Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

First Sitting
Tuesday 6 October 2020
(Morning)

CONTENTS
Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 10 October 2020
The Committee consisted of the following Members:

*Chairs: † David Mundell, Graham Stringer*

† Anderson, Stuart *(Wolverhampton South West)* (Con)  
† Atherton, Sarah *(Wrexham)* (Con)  
† Brereton, Jack *(Stoke-on-Trent South)* (Con)  
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)  
† Docherty, Leo *(Aldershot)* (Con)  
† Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)  
† Eastwood, Mark *(Dewsbury)* (Con)  
† Evans, Chris *(Islwyn)* (Lab/Co-op)  
† Gibson, Peter *(Darlington)* (Con)  
† Jones, Mr Kevan *(North Durham)* (Lab)  
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)  
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)  
† Mercer, Johnny *(Minister for Defence People and Veterans)*  
† Monaghan, Carol *(Glasgow North West)* (SNP)  
† Morgan, Stephen *(Portsmouth South)* (Lab)  
† Morrissey, Joy *(Beaconsfield)* (Con)  
† Twist, Liz *(Blaydon)* (Lab)  
† attended the Committee

Steven Mark, Sarah Thatcher, *Committee Clerks*

Witnesses

Douglas Young, BAFF Executive Council member (past Chairman 2006-2016), British Armed Forces Federation

Michael Sutcliff, Chairman, Armed Forces Support Group

Hilary Meredith, Chairman, Hilary Meredith Solicitors Ltd

Major Bob Campbell
Public Bill Committee

Tuesday 6 October 2020

(Morning)

[DAVID MUNDELL in the Chair]

Overseas Operations (Service Personnel and Veterans) Bill

9.27 am

The Chair: Before we begin, I have a few preliminary announcements. Please switch all electronic devices to silent. Tea and coffee are not allowed during the sittings. As I indicated before the sitting, please adhere to the social distancing requirements for the room.

Today we will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication, followed by a motion to allow us to deliberate in private about our questions before the oral evidence sessions. In view of the time available, I hope we can take these matters without debate. I call the Minister to move the programme motion standing in his name, which was discussed yesterday by the Programming Sub-Committee for the Bill.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 6 October) meet—

(a) at 2.00 pm on Tuesday 6 October;
(b) at 11.30 am and 2.30 pm on Thursday 8 October;
(c) at 9.25 am and 2.00 pm on Wednesday 14 October;
(d) at 9.25 am and 2.00 pm on Tuesday 20 October;
(e) at 11.30 am and 2.00 pm on Thursday 22 October;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Table

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<tr>
<th>Date</th>
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<tr>
<td>Tuesday 6 October</td>
<td>Until no later than 10.30 am</td>
<td>British Armed Forces Federation, Armed Forces Support Group</td>
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<td>Tuesday 6 October</td>
<td>Until no later than 11.00 am</td>
<td>Hilary Meredith, Solicitors Limited</td>
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<td>Tuesday 6 October</td>
<td>Until no later than 11.25 am</td>
<td>Major Robert Campbell</td>
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<td>Tuesday 6 October</td>
<td>Until no later than 3.00 pm</td>
<td>Professor Richard Ekins, Policy Exchange, Dr Jonathan Morgan, University of Cambridge, John Larkin QC, Policy Exchange, Association of Personal Injury Lawyers, Centre for Military Justice</td>
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<td>Tuesday 6 October</td>
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<td>Cobseo - the Confederation of Service Charities, The Royal British Legion</td>
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<td>Princess of Wales’s Royal Regiment Association</td>
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<td>His Honour Judge Jeff Blackett, Judge Advocate General</td>
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(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 6; Schedule 1; Clauses 7 and 8; Schedule 2; Clause 9; Schedule 3; Clause 10; Schedule 4; Clauses 11 to 16; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 22 October. (Johnny Mercer.)

Resolved,

That subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication. (Johnny Mercer.)

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Ctte shall sit in private until the witnesses are admitted. (Johnny Mercer.)

9.29 am

The Committee deliberated in private.

Examination of Witnesses

Douglas Young and Michael Sutcliffe gave evidence.

9.35 am

The Chair: We will now resume our public sitting to hear evidence from Douglas Young from the British Armed Forces Federation and Michael Sutcliffe from the Armed Forces Support Group. Both join the sitting remotely. May I confirm with Douglas and Michael that they can both hear us?

Douglas Young: Yes, I can, Chair.

Michael Sutcliffe: Yes, Chair, I can hear you.

The Chair: If at any point during the meeting when members of the Committee ask you questions you cannot hear them, please indicate so that we can make the necessary arrangements.

I remind all Members that questions should be limited to matters within the scope of the Bill. We must stick to the timings in the programme motion that the Committee has agreed. For this session, we have until 10.30 am.

Do any members of the Committee wish to declare any relevant interests in connection with the Bill?

Stuart Anderson (Wolverhampton South West) (Con): To err on the side of caution, I should say that I have served on overseas operations. I have also made a successful claim against the Ministry of Defence for my injuries during service.
Peter Gibson (Darlington) (Con): I am a former member of the Association of Personal Injury Lawyers, who are one of the witnesses.

The Chair: Will the witnesses please introduce themselves for the record? We will start with you, Douglas.

Douglas Young: I am Douglas Young, the former chairman of the British Armed Forces Federation. I am still a member and a member of its executive council. I have been asked by colleagues to present evidence today on behalf of the British Armed Forces Federation. We did submit detailed responses to the Ministry’s consultation last year.

Michael Sutcliff: Good morning, everybody. My name is Michael Sutcliff. I am the chairman of a small group called the Armed Forces Support Group, based up in Lancashire. Our worries are a conglomeration of things. We are a signposting group, and questions have been coming in regarding the Bill. Basically, it is déjà vu—we are here again. This has happened a number of times, and we would like to know how confident you are of getting these things through.

The Chair: Thank you for introducing yourselves. I think there are some issues with the audio, because some Members are indicating to me that they cannot hear well what you are both saying. I propose asking Chris Evans to begin asking questions, and we will hope that we can improve the audio as we go along. If Members feel that the audio is unsatisfactory, we will pause proceedings to see what we can do.

Q1 Chris Evans (Islwyn) (Lab/Co-op): Good morning, Mr Young and Mr Sutcliff. As we are on Zoom, will Mr Young speak first and Mr Sutcliff second? That will be easier than you talking over each other.

Both my questions are directed at both of you. The first question of the day is, does the MOD do enough to ensure that investigations and litigations are done in the interests of the personnel involved—to absolutely record everything and to interview people. It can be an absolute pest, and it can be very grim going through all that, but it has got to be done at the time, rather than relying on people’s recollections afterwards, when, of course, they may have gone through a whole series of incidents during a six-month tour or longer and it can be very difficult to pick one out. So investigation and recording will be even more important than ever if you reduce the longstop time limit. I think we support the 10 years.

Michael Sutcliff: Just doing a quick poll, the team up here in the north seem to go for five to seven years, although I do not disagree with the previous speaker. But one of the dangers that there appears to be that, if you give it too long, the memories fade. We are struggling with memory-fade systems on the Bloody Sunday situation—that is a very good example.

If there is an accusation, it needs to be examined quickly and it needs to be sorted. But first of all—this is the difficult bit—somebody, somewhere, has to verify that it is real and it has not been made up by somebody, because there has been too much of that.

Q3 Chris Evans: I do not want to dwell too much on this, but could you provide any evidence or examples of why cases of torture might not be brought within that five-year limit?

Michael Sutcliff: I cannot give you any examples of that. Talking among the team that we look after here, I have not heard of or seen any association with that sort of behaviour, so it would be unfair for me to comment on something that I really do not know about.

Douglas Young: There certainly are a number of very legitimate reasons for delaying. One would be simple concealment—perverting the course of justice and deliberate attempts to withhold evidence. Another one is where victims or complainants become aware of some evidence only later on because witnesses have been moved by the
exigencies of war—they are refugees in another country or they are in a refugee camp—and people never had the chance to obtain information until after a substantial delay.

Of course, the other side of that is that people are then vulnerable to stories that are not actually true. If something happens in a crowd, for example, bereaved relatives later become aware of different stories flying about among that crowd that may not be true. That is the other side of it. But there are legitimate reasons for possible delay, because we are always assuming that, following our well-intentioned intervention supporting another country in operations, there will then be a period of peace and organisation, which may not actually be the case.

Q4 Chris Evans: Moving on further from that, do you think that the Bill’s provisions extend to offences committed far beyond the traditional battlefield, and if so, what do you think the effect of that is?

Douglas Young: References to the battlefield are sometimes misleading. A battlefield is a very specific thing. Quite often, when these sorts of issues have been discussed over the past few years, commentators talk about the battlefield in relation to everything that happens anywhere in the deployment area. There is no doubt that if you are deployed anywhere, you are in harm’s way, and your possibly peaceful base environment may actually become a battlefield at very short notice—there is no doubt about that. Being in harm’s way is different from normal life in the peaceful United Kingdom, but, quite often, commentators have discussed these issues as if everything consisted of fighting through the enemy objective, which is a very long way, for example, from injuries or illness that occur in barracks or in other areas directly controlled by the United Kingdom forces. I do not know whether that answers your question.

Michael Sutcliffe: I agree. The term “battlefield” is often misleading. The battlefield could mean the backstreets of Basra or Belfast. It could mean the peacekeeping guys out in the far beyond place where we have them at the moment, where, theoretically, there is no war but where, sooner or later, the rebels will come out of the bush. Those are battlefields. Identifying a battlefield only as somewhere with tanks, aircraft, ships and everything else is incorrect. To answer your question, this should be very wide ranging—safely.

Q5 Chris Evans: I want to move on to troop welfare, which you are both very well briefed in. How many troops have you supported who have gone through repeat investigations, and what does the Bill do for those who have been dragged through repeat investigations?

Douglas Young: The aim is that fewer personnel and veterans will be dragged through them in the future. Personally, I have had limited involvement with individuals who have been supported by the British Armed Forces Federation, although I have certainly spoken to individuals. I have some experience myself that is sensitive and which I cannot go into.

There is no doubt that talk about being dragged into an investigation is accurate. However willing one might be to serve the ends of justice and truth, it is a strain, and it hangs over you for a very long time. It forces you to continuously go back over what at the time was a stressful, difficult and challenging event. It possibly causes one to have to review one’s own actions and decisions in a confusing situation, because nobody does everything absolutely right when things are going wrong.

One is faced with a mixture of getting approaches out of the blue—a phone call saying, “We’d like to talk to you about this, that or the other” or “Something is coming up,” which can come at you at any time—and also dates that you know about, such as a court hearing on a particular date. All that, even for a perfectly innocent witness, hangs over you for a very long time. That is part of criminal justice, and armed forces personnel are not the only ones who may have to face this, but it has a real cost. The fact that one is really only a witness does not get you off the hook.

I believe that there has been a lot of exaggeration in the language used about claims. People have often spoken about a vast number of prosecutions. I think all of us—lay people, ordinary soldiers—understand prosecutions as criminal prosecutions. In fact, there have been very few of those, which we all know about, relating to recent operations. Some of these so-called prosecutions are actually civil claims by members of the armed forces and veterans. We have to be aware of exaggerated language. However, it is a strain and a stress, and being caught up in long-running investigations can have an impact on one’s family as well.

Michael Sutcliffe: My personal situation regarding this is that I act in my role here as the welfare officer. Without going into too much detail, I can tell you about two individuals who were both involved with serious fighting and who both caused death to the opposite number—in-house. The fact that they had been through the wringer a few times was fairly obvious when you listened to their options—it was either them or the other. At the end of the day no charges were made, but the pressure put on those two guys was appalling.

On the other side, I have two guys who, even today in their early 70s, are looking over their shoulders and sleeping not too well at night, waiting for a knock on their door. I do not think the knock is going to come, but nevertheless, this situation is out. That is in a tiny little place where I live, so what is happening out in the big wide world, I do not know, but it is not very satisfactory. I hope that gives you a reasonable answer, sir.

Q6 Chris Evans: One of the criticisms of this Bill is the six-year time limit for civil cases against the MOD in respect of personal injury or death during overseas operations. First, should it be longer, and secondly, do you think it puts troops and veterans at a disadvantage compared with their civilian counterparts?

Douglas Young: I think six years is a reasonable presumptive time limit for civil payment, and corresponds pretty much to the legal system in the different parts of the United Kingdom, but we would be concerned about the absolute longestrop. As I mentioned before, claims of this type often originate during conflict or in post-conflict periods, when the claimants may be refugees or internally displaced persons. Perhaps a robust administrative payment system operating in-theatre would help to speed things up, because, clearly, some people have perfectly legitimate claims that should be met, and claims do not always imply criminal liability, which is what we are sometimes led to believe.
Imposing an absolute time limit places armed forces personnel claimants themselves at a disadvantage compared with civil claimants in ordinary life, where the court has discretion. Of course, the Minister has made it perfectly clear, absolutely correctly, that the time limit for this particular part of the Bill only starts to run at the point of knowledge. That is completely understood. That point of knowledge, diagnosis or whatever, could be many years later. Nevertheless, I would have a worry about an absolute longstop as proposed.

Q7 Chris Evans: To give some context to that, what I was thinking of with that question was nuclear test veterans and also the knowledge we have now about asbestos and asbestosis. These issues took numbers of years to emerge before we found there was a problem, and I am concerned that if we have another issue that we do not know about at the moment—chemicals that we then find out are life-threatening—the limit could have an adverse effect on troops bringing civil claims against the MOD. That was the background to my question.

Michael Sutcliffe: I take your point there, sir. Funnily enough, I am ex-Navy, and a number of my colleagues now are beginning to pick up the old asbestosis problem—I cannot remember the posh name for it—

Chris Evans: I can’t either.

Michael Sutcliffe: They are being compensated for it, so you are right that if we had a very early backstop, they would have lost that. Not being the lawyerly mind, I do not know whether you can split the two things up. Let us just take the asbestos as an example, which is a workplace situation that was or is found particularly in the Royal Navy, and the difference between that and an action situation. I do not know whether you can divide the two, but on one side, I am looking at the fact that you do not want it to go on forever, and on the other side, of course, in the example that we are talking about, forever is needed before you suddenly find you have it. That is the best muddled answer I can give you.

Q8 Chris Evans: There has been criticism in some quarters that the six-year limit breaches the armed forces covenant. Again, that was prevalent as the Bill began its parliamentary journey. Do you believe that the Bill in any way breaches the armed forces covenant?

Douglas Young: Various aspects of the covenant may be engaged by this legislation. Whenever we mention the covenant, it is worth saying that the stated aim of the legislation is to improve the position under the covenant, or to be guided by the covenant in removing what is considered to be unfair treatment of members of the armed forces compared with other, ordinary people who are never subjected to quite the same lengthy legislation. But there is certainly the argument that restricting the right of armed forces personnel and veterans to sue their employer for an injury or illness caused by a fault during their employment is against the military covenant, so there are two sides to that.

Michael Sutcliffe: I entirely agree. The covenant is fairly new, and as we progress and go through this, we will have to tweak it here and there. I see what is in front of me in the Bill as quite positive, but we need to look at these little things to ensure that service personnel are not limited or restricted any more than civilians should be. The idea of the covenant is to help and support you in the civilian life you have just entered, so having sticking blocks in it is not a good idea.

Q9 Chris Evans: I have taken enough time and know that colleagues want to come in, but I will end with a quick, simple question. How do you think veterans and their families will react to the Bill?

Douglas Young: There is no doubt that the Bill and its principles have been widely welcomed. I think a lot of people will see the headline that, as promised by the Government, action is being taken to put a stop to the industrial level of claims. As I mentioned before, I think there is some exaggeration behind some of that, although there is absolutely no doubt that many have suffered disgracefully and that should never have happened. However, I have some doubts about the scale of what is involved.

The Ministry has at times understandably encouraged the idea of prosecutions and welfare, and some of it is claimed by members of the armed forces. Let us not forget, of course, that there are perfectly genuine and reasonable claimants who have sought compensation for something that did happen to them, but across the board I would say there is a qualified sigh of relief. A lot of people welcome it.

I have seen pretty strong views against as well, and these views are not all from, if you like, the usual suspects who are suspicious of the armed forces or not particularly sympathetic to the armed forces. Some of the criticism has come from people with a lot of relevant experience. For example, the field marshal and the general who wrote the letter were described by some as “meddling generals”, and they probably knew very little about the two individuals concerned, who certainly know what a battlefield looks like and the consequences of putting people in harm’s way. I want to encourage this Committee in its scrutiny of the Bill in case of unintended consequences, or even intended consequences, that might trick the Ministry of Defence but might not be quite what those involved are looking for.

Michael Sutcliffe: From our point of view, it starts with a big hope. We have been here before, as I said at the start, as there have been several attempts. They all seemed to be Ministers saying, “We are going to do this, that and the other,” and then suddenly some bug is found somewhere and it never happens. There is a hope that this is going to go through. I take the great point just made to the Committee: please scrutinise the Bill as carefully as you can. Often the MOD is seen as the enemy of its men, which is the wrong way to see it and really is a bit of an issue. Do not let the Leigh Days of this world anywhere near it, because they will screw it up.

The object of the exercise is to look after your service and ex-service personnel in the best way you can. If you read the papers about a number of MPs voting against it, I hope you will see that there is concern out here in the big wide world and we are at your mercy—do a good job.

Chris Evans: Thank you.

Q10 Miss Sarah Dines (Derbyshire Dales) (Con): It is a pleasure to serve under your chairmanship, Mr Mundell. I thank the witnesses for giving evidence today, albeit
virtually. I have a couple of questions on the effects of the present regime on servicemen and women and their families. First, can each of you describe the effect of the present regime of repeated claims, sometimes over decades, on the mental health of the individual, of their fellow servicemen and women, and of their children and families?

Douglas Young: I think we have touched already on the dire mental health effects of repeated investigations, for example, and even simply of participation in combat operations. The British Armed Forces Federation has been involved in many of these issues. In campaigning about mental health in the armed forces in the past, we have given evidence to a parliamentary inquiry into healthcare for members of the armed forces. I have some experience myself, because I am a qualified caseworker and office bearer in a major national charity that supports armed forces personnel, veterans and their families.

Not all mental health problems among the armed forces and veterans are attributable to combat; there are many other factors. There can be a different pattern in illness between armed forces people and people outside. Obviously there is a huge overlap, but they can present slightly differently.

Years ago, not long after BAFF was formed, we had the case of an individual who had sought psychiatric support through the NHS. He had been assigned to take part in group therapy. In the group therapy, he described the incidents to which he attributed his illness, but after a while he was asked to stop coming because he was making all the other patients worse. There is a need for targeted mental health support where people are willing to accept tailored support. Of course, some people may not wish to be in any way associated with the armed forces, even though their problems may be attributable to that.

We certainly support everything that has been done. Things have improved. The Ministry of Defence has been doing a lot in this area, as have charities such as Combat Stress, but there is always more to be done. I frequently meet people—not directly through that, but at veterans breakfasts and the like—who are clearly suffering. It is a huge problem, which we need to understand and perhaps not exaggerate. The vast majority of people who have served in the armed forces are very happy about, but it is not thousands. Do not get too carried away with that. I have spoken to the local colonel and he said to me, “Everybody thinks that every soldier, sailor and airman has PTSD, and it works out at about 3% of us.” However, that 3% goes back to Cyprus and everywhere else—there is a lot in the 3%.

We are doing better, and we can do better. All of us are beginning to understand things better, and there are clever people out there coming up with good ideas every day. Hopefully that gives you the situation. But yes, obviously it destroys families and puts great stress and strain on them—there is no getting away from that.

Q11 Miss Dines: It was not so much a question about general mental health and the effects on fellow servicemen and families; it was about the absence of the protection that the Bill is bringing through. Do you agree with the Government’s idea that mental health will be helped if these sorts of vexatious or unnecessary and unmerited claims are stopped? Will that help servicemen and women, their fellow workers and their families? That is what the question was aimed at, in your experience.

Michael Sutcliff: The quick answer to that from me is yes.

Q12 Miss Dines: Mr Young, do you agree that the new proposed law will help the mental health of servicemen, their fellow servicemen and their families?

Douglas Young: Given that endless investigations and the fear of prosecution—sometimes unfounded fear—have had an effect on individuals’ mental health and that of their families, it follows that if that at least can be reduced, then fewer people will suffer from the same deleterious effects on mental health.

Miss Dines: Do you agree, Mr Sutcliff? I think you said yes earlier.

Michael Sutcliff: I agree 100%. They let these things run on and on forever, going round and round in circles. It is utter nonsense and has destroyed many people, so yes, they will be cutting out, and that is good.

Q13 Miss Dines: In terms of how that could spoil the retirement of someone who has retired from the services—the fear of someone knocking on the door in the morning to cart them off for yet another series of questioning—is that something that is realistic, or is that fear fanciful? Will the Bill stop that?

Douglas Young: [Inaudible.]

The Chair: We did not hear the start of your answer, Mr Young. Will you start again? We had a technical issue.
Douglas Young: There have been very serious allegations concerning the approach taken by investigators earlier on, under the IHAT investigation. We do not know fully the truth of those, but certainly in cases investigators who had no actual police powers acted excessively. I do not believe—or, certainly, I have not been told—that that sort of thing has been happening more recently.

The Bill should not affect that, except perhaps by removing scope altogether, but it will not have a direct effect on the treatment by investigators arriving at the door. It is an important area, and the Ministry of Defence, in so far as it has not already done so, should certainly take that on board.

People who are being investigated or engaged as potential witnesses have said that they do not feel supported by the MOD. The MOD arranges them—in some cases, they have some legal support—but the MOD is not actually on their side. I can understand that—you cannot tell a witness what to say—but a number of people have written, and I have now heard it myself directly, about how they did not feel adequately supported by the MOD. Sometimes, if they were still serving, they were told, “Well, your unit should be supporting you,” but that unit might not be the one that they have a particular connection with. The question of support and attitudes towards potential witnesses and suspects requires close attention, but is perhaps not directly addressed by the Bill.

Michael Sutcliffe: I have not seen that. We have had a couple of instances here. One guy had literally barricaded his house. He was worried about these guys turning up, but they never did. It took a while to calm him down. I have a couple of chaps who are still a little worried about a knock on the door, but they have not come. But I have not heard about these people knocking about for a while—at one time this was hitting the headlines quite often, but it is not at the moment. Of course it has an effect on people, and it is wrong. It is not being done properly.

Q14 Miss Dines: Some who oppose the Bill say that it will protect people who have in effect committed or been involved in torture. Do either of you have any personal experience—do say if this is simply outside your experience—of those who have suffered investigation for pure torture? I want to get a handle on how frequent these allegations really are and whether there is any justification for opposing the Bill on that ground.

Douglas Young: I have no direct experience of a member of the British armed forces who has been accused of torture; I have no direct knowledge. I have personally interviewed a very recent victim. I say “very recent”; it was years ago, but he had very recently been tortured by foreign armed forces and I saw his injuries.

I have very serious concerns about torture being treated differently from sexual offences—that sexual offences have been singled out as not subject to the same time limits that torture is. I would say that the two broad areas of offence are very similar. They may take place for base motives. They are certainly inappropriate. They are about using power against someone who has no control over the situation. And they very often take place behind closed doors, so it may be very difficult to take evidence—if torture or sexual offences have occurred within a base, other people in the area may not know about it at the time. So I have very serious concerns about the exemption, if you like, for torture and it being treated differently from sexual offences. The suggestion is that that is for reasons of political correctness: “Sexual offences? Oh no, we must keep them aligned, but torture we won’t oppose.” I do have worries about that.

Michael Sutcliffe: My answer is that I have absolutely no experience of it and have not heard any comments from any of my colleagues or visitors, so it would be unfair for me to comment.

Miss Dines: That is a very fair answer. Thank you very much, gentlemen.

The Chair: We are tight for time, so I will call Carol Monaghan next, and then, if we can, we will squeeze in Liz Twist and Stuart Anderson, who have both indicated a wish to speak. Gentlemen, could you, at the other end, give short, sharp answers as well?

Q15 Carol Monaghan (Glasgow North West) (SNP): Thank you, Mr Mundell. Could I take Mr Young back to something he said earlier? One reason given for the Bill being brought forward is the industrial scale of claims against the MOD. You said that you reckoned there might be exaggerations about that. How big an exaggeration do you think it is?

Douglas Young: I cannot quantify it, but I certainly have seen a suggestion that a large proportion of actual claims has been on behalf of forces personnel. Only the MOD can really answer that. I have mentioned before my concern about some of the language. Lawfare actually exists and it is a threat, but many of the cases are not lawfare at all in the sense of being employed by bad or malicious actors in order to make things difficult for the United Kingdom. Many of the cases are not like that at all. If people feel that they have a claim, they will make a claim. It is exactly the same in this country. Why wouldn’t you, if you were in Basra or Helmand and you thought you had a genuine claim? People exaggerate. I have absolutely had experience of that in the Balkans. People tell stories and it is difficult to get to the truth.

Q16 Carol Monaghan: Do you think the phrase “industrial scale” has been misused?

Douglas Young: “Industrial scale” refers to large numbers. The numbers mentioned by the MOD are high. I would like to see the breakdown and how many were settled, in which case presumably there was something in it, and how many were not by indigenous residents but by members of our armed forces.

Q17 Carol Monaghan: Part 2 of the Bill proposes a six-year limit for civil claims against the MOD. Typically that would be personnel who have suffered injury as a result of MOD neglect or negligence. Why do you think a six-year limit has been put forward?

Douglas Young: I think six years is a reasonable presumptive time limit, but the absolute limit, the longstop, should be longer than that.

Q18 Carol Monaghan: Without an absolute longstop limit, do you foresee difficulties, or have you had any experience where people have had injuries that have only come to light, or where they have only claimed, much later than that six years?
Douglas Young: On the first point about coming to light, we are all right with that. The time limit only starts at that point. I do not have any experience of facts that came to light.

Q19 Carol Monaghan: Could I put the same question to Mr Sutcliff? Can you see any difficulty? You talked about your experience in the Royal Navy. Can you see any difficulty whereby a situation might arise and an individual might want to claim beyond the six-year limit?

Michael Sutcliff: The example I gave you is exactly that. I can see it for everyday injury, but when you are using equipment, machinery and things like that—this problem with asbestos literally only started raising its head many years ago. To be fair, the MOD dealt with that very fairly. There are always exceptions to the rule. You should be able to make a submission as something that arrives and is seen by the necessary medical people or scientists as an issue. I am not sure that that answers your question, but you cannot just shut things down or hearing loss.

Q20 Carol Monaghan: I suppose the reason for my question is that different organisations have concerns that some conditions come to light and the individual has left a period of time before actually pursuing a claim, so although it has come to light on a particular date, the limit would prevent them from pursuing the claim. There are issues like, for example, radiation poisoning or hearing loss.

The Chair: Gentlemen, this will be the last question, so if you could both answer succinctly, that would be helpful.

Douglas Young: One thing about a shorter period is that, properly described by the MOD and by lawyers and others, a shorter time, if properly used, would actually remind people that the clock is ticking and that they need to get in. So there is that case for shortening that limit, but we should be careful.

Michael Sutcliff: I accept that. That is a reasonable comment.

Carol Monaghan: Thank you, gentlemen.

The Chair: Thank you to the witnesses. We have reached the end of the time. I apologise to the two Members who wished to put questions but were unable to do so. Thank you, gentlemen, for joining us and engaging with the technology successfully.

Examination of witness

Hilary Meredith gave evidence.

10.30 am

The Chair: We are now going to hear from Hilary Meredith, of Hilary Meredith solicitors, who is joining us in person. We have until 11 am for this session. Hilary, could you introduce yourself for the record, please?

Hilary Meredith: Yes, I am Hilary Meredith.

The Chair: Thank you. As you have seen from the previous session we have some logistical issues, because Members who wish to question you will have to move to a seat where there is a microphone, or we have a standing microphone just behind you. I hope that you will bear with us as we move forward with these logistics. The two Members who have indicated that they wish to question you during this session are Emma Lewell-Buck and Carol Monaghan. If there is anyone else—Sarah Atherton, I will take you as well. So, Emma.

Stuart Anderson: I want to be on every question, Chair.

The Chair: I suggest that we might logistically arrange for people who do want to ask questions, or anticipate asking questions, to be at the table where they would have access to a microphone. It makes it so much easier.

Q21 Mrs Emma Lewell-Buck (South Shields) (Lab): Hello, Hilary, good morning. My first question is: do you think that it makes sound legal sense to gather changes to criminal and civil law together in the same Bill?

Hilary Meredith: No, I do not, and that is one of my issues with the Bill—that it mixes civil and criminal law together.

Q22 Mrs Lewell-Buck: Why is that? What pitfalls do you envisage should the Bill go through unchanged and become an Act of Parliament?

Hilary Meredith: One of the issues with the Bill is that we need to look backward to find out how we got into the present situation, before we can cure it. Most of the criminal allegations arose out of civil proceedings by Iraqi foreign claimants against the Ministry of Defence. Great caution needs to be taken when criminal allegations arise out of a compensation cheque carrot being dangled. For that reason alone there needs to be a separation with the two—criminal and civil law.

Q23 Mrs Lewell-Buck: Thank you for that. Does the Bill do anything for existing veterans and service personnel who have been dragged through repeated investigations?

Hilary Meredith: I think that leads on to it: because many of the criminal allegations arose out of a civil compensation claim, great caution should have been exercised. I cannot believe that extra care was not taken, and under those circumstances I can quite see there should be a presumption against guilt. It was not helped by the Ministry of Defence then paying cash to civilians in Iraq by way of compensation, which almost indicated guilt. That led on to the criminal prosecutions.

Q24 Mrs Lewell-Buck: Is five years the right period for a cut-off? Should it be seven, three, or some other number?

Hilary Meredith: I am against any cut-off, to be honest. I think the reason why the cases became historic is not the date of the accusation—any of the criminal accusations under human rights law, for example, came within 12 months of the incident taking place. It was the prolonged procedure that was bungled afterwards that made those cases historic. It is the procedure and investigation in the UK that need to be reviewed and overhauled, and not necessarily a time limit placed on criminal or civil prosecutions.
Also under that heading, I have an issue with the longstop applying to civil cases where personnel are overseas on operations and military personnel have a longstop placed on their claims as well. I understand that that has been put in on a equitable basis, so that if there is a longstop for a criminal prosecution, it also has to apply to civil law, but I am not sure about that.

**Q25 Mrs Lewell-Buck:** Do you expect more prosecutions of UK armed forces personnel and veterans in the International Criminal Court?

**Hilary Meredith:** The answer to that is that I do not actually know. I think that lawfare instance came mainly from one or two lawyers. Phil Shiner was a one-off. He brought civil claims for compensation first, and as a result of that the prosecutions followed. If we had a robust procedure for investigating those cases and, for example, an independent advocate who has the back of the individual member of the armed forces and supports them, many of those cases would not have been advanced to the point that they were, with the subsequent criminal allegations.

**Mrs Lewell-Buck:** Thank you, Chair—I will leave it there so others can come in.

**The Chair:** Thank you for observing the microphone requirement. I call Stuart Anderson.

**Q26 Stuart Anderson:** Thank you, Chair—it is an honour to serve on the Committee. Ms Meredith, you have mentioned what you think is wrong in the Bill. Obviously, we are looking to protect serving personnel and veterans in the future. If you do not think the Bill is right, what do you suggest we do?

**Hilary Meredith:** I think the overarching view of the Bill is correct, but there does need to be protection in place. When criminal prosecutions arise out of civil compensation cheques being dangled, there should be a presumption of innocence and no prosecution should really take place without extra care and caution.

I think that the time limit is a bit of a red herring, to be honest. We do not need time limits on it; most of the allegations were brought in a timely manner. I have searched to see whether our courts ever exercise their power of discretion under the Limitation Act for human rights allegations—they have to be brought within 12 months. I cannot find a single case on a preliminary investigation in which the courts have extended a 12-month time limit under the Human Rights Act. I can see one case where they have extended the date that time begins to run, and in multiple proceedings, that is not at the beginning of the process but at the end.

For example, under IHAT, it was only in June this year that we found out that of those 4,000 vexatious criminal claims, there was not a single prosecution. In those circumstances, if a member of the Armed Forces wishes to bring their own human rights claim for lack of a speedy trial, that time runs from June this year.

**Q27 Carol Monaghan:** Thank you for your evidence so far. In response to Emma Lewell-Buck’s questioning, you talked about the need for proper investigation. Can you expand on that and tell me what you see that as being?

**Hilary Meredith:** The investigations that took place following the civil claims were shambolic to be honest. I know that you will hear from Robert Campbell after me; he would have liked to have been heard in the European courts, because our system was so shambolic and went on forever. That is a very extreme viewpoint to take—we cannot investigate properly in this country.

The Royal Military Police need special training. You have to understand that they are investigating crimes overseas and in a war zone. It is extremely difficult. It may be that they take training from, for example, the Metropolitan police on investigating crimes. It is a very difficult area to investigate. We need to have a robust system of procedures to investigate crimes, rather than putting time limits on it.

**Q28 Carol Monaghan:** Thank you. When we hear about repeat investigations, what sort of form do they take?

**Hilary Meredith:** For example, if I can use the case of Major Campbell, the investigation against him included a drowning in the river in Iraq. That allegation came within a year of the incident. He was told by his commanding officer not to worry about it because it would be cleared—it would be sorted. Then began a process where over 17 years, he was investigated 11 times for the same incident. That is the shambolic system of procedure that we are operating in this country and that is what needs to be reviewed and overhauled.

**Q29 Carol Monaghan:** And who was carrying out these repeated investigations?

**Hilary Meredith:** I think the original investigation was by the Royal Military Police. It was perceived that they were not independent enough, so the IHAT team was formed. Under the IHAT team, we then had this terrible form of investigation through Red Snapper, which Parliament has heard about before. Its methods of investigation and what it put those accused through was quite horrific. Had there been an independent advocate that had the backs of the individual members of the armed forces—not the Ministry of Defence, which cannot act; there is a conflict—there would have been a buffer between the Red Snapper team and the IHAT team and the individual person. I think that would have solved a lot of mental health issues as well.

**Q30 Carol Monaghan:** You mentioned that you are concerned about the six-year longstop in part 2 of the Bill. Can you give an example of where that would be problematic?

**Hilary Meredith:** There is a difficulty putting a time limit on the Human Rights Act—I do not even know whether we can do that constitutionally, because it is a European convention. If there is a six-year time limit on criminal allegations, I have concerns about that. I think most of those criminal allegations were brought well within time anyway; as I said, it is the process that was wrong.

For civil claims against the Ministry when people are injured or killed in service overseas, I do not think a longstop should be applied. There are tremendous difficulties in placing people in a worse position than civilians. In latent disease cases—diseases that do not come to light until much further down the line, such as asbestosis, PTSD, hearing loss—it is not just about the diagnosis. Many people are diagnosed at death. It is
about the connection to service. That connection to service may come much later down the line, and by that time they will be out of time to bring a claim.

Carol Monaghan: Thank you very much. Thanks for your answers.

Q31 Mr Kevan Jones (North Durham) (Lab): One of the things that has come out from what you have said, and certainly what I have read throughout all of this, is the issue around poor investigations and the investigation industry, as it became, in Major Campbell's case. You have already said that there should be an advocate on behalf of somebody who is accused. If we could put that into the Bill, would you welcome it? Secondly, is there any way we could put time limits or controls on the length of investigations?

Hilary Meredith: That is a really interesting point, actually. I had not thought of a time limit on investigations. Certainly under the Human Rights Act, there is a right to have a speedy trial, and that did not happen in these cases. There were no speedy trials. A limit on the time that an investigation takes would, I think, be really welcomed. Sorry, I cannot remember your second question.

Q32 Mr Jones: The other one was about advocates. As you say, the individual is a bit disadvantaged because they have the weight of the MOD and the investigation against them. Could we instigate something whereby they are given an advocate to act on their behalf?

Hilary Meredith: Parliament had an inquiry into what support they were given. Basically, there was none. It is not so much the serving personnel, but the veterans—there was no telephone number for them to phone. At one point, I was told, “Phone the Veterans Agency.” The Veterans Agency deals with pensions. If you are arrested and in a police cell at midnight, you cannot phone a pensions department for help. The penny dropped when I said that to the Ministry of Defence.

If someone was appointed independently from the Bar Council or the Law Society, and it was freely advertised, even given to personnel before they go on operations, then they would have a telephone number to phone for support and advice. I think that is crucial. The process of the investigation may have been reduced if they had had an advocate in their corner, questioning why this was going on for so long.

Q33 Mr Jones: In terms of a time limit to investigations, do you see anything that would legally stop or prevent that?

Hilary Meredith: I think that part 2, on the time limit, should be taken out and scrapped completely. It is the time limit for the procedure. It went on too long, with multiple investigations. We have not got our system right there. In fairness, the decision in the Al-Skeini case that opened the floodgates to the Human Rights Act applying overseas, outside our territory, took us all by surprise. It took the MOD and everybody by surprise. We were not geared up for the consequences of that.

Q34 Mr Jones: The presumption not to prosecute always seems like a strange thing. It is like investigating you for burglary, but saying in advance that we are going to make sure we are not going to prosecute you. What are your views on that? Is that legally possible?

Hilary Meredith: I worry that it is not, actually. I think the Bill will have a rough passage if that part is not tailored slightly. There is a presumption not to prosecute where the allegations of crime arise out of a compensation cheque carrot being dangled, but in the majority of these cases the MOD are paying compensation. Payment of £145,000 was made to the father of the drowned boy in Major Campbell's case, indicating in Iraq that there was guilt there. Why was that payment made, who authorised it and why was it so much—it is a huge amount of money—when he was exonerated completely? Some 4,000 allegations of criminal activity under IHT were completely dismissed, without a single prosecution. Why was the MOD paying out compensation?

Q35 Mr Jones: I might be able to answer some of that. Partly it was a cultural thing in Iraq. In the early days, the Americans and others were seen to be paying money out for car accidents and other things. It got to a situation where the MOD copied that and made compensation offers in the field. There were cultural issues that paying money somehow drew a line under the issue. It was partly related to the insurgents and trying to track that as well. It was possibly well intentioned, but that is the consequence of what you say.

Hilary Meredith: I think those payments fuelled the allegations of crime. Maybe there should be a review of why large amounts of money are paid in compensation when there is no guilt there.

Q36 Joy Morrissey (Beaconsfield) (Con): When you refer to the Human Rights Act, are you referring to upholding in the ECHR as opposed to the Court of Justice at the European Union? I find that interesting, given that the EU Court of Justice does not accede to the European Court of Human Rights or acknowledge all of its remit. The EU Court of Justice ruled that it had the right over rulings of the European Court of Human Rights, which is a separate entity. Did we then adopt the European Court of Human Rights ruling as sacrosanct and did we go on with that, prosecuting people in a specific way? Is that what we did?

Hilary Meredith: I am not quite sure I understand the question.

Q37 Joy Morrissey: The EU Court of Justice has decided that it has jurisdiction over the European Court of Human Rights in terms of the Lisbon treaty and other national security elements. Why did we go backwards and adopt the European Court of Human Rights, and hold ourselves to that level? Is that where things went awry?

Hilary Meredith: I think there are two issues. The Human Rights Act civil cases were brought for abuse and detention. When you look at the charge sheet, there are masses—hundreds—just as abuse and detention. The civil human rights were brought by the Iraqi civilians against the Ministry of Defence. That, then, culminated in human rights criminal activity against individual members of the armed forces. Which takes precedence? I think you will have to ask a constitutional lawyer, but my concern is that if we are putting time limits on the Human Rights Act 1998, I am not sure if in the UK we have the power or authority to do that. A constitutional lawyer would be able to advise you better.
Q38 Joy Morrissey: What about the national security element of the person’s defence? Who was there to make that national security defence for the armed forces personnel that was being prosecuted? Many of the things they were asked to do were a result of a national security issue, so who was there to help them in terms of the national security element?

Hilary Meredith: Nobody.

Joy Morrissey: No one.

Hilary Meredith: No, there was nobody there to help them.

Q39 Joy Morrissey: So for a whole aspect of what they were being prosecuted on, there was no information and no knowledge being shared.

Hilary Meredith: No, and I think one of the issues that the members of the armed forces have is that they have to step out of the military environment into civvy street and find a civilian lawyer or even know that they are allowed to find a civil lawyer, there was no information there for them. That is why I am suggesting there should be an independent civil advocate from the Bar Council or the Law Society with criminal knowledge to help them.

Q40 Joy Morrissey: I do not know what your feelings are, but the European Court of Human Rights also uses the primary method of judicial interpretation as a living instrument, as a current-day interpretation of events and modern-day facts, where you are not taking into consideration national security, armed forces personnel or procedure. You are not taking the wider NATO or other alliances that you are entering. They are just taking it on the modern-day interpretation. Would you say that that had an effect on how people in service have been or were prosecuted?

Hilary Meredith: I do not know. I am not a criminal lawyer, but I think that many of those—imagine that you are completely innocent and you are accused. First, there are so many different laws now that affect you on the battlefield, so many different conventions, and then throw in human rights as well. It is a difficult, complex scenario.

Q41 Sarah Atherton (Wrexham) (Con): I was reading your discussion points and I was interested to read that the majority of lawfare cases arose out of compensation claims brought by Iraqis and Afghans. That opened the floodgate, which paved the way for lawfare civil compensation claims. Can you expand on that? Can you give the Committee some idea of the numbers we are allowed to find a civilian lawyer, there was no information there for them. That is why I am suggesting there should be an independent civil advocate from the Bar Council or the Law Society with criminal knowledge to help them.

Q42 Sarah Atherton: It was numbers. I am looking for statistics.

Hilary Meredith: As a result of those civil claims that were brought—I do not know how many civil cases were brought against the Ministry of Defence; it would be interesting to know—they led to over 4,000 accusations of crime under the IHAT team, which happened to be investigating. Of those 4,000, there was not a single prosecution.

Q43 Sarah Atherton: How many of those were false?

Hilary Meredith: I understand that, out of the 4,000, there were possibly 30 worth investigation. Of those 30, it was whittled down to around five, and of those five, there was insufficient evidence to say whether there was any issue or not. Somewhere along the way, somebody decided that the British military were “rotten to the core” and they were not given a chance, so they were almost guilty before being proven innocent. That is where the presumption against prosecution is so important.

Q44 Joy Morrissey: What help are personnel given when they are accused?

Hilary Meredith: There are two scenarios, depending on whether you are still in service or you are a veteran. If you are a veteran, there is nothing—there is no chain of command. A number of times, the MOD said to me that veterans can go and see the chain of command, and I say that they are retired and are veterans, so there is no chain of command, or their commanding officer has retired. Who do they contact? If you are in service and have a good commanding officer, you can go and seek help through them. I know that the Army legal services tried to help in some instances, but I think there is a conflict of interest with the Army legal services protecting the Ministry of Defence and trying also to protect individuals.

Q45 Mr Jones: Hilary, you talked about an advocate, and obviously people who have been falsely accused need redress, in terms of getting their name cleared. Do you think there is an opportunity, particularly with veterans—you might be able to do it for serving personnel as well—to give responsibility to the armed forces ombudsman to review cases once they have actually concluded if people feel that they have been ill-treated, in terms of malicious prosecutions or delays in investigations, for example?

Hilary Meredith: That is one thing I considered. The remit of the ombudsman would have to be extended to do that. To look into 4,000 falsely brought accusations is a big job. Whether the ombudsman has the resources and the remit would have to be looked at, but I think that is a good idea.

Q46 Mr Jones: Even if we stay it for current cases, could that responsibility be given to the ombudsman for future cases?

Hilary Meredith: If their remit is extended and they could cope with the volume, yes, definitely. My idea is for an independent person, which the ombudsman is, or somebody from the Bar Council or the Law Society, or even a panel appointed on a rota basis that could assist.

Q47 Joy Morrissey: Hilary, do you agree that it is impossible to actually reach a fair verdict if you do not have the national security background or the military files on what was decided at the time? If that is restricted information—some of those documents may be classified
for several years or decades—how is the service person supposed to defend themselves if they do not have that level of information?

**Hilary Meredith:** I agree; it is extremely difficult. When I am putting forward an independent person, I am talking about somebody in civvy street, which would be even more difficult. Unless you sign up to the Official Secrets Act and there is a full cards-on-the-table procedure, it would be very hard to defend.

**Q48 Stuart Anderson:** Going back to when you said the time limit is a red herring, how do you think the serving personnel and veteran community will take it if we took your recommendation and removed the time limit from the Bill?

**Hilary Meredith:** The time limit, on the face of it, is welcomed by most veterans and military personnel, but the reading of it is a concern. For example, time limits will be introduced if military personnel serving overseas are killed or injured in service. Putting a time limit on that puts them in a worse position than civilians. That alone outweighs the prospect of a time limit on a criminal prosecution. Most criminal prosecutions were done in a timely manner. It was the process that caused them to be historical. Differentiating between the two and sorting out the process is more welcome than actually putting a time limit on an allegation.

**Q49 Stuart Anderson:** What about from the point of knowledge?

**Hilary Meredith:** In civilian cases, with the date of knowledge of, for example, of PTSD, you may consider that there is something wrong post service, but it can take up to 15 years for PTSD to actually raise its head. An example of that is the young men and women who came back who have lost limbs. People were surviving triple amputations and went on to do fantastic things; they climbed mountains, they skied, they had great prosthetics—they all did remarkably well. But as the ageing process takes place, they cannot walk on prosthetics; they become more wheelchair-bound, they put on weight, the Invictus games is not available to them, and that is when PTSD sets in. PTSD is not just the diagnosis; it is the date you realise it is connected to service, and 15 years down the line it can be difficult to differentiate between, “Yes, there is something wrong with me,” and, “Ah, but it’s also connected to service.” It is the causation issue—that the service caused the PTSD.

**The Chair:** Thank you, Hilary. With that, we have reached the end of the time period that was allocated for your evidence. On behalf of all the members of the Committee, we are very grateful to you for the evidence you have given and for bearing with us and the logistics we have to follow to comply with social distancing. Thank you very much for your evidence.

**Examination of Witness**

**Major Bob Campbell gave evidence.**

11 am

**The Chair:** Our next witness is Major Bob Campbell, who is giving evidence remotely using sound only. We have until 11.25 am for this session. Major Campbell, could you just confirm to me that you can hear me, and could you speak so that we know you can hear us?

**Major Campbell:** I can hear you fine. I will just say that I have hearing loss in both ears, so may I ask for the questions to be spoken clearly? You do not need to shout, but just speak clearly, and then we will probably get through this more quickly.

**The Chair:** Excellent. You are pre-empting my good self in giving that instruction to those asking for evidence. Major, could you just confirm your name formally for the record?

**Major Campbell:** My name is Robert Campbell, former Army officer.

**The Chair:** Thank you very much, sir. I have four Members who have indicated that they want to ask questions: Stephen Morgan, Kevan Jones, Carol Monaghan and Stuart Anderson. If anybody else wants to ask a question, please indicate. I will go first to Stephen Morgan, who I am sure will follow the Major’s instructions.

**Q50 Stephen Morgan (Portsmouth South) (Lab): Major Campbell, thank you for giving evidence before the Committee today. You have obviously recently been in the news for the eight investigations. How did the MOD provide you with support? Was there good care and assistance during the investigations?

**Major Campbell:** No, there was none. Depending on which investigation you wish to address, in the early investigations under the Royal Military Police we were told just not to think about it and to get on with stuff. No concession was given to us in our day-to-day duties. Later on, when the Aitken report was written in 2008, we were not approached prior to the publishing of the report; I heard about it on the radio like everybody else, while I was driving home. It is rather unpleasant to discover on the radio that your own Army accuses you of killing somebody in Iraq, three years after you have already been cleared of that allegation.

Moving forward to the later investigations, there was a civil claim made by Leigh Day in 2010, in which we were ordered to give another statement and we were ordered not to seek our own legal advice by the Treasury Solicitors. We ignored that instruction: we got our own legal advice, and we declined to assist the Ministry of Defence in defending the civil claim, because frankly we thought they had rather a cheek after previously accusing us of committing that offence.

When IHAT came in 2015, I had just started my intermediate officer education at staff college. I knew IHAT was going to come and arrest me and question me, so I approached the course colonel to ask whether I could defer the course, because I had to concentrate on this allegation. He wrote to me in an email, “Based on the version of events you have described to me, which would doubtless be corroborated by your colleagues, I do not believe you have anything to fear. Given the utter discrediting of Iraqi witnesses in al-Sweady, I believe you can take further confidence. I know this is extremely unsettling business for you, but I would urge you to try to put it to one side and focus on this course. That in itself will be a distraction and help you get on with your life.” So, to briefly answer your question, no, we were not offered any type of meaningful support other than some rather unhelpful advice to try not to think about it.
Q51 Stephen Morgan: How was the chain of command? Did they take responsibility? Should they have done?

Major Campbell: No. Again, that last instance was my direct line manager—okay, it was slightly different from the normal chain of command because I was on a course. Their belief was—that is what kept being told to me—if you have done nothing wrong, you have got nothing to fear. While I tried to explain to them, “Look, I have been through many investigations and, trust me, they are very, very unpleasant” they would not have it.

I pushed it up the chain of command to Army headquarters, and again they were not really interested in helping. They expressed to me that they were being told by the directorate of judicial engagement policy not to get involved. In terms of hindering me, if you like, I was appalled to discover that the Army personnel centre had handed over my service and medical records to IHAT without my knowledge or consent.

Apart from the military chain of command, I wrote to Penny Mordaunt, Mike Penning, Mark Lancaster and the Secretary of State, Michael Fallon, in response to some of their public statements in order to correct some things they said that were not entirely accurate when they were making claims that everybody was fully supported. They all responded back to me, “You don’t understand—we have to do this because we have to be seen to be doing something.” The impression I got was that me and my two other soldiers being multiply investigated was necessary for the reputation of the United Kingdom or the Army.

Q52 Stephen Morgan: We heard from other witnesses about the challenges that veterans have faced in getting information and suggestions of improvements to the armed forces covenant or a phone line or advocates. Will you say a bit more about what support you would have wanted?

Major Campbell: The Army is a large and compartmentalised place. For example, when public statements are being made about these investigations, nobody usually checks with us or our solicitors if they are indeed true. Certainly, Brigadier Aitken did not think to check with us or our solicitors if we might wish to dispute anything that he was going to write in his report. He wrote retrospectively that our case was included in another load of cases, some of which were true and some of which, I believe, were false. However, I think a greater degree of a direct communication would have been better.

I also suggested in my letter to Michael Fallon that an officer at least of colonel rank should be set up somewhere like Army headquarters—I will focus on the Army because I am not too sure about the other two services—to be the one-stop shop for anybody who is under investigation. I was told that that was not necessary. Both Michael Fallon and Sir Stuart Peach in the Defence Sub-Committee on this matter said there is no need for such a thing because there is the chain of command, which will do everything. The chain of command folded at the first hurdle. The administrative process in place to apply for our legal fees to be reimbursed failed at the first hurdle, because the form did not have a box for an IHAT investigation.

On top of that, there was just to be no concession on how we were supposed to conduct ourselves in our day-to-day life. Because there was no single point of contact, we had nowhere to address our concerns. I had a very tedious series of correspondence, again with all those people I just named, who all responded, “If you’ve got a problem with it, complain to IHAT.” That is not the most helpful piece of advice.

Q53 Stephen Morgan: You will have seen criticisms that the Bill does not do enough to protect our troops. What would you do to improve the Bill in its current form?

Major Campbell: In terms of legal protections of soldiers, I would not change anything in terms of historic allegations, let me make that point clear. Had the Bill been in place during my case, it would have meant, at the absolute worst, that our torment would have ended in 2009, and neither IHAT nor the Director Service Prosecutions would have had any method of dragging it out further. For me and my two soldiers, SO71 and SO72 as they are cited in the IFI report, that would have meant that we could have at least enjoyed the last 11 years in peace.

Secondly, if the Bill had been in place during my time, Leigh Day would not have been able to bring about false allegations. That would never have got off the ground. I am no legal expert, but if the Bill was in place, it would make the vexatious, scattergun, “throw a thousand allegations at the wall” process unprofitable, and people like Leigh Day and Phil Shiner would have to find some other human misery to exploit.

The last point about this hard stop of five years is that it would be a useful device, because it would focus the minds of the MOD and the investigators. It was the MOD that dragged it out for the last 17 years. If they had this hard stop, they would have to really focus and decide whether they are going to prosecute or not. Putting them under a bit of pressure would have saved us a lot of angst in the years past.

Stephen Morgan: Major Campbell, thank you for your answers.

Q54 Stuart Anderson: Thank you, Major Campbell. It is an absolute disgrace that you have had to go through everything that you have. It is horrible to hear, but we need to learn lessons from this and look to move forward. You just mentioned that if the Bill had been in place since 2009, you, SO71 and SO72 would have been able to lead a normal life, and the torment would have been over. Will you confirm whether you welcome the Bill or whether you are against it?

Major Campbell: I fully welcome the Bill, both in its intent and in its content. Again, in my amateur legal opinion, there may be a legitimate argument to be had over whether the Attorney General is the correct address in terms of being the final arbiter of further prosecutions, due to the advice he gives to the armed forces on the legality of a conflict.

My other slight concern is that previous Attorneys General have done us no favours at all. Lord Goldsmith had a lot on his shoulders for how we ended up in Iraq and the manner in which we conducted operations there. When I appealed to Jeremy Wright, and when he gave evidence to the Defence Sub-Committee on this several years ago, he took the view that this was an entirely fair process and that there was absolutely no reason to stop IHAT or even to scrutinise it any further than necessary.
The last point I would make about the Bill is that I cannot really adhere to some of the arguments against it. When I wrote to all these people, such as the CGS, the Adjutant General and previous Ministers Mordaunt, Penning, Lancaster and Fallon, they would all express a variation of, “Well, we have to be seen to be doing something.” I do not believe that public relations and being seen to be doing something are a good enough reason to destroy a soldier’s life or to drive them to suicide. I do not think that is morally acceptable in any way, but apparently they thought that was a price worth paying.

To answer your question, yes, I support the Bill. There may be some minor tweaks here and there, but, in principle, and in the absence of anybody doing anything to help us in any way, it has my full support.

Q55 Stuart Anderson: Just a follow-up. We had the Second Reading of the Bill in Parliament a few weeks ago. I am not sure whether you saw that; it was a very interesting debate. There were a lot of recommendations, and one of the recommendations to the Bill Committee is to shelve the Bill and start again. In my new term as a politician, that means to stop it. What is your view, and what do you believe the veterans community and armed forces will feel if the Bill does not pass the Bill Committee?

Major Campbell: From my very unscientific survey of veterans, I think that generally—in my orbit—the Bill is welcomed. If the words of the Bill are not welcomed, the principle of attempting to improve the lot of veterans and service personnel is welcomed. There is deep anger and distrust between the veteran community and the MOD. It is all very well for the MOD to blame Phil Shiner and Leigh Day for this, but it was the MOD that carried out the repeated investigations.

To answer your question, I think that if the Bill were to be squashed, it would send a very depressing message to the veterans community—probably one that has been felt quite harshly by the Northern Ireland veterans—that we are not important enough to get any type of assistance when facing legal assault.

Stuart Anderson: Thank you for your comments, and thank you again for your service.

Q56 Sarah Atherton: Hello, Major. I would like to thank you for your services, and I am horrified at what you have been through. Some critics say the Bill will increase the number of prosecutions and allegations taken to the international criminal courts. Given your experiences and knowledge of the Bill, what is your opinion on that?

Major Campbell: I think that is a false allegation, and I will tell you why. Again, when I wrote to all these people—even internally within the Army—I was told repeatedly that if IHAT was interfered with in any way, the International Criminal Court would swoop in and clamp us in leg irons, and we would all be off to The Hague. Michael Fallon repeated in the Defence Sub-Committee that he had no power to stop such investigations and that, if he were to do so, the ICC would get involved.

I decided to test that theory, and I wrote to the chief prosecutor of the ICC, Ms Bensouda, asking in exasperation whether I, SO71 and SO72 could surrender ourselves to the ICC rather than go through several more appalling years at the hands of the Ministry of Defence. Ms Bensouda responded that our allegation does not fall within her remit, because her job is not to prosecute individual soldiers; her job is to prosecute commanders and policy makers for the most grave crimes. In her orbit, manslaughter, which is what I was accused of, is not a war crime. It is a domestic crime—a regular crime, as opposed to what she would normally deal with. I reported that rejection to the Ministry of Defence, which continued to repeat that the ICC would fall in.

The second point I would make is, what would be so terrible about the ICC being involved? We kept getting told that the ICC has a bit of scrutiny over IHAT and is keeping a very close eye on it. Personally, I do not have a problem with that. Like I said, the ICC was not going to ruin our careers, the ICC was not going to harass our families, and the ICC was not going to go and bully soldiers who had left the Army for a witness statement—not even a suspect’s. The ICC would conduct itself professionally, and it would have no incentive—no financial incentive—to drag things out for years, like Red Snapper, which provided most of the detectives to IHAT, did. Finally, the ICC would probably not use the investigative technique that IHAT used, which was to pay Phil Shiner’s gofer to be the go-between between them and witnesses because IHAT was too scared to go to Iraq.

So regarding the whole spectre of the ICC, first, I do not find it remotely as scary as people make it out to be and, secondly, it is completely false, because I attempted, with my two soldiers, to surrender ourselves in order to spare us another several years of the MOD fannying about, and the offer was refused. So to answer your question, I do not see that as an issue at all.

What I would say, though, is that I think I understand why the Government would be reluctant for the ICC to be involved, because the scrutiny would not be on Tommy Atkins; the scrutiny would be on General Atkins and Minister Atkins. Those are my thoughts on the ICC.

Q57 Carol Monaghan: Major Campbell, thank you so much for the evidence that you have given us already today. I think that all of us here are sorry to hear of your experience, and I think that the sympathy of all of us is with you.

Clearly, a lot of this is still very raw for you, and you have talked about the MOD dragging it out over the last 17 years. Can you tell me how you think this Bill will actually tackle the MOD’s actions and inactions, which you have been subjected to over the last 17 years?

Major Campbell: Like I said in the previous response, if there was a time limit within which these things can be actioned, then I feel that a higher level of scrutiny and decision making would be necessary to make them work. I also think that the kind of dithering manner in which this process has been carried out to date would be nullified. If there is a time limit within which they have to get on with it, get it done right the first time and get the correct legal advice, I think that would improve matters no end.

Q58 Carol Monaghan: How would you see a proper investigation being carried out?

Major Campbell: That is a good question, because I do not know. The reason I say that is that I do not believe that there is a police force in the United Kingdom that would be able to carry out such a contested,
political and adversarial investigation. If you think about the way that it has been done in the past, when IHAT got this group of ex-detectives who were used to domestic crime, and they are asked to investigate an allegation in a country they have never been to, in a culture they do not understand, in a combat environment they have never experienced and in a language they do not speak, I just think that you are already on a hiding to nothing if those are your parameters.

I do not know how a war crimes investigation can be done effectively while hostilities are ongoing. For example, if there was an allegation against our forces in Syria, I really do not understand how you are supposed to be able to gather good evidence in an area that may be occupied by the regime, Russia or ISIS, and I do not understand how you would achieve the right level of evidence. But what I do know is that the way they did it in the past was an absolute shambles.

Q59 Carol Monaghan: Given that it would be difficult—I know that we are very short of time, Chair—to gather evidence when there is still an ongoing conflict, is five years a realistic point?

The Chair: This needs to be a very short answer, Major Campbell.

Major Campbell: I would argue yes, because otherwise, if you make it longer, you are just handing another incentive to the Leigh Days and Phil Shiners of this world to drag it out, because they have got absolutely nothing to lose. All of their funds are provided by the taxpayer, and all of the funds of the claimants are provided by the taxpayer. They can take a punt, and it is a win-win for them.

The Chair: We do have a time limit, which I am afraid we have reached, Major Campbell. But again, on behalf of all the members of this Committee, I thank you for your evidence this morning. Thank you very much indeed.

Major Campbell: Thank you.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Second Sitting

Tuesday 6 October 2020

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Thursday 8 October at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 10 October 2020
The Committee consisted of the following Members:

**Chairs:** † **David Mundell, Graham Stringer**

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Atherton, Sarah *(Wrexham)* (Con)
† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
† Docherty, Leo *(Aldershot)* (Con)
Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Eastwood, Mark *(Dewsbury)* (Con)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Gibson, Peter *(Darlington)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† Mercer, Johnny *(Minister for Defence People and Veterans)*
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Morgan, Stephen *(Portsmouth South)* (Lab)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Twist, Liz *(Blaydon)* (Lab)

Steven Mark, Sarah Thatcher, Committee Clerks

† attended the Committee

**Witnesses**

Professor Richard Ekins, Head of Judicial Power Project, Policy Exchange

Dr Jonathan Morgan, Fellow, Reader in Law at Corpus Christi College, Cambridge, and one of the authors of the Policy Exchange Report, Clearing the Fog of Law: Saving our armed forces from defeat by judicial diktat (2005)


Ahmed Al-Nahhas, Secretary, Military Special Interest Group, Association of Personal Injury Lawyers

Emma Norton, Director and Lead Lawyer, Centre for Military Justice

Martha Spurrier, Director, Liberty

Clive Baldwin, Senior Legal Advisor, Human Rights Watch
Public Bill Committee

Tuesday 6 October 2020

(Afternoon)

[David Mundell in the Chair]

Overseas Operations (Service Personnel and Veterans) Bill

2 pm
The Committee deliberated in private.

Examination of Witnesses

Professor Richard Ekins, Dr Jonathan Morgan and John Larkin QC gave evidence.

2.2 pm

The Chair: I hope that Professor Ekins can now hear proceedings. Will witnesses say for the record their name and designation, so that we may confirm that we can hear you?

Professor Ekins: I am Professor Richard Ekins. I am head of Policy Exchange’s Judicial Power Project and Professor of Law and Constitutional Government at the University of Oxford.

John Larkin: I am John Larkin QC. I am in private practice now in Belfast—[Inaudible.]

The Chair: Your sound is not very clear, Mr Larkin, so I am going to see whether we can have that adjusted. Will you repeat what you have just said?

John Larkin: I am John Larkin QC. I am counsel at the Bar of Northern Ireland, and practising there.

The Chair: Please try to get as close to your microphone and to speak as robustly as you can.

John Larkin: I apologise in advance, Chair. I am afraid that you have the alarming choice of seeing me leaning forward or perhaps not hearing me. We will sacrifice aesthetics in favour of audibility.

The Chair: We will take hearing you—that is our priority. If our two witnesses online will bear with us on the logistics, we are joined in the room by Dr Jonathan Morgan. Dr Morgan, will you introduce yourself for the record?

Dr Morgan: I am a reader in English law at the University of Cambridge and a fellow of Corpus Christi College. As you might be aware, I co-authored with Richard Ekins a paper called “Clearing the Fog of Law” for Policy Exchange in 2015. I imagine that that is why I am here, but you might be able to tell me better.

The Chair: Excellent. I am going to call Kevan Jones to start the questions, and I would ask that he and others indicate whether they are addressing a question to a specific witness or to all the witnesses.

Q60 Mr Kevan Jones (North Durham) (Lab): This is a general point for everyone. There is a five-year cut-off period in the Bill as outlined. Could you each consider the justification for that and why it should not be higher?

The Chair: Perhaps, if the question is to everyone, we will start with you, Dr Morgan, in the room, and then go to Professor Ekins and Mr Larkin.

Dr Morgan: My expertise is in private law—so, tort law—and I imagine that we will come on to that later. There, you have time limits of three years, six years, one year. In my view, there is no ultimate principled way of defending a particular time limit. Five years is obviously some kind of compromise. Ten years was originally proposed; that has been reduced to five. There seems to be no logical answer, certainly, as to that particular time period. It is a balancing act.

Professor Ekins: I agree with everything that Dr Morgan has just said. All I would add is that I presume five years has been chosen with a view to allowing a sizeable period of time to pass during which—[Inaudible]—can be brought in the customary fashion. After five years, a somewhat different regime obviously applies, although it might be too strong to call this a cut-off period. There is always something somewhat arbitrary about procedural time limits. As Dr Morgan said, three years and six years are used in civil law; the criminal law does not tend to do this so often, so I do not think this is a salient number—to my knowledge.

John Larkin: I agree. There is no magic in the number five; that is a matter of policy choice.

Q61 Mr Jones: Thank you for that, but the difference here is that, unlike with other time limits, there is a presumption that someone will not be prosecuted. There are two things to say on that. One is, are there any other examples of where we have that in law? Also, would it not lead, possibly, to the decisions of the Attorney General not to prosecute—because you have pre-empted that, in effect, in the Bill—opening the cases up to the UK courts for judicial reviews and other things?

Dr Morgan: On the second of those questions, which is whether the Attorney General’s decision not to prosecute could be challenged in court, I think that, yes, absolutely there is a risk of that, and I think the Minister, in a letter that he wrote to the Defence Committee, accepted that was the case, but expressed the view that the courts would have to take account of the context that it is a quasi-judicial decision, and that they should respect the Attorney General’s decision. But I suspect that it is very strongly likely that it would be reviewed. How successful that would be is hard to say in the abstract, but it could be challenged, in my view.

Q62 Mr Jones: Are there any other instances where you have in law a presumption not to prosecute before you have actually done the investigation?

Dr Morgan: Criminal procedure is not my area, but I am not aware of any others in UK law. There are references to limitation statutes in other jurisdictions. I think that the example given is that, in French law, there is a 30-year period, which is very much longer and which apparently does not apply to war crimes, so that is almost the mirror image of what is in the Bill.
Q63 Mr Jones: Yes, but the unique thing about this is not the time limit. I accept that there are time limits for various things in civil law as well as criminal. The difference here is that we are setting off an inquiry, even before investigation that someone is not going to be prosecuted. Is that not putting the cart before the horse? You are making the judgment well before you have even looked at the actual case.

Dr Morgan: It says that only exceptionally will there be a prosecution, so it is not a total amnesty after the five years. But even having the presumption after a time period is, as far as I am aware, unique in English criminal law. When we are talking about tort law, which is much more my area, limitation periods are absolutely standard, but in criminal procedure it is much more exceptional. I think that is why this has received so much more attention, media attention and public criticism than the civil law proposals.

Professor Ekins: As Jonathan Morgan says, there are precedents elsewhere for statutes of limitation in the criminal sphere in other jurisdictions, but they have not been a feature of English law, although, of course, this is quite a soft statute of limitations in so far as it provides no obstacle or bar to prosecutions after the five years. It certainly does not stop investigations. In fact, if one were to make a criticism of the Bill, one might say that it places no obstacle on continuing investigations, which might be thought to be one of the main mischiefs motivating of the Bill. If there has been no investigation, the fact that there is an investigation, and cogent evidence arises of a crime, will tend to beat back the presumption against prosecution, if one wants to call it the presumption against prosecution. So it is not quite right to my mind to say this is putting the cart before the horse and deciding against prosecution before one investigates.

In relation to the Attorney General and consent to prosecute, there are two stages. One is the prosecuting authority deciding whether or not the prosecution is warranted, and the Bill looks at some of the factors that should be taken into account in making that decision. That might be one way to think about part 1 of the Bill—it is framing the determination by the prosecuting authority. In addition to that, the Attorney General's consent is required. They are not necessarily the same stage or the same act.

As to whether the Attorney General giving or withholding consent—more likely the withholding, although I suppose either—will be challenged in the courts, I think, very likely, yes. How much risk is there? I think that is an open question. I think there must be some risk that there will be a Human Rights Act challenge arguing for a narrow and restrictive reading of the Attorney General's power to give or withhold consent, and that might end up requiring the Attorney General to give consent in circumstances where one might not otherwise expect it. It is possible the courts will not take that course, but I think it is a risk that parliamentarians should be aware of.

John Larkin: Yes. I am in agreement with Professor Ekins. Classically, the decision of an Attorney General to give consent to prosecution has been subject to very little judicial review. Here, although it is described in the clause heading as “Presumption against prosecution”, it is really more the establishment of an exceptionality test, and that of course gives a handle to anybody seeking to challenge the Attorney General, because what is or is not exceptional will be a matter ultimately for judicial determination. I think that challenges are almost inevitable, but they are by no means to be regarded as inevitably successful. I think the approach of the courts—one can see that in the Supreme Court challenge a year or so back to the certification by the Director of Public Prosecutions for Northern Ireland in the Dennis Hutchings case—tends to be associated with the bestowal of a good deal of latitude to the responsible law officer.

Q64 Mr Jones: Can I follow up one last point? Dr Morgan has already answered it, but I would be interested to know what you two think. The presumption at the outset that you are not going to prosecute—is that a unique situation or is it something that is covered in other, similar types of cases?

Professor Ekins: I do not think the UK has tended to legislate about the decision to prosecute. There are a great many statutory requirements for Attorney General's consent before prosecuting, so that is by no means unique, but the legislating to frame the prosecutor's decision as to whether to initiate the prosecution is unusual.

Q65 Mr Jones: The difference here is that this will actually be on the face of the Bill, in the sense that, at the beginning, the presumption will be not to prosecute. Putting the time limits aside, this is a major change. I wanted to know whether there are any other precedents in other pieces of law in the UK or other types of jurisdictions.

Professor Ekins: Not to my knowledge, but it is difficult to sever it from the point about time. There is a difference between a Bill that does what you see in part 1 from day one and a Bill that does so after a certain period of time has passed, which is why the Bill refers, understandably, to the importance of finality if you have an investigation and further evidence has arisen. Those are all considerations that a prosecutor might well take into account anyway; it is just that Parliament is requiring them to be taken into account, framing when and how—[Inaudible.]

Mr Jones: It is slightly different from that, I would argue, because it is presuming that you will not prosecute at the outset, which I think is difficult. Thank you very much.

Q66 Stuart Anderson (Wolverhampton South West) (Con): Do you think the Bill will have a positive impact and protect armed forces personnel who serve on overseas operations? I will ask Mr Larkin first.

John Larkin: I possess no qualifications to judge the reputational effectiveness of the Bill and its impact on military operations. What I have said to Policy Exchange is that many of the criticisms of the Bill are quite misplaced. It is not a blanket amnesty; in fact, it might be regarded as a fairly modest, proportionate measure.

Stuart Anderson: Mr Ekins?
Professor Ekins: I suppose the best case one can make for the positive benefit of the Bill is that it may provide some assurance to personnel. If no application has been made after five years, they are unlikely to be prosecuted. However, in one sense that is too strong, because if cogent evidence arises, it can be investigated. It probably will be — there is no bar to it in the Bill — and it may well result in a decision to prosecute.

Having said that, prosecution is the major risk for people who have been serving on operations abroad. It is a major problem in relation to Northern Ireland — we have been getting prosecutions 40 or 50 years after the fact, which are very difficult to conduct fairly, and which understandably cause an enormous amount of stress. In recent years, the problem in relation to people who have been serving abroad has been, in a sense, a seemingly never-ending cycle of investigation and reinvestigation. The Bill does not really do anything about that, so in that sense it will not provide much help.

Stuart Anderson: I should have referred to as “professor” — sorry, I did not want you to feel left out. Doctor Morgan?

Dr Morgan: The answer is, up to a point. It really depends on what kind of allegations we want to defend service personnel against. In the Second Reading debate, there were many references to Phil Shiner — we can take him as shorthand for spurious claims being brought. But you might say that if spurious claims are brought within six years, if it is a tort action, or within five years, if it is leading to a criminal prosecution, the Bill is not doing anything about those. It is not doing anything about promptly brought spurious claims. Indeed, it seems to me that the Shiner claims were actually brought promptly. There were many problems with them — namely, that people were making up the evidence — but they were not being brought many years later.

The Bill addresses one particular problem: very old and stale allegations being revived after a long period, which are either brought as a tort damages claim — that is part 2 of the Bill — or lead to criminal prosecutions, which is part 1. It seems to me to be part of a solution to what is actually quite a big and complex problem with a number of different strands in it. It is not the total solution, but it addresses that aspect of it.

Q67 Stuart Anderson: Mr Larkin, you did touch on it, but do any of you believe that the Bill provides a blanket amnesty in any way, shape or form for armed forces personnel?

John Larkin: I have given my view on that. The short answer is that it does not.

Professor Ekins: I agree with John.

Dr Morgan: I think “blanket amnesty” is a very overblown way of putting it, if we are talking of criminal prosecutions after the five years. It is establishing presumption, and that is what should be referred to. Having said that, the stronger the presumption is against prosecution, the closer it approaches that. The weaker the presumption is, the less protection it gives to the service personnel in question. So there is obviously a balancing act, but, as it stands, I do not see it as an amnesty; that is a misdescription.

Q68 Peter Gibson (Darlington) (Con): If the Bill’s intent is to protect service personnel, what steps should be taken to improve the Bill as drafted?

Professor Ekins: To my mind, the major problem of the Bill — this is a major absence, but it would be quite a substantial policy change to introduce it — is that it does not really address the extraterritorial application of the Human Rights Act. That is the main driver behind some of the difficulties we have seen in the last 10 or more years in a whole range of ways. That includes requiring continued investigation and litigation — sometimes from enemy combatants relying on the Human Rights Act while UK forces have been in the field. The Bill could be improved — although, as I say, it would be a major change — by limiting the extraterritorial application of the Human Rights Act.

That would be, in a sense, restating the position that our senior judges understood before the European Court of Human Rights extended how jurisdiction was understood. I think that would also be much more consistent with the way in which Parliament understood the Human Rights Act when it was enacted in 1998. The ECHR and the Human Rights Act really have been extended by a series of problematic judgments, and a Bill on this subject could usefully roll that back. That might mean that the Human Rights Act simply applies in the United Kingdom, or alternatively — this may be more plausible as a prospect for enactment — it might allow for limited extraterritorial application, in the limited way that was understood to be possible in 2003 when the European Court of Human Rights gave a significant judgment on the point, as well as by the House of Lords and the Supreme Court in the years to follow. That would address the problem of being unable to stop investigations and being exposed to litigation that requires the continuation of investigations, when the Government think that that is unfair to the personnel. The Bill does not address that — save, perhaps, by encouraging Ministers to derogate from the ECHR.

John Larkin: There is a lack of conceptual clarity in part 1 — [Inaudible.]

The Chair: Mr Larkin, we are sorry but we are not hearing you very well. Do you want to try to speak a bit closer to your microphone?

John Larkin: There is a lack of conceptual clarity in part 1 of the Bill with respect to the prosecutorial task. As the Committee will know, the prosecutor’s task breaks down into two parts. First, they ask themselves whether the evidential test is met. If it is, they consider whether a prosecution would be in the public interest. That is the approach taken in all three UK jurisdiction — [Inaudible.]

The Chair: We are still struggling, I am afraid.

John Larkin: Clause 1 of the Bill puts no time limit on assessment of the evidential test. But then, when one looks at clause 3, subsections (1) and (2) tend to reduce the person’s culpability. Culpability is at the core of criminal liability — it is synonymous with criminal liability. There may be value in amending the Bill to permit the prosecutor to take a global view.

The Public Prosecution Service for Northern Ireland, in its code for prosecutors, permits the public prosecutor to take a view based on the public interest test, sometimes — exceptionally — in advance of full consideration of the evidential tests, so if one has a sense from the beginning that the case is going nowhere, one should
not have to go through what might seem to be a very empty exercise of none the less carrying out the evidential test in full. There could be an expressed power, by amendment, given to prosecutors to determine in advance of consideration of the full evidential tests. As you rightly note, clause 3(1) sits ill with clause 1’s exception of the evidential consideration.

**Q69 Peter Gibson:** Can the witness write to us with his answer to that? It was not entirely audible to us here in the room.

**The Chair:** Are you happy to do that, Mr Larkin? We did not hear all of what you said. Members may have got the general thrust of what you were saying, but we did not get the detail.

**John Larkin:** I am happy to do that. It is a technical point, so it might be of assistance to Committee members if it were reduced to writing.

**The Chair:** Thank you for that.

**Q70 Peter Gibson:** Thank you, Mr Larkin. I will ask the same question to Dr Morgan.

**Dr Morgan:** I would approach the question in two ways. One would be, “How would I improve this Bill?” and the other would be, “What would I do if I was starting with a blank sheet of paper?” You would get two quite different answers, but I will start with the second one.

**Peter Gibson:** Let us have both approaches.

**Dr Morgan:** Okay. To start with the second one, it seems to me that the problem in this area is lawfare or the judicialisation of war—whatever you want to call it. The extension of the European convention on human rights into this area as a result of the European Court’s decision in Al-Skeini, and the decision of our Supreme Court in Smith v Ministry of Defence, which confirmed that and extended the law of tort into the battlefield, led to the erosion of combat immunity. To me, that should be the priority for any legislation on this difficult and multifaceted problem.

The section of the Bill that partly deals with the issue is the derogation provision and the duty on the Minister to consider derogation. It is not a duty to derogate; it is a duty to consider doing it, which is putting into statute the Government’s policy. It seems to me that that is valuable, although it does not change very much.

In its consultation paper published in June 2019, the Ministry of Defence said it was going to look at restatement of combat immunity, hand in hand with a no-fault compensation scheme for service personnel to pay damages on the full tort measure. Those two things should go together. I regret that last month, in reply to the consultation, it said that legislation on the issue is “not being taken forward...at this time.” I think it should be. The priority should be to restate combat immunity and, hand in hand with that, to have no-fault compensation for service personnel on the full compensation measure that you get if you bring a claim in law.

If that were done, it would help with the problem about the shorter limitation periods for tort claims—damages claims—that was raised several times at Second Reading. The British Legion has been quoted several times saying that that breaches the armed forces covenant. I do not want to get into that particular debate, but there is no question that service personnel might, in some fairly unusual situations, find their ability to bring damages claims caught by the proposals in part 2 of the Bill as it stands.

If the Ministry of Defence took forward the proposal that it called “Better combat compensation,” to have full compensation through the armed forces compensation scheme, those worries would fall away. If there was full compensation available without the need to bring a tort claim or negligence action against the Government, any limitations on the time periods for bringing tort claims would be an irrelevant question for service personnel.

Those are two reasons why I would revile what seems to have been the Ministry of Defence’s approach at one point, which was restating combat immunity and ensuring full, no-fault compensation. If you want me to give more detailed comments on the provisions of the Bill I can do that, but I would approach the issues in a quite different way than in the Bill that we have.

**Q71 Mr Jones:** In the case of no-fault compensation, would that then be within the existing armed forces compensation scheme? How would you change that?

**Dr Morgan:** The proposal to make that switch is in the joint paper produced by Richard Ekins, Tom Tugendhat and myself that I mentioned at the start. We said in that paper that that there is a case for having a more generous strand within the armed forces compensation scheme applying to those soldiers who cannot bring tort claims at law. In other words, if Crown immunity in warfare were to be re-visited—the Government already have the statutory power to do that, they do not need an Act of Parliament—and it was decided that you cannot bring claims at all, there would be a case for having a more generous approach within the armed forces compensation scheme to those people. I would not necessarily say the whole armed forces compensation scheme should be upgraded—I am aware of how expensive that would be. If we are going to restrict tort claims of a certain sub-category of injuries to service people, then it would be a good idea to balance that out by having full compensation.

**Q72 Mr Jones:** When I was a Minister, I extended the issues around mental health in 2009, I think it was. You would not have to have a limitation time and it would be automatic for that person to be considered, is that right?

**Dr Morgan:** Yes. I confess that I have not looked at the limitation rules of the armed forces compensation scheme. It certainly does ensure cover.

**Q73 Mr Jones:** Would it extend to, for example, mental health grounds? The original 2000 Act was quite limited in terms of date of knowledge and other things around mental health. The Lord Boyce review was implemented in 2009. So what you are saying is that the presumption that there be no fault, basically, is accepted. That would perhaps get round the time limitations altogether.

**Dr Morgan:** It also gets away from what we see in Smith v Ministry of Defence: the allegation that the Land Rovers were not the right ones. Once you go to court investigating that in a negligence claim, it is getting into areas that should not be dealt with by a
court in a negligence claim, it seems to me. If you are going to stop people from bringing such claims, you had better give them at least as good a compensation scheme without them needing to prove fault. That was our argument in the paper five years ago.

Q74 Carol Monaghan: (Glasgow North West) (SNP): This morning we heard from Major Bob Campbell who talked about the MOD—in a brilliant quote to get on the record—“fannying about with repeated investigations”. He talked about 17 years of this carry-on. What part of the Bill do you see addressing the MOD’s failures in terms of these repeated investigations?

Dr Morgan: I was going to comment on Major Campbell; I read about him in the newspaper on Saturday. It seems to me that his case would not have been addressed by these proposals. He was prosecuted in 2006 about an alleged offence in 2003, so that would have been within the five-year period for bringing the prosecution. It is only in 2020, after 17 years, that he has finally been cleared. The point was made in the Second Reading debate by a number of Members that perhaps the real vice is not so much very late prosecutions but the continued investigations by the Ministry of Defence without necessarily leading to a criminal prosecution at all. If I have understood the facts of Major Campbell’s case, it rather shows how a five-year soft cut-off for prosecutions is not going to solve that kind of problem at all.

Q75 Carol Monaghan: Would you support calls for some sort of independence in the investigative processes?

Dr Morgan: There is a rule in criminal law that if you have been tried in a criminal court for an offence and you are either acquitted or convicted, you cannot be tried again. That is double jeopardy. What I do not understand is why the double jeopardy rule is not applying, by analogy, to these repeated investigations within the Ministry of Defence. That needs to be urgently addressed, and it is not within the Bill. Maybe the Bill cannot do everything, but the Campbell case shows that there is a gap.

Q76 Carol Monaghan: Would it make sense for that type of legislation on the way investigations are carried out to be developed alongside the Bill?

Dr Morgan: Yes. Whether this needs fresh legislation or whether it can simply be done by changing the rules, I do not know. I know what Professor Ekins will say, which is that because the Human Rights Act requires investigations into deaths, we are currently limited in what we can do. Perhaps he will comment on that.

Professor Ekins: I am sure the Ministry of Defence has had many failings across the years, but in one sense it needs to keep investigations going and to be open and avoid plodding along. It has done a lot under the threat of litigation—sorry, the reality of litigation—where it is exposed to a duty to investigate in accordance with changing standards over time. Something similar has happened in Northern Ireland, which John Larkin knows much more about than I do. It has been a particular feature of the legacy and the legal cases around Afghanistan. Those conflicts were fought on a pretty sound legal position and on the understanding that the European convention did not apply. The ordinary rules of the law around conflict and service law applied, yet subsequent decisions about investigation or not investigating have been challenged in the domestic courts by way of the Human Rights Act. I cannot see how we deal with that prospect recurring over time without addressing the territorial reach of the Human Rights Act.

The Bill deals with the issue incidentally and in part in so far as derogation, if there is derogation, in advance of future conflicts might help, and in so far as there are time limits on Human Rights Act applications or proceedings. That might deal with some of the risk of historical allegations being made and investigations rolling on. In terms of the problem of people being investigated repeatedly and a prosecution never being mounted, that is not a problem the Bill deals with directly, although I think it probably is the main mischief.

John Larkin: I agree with Professor Ekins that the Bill is somewhat silent on the duration and repetition of investigations. In some cases, that leads to real mischief. It is not much fun for anyone to be finally vindicated after 10 or 12 years have elapsed. They would much rather be vindicated promptly—this applies both in terms of ordinary criminal civil justice as well as in the issue of service personnel—after a thorough and expedient investigation.

Q77 Carol Monaghan: Finally, having heard what the three of you have said about how we carry out investigations, do you understand that some people would have concerns that the Bill will not solve all the problems like Major Campbell and the difficulties that he has had over the past 17 years?

Dr Morgan: It is the point I made, so I agree that it will not solve all of the problems as it stands.

Professor Ekins: Yes, it is a real concern.

John Larkin: I think it is wrong to see a so-called independent investigation as the answer. The issue is not the independence or otherwise of the investigation. In fact, investigations are substantially independent at present. The issue is efficiency and the fairness of what is investigated.

Q78 Joy Morrissey: (Beaconsfield) (Con): I have two questions on the point raised earlier about the territorial reach of the Human Rights Act. How would you limit that within the Bill? What would you suggest?

The Chair: Who are you addressing the question to?

Joy Morrissey: I would welcome feedback from each of the witnesses. How would you limit the territorial reach of the Human Rights Act within this legislation? You mentioned it as a point, and I wanted to hear how you would do that.

Dr Morgan: The Human Rights Act would have to be amended to say that the Act itself did not apply extraterritorially. Parliament could do that; what Parliament cannot do is of itself reverse the decision of the European Court of Human Rights. The nearest thing to do is for the Government to derogate using the process in the European convention. Those powers are already there in the Human Rights Act.

Q79 Joy Morrissey: My question in response to that would be, why are we confusing the two things? The European Court of Justice ruled that it had supremacy over the ruling of the ECHR, and we opted out of the
Lisbon treaty in terms of the acceptance of certain aspects of the Home Office and Justice type of rules—we opted out of that. Within the EU structure, they sort of opted out of accepting the ECHR in terms of jurisdiction within their own court systems. I feel that there is a bit of muddying of the waters in terms of what exactly is the jurisdiction of what. Could there be a review of that?

Dr Morgan: In my view, this is nothing to do with the European Union. This is purely a European convention matter, so Brexit, thankfully, is out of the picture on this particular issue. It is purely a decision of the European Court of Human Rights in Strasbourg, which extended the extraterritorial reach of the convention in the Al-Skeini case.

There are two things that one could do about it. One is to derogate in future conflicts, which the Government have said they will consider doing. Another thing is to derogate in future conflicts, which the Government rather successfully argued that the European convention should be interpreted in line with the law of armed conflict or international humanitarian law.

Those are two things that one could do. A third thing, which would require fresh primary legislation, would be to amend the Human Rights Act so that domestic UK courts may only hear claims relating to things that happen within the territory of the UK. That will not stop the Strasbourg Court from hearing claims against the UK. Parliament cannot unilaterally change the meaning of the European convention on human rights, but it can change the meaning of the Human Rights Act. Richard Ekins is more expert than I, so I would like him to answer.

Q80 Joy Morrissey: It just gives me pause for thought about why we have decided to do it, when the Court of Justice held that the EU could not accept the ECHR under the draft agreement and held that the agreement was incompatible with the TEU article 6.2, for the reason that the draft agreement undermined the Court of Justice’s autonomy. It allowed for the dispute resolution mechanisms. I am just curious why we have gone down this road. Perhaps the witnesses can clarify.

John Larkin: May I come in on that point? The Member is referring, I think, to decision 2/15 of the Court of Justice of the European Union—incompatible with the European treaty. Many of us smiled at that decision, because it showed the Court of Justice of the European Union was not particularly enthusiastic about being subject to the jurisdiction of the Strasbourg Court.

The Chair: Were you able to hear that answer, Joy?

Joy Morrissey: No.

The Chair: When you write to us on the previous point, Mr Larkin, will you also set out your thoughts on the question that has just been asked? We come to you, Professor Ekins.

Professor Ekins: It was a surprising decision of the Court of Justice of the European Union, holding that the EU was not really able to make a treaty commitment to join the ECHR. It shows that the EU legal order guards its legal autonomy jealously, but I do not think that it helps in this context.

In answer to the question about how one limits the territorial reach of the Human Rights Act, one thing would be to include a clause in the Bill that amends the Human Rights Act to specify its territorial reach. That could be the more limited reach of only applying in the United Kingdom, or it could effectively restate the position as it was held by the European courts in 2003 and accepted by our senior judges for many years thereafter, that the convention applies in the United Kingdom and in some very limited extraterritorial circumstances. I drafted a provision to that effect, if anyone is interested, in submissions to the Defence Committee and in other papers to the Policy Exchange. It is open to question, obviously, but it is certainly possible to frame a limitation in a clause that could be adopted in the Bill. It is not impossible; it depends on whether Parliament wishes to do so.

As Dr Morgan says, though, that would not change the UK’s position in relation to Strasbourg, the European Court of Human Rights. Derogation is an important addition to the meaning of the Human Rights Act. If you want to deal with the prospect of continuing litigation, investigations and reinvestigations, you have to address the scope of the Human Rights Act. The same thing is true in relation to Northern Ireland and those historic allegations as well. The intention is that that should be dealt with in a separate Bill.

The Chair: Does any other Member wish to question the witnesses?

Q81 Mark Eastwood (Dewsbury) (Con): Yes, Mr Mundell.

Thank you for coming to this session. We referred to Major Bob Campbell previously, and I wanted to follow on from the point made by Carole Monaghan and the evidence given by Major Campbell. He said that he gave evidence after several years of being investigated and reinvestigated, and he wrote to the International Criminal Court to ask them to prosecute him. The ICC actually refused that request. On Second Reading—I am sure you all witnessed the debate—a number of concerns were raised relating to veterans being hauled before the International Criminal Court as a result of the Bill being passed. Do you expect any veterans to be put before the International Criminal Court if the Bill goes ahead?

Dr Morgan: There is a risk that it could happen. I have read the Government’s comments on this, and they point out that prosecutors will remain independent, that it is not an absolute bar, and that it is not an absolute amnesty. All of that is true; but if, in a particular case, a war crime is alleged against a person and it is after five years, and the prosecutor decides not to bring a case because it is not sufficiently exceptional, then in that situation there must be a risk either that the International Criminal Court would seize jurisdiction, or that another member state could apply for extradition of that veteran.

Professor Ekins: I am not an expert on the International Criminal Court, but it is probably correct to say that there is a risk. There is said, prosecutors have a discretion as to whether to bring prosecutions even without the Bill. If a decision is taken not to prosecute in a particular case, then there is a risk that the ICC may take a
different view. The ICC should not be taking over prosecutions if the UK—as I think it will even if the Bill were enacted—remains a country that does take its obligations seriously, that does investigate credible cases promptly and that does retain a system of deciding which cases to prosecute, rather than having a rule that they will all be prosecuted regardless of strength of evidence or other considerations such as the passage of time. There have, however, been types of cases in which the ICC has proved to be somewhat political in its decision making. It might turn on who the prosecutor is at the relevant time. It probably does increase the risk. If you ask me whether I expect there to be prosecutions before the ICC, I would say, “Not really,” but that is amateur speculation and not bankable.

**John Larkin:** I think the risk is modest because, as the Committee knows, offences that are excepted from the reach of clause 1 include genocide, crimes against humanity and war crimes as defined in articles 6, 7 and 8 of the Rome statute respectively. Given that those are not subject to the five-year exceptionality rule, I think it is quite likely that those more serious offences would be prosecuted domestically, because they would benefit from the five-year exceptionality filter.

**Q82 Mark Eastwood:** You said that there was an element of risk there, but when you look at what the International Criminal Court is prosecuting at the moment, and at cases it has done in the past, they generally relate to large-scale war crimes, genocide and that type of thing. Are we really suggesting that the International Criminal Court will get involved in cases that involve veterans? I have no option to expect the level of case, but are we expecting the International Criminal Court to get involved in, as Major Bob Campbell said, manslaughter and those types of incidents? Is that a realistic prospect?

**Dr Morgan:** It would have to fall within the definition of war crimes, so one hopes that it is unthinkable that credible evidence of this would ever be laid but, if it were—this is a hypothetical situation—if such evidence existed, because it is related to events a long time before, perhaps long before five years, and if the sole reason for not prosecuting was the change that the Bill is making, namely that it was after the five years, then the risk is there. It is probably quite small because, as you say, the kind of situation that will trigger the ICC jurisdiction we all hope would never happen anyway, but that does not mean it cannot.

**Q83 Mark Eastwood:** Are they not looking at commanding officers, high-ranking soldiers, dictators and the higher level, rather than at the lower ranks as such?

**Dr Morgan:** The only point that I would add is that the fact that what is being proposed is internationally unusual I think increases the risk. I probably agree with Mr Larkin that the risk is modest, but I think the fact that it is a five-year time period, which to my knowledge is not visible in any other signatory state of the ICC, increases the risk.

**Professor Ekins:** The ICC should be focusing on allegations of atrocities, widespread wrongs and so on, rather than on what you might call manslaughter or questions of where the allegations are much more fine-grained, such as excessive force and so on, but there is a risk that the ICC does not always observe the limits that we apply in law to its jurisdiction. There have been instances of somewhat politically motivated decision making. There might still be a modest risk of the ICC going into the kinds of case that are likely to arrive at a place where a decision is made that it is not worth prosecuting because of particular circumstances, a lack of evidence and so on. The risk is probably quite—\[Inaudible.\] This will only arise if after five years a prosecutor decides that the public interest in prosecuting is not really there. I think it would only be possible for the ICC to justify intervention if there is a sufficiently strong case that would result in a conviction, and disagree about the public interest. That would sound like a surprising ground on which to debate a disagreement on whether a prosecution is warranted. I think it is possible but not very likely.

**John Larkin:** My point is that genocide, war crimes and crimes against humanity are not subject to the five-year time limit, so if the evidence emerges at eight years, for example, the process envisaged by this Bill—exceptionality assessment—simply does not apply; it will be determined as if it had occurred last week. That is an important point that is lost in legal—\[Inaudible—\]the international—\[Inaudible—\]of the Bill and it is not sufficiently appreciated that part 2 of the statute of Rome makes an exception for genocide, war crimes and crimes against humanity. They will be prosecuted if the evidence exists domestically, and therefore the risk of a lance corporal being hauled in front of the International Criminal Court seems to me to be fairly minimal.

**Q84 Mr Jones:** The Government have announced that they are going to bring similar legislation with reference to Northern Ireland, although the Northern Ireland situation would be retrospective. This is not retrospective; even though it is being pumped out in propaganda as being a thing that will protect all veterans from Iraq and Afghanistan, it clearly is not. If the Government are going to make the Northern Ireland one retrospective, is there not a case to be made for making these things retrospective?

**Dr Morgan:** indicated assent.

**The Chair:** I think you have to speak as an answer, Dr Morgan, because we cannot otherwise hear what it is.

**Dr Morgan:** Retrospection is obviously going to add a further layer of controversy on top of this. The question really is whether it should apply to Iraq and Afghanistan after this lapse of time. If you believe that the Bill is the right solution to the problem, then it seems to me odd that that is not being proposed, but I am not convinced it is the right solution to the problem, so I am not going to argue for it to be retrospective.

**Q85 Mr Jones:** No, I am not either; I just wanted to know what your views are. This Bill is being portrayed as if it will draw a line under Afghanistan and Iraq, which it clearly will not, as it is framed. If legislation is going to be brought forward on Northern Ireland, as we have been promised, that would have to be retrospective, because we are dealing in those cases with things that happened perhaps 40 years ago. I am playing devil’s advocate in saying that, if it is going to be retrospective for Northern Ireland, would it not be the obvious thing to do here to make this retrospective, to protect the veterans who served in Afghanistan and Iraq? I hasten...
to add that I will wait to see the legislation on Northern Ireland to make it retrospective and how that will be done.

Dr Morgan: We have to wait and see what it says. It would be curious if the Northern Ireland situation and the Iraqi and Afghan situations were dealt with in a different way on that issue of retrospection, so I agree with your point.

Professor Ekins: I would question the premise of the question, because as I read the Bill, it does apply to actions taken in the past. It will not foreclose prosecutions or proceedings already under way. It is a procedural change: if the Bill were enacted, tomorrow, a prosecution brought the day after, that more than five years after the events in question, would be subject to the regime in the Bill. I think it will apply to Iraq and Afghanistan, save insofar as there are prosecutions that have been initiated or proceedings that are under way. It will not apply to ongoing legal proceedings, but it will be a question sometimes, if I wanted to continue proceedings, where it might apply.

John Larkin: The Bill is, as Professor Ekins has said, significantly retrospective. If one looks at clause 15(6), it says:

“None of the provisions of Part 1 applies to proceedings instituted before the day on which the provision comes into force.”

As [Inaudible]—

The Chair: Sorry, I think you were looking away from the microphone when you answered.

John Larkin: Clause 15 makes it clear that the Bill does not apply where proceedings have begun or are under way before the day it comes into force, but if they are not under way—[Inaudible]—clearly defined rules can crystallise shortly thereafter, and—[Inaudible]—subject to the exceptionality—[Inaudible].

The Chair: I think we are going to ask for that answer in writing, as well. The Minister has a very quick question—

The Minister for Defence People and Veterans (Johnny Mercer): I am happy to pass on it; it has been answered by Dr Ekins.

The Chair: Thank you very much indeed. If no one else has any further questions, we have reached the end of the time allocated. I thank each of the witnesses for their evidence and for being with us in the technical circumstances. Mr Larkin, I am very sorry that we were not able to hear some of your responses; if you are able to write to the Committee on the matters we have come back to you on, that would be very helpful indeed.

John Larkin: I am happy to do that, Chair.

Examination of Witnesses

Ahmed Al-Nahhas and Emma Norton gave evidence.

3 pm

The Chair: Before we move to our next set of witnesses, I should say that in the event that there is a Division in the House during this session, which there could be—this is for the information of the witnesses as well—we would initially suspend the sitting for 15 minutes. If the vote takes longer than that and Members cannot get back, we will deal with that pragmatically.

We are now joined by Ahmed Al-Nahhas and Emma Norton. Mr Al-Nahhas, perhaps you could say who you are so that we can confirm that we can hear you. I know from my mispronunciation of your name that you can hear me.

Ahmed Al-Nahhas: My name is Ahmed Al-Nahhas. I am a representative of the Association of Personal Injury Lawyers, which is a not-for-profit organisation that campaigns for victims of injuries and negligence. I am also a solicitor advocate.

Emma Norton: My name is Emma Norton. I am the director and lawyer at the Centre for Military Justice. I have developed a dry cough in the last two days, which is why I am appearing virtually—I apologise in advance for any coughing that I may do.

The Chair: Thank you very much in advance for giving evidence today. I will ask Emma Lewell-Buck to start the evidence session.

Q86 Mrs Emma Lewell-Buck (South Shields) (Lab): Good afternoon to both of you. As you are aware, the main purpose of the Bill is to provide greater legal protections to forces and veterans. In your opinion, does it fully do that?

Ahmed Al-Nahhas: No, APIL’s position is that the Bill does not afford that. We acknowledge the good intentions behind the Bill. However, in respect of part 2 of the Bill, which I am here to discuss—the civil claims aspect—we believe that it strips service personnel and veterans of certain rights in relation to civil claims and their rights under the European convention on human rights.

Emma Norton: I would agree with that and I will not repeat it. I would say that one of the major flaws in the Bill is that it does not address the issue of the investigations that gave rise to all the problems that we are dealing with today. I think you heard that in the previous evidence; it has been a thread that has been running throughout the evidence that the Committee has heard today.

Q87 Mrs Lewell-Buck: Bearing in mind your answers, I think I know the answer to the next question. Do either of you feel that it will reduce the number of investigations and reinvestigations or not?

Ahmed Al-Nahhas: I may pass that question to Emma, who is here primarily to deal with those issues in respect of investigations. My remit is in respect of civil claims.

Emma Norton: I think there were very serious problems with the original investigations that took place into the allegations of harm in Iraq and Afghanistan. That is what made it relatively easy for courts to find that, time and again, fresh investigations needed to be conducted, which then gave rise to further litigation. The responses from the Ministry of Defence to those adverse findings did not go far enough. The investigations that we had had time and again never got to the bottom of what had happened.

As witnesses have said, the longer period of time that you get between the event and the investigation, the harder it is to get to the bottom of what happened. If we were serious about really addressing the issues that
Mr Campbell and other veterans have described, we would be looking at what kinds of systems and structures that we could build now and that would ensure that this does not happen again. What kinds of investigations could we set up and design that could function in the context of overseas operations? I am afraid that until that happens, these problems are going to recur and I do not think the Bill addresses them.

**Q88 Mrs Lewell-Buck:** Would either of you advocate a pause on the Bill going through right now until some of the issues can be ironed out properly?

**Emma Norton:** I am happy to say that I would, personally. That would have been a sensible way to go about it—to have a consultation that would really hear from individuals who had been directly affected by investigations, as well as victims, and to speak to experts who can talk to the challenges of building a really good system of investigations overseas, because it is really difficult and we do not underestimate that. There are lots of things that could be done and could be done better.

There was a service justice review, and I know we are expecting some further responses to the recommendations in that review, but that was published in February and it had taken two years to get to. That contained some really interesting ideas about how we could improve service policing and the quality of prosecutorial decision making. I know that there are lots of other ideas—ideas about maybe getting greater degrees of civilian oversight and input into military policing overseas, or possibly having judicial oversight of decisions to detain insurgents and reviews of those kinds of decisions. It would have been more sensible to have those discussions first and then look at what was needed by way of amendments to the criminal law. It feels very much—we have heard this a couple of times today—that this is a cart before the horse situation.

**Ahmed Al-Nahhas:** I would add my agreement to that. APIL’s concern is that the impact assessment does not go far enough and is not clear. I would welcome a pause so that a proper impact assessment can be taken and further expert evidence explored.

**Mrs Lewell-Buck:** Thank you both. My colleague, Kevan Jones, wants to come in quickly on investigations as well.

**Q89 Mr Jones:** On investigations, a theme has come out in the reading and in this morning’s session. We have time limits here for bringing prosecutions. Would you suggest time limits for investigations? The Human Rights Act says, I think, you have got to have speedy investigations. Even without time limits, is there a role for judicial oversight of those investigations as they are ongoing—an investigation could get to a point where independent judicial oversight could say, “Nothing further is going to be gained from taking this prosecution any further”? What are your thoughts on that?

**Emma Norton:** I do not think you can have a set time limit for an investigation. I think an investigation needs to take as long as it takes, as long as it is being conducted expeditiously. The problem with the original responses to allegations of really serious abuse overseas was that those allegations were not responded to sufficiently, certainly in accordance with our convention-compliant obligations, which are that they needed to be sufficiently independent, sufficiently well-resourced, sufficiently prompt, adequate—all those kinds of things. I do not think that setting an arbitrary time limit on what would be criminal investigations is necessarily helpful. If we think about how police conduct criminal investigations domestically, although there are time limits in terms of issues around police bail and things like that, there are no hard and fast time limits within which police need to complete those investigations, although obviously they should do them as quickly as possible, because otherwise the defendant is prejudiced.

**Q90 Mr Jones:** What about actually having a review of the investigation—an independent review of those investigations?

**Emma Norton:** In terms of how that would function overseas, I can see the benefit. It may be that when you have sufficient levels of civilian input into those investigations or oversight into those investigations, or judicial oversight into decisions to detain in theatre, then that may not be necessary; you could inject that level of requisite independence in those ways. This is something that would really benefit from a wider consultation with experts in criminal law and procedure, who are experienced in criminal law and procedure but also in the challenges of having investigations overseas. We have not had that.

**Q91 Mrs Lewell-Buck:** Going back to my earlier question, does the Bill open up the possibility of more prosecutions in the ICC?

**Ahmed Al-Nahhas:** I am sorry, I cannot comment on criminal matters.

**Emma Norton:** I am not an expert in international criminal law, but if an otherwise credible allegation of a war crime was not proceeded with because of the Bill, that by definition increases the risk that those matters would be taken up by the ICC. That is something, of course, that our Judge Advocate General Jeff Blackett has very real concerns about and has spoken about. I know a lot of others also have very serious concerns about that.

We have heard a lot about veterans and their understandable fear and anxiety. We have heard less from very senior and former members of the armed forces who are really concerned about these provisions—the criminal side of the Bill as well as the civil side—and feel they are not in accordance with the Army’s values and standards. The message the Bill will project to the rest of the world about how the Army wishes to conduct itself is really serious, and they feel quite despairing about it. I was speaking to a former brigadier this morning who served 36 years, and he said that he was really ashamed of the Bill. So I think there is a real concern.

**Mrs Lewell-Buck:** Thank you both very much.

**Q92 Sarah Atherton** (Wrexham) (Con): Hello, Emma. It is good to see you again. I am intrigued with what you just said. A blunt question to you: do you feel that the Bill is necessary?

**Emma Norton:** What is necessary is for what happened in the past never to happen again—definitely. I just do not think that the Bill will fix it, for the reasons I have
given. I will not go over them again, but they go to the lack of willingness inside the MOD to look at those allegations at the time.

I think we are in a different place now. The MOD has learned a huge amount from all those errors. I would say that the MOD has learned from some of the litigation; there have been some very positive outcomes from that, and that is missing from the debate. I just do not think that the Bill fixes those problems sufficiently.

Q93 Sarah Atherton: Are you concerned about the interface between the service justice system and, perhaps, the service complaints ombudsman and what role they could play—if you feel that the Bill could be improved?

Emma Norton: Hilary Meredith mentioned this morning that the ombudsman could have a role here. I think she was looking at whether some sort of compensation or ex gratia payment scheme could be made or some form of redress could be given to the soldiers subjected to this cycle of investigation. That was a really interesting idea. I know that, separately, the ombudsman is very under-resourced, so that would need a whole separate discussion as well.

The interplay with the service justice system is something you should ask the Judge Advocate General about when you speak to him later, because—obviously—he has huge amounts of experience of issues arising where somebody is not convicted of the main charge but is perhaps convicted of a lesser charge under the court martial.

Q94 Liz Twist (Blaydon) (Lab): Mr Al-Nahhas, how aware are troops that they can privately claim for their injuries?

Ahmed Al-Nahhas: Good afternoon. I think it is a feature of military claims that service personnel are largely unaware of their legal rights to bring a civil claim. I often find in my own practice—many of our members have also reported this—that they will, in fact, be misinformed of their legal rights. This may be because there is confusion in their chain of command. Indeed, we have heard of many cases in which the chain of command will misinform them and say that they should wait until the end of their service before bringing a civil claim, which usually means that they are out of time by the time they bring a claim. In other cases there is confusion between civil claims and the armed forces compensation scheme, which is a separate, no-fault scheme, which has a much longer period of time in which to apply—normally seven years. In answer to your direct question, I think they are very unaware and, in fact, a lot of the time they are misinformed.

Q95 Liz Twist: I see that you are nodding, Emma. Is there anything that you would like to add?

Emma Norton: Just that that is entirely my experience as well. I have not advised people about overseas claims, but I advise them about claims arising in other respects, and that is a very, very common observation, yes.

Q96 Liz Twist: Returning to Mr Al-Nahhas, after what period of time will troops usually be aware of the fact that they can claim for injuries? You said that there is often a delay.

Ahmed Al-Nahhas: There is often a delay. In fact, I have dealt with many hundreds of inquiries, or at least many of the lawyers who APIL and I work with have dealt with many hundreds of inquiries, that are many, many years out of time. You will have calls from service personnel who have just finished their 22 years in service, and they will call up and inquire about the opportunity to bring a civil claim, and you have to tell them that actually they are about a decade out. So, it does vary, but more often than not they are quite a few years out of time.

Q97 Liz Twist: Could the Ministry of Defence do more to make troops aware of that route to compensation, in your view?

Ahmed Al-Nahhas: Absolutely—forgive me for interrupting you, but absolutely I think they could. In fact, at the moment I do not think that they do anything to inform service personnel of their rights to bring a civil claim. I am not suggesting that as an organisation they should be shouting from the rooftops and saying to service personnel, “You should really explore your opportunity to sue us”. However, I think that the Ministry of Defence has an obligation under the armed forces covenant to be fair to service personnel. They do provide them with information about the AFCS, but, as I said, there is a much longer period of time to claim under that scheme.

I think that we also need to bear it in mind that service personnel are quite unique legal creatures in a way. For example, they are not allowed, if we are comparing them to civilians, to join a trade union. So, if you were a civilian and you were injured, you might speak to your trade union and get some advice about what claims you might bring. They may even point you in the direction of a solicitor. That often does not happen with service personnel. So, yes, I think the MOD needs to address this and be fairer with service personnel about the information available to them.

Q98 Liz Twist: You mentioned the armed forces covenant. What do you think could be the impact of this Bill on the armed forces covenant?

Ahmed Al-Nahhas: I think that the Bill, as drafted, is potentially in danger of breaching the armed forces covenant, and I will explain why. As I mentioned earlier, service personnel are quite unique legal creatures. They do not actually have the same legal rights as civilians. So, just to take an example, service personnel have very limited rights to bring a claim in the employment tribunal, save for issues such as discrimination. However, if this Bill were to be passed, they would not—beyond the six-year longstop—be able to rely on section 33 of the Limitation Act 1980 in respect of civil claims. They would not be able to bring those claims, which may be worthy but are actually brought very late in the day, whereas civilians might have the opportunity to use section 33 of the 1980 Act.

Of course, the other aspect of the Bill is the stripping away of reliance on the European convention of human rights. So, in many senses, if this Bill were to pass, service personnel would have less civil rights and less human rights. By analogy, they will have less rights than a prisoner, so I do not see how that squares with the armed forces covenant. I am very concerned about that.

Q99 Liz Twist: You mentioned the time limits. Can I ask you about the difference between the point of knowledge, as written in the Bill, and the point of
Ahmed Al-Nahhas: That is a difficult question to answer. I think it will definitely have an impact. I do not think that the impact statement that has been released really explores it fully, because it ignores a large proportion of civil claims brought against the Ministry of Defence, which may include elements of overseas operations.

If I can give you just a quick example, the impact study does not take into account noise-induced hearing loss claims. These are complex claims that may involve exposure to harmful noise at any point of the serviceperson's service, and at different points of overseas operations in different countries. The impact study that has been released ignores all of those claims. In the last year alone, I think the figures released by the Ministry of Defence suggested that 1,810 claims relating to noise-induced hearing loss were brought against the MOD.

My answer to your question is that I think there will be an impact, but we do not know the extent of that impact, and that needs to be explored further.

Liz Twist: Thank you. I want to ask Ms Norton a few more detailed questions. Are you okay? You look as if you are suffering.

Emma Norton: I am okay. I am muting myself, but I am okay.

Q102 Liz Twist: Further to the questions that my colleague Emma Lewell-Buck asked you, what is the evidence that courts cannot strike out baseless legal claims?

Emma Norton: We are talking about civil claims. I am not aware of any evidence that the courts cannot do that. They do it all the time; it is a fairly standard part of civil law procedure. Civil procedure rule 3.4—I think—says that if a claim discloses no reasonable prospect of success, the defendant can apply for strike-out, and the strike-out can be given. There are some really good examples of that happening where the MOD has been the beneficiary. A good example was the second batch of the Kenya litigants’ claims, which were thrown out a few years ago now. Something like 40,000 claims were dismissed on the basis that they were too old and it would be unfair on the defendant, which was the Ministry of Defence, to defend the claims because it no longer had the evidence available to have any reasonable prospect of defending them. The courts are perfectly capable of striking out stale claims and they do it all the time.

I want to pick up on a couple of Ahmed's points, which were excellent. The point about the Limitation Act is really important. The Limitation Act contains a range of different criteria that, in my opinion, are duplicated by the new criteria that are set down in the Bill. Section 33 of the Limitation Act enables the court to consider whether allowing the claim out of time is going to prejudice the defendant, in particular, or anybody else. It requires the court to have regard to all the circumstances of the case, which would include the fact that the claim arose from overseas operations, and all the difficulties and complexities of that environment. I think the courts have more than enough powers.

Q103 Liz Twist: Do the courts have an unfettered legal route into matters of combat decision making?

Emma Norton: No, they do not, and I respectfully disagree with the previous witnesses on that issue.
In the Smith case, which Dr Morgan cited, the Supreme Court made it very clear that the principle of combat immunity is absolutely sound. In that case, the Ministry of Defence was trying to expand combat immunity to cover a range of factors that the court said were never intended to be covered by that. It was just heat of battle, in theatre. The families of the deceased—remember, they were young soldiers who got into those Land Rovers, or other vehicles that had been procured, and suffered dreadful injuries and death—wanted to challenge the decisions made by individuals back here in Whitehall, behind a desk, to procure that equipment for use in Iraq. That was the decision that they wanted to challenge. All the court said was that combat immunity did not go that far. It has not been chipped away or reduced. So no, I do not agree with that.

Q104 Liz Twist: That picks up on my next question, which was about the principle of combat immunity. That is all my questions. Thank you very much.

Q105 Stuart Anderson: When we have listened to evidence today we have heard from veterans and from legal representatives like yourself. There is a disparity between veterans, who really want this Bill and say how let down they will be if it does not go through, and legal representatives, who say, “Stop.” As legal representatives are there to defend or to represent our troops, as you have done, where is that breakdown happening and why, Mr Al-Nahhas?

Ahmed Al-Nahhas: I am not going to comment on the criminal aspect, but from my perspective there is a need to protect service personnel from spurious criminal claims, which we are looking into. That brings forward a lot of people who want this Act in place. I am not sure whether that is the incentive behind part 2 of the Bill, which is the civil aspect.

I can share with you, as a representative of APIL, that many of our members have many hundreds of clients who are service personnel. I have been doing this for a long time. The people we act for come to us seriously injured and needing compensation. The tools that are available to us as lawyers are the civil claim route and the Human Rights Act. If you start taking those rights away from veterans and service personnel then you will be, in my view, doing them an injustice.

I do not envy you. I can see that this a fierce debate and there are different sides to the argument. I would caution that that should be a sign to all of us that there should be a pause to the Bill and further exploration. I wonder to what extent the confusion is caused by the fact that the Bill tries to do two things. It tries to resolve the issues in respect of criminal law and it also addresses the fact that the Bill tries to do two things. It tries to resolve the confusion because there is a brotherhood and sisterhood that has gone through the forces. When one person is affected, everybody is affected. Nothing has been brought in so far, and now we are at the start point. A major fear I have is that I keep hearing people saying stop. It has taken decades to get here. I do not know how long I will be a politician, but if I have a long career, we could still be saying stop, because people will never find a perfect Bill.

I hear what you are saying, but I think it goes against what the veteran community wants and is crying out for. As you have heard today, and with the greatest respect—I value what you are saying—every person we are seeing has a different view on this. As politicians, we need to find the best way to get the Bill through. If the Bill were to be stopped, I know the absolute lack of trust and heartbreak that the veteran community would feel. We have to use what we have and move that forward. I respect what you have said, but I felt that it was important to express how the heart of the veteran community is feeling about this.

Emma Norton: I do understand that. You say that every person that has appeared before you has a different view; in fact, it has been a running thread throughout all of this. Everybody seems to agree that the problem is the lack of independence in those early investigations, and we still have a lot of questions, and need to have discussions, about how to improve that. If we addressed that, it would be a much safer basis to proceed and face the future. It would also be litigation-proof for the MOD; if you have investigations that are solid, independent and secure, they would be litigation-proof. That would be good for the victims, and it would be excellent for the soldiers.

Q107 Carol Monaghan: May I ask, following those last questions, whether part 2 has been brought in stealthily off the back of part 1?
Ahmed Al-Nahhas: Yes, I believe so. What you are giving veterans with one hand, you are taking away with the other. That is a confused approach to legislation, and I am very concerned about it. Does that answer your question?

Q108 Carol Monaghan: Yes, thank you. Emma Norton, do you have any comments?

Emma Norton: I do not have much to add to that, except to say that I agree and that it is quite extraordinary that part 2 will only benefit the Ministry of Defence, and the Ministry of Defence is the defendant in all those claims. That is quite extraordinary.

Q109 Carol Monaghan: Is there a danger that the hard stop of six years could prevent things such as inefficiencies in equipment from coming to light?

Ahmed Al-Nahhas: There is definitely a risk with any hard stop. APIL’s main concern is that taking away the flexibility of section 33 is a real danger. You are touching on accountability here; I heard your question to the previous academics about that, and it is important.

May I share an example from a case of mine? It was the wife of a serviceperson who died in Iraq in 2005. At the time he died—he died in a Snatch Land Rover due to an improvised explosive device—she had no idea whatsoever that the Ministry of Defence was culpable in any way. It was not until more than a decade later, when the Chilcot report came out, that fingers started to be pointed towards the Ministry of Defence. That report stated that the provision of Snatch Land Rovers was woeful and put service personnel’s lives at risk.

The wife later sought to bring a civil claim for her and her children. At that stage, 10 years after the death, her claim was already technically out of time. We had further delays because she was dealing with cancer and going through treatment. That sounds like quite an exceptional case, but we have had similar situations—I brought a claim that technically was out of time, and if this Bill had been in place, that claim could not have proceeded. The claim was settled for several hundred thousand pounds, and brought her some justice and some compensation.

I mention that example for two reasons. First, you are talking about the accountability of these investigations that take so long; secondly, adding to that the complexity and problems of a Bill that introduces a longstop is opening the doors to some real problems here.

Emma Norton: May I make a quick point on that? Another thing that is overlooked is the benefit of some of this litigation that we are discussing now to soldiers and the MOD more widely. The Snatch Land Rovers are a good example of that, because those Land Rovers are no longer used in those kinds of conflict. If those families had not brought those claims, we would not be in this much-improved situation. That is an example of the positive outcomes of litigation, and that is worth reminding you of.

Q110 Carol Monaghan: Could part 2 of the Bill be seen, then, as harmful to serving personnel and veterans?

Ahmed Al-Nahhas: Yes, potentially. It would not encourage people to come forward and bring claims. It is normally a very brave lawyer who takes on a case that is out of time in the first instance; the reason section 33 is there is that it allows flexibility only in the most exceptional of cases. If you were to take that away and introduce this Bill, you would see less litigation on these issues. Emma raises an important point; it is certainly my experience and the experience of our members that it is primarily through litigation that organisations such as the MOD listen and change. That is one of the aspects of removing those protections that causes us great concern.

Q111 Carol Monaghan: I am not sure whether it was you, Ahmed, or Emma who mentioned the issue of hearing loss earlier. I am wondering what happens if veterans or serving personnel have suffered an injury that cannot be attributed to a single event—for example, a number of things could contribute to PTSD. I am not a lawyer, so how does it work under this legislation if there is some dubiety over which particular event caused the injury?

Ahmed Al-Nahhas: That is one of the big problems with this Bill: it will encourage a great deal more argument. As I said in my answer to the previous question, I think the Ministry of Defence will seek to use this Bill to strike out claims. Using noise-induced hearing loss as an example, as you did, that is a very typical injury that service personnel suffer. They normally get compensated through the AFCS, but where there is negligence, they can get significant compensation. By “negligence”, I mean where the Ministry of Defence has, for example, not provided sufficient training or sufficient equipment to protect that serviceperson’s ears.

Those exposures to harmful noise can happen throughout a career. It becomes very complex, because as a lawyer you are investigating the entirety of someone’s career, with their medical records in one hand and their personnel file in the other. You are looking at overseas operations, maybe in Iraq or Afghanistan, and you have to explore whether they were exposed to a certain level of noise that may have been harmful. If I can put it simply, they are complicated enough as they are. Introducing this Bill will only do two things: it will increase the challenge to service personnel in bringing claims, and it will complicate claims unnecessarily.

Q112 Carol Monaghan: Thank you. I do not know whether you have any additional comments on that, Emma.

Emma Norton: No, I do not have anything to add on that. I was just going to say that there are often references to the armed forces compensation scheme, and it might be worth briefly mentioning on behalf of service personnel how dreadful they find it to try to operate that scheme. Ahmed has more experience of this than I do, but a lot of my clients have described to me how bureaucratic, difficult, slow and stressful it is, and it is true to say that the awards you would generally expect to recover from that scheme are significantly lower than those you would expect to recover if you succeeded in court. Ahmed will correct me if I am wrong about that, but I think it is a point worth making.

Q113 Carol Monaghan: My final question, playing devil’s advocate I suppose, is, what benefit is there to veterans from part 2 of the Bill?
Ahmed Al-Nahhas: I am struggling, to be honest with you. As Emma pointed out, this is all about civil claims that are brought against the Ministry of Defence; it is not about civil claims that are brought against service personnel, so I am really struggling to find any advantage for service personnel. When you are stripping away their access to section 33 of the Limitation Act, you are ignoring those exceptional cases in which a judge may think, “You know what? This case is out of time, but there are really good reasons why we should proceed with it.” It may be for reasons of accountability, which we have touched on, or it may be because that particular claimant deserves some justice. When you start stripping that away and then start stripping away the protections under the Human Rights Act, service personnel are left vulnerable—more vulnerable than civilians, more vulnerable than prisoners. I do not understand what advantage they are getting out of this.

Emma Norton: I agree with that. I do not have anything to add to that.

Q114 Mr Jones: I struggle to find consistent statistics about civilian claims against the MOD, and some people have clearly given the impression that all civilian claims are by Phil Shiner-type claimants. As a former Minister, I know that a lot of them are from serving personnel, veterans and family members. Are there any statistics on how many claims armed forces personnel, family members and veterans bring against the MOD each year?

Ahmed Al-Nahhas: There are, sir. They are published by the MOD on an annual basis. The MOD split the figures according to the type of claim that is being brought. What you are looking for is what they term employer’s liability claims. The figures are available online. I am happy to provide them, but I am sure you have quicker access to them than I do.

Q115 Mr Jones: In terms of your experience of those claims and claims by individuals who are not from the MOD—low-flying claims and other negligence claims that are not to do with operations or the MOD, but related activities—have you any idea of how many we are talking about? Are they published anywhere?

Ahmed Al-Nahhas: They do split them. I do not have them to hand, unfortunately, but they separate them out, so maybe you will glean more from that. I am sorry that I cannot assist further. My understanding is that the Bill will affect the vast majority of the civil claims that are brought against the Ministry of Defence, which are the employer’s liability claims. The main provisions that the MOD break them down into are non-freezing cold injury claims, which are a mainstay of civil claims that are brought, and are in relation to negligent cold exposures, and noise-induced hearing loss, in relation to negligent exposure to loud noises. The others relate to industrial disease—things like asbestos—and then they have a quota that is defined as “other”. With a freedom of information request, we may be able to dive a bit more into those statistics. I hope that helps.

Q116 Sarah Atherton: Mr Al-Nahhas, you are talking to the uninitiated here. I absolutely agree that litigation is a strong conduit for change. For families who feel that they have been unjustly treated, how do they fund claiming and who funds the litigators?

Ahmed Al-Nahhas: That is a very good question. It depends on what they agree with their lawyer. In the industry, the norm is to provide something called a conditional fee agreement. Where you can establish that a claim has good prospects of success, you may, as a lawyer, offer a service person’s family, in relation to your example, a CFA, where you do not charge them unless you win. It is conditional on certain terms. These days, there are a lot of rules that regulate how much lawyers can charge. Normally, for example, and taking a rule of thumb, they cannot exceed the damages that you recover for the individual. In the past, there were fewer constraints on the extent of lawyers’ fees.

There are lots of lawyers out there who are specialists and who offer no win, no fee agreements to service personnel and their families. The only way that service personnel or their families may be required to pay legal costs normally is that they sometimes have to pay a chunk of their costs, related to what lawyers would define as unrecovered costs, which are things that they cannot recover from the Ministry of Defence, but as long as the claim is successful, in this context, it would be the Ministry of Defence that pays the lawyer’s bill. I hope that answers your question.

Sarah Atherton: Yes, thank you.

Q117 Stuart Anderson: If they are successful, what percentage is taken from the soldier’s claim, on average, for the solicitors?

Ahmed Al-Nahhas: It depends on the terms offered by the lawyers. They can vary, typically between 15% and 25% of the damages that are recovered. There are certain caps, but that is typically what you might find in the industry.

Q118 Peter Gibson: I have two quick questions for Ahmed. In terms of the claims that you have brought for veterans, how many times have you had to use the dispensation of limitation under section 33? And are you able to share with us your success rate in terms of the claims that you win and those that you lose for veterans?

Ahmed Al-Nahhas: As I am representing APIL, I would not be able to share specific numbers, but I am very happy to share my experiences on section 33. I would say that it is a small fraction of cases that are pursued that will have to rely on section 33.

Q119 Peter Gibson: Just to put some data on that, how many claims does a small fraction look like in practice, over a period of 15 years?

Ahmed Al-Nahhas: To give you an idea, it may be that two out of 100 cases that we manage would be at risk of being out of time—maybe 5% at most. On whether or not you succeed with a section 33 argument, well, the only time I went to court on a section 33 argument, I lost. I took it to the Court of Appeal, and I lost there, too. I think that might indicate to you how difficult it is to succeed there. The judges really do not engage in a liberal application of section 33.

As a lawyer, if you are partaking on a case that is out of time, you need to be brave, and it is very rare. Often or not, in some of these cases where there is a section 33 argument, they may be settled along the way, but the
fact that the claim is out of time might be a factor that affects the settlement figure. I hope that answers your question.

Q120 Peter Gibson: Thank you. So it is incredibly rare that you would need to use section 33.

Ahmed Al-Nahhas: In answer to your direct question, yes, it is incredibly rare that you use it, but that is dependent on the lawyer and whether they are willing to take on riskier cases. On the whole, it is not something that lawyers engage in easily. But the key about section 33 is that you will come across those cases, like the one I explained earlier involving the widow of the serviceman, where they are demanding justice. They are worthy cases, and you use section 33 because that is the flexibility in the system. That is the conduit through which judges can achieve justice, even if you are out of time.

Q121 Peter Gibson: My second question is about success and failure. How many cases do you win and how many do you lose?

Ahmed Al-Nahhas: That depends on the definition of win. What is interesting is that most of the claims—civil claims in this area—will tend to settle. The MOD will publish, with the same document I mentioned earlier, the figures in respect of settlements that it pays out. I think that last year it spent £131 million in respect of compensation and legal costs. I do not think it has separated what is legal costs—

Q122 Peter Gibson: I am trying to establish in how many cases you succeed in recovering compensation and in how many you do not. Obviously, one subsidises the other. Are you able to share those percentages with us?

Ahmed Al-Nahhas: I could not give you an accurate estimate here. I am a representative of APIL, representing hundreds of solicitors across the country in this field. It may be that I can provide written evidence, if that would assist the Committee.

Peter Gibson: That would be welcome, thank you.

Ahmed Al-Nahhas: Of course. I am sorry that I could not assist you immediately.

Q123 Stuart Anderson: I have a supplementary question about a no win, no fee where a young rifleman has a previous injury. If you or the other solicitors do not deem it to have a good chance of success—those were your words—how would a young rifleman fund his legal case?

Ahmed Al-Nahhas: I have no idea. They may need to rely on charity. They may need to rely on family. They have very limited options. Actually, they often have a big challenge: they need to find a specialist in this field to begin with, because it is not easy to sue the Ministry of Defence and it is not easy to understand the specialties and complexities of such cases. They will often go to another lawyer for a second opinion, and one hopes that that lawyer would take on their case, but there are no guarantees, and particularly on cases that are out of time. You may be going around the houses to tens of lawyers who will all say to you, “I’m really sorry, but you are out of time. There is nothing I can do for you.” That is one of my concerns with the Bill.

Q124 Stuart Anderson: How many cases have you turned down that have been over six years?

Ahmed Al-Nahhas: I would say, on average, in my own practice, probably between 70% and 80% of inquiries that come in will be rejected because they are out of time. Forgive me, that is anecdotal and off the top of my head. I was not expecting that question but, if it gives you an idea, the vast majority of the inquiries we get are from people who are frankly out of time.

Q125 Mr Jones: Does that not demonstrate the point made earlier about people being aware of their rights, in terms of taking cases forward? To answer Stuart’s point about cases, charities take test cases and cases that might not be seen as winners. Section 33, which this takes away from veterans, applies to me if I want to sue someone and it applies, as you said, to a prisoner wanting to sue the Ministry of Justice. Why should it be different for a prisoner and for a veteran?

Ahmed Al-Nahhas: It should not—it definitely should not. You are taking away legal rights from service personnel who already have fewer legal rights as it is. You really are stripping the tree there.

The Chair: If no other Member wishes to ask a question, I thank both our witnesses for their contributions to the Committee this afternoon. Thank you very much indeed.

Examination of Witnesses

Martha Spurrier and Clive Baldwin gave evidence.

4 pm

Q126 The Chair: As we were hoping, Martha Spurrier from Liberty has appeared on the screen. Can you and Mr Baldwin please introduce yourselves?

Martha Spurrier: Hi, everyone. I am Martha Spurrier and I am a lawyer and the director of the human rights organisation Liberty.

Clive Baldwin: I am Clive Baldwin, senior legal adviser with the international organisation Human Rights Watch. It is perhaps also relevant to the Committee that I was previously involved in training the UK armed forces and other armed forces on detention practices and international law.

The Chair: Thank you. We are expecting a vote in the House imminently; I will have to suspend proceedings for about 15 minutes in that event. We will begin the questioning with Chris Evans.

Q127 Chris Evans (Islwyn) (Lab/Co-op): Welcome to you both. Mr Baldwin can answer first and Ms Spurrier second, so that you are not crossing over each other, but I will address questions to both of you. The reason I have picked Mr Baldwin is that he is a sitting above you on my screen, Ms Spurrier—there is no discrimination, I promise you.

Given that the Government have managed to exclude sexual offences from the Bill, do you see any reason why torture should not similarly be excluded?

Clive Baldwin: No, there should be no reason. Not just torture but other international crimes should not be excluded, particularly war crimes, crimes against humanity.
and, indeed, any other international crimes, such as enforced disappearances that the UK is obliged to investigate and prosecute. For the reasons given by the Secretary of State, sexual offences that no place in armed conflict, and neither does torture or war crimes. The exemption should be very clear. Even in international crimes, particularly war crimes, it is a very clear principle of international armed conflict law that there should be no statute of limitations on war crimes, because of the difficulties in investigating them. Anything that starts to look like a statute of limitations on war crimes risks the UK violating its international obligations.

Martha Spurrier: I entirely agree. I cannot see any legal or moral justification for not including torture and other war crimes in that schedule.

Q128 Chris Evans: Could we talk a bit about the triple lock? Obviously, the Bill would apply the same triple lock against prosecutions for war crimes or crimes against humanity that took place more than five years ago. I have had a number of lobby groups write to me about this situation. What is your view on the triple lock? Does it need to state intent?

Clive Baldwin: The triple lock, as it is set out, is quite worrying, particularly for those international crimes, because it seems to be creating a block to prosecution. The first element is the five-year limit, together with the presumption against prosecution, which is quite unique. I am not aware of any other country having something similar, especially for those international crimes.

The third part of it—the increase in the powers of the Attorney General—is a position that we at Human Rights Watch have objected to for some time. The Attorney General is an unreformed legal position that essentially remains a member of the Government and should therefore have no role in determining individual decisions on prosecutions, although of course the Attorney General still has some of those powers. The increase in the power to effectively block prosecutions gives the risk of all this appearing to be a political attempt to make prosecutions harder to bring. If you have been the victim of an injustice, whether that is because you are a civilian victim abroad or you are a serving man or woman who has been the victim of an abuse of justice by the UK military, those three locks on you getting justice could very easily act as a bar. They are an additional three hurdles that an ordinary, if you like, victim of crime would not have to cross in order to seek justice, accountability and punishment for what they have suffered.

Q129 Chris Evans: Are you saying that this Bill could deny justice to victims of serious crimes?

Martha Spurrier: Absolutely. If you have a triple lock on prosecution, it must be right that your intention is to make prosecutions harder to bring. If you have been the victim of an injustice, whether that is because you are a civilian victim abroad or you are a serving man or woman who has been the victim of an abuse of justice by the UK military, those three locks on you getting justice could very easily act as a bar. They are an additional three hurdles that an ordinary, if you like, victim of crime would not have to cross in order to seek justice, accountability and punishment for what they have suffered.

Q130 Chris Evans: What is your view, Mr Baldwin?

Clive Baldwin: Absolutely. Particularly in the situation of crimes that may have been committed overseas, it is very difficult for victims to achieve justice, for many understandable reasons, in those cases. This makes it even more difficult, in that after five years it becomes the exception rather than the rule to prosecute. This is just focusing on part 1, the criminal side. It does run the serious risk of creating injustice.

Q131 Mr Jones: In the Bill, there is a presumption against prosecution, which I think is very odd, in the sense that you are basically presuming that you are not going to prosecute even before you have done the investigation. Are you aware of any other international comparisons that have that in law? Basically, it presumes that you will not prosecute even before you have done the investigation.

Clive Baldwin: No, I am not aware of any international law or even system that has something like that. Some countries have statutes of limitations—absolute time limits for the prosecution of minor offences, or relatively minor offences. Certainly, when it comes to war crimes, as I have said, there is a very strong international law, under the law of armed conflict, that there should be no limitation period for war crimes.

As you say, this is quite a strange law. It would create a very strange situation and I think, as Martha was saying, that it will have a very chilling effect, not just on prosecutions but even on criminal investigations, because those doing the investigation will know that there will be a presumption against prosecution.
Q132 Mr Jones: May I add a supplementary question to that? You mentioned the role of the Attorney General, which is a political appointment. Again, are there any international comparisons where the decision to prosecute in these cases is actually vested in a politician? Clearly, the pressure on that person not to prosecute, for example, could become quite intense. I remember the big campaign against Marine A. I am sure that a political appointment in that situation may have had undue influence, in terms of making a decision not prosecute in that case.

Clive Baldwin: Internationally, there are standards, as with the independence of the judiciary, that prosecutors should be independent and not subject to interference by politicians or Ministers on individual cases. Of course, Ministers may be at the head of the prosecution system. Some countries do this better than others, and there are very different types of systems. In the United States, for example, Attorneys General are elected, which creates its own political problems. However, the move has generally been very much towards making prosecutors, and that prosecutorial decision to prosecute or not, as robustly independent as possible.

One country that had a similar system to the UK was Kenya. When it had a major constitutional reform, it made sure that the Attorney General became a very apolitical, non-political position, because of the importance of the Attorney General in making these decisions about prosecutions.

Q133 Chris Evans: There has been a lot of talk this afternoon about the danger that armed service personnel and veterans could find themselves being prosecuted in the International Criminal Court. Are you of the view, like many others, that this Bill, unamended, could see more of our service personnel and veterans being prosecuted in the International Criminal Court?

Clive Baldwin: Yes. As an organisation that works very closely on international criminal justice, including with the International Criminal Court, I would say that this Bill, unamended, would probably significantly increase the risk of UK service personnel and others facing investigations from the International Criminal Court, or perhaps in other countries, on the principle of universal jurisdiction for international crimes such as war crimes and torture—universal jurisdiction being that principle that a crime like torture should be prosecuted anywhere. There is a duty under international law that countries have to criminalise, or make it possible to prosecute, or extradite, anyone suspected of torture found in their territory.

The Bill, unamended, would increase that risk because it does not exclude all forms of international crimes—war crimes and torture. The International Criminal Court and others will consider whether the UK is willing and able to genuinely prosecute such offences, and given that the Bill would include those offences, would create this triple lock and would create effectively a presumption against prosecution after five years for those offences, it creates the serious risk that the UK would not be considered willing to prosecute offences after five years. That would increase the risk that the ICC or other countries would seek to prosecute such offences.

Martha Spurrier: I agree. The phrase to remember is that, when looking at whether to prosecute, the ICC will think about whether the home country is willing and able to bring forward a prosecution. If you have a stated legislative intention from Parliament, with a triple lock and with a schedule that you have said you are not going to include torture and war crimes in, that telegraphs pretty clearly to the ICC and others that the UK Government and UK prosecutors are unwilling and unable, and therefore that those prosecutions would have to take place elsewhere.

Q134 Chris Evans: As my right hon. Friend the Member for North Durham (Mr Jones) said, the Attorney General is obviously a political appointment. Equally, the Secretary of State is a political appointment. The Bill gives the Secretary of State the power to make regulations in order to amend schedule 1 and to add or delete excluded offences at any date in the future. Do you envisage a situation where this could be used, and what sort of offences do you envisage?

The Bill obviously extends beyond the traditional battlefield. Are you thinking of areas where we have deployed UK troops on peacekeeping missions and they may or may not have committed offences there? That is just an example.

Clive Baldwin: It is difficult to say; I have not seen any indication from the Government of where they would intend this. Of course, if the Government made a very specific commitment to exclude all international crimes, they could exclude new international crimes. Enforced disappearances would be one, and perhaps others that might arise and that the UK may sign up to. However, I worked for several years in Kosovo on justice issues during the peacekeeping operations and, as you mentioned, in situations of peacekeeping many issues arise about day-to-day crimes—traffic offences, even, and elsewhere—that the Government may or may not choose to exclude, depending on the nature of the peacekeeping mission.

If a peacekeeping force is part of building a justice system and there is a functioning justice system in the country, it may be that the Government may choose to make some of those crimes part of it. On a wider picture, giving that power to the Secretary of State, when it is done on an ad hoc basis, mission by mission, will produce uncertainty and lack of clarity about what crimes will be prosecuted. That is something it is quite important to be really clear on, because if anything is amended in the Bill now, it is a very clear and simple statement that no international crimes are part of this Bill; they are all excluded.

Martha Spurrier: The danger of secondary legislation for lawyers is, of course, that, as the Committee will be aware, it simply does not receive the parliamentary scrutiny that primary legislation would. The very real concern with this delegated power is that, as Clive said, you could end up taking away or adding really serious international crimes; you could also conceivably say that the Minister might, by secondary legislation, make changes to the Human Rights Act. That would be pretty unprecedented in parliamentary terms. We have seen over the past few months with the coronavirus regulations how much the state can do without parliamentary authority. We are deeply concerned about the extension of the use of secondary legislation to make such substantive changes that will impact on people’s rights.

Q135 Chris Evans: Before I move from the criminal to the civil side, I want to talk about the definition in clause 1 of the Bill. Do you think that is a sufficient...
definition of “overseas operations”? To explain my thinking, technology is moving at such a pace that we already read reports that future warfare will not include boots on the ground; it might be drones or other technology fighting that, and that leaves open a whole new area of potential laws that could be broken or crimes that could be committed. Do you think there is enough detail in that for overseas operations to be covered by the Bill, Mr Baldwin?

Clive Baldwin: No, for the reasons you say. My organisation works a lot on these situations of violent conflict and the intersect between human rights law and the law of armed conflict, and we are seeing a breakdown in what is the beginning and the end of an armed conflict, what is the battlefield and what decisions are made in which country—you mentioned drones, but there are other decisions made within a country, and cyber-warfare is coming. The artificial distinction of an overseas operation with a clear beginning, a clear theatre and a clear end is one that is very much breaking down. The distinction of when an armed conflict begins and ends is becoming murkier in many ways, especially non-international armed conflict. The idea of having one rule for overseas operations and one for domestic operations will be increasingly artificial, and that lack of clarity about the real application of such situations and such laws will be another danger of this Bill.

Martha Spurrier: The definition, as Clive says, is unclear but it is also over-broad. In my mind, there is no justification for including in that definition things such as peacekeeping missions. What the definition should be focused on is restricting those powers to active hostilities, which could then include, as you say, a future-looking way of envisaging modern warfare, but should still be restricted only to active hostilities. There is simply no justification for taking these extraordinary powers any wider.

Q136 Mr Jones: How would this interface with United Nations peacekeeping operations? In those situations, you often have UK military personnel under the command of non-UK personnel. Do they have separate laws governing specific UN operations? How does it work in practice?

Clive Baldwin: Speaking from personal experience in Kosovo and Bosnia, and from the experience of my organisation, the rules and laws that apply to overseas armed forces in these operations vary very much from time to time. You may have formal peacekeeping operations, where the armed forces have to act as domestic police officers and do domestic policing work, or you may have a strange and unclear overlap. To some degree, that was the situation in Iraq in the last decade, especially as the occupation formally ended after one year in 2004, although British forces remained for four or five years after that with special powers. Sometimes you have stated forces agreements between countries, and sometimes you do not, so it is very unclear. The actual criminal law, and crimes that have been committed by forces or that are alleged to be committed by forces also vary from war crimes in the battlefield to war crimes in occupation, but if you—[Interruption.]

The Chair: We cannot hear you, Mr Baldwin, because we have a Division in the House of Commons that requires the bell to ring. I am suspending the sitting for 15 minutes and we will come back to your answer to that question. The Clerks will remain in the room, so if there are any unexpected issues they will remain in contact with you.

4.21 pm

Sitting suspended for a Division in the House.

4.36 pm

On resuming—

The Chair: We are formally resuming proceedings. I ask Chris Evans to continue his line of questioning. When Mr Jones comes back, I will ask him whether he wants to resubmit the question that he asked before the suspension.

Q137 Chris Evans: As I said before we left for the vote, I want to finish off with a few more questions about the criminal side, and then move on to the civil side. As the Bill stands, it affects future conflicts. Is there a case to make it retrospective to protect veterans from other foreign conflicts, such as Iraq and Afghanistan?

Clive Baldwin: If the Bill were made retrospective, and I think it is not quite clear whether it would be for existing investigations that have not proceeded to prosecutions, but even if it were, I think that creates even more problems. With the ICC, there is currently a preliminary examination, which might then proceed to an investigation, for that reason we would still need. More broadly, we would say that the Bill does not fix any of the problems about criminal investigations, because part I is trying to limit prosecutions, and there have been so few prosecutions in any event. We would say the problem recently in Iraq and Afghanistan lies with the lack of prosecutions dealing with the evidence that some more crimes—limited, but some—were committed. That has been the problem.

Martha Spurrier: I agree with Clive. The Bill is a huge barrier to victims, as I have said, whether they are civilian or service personnel seeking justice. It has no bearing on the problem that it is purporting to solve and it will make accountability for human rights violations and serious crimes harder. To make it retrospective would simply enlarge the scope of what is already going to be a bad law.

Q138 Chris Evans: The huge issue for veterans groups is that repeat investigations are placing a huge strain on our service personnel. I think that is really the intention of the Bill—to remove the stress and tension that they feel, once they have served the country. In your view, is the Bill getting to the heart of that problem?

Clive Baldwin: Not at all. We have been following and looking at the issues in Iraq, particularly, and in Afghanistan, and not just with the UK, but also with other countries. The problem on the criminal side is that the military criminal justice system has not shown itself fit for purpose in these particular situations of overseas investigations, which are very complex. We need a system that is fair, speedy for size, transparent, effective and independent. We would say that you start with trying to look at the problem and fixing that, so that there are investigations on the criminal side first that are as speedy as possible and fair. Once you fix that, you can
look at what other measures might be needed. This problem starts with the prosecution side, which, as I said, has not in itself been the issue, because there have been so few prosecutions.

*Martha Spurrier:* That is absolutely right. The answer to the stress faced by service personnel is to deal with investigations: to make them thorough, to make them fast, to get them done to a high standard, and also to offer proper support to service personnel and victims. You heard from Major Campbell today, and he has been clear in his public statements that he does not feel that the Ministry of Defence supported him through the repeated investigations he faced. Presenting the Bill as a solution to what people like Major Campbell have faced is, frankly, offensive to the trials he has been through. It is not an answer to that problem. Nowhere on the face of the Bill does it deal with investigations.

**Q139 Chris Evans:** There are two questions that come up there: first, in the light of what you just said, how could the Bill be improved? Secondly, as the likelihood of a prosecution is, as you said, not very high anyway but is now less likely with the Bill, what are the chances that the rule of the law of armed conflict could be pushed to the limit with the Bill?

*Clive Baldwin:* To answer the second question on the law of armed conflict, you say “pushed to the limit”, and, as I said on one particular element, if it starts to look like or resemble a statute of limitations on war crimes, that does violate a basic principle of the law of armed conflict. If you are suggesting that anyone would then feel that they could push any other crimes, or commit crimes with impunity, that may or may not be the case, but it would certainly encourage people to delay investigations to cover up, which is something that we have seen in Iraq and Afghanistan.

Also, the UK has a fairly poor record in actually prosecuting crimes committed overseas, despite there being public inquiries and investigations. Only when you have those clear cases of torture being prosecuted do people become aware of what is or what is not torture. One example from Iraq relates to torture practices, such as sensory deprivation and hooding, that the UK said in Northern Ireland 40—then 40, now 50—years ago were unacceptable, and should not recur. They started recurring in Iraq. You might say that that was because there has not been a clear prosecution of such cases as torture. It took an English judge in one of those civil claims in the past few years to say that these practices should have no place in the 21st century. That is why you need some litigation. Of course, the innocent and the accused who have not committed any crimes also get tarred with the same brush if these investigations go on and nobody gets prosecuted. You need a prosecution to clearly identify the few people responsible for war crimes, and to make sure that those individuals are held responsible and not the armed forces as a whole.

*Martha Spurrier:* Clive has covered the second question, so I will take the first one. When you start with a Bill that does not deal with the problem you are trying to solve, it is quite difficult to answer the question of how to make it deal with that problem. There are lots of practical things that the Government could do to try to make investigations better. The recommendations from the Service Justice System review would be a good place to start: issues about things such as independence and fast pace, and doing basic investigative things like taking witness statements promptly, gathering forensic evidence effectively, and so on. All of those things can and should be done, and they should be a matter of priority. The Bill cannot and will not do any of those things.

You could amend the Bill to knock off some of its most egregious aspects. You could include torture, war crimes and crimes against humanity in the schedules. You could remove the triple lock by taking away Attorney General consent, by removing the presumption against prosecution in relation to the time limit, and by balancing out the factors that a prosecutor would have to consider before proceeding with a prosecution. That would not cure the Bill and would not make it a good piece of legislation, either from the perspective of accountability, justice and human rights, or from the perspective of trying to solve the problem that the Government purport to be wanting to solve.

**Q140 Stuart Anderson:** Mr Baldwin, you said that the legislation could encourage soldiers to commit crime with impunity. Will you clarify that it is a piece of legislation that you think will then encourage soldiers on operations to commit crimes?

*Clive Baldwin:* To clarify, I was not saying that it would encourage it. I am responding to the question that seemed to be saying, “Would it lead to anyone trying to stretch the law of armed conflict?”. If a law creates impunity for offences and makes sure no one gets prosecuted, it may make those offences more likely. I would repeat that torture was admitted but never prosecuted in Northern Ireland in the 1970s, and the same techniques—the same type of torture—was repeated in Iraq in the 2000s. That is because you need prosecutions. You need people to be aware that they will face prosecutions for an offence. If they perceive that an offence will not be prosecuted after five years, it will make it more likely even for the investigations to be delayed to that moment and for offences not to be seen as, very clearly, “This is criminalised. This is unacceptable. These are crimes that will be prosecuted.”

**Q141 Stuart Anderson:** That is the bit I want to challenge. Every soldier going on operations knows the rules of engagement and knows the law—what they can and cannot do. That will be crystal clear. If you are saying that because of the Bill we would brief people to say “It’s five years and then you’re okay”—nothing in any military teaching or doctrine would say that that is the case. I think you could be doing what we would call in the military making the ground fit the map. You are taking something and adjusting it to fit a discussion. I cannot see any military personnel being briefed that they are immune from prosecution because of the Bill. Would you agree with that, or do you still think that they would be briefed that there is impunity?

*Clive Baldwin:* I do not think anyone would be briefed. When I was involved in training the armed forces in detention we were very clear, and everyone was very clear—these are the crimes. What has been interesting, as well, though, is that there are some elements which are just, traditionally, not being prosecuted in the United Kingdom. One of the keys is that senior people do not get prosecuted for war crimes in the United Kingdom—senior military people, even Government Ministers—under
the principle of command responsibility, which is an international element of war crimes. It was put into the International Criminal Court Act 2001 in the UK, but to my knowledge and others’ no one has even been investigated under that.

It was only when I used to brief people in this country and other countries about that element, people sit up and take notice, because it makes people aware that as a commander you could be criminally liable if you fail to prevent war crimes or if you fail to prosecute them. It is elements like that—you only become aware of that when you actually see people being prosecuted for it and know that it is liable. Again, if it comes after five years it is much more difficult and there is a presumption against prosecution: that is why the words matter. Something like a presumption against prosecution—it sounds like it would be very difficult, it would be exceptional, to prosecute. That would send a very difficult message, both internally and externally in the rest of the world.

Q142 Stuart Anderson: Thank you. Ms Spurrier, to continue on your point, you have raised quite a lot of things that you would like to take out of the Bill, which would leave pretty much nothing in it, so my question to you is would you support any Bill that protected our service personnel overseas, and what would that look like?

Martha Spurrier: I absolutely would support a Bill that protected service personnel, because, as I am sure you know, Liberty has done a lot of work supporting military personnel and their families to find justice. What I think about this Bill, as I have said, is first that it is setting up a solution to a problem that is often mis-stated; and then the solution does not fit the actual problem.

In my view what service personnel need, to be protected, is to have an absolute assurance that any investigation that they face will be dealt with fairly and independently, and to an extremely high standard. One would hope, therefore, that that would mean that they do not have repeat investigations hanging over their heads for many years, which obviously is an unenviable and miserable situation for any human being to find themselves in—but that Bill will not deal with this.

I appreciate the lens of saying that it will create a culture of impunity, in the sense that I do not think anyone is suggesting that you would go out to the battlefield and commit a crime in the hope that you could delay being noticed for five years; but the fact is that there are plenty of reasons why five years might elapse before an effective independent investigation can be undertaken, either to exonerate someone who has wrongfully been accused, or to convict them. That could go for torture survivors, for example, who are often not able to come forward for a number of years because of the trauma they have faced, and for serving military personnel, who often do not feel able to come forward, including if active hostilities have been continuing for that whole period of time.

I do not think it is about saying, “Well, let’s just bin the Bill, and then do nothing.” There are plenty of constructive things that one can and should do in order to support military personnel. I just do not think that this Bill achieves those things.

Q143 Mr Jones: A theme that has come out throughout today’s discussions is around timely and proper investigations. Is there anything you could put into the Bill, in terms of investigations, that would at least be a move in the right direction and improve the situation?

Clive Baldwin: It is important to distinguish between the three types of investigation that the MOD and service personnel have faced in the last 20 years. One is public inquiries, which should be about the general situation and general problems. They should be for learning lessons and to find out the truth about what went on. There are then civil claims that are brought against the Ministry of Defence, sometimes by service personnel and sometimes by others who have claimed to be victims, some of which have been upheld and some of which have not. Then there are criminal investigations.

I am not sure about this Bill. Improving investigations would be better done in a wholesale reform of the military criminal justice system, which we hope will happen in the next armed forces Act and has been promised for many years, that is based on rights, fairness to the accused, those investigated and alleged or real victims, and some basic human rights principles, such as double jeopardy, which has already been mentioned. Generally, no one should be prosecuted twice, once finally acquitted or convicted for the same offence, and they should not face repeat investigations for the same offence.

Strengthening of those conditions and some fundamental principles, not just of human rights law but of English tradition, such as habeas corpus, having judges control detention and having every detainee brought before a judge, not only deters abuse but protects those doing the detention, because they can say, “We had a record and the judge controlled the detention.” Records made at the time make it much easier to investigate afterwards. There are a lot of recommendations for the justice system. They are probably better done in a military justice reform Act rather than in this Bill.

Martha Spurrier: I agree with Clive. There are plenty of good and constructive things that one could do to the military justice system in order to make it fairer for all concerned. This Bill does not do that.

There is a danger in saying that the way to cure the deficiencies in the Bill is to effectively add a section on investigations. That would deal with the fact that investigations are missing, but it would not deal with the fact that what you have in the rest of the Bill is a system being set up that creates a culture of impunity in the armed forces. It means that bringing criminal prosecutions for the most serious offences imaginable will become much harder. That is why I think both Clive and I are now saying that this simply is not the vehicle.

This Bill cannot be cured by adding things in about investigations. That is something that will have to be done separately. There is a real danger of losing focus on the egregious parts of this Bill, which will damage the standing of the armed forces abroad and damage the UK’s reputation as a leader in human rights. That is why I think you have seen many people, including people from the military, coming out with grave concerns about this Bill, whether you take Lord Guthrie or the Judge Advocate General. These are people with high standing in the
Q144 Chris Evans: This morning we heard that there were deep concerns about the six-year limit for bringing civil cases against the Ministry of Defence. How do you see the problems we heard about? Many medical conditions take years to come to the fore and be seen as damaging. There are cases where people have been locked up abroad under the Terrorism Act 2000, unfairly sometimes, for over a decade. How do you see the time limit developing for civil cases for those who bring claims against the MOD, both as serving personnel and as victims of MOD decisions?

Clive Baldwin: On the international side, which is what my organisation works on—I will be brief, because Liberty’s focus is on this—there are many reasons why claims, brought both by members of the armed forces and by others in different parts of the world, may take some time. We have seen them on rendition cases and others in the last year. It is partly because people may not be aware of damages in a case, or because evidence did not come out, as the only people aware of the crimes that may have been committed were those who suffered them and the persons who were responsible, or because other types of claims could be made. There are many reasons why, particularly for overseas operations, flexibility around time limits would be vital in order to secure justice.

On an international level, particularly when it comes to torture, there are quite a lot of international standards that say countries need to give an effective remedy to people who suffer torture allegations. It needs to be a fair system. Sometimes it is not possible to have trials—this has been mentioned about the Kenya cases from 70 years ago—but it still needs to be a fair system that has a degree of flexibility. Something that looks like a very hard time stop perhaps risks creating some severe injustice.

Martha Spurrier: As someone who has practised law and argued these kinds of cases before judges, equitable is the watchword. Bright-line rules, in the context of what are often extremely complicated textured cases, very rarely give out justice or achieve something equitable for either victims or perpetrators. The courts have a whole range of powers available to them, in [inaudible] and beyond, to prevent cases from being brought—be it before or after a time limit—if those cases are unmeritorious or are being brought for abusive reasons. For example, you can have your legal aid certificate removed, or your claim can be struck out. You can have your funding withdrawn if any dishonesty offences are proven. There are a whole array of tools that judges can and do use routinely to make sure that justice is done, and that includes justice being done in a timely fashion.

The danger of putting a hard stop is that the kinds of cases that you have alluded to—whether you are talking about noise-induced hearing loss, some other complicated medical issue or an issue entirely beyond the control of any of the parties to the litigation. That case, falling three days the wrong side of that rule, would not be heard even if it was a meritorious case. That seems to me to be arbitrary injustice. What should instead continue is judicial discretion over what is equitable for both parties. Of course, both parties will be represented and they can—and, believe me, they do—argue very forcefully on both sides, either to extend or not extend time limits.

Again, it feels to me as though people speculate that this is a problem that exists in the justice system, but it is certainly not one that is statistically significant or that I have ever experienced as a lawyer.

Q145 Chris Evans: Would it be fair to say a civilian has more rights than a veteran or service personnel if they want to bring civil cases against the Ministry of Defence?

Martha Spurrier: Sorry, could you say that again?

Q146 Chris Evans: I have a very thick accent, as you can tell. Would you say it is fair to say that a civilian has more rights, because of the six-year time limit, than a member of the forces in bringing a civil case against the Ministry of Defence?

Martha Spurrier: Yes, in the sense that at the moment, everyone is equal before the law, and that is how it works. You can pitch up and argue that a case should be struck out because it is out of time, or that it should not be struck out because it is out of time. There is no weighting according to whether you are a civilian, a claimant, a defendant or a member of the armed forces. Of course, the proposal in the Bill is that civilians will be disadvantaged more greatly than service personnel by the longstop. That is an unjustifiable weighting in favour of service personnel, in the same way that the weighting works on the criminal side, where presumption goes all in favour of military personnel and all against victims of military crimes.

Chris Evans: Mr Baldwin, do you have a view on that?

Clive Baldwin: I have nothing to add to what Martha said.

Q147 Chris Evans: Who does the six-year time limit benefit, then, in your view, Ms Spurrier?

Martha Spurrier: If the six-year time limit came in, it would benefit the Ministry of Defence and the Government, because these claims are, by and large, being brought against the Ministry of Defence, either as an employer or as a detaining official, or against the Government as a policy maker. It is absolutely critical that the forces of the state—again, I have acted for countless individuals and families where bringing a claim against the state is no mean feat. You are usually against a range of senior and powerful lawyers, and any additional disadvantage that you face makes it incredibly difficult to seek justice. So, unquestionably, this is a power that plays in favour of the state, and state agencies, and plays against individuals, whether those individuals are service personnel or civilians.

Clive Baldwin: To add to that, it is so clear, when it comes to civil claims, because they are public claims, that the beneficiary of any limit to those powers would be the British Government and normally the Ministry of Defence, because that is what the claims are made against. That includes service personnel bringing claims; it includes people in other countries bringing claims who in some cases have been the subject of abuses. That is the beneficiary. Of course, you still have to have a fair trial, but in most cases it is going to be the MOD.

When it comes to the investigations, the Government, when it is a civil claim, which is not against individual personnel, have a duty of care towards their personnel and ex-personnel. Those are not investigations and claims against those individuals; they may have to give evidence and that has its own degree of severe stress,
but it is not a claim against individuals. That is why it is so important to separate the public law issues, the civil claim issues, and the criminal law issues.

**Q148 Chris Evans:** Mr Mundell has indulged me somewhat—I think over-indulged me—so this will be my final question. Clause 12 of the Bill seeks to amend the Human Rights Act 1998 to require the Secretary of State to consider derogation from the European Court of Human Rights. What is your view on that clause in particular, given your background? We will hear from Mr Baldwin and then Ms Spurrier.

**Clive Baldwin:** On the broader issue of derogation from human rights, that is part of human rights law; that is part of the European convention. It is actually something I proposed in Kosovo 20 years ago—that there would be a derogation then to reflect the realities of the situation and still be able to detain people according to the law. It is also important to realise that derogation is not exempting anyone from human rights law; it is just modifying it to deal with emergency situations. That is the case particularly on detention: it does not remove the need for detention according to law. It does not remove the need for habeas corpus, to bring someone before a judge. It could mean that someone is before a judge within weeks rather than days, perhaps. This does not mean that human rights law does not apply.

**Chris Evans:** Could I just—

**Clive Baldwin:** Sorry, it is extremely complex.

**Q149 Chris Evans:** Could I just come in with one word there? The phrase is “consider” derogation. Do you think it is significant that that has been written into the Bill? Sorry to interrupt there; I could see that you were in full flow.

**Clive Baldwin:** Effectively, Governments always have to consider derogation, so I do not think that legally it changes anything. Human Rights Watch proposed some years ago to Government that they should consider this when dealing with the issue of detention overseas. You have to prepare it—I do not know of any situation where a Government has actively declared a state of emergency, which is what you need for derogation, in another country, and a lot of these situations are multinational peacekeeping and other operations, so you cannot really have one rule for the UK armed forces and one for others, normally.

So it is quite a complex situation. Also, derogation changes the law; it changes the law that applies, so again, it should not be done by just a secondary declaration by a Minister or Secretary of State. It would need a change in law. But we would say that preparing for these situations, preparing for detention in armed conflict or peacekeeping, and having a law that is clear is something that people have been saying that the armed forces need for the last 20 years. The armed forces I know say that they want clarity when they go to detain, which means knowing what law they should apply, how they detain and to whom they should apply. Giving them that clarity in advance would be of great interest. Derogation, when applied properly, is a strengthening of human rights law. It is not an exclusion of human rights law, but only when it is applied carefully, properly and not by just some ministerial fiat, as it could risk becoming.

**Martha Spurrier:** As Clive says, the power to derogate is a really critical part of the human rights framework; it is the power to suspend rights or to restore rights, and that is why it is tied to a state of emergency. Writing that requirement to consider into the Bill, on a narrow view, changes very little in relation to the legal position.

The concern, of course, is when you take a wider view and look at this Bill as a whole, which very much signals the desire to water down the human rights arrangements; and then you look at the wider agenda more generally, which is a Government with a manifesto commitment to update the Human Rights Act and an ongoing process to look at access to judicial review, and whether certain Government decisions should be shielded from that mechanism of accountability.

So, our concern is not so much about the narrow wording of that clause, but about a culture of watering down Executive accountability that crops up manifestly in this Bill but also in other places in the Government’s agenda, which we would say overall will make it very much more difficult for ordinary people—be they soldiers or civilians—to hold powerful people to account.

**Chris Evans:** Thank you both. No further questions from me, Mr Mundell.

**The Chair:** I will call Carol Monaghan, because we can go on until 5.15 pm, and I want Carol to have the opportunity of asking her questions.

**Q150 Carol Monaghan:** Thank you, Mr Mundell. A lot of my questions have already been asked, so I will not be too long.

I just want to ask a few questions about part 2 of the Bill. In the briefing sent by Liberty and Human Rights Watch, Amnesty International and I think a few other organisations, one thing it says is, “It is notable that by far the largest proportion of claims against the MOD between 2014 and 2019 were brought by service personnel seeking compensation for injuries.”

I asked the last witnesses about this, as well. Have we got a Trojan horse situation, where part 2 of the Bill has been snuck in off the back of part 1, so veterans and personnel think this Bill is about helping them, but in actual fact it is putting barriers in their way?

**Clive Baldwin:** The submission was actually from Liberty and Amnesty; I will not have Human Rights Watch take credit for that. However, in some ways, absolutely, by removing the power of anyone, or by having this backstop, to take action against the Ministry of Defence, it will definitely affect members of the armed forces. So, for some it will be removing protection.

**Q151 Carol Monaghan:** Martha, do you agree with those comments?

**Martha Spurrier:** This Bill protects the MOD and the Government much more than it protects anybody else.

**Q152 Carol Monaghan:** We have been told that the six-year limit is actually to encourage prompt claims, which might be one line of argument. Are there any circumstances in which you can see that personnel would not make a claim within those six years? Martha, do you want to start with that one?
Martha Spurrier: Yes, I think there are plenty of circumstances in which there would be entirely fair and honest reasons for not starting a claim promptly. The one example that I have already alluded to is the case of noise-induced hearing loss, where an injury may develop over a matter of decades of service, and the date of knowledge may occur after the six-year time limit has already elapsed, and then you may be prohibited from bringing a claim for really no good reason.

That is why you need to be able to have flexibility in the hands of the judiciary when considering these claims. That is not to say that claims that could have been brought promptly but were not should be allowed to proceed; maybe they should not be allowed to proceed. However, that is not what this longstop will do. This longstop will just create a bright line that creates injustice for people who fall the wrong side of it, even though they may have perfectly good reasons for doing so.

Q153 Carol Monaghan: Thank you. Mr Baldwin, do you have any additional comments to make?

Clive Baldwin: Just to add that, although some time limits on civil claims are quite common in systems, there needs to be that element of flexibility or fairness. Can we imagine situations in which there are good reasons not to bring claims within that time limit? Quite a few, particularly for overseas operations in which, as we said, the situations are complex and people may not even be aware of their rights, or rights to bring a claim, until later, or even until they have left the armed forces. That is why the overriding principle has to be one of fairness. People may need to justify why they are bringing a claim later than they could have done, but they may have good reasons to do so, and the judiciary needs that element of flexibility to respond to those situations.

Q154 Carol Monaghan: This is my final question to both of you. Do you feel that veterans are being misled by the Government spin around the Bill, particularly with regard to part 2?

Clive Baldwin: Quite possibly. You would have to ask the veterans. The idea is that the Bill will protect veterans, but as we said, on the civil side, it will clearly take away some rights, and on the criminal side, it will not stop investigations; it may stop prosecutions, but very few have been happening anyway. It increases the risk of international criminal investigations against members of the armed forces and others if the UK does not appear to have a credible system of prosecution of international crimes. Yes, the Bill, in its current state, does not seem to strongly protect veterans and other members of the armed forces from some of the real injustices that some of them have suffered.

Martha Spurrier: I agree with that proposition. The Bill does nothing to deal with slow, ineffective or unfair investigations, which is what service personnel are complaining about. Certainly, the families and the people who Liberty has represented are often bringing cases against the Ministry of Justice or against the Government after years of banging their head against the wall of institutional power. The Bill will do nothing to help those people seek justice and accountability.

The Chair: If there are no further questions, I thank our witnesses, on behalf of the Committee, for their evidence this afternoon. That brings us to the end of our oral evidence session today. The Committee will meet again in this room at 11.30 am on Thursday to take further evidence.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

5.12 pm

Adjourned till Thursday 8 October at half-past Eleven o’clock.
Written evidence reported to the House

OOB01 David Lloyd Roberts, MBE, LLM and Charlotte Harford, PhD
OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Third Sitting

Thursday 8 October 2020

(Morning)

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Examination of witnesses.
Adjourned till this day at half-past Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 12 October 2020
The Committee consisted of the following Members:

**Chairs:** † DAVID MUNDELL, GRAHAM STRINGER

† Anderson, Stuart  (*Wolverhampton South West*) (Con)
† Atherton, Sarah  (*Wrexham*) (Con)
† Brereton, Jack  (*Stoke-on-Trent South*) (Con)
Dines, Miss Sarah  (*Derbyshire Dales*) (Con)
† Docherty, Leo  (*Aldershot*) (Con)
Docherty-Hughes, Martin  (*West Dunbartonshire*) (SNP)
† Eastwood, Mark  (*Dewsbury*) (Con)
Evans, Chris  (*Islwyn*) (Lab/Co-op)
† Gibson, Peter  (*Darlington*) (Con)
Jones, Mr Kevan  (*North Durham*) (Lab)
† Lewell-Buck, Mrs Emma  (*South Shields*) (Lab)
Lopresti, Jack  (*Filton and Bradley Stoke*) (Con)
† Mercer, Johnny  (*Minister for Defence People and Veterans*)
† Monaghan, Carol  (*Glasgow North West*) (SNP)
† Morgan, Stephen  (*Portsmouth South*) (Lab)
† Morrissey, Joy  (*Beaconsfield*) (Con)
† Twist, Liz  (*Blaydon*) (Lab)

Steven Mark, Sarah Thatcher, **Committee Clerks**

† attended the Committee

**Witnesses**

General Sir John McColl, Chairman, Cobseo, the Confederation of Service Charities

Charles Byrne, Director General, Royal British Legion

General (Retd) Sir Nick Parker KCB CBE
Public Bill Committee

Thursday 8 October 2020
(Morning)
[DAVID MUNDELL in the Chair]

Overseas Operations (Service Personnel and Veterans) Bill

11.30 am
The Committee deliberated in private.

Examination of Witnesses
General Sir John McColl and Charles Byrne gave evidence.

11.32 am
The Chair: Before we move into the evidence session, are there any declarations of interest?

Stuart Anderson (Wolverhampton South West) (Con): I served with General Nick Parker in the same battalion.

The Chair: Thank you very much.

Liz Twist (Blaydon) (Lab): I do not know whether I need to declare this, but I am a member of the British Legion.

The Chair: It is always best to put these things on the record.
Thank you, Mr Byrne, for joining us in person. Will you say who you are for the record, and who you are here on behalf of?
Charles Byrne: I am Charles Byrne, director general of the Royal British Legion.

The Chair: We are joined online by General Sir John McColl, who is chairman of the Confederation of Service Charities. Will you also confirm your name and designation for the record; General McColl?

General Sir John McColl: I am General (Retired) John McColl. I am the chairman of Cobseo, the Confederation of Service Charities.

The Chair: For your information, in case you are not aware, we have a witness here in the room, Mr Charles Byrne, so we will be alternating between you and Mr Byrne. We have some logistical challenges, because we have to adhere to social distancing, so I am sure you will bear with us if those arise. We have until 12.15 for this session. I call on Stephen Morgan to begin the questioning.

Q155 Stephen Morgan (Portsmouth South) (Lab): Thank you, Chair. May I place on the record our gratitude for the work of the British Legion and other charities in this challenging time for our country? It has been an important year for the nation. Charles, does any aspect of the Bill risk breaching the armed forces covenant?
Charles Byrne: Thank you for the question. We welcome and understand the good intent behind the Bill. However, we have raised concerns that the six-year longstop could be a breach of the armed forces covenant, because it restricts the ability of armed forces personnel to bring a civil claim against their employer. As far as I understand it, that longstop limit does not apply elsewhere. That is the concern we have exactly.

Stephen Morgan: So it would breach the armed forces covenant, in your view?
Charles Byrne: That is what we think, yes.

Stephen Morgan: Can I put the same question to the general?

General Sir John McColl: First, I absolutely agree with Charles’s support for the intent of the Bill. The pernicious harassment of servicemen by the legal profession following the campaigns in Iraq and Afghanistan was absolutely disgraceful. We commend the efforts of the Government in bringing forward this legislation to try to address that issue.

In terms of the advantages and disadvantages, we absolutely acknowledge that the six-year cut-off will disadvantage some elements of the community—we understand that it is about 6% of cases. Of course, there is a judgment to be made between that disadvantage and the disadvantage experienced by the 94%, or the significant number of people, who may be subject to harassment. That is the balance of advantage.

I just observe, sitting in front of you as the chairman of the Confederation of Service Charities, that we members of the service charity community are not experts in law, human rights or legislation. Those are the remit of politicians, officials and lawyers. We can talk in broad terms about the interests of our community. We cannot talk about the detail of how to achieve the laudable intent of trying to put a stop to this appalling harassment.

Q156 Stephen Morgan: Thank you for those answers, and for setting out your concerns about part 2 of the Bill. What do you want to see addressed? What would improve the legislation, based on the comments you have made?

Charles Byrne: Anything that can be done to address the fundamental concern about that six-year longstop. As I say, we support the intent behind the Bill and welcome that the impact on mental health is explicitly called out; that is very good. While there is good there, we think that the Bill could be improved if it is possible to address the six-year longstop that limits the ability to bring civil cases. There is some difficulty in the numbers as well—the 6% that Sir John refers to. We could look into the detail that sits behind that.

General Sir John McColl: We encourage continuing consultation to find ways of ameliorating the difficulties of the 6%. However, we observe that the overriding requirement is to ensure that this harassment ceases.

Q157 Stephen Morgan: I understand that the British Legion has seen a copy of the Bill’s impact assessment. Are there any concerns in there that you want to bring to the attention of the Committee?
Charles Byrne: No. To be honest, I have not been through it in detail.

The Chair: I think the Minister has a follow-up question, which he will have to deliver from the microphone.
Q158 The Minister for Defence People and Veterans (Johnny Mercer): On the Bill’s breaching the armed forces covenant, I do not think there is any dispute that, if you bring in any time limit on anything, people will fall either side of that line. However, disadvantage in the armed forces covenant is very clearly about comparing those in a similar situation—those in service and civilians—which is why the Bill applies to both groups.

You argue that someone serving in the armed forces will have that limitation and will therefore be disadvantaged, breaking the armed forces covenant. Service personnel will of course be able to serve in operations, where they may get killed or lose limbs, and some would argue that that is a disadvantage. The Government would argue that that is a misapplication of the armed forces covenant, and that, actually, if you compare a service person with a civilian in the same situation, there is no breach of the armed forces covenant. What would you say to that?

Charles Byrne: You have always been very clear about welcoming our challenge as a constructive effort, so we have had this conversation before, Minister. Thank you for the chance today.

For me, it is fairly simple. In the armed forces covenant, the principle of no disadvantage is not caveat ed to say, “It must be no disadvantage in directly comparable situations.” It is a principle of no disadvantage much more generally than that. This Bill would effectively prevent a member of the armed forces from being able to bring a case against their employer, which would be different from a civilian—

Q159 Johnny Mercer: Of course, I understand that. But by extension of that, armed forces service—because you may well suffer the disadvantage of being killed—is, in fact, a breach of the armed forces covenant.

Charles Byrne: Not in quite the same way. I was looking at it much more generally—

Johnny Mercer: You do not think it is a disadvantage?

Charles Byrne: I think this Bill would be a breach of the armed forces covenant. If you look at the general principle, when we say that we do not want someone to be disadvantaged by their service, and think of a really straightforward example—one that you will well know—about people who move house regularly because of deployment, they therefore go to the back of the queue for dentistry or primary schools. That is where you are comparing somebody who works nearby—in a shop or a hospital—in a direct comparison, where we do not want the disadvantage. I think it does apply in very general terms.

Q160 Johnny Mercer: Okay, so the disadvantage of serving is, in your view, not applicable in the case of being killed, but in this case where we are trying to protect our people, it is applicable. Do you see that there is a disparity there that is not really fair? It seems to be translating it to your own intent.

Charles Byrne: No. The intent behind the armed forces covenant was that there should be no disadvantage, and it looks—

Johnny Mercer: But is being killed a disadvantage?

Charles Byrne: Is that an inherent risk of—

Johnny Mercer: Of military service—I think most people would argue that it is.

Charles Byrne: Exactly.

Q161 Johnny Mercer: So is lawfare an inherent risk of service?

The Chair: I think we have got to allow Mr Byrne to answer the question.

Johnny Mercer: Sorry.

Charles Byrne: What happens if this Bill goes through is that it protects the Ministry of Defence from civil action—from someone bringing a case. That longstop does not protect the armed forces personnel. Is not that the intent behind the armed forces covenant—not to protect the MOD, but to protect armed forces personnel?

Johnny Mercer: On overseas operations.

Charles Byrne: On overseas operations.

Q162 Johnny Mercer: Yes, and as we have heard, the vast majority of those claims—94% of them—are from people abroad—

Charles Byrne: Even that number is questionable, though, is it not?

Johnny Mercer: It is not questionable—it is the data.

Charles Byrne: No, it is based upon a sample. Of the 70 cases that fell outside of the six months, only 39 were investigated—not all of them. Of those 39, 17 were found to have—so those were 17 actual cases. There could be another 31 from that sample size, which is taken only from Afghanistan and Iraq, as you know. There is a whole area of exclusions within that. So that number is a little bit—

Johnny Mercer: Well, the numbers are the numbers. We cannot argue with them.

Charles Byrne: They are, but they are questionable numbers, potentially.

Q163 Johnny Mercer: Okay, but the idea that you can apply the armed forces covenant when it fits, and then not when it does not fit, I think is a misapplication of the armed forces covenant.

Charles Byrne: Is that not exactly what this Bill is potentially doing? It is choosing to apply it in some cases, and not in others.

Johnny Mercer: No, because what we are looking to do is to protect, and to ensure that our servicemen are not disadvantaged.

Charles Byrne: I think it is protecting the MOD, rather than the service personnel—that is the debate that we have had.

Stephen Morgan: Could we go back to constructive questions, rather than an interrogation?

The Chair: Indeed. I think we will have the opportunity for some of the issues that the Minister has raised in the parliamentary debate and in the subsequent discussion in Committee.

Q164 Stuart Anderson: I have a supplementary question on that point. Everybody keeps talking about the longstop, but nobody brings in the one year from point of knowledge. That point of knowledge could be 25 years afterwards. We cannot have the longstop argument without that point. If there was no—[Interruption.]
The Chair: Just to explain it to you, General McColl, that bell is not a fire alarm or for a vote; it signals the fact that the House of Commons has suspended its sitting in the Chamber for three minutes. We will hear another bell shortly, so just be aware of that.

Stuart Anderson: If that one year from point of knowledge was not in there, I would get your argument. I believe that we are here to try and get the best for our service personnel and veterans. However, that one year from point of knowledge has to have the weight. That is why it has been put in there—it could be 20 to 30 years later. We heard the other day about asbestosis. That is something some in the veteran community experience in 20 years later. We heard the other day about asbestosis. That is something some in the veteran community experience in 20 years later. We heard the other day about asbestosis. That is something some in the veteran community experience in 20 years later.

Charles Byrne: We recognise and understand that there is that point of knowledge, which is a really powerful and important principle in there. Then we look at the recent sample survey of that limited pool of data and we find 19 cases where, even from point of knowledge, they would have fallen outside that six-month period. Even allowing for the point of knowledge, there are still 19 families and veterans who would not have been able to bring a case under the Bill.

Q165 Stuart Anderson: When I got involved in politics, I found out through Facebook about the armed forces covenant. When I was shot, I paid for all my own treatment. I did not get any support from the charities or anything else. I had fallen out of the system and I did not know about the covenant. I am now under the trauma unit in Birmingham, where they review me regularly. I think it was two years after that was formed, and I still did not know about it.

There has to be education about the Bill as well. I really respect the work your organisation does, but within and outside the military there is a need to educate our troops and let people know about this. How do we connect with people who are now 60 or 70 years of age and let them know about the point of knowledge? It is not all about the Bill. I believe we have a role to educate the community, which we know well about the point of knowledge. At the armed forces breakfasts and through the community, which we know well, about the point of knowledge. At the armed forces breakfasts and through the community, which we know well, about the point of knowledge. At the armed forces breakfasts and through the community, which we know well, about the point of knowledge. At the armed forces breakfasts and through the community, which we know well, about the point of knowledge.

Charles Byrne: The Legion was always the organisation that championed and brought the armed forces covenant into law, so education is part of that. In an ideal world, we would get all that is good in the Bill and we would also address this area of concern, because we would not want anybody to fall out of that. We are looking to make sure that no veteran or member of the armed forces community is disadvantaged by a six-year stop, even allowing for the point of knowledge. It does not exist today. If we were to introduce it, it would be a limit that does not exist today.

Stuart Anderson: I have another supplementary on that.

The Chair: If you have a short supplementary, you can ask it.

Stuart Anderson: I will come back to it.

Q166 Stephen Morgan: There are proposals to put the armed forces covenant into law next year. Do you think a legally binding covenant and the Bill are compatible under English law?

Charles Byrne: Can you say that again?

Stephen Morgan: Do you think a legally binding covenant is compatible with what we see in the Bill, in terms of the proposals that will be brought before Parliament next year?

Charles Byrne: It is an interesting question. On the general principle of strengthening the force of the armed forces covenant, I welcome that. In all honesty, on the considerations of how this might play out in that situation, I cannot give you an answer now.

Stephen Morgan: Can I put the same question to the general?

The Chair: Perhaps you could repeat your question, Mr Morgan.

Stephen Morgan: The proposals for next year are to bring the armed forces covenant into law. Do you believe that a legally binding covenant and this Bill would be compatible under English law?

General Sir John McColl: We are in consultation with the Government at the moment in relation to bringing the covenant into law. We have raised a number of issues with them, which the Minister who is sitting with you is very well aware of. Charles can support me here in terms of the concerns we have.

The first concern is that initially there was no mention of special consideration, in other words, for those who had given the most—those who had suffered bereavement or very serious injury. I understand that may now be in it. There was also a concern that it was limited, in that it dealt with three specific areas rather than the totality of the covenant. We continue to have concerns in that area, and we also have concerns that it seems to focus the effort on local government rather than central Government. Those are our major concerns. I am not sure whether I have answered your question, but those are the concerns that we have. We will be watching the consultation and participating in it.

Q167 Sarah Atherton (Wrexham) (Con): Charles, on Second Reading, three times I heard Opposition Members say that the British Legion is categorically against the Bill. I have heard it once in this Committee already. Can you confirm? Are you against the Bill?

Charles Byrne: No, we are not opposing the Bill. We think the Bill can be improved, which is why we are focusing on this particular element in the second part of the Bill. To be categorical, no, we are not opposing the Bill.

Q168 Sarah Atherton: I am glad to hear that. Every Bill will never suit every person in every circumstance—that is just not possible—but would you not agree that the Bill makes great advancements to protect our veterans?

Charles Byrne: We certainly welcome the intent behind what we see the Bill is trying to do in, as the general said, trying to reduce pernicious, vexatious claims. However,
we are looking to say, “Can we achieve those aims without disadvantaging service personnel?” If we can do both, both should be done.

Q169 Sarah Atherton: Just going back to my point, a Bill will not cover every person in every circumstance, but this has to be a lot better than where we are now.

Charles Byrne: Is that a way of saying that there is not the appetite to try to address those who would fall out of the Bill?

Q170 Sarah Atherton: No, I am not saying that at all.

Charles Byrne: The answer is the same: if there is good being done, we should aim to make that good go as far as possible and not exclude those who would be excluded by the six-year longstop allowing for the date of knowledge.

Q171 Sarah Atherton: The six-year longstop, the point of knowledge or diagnosis—that is the only concern that the British Legion has?

Charles Byrne: That is the concern that we have brought forward, yes. If that can be addressed through further consultation work, that would be a good development.

Sarah Atherton: Thank you, Charles. By the way, your new TV poppy appeal is very good. I saw it this morning.

Charles Byrne: Thank you.

Q172 Carol Monaghan (Glasgow North West) (SNP): Could you give us examples of situations where individuals might fall out with this six-year limit?

Charles Byrne: In terms of specific examples, I cannot at the moment. I know from the sample size that was taken that there were, I think, 19 individuals or families who fell outside that. I do not have specific examples.

Q173 Carol Monaghan: What about conditions that might fall outside it?

Charles Byrne: This is difficult, because what are the effects of loss or injury that might make somebody find it difficult and challenging to bring forward their cases? The obvious one that comes around is hearing loss, which I think was excluded from those numbers as well. When it is that small percentage, that excludes hearing loss. You can imagine that if there are conditions that are developed over a period of time that do not relate to just one field of operations, and that is a whole area that could fall outside the Bill. If the hearing loss is established over a period of time over a number of operations, you might not be able to trace it back to a particular overseas operation. That is just one example.

Q174 Carol Monaghan: Do you agree that when people sign up for the armed forces, they understand that there is an element of risk with that?

Charles Byrne: Of course, yes.

Q175 Carol Monaghan: Is there also an expectation on their employer, the Ministry of Defence, to look after them in the best possible way?

Charles Byrne: Absolutely, and this cuts both ways. We recognise that if we are asking that the armed forces maintain the highest standards when they go out and serve in difficult situations, there is an equally fair onus on their employer, the Ministry of Defence, to provide them with what is needed do that and the support that is needed.

Q176 Carol Monaghan: Do you find it worrying that the Minister is arguing this morning that it is okay to disadvantage members of the armed forces or retired members of the armed forces because their service puts them at an inherent disadvantage?

Charles Byrne: The Minister has been very clear and welcoming of our disagreement with him over this point. He knows well that we have a different view around the impact of this on the armed forces covenant.

Q177 Carol Monaghan: Okay. Can we talk specifically about part 2 of the Bill? Part 2 puts limits on people making a claim for negligence against the MOD and you are suggesting that that is putting them at a disadvantage compared to civilians or those who have not served. Why is that?

Charles Byrne: Why does it put them at a disadvantage? Because, in my understanding, unless the civilian is being employed by the MOD in overseas operations, there is nowhere else where there is a similar time limit for cases of injury or death that could be brought to an employer. That is the difference.

Q178 Carol Monaghan: The six-year limit is being sold as being beneficial to veterans. Do you see it as such?

Charles Byrne: It is an interesting question. I think there will be support for the intent behind this Bill, because—

Carol Monaghan: I am talking specifically about part 2.

Charles Byrne: Yes, indeed. I think there is a level of understanding that is required, but when people understand the potential for limiting the ability of veterans and armed forces personnel to bring claims, that would not be welcome.

The Chair: I am going to call Liz Twist, to speak from the microphone.

Q179 Liz Twist: How exactly does the Bill disadvantage troops compared to their civilian counterparts? What is the broader effect of that disadvantaging behaviour on the overall welfare and morale of service personnel, veterans and families?

Charles Byrne: The point we have been working around so far is that at the moment there is no time limit, even allowing for point of knowledge. This would introduce a time limit. That time limit does not apply more widely in other civilian cases, so we see that as a disadvantage. What impact might that have on morale? Good question. Would it possibly make those who get caught in this situation feel less valued? That would be my conclusion.

Q180 Liz Twist: The Bill requires additional weight to be given to the stresses of operations when deciding to prosecute. To what extent do you think service personnel are adequately trained to deal with these stresses?

Charles Byrne: I am glad you called that out, but I do not think I am in any way qualified or able to answer that question.
Q181 Liz Twist: Okay. Perhaps I could ask Cobseo to answer that question, then? Would you like me to repeat it?

General Sir John McColl: Could you repeat it?

Liz Twist: The Bill requires additional weight to be given to the stresses of operations when deciding to prosecute. To what extent do you think service personnel are adequately trained to deal with these stresses?

General Sir John McColl: My personal opinion on that is that the training that service personnel receive generally for conducting operations is absolutely first class. Indeed, that will reflect on their conduct on operations and that conduct will be affected by the role of the chain of command. I think they are well prepared. I am sure there are exceptions and that there will be difficulties, but in general terms that is what I would say. It is a question that you should really be asking of the serving chiefs within the Ministry of Defence, rather than a retired general, such as myself.

Q182 Liz Twist: Okay, thank you. From your experience, do you think training can be improved in any way to help with dealing with stresses?

General Sir John McColl: Training can always be improved, there is no doubt about that. After every operation there is always analysis of the training people go through to ensure that they are prepared for whatever they may have to deal with. I am sure that is the case. The area where training has particularly improved over recent years, but continually needs to be improved, is that of mental resilience. If I am being honest, that is something we did not pay significant attention to in previous decades. We need to do better in that particular area.

Liz Twist: Thank you very much to both witnesses.

The Chair: I think Mr Byrne wants to say something.

Charles Byrne: I think this is an area I probably need to be careful about. Echoing John’s comments from the personal perspective, I was with friends last night, one of whom is still serving with the Royal Marines. He spoke very passionately about how well their training goes and a new element of the programme, I think called Regain. It is taken very seriously and good work is being done to recognise and address the mental stresses, the mental health and mental strain.

Liz Twist: It is perhaps appropriate, with it being World Mental Health Day tomorrow, that we finish on that point. Thank you.

The Chair: I am going to call Peter Gibson on a supplementary and then I will come to you, Mr Anderson.

Q183 Peter Gibson (Darlington) (Con): Charles, given that your principal objection to the Bill as it is drafted is in respect of your perceived view that it breaches the armed forces covenant, can you give us some examples of how you think that might manifest itself?

Charles Byrne: I think this is a point we have covered previously, so forgive me if I repeat myself. I think it is the same sort of question. We have seen the evidence that there are 19 cases where veterans’ families would not be able to bring a claim against the MOD because it would fall out of the proposed six-year time limit after the point of knowledge and all those other caveats. Those are the examples that we think would follow from the Bill and that is only of the ones that we know, and the ones where the data exists, for Afghanistan and Iraq.

Q184 Peter Gibson: How would you propose to improve the Bill, if we were to improve the Bill, to rectify that? How would that be done?

Charles Byrne: That is a good and fair question, which the Minister has also asked us. With respect, in fairness, that we think that is your job. It is our job to try to point out where it can be improved, but not how. That is a bit unfair, but that is the way it works.

Q185 Stuart Anderson: This is the first Bill Committee that I have sat on as a new MP, and I have watched the process get to where it has got to already, notwithstanding the years it has taken to get to this stage. On Second Reading, and even in our last witness session, there were multiple calls to stop the Bill. If we produced a Bill that had everything in it that the British Legion has asked for, there would still be an organisation against the Bill. I saw on Tuesday that, broadly, veterans are in favour, legal firms are not. I am trying to figure that one out and I am sure I will get there in the end. What will the impact be for the veteran community if the Bill does not pass Third Reading and come into law? I ask that to General McColl first. If the Bill is stopped, what will the impact be on the veteran community?

General Sir John McColl: Both Charles and I started off this hearing by saying that we welcomed the intent of the Bill. What veterans want to see is the pernicious harassment of veterans following operations by the legal profession stopped. If the Bill achieves that, they would regret the fact that it had been stopped.

I accept that there may be some trade-offs in doing so. Whether or not it is a breach of the covenant, there will be roughly 6% of people who may have brought cases against the MOD or the Government who can do so now and if who will not be able to do so in future. We would wish to see that ameliorated. We would wish to see that in some way worked around. It is up to the Government to see if they can do that. The bottom line—I think that is what your question is getting at—is that we want to see harassment stopped. There may be some compromises required in doing that.

Stuart Anderson: Thank you very much, General. I know I said veterans, but I also mean serving personnel.

Charles Byrne: Thank you for that response, John, which helps to lay it out. The point of this process, and the consultation and the debate that we had, is to produce a better Bill at the end of the day. As I said before, the Minister has always been very clear that he welcomes our constructive challenge and disagreement.

You said that if this Bill addresses everything the Legion is looking for, it might not get through. There is not everything in there; there is a single focus point. There is a restriction introduced by the Bill, and if it can be removed, the Bill will be better. It seems to me that that is a good thing to do. As Sir John says, everybody
wishes vexatious, pernicious claims against veterans to be addressed and reduced, and we fully support that intent. We want to make this better, which is why we have contributed and have always been very clear about our concerns in this area. If the Bill can be made better, I am sure you and veterans would welcome that.

Q186 Stuart Anderson: To follow on from that and a point you made earlier, let us say that this Bill goes through the Committee and Parliament with no changes and becomes law. Would then a major campaign from the British Legion and others to educate about that one-year point of knowledge be a core focus of what you would be looking to do?

Charles Byrne: Is this the Government offering to pay for a massive campaign from the Legion?

Stuart Anderson: That is outside my remit.

Charles Byrne: We are just about to go into our poppy appeal in the most difficult time we have ever had, so I would not give a commitment to any campaign. We do a lot to drive awareness of the armed forces covenant as it is, and we always have done. We are trying to build the awareness of all our services. We would welcome any support and help that you are able to give us on that.

Stuart Anderson: Thank you. I appreciate the comments.

The Chair: Are there any further questions for either witness? As there are no further questions, I thank you, General McColl for your appearance online, and thank you, Mr Byrne, for your appearance in the room. I am grateful for your forbearance with the logistical issues we are managing today. Thank you, on behalf of the Committee, for your evidence.

Examination of Witness

General (Retd) Sir Nick Parker gave evidence.

12.6 pm

Q187 The Chair: We will now move seamlessly to our next panel. I therefore need to confirm, General Parker, that you can hear us.

General Sir Nick Parker: I can indeed. Thank you very much.

The Chair: And could you set out for the record who you are and your locus in today’s discussion?

General Sir Nick Parker: I left the Army in 2013 as the commander land forces. My perspective on this is that of an operational level commander, and it has been informed by my experience in Sierra Leone in 2001 and Iraq in 2005. Not directly connected to this, but it informs it, I was the last general officer commanding in Northern Ireland in 2006-07, and then I was the deputy commander of the International Security Assistance Force from 2009 until 2010. I view this from the perspective of the senior levels of the chain of command, not from that of the MOD.

The Chair: And to confirm for the record, you are General Sir Nick Parker.

General Sir Nick Parker: Yes. Not to be muddled with Carter.

Q188 Liz Twist: General Parker, do you think this Bill is a proportionate and reasonable response to the Government’s stated problem of vexatious claims and lawfare?

General Sir Nick Parker: I start by echoing the previous witness. Malicious claims have to be taken very seriously, and I welcome everything that does that, but to answer your question, my concern is that the process risks the legitimacy of the armed forces, and I am not convinced that what is being done is the most effective way to deal with the challenge. It feels to me as if we are treating a symptom through this Bill, not going to the cause at the heart of the problem. I will elaborate very quickly on that, if you are happy.

As far as legitimacy is concerned, we deploy on operations, quite rightly answering to the highest possible standards. While I am not a legal expert—again, I am applying my operational experience to this—during the passage of the Bill, particularly part 1, there has been a weight of eminent legal opinion that I trust, including from people who were involved in the service legal issues before, who are concerned that one of the effects of the Bill will be to demonstrate in some way that the British are not operating under international legal norms. If that were the case, it would be extremely challenging both internally, if we are working in a coalition with other countries where our behaviours need to be consistent, and with the enemy. Most of the enemies I have faced do not follow international law, but it may well be that that is the case, and if we are seen to be prepared to operate outside the international norms, that risks calling us into question and adding another complex element to the decision making that the chain of command needs to take.

That is the legitimacy side. On the effectiveness side, it appears as if part 1 of the Bill focuses entirely on the process of prosecution, whereas for me the big issue here is the process of investigation and, critically in that process, ensuring that the chain of command is deeply connected with what goes on from the very outset. I do not think there is any serviceman or woman who would not accept that bad behaviour on the frontline must be treated quickly and efficiently. Nobody would want anything in the process that somehow allows people who have behaved badly on the frontline to get away with it. But all of us would believe that the process has to be quick, efficient and effective to remove the suspicion of a malicious allegation as quickly as possible. I cannot see how this Bill does that.

Q189 Liz Twist: You have talked about the importance of investigations being carried out properly. Could you explain a little more about that, please?

General Sir Nick Parker: In the complexity of the frontline, there is an enormous amount going on and it is very difficult to produce accurate, timely records of what is occurring. It may be that someone will stand up and contradict me, but when I served we had a thing called a battalion war diary, which was very nearly a mandraulic, hand-written process. We need to change our culture of record keeping on the frontline so that
there are sophisticated ways of recording exactly what is going on, so that when somebody comes to look at an allegation of bad behaviour, they have good, accurate records that are endorsed by the people who gave the orders to those who have undertaken the act and they are also held accountable for what happened. That needs to be investigated not, in my view, by an RMP lance corporal who has been trained to do a whole load of important but relatively menial things, nor by an independent constable from Northumbria who has no idea of the activity on the frontline, but by a properly found investigative organisation that is a genuine independent part of the organisation and respected by both those on the frontline and those outside the armed forces as an effective body. That certainly did not exist when I was serving, and I think it would require resources to create it.

Q190 Liz Twist: You have talked about the chain of command. To what extent should the chain of command have responsibility for the actions of individual soldiers, for allegations of crimes that do not take place during the heat of battle?

General Sir Nick Parker: The chain of command is responsible for giving its orders to our people both before, during and after a battle. In all three circumstances there are levels of complexity. Clearly, in the heat of battle the complexity increases in some ways, but the pressures on individuals often increase quite significantly afterwards. The chain of command is the organisation that gives the orders and should be accountable for the collective action of those it is in charge of. When something occurs that is challenged by people, in the terms of a malicious claim, the chain of command should be the first port of call to present why what happened is or is not acceptable, because the chain of command has to own the responsibility of the actions of its people. The thing that I have found quite difficult—I have done a little bit of work with some people in Northern Ireland, which I know is not this case—is that it appears in law that the chain of command is not really considered a factor in all this, yet it is right at the heart of it.

Q191 Liz Twist: Do you think this Bill adequately addresses the responsibility of the chain of command who may have frustrated investigations?

General Sir Nick Parker: I am not suggesting that the chain of command frustrates investigations. I think that the lack of accurate, timely, well maintained information, recording what is occurring, means that there may be confusion. I think there are also probably instances where levels of the chain of command do not take sufficient responsibility for what their subordinates should do. A very brief example: in Afghanistan, the lack of force density in certain parts of the theatre may have meant that a significant level of force was used in order to protect our own people, because there were so few of them. The reality may be that there should have been more people allocated to the ground, in order to achieve the objectives that were being set. I think the responsibility for that sits quite high up in the chain of command, and there people need to understand their responsibility for the decisions they are making. I am not convinced that at each level of the chain of command we have yet created the right culture to support the effective dealing with things like malicious claims.

I would add that I think one of the key things that we have to do is to produce mechanisms that establish a really effective duty of care for those who are placed under the spotlight by malicious claims. Of course, if you deal with these things quickly, that will help, but anything that drags out, even for two or three years, puts individuals under massive pressure. If the chain of command does not have the ability to look after them, because it somehow distances itself from them, then we have got to address that as well.

Q192 Liz Twist: Do you think this Bill does address any of those issues that you have identified?

General Sir Nick Parker: No, I think it focuses too much on prosecution and putting checks in place to ensure that prosecutions are absolutely as fair as they need be, when the reality is that you need to go back down the pipe and deal with what is happening on the coalface.

Q193 Liz Twist: You have answered this in part, but the European convention on human rights requires effective investigations capable of leading to prosecutions for alleged violations of article 2 and 3 of the convention. In your view, what constitutes an effective investigation? Is there anything more you would like to say about that?

General Sir Nick Parker: Only that you must understand the challenge that exists in a complex operational environment. I am not suggesting some sort of panacea that will provide a perfect level of information, but we have to do much better at providing accurate, timely information, and having an independent, properly found investigating system, respected by all, that can then take that information, investigate it and come to as quick a conclusion as possible about the actions of the people who are being investigated.

Q194 Liz Twist: Do you think that if we had those more timely, more effective investigations, that would resolve some of the issues that this Bill is trying to address?

General Sir Nick Parker: Yes.

Q195 Liz Twist: Finally, the Chief of the Defence Staff and the Defence Secretary recently made a speech in which they said that the distinction between war and peace is no longer clear-cut. In your view, how well equipped is the Bill to deal with the complexities of grey zone warfare?

General Sir Nick Parker: We operate in grey zone warfare anyway, so I imagine that the Bill and everything being discussed has been generated in that environment. My point is not whether the Bill addresses that, but that it does not address the core, which is the investigation, in black, white, grey—wherever it is. The emphasis appears to be on prosecution. In reality, it should be on what is happening in the investigative process, whether it is grey zone or not.

Q196 Sarah Atherton: Hello General. To touch on one of Liz’s initial questions, please could you expand on your questioning of the legitimacy of the Bill and on why you think it works outside of international legal norms?

General Sir Nick Parker: I do not understand why sexual acts have been excluded, but not murder and torture. I do not understand why that distinction has
been made and whether it undermines the fundamental credibility of the Bill. As I said at the beginning, I am not a legal expert, but I have been told by people whose views I respect that even putting in conditions for prosecution that separate your military from the normal process will be viewed with some suspicion by those who uphold international law more generally.

I have heard enough people whose views I respect telling me that they are concerned about the five-year time limit or time point; they are concerned about the exclusion of sexual offences; they are concerned about the triple lock and why it needs to be applied when our systems for prosecution are perfectly effective if the investigation is effectively carried out and properly presented. If that is the case, we will potentially be viewed by other countries as operating in a way that contravenes international norms.

Q197 Sarah Atherton: Do your reservations also include the presumption against prosecution?

General Sir Nick Parker: Yes.

Q198 Sarah Atherton: Is there any reason why?

General Sir Nick Parker: Because, surely, for those serious things, we should all be treated the same. There is no need to introduce an additional check. If all of us believe that on the frontline we all do our best in very difficult circumstances, that those who commit illegal acts must be dealt with, and that everybody else should be protected by an effective record-keeping and investigatory service, why does anything need to be different?

Q199 Sarah Atherton: I suppose my answer to that is that I might go to Tesco and work behind a counter, or I might go to the frontline and put myself in front of a round. They are not equal.

General Sir Nick Parker: I think it less likely that you would commit murder at the Tesco counter. My view is that we train for those really difficult circumstances. You are talking here about acts that take place under the very watchful eye of an extremely rich chain of command. I believe that we therefore operate in an environment where we can uphold the rule of law in the way that it is presented to everybody else. Do not forget that we are operating under international law, the Geneva convention and the terms of the Armed Forces Act, which allows us the opportunity to operate in those very challenging circumstances.

Sarah Atherton: Under the International Criminal Court’s article 53, there is a similar provision where you can exclude from prosecution, as there is here with the presumption against prosecution. It is not exactly the same, but very similar, so I do not think we are deviating from international legal norms. I will have to disagree with you, but I thank you for your comments.

The Chair: I will call Carol Monaghan, and then come to Joy Morrissey and Mr Anderson.

Q200 Carol Monaghan: I apologise; I did not declare an interest at the start because I did not think it was relevant, but my husband also served in Sierra Leone in the early 2000s.

General Parker, we heard on Tuesday some witnesses saying that they did not feel the Bill would stop the number of investigations and re-investigations that people such as Major Campbell were subjected to. What are your thoughts on that?

General Sir Nick Parker: If it is being used as a tool to undermine our military capability by an enemy, if I was the enemy, I would start thinking about introducing lots of claims against acts of rape and sexual behaviour, because I could use it as a tool to somehow fix the willingness of my enemy to fight. I do not think it will solve the problem. I think we need to address the way we hold the chain of command accountable and conduct our investigations. Those are the two key things. With a chain of command, effective information and an effective investigating system, you will stamp out the malicious claim because you will see it very quickly for what it is.

Q201 Carol Monaghan: The Bill has a time limit on prosecutions. Would you therefore consider that a time limit on the investigation rather than the prosecution might be more appropriate?

General Sir Nick Parker: I do not think you need to have a time limit. I just think you need a system that can investigate effectively. If you can produce the facts, because you have the right level of capability to investigate, you will do it as quickly as you can. I do not think you need to put a time limit on it.

Carol Monaghan: I ask because Major Campbell talked about the 17 years of investigation and re-investigation, so some sort of time limit might reduce the chances of that re-occurring.

General Sir Nick Parker: Without going into specifics, there are cases where people have actually been found to be innocent, and then the issue has been returned to because the chain of command has failed to show the levels of integrity and accountability that they should have. An investigation takes place, it is sanctioned by the chain of command as being effective, it is investigated independently, and that is the end of it. It is disgraceful that somebody can be investigated for 17 years and can go and see almost every senior officer—I have to be careful—but it is sort of pushed off because the system has to be allowed to churn on, and yet at the beginning it is already being investigated. That will not happen if you have a credible system that investigates and you address some of the cultural issues in the chain of command by making it genuinely accountable for what is happening.

Q202 Carol Monaghan: Do you think it allows challenges or difficulties within the chain of command to hide behind aspects that are being put forward in the Bill?

General Sir Nick Parker: I am concerned. If you look at things like the report on the Baha Mousa investigation, you see the potential for some sort of cultural resistance to the fact that an investigation is taking place. We need to address how the chain of command approach the issue, because they are fundamentally responsible for what their subordinates do. As an aside, I am slightly nervous that the focus on the prosecution of individuals almost feels as if one is focusing on the people on the frontline as if they are the guilty parties, and we the system are failing to address the issues that we should
address because it is our responsibility in the first place. Somebody might accuse me of trying to stand up to the Bill and not looking after our boys and girls. That is fundamentally not what I am saying. I am saying that we are failing to address the responsibility of the chain of command—its cultural approach to these sorts of issues, and its ability to maintain records and then allow people independently to investigate what is happening, so that we can deal with things quickly. I would suggest that if that were in place, what happened to Bob Campbell would never have happened. For a start, they would not have lost the records of the communications. Why did they lose the communication records in the week of his incident? That will not happen if you have an effective system.

**Q203 Carol Monaghan:** You have talked about how we might be viewed by our international colleagues—for example, if we are doing a joint operation. Do you think the Bill might affect the willingness of other countries to work with the UK armed forces?

**General Sir Nick Parker:** I honestly do not know, and that should worry us. If one is in a coalition with a Danish partner, and if the Danes consider that the way we are approaching dealing with our people is different from their way and they feel that it is culturally incompatible for some reason, that would create difficulties. It might seem slightly pathetic, but I would defer to the eminent legal opinion, which I would not profess to have. All I would say is that when there is a considerable amount of noise about something, I would hope that it is taken seriously. My feeling is that the Bill is moving at such a pace that there are certain key people who would never have happened. For a start, they would not have lost the records of the communications. Why did they lose the communication records in the week of his incident? That will not happen if you have an effective system.

**Q204 Joy Morrissey (Beaconsfield) (Con):** What is the military international framework that our military allies adhere to for overseas operations—specifically, France, the US and Poland—or in NATO operations? I ask that for my second question: why is their rate of prosecution against their servicemen and women so much lower than it is here? If we are all adhering to the same legal framework that you keep referring to, why is it that our servicemen and women are open to investigation while others who serve with us are not? Can you explain that for me?

**General Sir Nick Parker:** I cannot answer for the Americans and the French, but I would revert to my original point: we might not be keeping effective records and investigating them as rapidly as some of those other countries are. I know that the American situational understanding, because of their investment in information technology—certainly when I was serving—meant that they got a very quick and clear picture of events in these conflict situations. I can only assume that they have a more effective investigative system.

**Q205 Joy Morrissey:** Could you also assume that it may be an investigative system on the chain of command and the point you have alluded to? I appreciate that, but it could also be that they are not under the same international legal frameworks that other countries, or perhaps we, are under. That allows them to protect their servicemen and women more effectively. What is your opinion on that?

**General Sir Nick Parker:** It comes back to the point that we need to conform to international norms so that we are seen to be legitimate, but the way we protect our people is by ensuring that they are properly commanded, that we keep accurate records and that we investigate any claim very quickly, so that we can ensure that our people are properly looked after. I do not think the comparison is relevant from the perspective of what we do about this particular issue, which badly needs to be dealt with.

**Q206 Joy Morrissey:** But if we engage in joint military operations with allies, is it not more important that we are aligned with what our military allies view as the legal framework, rather than anything else? Is that not the most important component of how we protect our servicemen and women, by all operating in the same framework—for example, if we are on a joint NATO operation overseas—and that all the countries engaged in that military operation share in the same framework?

**General Sir Nick Parker:** As I said, I believe that we need to be consistent with our coalition partners. All I would add is that you cannot predict who your coalition partner will be, because we do not know whom we will be fighting with in the future. Therefore, there has to be a certain consistency that is probably provided by international norms.

**Q207 Stuart Anderson:** General, it is good to see you. I was barely out of school when I came under your command in Dover, where you were the CO, the commanding officer. We were at very different ends of the spectrum of rank structure, but it is a pleasure to see you again.

A lot of what you discussed there is the chain of command. You talked about implementing different procedures within the chain of command. I would argue that that is an internal military adjustment, not for a Bill or other legislation, but I would then say, looking back, with your experience and what you know with hindsight—we always want to learn from the past to move forward—what would you have done differently, and what could be done differently by the chain of command, outside legislation, to protect our troops?

**General Sir Nick Parker:** The irony, then, is that I am now subordinate to you, an elected representative in the House, so congratulations, and—

**The Chair:** I am not sure that is how it works.

**General Sir Nick Parker:** I am now decaying in my shed at home.

I feel very conscious of the responsibility that I had at every level, and I am also acutely aware of the nature of the responsibility that you have as a platoon or section commander, which is different from the responsibilities you have as a company commanding officer and so on, but there is a critical connection between every level of
the hierarchy that requires us to enact things like mission command effectively. So, if you are going to tell somebody what to do, you need either to resource them properly or, at least, to have a conversation with them about why are you not giving them sufficient resources, so you both understand and manage the risk. That is something that should be inherent in our training anyway.

To your point, why this is all nothing to do with the Bill, my answer is, I do not think it is. I think there is a worry that the Bill goes through Parliament and yet does not actually address the real issue. To go back to my experience, what I would have liked is to have had more much more effective operational record keeping, a credible and properly resourced investigative organisation that one did not see as the dodgy people who came sweeping in to start testing you, but people who would be able to look at the records that you had been keeping, have a mature conversation with those who had given the orders, come to their conclusions and have the ability not to penalise those who are focused on the operation.

I acutely remember somebody being placed almost on the naughty step, because they were being investigated, and I think that was because of the culture that we were promoting. It might well not be the case today, but while I was always part of a transforming organisation, I am not sure that the chain of command was as good as it should be at balancing this duty of care with the need to ensure that you deal with those who behave badly quickly and efficiently.

You need resource to do it. What I can be accused of is worrying too much about wanting to spend money on tanks, when I should have been spending money on a really effective operational record-keeping system.

Q208 Stuart Anderson: Thank you for that. I think we had a saying in our regiment, “Once a rifleman, always a rifleman”, so we were always the same rank there. On that point, I am well aware of how well you are respected within the community. If you go back to Dover, when you were the CO, that era of the young riflemen—I went through my military career with many of them and some are still serving now, while others have retired and ended up warrant officers or officers—is a band of men with whom I am in communication. From the communication I have had, they very strongly want to see the Bill come through. I understand the points you raise. With the Bill in its current form—it is in Committee to be reviewed—is it better to have it or not to have it?

General Sir Nick Parker: That is a political question.

Stuart Anderson: That is why I am in this role.
PUBLIC BILL COMMITTEE

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Fourth Sitting
Thursday 8 October 2020
(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Wednesday 14 October at twenty-five minutes past Nine o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 12 October 2020

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The Committee consisted of the following Members:

**Chairs:** David Mundell, † Graham Stringer

† Anderson, Stuart (Wolverhampton South West) (Con)
† Atherton, Sarah (Wrexham) (Con)
† Brereton, Jack (Stoke-on-Trent South) (Con)
Dines, Miss Sarah (Derbyshire Dales) (Con)
† Docherty, Leo (Aldershot) (Con)
† Docherty-Hughes, Martin (West Dunbartonshire) (SNP)
† Eastwood, Mark (Dewsbury) (Con)
Evans, Chris (Islwyn) (Lab/Co-op)
† Gibson, Peter (Darlington) (Con)
† Jones, Mr Kevan (North Durham) (Lab)
† Lewell-Buck, Mrs Emma (South Shields) (Lab)
Lopresti, Jack (Filton and Bradley Stoke) (Con)
† Mercer, Johnny (Minister for Defence People and Veterans)
† Monaghan, Carol (Glasgow North West) (SNP)
† Morgan, Stephen (Portsmouth South) (Lab)
† Morrissey, Joy (Beaconsfield) (Con)
† Twist, Liz (Blaydon) (Lab)

† attended the Committee

Steven Mark, Sarah Thatcher, Committee Clerks

Witnesses

Lieutenant Colonel (Retd) Chris Parker MBE, Chair, Princess of Wales’s Royal Regiment Association
Judge Jeff Blackett, Judge Advocate General (Retd)
Public Bill Committee

Thursday 8 October 2020
Afternoon

GRAHAM STRINGER in the Chair

Overseas Operations (Service Personnel and Veterans) Bill

Examination of Witness

Lieutenant Colonel (Retd) Chris Parker gave evidence.

2.30 pm

Q209 The Chair: We will now hear from Colonel Chris Parker, chair of the Princess of Wales’s Royal Regiment Association, who is joining us remotely. We have until 3.15 pm for this session. Welcome, Colonel Parker. Will you please introduce yourself formally for the record?

Lieutenant Colonel Parker: My name is Lieutenant Colonel (Retired) Chris Parker. I am the chairman of the Princess of Wales’s Royal Regiment Association and I am an infantry veteran of nine combat and operational tours.

The Chair: Thank you. We will move straight to questions. I call the Minister.

Q210 The Minister for Defence People and Veterans (Johnny Mercer): Chris, good afternoon. Thank you for coming along. Your regiment has been through this process a number of times. Can you outline why we are considering today, and what it will mean to those who have served on operations?

Lieutenant Colonel Parker: The effect of the legislation on people would be to remove quite a large amount of pain and misery, which I have experienced not only with individuals but with their families. We must remember that when people’s lives go on hold for several years due to investigations, whether they are right or wrong, that can have a very damaging effect on families and individuals. This legislation certainly will remove most of that pain and misery, which I have witnessed, as many have.

From our regiment’s point of view, few things have been harder for our men—our infantry are primarily male—who are often from the most vulnerable places in our society and often very tough backgrounds, who do their bit and then find that they are exposed. This legislation is broadly going to remove that risk and pain—in broad terms. I know you might want to talk about the smaller aspects.

In terms of the effects on operations, I can only speak from a subjective point of view about the impact on me, but also on all the people I speak to. There is an increasing concern among very young junior commanders—I have been one of them on operations, where you have to make decisions. Going forwards, without this sort of legislation, there is the increased risk to life of people not being able to take decisions, as I had to, such as: do you bring in a precision airstrike or not and take 10 lives with some risk of collateral damage on the spot, to save lives, without some form of legal concern, because you are doing the right thing and you are following drills?

I think your Bill’s effect on operations will be to remove a large amount of that concern. I think that is probably the bigger professional concern—that it would cost more British lives because people would be hesitant.

Q211 Johnny Mercer: I think that there is a temptation in this place to let the perfect be the enemy of the good in a lot of the legislation that we pass. Of course, legislation is not going to be all things to all men, but within the art of what is possible—I have asked everybody this question—what would you do to improve the Bill? There are things that people want to do. For example, they want to separate classes of claimants, so that the six-year limitation on human rights claims is unlimited for armed forces personnel but limited for those we go against. That is not legal under European human rights law. We heard that from the British Legion this morning. There are plenty of ideas coming forward that are not possible. What, within the art of what is possible, would you do to improve the Bill?

Lieutenant Colonel Parker: That is a difficult question, because of the stretch of my understanding of what is and is not legally possible. If I may add value in this way, I think there is a concern about the six-year time limit. There is a perception—maybe it is my misunderstanding—that the six-year time limit would apply to service personnel themselves bringing claims against the armed forces, or against people. Is that correct?

Q212 Johnny Mercer: That is correct. What I was saying is that we cannot differentiate between different classes of claimants. That is illegal under European human rights law. If you are going to draw a line to stop people bringing European human rights cases against this country, it has to apply to anyone. The calculation that is then made is where to draw the line. Given that 94% of those claims came before that, and that the six years will give a better level of evidence and people will be helped going through the process—the whole thing in the round—that is why the six years were taken. But what would you do to improve that?

Lieutenant Colonel Parker: I think there has to be some form of recognition and qualification that the major concern—I see it as a volunteer—is that we are getting close to 100 cases, in a body of about 5,000 people, of severe mental distress, and those are rising by the week, primarily out of Afghanistan. On the timeline of those cases appearing—we are in the category of post-traumatic stress disorder in about 90% of cases—we are talking about 10 years.

Bear in mind that there are proven facts that the bell curve of PTSD cases is 28 years. My own personal experiences was 24 years after the event, out of the blue, and then being treated for it. If cases were to be brought—and I think it is quite reasonable to allow soldiers, sailors and airmen to bring cases for mental duress that could have been caused by a mistake, an error or incorrect equipment, or some form of claim—to put a six-year time limit does not help. It may help legal reasons for other purposes, but it certainly does not help the mental duress, because the facts and evidence point to a 28-year bell curve, with 14 years therefore being the mean.
Q213 Johnny Mercer: Of course, and that is why we have built in there that it is the point of knowledge, rather than when the incident took place. Therefore, if you had PTSD 24 years later, your six-year clock would start from that 24-year point.

Lieutenant Colonel Parker: Understood. It is great to hear that clarification.

Mr Kevan Jones (North Durham) (Lab): No, it would not.

Johnny Mercer: Yes, it would. You have no idea what you are talking about.

Lieutenant Colonel Parker: You can understand the problem that the military community have. It is hard enough for someone like me, as a master’s graduate, to understand it, but also trying to get this understood by a large body of quite unqualified people who fought bravely is difficult enough.

The only other qualification that I would add is to do not with the question that you have directly asked but with a broader question, which you may want to touch on later. It is very difficult to separate, in the view of the veteran, operations from one theatre and operations from another theatre. Obviously, you probably know straight away that I am referring to Northern Ireland. I understand, and we understand, that it is not part of this Bill, but I think there has to be a measure by the Government to say—and I think they have—that other measures will be taken ahead to deal with that. That is something that I know is a concern, and it is something that is of prime concern.

Broadly—I have to say this broadly because, again, we have to remember that we do not get people scrutinising the Bill itself; they hear the broad terms of it—it is welcomed by the community and there is no major feedback. It is very difficult to separate, in the view of the veteran, operations from one theatre and operations from another theatre. Obviously, you probably know straight away that I am referring to Northern Ireland. I understand, and we understand, that it is not part of this Bill, but I think there has to be a measure by the Government to say—and I think they have—that other measures will be taken ahead to deal with that. That is something that I know is a concern, and it is something that is of prime concern.

Q214 Mrs Emma Lewell-Buck (South Shields) (Lab): Good afternoon, colonel. Just a quick question from me. How could the Ministry of Defence better exercise its duty towards soldiers who are accused of crimes?

Lieutenant Colonel Parker: The problem came, in a lot of our cases—certainly with some of the earlier ones with the Iraq Historic Allegations Team and others—that, because it was done in a very legal and correct fashion, sometimes we can forget that the care is needed, because they still are people. It was often very difficult for people to get facts and information about what was likely happening. I would say that we have come quite a long way with that. We have an independent ombudsman and others. Personally I think that has been a huge step forward, and I met Nicola the other day. We must remember that we have to think about whether there is a resource capability gap or not, to allow some form of funded or additional care for the families, and also potentially for people’s loss of earnings and loss of promotion.

One of the biggest fears and concerns that people had is that their career was on hold and their career was affected. Like it or not, that comes down to the financial burden that people feel they have suffered unduly. I can think of several cases where it is pretty hard to explain why certain people were not promoted for a few years when these investigations were going on. Obviously, it was a difficult position for everyone.

There are two things there: a broad duty of care with some resourcing for the impact on families and the individuals themselves, whether that is more information or some sort of independent helpline. Perhaps it could be done through a body such as the ombudsman or something in addition to that. Secondly, it is the ability to explain and understand those pieces.

Q215 Mrs Lewell-Buck: Is there anything in the Bill that improves the duty of care?

Lieutenant Colonel Parker: I have not found it because I think it is a softer thing—it is beyond the Bill. It is something that the MOD would have to bring in. It is a chain of command issue. It is very difficult for people. The chain of command is uniquely allied to the same thing as the duty of care chain, because it is the officers, and therefore there has to be perhaps support outside of the chain of command: somebody to care, outside the direct chain of command, for those individuals. People have made the best effort to get by; but we have a unique problem where the officer chain of command, the line between [Inaudible] and courts martial, cannot be compromised, and therefore other people have to be involved.

The Chair: I call Stuart Anderson.

Q216 Stuart Anderson (Wolverhampton South West) (Con): Sorry for the delay, Chris: I have to stand up because there are not enough microphones for social distancing. Thank you for everything you have done and for your service. It is hard to hear what you have been through. You said that you have 5,000 members in the association. When did the association hear that there was going to be a Bill to protect servicemen and veterans? What was their initial response?

Lieutenant Colonel Parker: Thank you very much. The 5,000 I referred to are our Iraq and Afghanistan veterans. They were a large regiment. You can see the numbers because the throughput is quite large and significant, and that is just in one regiment. We have about 20,000 in total, including right down to the oldest. Some of them are second world war veterans.

In terms of when we first heard, I have to be honest that I cannot recall a date or time, but we are informed through our regimental headquarters, which is a very small Ministry of Defence-funded element. It is very small. It has been cut right down to the bare basics now. They inform us of those things, but you must remember that the association people like me are volunteers, and for us to spend time trawling through things and looking at emails to with things can be difficult, so we get prompts and help, and then they provide, effectively, a staff capability. When we heard through them, which was very helpful, the initial reaction—we serve using social media platforms, with groups of several thousand of our veterans, and those are quite active, to care for people—and the mood was very positive. It was seen as a weeping sore in the minds of many that they had done their service and they would not be looked after. We know that the Government put this in the manifesto late last year, and it came into being very soon after the general election in late 2019. It was welcomed, but it was not a political point for the veterans; it was more about the Government doing something to address what they had seen as an injustice. Their feelings were certainly very positive.
Q217 Stuart Anderson: Based on your contacts—those 5,000 to 20,000 veterans—what would the veteran community feel now if this Bill were stopped?

Lieutenant Colonel Parker: I do not think they would understand why. We must remember that among the base we address, look after and care for, the understanding of things like how the machinery of government works is quite low. They just see a very clear sense of right and wrong, partly because we instilled it in them. They have that very simple view of life, so I think there would be acute distress. There would certainly be an increase in mental duress, and I think that for those people who hover around the distressed level, rather than getting into specific, incident-related PTSD—we deal with a lot of these—there would be a lot of hands being thrown up in the air. Allied with the current conditions, which obviously include the environmental factors of covid, separation and people being isolated, I would see that as a very big risk. However, the country seems to be behind this, and certainly the veteran body is. It seems to be something that is apotitical at the moment, notwithstanding the need for good scrutiny.

Stuart Anderson: That is brilliant. Those are all my questions. Thank you very much.

Q218 Mr Jones: Hi, Chris. In terms of the cases you have dealt with, we have already heard from other witnesses that the real issue is the length of time these investigations take. We took evidence on Tuesday from Major Campbell—frankly, the way that individual has been treated is disgraceful. This Bill does not cover investigations, and I wonder whether you think there should be some way in which investigations could be speeded up, or a way to prevent people from being reinvigorated for the same thing on several occasions, which certainly happened in Major Campbell’s case.

Lieutenant Colonel Parker: That is a very fair point, and it is an excellent question, because the time has been a big factor. I am not aware of any way in which military law should be seen to be rushed along or pushed along. However, I think this comes back to the duty of care. I know there is provision in the Bill for certain time restrictions, so if there were a time restriction on an investigation, unless there was a good reason to extend it, that might be something that would allow a positive factor of, “Yes, there is some definite evidence brewing here.” That could be positive.

We are talking about several years in which people are on hold. That was certainly the case for people involved in the Danny Boy incident in al-Amarah, with the public inquiry and the many cases to do with that particular incident, which was a real travesty. That affected some people for eight or nine years, so that was quite a long wait, and of course some of those people were already in distress because of the very tough fighting in that incident.

Q219 Mr Jones: I agree with you on that, but the Bill does not stop potential prosecutions by the International Criminal Court. The problem with this legislation as it is drafted is that it includes a presumption not to prosecute even before investigation, which seems very odd. The Minister is looking bemused, but it is actually in the Bill. Are you not concerned that if we are not seen to investigate these things to a certain level, we could end up with individuals being placed before the International Criminal Court? That is certainly something I would not want to see.

Lieutenant Colonel Parker: That is a good question, because it is something I have heard from chats on veteran social media and other discussions. You must remember that our face-to-face contact with our people has been limited from the summer onwards, but in a lot of the discussions that happen on this, sometimes weekly, there is without a doubt greater fear of a non-British legal action coming against people than of anything British. Even though soldiers, sailors and airmen might grumble about the prosecutions, I think they would all, to a man and woman, admit that British justice would be the preferable place to go to every time. There have been many times when people have been investigated but then there has been no case to answer and justice has been seen to be done—there has been no prosecution, and certainly no conviction, in the majority of cases—so I would agree with you.

Again, we must remember that I, let alone the body of the kirk, if you like—the association members—would not understand the nuances of what might cause an International Criminal Court action. If there seemed to be a risk of that, it would need to be closed on behalf of the veterans, who would see that as a far greater risk to themselves than facing British justice. I think that is a fair question to ask.

Q220 Mr Jones: Can I turn to the issues around investigations? You talk about the duty of care and the chain of command—I know it well, and how it works sometimes and does not work at other times. Do you think there should be an obligation on the Ministry of Defence to provide legal assistance to individuals who are being investigated or are accused of crimes?

Lieutenant Colonel Parker: When I was involved in a public inquiry—it was the Baha Mousa public inquiry—there were five separate teams of lawyers and barristers, of which two were consulting me as a person giving evidence, not in any accusatory sense, but for contextual evidence. I was amazed by how much effort and money was going into that. The accepted norm is that a lot of people are left to their own devices and are not able to access the same level or scale of funded assistance when they are accused by military investigations such as IHAT and others.

Q221 Mr Jones: I raise that because if you were in civilian life and were accused of something in line with your employment, you could go, for example, to a trade union, which would provide you with legal assistance. We have not got that for individual soldiers. I am just thinking about trying to level the playing field, in the sense that members of the armed forces should at least have some recourse to legal assistance. As you say, the other side could perhaps spend a fortune on very expensive barristers and others. Leaving it to associations such as yours and others to provide legal support is a bit hit and miss, isn’t it? I know that some associations do.
I agree with you. If this can add any context, after my 17 years of service and a lot of frontline tours, often the biggest point of failure that caused the most damage was when there was a point of failure in the chain of command. If a commanding officer or a senior officer—a major or a brigadier perhaps—was the person causing the problem, they are also in the discipline chain, so the whole thing grinds to a halt and becomes an impasse. That is a very difficult situation.

The second-order question is: why do we not have a Police Federation equivalent or a trade union? I have seen a number of failures—not a large number, but it has happened—in the chain of command by officers behaving improperly, and that says to me that the only way you can stop that sort of thing affecting the people beneath improperly, and that says to me that the only way you can stop that sort of thing affecting the people beneath them is by having, if not a trade union or federation, then an independent place to go. Personally, I think we have that with the independent Service Complaints Ombudsman, which is available as a pressure release valve. The good work that has been done to bring that in, although that small body is not widely known at the moment, has removed some of the risk.

Q222 Mr Jones: That is one of the things I argued very strongly for when we did the Deepcut inquiry—it came out of that in the early 2000s. The problem with the ombudsman is that he or she can only look backwards. What I am trying to get to is that people need legal support and so on in these cases when they are going through it. I will come on to the ombudsman in a minute, because you raised another issue with it earlier.

I am trying to think whether there is a mechanism we could get for those accused. I accept the point that you make about the chain of command, but I am trying to understand whether there is anything we can do to even up the playing field, in terms of ensuring that people are not left on their own? Most people do not have access to independent funds, and most people have perhaps never been involved with the law before, so when they are it is obviously quite a daunting experience. If we could come up with some system that actually allowed recourse to legal support, would that be something that you would support?

Lieutenant Colonel Parker: Yes, I would, but I would qualify that support. As a veteran leader, I constantly tell our people that they must not consider themselves to be a special case when there are also blue light services and other people who are equally well deserving and who also sometimes face legal complaints.

Q223 Mr Jones: But they are slightly different, in the sense that they have recourse to, for example, in the ambulance service, a trade union, or the Police Federation.

Lieutenant Colonel Parker: Correct. I understand why you ask that question. It is something, certainly for the veteran part of it, that I have proposed. I am in discussion with our excellent friend the Minister about innovative ideas such as having an inspector for veterans, like the inspector for prisons. Beyond that, there could possibly be someone who would be an independent body. Wherever that independent body sits, it cannot sit in the MOD. That is the problem—it must not sit there; it should sit outside.

Mr Jones: Can I—

The Chair: May I turn to Sarah Atherton. If there is time, I will come back to you.

Mr Jones: Can I just ask one question about the ombudsman?

Sarah Atherton (Wrexham) (Con): I don’t mind, Mr Stringer.

The Chair: Okay. Just one. There might be time for further questions, because only Sarah is indicating that she would like to ask one at the moment.

Q224 Mr Jones: The ombudsman can look backwards. We heard Major Campbell the other day; even though he had been completely exonerated, there was no ability to investigate why he was treated the way he was. Do you think it would help those individuals who have gone through very poor service—in his case, it was 17 years of hell, by the sound of it—to have recourse to the ombudsman to have that investigated, to at least get some answers as to why things were actually happening?

Lieutenant Colonel Parker: I would say a strong yes, because in all the incidents I have seen where it has gone wrong, if the individual concerned knew that there was some way that an independent person would be able to investigate them, they may have been less likely to think that they could get away with it; it is often individuals acting fully in the knowledge of what they are doing because they can get away with it. Personally, based on my experience, I would say yes to that.

Q225 Sarah Atherton: Princess of Wales’s Royal Regiment, the Tigers, was caught up in the battle of Danny Boy. As an association representative, can you give the Committee a sense of what the soldiers and families went through during those vexatious claims? There have been high-profile cases of Brian Wood and Scott Hoolin, whom I assume you know all about. Can you give us a sense of what they went through during these vexatious investigations?

Lieutenant Colonel Parker: I will, and if it helps you, I would prefer to answer that in the broadest terms, rather than focusing on individual cases, to avoid causing them any further distress. Obviously, a lot of the things we talk about are very confidential, and a lot of them are very tearful.

With that incident and the aftermath, once it started to break out that there was going to be some sort of investigations, and the manner of those investigations, there was certainly a feeling of horror and almost terror that swept through people, because they realised, “When will this stop?” It was a particularly brutal engagement, and it was cited, as the Committee probably knows, as being along the lines of second world war bayonet fighting-type engagement—incredible bravery but also incredible stress. One of the individuals I know—a large, strong, tough individual—was in tears in my arms, explaining that he had enough to deal with coping with having had to kill several people, and now he would have to deal with the fact that he might be court martialed for it. He just could not understand it.

We have to remember, again, that the individuals concerned are not people who are able to sit and pick through legal documents, nor understand them. Whether we ask the most vulnerable or tough people in our society to go forward and do these extremely tough and brave point-of-the-spear jobs, such as combat roles, we
must remember that we have a duty of care to protect them from anything—intellectual or otherwise—that might affect them later in their distress.

In answer to your question about the families, that whole inquiry, and certainly that incident, were the largest single point of family distress that I have witnessed in my entire military service or veteran chairmanship of five years. That amount of distress was not only for those who were being prosecuted, but for their spouses, partners, mothers, fathers, others, and children in some cases—those who knew that the veteran had been involved not only in that incident but in others—because there was immediate presumption that there would soon be a knock on the door or a letter popping through the door for some sort of summons, so the stress levels, the distress and the impact snowballed to quite a large level. It was very hard to put a lid on that stress because that is what happened: letters did start to arrive and people did get knocks on the door, so it became a very distressing time.

Q226 Sarah Atherton: Thank you for talking in general terms. How would the Bill have changed their experiences?

Lieutenant Colonel Parker: There are two parts to that. First, we would have at least had something to be able to say back, “No, no. There is protection here.” Whether it was a six-year limit or inside that is, of course, a different point. At least there would have been something there to say that.

We must remember that in parliamentary terms, it can be easy to understand it as a Bill about legal process. In the veterans sense, it is much more simple than that. It is simply understood as: the people, the public, the nation, does not want to do this to people who have stood on the wall and had to fight for freedom. They do feel that a Bill like this would allow those of us who are able to soothe and reassure to say as a result, “It’s okay. The country does care; Parliament does care.” Therefore, every effort is being made, which is why we admire what you are trying to do to close the gaps that have allowed those things to happen.

The Chair: I cut you off Kevan. Do you have another question?

Q227 Mr Jones: I have, but I just want to pick up on that point. The Bill would not stop the agony that you have just talked about, because in the five or six-year period, you would still be investigated. Is the root of this not that if accusations are made, they should be investigated and dealt with speedily and efficiently and, frankly, thrown out? That is what is missing from the Bill. A time-limit can be put on it, but six years is a long time for a family to go through that, as you have described. We cannot put ourselves in those people’s shoes; for anybody accused of something that they have not done, it must be awful.

Lieutenant Colonel Parker: I agree with you, but I propose that in the whole of defence—let alone the MOD, lawyers, investigators, military police investigators—everyone went through a learning process. That was an unprecedented time. Now, everything—the procedures, the understanding, the channels of complaint, the channels of the chain of command acting to look after people, the care for families—has improved, so we must be careful not to look at those past incidents when we were going through extreme learning pains with the existing legislation, but think about how we might cope not only with new legislation, but with the great leaps forward and lessons that have been learned about investigative timescale and accuracy, and the ability and the need for statements to be taken after patrols and suchlike.

Those things sound very easy. Sometimes they are difficult out in the dust and the heat, with the extreme exhaustion that goes on out there. We are in a much better place: I genuinely offer that from a very lucky perspective, because I can speak without any official man here, but I get the chance to speak to everyone who is in officialdom, as well as the soldiers from my regiment and their families.

Q228 Mr Jones: Can I now turn to part 2 of the Bill?

I accept that you and others have perhaps not read the Bill line by line, but part 2 would put a six-year limit on section 33 of the Limitation Act 1980, which means that veterans will not be able to bring claims outside that time limit. As one witness explained the other day, that would mean that prisoners would have more rights than members of the armed forces. That cannot be right, can it?

Lieutenant Colonel Parker: No, but it would not be the first time. We are in a gradual process as a country, and we must not be too hard on ourselves. We are closing gaps and are doing the best we can, but nothing will be done in a week or two. Everyone is pretty realistic—you will not get a bunch of people who are more realistic than military veterans about how long things take. There might be some concerns about the six-year rule, but I am sure people would welcome being part of that discussion. I can certainly help that process by getting my people to be part of that discussion, survey or whatever it might be, to get the feeling about whether this would be something that could sit happily with them. This process alone—my being here—is part of that. The six-year part, and the potential that other parts of society could be better off, is still countered by the fact that I have never met a military person who feels that we should be outside the law and that we should not obey the agreed principles.

Q229 Mr Jones: But what this is doing is putting veterans at disadvantage by comparison with what I or you can do as a civilian, in terms of taking a case outside the Limitation Act 1980. It does not sit comfortably with me that veterans should not have the same rights as everybody else. It is possibly one of those things that we get in legislation sometimes—an unintended consequence. Personally, I think it should be taken out of the Bill, because it will limit the ability of veterans to bring civil claims outside those time limits. Knowing the MOD lawyers as I do, they will use it as an excuse for why claims should be discontinued.

Lieutenant Colonel Parker: Understood, and I partially agree with you. Again, I would say that most people would be surprised, as would I, that no mechanism could be thought of to allow someone after the six years, if they felt that there was a strong enough case and it was sound in British justice, to bring a claim via appeal, the High Court or whatever it might be, to a judge, and that would be allowed to be waived. I am not a legal expert, but I would have thought that would be the situation if there was a particularly compelling case. I cannot think of any.
Mr Jones: It is there already in section 33 of the Limitation Act 1980. The Bill is carving veterans out of it, which I certainly do not agree with at all.

The Chair: If there are no more questions, may I thank you, Colonel Parker, for your valuable evidence this afternoon? I am sure the Committee will find it useful and informative when we come to discuss the Bill on a line-by-line basis.

Examination of Witness
Judge Jeff Blackett gave evidence.

3.8 pm

Q230 The Chair: We will now hear from His Honour Judge Jeff Blackett, who very recently retired as Judge Advocate General. We have until 4 o’clock for this session. Welcome, Judge. Would you care to introduce yourself for the benefit of the Committee?

Judge Blackett: I am His Honour Judge Jeff Blackett. I was the Judge Advocate General for 16 years. I had 31 years’ service in the Royal Navy before that. I retired as Advocate General last week, on 30 September, so that I could go and become president of the Rugby Football Union.

Q231 Johnny Mercer: Hi, Judge Blackett. Thank you for coming in today. We have had broad discussions along this issue already, so I will not reheat any of those. What would you do within the art of what is possible? There are plenty of ideas—taking out the six-year limit, applying it to one set of claimants and so on—but within the art of the possible and the strategic aim of the Bill, what would you do to improve it?

Judge Blackett: That has gone to the end of where I was going to speak, because I was going to start off by saying that I think the Bill does not do what it is trying to do. My concern relates to investigations, not prosecutions; but there are a number of issues, and I think you and I have discussed some of them.

The first thing I would do is apply section 127 of the Magistrates’ Courts Act 1980 to the military. That puts a six-month time limit on summary matters, and I would extend that to be matters that were de minimis—there would have to be a test of de minimis. Interestingly enough, halfway through my time as the Judge Advocate General, I issued a practice memorandum, which effectively incorporated that into the court martial. Following Danny Boy, the only offences that could be brought to trial were common assaults, and they were not, because the Army Prosecuting Authority followed my practice memorandum. The Ministry of Defence at the time were not in favour of that, and they challenged. Unfortunately I had to withdraw that practice memorandum.

That would deal with minor cases, and there are lots of minor cases. The sorts of things that IHAT was dealing with were that there would be a complaint that appeared to fall at the upper end of the spectrum. There would be an investigation. It would find that the allegations had been wildly exaggerated and end up finding that the most serious offence might have been an attempted actual bodily harm. In cases like that there should be a limitation period. So that is my first thing.

The second thing is that I would have judicial oversight of investigations. I introduced something called “Better Case Management in the Court Martial”, towards the end of my time as the Judge Advocate General. That puts time limits on investigations. The most important thing about it is that a case, early on, goes before a judge, and a judge then sets out a timetable of what various things should do. If section 127 of the MCA was brought into force, and the case dealt with de minimis, he could then say, “This is de minimis; stop the investigation.” So you need some mechanism, and judicial oversight. In my opinion, you could do that.

Thirdly, I would look at legal aid and funding. We have to remember that Northmoor and IHAT were set up by the British Government, and were funded by the British Government. The ambulance-chasing solicitors—people like Phil Shiner—used public money to pursue the means. I think you need to look at how legal aid is approved in those matters, and whether complainants should be funded, and the bar for funding them and their solicitors should be set higher.

So those are three areas. Finally, I would raise the bar for reinvestigation, or investigation. Having said that, there were only two courts martial where people were acquitted where there was a reinvestigation, but I would raise the bar for reinvestigation as well. So those are four practical matters that I think the Bill should concentrate on, rather than prosecution.

Q232 Johnny Mercer: One of the difficulties I think people like me face is that we have had General Parker, x-Armed Forces Ministers and others, saying that this and that should happen; why, over the last 10 or 15 years have none of these things been done?

Judge Blackett: You would have to ask them. I am an independent judge, who was the judicial head of the service justice system.

Q233 Johnny Mercer: Why do you think the MOD has not taken on your advice?

Judge Blackett: I think in terms of the six-month time limit, there were lawyers in the MOD who said that we did not put that in the Armed Forces Act 2006. There are commanding officers who do not want to be limited, because sometimes they need more time. In terms of better case management, I think that the MOD thinks that is a good idea, but I did not come to it until quite late in my time.

I will say one thing, though. In terms of IHAT and Northmoor, as the Judge Advocate General I wanted to be more involved, but I was kept out—properly, I suppose, because I might have to try the cases in the end. We expected a lot of cases to come out of those two matters, and as you know, not a single case came out of them, which tells its own story.

Q234 Stephen Morgan (Portsmouth South) (Lab): Thank you, Judge Blackett, for being so willing to come before the Committee to hear our concerns and to help us improve the Bill. You described the Bill as ill conceived. Can you explain why you had that view?

Judge Blackett: Yes. Perhaps I can say this. I wondered why, in the face of all the opposition—that is huge opposition, from various bodies—the Government seemed intent to pursue this particular issue. I have three concerns
about the Bill. One is the presumption against prosecution, one is the wording in clause 3(2)(a), and the other is the requirement for Attorney General consent.

I listened very carefully to what Johnny Mercer said to the Joint Committee on Human Rights a couple of days ago. He described a pathway that goes from civil claims for compensation. That becomes allegations of criminal behaviour. That leads to investigation. That leads to re-investigation. I think that is the pathway you described, Mr. Mercer. He said the lock was a presumption against prosecution, and Attorney General consent. I can understand, looking back, how you might get to that, but I think that logic is flawed, because actually he agreed that the issue of concern is investigations, which is my concern as well, and the length of time they take. He accepted, as he would, that all allegations must be investigated. That acceptance and a presumption against prosecution just do not equate, in my terms.

Let us look at some statistics. In my time as JAG, we have had eight trials involving overseas operations, with 27 defendants, of whom 10 were convicted. There were obviously trials. I did the two murder trials. The first murder trial was about the murder of a chap called Nadhem Abdullah by 3 Para. That was a case called Evans. The events took place in 2003; the trial was in 2005. In the case of Blackman, Marine A, the unlawful killing took place in 2011; he and two others were tried in 2013. So the system worked and due process went along. There were eight trials.

At the same time, there were 3,400 allegations in IHAT and 675 allegations in Northmoor. We all know how long they took, and nothing came out of them. So I agree wholeheartedly with what the Minister is trying to do. I am absolutely behind protecting service personnel. I simply do not believe this Bill does it, because I cannot see that a bar on prosecution or—sorry—a presumption against prosecution is going to stop the ambulance chasing that the Government are so worried about.

My second concern, of course, was the International Criminal Court. Take a case like Blackman, Marine A, the unlawful killing took place in 2011; he and two others were tried in 2013. So the system worked and due process went along. There were eight trials.

The prosecutor could decide there is a case to answer, but he would send it to the Attorney General, and the Attorney General says either, “Prosecute”—in which case, so what?—or no, and you have exactly the same thing: judicial review of his decision by all sorts of people, and the International Criminal Court saying, again, “You are unable or unwilling.”

In my view, what this Bill does is exactly the opposite of what it is trying to do. What it is trying to do is to stop ambulance-chasing solicitors and vexatious and unmeritorious claims. The Minister quite rightly said we want rigour and integrity. What it actually does is increase the risk of service personnel appearing before the International Criminal Court. That is why I said it was ill conceived.

Q235 Stephen Morgan: Thank you for that thorough and comprehensive answer. You mentioned earlier being kept out of discussions. One theme that has come out from the witnesses over the last few days has been about more engagement and consultation on what the Bill is trying to do and its contents. Is it unusual for someone in your position not to be formally consulted on the Bill’s contents?

Judge Blackett: No. My office is nearly always consulted on legislation, particularly when I went through the 2006 Act. I was heavily involved in that and, subsequently, with the other quinquennial reviews. I do not understand why my office was not consulted. There have been occasions in the past where paperwork has got lost when we have been consulted. I personally was not, but my office dealt with it. That was not the case here—we simply were not consulted.

Q236 Stephen Morgan: So it was quite unusual?

Judge Blackett: It was unusual. Whether it was pressure of time or whether officials wondered what I was going to say and did not want to hear it, I do not know.

Q237 Stephen Morgan: What difference would that formal consultation have made?

Judge Blackett: I would have hoped that we could have influenced the Bill, because I think a Bill is a good idea, but it has to have the right contents. Had I been able to have an input, perhaps on the format as I have just described, I do not know whether it would all have made it into the Bill, but at least it could have been discussed.

Q238 Stuart Anderson: On a point of clarification, you said it is very unusual for you not to be consulted, but you started off by saying you were not consulted on any of the other investigations when they were set up. Is that correct?

Judge Blackett: That is a different matter. That is apples and pears. I am consulted on policy development, even though I am an independent judge. In terms of individual cases then clearly—and properly, at the time—I was not consulted. I was going to have to deal with the serious matters that came out of it, so I was not consulted. I was told that there might be a case—‘“There is possibly a case. Can you clear seven weeks in the diary to sit in a case, sometime in the future”’—but I was not consulted about how the investigations were going on.

Q239 Stuart Anderson: Thank you for clarifying that. You mentioned some practical steps that you wanted to put in the Bill. I am by no means a legal expert, so for clarity could you explain, are they steps that you have the power to put in or would they require an Act of Parliament to go through for them to be put into place?

Judge Blackett: Section 127 of the Magistrates’ Courts Act would require legislation to apply to the armed forces. As I told you, I issued a practice memorandum many years ago to try to do that, which the MOD objected to and it had to be withdrawn. Legal aid funding for victims and ambulance-chasing lawyers, to use the expression that has been used, would need some legislation.
On raising the bar for the investigation, the wording in the Bill might do that, but perhaps it would require legislation. Judicial oversight of investigations, particularly overseas operations, would require legislation.

Q240 Stuart Anderson: I am trying to understand the process for someone with your influence and experience. Have you ever taken forward discussions with the MOD to say, “I believe this legislation, this Bill or this Act, if brought through Parliament, will solve A, B and C”?

Judge Blackett: The process that you describe goes on all the time, but not in particular for overseas operations. There is a quinquennial review of the Armed Forces Act. I am consulted and have the ability to input issues. For example, I have been concerned for a long time about service personnel who are convicted in the court martial of causing death by dangerous driving. We had a number of those with servicemen overseas. The court martial had no power to disqualify them from driving, and I had a real concern that they would come back, serve their time, go straight on the road and kill somebody else. I have been trying to get something like that into the Armed Forces Act.

The process takes ages. I would start off 15 years ago saying, “I don’t think this should be in the Act.” It is not agreed by the policy people within the MOD, for all sorts of reasons. We go round and round in circles, miss one Act and then another Act. Hopefully, it is going to be in the 2021 Act. That goes on all the time. I am proactive in dealing with matters around trial process.

Q241 Stuart Anderson: I am certainly not knocking your work ethic or your proactive approach, but was anything formally put into the MOD with recommendations for overseas operations that ended with Ministers?

Judge Blackett: No, because I was not consulted.

Q242 Stuart Anderson: You were the only person in that time who could have done that—is that correct?

Judge Blackett: No. I am sure other people have similar ideas—I have not got all the good ideas—but I was not asked, so I did not put anything in. That was until I became aware of the Bill—too late, but probably my fault—and at that stage I wrote to the Secretary of State and raised my concerns.

Q243 Stuart Anderson: I am on the Defence Committee, so I saw that letter. How long have you been in the position of Judge Advocate General?

Judge Blackett: Sixteen years.

Q244 Stuart Anderson: Has any Minister come to you or consulted you about putting such a Bill through Parliament?

Judge Blackett: No. I have had exchanges and we have had meetings with Ministers, but for this particular Bill nobody came to me and said, “We are going to put this through Parliament. What do you think?”.

Q245 Stuart Anderson: I get that. I came into Parliament at the end of 2019 as a veteran, wondering why soldiers have been prosecuted and gone through everything they have. I understand your points, and there are a lot of good ideas here, but Parliament has been going for many years and I wonder why it has taken till now to get to this situation. I have a fear, as we heard from the veteran community, that the Bill would get stopped. What I really want to find out is whether anybody has thought of this before. It is without a doubt a hard subject to address. Is it too hard? Has anyone sat down and said, “We want to put this through”?

Judge Blackett: Not to my knowledge. It needs political will, of course, and if you go back to IHAT and Northmoor, you start with the Baha Mousa concerns where we had a court martial where seven people were tried, one pleaded guilty to an ICC Act offence and all the rest were acquitted when clearly the British Army had been responsible for killing an individual over a three-day period. The court martial did not resolve in a conviction.

Following that, we had all the cases from a solicitor who in those days was well respected, so nobody questioned his motivation on the allegations he was raising. That subsequently turned out to be wrong. I think the issue then was the British Government thinking, “If we have got systemic abuse by the British forces overseas, we have got to do something about it.” Hence they set up Northmoor. That was really the focus.

Q246 Stuart Anderson: Do you think the Bill is needed?

Judge Blackett: Not in its present form, no. The court martial system demonstrates that we have, to use the Minister’s words, “rigour and integrity”. We have got to move faster and we have got to investigate quicker. The issue is not the court martial system; the issue is IHAT and Northmoor, and that is nothing to do with the court martial system.

The Bill is effectively looking at the wrong end of the telescope. It is looking at the prosecution end, and you have got to remember that you do not prosecute until you investigate—and you have got to investigate. This will not stop people being investigated and it will not stop people being re-investigated and investigated again. Lots of investigations do not go anywhere, but the people who are investigated do not see that.

The fact is that, as you know, of the 3,400 cases, or whatever it was, at IHAT, not a single one has been prosecuted—not one. But the issue for those being investigated is dreadful. That is their complaint. Now, I understand that with high-profile cases like Blackman—Marine A—there are a lot of veterans who think we should not even prosecute that because they say he was doing his job and it is wrong to prosecute him. That is clearly wrong. When you have an offence as blatant as that, it must be prosecuted; otherwise we are undermining the rule of law and what we stand for in Britain.

Q247 Stuart Anderson: I slightly disagree. I do not believe that veterans want amnesty—perhaps a small percentage. If something has gone wrong, professional soldiers, men and women, would expect or want that to be followed through.

Finally—I am not sure whether you heard the last witness—

Judge Blackett: I heard some, yes.

Stuart Anderson: I asked him how the 5,000 Iraq and Afghanistan veterans and the 20,000 overall veterans he has contact with would feel if the Bill were stopped. I do not know whether you heard his answer.

Judge Blackett: Yes, I did.
Carol Monaghan: We have heard that many times, but we are slightly concerned.

Judge Blackett: I take the Minister at his word—if he says that he is open to any suggestion, he or his staff must look at it on its merits and, if they see any merits, they will take it forward.

Q253 Carol Monaghan: I was going to ask about the re-investigations, but we have already covered that, so I will move on. Do you have any concerns about part 2 of the Bill?

Judge Blackett: The six-year time limit on civil claims.

Carol Monaghan: Yes.

Judge Blackett: The previous witness talked about the inability of service personnel to sue, because of the six years. It is rather like going back to section 10 of the Crown Proceedings Act 1947. That is not really my area of law, so perhaps I am not the right witness to deal with it. I said to the Secretary of State that I thought it was injudicious, but there are better minds than mine who can apply that.

One bizarre thing is that, if this Bill becomes law, there is a six-year time limit but the Attorney General may give consent to a prosecution. Then, clearly, one of the things that the criminal court would be doing is awarding compensation, if there was a conviction. There would still be issues in relation to personal injury claims, which would come through the criminal court rather than the civil court, if it got to prosecution. However, I do not think I am the right person to answer those questions.

Q254 Mr Jones: In your letter to the Secretary of State you said:

“The bill as drafted is not the answer.”

You have been very clear on that today. You have made four suggestions there. I can see a problem with the legal aid one, but the other three relate to procedure for criminal trials in the service justice system. Could they be incorporated into the Bill?

Judge Blackett: Yes. If you need legislation, you can use any legislative vehicle, can you not? Certainly, I would have thought that applying the Magistrates' Court Act 1980 one, which is applying a six-month time limit to summary-only matters, would be extended. It would need more wording because I believe that should be extended to what should be called de minimis. De minimis claims probably need to be taken before the judge who is overseeing it so he can say, “This is de minimis.” Then, a great raft of those allegations in IHAT and Northmoor would have gone with that.

Q255 Mr Jones: That would clear out a lot of frivolous and vexatious cases, the difference being that it would not be about a presumption not to prosecute. An independent legal body—a judge or a magistrate—would make that decision. That is the important thing there. It is not the chain of command or the MOD making that decision, or the Attorney General. It is independent legal—

Judge Blackett: Yes.
Q256 Mr Jones: On raising the bar, how would that work in effect?

Judge Blackett: The way I described it when we had our meeting with the Minister was relating to the Criminal Cases Review Commission. They can look at what is a miscarriage of justice and put it back to the Court of Appeal, but they have a very high bar. It was extracting that sort of test and applying it on the other side in relation to investigations. Having said that, there have been only two reinvestigations following acquittals in my time, and both of those determined that there was no further evidence and therefore it did not come back to court. However, the individual accused, who had been acquitted, had to go through all the problems that we heard the last witness talk about.

Q257 Mr Jones: I am aware of the criminal case review because I have just been involved with the Post Office Horizon cases that are going before that. It is a high test to get them there, but it does give that. I will come on to one of your third points in a minute, but the issue that has come out throughout all the evidence that we have taken so far is around investigation and—I think this came through from the last witness—the trauma, not only for individuals but for families, because things are taking too long, although the two cases you mentioned were done quite quickly. In terms of judicial oversight, can you explain how that would work?

Judge Blackett: In my view, you have an allocated judge—probably a judge advocate—who the investigators can come to and say, “This is what we have. We have one person saying ‘He raped me 10 years ago.’ We have no other evidence. We have interviewed her and we think”—she is lying, she is telling the truth, or whatever. The judge can then take a view, rather than the current system at IHAT. It became rather like a fishing expedition, where an allegation came in and they spent ages fishing for more evidence around the allegation. It needs, I think, judicial oversight to say, “Stop fishing, you have had enough time. This clearly will not get anywhere near a conviction and therefore stop the investigation now.”

Q258 Mr Jones: Would the judge have the ability, if he or she were not satisfied with the evidence put forward, to say, “You should investigate it further”?

Judge Blackett: Absolutely, yes.

Q259 Mr Jones: So it would not be an automatic cut-off.

Judge Blackett: No, no. It is basically judicial supervision. It comes back to what I was saying about better case management in the court martial, which is the system we introduced not that long ago, where early on in the investigation, before the investigation is complete, the case is put before a judge. It may be that at that stage the defendant says, “I plead guilty and therefore let’s stop the investigation.” That is one way of dealing with these matters. It stops the time taken on an investigation.

Q260 Mr Jones: On the issue around the International Criminal Court, in that case, you could argue to them that it would be judicially independent oversight, and that is the important point.

Judge Blackett: Absolutely.

Q261 Mr Jones: Can I turn to clause 3? I think it is a very strange one. It refers to “exceptional demands”, but I think your letter to the Secretary of State outlines that the service justice system already takes that into account. That is certainly why I am a big supporter of it, in the sense that it recognises the nature of military service, which of course civil courts cannot take into account. Can you talk us through your concerns about clause 3?

Judge Blackett: Clause 3 is engaged after five years. It seems bizarre to me that in deciding whether to prosecute, you have a post-five-year test, but not a pre-five-year test. All these matters are taken into account anyway when the service prosecutor decides whether it is in the service and public interest to prosecute. As you know, there has to be evidential sufficiency and public interest. This is effectively designing or describing what the service interest test or public interest test should be. Now, prosecutions may take place, even though a serviceman were suffering from battle fatigue, diminished responsibility—all of those things. There is still a proper prosecution and the offence or the sentence will reflect all those matters, but not the actual prosecution. This therefore seems to me unnecessary, because the service prosecuting authority exists separate from the Crown Prosecution Service because it applies the service interest test. That was my concern.

Q262 Mr Jones: In your letter, you give the example of Marine A. Could you talk the Committee through how that worked in practice in that case?

Judge Blackett: Interestingly, a number of the issues here were raised by Marine A subsequently through the Criminal Cases Review Commission and back to the Court of Appeal, and they were never raised at first instance. Had he raised them at first instance—had all the psychiatric evidence that came out eventually appeared at the start—he probably would have been charged with manslaughter rather than murder, for example. So that can assist the prosecutor in the way he moves forward.

Q263 Mr Jones: In that case, he was charged with murder and convicted of murder and then, on appeal, that new evidence came in and it was reduced to manslaughter. Is that correct?

Judge Blackett: That is correct—on the second appeal.

Q264 Mr Jones: Do you have concerns—I certainly do—that there is a danger that the way in which the Bill is constructed could give credence to some of those who are advocating the abolition of the service justice system? I am not one of those who want to do away with the service justice system, because I think it is a system that protects its unique nature.

Judge Blackett: I think if the Bill becomes law as it stands, then clearly there is a concern. We have seen it from all the responses to you, from Liberty and others such as Liberty, who are very concerned. Their perception is that you are protecting people from wrongdoing. I am sure their view will be that if you are protecting people from wrongdoing, you are not capable of being independent and therefore we should take all this away from you.

Q265 Mr Jones: You have already mentioned the presumption to prosecute. I have said this before and I will say it again, but in my opinion, the Bill fails the
Ronseal test: it does not do what it says on the tin. I find the presumption not to prosecute remarkable—the idea that you can investigate someone, but start the process with a presumption that you are not going to prosecute them. The argument made is that this will mean that people will not face courts later on. However, it is not true that this will open up an entire system of judicial reviews, not only of decisions to not prosecute, but where the Attorney General decides to?

**Judge Blackett:** Sorry, I am not quite sure what the question is.

**Q266 Mr Jones:** Well, in terms of the way judicial review is done, if you have a presumption at the start to not prosecute and somebody then says, “We are not going to prosecute you even when we have done the investigation,” could that not lead to other court action coming in through judicial review?

**Judge Blackett:** I do not read the Bill as you have suggested—that you do not investigate because there is a presumption against prosecution.

**Q267 Mr Jones:** No, you do investigate, but you have the presumption at the back of your mind that you are not going to prosecute at the end of it.

**Judge Blackett:** You investigate on the basis that if there is sufficient evidence, it will go to the prosecuting authority and he will say either yes or no, or it will go to the Attorney General. As I said earlier, if the Director Service Prosecutions decides not to prosecute, there is a victim right of review, so there is a further process—that is, if it does not go to the International Criminal Court—and if it gets to the Attorney General, there is the option of judicial review of his decision. Yes, there is a lot of potential litigation around the Bill.

**The Chair:** I call Liz Twist.

**Judge Blackett:** Can I add a rider to what I have just said? The Attorney General has to consent in a number of offences. As far as the court martial is concerned, the Attorney General has to consent to prosecuting any International Criminal Court Act 2001 offence—that is, genocide, crimes against humanity or war crimes. Under section 1A(3) of the Geneva Conventions Act 1957, he has to consent to prosecuting any grave breaches of that Act, and under section 61 of the Armed Forces Act 2006, he has to consent if a prosecution is to be brought outside of time limits. That is in relation to service personnel who have left and are no longer subject to that jurisdiction. A consent function is there in any event, and sufficiently enough, given that ICC Act offences and Geneva Conventions Act offences are covered by the Attorney General, a lot of this will have to go to the Attorney General anyway, without the Overseas Operations Bill.

My concern about the Attorney General’s consent is that it undermines the Director Service Prosecutions. If I were he, I would be most upset that I could not make a decision in these circumstances.

**Q268 Liz Twist (Blaydon) (Lab):** I wanted to follow up on a couple of points. Ms Monaghan asked you about the exclusion of the issue of torture. Are you satisfied by the Government’s assurances that torture and other war crimes will always be prosecuted under this Bill?

**Judge Blackett:** I think all Governments would want torture and other war crimes to be prosecuted, and if they give that indication, it is not for me to say anything else. I am satisfied by that assurance, but on the face of the Bill, there is a chance that it would not be prosecuted. That is the point.

**Q269 Liz Twist:** So in your view, it is a weakness that it is not written on the face of the Bill. Would that be right?

**Judge Blackett:** Yes.

**Q270 Liz Twist:** Finally, would you agree that the definition of overseas operations contained in the Bill goes beyond its “on the battlefield” refrain, covering not just armed conflict but peacekeeping and overseas policing activities?

**Judge Blackett:** I would have to read the Bill again. It says in clause 1 what “overseas operations” means. doesn’t it? I cannot put my hand straight on it, but I am sure there is a section that describes what overseas operations are. Sorry, this is not really answering your question, but the eight cases that have come to court martial include ones that were not necessarily on the battlefield. The Breadbasket case, for instance, where soldiers were alleged—they were found guilty—to have abused civilians by stripping them naked, making them simulate sex, urinating on them, etc, was not on the battlefield, but it was in operations shortly after the war fighting. That does not answer the question, does it?

**Q271 Liz Twist:** Not really. Is there a concern about grey areas, would you say?

**Judge Blackett:** Yes. The way I read the Bill is that anybody on an operational tour in an operational area is covered, so the case I just described would be captured by this. That would be my interpretation.

**Q272 Liz Twist:** And that is not on the battlefield.

**Judge Blackett:** It does not talk about the battlefield; it talks about overseas operations. I went on a number of overseas operations in the Royal Navy, which were not a battlefield. It was never in the face of the enemy; I cannot say more than that. I would have considered myself on an operational tour when we were sailing round the West Indies, for instance, but I do not think that would be covered by the Bill. Any activity where there is effectively war fighting is what this Bill is about. That is my interpretation. It is not just about what is happening when you are firing bullets at each other; it is what is happening around it.

**Q273 Liz Twist:** It is in the wider sphere of operations.

**Judge Blackett:** Yes.

**Q274 Stuart Anderson:** I have a supplementary question, following Kevan Jones’s question about the five-year presumption against prosecution. We do not know what we are going to come up against next year. We could go into a conflict that lasts 20, 30 or 40 years. If this Bill was introduced in 1969—the start of the Northern Ireland conflict—would veterans who are in their 80s now be getting those knocks at the door, and would they be going through the same thing?

**Judge Blackett:** Yes, because they are being investigated.
Q275 Stuart Anderson: Not all of those were investigated.

Judge Blackett: What I am saying is that the fact that there is a presumption against prosecution would not stop the knock on the door and the investigation. That is the whole point. The presumption against prosecution does not stop the investigation; the investigation happens. The 80-year-old who is alleged to have done whatever he has done would still get the knock on the door. He would still be investigated. Once there was sufficient evidence against him, it goes to the prosecutor. If there is not sufficient evidence, the investigation stops. If there is sufficient evidence, it goes to the prosecutor, who then has the five-year presumption against prosecution. The 80-year-old is still going through all the trauma, and it may be that the police say, “This is such a serious case that it is exceptional, and therefore we should waive the presumption against prosecution.” This Bill will not address that question. That is the whole point.

Q276 Sarah Atherton: Given that you were the Judge Advocate General in 2010 when IHA T and Operation Northmoor were established, were you consulted or involved? Did you have any jurisdiction on their functioning?

Judge Blackett: No, because that was very much an investigation function. It has changed a bit because of what I have done with the system, but at that time I was effectively waiting for the investigation to happen and the prosecution to come to us. The judge becomes involved when the case first steps into the courtroom. That may take another two years, even after it has stepped into the courtroom, because of whatever has to happen. I was not consulted, no, and nor should I have been at that stage.

Q277 Sarah Atherton: Do you not think you would have had the responsibility—perhaps moral if not professional—to raise any alarms or concerns you may have had?

Judge Blackett: I constantly raised concerns with the DSP that this was all taking too long and that they ought either to get rid of it or get to court. I did that.

Q278 Sarah Atherton: And you were ignored, I take it.

Judge Blackett: I was reassured that the investigations were taking time, more evidence was needed, some cases were coming, and I needed to keep out of it so that when the cases came I could deal with them.

There was one other point that I wanted to make, which is about complementarity—not with the ICC. I would pose some questions, particularly to the Minister. You will remember that six Royal Military Police were killed at Majar al-Kabir in 2003. If those responsible were identified today, would we accept that there would be a presumption against their prosecution? Would we expect the factors in clause 3(2)(a) to be taken into account? Would we be content that a member of the Iraqi Government’s consent would be needed to prosecute? Would we accept a decision by that person not to prosecute? In my view, there would be outrage in this country if that occurred. In all areas of law, you have to be even-handed. If, in that same battle, it turned out that one of our soldiers killed one of the Iraqis unlawfully and we said, “Well, he should be protected, because it was a long time ago, but we not protecting these Iraqis,” that is just not right. I fundamentally think the Bill is wrong, and I really believe it needs to be revised before it passes into law.

The Chair: Thank you, Judge. That neatly turned around the normal procedure—instead of the Committee asking you questions, you are asking the Committee questions. The Committee has come to the end of its questions. The Committee has come to the end of its questions. May I thank you on behalf of the Committee for the very interesting and valuable evidence that you have given to us? That brings us to the complete end of our oral evidence sessions with different witnesses. We will meet again on Wednesday next week to commence line-by-line consideration of the Bill. We will be meeting at 9.25 am in Committee Room 10.

Ordered, That further consideration be now adjourned. —(Leo Docherty.)

3.57 pm

Adjourned till Wednesday 14 October at twenty-five past Nine o’clock.
Written evidence reported to the House

OOB02 JUSTICE

OOB03 John Cubbon
OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Fifth Sitting

Wednesday 14 October 2020

(Morning)

CONTENTS

Clause 1 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 18 October 2020
The Committee consisted of the following Members:

*Chairs: David Mundell, † Graham Stringer*

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Atherton, Sarah *(Wrexham)* (Con)
† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
† Docherty, Leo *(Aldershot)* (Con)
† Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Eastwood, Mark *(Dewsbury)* (Con)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Gibson, Peter *(Darlington)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† Mercer, Johnny *(Minister for Defence People and Veterans)*
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Morgan, Stephen *(Portsmouth South)* (Lab)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Twist, Liz *(Blaydon)* (Lab)

Steven Mark, Sarah Thatcher, *Committee Clerks*

† attended the Committee
Public Bill Committee

Wednesday 14 October 2020

(Morning)

[GRAHAM STRINGER in the Chair]

Overseas Operations (Service Personnel and Veterans) Bill

9.25 am

The Chair: Before we begin consideration, I have to make a few preliminary points. Members will understand the need to respect social distancing guidance, and I shall intervene if necessary to remind everyone. I remind Members to switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Many Members will speak spontaneously in the debate but, if they have speaking notes, it would be helpful to our colleagues in Hansard if those can be sent to hansardnotes@parliament.uk.

For a number of Members, this is the first time that they have been in a Bill Committee. If any hon. Member is unsure of the procedure or wants advice, the Clerk and I are here to help, and not in any sense to hinder.

We now begin line-by-line consideration of the Bill. The selection list for today’s sitting is available in the room, on the desk. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue.

Please note that decisions on amendments do not take place in the order that they are debated, but in the order that they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

Clause 1

PROSECUTORIAL DECISION REGARDING ALLEGED CONDUCT DURING OVERSEAS OPERATIONS

Chris Evans (Islwyn) (Lab/Co-op): I beg to move amendment 23, in clause 1, page 2, line 1, at end insert—

“(ba) operating weapon-bearing UAVs (Unmanned Aerial Vehicles) or RPAS (Remotely Piloted Aerial Systems) from the British Islands in support of overseas operations.”

It is a pleasure to serve under your chairmanship, Mr Stringer.

The Bill is important to our service personnel, and it is crucial that we get it right. Last week, one of our witnesses, Mr Sutcliffe, said to us: “please scrutinise the Bill as carefully as you can...and...look after your service and ex-service personnel in the best way you can.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 10, Q9.]

It is important to keep those things in mind as we proceed. I hope that the Government will consider our amendments even-handedly. They have been tabled in good faith, in the hope that we can make the Bill the best it can be for the brave men and women who serve in our armed forces.

Amendment 23 calls for unmanned aerial vehicles or remotely piloted aerial systems operated from the British isles in support of overseas operations to be included in the Bill. The Minister has said that he is happy to look again at all aspects of the Bill and that he wants to build a collegiate approach in the House to get the Bill through. I would argue that this clause is a good place to start. The amendment would a simple and effective way to help the Bill to achieve its stated aims. If the Government are serious about making this Bill comprehensive, I see no reason for UAVs not to be included. As drafted, the Bill is not clear enough about its scope or what it includes.

In recent times, we have seen a dramatic rise in the use of UAVs. The failure to include them in the Bill gives me concern that it is not looking enough to the future of warfare. The Government have made their plans clear, saying that they will rely increasingly on unmanned aerial vehicles, meaning that those will account for an important part of the integrated review. Across the world, armed forces have invested millions in the development of UAVs for military operations. The United States has increasingly relied on drones to carry out its military operations overseas, and the rest of the world is quickly following.

In 2016, at the cost of £816 million, the drone acquisition programme was approved by the Ministry of Defence. Earlier this year, the permanent secretary at the Ministry of Defence said that the estimated cost had risen by an additional £325 million. The UK Government are funneling ever-increasing sums into the funding of UAVs for military purposes. Since 2007, about 3,700 Royal Air Force drone missions have killed 1,000 terrorists in Iraq, Afghanistan and Syria.

Mr Kevan Jones (North Durham) (Lab): Does my hon. Friend agree that UAVs are an integral part of the new battlespace and that, while some people argue that they are outside any rules of engagement, they are in fact governed by the same rules as govern conventional weapons and that the people using them are aware of the legal restraints?

Chris Evans: I thank my right hon. Friend for his intervention. A long-standing member of the Defence Committee, he has developed a reputation as an expert in the field of defence. He is right that the impact of technology will only increase in changing our world beyond all recognition. It is important to realise that, in future, whether drones are operated from the British islands or America, they will be as much a part of warfare as boots on the ground. Unmanned combat is likely to become an increasingly common form of warfare. The Ministry of Defence has said it aims for a third of the Royal Air Force to be remotely piloted by 2030, and funding for unmanned aerial vehicles for military purposes continues to grow. Given their rising use, the exclusion from the Bill of UAVs and remotely piloted aircraft systems is a glaring oversight if the legislation is to serve its purpose in the future.

The Ministry of Defence is also considering the most appropriate systems for air combat, especially when Typhoon leaves service in 2030. Options for air combat
forces include unmanned combat aerial vehicles with both offensive and defensive capabilities. That would see a mix of manned and unmanned craft in the air force, working alongside each other. Surely those piloting UAVs from the UK should be given the same consideration under the Bill as those they work alongside.

Mr Jones: The hon. Friend refers to unmanned aerial vehicles, but is it not the case that in future we will also have unmanned sea vehicles and, increasingly, autonomous tank-type vehicles on the battlespace?

Chris Evans: My right hon. Friend is absolutely right. People will still have to operate those vehicles in future, and they will also be open to the horrors of war and what happens on the battlefield. We should keep that in mind as we develop this argument.

Until recently, the drones used by the UK armed forces were remotely piloted aerial systems. The proposed unmanned combat aerial vehicles differ from the previous drones as they are designed to fight for air supremacy. That widens the scope of drone and other unmanned warfare, as my right hon. Friend just said, increasing the number of service personnel working on an overseas mission but not physically based overseas. General Sir Mark Carleton-Smith recently said that he foresees the Army of the future as an integration of “boots and bots” and that in future combat those on the ground will be supported by “swarms of drones”. We look forward to hearing more about those plans when the integrated review is finally published.

The Ministry of Defence also continues to fund research into the future of drones. The Government are funding jointly with the French a study into the feasibility of an unmanned combat aircraft as a possible replacement for Typhoon from 2030. The Government have said they have no plans to develop fully autonomous weapons; that means that service personnel will continue to operate UAVs for the foreseeable future. What is clear from all that is that drones are here to stay. Therefore, those who operate these missions should be included in the Bill. It is important to note that drone operators face a worrying high chance of developing post-traumatic stress disorder. In fact, in 2015, Reaper squadron boss Wing Commander Damian Killeen told the BBC that staff operating drone aircraft in Iraq and Syria may be at greater risk of mental trauma.

While drone operators may be based in the UK, they are completing overseas missions. There is a popular image that operating a drone is like playing a video game, but those who serve say that that is simply not the case. One US drone operator is quoted as saying: “You are 18 inches away from 32-inch, high-definition combat, where you are in contact [by headset with] the guys on the ground... You are there. You are there. You fly with them, you support them and a person you are tasked with supporting gets engaged, hurt, possibly killed, it’s a deeply, deeply emotional event. It’s not detached. It’s not a video game. And it’s certainly not 8,000 miles away.”

For some, drone operation can be more traumatising than flying a conventional aircraft. As Commander Killeen says: “You’ve got that resolution where you know exactly what it is that’s on the other end of your crosshairs.”

Research by the US air force also suggests that those in the kill chain see more graphic violence than their special forces counterpart on the ground. On surveillance missions, they are more likely to see destroyed homes and villages, as well as witnessing dead bodies and human remains. One UAV pilot told the Daily Mirror: “The days are long and hard and can be mentally exhausting. And although UAV pilots are detached from the real battle, it can still be traumatic, especially if you are conducting after-action surveillance.

When you are piloting a UAV for hours, you feel part of the battle, even though you are thousands of miles away.”

The risk of post-traumatic stress disorder is also increased by the fact that, unlike personnel on the ground, who perhaps do a four-month tour, UAV operators often work year round, meaning less chance for a break and time to recover. Justin Bronk, a research fellow for airpower at the London-based Royal United Services Institute, said that fast jet crews were used to deploy on short tours abroad, but that drone operators switched daily between potentially lethal operations and family life, which could be “extremely draining and psychologically taxing”.

The psychological stress of drone warfare is visible in difficulties that the UK faces in recruitment and retention of those qualified to fly armed drones. During an appearance before the Public Accounts Committee in January, the Ministry of Defence permanent secretary said that for the Royal Air Force, the training and retraining of drone crews has “historically proven challenging”.

The effect that taking part in such machines has on UAV pilots mentally, despite their being physically further away from the action, merits their inclusion in the Bill. Only last week, in our evidence session, Clive Baldwin of Human Rights Watch said: “The idea of having one rule for overseas operations and one for domestic operations will be increasingly artificial.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 67, Q135.]

Drone operators may not be physically overseas, but they are very much taking part in overseas operations. With unmanned warfare looking like it will be more common in future conflicts, I would argue that failing to include those operations in the Bill may cause the Ministry of Defence service personnel issues down the line. The Government have said that they want the Bill to protect service personnel from repeated investigations and vexatious claims. Do those service personnel who operate UAVs not also deserve to be protected?

Given the increasing use of UAVs and RPAS, I would be deeply concerned were they not included in the Bill. If the Bill is to do as the Minister purports, surely, if we are to protect our service personnel, we want to include and protect those personnel who operate our drones.

Mr Jones: I thank my hon. Friend for introducing this amendment, which I assume is a probing one in order to have the debate. But, Mr Stringer, it was remiss of me not to say what a pleasure it is serve under your chairmanship, especially now we are both serial rebels on our Benches, after votes that took place this week on covid.

I do not like the word “drone”. It gives the sinister idea that somehow these things are indiscriminate weapons and there is no human in the chain. Unmanned aerial vehicle is a more appropriate term. I accept that, in the future, we may get to a system where unmanned aerial
vehicles or subsea systems are completely autonomous, but at the moment, we are talking about the human in the chain.

It is a common myth, mainly argued by those who are against the use of UAVs, that somehow there are no rules that govern how they are used. Nothing could be further from the truth. When I was a Minister in the Ministry of Defence, I met the individuals who pilot—that is the word we use—these unmanned systems in both Iraq and Afghanistan. They are in the same decision-making process and legal framework as if someone was dropping an ordinance from a Typhoon or any type of manned aircraft.

There is a chain of command, including a legal framework around their decisions. Before each individual airstrike takes place, there is a legal justification. That might come as a surprise to some people who want to portray the view that people are sat in Nevada or Waddington or Florida pressing buttons, attacking targets. Nothing could be further from the truth. There is a legal framework for each operation and that is supported by the legal service. It surprises some people that each strike has a legal sign-off, with lawyers who agree what can and cannot be done, including, as I know from my time in office, a chain that sometimes includes Ministers who have to agree to those sign-offs. There are many examples where Ministers have had sign-off.

Is what we are talking about pretty? No, it is not—but anyone who knows the battle space or any type of combat knows that it is not a pretty thing. Killing people is not something that anyone wants to do, but unmanned aerial vehicles have given a capability to us and our allies which has been of tremendous help, not only in saving UK and allies’ servicemen and women’s lives, but in saving civilian lives.

The chain of command is a legal framework. Do things go wrong? Yes, clearly they do, and not just in this theatre. Sometimes in a very complex battle scenario, no matter how well you plan for it, you cannot foresee every eventuality. What irritates me is that people sometimes look back at those situations with some sort of crystal ball and say, “Well, if I was there, I would have done X, Y and Z.”

**Jack Lopresti** (Filton and Bradley Stoke) (Con): On a point of information, and paying tribute to the right hon. Gentleman’s experience in the field, if a Minister signs off an operation and it goes wrong, does that mean that the Minister is legally culpable for the decision, or is it the operator operating the UAV or is it the people on the ground calling in the mission?

**Mr Jones**: I will come to that in a minute; it is an important point on the legal protection that is there for the people involved.

Things do go wrong. It is fine for people to look back and say, “Look, if that happened, I would have done this differently,” but that is just not how warfare takes place. Sometimes, there are critical decisions that have to be taken at short notice to protect civilians or protect our armed forces’ lives. At the end of the day, they are down to individual judgments, not only by the commanders who authorise things, but by the people we are asking to protect us as members of our armed forces.
board issues in relation to fully autonomous systems. Nevertheless, it should be recognised that fully autonomous systems will be with us sooner rather than later and that, in those systems, there is a human decision-making process that must be safeguarded. Artificial intelligence is artificial, requiring human instigation to create the algorithm to make the decision-making process, and we must keep that in mind as we recognise the need for and validity of securing protections.

Mr Jones: I agree. Again, some people writing or talking about this area are saying that somehow the human being has nothing to do with it. The hon. Gentleman is correct in that even if we get to having a futuristic system with fully autonomous vehicles and in-flight combat between various systems, swarms of drones and things like that, a decision will still need to be taken on how that system is used. That is an area where not just in the UK but internationally we will need to look at rules of engagement and the definition of an autonomous vehicle. There is increasingly a move towards autonomous vehicles. Look at the Team Tempest programme from BAE Systems and its partners and how that is going: there can be a pilot, but the design will not need a pilot, and that ain’t that far away—it is coming up fast.

It comes back to the decision-making process. The hon. Member for Filton and Bradley Stoke mentioned the chain of command issue. That goes to the heart of the Bill because of the importance of having the audit trail for who took which decisions. It is difficult for anyone in the chain of command to take a decision, from the person executing the mission on the ground right up to a Minister signing something off. That is not an easy process. Can things go wrong all the way through? Yes. However, I would argue that as long as a decision is underpinned by our legal processes right the way through to authorisation by a Minister to ensure that it is legally watertight, we should be okay. Mistakes will happen. What a lot of the public find strange is that in cells that deal with targeting, there are MOD or RAF lawyers sat there, saying, “I am sorry, you cannot do that.” It shocks people.

Unmanned aerial vehicles have got to the point where there is a bit of folklore when people make a decision. It is therefore important to ensure there is that legal framework. However, as I said, things will go wrong, and my hon. Friend the Member for Islwyn is trying in the amendment to consider what happens when things go wrong. Is somebody sat in RAF Waddington classed as being on overseas operations? That is a grey area that perhaps has not appeared yet in all these claims, but I think it will.

The evidence we have taken in the last few weeks has highlighted how, in many ways, this is an easier area to look at in terms of investigations because there is—there should be—that chain of decision making. However, it does get complicated when we are working with allies. I am confident that we have some of the most robust rules in terms of targeting and rules of engagement, but—how can I put this diplomatically?—I do not think it is the same for some of our allies, especially one of our closest allies. Could we argue that some of the examples I have seen in Afghanistan and Iraq were proportionate in the way they were conducted? I do not think they were. That has led to the idea that somehow we are the same.

Let us suppose we get to the situation where we have a legal challenge to somebody who has been sat in Waddington, has legitimately followed the legal advice and is something gone wrong. What happens? Are they classed as being on overseas operations? We should give them protection because they are not just following orders, but following the legal guidance that has been supplied to them as to why they are carrying out the mission. That is an area we need to look at.

It links to a broader point about what we deem to be overseas operations. Eminent lawyers will want to argue around the head of a pin about this, if we do not look at it. The other side is other operations. Increasingly we, as a nation, are not going into conflicts on our own, but with other nations. That leads to a situation where, on occasion, UK forces are not under the command of UK personnel, but those of other nations. I do not think people realise that.

Some nations have different interpretations of what is proportionate. How are they included, especially within—that misnomer—peacekeeping? Peacekeeping can be dangerous. I have visited parts of the world where peacekeeping is taking place that were far from peaceful, and were stressful for the individuals involved. Is that classed as an overseas operation?

When I was walking in this morning—I often think when I am walking—I was thinking that this gets to the definition of what an overseas operation is. If somebody were based at NATO headquarters in Brussels, would that be classed as an overseas operation? I am not suggesting they would be involved in a mission such as an airstrike or combat in Brussels, although perhaps they might be on a rowdy Friday or Saturday night in the Grand Place. Is that classed as an overseas operation for that individual? Those individuals are lone officers, but members of our armed forces are serving in ones and twos around the world, mentoring forces, doing a great job in defence diplomacy and ensuring that the high standards we have in this country are passed on to other nations.

My hon. Friend the Member for Islwyn talked about the UAV operators themselves. I have read a few studies about their mental health and the jury is out on evidence of increased PTSD and other things. It is a strange environment for individuals, as my hon. Friend said, because they are separated from the battle space, but they see and do some graphic and dangerous things. Having seen some of those videos, what happens is not pretty. The jury is still out on the issue of mental health effects and that is an area where we need more research, not just in this country but internationally. That links to part 2. If those individuals developed mental illness later, given the time limits set out in the Bill, would they be excluded or not? That is another area that we need to look at when we come to part 2.

Can we ever future-proof legislation? No. Politicians all think that we can see into the future as if with hindsight, but unfortunately we all know that most of our legislation is reactive to events. We can try to make it as future-proof as possible, however, and amendment 23, which I presume is a probing amendment, is really a way of asking whether the MOD and the people who have drawn up the Bill have thought about the area. Whether we like it or not, it will increasingly become a challenge not just for how we train people, but for how individuals are legally protected. Even if it cannot be
incorporated into the Bill, I would certainly like the Ministry of Defence to look not only at the training, but at what the legal status of those individuals will be. The amendment is welcome in allowing us to explore some of those areas; I hope that it will give MOD policy makers some food for thought on where we take this in the future.

10 am

The Minister for Defence People and Veterans (Johnny Mercer): It is a pleasure to serve under your chairmanship, Mr Stringer.

The principle is that part 1 should cover personnel in circumstances in which they may “come under attack or face the threat of attack or violent resistance” in the course of an overseas operation, as detailed in clause 1(6). When developing our policy, we considered whether we should extend the coverage of part 1 to include UK-based drone operators when the systems that they are operating are involved in operations outside the British islands. However, we determined that although the UK-based drone pilots would be considered part of an overseas operation, they could not be said to be at risk of personal attack or violence, or face the threat of attack or violence, as would be the case for an individual deployed in the theatre of operations. We therefore determined that as the personal threat circumstances would not arise in a UK-based role, the personnel in those roles would not warrant the additional protection provided by the measures in part 1. I therefore ask that the amendment be withdrawn.

Mr Jones: I see the logic of how the Bill is structured, and I accept that somebody sitting in Waddington is not going to be attacked by an enemy, but if the purpose of the Bill is to give them legal protection for their actions, they are not immune from being attacked in a legal process for something that they do on overseas operations.

Johnny Mercer: Some really important points have been made, particularly about mental health provision and the protection of those who operate these systems, but the Bill is clearly there to provide the additional protections that particularly apply to those who face the threat of violence and attack at the time, so I disagree on this point. I therefore ask that the amendment be withdrawn.

Martin Docherty-Hughes: I take on board what the Minister says, but we may disagree on an overall element of the Bill. It is the Overseas Operations Bill, and the persons we are speaking of are involved in an overseas operation. Surely the security given to those in the physicality of the arena of military activity should not be just about geography or about those who are physically participating in the overall operations.

Johnny Mercer: The clauses that deal with special consideration for the circumstances of what is going on at the time are there precisely to take account of the unique physical and mental demands of being in close combat; that is what they are designed for. To suggest that drone operators operating from UK shores would face the same pressures is not the same thing. I therefore ask that the amendment be withdrawn.

Chris Evans: This was a probing amendment. I am happy to withdraw it, but I hope that the Minister will revisit the matter as soon as we know more from research about the effects of post-traumatic stress disorder on drone operators and—as we move towards the integrated review—technology starts to dominate the battlefield. I hope that he will give a commitment that the MOD will revisit that in the near future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stephen Morgan (Portsmouth South) (Lab): I beg to move amendment 25, in clause 1, page 2, line 2, leave out “5” and insert “10”

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

Amendment 26, in clause 1, page 2, line 4, leave out “5” and insert “10”

Amendment 27, in clause 5, page 3, line 19, leave out “5” and insert “10”

Amendment 28, in clause 5, page 3, line 36, leave out “5” and insert “10”

New clause 8—Limitation of time for minor offences—

“(none) No proceedings shall be brought against any person in relation to a relevant offence, where—

(a) the condition set out in subsection 3 of section 1 is satisfied,

(b) the offence is subject to summary conviction only, or is one in the commission of which no serious, permanent or lasting psychological or physical injury has been caused, and

(c) a period of six months has passed from the time the offence was committed or discovered.”

This amendment would dispose of minor allegations of misconduct by imposing a time limit similar to that which exists in relation to summary only matters in Magistrates’ Courts.

Stephen Morgan: It is a pleasure to serve under your chairmanship, Mr Stringer. I start by thanking you for the way you have skilfully conducted proceedings through this Committee stage so far. Your skill and guidance have allowed the Committee to provide the proper scrutiny that we all agree that all legislation passing through this House is due, and allowed proceedings to be conducted in an orderly and timely manner. I also thank the Clerks and wider support teams for their support in allowing proceedings to run as smoothly as possible. This period presents particular challenges, including allowing witnesses to provide evidence by video link. The entire Committee will join me in thanking them for their important work.

This is the first time I have led a Bill through Committee, and also, as I understand it, the Minister’s. However, this is by no means the first time that you have been Chair of a Bill Committee, Mr Stringer. As I understand it, it was the Digital Economy Bill back in 2016 that was first chaired by your good self in Committee, four years ago, almost to the day. It would be fair to say that a lot has changed in those four years and I am sure that I speak for the entire membership of the Committee when I say that we are in safe hands with your experience and guidance. I also thank my right hon. Friend the
Member for North Durham for his contributions, as well as my hon. Friends the Members for Islwyn, for South Shields and for Blaydon.

Before we progress, I want to take the opportunity to outline our concerns about the Bill once again. The Government still have an opportunity to fix the Bill and get it right. Unfortunately, the Bill does not focus on the root causes of the terrible stresses experienced by our armed forces personnel and their families. The Government should focus on what can be done to reduce the length and regular occurrence of investigations for vexatious claims faced by our armed forces personnel, not prosecutions. In addition, as we heard from a wide variety of witnesses last week, the Bill does not protect our armed forces personnel; it protects the MOD. As we heard last week, the introduction of a six-year time limit against armed forces personnel making civil claims puts them at a distinct disadvantage to civilians.

Crucially, the Bill also risks breaching the armed forces covenant. I repeat: there is still time for the Government to fix this and get the Bill right. As we have said at every stage, we will work constructively with the Government to improve the Bill. That is why the Opposition have also tabled vital amendments, including the requirement for the Government to commission and publish an independent evaluation of service personnel access to both legal advice and legal aid in relation to legal, civil and criminal proceedings covered by the Bill's provisions. I hope the Government will listen to the points raised in Committee and work with us to protect our troops and get the Bill right.

The Chair: Order. I have allowed the hon. Gentleman to continue, not because he started with those kind words about me, but because it is the start of the Bill and the hon. Gentleman is new to the position. The amendment is tightly drawn around five and 10 years, so I will from now on be quite strict about focusing on what the actual amendment is, and not moving out of scope.

Stephen Morgan: Thank you, Mr Stringer, I was about to get to the point around our amendment.

Part 1 sets a five-year limit on the prosecution of current or former armed forces personnel for alleged offences committed in the course of duty while overseas, save for exceptional circumstances. That would mean that the Bill would halve the timeframe initially envisaged for the prosecution of offences.

The Government's consultation originally proposed a 10-year deadline, which would have meant that operations in Afghanistan, which ended in 2014, fell outside the time limit unless the circumstances for prosecuting any new alleged offences were deemed exceptional. That raises questions about the Government's reasons, and about the evidence or advice that they received, for changing the deadline to five years. Why not six or seven years? Five years seems to be an arbitrary figure, with no clear evidence for why that timeframe has been selected. Will the Minister provide the evidence behind the selection of that specific timeframe?

According to written evidence shared by the charity Reprieve, even countries such as France and the US, which operate statutes of limitation for criminal offences, have never introduced provisions that give military personnel special status in criminal law. Why are we deviating from the international standards that we share with our security partners, which risks undermining our international reputation? That is not the global Britain that the country was promised by the Government during the last election.

In 2020, the Judge Advocate General for the armed forces—the most senior ranking military judge—said that creating a five-year limit on prosecutions would be a damaging signal for Britain to send to the world, and would be a stain on the country's reputation if Britain were perceived as reluctant to act in accordance with long-standing international law. What was the Government's reasoning for ignoring such an important figure who was raising serious concerns about the Bill's five-year limit on prosecutions?

The Government also seem determined to ignore those very same concerns when they are raised by the Defence Committee. In July 2020, the Chair of that Committee sent a letter to the Secretary of State to reiterate concerns that to protect “serving personnel and veterans against vexatious claims or unnecessary investigations and prosecutions”, the Bill “may not be an effective way of achieving those aims.”

In that letter, the Chair also posed a further set of questions about the decision to reduce to five years the initial prosecution cut-off of 10 years.

The Labour party is determined to stop vexatious claims made against armed forces personnel, which cause them and their families truly heartbreaking stress, but as last week's evidence sessions made clear, the parts of the Bill that intend to remedy that contain logical flaws. Furthermore, the Minister himself has said that one of the biggest problems was the Ministry's inability to investigate itself properly, as well as the standard of those investigations. If those investigations were done properly with self-regulation, we would probably not be in Committee today. I ask the Minister: why does the Bill not deal with those investigatory issues that he has identified?

Clive Baldwin, the senior legal adviser at Human Rights Watch, has suggested that the Bill would “greatly increase the risk that British soldiers who commit serious crimes will avoid justice”;

that “the presumptive time-limit of five years...will encourage a culture of delay and cover-up of criminal investigations”;

and that, in turn, it would increase the risk of the International Criminal Court considering bringing its own prosecutions.

As I have said, there is still time to change the Bill, to focus on the issues that need addressing, and to get it right. That means focusing on legislation that will stop the sad cases that we have heard time and again about our troops undergoing drawn-out investigations, only for the decision to be made against prosecution. That is what needs fixing and it is where the Government's focus should be.

In last week's evidence sessions, we repeatedly heard the same concerns from a wide range of witnesses. Hilary Meredith, of Hilary Meredith Solicitors, said that she was against any cut-off. She went on: “I think the reason why the cases became historic is not the date of the accusation—any of the criminal accusations under human rights law, for example, came within 12 months of the incident...
Stephen Morgan: I thank my right hon. Friend for that remark. It is very clear that the Bill in its current form will not help that case if that is repeated ever again.

The Government have let us down on the Bill. It is becoming ever clearer in Committee not only that it fails to fix the problems that it intends to fix, but that the Government have failed in the due diligence for our armed forces personnel and their families that they deserve. The Government should be developing legislation by properly conducting consultation, analysis and identifying the best way to deal with the issues at hand.

Sadly, it seems that the Government are inclined to make policy on the hoof. It is exactly this failure to identify the root causes of the issues that our armed forces personnel face that has been continually highlighted in Committee. As Professor Richard Ekins, head of the judicial power project at the Policy Exchange, highlighted in evidence last week:

“It certainly does not stop investigations. In fact, if one were to make a criticism of the Bill, one might say that it places no obstacle on continuing investigations, which might be thought to be one of the main mischiefs motivating of the Bill”.—[Official Report, Overseas Operations (Military Personnel and Veterans) Bill, 6 October 2020; c. 31, Q60.]

We also heard from Major Bob Campbell about the unimaginable stresses he faced in a 17-year investigation that eventually did not lead to prosecution. I know the entire Committee will join me in thanking him for his service and offering our condolences for the terrible process he has been put through. Once again, we heard that the Bill does not deal with the key problem of addressing investigations. The specific case of Major Bob Campbell would not be covered by the Bill.

Last week, Dr Jonathan Morgan also stated that Major Bob Campbell’s case would not have been addressed by these proposals. He was prosecuted in 2006 in connection with an alleged offence in 2003, which would have been within the five-year period for bringing a prosecution. It is only in 2020, after 17 years, that he has finally been cleared. Several hon. Members made the point on Second Reading that perhaps the real vice is not so much late prosecutions but the continued investigations by the Ministry of Defence, without necessarily leading to a criminal prosecution at all.

If I have understood the facts of Major Campbell’s case, it rather shows that a five-year soft cut-off for prosecutions will not solve that kind of problem at all. Are the Government really prepared to abandon decorated armed services personnel like Major Bob Campbell? Is that really what the Government have set out to achieve?

In summary, I hope that the Government will listen to the points raised here—including the extensive evidence that we have heard that the five-year limit is at best arbitrary—refocus the Bill on dealing with investigations, not just prosecutions, and work with us to protect our troops and get this Bill right.

I ask the Minister, what evidence or advice have the Government received to change the deadline to five years? Why not six or seven? I ask the Minister to provide evidence on why that specific timeframe was selected. Are the Government really prepared to abandon decorated armed services personnel like Major Bob Campbell? Is that really what the Government have set out to achieve? Why does the Bill not deal with the issues in investigations that the Minister has identified? What is the Government’s reasoning for ignoring the
Judge Advocate General in this Bill, raising serious concerns about the problems he raised about the five-year limit on prosecutions?

Mr Jones: Are we dealing with the group together, including my new clause 8?

The Chair: We are dealing with new clause 8 and amendments 26, 27 and 28.

Mr Jones: Thank you for that clarification, Mr Stringer. With new clauses 8, 6 and 7 we come to the issue of investigation. We will discuss new clauses 6 and 7 later. The new clauses put forward by my hon. Friend the Member for Portsmouth South get to the heart of the issue, which has come out in the evidence we have taken over the past few weeks. This Bill puts the cart before the horse. It deals with prosecutions rather than the real issue, which is investigations.

I find that odd. Who was consulted on drafting this Bill? We heard evidence last week that Judge Blackett was not consulted on this Bill, so who drafted it? Anyone looking at the Iraq Historic Allegations Team or the testimony given last week by Major Bob Campbell can see that the issue is investigation. It would interesting to hear the reasons why the limit has gone from 10 years, as recommended in the consultation, down to five.

Personally, I do not agree with the time limit, for the reasons that my hon. Friend has just outlined. It will give no protection to those veterans of the most recent conflicts in Afghanistan and Iraq, whom this Bill seems to be focused on, nor will it give protection to veterans in the future, because investigation will still take place from that five-year period. Are they traumatic? I think they must be.

I agree with my hon. Friend, and I pay huge tribute to Major Bob Campbell for his evidence last week, because it must have been very difficult for him. Consider the idea that any of us would have something hanging over us for 17 years. If it was a minor offence, it would be bad enough, but he was accused of horrendous crimes for 17 years, and investigated time and again for the same thing. I cannot imagine how that felt for him as an individual.

What is proposed will not stop investigations. It is clear to me that if we have limitations as outlined in the Bill, we will get cases that go to the International Criminal Court. Its investigations will take into account the lack of action, because there is a five-year limit. We will come later to the presumption of prosecution, which is another huge problem. Do I actually want our servicemen and women to end up in the International Criminal Court? No, I do not. I think it is proud testimony not only to the professionals in our armed forces, but to our legal system and what we have had so far, that we have avoided that because of our robust legal system and the oversight of our military justice system.

The problem with the Bill—the Minister gave this away in his ill-advised winding up on Second Reading—is that it implies that people are either in favour of our brave armed forces or in favour of ambulance-chasing lawyers. As I said on Second Reading, my record of supporting defence and the armed forces speaks for itself. My attacks on ambulance-chasing solicitors, through my work on the miners’ compensation scheme and the formation of the sister regulation body—taking it away from the law side—also speak for themselves. What we need over the Bill is a legal framework that is there not just because it is nice to have, but because society needs a framework that protects individuals—not just individual civilians, but members of our armed forces. As one witness said last week about the unique situation for members of the armed forces, they have few enough rights, and recourse to the law is important. In terms of our standing in the world, we are rightly proud that we have been a beacon of being able to portray good practice both in law and in other areas.

New clause 8 is about how we try to stop the cycle of investigation. As I say, I am just surprised that when the Bill was being drafted, no one thought, “Let’s look at what the problem is.” It is around investigation and the time it takes. Various arguments have been about why investigations have taken so long. Is it a lack of resources? It possibly is in some cases. Has it been the issue around Iraq and Afghanistan? Are we now in a different political climate? Yes, we are. When I was a Minister in the Ministry of Defence, when we were in Iraq and Afghanistan, the will to ensure that accusations were investigated came from all sides. It was not just from the liberal wing of Liberty and others; it was from Conservative Members as well. Mistakes were made.

Not having the issue of investigation in the Bill—

The Chair: Order. I have been listening carefully to the right hon. Member. The amendments are very tightly drawn. New clause 8 is about the limitation on time for minor offences. I do not want to restrict the debate, but I do want to focus on what the amendments are, rather than wandering all the way through the Bill. If the right hon. Member focused on the new clause and the three amendments that were debating, that would be helpful.

Mr Jones: I accept your ruling, Mr Stringer. New clause 8 is around investigation.

The Chair: For minor offences.

Mr Jones: Yes. I will come back to the new clauses later.

Some serious accusations were made in the IHAT and Northmoor investigations. They took so long because some were very complicated, but some were very minor. The more we can speed up the system for the accused and the quicker it is dealt with, the better. It will be better for armed service personnel, and better for confidence in our system. New clause 8 tries to get a system that deals with minor cases and does not lead to endless investigations into things that really should be dealt with in the first instance.

New clause 8 argues that minor offences should be dealt with through a summary process, which Judge Blackett referred to last week and through which the magistrates court system already deals with cases. One thing that is missing in the entire Bill, which would give us confidence in it, is judicial oversight of the reasons why things are done. That is important. New clause 8 would empower prosecutors to place a six-month time limit on summary matters.

10.30 am

Martin Docherty-Hughes: In reality, the right hon. Gentleman wants to remove bureaucracy because justice
delayed is justice denied, whether someone is the accuser or the accused. His new clause seeks clarity for minor offences.

Mr Jones: It is clarity for the individuals, so that they can be dealt with swiftly. If Judge Blackett had been consulted on this Bill, that might have been included.

I will not try your patience, Mr Stringer, because I might need it when I come to new clauses 6 and 7 on the broader issues around investigation, which I notice the MOD is now moving on and possibly recognising that it has missed a trick in the Bill. The new clause would give the court powers. We are not talking about serious offences or common assault. We did a similar thing in the Armed Forces Act 2006. We gave commanding officers the powers to deal with minor offences, because the old system was taking an inordinate amount of time to deal with them. We are basically setting up a de minimis case. As the hon. Gentleman just said, it would deal with the bureaucracy and make sure that we concentrate on the most serious offences.

People might say, “How does this get into ambulance-chasing solicitors?” With IHA T and Northmoor, some of the cases put forward were to do with such things as slaps and assaults, which would actually meet this criteria. Why did it take years to investigate whether somebody was slapped if it was on a Saturday night in a pub and classed as a common assault? Why did it take years to investigate or in some cases re-investigate? We could argue that it happened in Iraq or Afghanistan or somewhere else and it might be more difficult to gather evidence and witnesses, but it should not be beyond the wit of the legal system to look at the evidence initially and say, “To be honest, the threshold for this would not be very high.” Why were they brought? We know: in some cases, clearly, Phil Shiner was trying to get some compensation out of an alleged fault, but the pressure was put on those individuals who were accused of things that were minor and would have been dealt with normally. The new clause frees up the criminal justice system and the investigators to concentrate on the things that we want to concentrate on, which are the more serious cases.

Would that protect our armed forces? Yes, I think it would, because we would have a sense of fairness for them—they would be getting speedy justice, they would not go through reinvestigation and they would not have to wait an inordinate length of time for things dealt with as a matter of course in a magistrate’s court. It is a way to give protection to servicemen and women, while also—as the hon. Member for West Dunbartonshire said—making the system more effective.

The important thing, however, is the judicial oversight—this is not just deciding to stop prosecution; the evidence is looked at, the de minimis test is applied and only then would that be ended. That would be a huge improvement. The Minister said he was looking for improvement of the Bill and, to me, this is an obvious way to do it.

Johnny Mercer: Amendments 25 to 28 seek to change the time at which the presumption comes into effect from five to 10 years. The proposal in the public consultation that we ran last year was for a 10-year timeframe for the statutory presumption. It was not fixed policy, because we were seeking the public’s views.

In the consultation, we asked the following questions: whether 10 years was appropriate as a qualifying time, and whether the measure should apply regardless of how long ago the relevant events occurred. As we set out in our published response to the consultation, there was support for a 10-year timeframe, but equally there was support for presumption to apply without a timeframe at all. We also considered the written responses, which clearly indicated the concerns that a 10-year timeframe was too long—memories can fade, evidence tends to deteriorate and the context of events changes. There were also concerns that 10 years was too long to have the threat of prosecution hanging over a serviceperson’s head.

Respondents suggested time periods of less than 10 years, with the most popular timeframe being five years. As the issue that we seek to address relates to historical alleged offences, we did not feel able to apply the presumption without a timeframe. However, given the strength of the views expressed, we felt that a timeframe of less than 10 years would be more appropriate, and five years was the most popular alternative.

Mr Jones: Will the Minister say what the numbers were for the responses to the consultation? What was the basic divide between those who wanted 10 years and those who wanted none or five years?

Johnny Mercer: I am more than happy to write to the right hon. Gentleman with the exact responses. They are in the House of Commons Library, in the impact assessment. The numbers were clear, and I have just outlined the general findings—[Interruption.] I will not give way again. Some people want 10 years and some five years—

Mr Jones: It is not in your notes.

The Chair: Order. Continue, Minister.

Johnny Mercer: Thank you, Mr Stringer.

New clause 8 seeks to limit to six months the period between an offence being committed or discovered and any proceedings being brought, where a number of conditions can be satisfied. First, the offence must be a relevant offence, committed on overseas operations by a serviceperson. Importantly, the bar to proceedings only applies if the offence being prosecuted is subject to summary conviction only, or is one where no serious, permanent or lasting psychological or physical injury has been caused.

During an investigation, it is not always clear what the charge will be, but this is made harder for investigations on overseas operations where the injured person is a local national. It will not always be possible to get information regarding the incident, or on the permanence or lasting nature of an injury, in the timeframe demanded by the amendment.

Investigations on overseas operations inevitably rely to some degree on actions by others in theatre. Delays in such investigations are a fact of the operational environment and placing a time limit on investigations runs the risk that others may be able to affect the outcome of a service police investigation. The service police cannot have any barriers placed in the way that fetter their investigative decision making. A time limit in these circumstances would do just that.
Even the most minor offences take on a greater significance in an operational environment. A minor offence is not necessarily a simple matter that could be dealt with quickly by a commanding officer. Placing a barrier in the way of investigations for minor offences does not take account of the disproportionate effect of poor discipline directed towards local nationals in an operational setting.

The amendment is modelled on the provisions that exist in relation to summary-only matters in the Magistrates’ Courts Act 1980. That is where the problem lies. That Act codifies the procedures applicable in the magistrates courts of England and Wales. It is not legislation written to accommodate the extraordinary demands made of a system operating in an operational context.

Mr Jones: Will the Minister give way on that point?

Johnny Mercer: I will not give way.

Delays are inevitable and applying civilian standards to an operational context is inappropriate. If this is something that might be considered for the service justice system, it would seem more appropriate for an armed forces Bill, but with an exemption to account—

Mr Jones: On a point of order, Mr Stringer. This is a very strange Committee. Basically, the Minister is reading his civil service brief into the record, rather than actually answering the points. It is going to be very difficult to scrutinise the Bill properly if he will not take interventions, even though I accept he might be at a disadvantage if it is not in his briefing notes.

The Chair: The right hon. Gentleman knows that is not a point of order. The Minister is entitled to give way as he chooses.

Johnny Mercer: If this measure is something that might be considered for the service justice system, it would be more appropriate for an armed forces Bill, but with an exemption to account for the complexity of overseas operations. This Bill is not the correct legislative vehicle for the measure. I therefore ask that the amendment be withdrawn.

Mr Jones: I just find this remarkable, Mr Stringer. We have a Minister who has come in here to read his civil service brief into the record. He is not taking account of anything that is being said, by myself or by other hon. Members. When he wants to be questioned on it, he will not take interventions. It is a strange way of doing this. He possibly thinks that doing a Committee is just about reading the civil service brief the night before and then reading it into the record. I am sorry, but that is not how we do scrutiny in this House.

With regard to the Minister’s comment that this measure would be more appropriate in an armed forces Bill, that may well be the case, but he has an opportunity to put it in here. He can sit there and smile but, frankly, he is doing himself no favours. He has said that he wants co-operation on the Bill, but he is doing nothing. He is going to try to plough through with what he has got, irrespective of whether it damages our armed forces personnel. That makes me very angry.

The Minister said that the Magistrates’ Court Act provisions would not cross over to this Bill. We could draw up a protocol around that, which would fit in the Bill. If the Bill is supposed to be the all-singing, all-dancing, huge protection that we are going to give to our servicemen and servicewomen, then that should have been in the Bill.

Martin Docherty-Hughes: Does the right hon. Gentleman recognise that the ranks, as opposed to the chain of command, would be best served by an acceptance of the new clause, because it gives clarity and allows them to move forward on those cases, within the elements that he has discussed?

10.45 am

Mr Jones: It does. There is an argument, which some members of the Committee are trying to make, that it is the ranks versus the seniors, but this is designed to protect the ranks.

The Minister says that it would be more appropriate to have this in an armed forces Bill. If that is the case, why was this Bill not held over until next year, when we could incorporate all of this into an armed forces Bill? Having sat on nearly every single armed forces Bill over the past 20 years, I know that there are things in this Bill that would be able to fit into an armed forces Bill. We know that the reason it is in this Bill is because it was a political stunt—it is more about politics than about what it is supposed to do.

New clause 8 should be incorporated in this Bill, because it would get to the root cause, which we discussed last week and which people have continually commented on: namely, that the Bill does not look at investigations. If the Minister got off his phone and listened, he might be able to get to a situation where, after reflecting on this, the Government may well look at how they can codify this and put it into the Bill, because it would then be stronger. As has been said, we want to protect, and that is what we are supposed to be doing with the Bill.

The Chair: Does the right hon. Gentleman wish to press the amendment to a vote?

Mr Jones: Yes, I do.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 1]

AYES

Docherty-Hughes, Martin
Evans, Chris
Jones, rh Mr Kevan

Lewell-Buck, Mrs Emma
Morgan, Stephen
Twist, Liz

NOES

Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo

Eastwood, Mark
Gibson, Peter
Lopresti, Jack
Mercer, Johnny
Morrissey, Joy

Question accordingly negatived.
The Chair: With this it will be convenient to discuss the following:

Amendment 2, in clause 3, page 2, line 33, at end insert—
“(ba) the thoroughness, promptness and efficacy of any ongoing investigation into the alleged conduct or any relevant previous investigation, and the reasons for any delays in such investigations.”

This amendment would ensure that the adequacy of any investigative process to date is given particular weight by a relevant prosecutor.

Amendment 56, in clause 3, page 2, line 33, at end insert—
“(ba) the quality and duration of relevant investigations.”

This amendment would require prosecutors to give weight to the quality and duration of relevant investigations when deciding whether to bring or continue proceedings against a person relating to alleged conduct during overseas operations.

New clause 6—Judicial oversight of investigations—
“(1) This section applies to any investigation by a police force into alleged conduct as described in subsection 3 of section 1.

(2) The police force investigating the conduct must place their preliminary findings before an allocated judge advocate as soon as possible, but no later than 6 months after the alleged offence was brought to their attention.

(3) The judge advocate shall have the power to determine—

(a) that no serious, permanent or lasting psychological or physical injury has been caused; and order that the investigation should cease;

(b) that the evidence is of a tenuous character because of weakness or vagueness or because of inconsistencies with other evidence, and that it is not in the interests of justice to continue an investigation; and order that the investigation should cease; or

(c) that there is merit in the complaint; and make directions as to the timetable and extent of further investigation.”

This amendment would set a timetable for police investigations into alleged conduct during overseas operations, to ensure they are as short as possible and provide an opportunity for a judge to stop an unmeritorious or vexatious investigation early.

New clause 7—Limitation on reinvestigation—
“(1) This section applies where—

(a) a person has been acquitted of an offence relating to conduct on overseas operations, or

(b) a determination has been made that an investigation into an offence relating to such conduct should cease under section (Judicial oversight of investigations).

(2) No further investigation into the alleged conduct shall be commenced unless—

(a) compelling new evidence has become available, and

(b) an allocated judge advocate determines that the totality of the evidence against the accused is sufficiently strong that there is a real possibility that it would support a conviction.”

Martin Docherty-Hughes: I rise to speak to the amendment for a very specific reason. It concerns the word “alleged” in the Bill. The Government, in bringing forward the Bill, have sought to provide clarity to members of the armed forces and veterans against some elements of the legal profession, which is the constant narrative during our debates—although, I have to say that there are many members of the legal profession who are not only members of the armed forces, but veterans too. We need to be very much aware of the rule of law.

The clarity that I and my party require, which is why we have tabled this amendment, is to remove that word “alleged”, because it causes ambiguity, whereas I think the Government’s intention in introducing the Bill is to give clarity. Whether or not I disagree with various parts of it, if not the vast majority, we are seeking to work here in a coherent and collegiate fashion, because I think that, not only for the accused but for the accuser, we need to be clear about the point at which we start, which is the day on which the first investigation takes place.

The word “alleged” creates ambiguity in the law and ambiguity for members of the armed forces and veterans, which is why we have brought forward this specific amendment.

Johnny Mercer: Mr Stringer, do you want me to speak only to amendment 14?

The Chair: I want to give you the opportunity to comment on amendment 14 and the associated amendments and new clauses.

Johnny Mercer: The other associated amendments as well?

The Chair: Yes.

Johnny Mercer: I thought so.

Mr Jones: Mr Stringer, are you going to move the other clauses? Are you taking them as a group?

The Chair: What is being debated is amendment 14 to clause 1. We are also debating amendments 2 and 56, and new clauses 6 and 7. If hon. Members wish to vote at the end, we will vote on amendment 14. However, it is in order to discuss the other amendments and new clauses.

Johnny Mercer: One of the main purposes of introducing the presumption against prosecution is to provide greater certainty for veterans in relation to the threat of repeat investigations and the possible prosecution for events that happened many years ago. Amendment 14 would undermine that objective by extending the starting point for the presumption and, in some cases, creating even more uncertainty. However, I want to reassure Members that the presumption measure is not an attempt to cover up past events as it does not prevent an investigation to credible allegations of wrongdoing in the past, and neither does it prevent the independent prosecutor from determining that a case should go forward to prosecution.

Martin Docherty-Hughes: Does the Minister not accept that the very word “alleged” creates ambiguity within the law and, if anything, creates a barrier? Our amendment would give the clarity that he and his Government are seeking.

Johnny Mercer: I do not accept that. The wording about the “alleged conduct” is clear. We have dealt with a number of allegations: 3,500 from the Iraq Historical Allegations Team alone, and another 1,000 from Afghanistan. They are alleged offences and it is right to leave those in there. I request that the amendment be withdrawn.
Martin Docherty-Hughes: I will not be withdrawing the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 2]

AYES
Docherty-Hughes, Martin
Evans, Chris
Jones, rh Mr Kevan

NOES
Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo

Question accordingly negatived.

Liz Twist (Blaydon) (Lab): On a point of order, Mr Stringer. I would be grateful for your clarification on the next steps. I understood that that was taken as a group, but will we be moving now to the other amendments in the group and asking for them to be moved?

The Chair: The opportunity to debate the other amendments in this group has gone; that went when that debate finished. We can now, if hon. Members wish, vote on amendment 26, and then we will come to clause stand part. If I can help the hon. Lady, if I wish, vote on amendment 26, and then we will come to that debate finished. We can now, if hon. Members want to vote on amendment 26, and then we will have a clause stand part debate on clause 1. However, the opportunity to debate amendment 26 has not been exhausted, we can have that. You are absolutely right that we will vote later on new clauses, but the opportunity to debate them was then, when I read out the list.

Liz Twist: Further to that point of order, Mr Stringer. I do not wish to be difficult in any way, and of course I respect your ruling, but I think there was some misunderstanding at the start about exactly what we were doing. You certainly did say that we were taking these amendments, but I think we were expecting the sequence of people to be able to move them. I wonder whether there is any way that we can resolve that issue so that these amendments can be moved.

The Chair: I accept that there is a misunderstanding, but the statements were read out clearly from the Chair about what we were debating at the start. The opportunity to debate them was not taken. I cannot think of any way to debate them now. However, I will take the Clerk’s advice later and see whether there is a way.

Mr Jones rose—

The Chair: I take no further points of order on the matter at this time. Clearly, people have not taken the opportunity to debate the matter. That is unfortunate. I will take the Clerk’s advice to see whether there is any way of doing that, but I cannot think of any way at the present time, because we have passed it. We have now moved on to amendment 26. Does Stephen Morgan wish to move amendment 26 formally?

Stephen Morgan: I do wish to move it.

The Chair: I am asking whether the hon. Gentleman wants to vote on the amendment.

Mrs Emma Lewell-Buck (South Shields) (Lab): On a point of order, Mr Stringer. I was under the impression that we voted on amendment 26 as part of the first grouping.

The Chair: We did not. We debated it. There is a difference between debates on amendments grouped together because they are related and the order in which decisions are taken.

11 am

Leo Docherty (Aldershot) (Con): May I ask a question, Mr Stringer? Is it therefore the case that we move now to clause 2?

The Chair: No. We have to get through the amendments, and then there will be a clause stand part debate on clause 1. We have to agree to clause 1, as amended or not, before moving on to the amendments to clause 2. By the start of this afternoon’s session, which I will chair, I will have clarified with the Clerk whether it is possible to come back to this, because the hon. Member for Blaydon says that there has been a genuine misunderstanding.

If hon. Members will take their place, the Clerk tells me that the issues raised in the amendments and the new clause can be raised in the clause stand part debate on clause 1. If that is not clear to hon. Members, now is the time to ask a question.
Mr Jones: It is clear, but I asked the Chair, when he was taking that group of amendments, whether I could move my new clause. I will not go over that. It was strange to me, because I have been here long enough to know that when amendments and new clauses are grouped, they can actually be moved. I did ask the Chair, but I was not allowed to do that.

The Chair: If the right hon. Member will take his seat, I had already told the Committee what was being debated. There was clearly a misunderstanding. We are going to resolve that issue, and then we can have the clause stand part debate. For clarity, amendment 26 has been moved formally. Does the Front-Bench spokesperson wish to put it to a vote.

Stephen Morgan: Yes, I wish to put that to a vote. Amendment proposed: 26, in clause 1, page 2, line 4, leave out “5” and insert “10”.—[Stephen Morgan.]

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 3]

AYES

Docherty-Hughes, Martin
Evans, Chris
Jones, rh Mr Kevan
Lewell-Buck, Mrs Emma
Morgan, Stephen
Twist, Liz

NOES

Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo
Eastwood, Mark
Gibson, Peter
Lopresti, Jack
Mercer, Johnny
Morrissey, Joy

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Chair: Does the Minister wish to say something generally about clause 1? If not, I will open it up to the floor so that the amendments in the previous group, or any other issue relating to the clause, can be debated.

Johnny Mercer: Not at this stage, Mr Stringer.

Mr Jones: I say again what a pleasure it is to serve under your chairmanship, Mr Stringer.

On clause 1, we heard last week that one problem the Bill does not address relates to investigations. If that had been included, the Bill would be more effective in stopping the unfair distress of individuals. We heard from Major Campbell, who was quite graphic about his 17 years of investigations. The clause is clear about trying to clear up the system and we have heard about the system being made more efficient, which would not only ensure that armed forces personnel get a fair hearing but speed up the processes where they face distress.

It is not surprising that investigations are not being considered. Let us look at General Nick Parker’s evidence last week. I know him well—he has had a distinguished career—and I certainly know his son, who was injured in Afghanistan. Those of us on the Opposition Benches might say, “It’s yet another general rather than a squaddie,” but I have a huge amount of respect for him. He not only has the Army running through his veins but stands in for the armed forces and the men and women who served under him, having their best interests at heart.

He would be supportive of any legislation or anything done to try to improve their lot. Having had a few heated arguments with him over the years—he is no shrinking violet—I know that if he thought the Bill was perfect or would improve things, he would say that. What he says about investigations is therefore important.

He said: “On the effectiveness side, it appears as if part 1 of the Bill focuses entirely on the process of prosecution, whereas for me the big issue here is the process of investigation and, critically in that process, ensuring that the chain of command is deeply connected with what goes on from the very outset.” I do not think there is any serviceman or woman who would not accept that bad behaviour on the frontline must be treated quickly and efficiently. Nobody would want anything in the process that somehow allows people who have behaved badly on the frontline to get away with it. But all of us would believe that the process has to be quick, efficient and effective to remove the suspicion of a malicious allegation as quickly as possible. I cannot see how this Bill does that.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Bill Public Bill Committee, 8 October 2020; c. 94, Q188.]

The Minister referred to next year’s armed forces Bill as being appropriate for that, but I am aghast. If this Bill is supposed to be the Rolls-Royce legislation to protect our servicemen and women, why on earth does it not include investigation?

I note that, ironically, since we took evidence, a written ministerial statement was made yesterday in which the Defence Secretary announced that investigations will be looked at. He said:

“The Overseas Operations (Service Personnel and Veterans) Bill currently before this House will provide reassurance to service personnel that we have taken steps to help protect them from the threat of repeated investigations and potential prosecution in connection with historical operations...However, we are also clear that there should be timely consideration of serious and credible allegations and, where appropriate, a swift and effective investigation followed by prosecution, if warranted. In the rare cases of real wrongdoing, the culprits should be swiftly and appropriately dealt with. In doing so, this will provide greater certainty to all parties that the justice system processes will deliver an appropriate outcome without undue delay.”—[Official Report, 13 October 2020, Vol. 682, c. 9WS.]

Even the Defence Secretary recognises that one of the issues is the length of investigations. Could I disagree with any of what he said? No. As I said in speaking to new clause 8, the issue is effectiveness in making sure not only that the service is protected from malicious allegations, but that individuals are. We must always think about that, because at the end of the day the individual is important.

The Defence Secretary’s statement goes on to say: “I am therefore commissioning a review so that we can be sure that, for those complex and serious allegations of wrongdoing against UK forces which occur overseas on operations, we have the most up to date and future-proof framework, skills and processes in place and can make improvements where necessary. The review will be judge-led and forward looking and, whilst drawing on insights from the handling of allegations from recent operations, will not seek to reconsider past investigative or prosecutorial decisions or reopen historical cases. It will consider processes in the service police and Service Prosecuting Authority as well as considering the extent to which such investigations are hampered by potential barriers in the armed forces, for example, cultural issues or operational processes.”—[Official Report, 13 October 2020, Vol. 682, c. 9WS.]
Mrs Lewell-Buck: Is my right hon. Friend a little concerned about the Secretary of State’s comments, as I am? If indeed those comments are true and that is the intention, why has the Minister not tabled amendments today to address that issue?

Mr Jones: My hon. Friend makes a very good point. We were told, although I do not believe it, that the Government wanted to improve the Bill and would consider amendments. I accept that Opposition amendments are not always properly drafted to fit into a Bill, but it is quite common for the Government to say that they will look at an amendment and change it, but put the spirit of it into a Bill. There is an opportunity to do that now, but unfortunately we have a Minister who clearly just wants to say, “No, we will get the Bill through as drafted, and that’s it,” which is contrary to his statements about trying to work together with people. There is an opportunity to do that now and I do not understand why we cannot do it, as my hon. Friend says.

The Defence Secretary’s statement goes on to say: “A key part of the review will be its recommendations for any necessary improvements. It will seek to build upon and not reopen the recommendations of the service justice system review.”—[Official Report, 13 October 2020; Vol. 682, c. 9WS.]

Martin Docherty-Hughes: On the justice system review and its relationship to the Bill, in answer to a question from my hon. Friend the Member for Glasgow North West last week about Major Campbell’s 17 years of dreadful investigation, General Sir Nick Parker said: “That will not happen if you have a credible system that investigates and you address some of the cultural issues in the chain of command by making it genuinely accountable for what is happening.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Bill Public Bill Committee, 8 October 2020; c. 98, Q201.]

Does the right hon. Gentleman agree that the Bill does absolutely none of that?

Mr Jones: It does not. If somebody like Nick Parker is saying that, we need to take it seriously. As for how the Bill has been born, I would love to know who is claiming paternity for it, because a lot of people seem to have been excluded—certainly the Judge Advocate General has. I would have thought he was the obvious person, as a senior military person in the justice system, to be brought in at an early stage to look at some of the things we shall talk about later—not only the issues of international law, but how the system could be improved.

11.15 am

The Defence Secretary’s written statement states: “A key part of the review will be its recommendations for any necessary improvements. It will seek to build upon and not reopen the recommendations of the service justice system review.”—[Official Report, 13 October 2020; Vol. 682, c. 9WS.]

We heard last week from Judge Blackett about the service justice system review, and it would be interesting to know how those recommendations, which are about improving the system, have been fed into the Bill. If there are obvious things in the review, they should have been included in the Bill. It is strange to me when I consider who has written the Bill—whether it has been done for political reasons, rather than by people who understand the military and the service justice system and who look at the issues that face servicemen and women. I am amazed at the exclusion of people such as Judge Blackett.

Then, literally as the Bill is beginning its passage through the House, the Defence Secretary commissions yet another review of the exact subject that came up in the evidence sittings, about investigations. I find it remarkable. We do not need another review. We just need to implement some simple things, some of which Judge Blackett came forward with last week, and some of which will have come out of the service justice review.

I am sure that there will be an argument in the Ministry of Defence, knowing the civil servants as I do, that everything should be pushed off into the Crown review and the armed forces Bill, which I understand is coming up next year. To be honest, I have a lot of sympathy with that, because that is where the provisions we are considering should be—not in a separate Bill. Things have been done in this way for political reasons, because the Conservative party stood for election saying that it would implement legislation.

If we were to deal with the matter next year as part of the armed forces Bill we would look at the situation in the round, in terms of not just prosecution but investigations. There may be a view that it is possible to do things in isolation in this regard, but it is not. We have already seen the implications that changing one thing will have elsewhere. Ideally it would be best to act next year.

Miss Sarah Dines (Derbyshire Dales) (Con): It is a pleasure to serve under your chairmanship, Mr Stringer. The scope of the Bill clearly does not encompass a wide-scale investigation of the present investigation process. Will the right hon. Gentleman explore a little more and explain what he did in his tenure as a Defence Minister to look into the matter?

Mr Jones: I will say this to the hon. Lady: if she wants a long rundown of the positive things that the Labour Government did for the armed forces I can start with the Armed Forces (Pensions and Compensation) Act 2004.

Miss Dines: But on investigations?

Mr Jones: It is related, because it is related to people who were serving on operations. For the first time ever it brought forward a modern system of lump sum payments, which were never there before, for Falkland veterans or anything else. I actually extended that in 2007 to cover issues to do with mental health provision. Our record was that each year but one of that Labour Government we accepted the finding of the Armed Forces Pay Review Body, as opposed to the Conservative Government’s cutting pay. We maintained our armed forces spending at a level above inflation. The 2010 Conservative Government cut the defence budget by 16%.

We also had the armed forces welfare pathway, which I started in—

The Chair: Order. I am sure that the right hon. Gentleman knows that he is moving way outside the scope of clause 1 and the amendments and new clauses. I ask him to come back to the clause stand part debate.
Mr Jones: I am sorry, Mr Stringer. I was going down memory lane to happier times. Just to finish that point, the welfare pathway, which the Government who came to power in 2010 rightly changed and renamed the covenant, was something that I introduced in 2010.

The hon. Member for Derbyshire Dales raised the issue of investigations and what we did. She is the new Member for that beautiful part of the world, and I have huge respect for her predecessor. I spent many a time at Kinder Scout and Hope as a boy walking round that area, so I know her area very well. But I think that she has to recognise the issue in terms of Iraq and Afghanistan. Yes, huge and terrible accusations were made about what was going on. There was pressure not only from what could be called the outriders on the left but from her own party to the effect that some of these accusations should have been investigated. If there was a failure, it was around investigation.

I do not want to try your patience, Mr Stringer, but we also did the Armed Forces Act 2006, which meshed the three service disciplinary systems into one. That was a huge issue, but it actually improved service discipline and investigations. This is an opportunity to get this Bill right. Let me say to the hon. Lady that I just want to get the Bill right. I think that if we had an approach from the Minister whereby he would take on board some of this, we could do these things, both here and in the other place, but there is a tendency, which I do not like, to think that somehow we in this place scrutinise legislation, and the Government know that they are going to change things but they change things in the House of Lords, giving the public the impression that somehow the House of Lords is this all-singing, all-seeing, body when actually those things should be done here. I am already talking, as I am sure others are, to Members of the House of Lords, including, I have to say to the Minister, some of his noble Friends who I think also have concerns about the Bill.

There is an opportunity here to do that with investigations. The issue with the amendments that we were talking about is really this. We had the debate about investigation of de minimis things, but what I think everyone wants is that investigations can be done quickly—not be done quickly and dismissed, because we have to get the balance right in terms of people making serious allegations that are investigated properly. Let us remember that we are talking here about allegations from civilians against members of the armed forces, but remember also that there are often cases between servicemen and women, who are making accusations against themselves—against individuals. There has to be a sense of fairness, and it cannot be right that it goes on for a very long time, so it does need judicial oversight. If someone is accused of something, that should be investigated properly and quickly, but that should also be done in a legal process that cannot be challenged—well, I am sure that everything can be challenged if someone pays a lawyer enough, but we must ensure that we have a situation whereby it is as judicially robust as possible.

Martin Docherty-Hughes: In response to a question asked by the hon. Member for Blaydon last week, General Sir Nick Parker stated: ‘Nobody would want anything in the process that somehow allows people who have behaved badly on the frontline to get away with it. But all of us would believe that the process has to be quick, efficient and effective to remove the suspicion of a malicious allegation as quickly as possible. I cannot see how this Bill does that.’—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 94, Q188.]

Does the right hon. Gentleman agree that legitimacy and effectiveness are not an element of this Bill and that we need to see structural change before we can go forward?

Mr Jones: I agree. The impression that I think some people try to give of the armed forces is that the armed forces, which have a job to go and do, want to be above the law. Nothing could be further from the truth.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Sixth Sitting

Wednesday 14 October 2020

(Afternoon)

CONTENTS

Clauses 1 and 2 agreed to.
Clause 3 under consideration when the Committee adjourned till Tuesday 20 October at Twenty-five minutes past Nine o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 18 October 2020
The Committee consisted of the following Members:

**Chairs:** David Mundell, † Graham Stringer

† Anderson, Stuart (Wolverhampton South West) (Con)
† Atherton, Sarah (Wrexham) (Con)
† Brereton, Jack (Stoke-on-Trent South) (Con)
† Dines, Miss Sarah (Derbyshire Dales) (Con)
† Docherty, Leo (Aldershot) (Con)
† Docherty-Hughes, Martin (West Dunbartonshire) (SNP)
† Eastwood, Mark (Dewsbury) (Con)
† Evans, Chris (Islwyn) (Lab/Co-op)
† Gibson, Peter (Darlington) (Con)
† Jones, Mr Kevan (North Durham) (Lab)
† Lewell-Buck, Mrs Emma (South Shields) (Lab)
† Lopresti, Jack (Filton and Bradley Stoke) (Con)
† Mercer, Johnny (Minister for Defence People and Veterans)
† Monaghan, Carol (Glasgow North West) (SNP)
† Morgan, Stephen (Portsmouth South) (Lab)
† Morrissey, Joy (Beaconsfield) (Con)
† Twist, Liz (Blaydon) (Lab)

Steven Mark, Sarah Thatcher, Committee Clerks

† attended the Committee
Public Bill Committee

Wednesday 14 October 2020

(Afternoon)

[GRAHAM STRINGER IN THE CHAIR]

Overseas Operations (Service Personnel and Veterans) Bill

Clause 1

Prosecutorial decision regarding alleged conduct during overseas operations

Question (this day) again proposed, That the clause stand part of the Bill.

2 pm

Mr Kevan Jones (North Durham) (Lab): I hope everyone had an enjoyable lunch. When we left off, I was still talking about investigations and what came through in the evidence we took. Mr Stringer, you and I are old enough to remember when Public Bill Committees did not hold evidence sessions. The process is far better now, because it informs the debate and our progress. Certainly, our witnesses gave valuable evidence, and from a variety of different positions. The one thing that did come through, however, was the lack of any reference in the Bill to investigation.

This morning I referred to Nick Parker’s comment that “part 1 of the Bill focuses entirely on the process of prosecution, whereas for me the big issue here is the process of investigation”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 94, Q188].

This is an important point. Major Campbell gave some very good evidence—I think everyone had sympathy—about how he had spent 17 years under investigation and reinvestigation.

Last Thursday we had the Judge Advocate General before us. I was amazed that he had not even been consulted on the Bill before it was introduced. I would have thought that he, as the leading judge in the service justice system, would be a good starting point to run things by. He said in evidence:

“My concern relates to investigations, not prosecutions; but there are a number of issues”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 115, Q231].

And of reinvestigation. That is a good analogy for how they have approached the subject. We have been blindsided by the disgraceful case of Phil Shiner, which concentrated on the number of vexatious claims. I will put on the record again that I thoroughly condemn that individual, but I think that the process that we had did deal with him, in terms of regulation.

I will now turn to the two amendments that stand in my name, amendment 2 and new clause 6. We did not get a chance to talk about amendment 2, which is also about investigation when the evidence went into clause 3: “the thoroughness, promptness and efficacy of any ongoing investigation into the alleged conduct or any relevant previous investigation, and the reasons for any delays in such investigations”.

The purpose of that is to ensure that we get timely investigation. I will move on shortly to new clause 6, which talks about judicial oversight, because that is important, but we do not want to get into a situation in which the service military police or other people simply say, “Well, we’re not going to investigate because it’s too difficult.” We need oversight, but amendment 2 puts the focus on looking at the investigation, not only to ensure an adequate investigational process, but to give particular weight to the prosecution. In considering a case, therefore, a prosecutor should be able to consider the efficiency of the process and previous investigations that have taken place.

As a statement of principle, I would like the Bill to consider more effectively the way in which the investigation function in the military justice system can be amended. I am sorry that the Government do not seem to accept that that should be part of the Bill. I think I referred to this morning. At least I know why the civil servants are not accepting that. The obvious thing to have done with the Bill would have been to have put it with the armed forces Bill that will be coming through next year. If there is one thing that I know from my experience of civil servants, it is that they like tidiness, and this process is not tidy. That would have been a better way of doing it.

Liz Twist (Blaydon) (Lab): Does my right hon. Friend agree that witness after witness in the evidence sessions pointed to the centrality of good-quality investigation in removing the problem of vexatious and pluralistic claims?

Mr Jones: Yes, and in a moment or two I will cover the important point that my hon. Friend raises. It is about efficiency in dealing with claims through an early process, so that when the evidence is not going to go anywhere, a claim can be dropped. As the hon. Member for West Dunbartonshire said this morning, that is good for the efficiency of the system as well as for the individual. As Lieutenant Colonel Parker said, it is not just the prosecution case, but the mental torture that people go through when waiting for that. It would help servicemen and women going through that process to have an early resolution.

We did not get to discuss new clauses 6 and 7, so I will speak to them now. I understand, Mr Stringer, that they will be voted on at the end of this process. Is that correct?

The Chair: We are debating clause 1 stand part and we will vote on clause 1 stand part at the end of the debate.

Mr Kevan Jones: One of the important things about the process is that we have judicial oversight of whatever happens. That is important for making the system robust and fair, both for those complaining and for those accused, as well as in relation to our international obligations. We have been a beacon of light in ensuring that we have an independent judiciary in this country,
and it is important that we have oversight of that. Judge Blackett suggested things that could do that, and that could also make the system more efficient.

New clause 6 proposes to bring in judicial oversight of investigations. It would allow the judge advocate, once an investigation has come to its preliminary conclusions, to look at the evidence in the allegation as soon as possible, but no later than 6 months, and the judge, not the Ministry of Defence or the chain of command, would then make an assessment. It is important that the assessment is made by the judge advocate, who is part of the judiciary. The judge advocate would have “the power to determine—

(a) that no serious, permanent or lasting psychological or physical injury has been caused; and order that the investigation should cease”.

If, at that stage, an indication was taken that the case was going nowhere, that would knock out all the vexatious cases, which is what we are trying to get at here. It would allow the individual who has been accused to move on. It would have the strength of having a judge make that decision. The clause moved this morning takes away more minor offences, allowing us to get down to the serious cases that need to be investigated and prosecuted.

Chris Evans (Islwyn) (Lab/Co-op): My right hon. Friend is rightly seen as an expert on defence matters, having been in this House for a number of years. I wonder whether we could have the benefit of his experience. In his experience, both as a Minister and as a member of the Bill Committee, is he open to the suggestion that a number of these investigations are taking so long because of failures within the Ministry of Defence, and that that is why we have arrived where we are?

Mr Jones: Yes. That is the problem. How do we get at it? Is it about a lack of resource? I think it is. Going back to Iraq and Afghanistan, as I said this morning, there was huge pressure from all sides, including the Conservative Opposition at the time, that these things had to be seen to be investigated to the nth degree. There was a culture, which led to a resistance to say in some cases, “There is no evidence to stand those.” If that was done politically, I understand why people have issues with that.

However, if there were a judicial process, which new clause 6 provides for, overseen by a judge, that would give confidence to the public and the international community, in relation to our obligations, that this was being done not for political reasons but because a judge had determined independently what the facts are. It would certainly help.

Martin Docherty-Hughes (West Dunbartonshire) (SNP): In response to a question the right hon. Gentleman raised last week, Judge Blackett said, in relation to the Magistrates’ Court Act 1980, that “a great raft of those allegations in IHAT and Northmoor would have gone with that.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 122, Q254.]

Is that not the right hon. Gentleman’s point? Much of what the Bill seeks to do could easily have been dealt with through existing legislation.
might take longer than that, but at least we would have regular judicial oversight of the system, which we do not have today. That would be important.

I do not want to criticise the service police, because in some cases they have a hugely difficult job to do. It is not like going and investigating a house burglary in west London; it is often going on overseas operations to very difficult terrain. In some cases it is dangerous to gather evidence. In many cases we are dealing with different cultures and people for whom English is not their first language, so I am not criticising the service police. However, it would give them some rigour to know that, by a certain date, they at least have to come back before a judge to say what they have done in a certain case. In the cases that we have seen, a lot would have been fished out of this pool way before they got to the prosecution stage.

Martin Docherty-Hughes: Again, the hon. Member asked Judge Blackett question last week in relation to Marine A. Judge Blackett responded that

“a number of the issues here were raised by Marine A subsequently through the Criminal Cases Review Commission and back to the Court of Appeal, and they were never raised at first instance. Had he—

Marine A—

“raised them at first instance—had all the psychiatric evidence that came out eventually appeared at the start—he probably would have been charged with manslaughter rather than murder”.

—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020, c. 124, Q262.]

which is what he was charged with. It was actually on the second appeal that it was overturned and the prosecution was for manslaughter. Does the right hon. Member agree that the process is at fault and that, to improve that, the Government need to make substantial changes and investments in the process, rather than with the Bill?

Mr Jones: It is the process. I am glad that the hon. Member has mentioned the case of Marine A, because the way it was dealt with worries me. People might not be familiar with it. It was an individual who was on operations in Afghanistan and shot, on camera, a wounded Taliban fighter. That case did not come about through an ambulance-chasing lawyer; it came about because somebody filmed the shooting and was so horrified by it that they handed in the video. That was not an ambulance-chasing lawyer saying, “This man’s killed somebody in cold blood.” That case is important.

The process being adopted concerns me for two reasons. My first concern, on the point we raised last week, is about the support that servicemen and women are getting while they are going through the process. Clearly, in that case, the individual did something that goes against everything that members of the armed forces are trained to do. But when we look at the overall envelope of what he had been up to—the psychological trauma and the other things he had been through—we could explain it not as murder, but as manslaughter. Again, if that case had gone through this type of system, it would have led to those issues around the individual’s mental health, which do not excuse his actions but obviously had an impact on what happened, and to the first issue being seen as manslaughter, which would have been a fairer way of dealing with it.

My second concern about the Bill is that if that happened more than five years after that case, the presumption would have been not to prosecute. There would then have been a political decision, because the Attorney General would be deciding on prosecution. That individual could then end up before the International Criminal Court, because we would deem that we had not prosecuted.

There was a media maelstrom around the case. As with many such cases that we have all dealt with, it got a nice headline in the Daily Mail or The Sun, but there were obviously more details to it. If we have a similar case in future on which there is to be a political decision, it will be a strong politician or Attorney General who will turn around and say, “Yes, I want to prosecute this person.” There would then be the danger of the International Criminal Court picking up the case. Whereas in the process that I am proposing in new clause 6, the judge would review all the evidence, including, in that case, whether he should have been charged with murder in the first place when it went to court or to appeal—and no, he should not have been.

As many Committee members have said, and certainly, having spoken to members of the armed forces and veterans, they do not want to be above the law; they want to be treated fairly. That is what we are here to ensure. I have spoken to the individuals involved in the Marine A case, who explained the reasons why it happened, which I understand. It did not fulfil the high standards that are expected of the armed forces. In that case, it is about being fair to members of our armed forces, and ensuring that we are doing the right thing. Again, the combination of new clause 8, which we debated this morning, and new clause 6 would start to reduce that pile of potential litigants, even if they came from vexatious lawyers or elsewhere.

The other issue, which I can never get my head around, is the idea that the same case can be reinvestigated, as in the Campbell case. That is just ridiculous. There must come a time when we have to say, “Well, it has been looked at in detail. There has been evidence.” There might be a delay to trawl for witnesses and other evidence, but in effect what that says is, “Basically, we will do a fishing exercise until we get the answers that we want.” That cannot be right.

My new clause 7 addresses some of the limitations around investigations. I think we on this Committee all want thorough investigations, and so do members of the armed forces; what they do not want is endless reinvestigations that go on forever, in the Campbell case, 17 years. New clause 7 would put limitations on reinvestigation. The section applies where

“(a) a person has been acquitted of an offence relating to conduct on overseas operations,”

so it would apply to those individuals.

I know this is not within the scope of this Bill, and I am sure you would pull me up, Mr Stringer, if I mentioned other areas, but that is the problem with the title of the Bill: some of the things in here should apply to members of the armed forces if the offence was committed on the UK mainland, but they do not. That is why I come back to the point that it would be better to do these things in the Armed Forces Bill next year and to take a holistic approach. Obviously, there are political reasons why this Bill is being rushed forward, to meet a manifesto 100-day commitment. However, I think some of these
things should apply in the UK, but they will not with this Bill, and no doubt they will have to be picked up in the Armed Forces Bill.

The section also applies where

"(b) a determination has been made that an investigation into an offence relating to such conduct should cease under section (Judicial oversight of investigations)."

2) No further investigation into the alleged conduct shall be commenced unless—

(a) compelling new evidence has become available”.

Again, this is about trying to stop that reinvestigation, but having judicial oversight. The judge advocate determines “the totality of the evidence against the accused”, and sees whether it is strong enough such that “there is a real possibility that it would support a conviction.”

Let us go to the Campbell case: if that case came forward again, the judge would have to look at the evidence and see whether the material circumstances had changed since the last time the offence was looked at. The strength of doing it this way, rather than as proposed in this Bill, is that it is not about limitations of time and the presumption against prosecution; a judge will look at the evidence and there will be a process. That would avoid the reinvestigation of such complaints.

If there is compelling new evidence, I think we would all agree—not just in the military justice system, but in a civil case—that we would want it to be looked at again. That links to the time limits on investigations, which for the individual concerned would not then stretch out for an indeterminate length of time.

Martin Docherty-Hughes: Regarding proposed new subsection (a) on new evidence, in evidence to the Criminal Cases Review Commission can review prosecutions, look at the evidence and, if it finds a flaw, refer them to the Court of Appeal. I wondered whether we could have something similar in this area, but that would be cumbersome. What we need is to put cases before a judge, as at the Court of Appeal. I have had quite a lot to do with the Criminal Cases Review Commission—obviously not personally—regarding the Horizon scandal at the Post Office. Thankfully, last week it was announced that 44 convictions will be overturned. That is judicial oversight, and that is what is lacking in the Bill.

I do not doubt the Bill’s good intentions, but there are problems with how it has been done. Under new clause 7, new evidence would have to be compelling. It would not be a question of, “Can we have another trial of this case?” or, as with the Shiner cases, where one case has been dismissed and a related one comes in, that previous case has to be reinvestigated all over again. The important point—I cannot reiterate this strongly enough—is that that limitation would be defensible in any international system because the scrutiny of the three stages mentioned in new clause 6, and as Judge Blackett said last week, would be done by judges and not, as the Bill proposes, by an Attorney General, who is a political appointment, with a presumption against prosecution.

As I look at the Bill, I think those things could be done now. The new clauses would certainly improve the Bill and get to the root of stopping vexatious prosecutions and investigations more effectively. I think there is a misunderstanding—I include the Minister in this—that the Bill will stop investigations within those five-year periods.

It is also important that we do not do anything to damage our international reputation. I looked at a tweet the Minister put out earlier this week. The linked article said:

“War crimes under international law in the Nuremberg sense, together with sex offences, are excluded from the effects of the Bill. The Minister’s tweet said:

“Perhaps worth reading this before going off on one about the Overseas Bill... Committee stage continues tomorrow, and I actually get a chance to counter some of the ridiculous narrative around it.”

We have not heard much from the Minister apart from his civil service brief.

The Minister for Defence People and Veterans (Johnny Mercer): Let’s not be personal, Kevan.

Mr Jones: I am not being personal, but a Minister usually does more than read what is in front of him; he takes notes and engages. My proposals should be looked at seriously, because they would improve the Bill. The Minister says he wants to work with everybody, but he seems to have deaf ears when people make suggestions that would not harm but improve the Bill. It is not just me saying that, as someone who is passionate about protecting the armed forces; that is the evidence we have taken through this process. As I said earlier, that is the good thing about the process.

What would be the argument against accepting the new clauses? The only one I can see is that the Government want to deal with this next year in the Armed Forces Bill. Fair enough, but put them in now. They can be done now. We will not end up with any additional costs of process—in fact, that will save money. I know we do not have a money resolution with this Bill, so we cannot propose things that cost money, but I doubt whether those proposals will. As the hon. Member for West Dunbartonshire said this morning, it is about making
things efficient, and there are two wins here: one win with the process being slicker and quicker; and another win with the accused individual being dealt with fairly and robustly.

Turning to other parts of the clause, this morning we asked why five years, rather than 10, 15, 20 or whatever. I asked the Minister to justify that and I also asked about the numbers for who said what. He said they were in the impact assessment, but I could not find them when I looked at it at lunchtime in the Library, or where they are referred to. I would like the Minister to do what I thought he would do when he responded to my hon. Friend the Member for Portsmouth South, which is to say, “Well, five years has been put forward for X reasons and 10 years was seen as too long”—or something like that—“and these were the people who argued for each.”

On balance, I agree, that some such things are at the end of the day political decisions, but we did not get that sort of response. I would still like an explanation for the decision of five years. I do not think that is in the impact assessment, on which, likewise—I have raised this with the Minister on the Floor of the House—there is confusion on the number of claims and the potential of those claims. The figures vary from 900 to 1,000, but there is no breakdown at all of whether those claims are from civilians or from members of the armed forces making claims against the MOD.

The other thing that concerns me is the presumption not to prosecute. I know of no other system where the presumption is written into a Bill to state, before anything is done, that someone will not be prosecuted. Again, my fear about that is that it will be seen as interfering with process. I am sure some people in Committee are old enough to remember the time before the Crown Prosecution Service, many years ago—this is the reason why we had that in this country—when police investigated and did the prosecution as well. Anyone who wants to know the reasons why that system failed—for example, in the Horizon case to which I referred earlier—should read last week’s excellent report of the Justice Committee, which criticised the arrangement whereby someone was both investigator and prosecutor.

The presumption in this Bill is worse than that, because we are saying, “We will presume that we are not going to prosecute.” I know that Ministers have said, “This does not mean that cases will not be prosecuted”, and I accept that, but the decision on whether a case should be prosecuted should be down to an independent judicial process; it should not be in the hands of the Attorney General, a Minister or anyone else to decide whether a case goes forward.

Chris Evans: My right hon. Friend has touched on this before. The issue is not prosecutions but the actual investigations. The question to ask is, how do we square investigations, where there is justice at the end, with this limitation on prosecution? Do the Government have this the wrong way around?

Mr Jones: I agree with Judge Blackett and General Nick Parker. What the Government have done is looked at the prosecution end of it, rather than at the investigation end of it. As I have said, Blackett referred to it as looking through the wrong end of a telescope. We all know what happened when we were kids—we looked through telescopes, which were quite good for seeing things that were far away. It is as though somehow we would not pick up on the detail of what can be seen. With the Bill, however, we can see the detail.

As I have just outlined, what is needed is proper investigation. No one is suggesting shortcuts in investigations. We need a proper system that has judicial oversight, which will ensure that it is fair on all sides, and that it is efficient. The next bit of it is prosecution, which has to be independent of Government. I have never seen it written into a Bill that, before there is an investigation, there is a presumption in law that there will be no prosecution. How would we do that? What is the purpose of investigating a case and going through details if, from the outset, there is a presumption that it will not be prosecuted? That is very difficult. It would be like you, Mr Stringer, burgling somebody’s house—I am not suggesting for one minute that you would do that. The authorities would then say, “We are going to investigate you, but the presumption”—not the decision, because I accept that you could still get prosecuted—“is that you are innocent and that you haven’t done it.”

That is just nonsense and will not stand up. It will end up with judicial reviews, so we will not be free from the ambulance-chasing lawyers or the legal aid system, because if they can see that there is a buck to be made in that way, they will do it.

Likewise, on international comparisons, it comes down to the point that the Judge Advocate General made in his excellent letter to the Defence Secretary, to which I referred last week in evidence: he was not consulted on the Bill. When these cases go to the International Criminal Court for investigation, it will say, “Wait a minute. At the outset you had a presumption that you were not going to prosecute in these cases.” If we had a situation in which a case went forward, there would be a presumption against prosecution and there would be an investigation. If the Attorney General were to decide that the case did not go to prosecution, the International Criminal Court would have a field day. It would say, “Well, wait a minute. You’ve had a presumption against prosecution. You’ve had political interference, with the Attorney General making the final decision about whether a prosecution should take place.” I do not think that is compatible with our treaty obligations to the ICC.

I know that reference is often made to the Human Rights Act 1998 and that there is a tendency—not with you, Mr Stringer, because I know you are an expert on European matters—to think that somehow it is something to do with the European Union. It has nothing at all to do with the EU. It has a proud history, and we should be proud to have helped develop the idea of human rights after the second world war in order to ensure that we have the highest standards. My fear is that we will end up with servicemen and women before the International Criminal Court. I am sorry, but I do not want to see that. What I want to see is their being dealt with in our judicial legal system, which will end up with their getting better justice. It will be very difficult to explain to the public why servicemen and women end up in the International Criminal Court. If that happens, the next step is that we withdraw from the International Criminal Court and everything else. If we do that, it will affect our reputation in the world as a country that wants to uphold the rule of law and to tell China and other nations, “Look, these are the basic standards that you should adhere to.” It will be a godsend to them.
There are serious issues to do with clause 1, which I do not think the Minister has addressed. If we end up with fairness and justice for our servicemen and women but we do not have an efficient system, that needs to be changed. I repeat to the Minister that the Bill can be changed on Report in this place, and I am happy to work on the investigation issues with him. If new clauses to that effect were not perfectly written according to the Ministry of Defence, I would be quite happy to work on getting a form of words that we could all accept. I am a mild-mannered individual, as many people know, and I would quite happily let the Government table them and claim the credit. I am not looking for plaudits. What I would quite happily let the Government table them and claim the credit. I am not looking for plaudits. What I would quite happily let the Government table them and claim the credit. I am not looking for plaudits. What I would quite happily let the Government table them and claim the credit. I am not looking for plaudits. What I would quite happily let the Government table them and claim the credit.

As we know, the Defence Committee report “Protecting veterans by a Statute of Limitations” was supported on the presumption against prosecution for allegations that were more than 10 years old. I was extremely concerned that the proposals would not cover soldiers who had served in Northern Ireland through the troubles. It is said that the Ministry of Defence should ensure that sufficient resources are made available for educating the armed forces more regularly about their legal obligations.

Far be it from me to be personal, but when the Minister replies, I would like him to give further explanation of why he moved from the 10-year period agreed by the Defence Committee to the five-year period. The real issue here, as my hon. Friend said—sorry, my right hon. Friend; he is a member of the Privy Council and I should acknowledge that—is not so much the prosecution but the investigation. All soldiers who make the great commitment to serve our country in the armed forces need a prompt, fair, efficient and effective investigation before we reach prosecution.

I would like to cite the example of how alleged crimes in Iraq were investigated and how we have arrived at the current position. As many of us know, UK military operations in Iraq lasted from the start of the invasion on 20 March 2003 to the withdrawal of the last remaining British forces on 22 May 2011—an eight-year period. Alleged crimes by UK forces in Iraq have formed the subject of two public inquiries initiated by the Ministry of Defence between 2008 and 2009 to examine the death in custody of an Iraqi civilian, Baha Mousa, in September 2003, and allegations of unlawful killings in a street arising from the so-called battle of Danny Boy in May 2004.

In March 2010, the MOD established the Iraq Historic Allegations Team, to ensure that credible claims were properly investigated. The IHAT received a total of around 3,400 allegations of unlawful killings and ill treatment between 2010 and 2017—a period of seven years. However, in February 2017, the Defence Committee published its IHAT inquiry report, which notably criticised the team for alleged inefficiency and lack of professionalism. It called on the MOD to close it down and to provide financial and other support to UK servicemen under investigation. On the same day as the release of the inquiry’s report, the Defence Secretary announced the closure of the IHAT, ahead of the original schedule, citing IHAT’s own forecasts that the team’s caseload was expected to reduce to about 20 investigations by the summer of 2017. The IHAT was permanently shut down on 30 June.

The MOD said that military operations in Iraq have resulted in nearly 1,000 compensation claims for unlawful detention, personal injury and death, and about 1,400 judicial review claims, seeking investigations and compensation for alleged human rights violations. An investigation by the BBC “Panorama” programme and The Sunday Times found that the UK Government and the armed forces might have covered up the killing of civilians by British troops in Afghanistan and Iraq. The MOD has strongly rejected the allegations of cover-ups. I bring that up because it was a MOD investigation into a conflict that lasted eight years, and then seven years into that investigation it was shut down because of what it was doing.

The real problem we have is that the Bill does not stop the cycle of investigations. Restrictions apply solely to prosecutions. If we were to ask most people who have been investigated time and again, they would say it is the investigation that has caused the problems. Unless we resolve that, the Bill does not ensure that allegations are properly investigated and resolved—this is the point, Mr. Stringer—within a reasonable period. As I have said, service personnel would benefit from a focus on prompt and thorough investigations, rather than simply a limitation on prosecutions. That is why the amendments are so important. The investigations have to be judge led.

I agree that we have to resolve concerns about uncertainty and the delay for soldiers and litigants. On the other side, there are the victims. Some claims may have to go over five years for sound reasons. Injury may become problematic only after five years of post-traumatic stress disorder. Luckily, we live in a world where we have a better understanding of mental health and we are far more sympathetic to problems. In another life—14 years ago—I worked for Lord Touhig, who was involved when he was a Defence Minister with the shot-at-dawns. I am very proud that the last Labour Government granted them a pardon. I hope we never see a return to the bad old days when people were shot for alleged cowardice, when really they were suffering from terrible mental health problems.

That is what we have to guide ourselves with in this Bill. We face a mental health crisis. I was encouraged earlier when I moved the motion about UAVs, as the Minister accepted there was an issue of post-traumatic stress disorder and the need for more research. I know he has worked very hard in that area and I look forward to some of the outcomes of the work he is doing. I pay tribute to him for his work on that.

We have to accept that many of these claims will take longer. In some of these cases, it may take a long time for evidence to be gathered and to come to light, especially when we are dealing with complicated areas of law or complicated parts of operations in theatre. The Minister...
should look again at the five-year rule and make it 10 years, but it is more important that, alongside that, we look at how the investigations are conducted.

We should consider any time limit on prosecutions to be an intolerable barrier to justice. It is notable that the proposed five-year period halves the time period for prosecutions from the proposal of 10 years consulted on by the Ministry of Defence last year. A five-year limit makes it likely that the relevant overseas operation will still be in progress—I used the example of Iraq and Afghanistan at the beginning of my speech. That means investigations may have to be limited to while we are active in hostilities. That, again, is a barrier to justice.

The Judge Advocate General of the armed forces, Jeff Blackett, warned the Defence Secretary that this provision “would encourage an accused person to frustrate the progress of investigation past the five-year point to engage a high bar for prosecution”. When the Minister responds, I hope that he can lay out some guidelines on how we can stop anybody frustrating justice in that way.

Mr Jones: Is not an obvious way of doing that to adopt the new clause I spoke to, which would give judicial oversight?

Chris Evans: I alluded earlier to our good friend Lord Touhig, who advised me to always be careful of taking interventions, because they can ruin the end of your speech. I feel that that has happened here. It is important to remember that the overwhelming majority of repeat investigations or delayed prosecutions in recent years have, as my right hon. Friend said, been the direct result of failures by the MOD itself. It is an issue within the MOD that needs to be resolved—whether it is a cultural issue or a rules-based issue, it needs to be resolved. I agree with what the Minister is trying to do because there are too many veterans, ex-service men and women, who are living in fear of repeat investigations. If they are living in fear of that, we must ask why these investigations are repeated over and over again, causing not only stress to their mental health but putting intolerable strain on their families.

Rather than measures that tackle the real reason behind the investigations that delay prosecutions, the Bill proposes unprecedented legal protections that will create a legal regime that mandates impunity for serious offences and, above all, inequality in law for the victims of abuse in our forces. Severely restricting the application of criminal law for certain categories of people accused of having committed offences including international crimes would violate the principle of equal application of the law, which is what our legal system is based on.

A multitude of sources suggest that crimes were committed on a large scale in Afghanistan and Iraq. That happened at least partly due to systemic issues—for instance, in 2013, in R. v. the Secretary of State for Defence, the UK High Court held that “there might have been systemic abuses and that such abuses may have been attributable to a lack of appropriate training.”

If the problem is appropriate training, it is not a legislative solution that we need but a systemic solution from within the Ministry of Defence. In its 2018 report, the Ministry of Defence working group on systemic issues said that it considered: “there was sufficient evidence to conclude that assaults in detention had occurred, and may have been systemic.”

International law imposes certain obligations on the UK, including the obligation not to put in place a legal framework that severely restricts or makes impossible the investigation and prosecution of serious crimes under international law committed in armed conflict, irrespective of where those crimes were committed. The proposed legislation severely limits the possibility of opening a full investigation in respect of Iraq or Afghanistan. Any measure that significantly limits the possibility of prosecuting international crimes, whether referred to as a statute of limitations or a statute of presumption against prosecution, risks undermining the UK’s hard-won role as a champion of the international rule of law and hence its ability to advance its agenda.

Mr Jones: The hon. Member for Wolverhampton South West made the point, in respect of the lack of training, that the real pressure is not on the chain of command but on the men and women in the frontline. Does my hon. Friend agree that, unfortunately, it is they who find themselves in these cases rather than those higher up in the chain of command who have equal responsibility for some of the actions?

Chris Evans: I agree; it is often ordinary squaddies or ratings who find themselves in these circumstances simply because they were following orders. If we are talking about training, we do live in a different world, a modern world. I have already spoken about our shot-at-dawn campaign, which my right hon. Friend is involved in. We have to realise that our modern armed forces are constantly evolving in a changing world, and our training should reflect that, whether it is for an ordinary rating or top brass in the armed forces. It is important that we focus on training. The Government have the numbers and they will pass the Bill, but the way to change the culture of ongoing prosecutions is to start with the training of our troops, whether in command or on the frontline.

To return to the point I was making, the code for Crown prosecutors already has ample criteria to provide guidance on whether prosecution should take place. This includes an evidential stage, followed by a public interest stage. The evidential stage concerns an independent prosecutor’s assessment of whether there is a realistic prospect of conviction. The public interest stage guidance involves considerations such as the seriousness of the alleged offence, the level of capability of the offender, the circumstances of and the harm caused to the victim, the suspect’s age and maturity at the time of the offence, the impact of the offending on the community, whether prosecution is a proportionate response and whether sources of information require protecting.

3 pm

The Ministry of Defence and the Government more broadly should ensure that adequate legal safeguards are in place for service personnel and veterans, including access to legal counsel, and other internationally recognised due process and fair trial standards. The legal protection of current and former service personnel is best served by a framework that facilitates prompt—this is the third time I have said this—and adequate investigation, which
would clear anyone wrongly suspected of having committed the crime without risk of undue reinvestigation and at the same time ensure accountability for those guilty of crimes.

No one is above the law. If crimes are committed, they should be prosecuted and the full weight of the law should come down on those responsible. Many investigations—this is the key point about the clause—have been so weak and ineffective that they resulted in judicial findings which led to the need for them to be reopened or restarted, or for more robust procedures to be put in place. It is not appropriate to impose a limit for bringing claims in relation to personal injury or death where people are seeking damages in respect of sorrowful events that took place outside the UK; to do so breaches the rights of the victims.

The Government have sought to claim that these reforms are needed to stop legal cases relating to UK actions where that is not appropriate, but the Bill’s definition of overseas operations, to which these provisions apply, is too broad, as it covers “peacekeeping operations and operations dealing with terrorism, civil unrest or serious public disorder, during the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance.”

The Minister referred to my amendment dealing with that point. It is striking that the Bill’s presumption against prosecutions would appear to apply to any and all operations that deal in terrorism. The provision would cover a wide range of covert activities that are subject to little or no public or parliamentary scrutiny, and of which MPs may have no knowledge at all. This could include so-called training SIS operations carried out with a range of foreign security forces, or indeed operations of the kind that UK became involved in during the war on terror, when Parliament’s Intelligence and Security Committee found the UK maintained a corporate policy of facilitating rendition of detainees and was involved in hundreds of cases of torture and mistreatment.

In our evidence session, Clive Baldwin of Human Rights Watch said that “we are seeing a breakdown in what is the beginning and the end of an armed conflict, what is the battlefield and what decisions are made in which country—you mentioned drones, but there are other decisions made within a country, and cyber-warfare is coming. The artificial distinction of an overseas operation with a clear beginning, a clear theatre and a clear end is one that is very much breaking down. The distinction of when an armed conflict begins and ends is becoming murkier in many ways, especially non-international armed conflict. The idea of having one rule for overseas operations and one for domestic operations will be increasingly artificial, and that lack of clarity about the real application of such situations and such laws will be another danger of this Bill.”

I support my right hon. Friend the Member for North Durham in his amendments and I hope that the Minister will think on what has been said this afternoon, and answer some of the questions that we have put to him.

Johnny Mercer: I am delighted to answer some of the questions that have been laid out. I have spoken at length about the “five to 10 years” issue in dealing with previous amendments, but I will look to answer some of the questions raised and then speak to clause 1 in general.

We ask a huge amount of our service police. Investigations on overseas operations are inherently dangerous, and the risk of gathering evidence on operations must always be balanced with the risk to the lives of our investigators. To suggest that the service police pursue unmeritorious or vexatious investigations in those circumstances is to do a huge injustice to those brave men and women who do this dangerous work, and we do not.

To understand new clause 6, it is necessary to go through it line by line. Proposed new subsection (1) seeks to apply the clause to, “any investigation by a police force into alleged conduct as described in subsection 3 of section 1.”

Clause 1(3) applies—

The Chair: Order. I asked hon. Members at the beginning of the meeting to respect social distancing. I am sorry, Minister; please continue.

Johnny Mercer: Clause 1(3) applies where, “the alleged conduct took place (outside the British Islands),” at a time when the person was “subject to service law” under the Armed Forces Act 2006, and “deployed on overseas operations.” There is no further limit on the remaining provisions of the proposed new clause, which means they must therefore apply to all investigations on overseas operations committed by service personnel. For context, there were in the region of 3,000 service police investigations in Iraq and 1,000 in Afghanistan. The majority of those will have been committed by persons subject to service law. It is not considered feasible for such numbers of investigations to be brought in front of a judge, and to do so would undoubtedly add further delays to the process.

Proposed new subsection (2) states: “The police force investigating the conduct must place their preliminary findings before an allocated judge advocate as soon as possible, but no later than 6 months after the alleged offence was brought to their attention.”

The service police are independent. That independence is enshrined in law in section 115A of the Armed Forces Act 2006. It is common practice for them to consult prosecutors in the course of an investigation and for that discourse to shape an investigation, but this is discourse, not direction. Any obligation on the service police to police their investigation before a person who has control over the final determination of that matter seriously compromises the independence and is therefore contrary to section 115A.

New clause 6 states that the allocated judge advocate may order an investigation to cease should it be determined, “that no serious, permanent or lasting psychological or physical injury has been caused”—presumably by the alleged conduct. Again, it would be hard to determine whether that was the case without investigation, a matter complicated by being on overseas operations. Proposed new subsection (3)(b) gives the judge advocate the power to order that an investigation should cease if it is determined, “that the evidence is of a tenuous character because of weakness or vagueness or because of inconsistencies with other evidence, and that it is not in the interests of justice to continue an investigation”.

That proposed new paragraph is equally problematic; only in the most clear-cut cases can the police produce evidence entirely without some area of weakness or
An investigation is a hard thing to define in law. It starts when inquiries begin, and its purpose is to determine whether what little information there is to start with is credible, and to gather more evidence in support of that. The process of finding out whether evidence is compelling is called an “investigation”. It is hard to see how, people having been told to cease an investigation, no further investigation—whether new or a continuation of the earlier investigation—can be commenced unless some form of compelling new evidence becomes available. The only way the police can determine whether the new evidence is compelling is by carrying out the investigation that they are not allowed to carry out. This becomes a circular issue.

Additionally, no further investigation into the alleged conduct may be carried out unless the allocated judge advocate determines that the totality of the evidence against an accused, which presumably has had to come from some sort of investigation that the police are not allowed to conduct, is sufficiently strong that there is a real possibility that it would support a conviction.

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

**Johnny Mercer:** Not at this stage.

Where a person has been acquitted and new evidence comes to light, it would be necessary for there to be a further investigation before a prosecutor could determine whether a new prosecution could and should be brought. That is not a decision for the police; it is a decision for the prosecutor. To prevent the investigation would prevent a prosecutor from having the information that they need to make that determination.

Unfortunately, new clause 7 is not clear enough to allow a real debate on what it is seeking to achieve. The only way the police can determine whether new information is “compelling” or “sufficiently strong” to “support a conviction” is to carry out an investigation. A thorough investigation is important. As I said earlier, it can serve to exculpate, which is a good thing for the reputation of our armed forces, as well as to incriminate. The Bill does not specify whether the judge advocate would have continued oversight, or some ability to enforce the timetable and direction. Again, that would place an additional burden on police who, in an operational theatre, responding to operational events, would now have an added layer of bureaucracy placed on them by someone who is not deployed and cannot possibly understand the unique pressures experienced by the deployed police officer. That would remove the discretion that all police officers must have to carry out prompt, independent and effective investigations, and hamper their decision making. That is not the same as the police relationship with the prosecutor, and here I return to my point about discourse versus direction. Discourse allows the police to retain the discretion so vital to acting in response to events; direction fetters their decision making.

The proposed clause is based on the false premise that police carry out unmeritorious or vexatious investigations. It would undermine the relationship between the police and prosecutors and fetter the police in the conduct of investigations in difficult circumstances. It would place an additional and unnecessary cog in a system that does not need it.

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

**Johnny Mercer:** Not at this stage.

With the discourse between prosecutor and investigator, a balance must be struck between further investigation and the realistic prospect of conviction, and this includes the measures in the Bill that the prosecutor must take account of.

**Mrs Emma Lewell-Buck** (South Shields) (Lab): Obviously, the Minister is probably more familiar with the Bill than I am. I just getting a little bit lost on his comments here. Is he saying that the only time that new evidence comes to light is through an investigation? That is just not the case. Sometimes evidence appears when there is not an ongoing investigation. Also, is he saying that, in
that case, when new evidence comes to light, an investigation should not happen? For my benefit and perhaps that of other members of the Committee who are not as familiar with the Bill as he is, could he please explain where in the Bill there is a limit on reinvestigation at this moment?

Johnny Mercer: I am happy to address the point about reinvestigation, because there are no circumstances in which anybody could arrive at the Ministry of Defence with an allegation of criminality or whatever it might be and we could not investigate it. There is a difference between investigations and where those investigations start impacting the lives of veterans, which is what the Bill seeks to deal with and which is why we have drawn the line where we have. We are not saying that new evidence comes only from investigation, but, as I have outlined, new clause 7 introduces an element of oversight that is simply not practicable to what we are trying to do. I have outlined that the 3,500 cases in Iraq and 1,000 in Afghanistan, and it is not practicable to do that and to ensure there is a speedy resolution, that evidence is preserved, that if people have done wrong we can prosecute them in a timely manner and so on. I am happy to have a further conversation with the hon. Lady about that later.

3.15 pm

In summing up the clause stand part debate, the Government do not consider the armed forces to be above the law. Whenever they embark on operations overseas, our armed forces must abide by the criminal law of England and Wales, as well as international humanitarian law, including as set out in the Geneva convention. Our personnel serve with great dignity, courage and commitment. The vast majority undertake the difficult and often dangerous tasks we ask of them in accordance with domestic and international law. However, in the circumstances where our service personnel fall short of the high standards of personal behaviour and conduct that is required and expected of them, it is vital they are held to account. That is one of the reasons we are not proposing an amnesty or a statute of limitations for service personnel and veterans as part of the measures. Of course, alleged misconduct by service personnel is dealt with most effectively if individuals are investigated and, where appropriate, subject to disciplinary or criminal proceedings at the time of the conduct. However, that is not always possible in the circumstances of overseas operations.

Chris Evans: I fully appreciate what the Minister says about being bound by criminal law in England and Wales. However, having gone through the process himself, is he confident that when someone is recruited into the armed forces, they are fully aware of their legal obligations and that the training meets those needs?

Johnny Mercer: I thank the hon. Gentleman for that pertinent question. Extensive efforts have gone down over the years to make sure our people understand the rules within which they should operate. There clearly have been challenges in some of the training regarding detentions and so on, as has been found out through various court cases. I have always talked, on Second Reading and even before the legislation came to the House, about how the it is one of a series of measures. One such measure is about investigatory standards, another is about education and how individuals’ lives are affected, because it is not in anybody’s interests for us to do the legislation and for people not to understand. I am more than happy to share with the hon. Gentleman how much work we have done in that space.

Martin Docherty-Hughes: Go on, give way.

Johnny Mercer: I will not. Repeat investigations of alleged historical offences or the emergence of new allegations of criminal offences relating to operations many years ago can make the delivery of timely justice extremely difficult. It can also leave our service personnel with the stress and mental strain of the threat of potential prosecution hanging over them for far too long. The measures in part 1 of the Bill are key to providing reassurance to our service personnel and veterans about the threat of repeated criminal investigations and potential prosecution for alleged offences occurring many years ago on overseas operations. The purpose and effect of clause 1 is to set the conditions for when the measures in clause 2 and 3 must be applied by a prosecutor in deciding whether to prosecute a criminal case or to continue with the proceedings in a case. It should be noted with reference to clause 1(2) that the measures do not affect the prosecutor’s decision as to whether there is sufficient evidence to justify prosecution. The first stage of the prosecutorial test will therefore remain unchanged. Clause 1 therefore details to whom and in what circumstances the measures will apply.

Martin Docherty-Hughes: I am very grateful to the Minister for giving way. When we consider his summing up, critically with reference to new clause 7(2)(a), does he not recognise that some of the evidence given by Judge Becket in response to his hon. Friend the Member for Wrexham creates an ambiguity in terms of our partners in military activity? For example, Judge Becket referred to the murder of six Royal Military Police in Iraq and noted that if new evidence was brought forward, and the Government of Iraq had the same legislation, there is every possibility that the people responsible would not be prosecuted.

Johnny Mercer: I assume that the hon. Gentleman is talking about Judge Blackett, who is the Judge Advocate General. He made some keen points. I have met Judge Blackett and we have tried to incorporate his work in the Bill, where appropriate. The idea that new evidence is presented and we do not prosecute is simply not the case. With reference to the six individuals killed at Majar al-Kabir in 2003, if new evidence is presented in that case, we would expect the Iraqis to prosecute. If new evidence emerges in cases against servicemen and women, they can still be prosecuted beyond these timelines. The legislation is simply bringing integrity and rigour to the process.

Mr Jones: Will the Minister give way?

Johnny Mercer: No, I am going to make some progress.

Under the Bill, the first condition establishes that the measures will only apply to members of the armed forces, both regulars and reserves, and to members of British overseas territory forces operating as part of UK forces when deployed on operations outside the British Islands, as defined in clause 7. Although we do deploy other Crown servants and contractors on overseas operations, those individuals are not deployed on front-line
military operations and are not ordinarily exposed to the same risks and dangers as service personnel. It is not therefore appropriate to extend the protection provided by the measures in part 1 for our service personnel and veterans to other Crown servants or contractors.

The first condition in the legislation also requires that the alleged conduct occurred while the person was deployed on an overseas operation during which personnel came under attack or faced the threat of attack or violent resistance. Operations conducted outside the UK are vastly different from those conducted inside the UK. Within the UK, the military only ever operate in support of the civil authorities. With the exception of Operation Banner, which was an absolutely unique circumstance, UK operations rarely, if ever, require our personnel to operate in the same sort of hostile, high-threat environments they face on overseas operations. Excluding Northern Ireland, there are no outstanding historical allegations relating to operations in the UK.

Be assured that we have not forgotten our Northern Ireland veterans. The Secretary of State for Northern Ireland will be bringing forward separate legislation to address the legacy of the past in a manner that focuses on reconciliation, delivers for victims and ends the cycle of re-investigations into the troubles in Northern Ireland, which has failed victims and veterans alike. That will deliver on our commitment to Northern Ireland veterans.

The second condition for the measures to apply is that the alleged offence must have occurred over five years ago, with the start date being the date of the offence. Where an alleged offence occurred over a period of days, the start date will be the last day of that period. It is vital that investigations into historical allegations are brought to resolution without undue delay. To provide greater assurance to our brave servicemen and women, we consider five years to be the most appropriate start point for the presumption.

The Chair: Just before I collect the voices of Members as they vote, if the clause is voted for, it means that the first clause is agreed to and then becomes part of the Bill to report to the House. The other new clauses and amendments that were grouped with it will be voted on when they are reached. I hope that is clear.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 2.

Division No. 4]

AYES

Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo

Eastwood, Mark
Gibson, Peter
Lopresti, Jack
Mercer, Johnny
Morrissey, Joy

NOES

Docherty-Hughes, Martin
Jones, rh Mr Kevan

Question accordingly agreed to.

Clause 1 ordered to stand part of the Bill.

The Chair: It is not an important point—it is a difference without real meaning—but the normal procedure is not to abstain but to have no vote.

Mr Jones: Clause 2 is quite an important part of the Bill. I am sorry that the Minister did not allow me to ask him about his investigation point, because it has an impact on this clause. He said that there is no similar system of judicial oversight for investigations, but I have to say that there is. For example, the police will often refer cases to the Crown Prosecution Service prior to the conclusion of an investigation for advice on whether more information is needed to meet the threshold for a prosecution. That is one of the points that I was going to make if he had allowed me to intervene. Whatever his civil servants have written to him, I suggest that they look at that comparison and what that would have done.

It is interesting that the Minister said that he met the Judge Advocate General and tried to incorporate things. I would like to know what in the Bill was changed after the meeting. The Minister has moved clause 2 formally. If there is any debate, he can respond. The new clauses will be moved formally when we get to them, but they can be debated now.

Mr Jones: Clause 2 is quite an important part of the Bill. I am sorry that the Minister did not allow me to ask him about his investigation point, because it has an impact on this clause. He said that there is no similar system of judicial oversight for investigations, but I have to say that there is. For example, the police will often refer cases to the Crown Prosecution Service prior to the conclusion of an investigation for advice on whether more information is needed to meet the threshold for a prosecution. That is one of the points that I was going to make if he had allowed me to intervene. Whatever his civil servants have written to him, I suggest that they look at that comparison and what that would have done.

It is interesting that the Minister said that he met the Judge Advocate General and tried to incorporate things. I would like to know what in the Bill was changed after the meeting with Judge Blackett. I cannot see anything, but if the Minister wants to give us that, either now or later, that would be fine.

The presumption in clause 2 is for it to be exceptional for a prosecutor to determine that proceedings should be brought in relation to an offence committed by members of the armed forces when deployed on operations abroad. On that presumption against prosecution, I think we will have real problems, as we have referred to already, with regard to our international standing. I ask for your guidance, Mr Stringer: am I allowed to speak to new clause 1, even though it is not being moved?

3.30 pm

The Chair: New clause 1 is before us for debate. The Shadow Minister may or may not wish to press it when we get to the new clauses, but it is before us for debate now.

Mr Jones: New clause 1 states:
The principle referred to in section 1(1) is that a relevant prosecutor makes a decision to which that section applies may determine that proceedings should be brought against the person for the offence or, as the case may be, that the proceedings against the person for the offence should be continued, only if the prosecutor has reasonable grounds for believing that the fair trial of the person has not been materially prejudiced by the time elapsed since the alleged conduct took place.

We have already discussed this, but if a material time difference were to prevent someone from getting a fair trial, I do not think that anyone would deem it fair to prosecute them for a crime. That has been an issue in civil law. For instance, certain historical sexual abuse cases have been very difficult to determine. There is a balance between the case for the prosecution to, quite rightly, get justice for the victim, and for the accused to receive a fair trial given the lapse in time. The new clause makes a fair suggestion.

In the case of Major Campbell, the circumstances were very difficult. The differences between service justice and civilian life include the unique circumstances in which individuals operate and, as I have said, the fact that they serve overseas, where evidence and witnesses must be gathered. We must ensure that the accused gets a fair trial. I want this Bill to make the process fairer and more just for accused individuals in those unique circumstances. I keep coming back to that point: the circumstances are unique and very different.

I support new clause 1. I accept that it might not be expertly drafted, but if the Minister is sympathetic towards it, I urge him to at least ask a civil servant to redraft it so that it can be brought back as a Government amendment, or to suggest another way in which the proposal can be brought into effect. Judging by his attitude, I doubt he will do that for any of the proposed amendments.

Johnny Mercer: He’s a fan, isn’t he?

Mr Jones: I am not bad, actually. I am just trying to be helpful and to improve the Bill, but the Minister seems determined to push it through unamended. He might not like it, but this is the purpose of Parliament: it is about scrutinising legislation. I have tabled amendments that I do not necessarily agree with, but I have done so because we need to demonstrate to the public that all opinions have been aired in Committee. That is an important part of our democracy. Even with a Government majority of 80, a Minister cannot simply determine that their proposals go through on the nod. Likewise, just because something comes out of his lips, that does not necessarily make it right. Perhaps I can give the Minister some advice: he might be in a stronger position if he was prepared to stand up and argue, in a friendly way, some of the points made in the Bill. All he seems to be doing, however, is reading out a pre-prepared civil service brief. This is the first time I have seen that done in a Bill Committee.

On the presumption against prosecution, we have got things the wrong way around. As Judge Blackett said, by looking at prosecutions we are looking through the wrong end of the telescope. I think there are ways in which we can ensure that people do not have to face lengthy reinvestigations or an inordinately long wait before being taken trial, and, if they meet the threshold for prosecution, that they are not disadvantaged by the passage of time. It is worth exploring those issues. My hon. Friend the Member for Portsmouth South asks, through the new clause, a reasonable question about time limits. If this is not the way to do it, what is?

Stephen Morgan (Portsmouth South) (Lab): I rise to support new clause 1. I have said many times throughout this process that the Opposition will work constructively with the Government to get the Bill right, to protect armed forces personnel and their families. We believe that the intent of the Bill is well placed, but it has been poorly executed to achieve what Members on both sides of the House want—an end to vexatious claims that are misplaced, that are drawn out for years longer than they should be, and that place our troops and their families under incredible amounts of stress and pressure that they simply should not have to expect.

Our world-class personnel and their families deserve so much better. That is why it is so important that we get the Bill right. However, the presumption against prosecution does not resolve the issue that we all recognise: it does not afford our armed forces personnel the protection that they deserve. That is why, where the Opposition see an opportunity to improve the Bill, we will seek to highlight it. It is why we have tabled new clause 1, which we believe is fair. Crucially, it tackles the key issues of bringing to an end many of the vexatious claims against our armed services personnel—we want to make that commonplace—and of ensuring that decisions to prosecute are brought to a swifter conclusion. For that to happen, clause 2 in part 1 of the Bill must be removed and replaced by a new clause that replaces the presumption against prosecution with a requirement for a prosecutor who is deciding whether to bring or to continue a prosecution to consider whether the passage of time has materially prejudiced the prospective defendant’s chance of a fair trial.

The principle of a fair trial and consideration of the length of time that has passed during an investigation of our armed forces personnel is important for two reasons. First, it focuses on fairness. It ensures that our world-renowned legal system’s reputation remains intact. It does not undermine our international reputation and avoids the potential repercussions of our armed forces personnel being dragged to The Hague for violating international law. Secondly, it tackles the issue of lengthy investigations, which, sadly, some of our armed forces personnel have experienced and still are experiencing. More specifically, it requires the prosecutor to consider whether the passage of time in such investigations has materially prejudiced the chance of a fair trial for our armed forces service personnel and veterans.

It is not just the Opposition who have identified the flaws in clause 2 and where it could be improved. The International Committee of the Red Cross has raised these concerns, submitting them in written evidence. For context, and for those who are not aware, the ICRC is an impartial, neutral and independent organisation whose mission is to protect the lives and dignity of victims of armed conflict and others in situations of violence and to provide them with assistance. The ICRC is also the origin of the Geneva conventions, an international agreement of which our country is a proud original signatory.

In its evidence, the ICRC acknowledges that there are occasions on which discretion has developed to address cases in which prosecutions are not taken forward. At international level, article 53 of the International Criminal Court statute sets out a procedure to follow if,
“upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because...A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime”.

The written evidence goes on to say, however, that the ICC Office of the Prosecutor said that “only in exceptional circumstances will the Prosecutor of the ICC conclude that an investigation or a prosecution may not serve the interests of justice”.

Finally, under the heading, “The presumption in favour of investigation or prosecution”, the OTP notes: “Many developments in the last ten or fifteen years point to a consistent trend imposing a duty on States to prosecute crimes of international concern committed within their jurisdiction”.

The written evidence gives rise to a number of considerations. Clause 2 states that there should be exceptional circumstances for a prosecutor to determine whether proceedings should be taken against armed forces personnel. However, as outlined in the ICRC submission, does the prosecution in the interests of justice, including the gravity of the crime, the interests of victims and the age and infirmity of the alleged perpetrator, sound like an exception to the rule of when proceedings should be brought forward? Indeed, it seems more likely to be exceptional for such a case to not be progressed and brought forward. The OTP compounds that point by stating that “only in exceptional circumstances will the Prosecutor of the ICC conclude that an investigation or a prosecution may not serve the interests of justice.”

Under the Bill as drafted, it will not be exceptional to not prosecute such cases. Indeed, it risks undermining our international reputation and legal obligations, and, as a consequence, risks our armed forces personnel being tried at the International Criminal Court instead of in British courts. That gives rise to the question: why are the Government so intent on taking this risk, undermining our reputation and legal obligations, and leaving our armed forces personnel exposed? Why have the Government included a clause that risks undermining a historic, momentous international convention in which our country played a key role and of which it is a key signatory? Why do the Government wish to deviate from our colleagues and international security partners on such an important issue? What is the Government’s reasoning for this? Why have they included a clause that risks undermining a historic and momentous international convention in which our country played a key role and of which it is a key signatory? Why are the Government so intent on risking undermining our reputation and legal obligations and leaving our armed forces personnel exposed? I hope the Committee will get some answers from the Minister.

Miss Sarah Dines (Derbyshire Dales) (Con): I rise to speak briefly to new clause 1. As a new Member, I find the quality of the new clause disappointing. It does a disservice to the intentions of those who tabled it, so I invite them to withdraw it. The wordings are far too vague and subjective. It is without guidelines and substance. Its incredible vagueness would make for a very unworkable piece of legislation. I believe in proper scrutiny in Committee, and the quality of the new clause is not good. It is a lawyer’s gift and would be subject to countless legal challenges and much litigation, which is exactly what the Bill is meant to stop.

Mrs Lewell-Buck: Will the hon. Lady give way?

Miss Dines: I am just finishing. I respectfully ask for the new clause to be withdrawn.

3.45 pm

Johnny Mercer: I will answer the point about the Judge Advocate General first. He is able to comment on all areas of policy that have a direct impact on his role within the service justice system and the management of the military court system, but the measures in part 1 of the Bill impact on the prosecutorial process. As such, we felt it was more important to focus on engagement with the independent prosecutors, the Crown Prosecution Service and the Service Prosecuting Authority, which were all engaged in the process.

As I have said already, I have met the JAG and have looked at his recommendations, and we continue to look at how we can take forward his suggestions in order to improve the process of service justice. More will come on that in due course.
Johnny Mercer: I did not meet Judge Blackett before the legislation was prepared, for the reasons I have outlined. We thought it far more important to focus on engagement with the independent prosecutors, the Service Prosecuting Authority and the Crown Prosecution Service. Like I said, I have met him and heard what he has to say, and we heard his evidence last week.

Liz Twist: Having subsequently met Judge Blackett and heard his evidence, did the Minister make any changes to the legislation as drafted, or does he propose to make any such changes?

Johnny Mercer: No, because that would be to pre-empt the judge-led review of how we protect the Department, configure ourselves and develop the capability to deal with lawfare. Judge Blackett gave his view, but in our judgment it was better to engage the independent prosecutors, the Crown Prosecution Service and the Service Prosecuting Authority. That is what we have done—we engaged in a wide public consultation—and I believe that where we have arrived is fair and proportionate.

Martin Docherty-Hughes: If the Bill were not legislation relating to the armed forces, it would have been given prior oversight by either the Attorney General for England and Wales, the Attorney General for Northern Ireland, or, for Scotland, the Lord Advocate or the Advocate General. Will the Minister tell the Committee why the Judge Advocate General was excluded from that process for this legislation?

Johnny Mercer: The Secretary of State wrote to the Judge Advocate General on 14 May 2020 acknowledging that, because of the 100-day election commitment to introduce the Bill, it was not possible for the legal protections team to complete the usual level of stakeholder engagement that we would usually seek to undertake post-public consultation.

Martin Docherty-Hughes rose—

Johnny Mercer: I am answering the hon. Gentleman’s question. However, we welcomed the Judge Advocate General’s interest in the Bill: an offer was made for the project team to engage with him at a convenient time, and I subsequently met him. I respect the hon. Gentleman’s views on how we should deal with the current system, which is difficult and ultimately unfair to veterans.

I respect all the views that we heard last week—of course I do—but I am allowed to disagree with them. Having worked on this for seven years, it is possible to hear other people’s views on the matter and disagree with them. The Department has taken a balanced and proportionate view, and indeed, it has incorporated a lot of views from other stakeholders throughout the process.

Mrs Lewell-Buck: Will the Minister give way?
Johnny Mercer: I will not give way at the moment, because I have addressed that point a number of times.

Clause 2, which the new clause would replace, sets out the principle of the presumption against prosecution, but it is to be exceptional for a prosecutor to determine that proceedings should be brought for an alleged offence that occurred in operations more than five years ago, as set out in clause 1. We have not sought to define “exceptional”, as we do not think it necessary or possible to provide an exhaustive definition. We intend, however, that the effect of clause 2 will be that when a prosecutor considers whether criminal proceedings should be brought or continued in relevant cases, there will be a presumption against prosecution, and that the threshold for rebutting that presumption will be high.

We also expect that the concept of “exceptional” will develop over time as cases are considered by prosecutors. I reinforce the point in clause 1(2): the presumption against prosecution does not impact on the prosecutor’s assessment as to whether there is sufficient evidence to justify a prosecution. It focuses instead on setting a high threshold for a prosecutor to determine that it is in the public interest to bring or to continue criminal proceedings in respect of offences committed by service personnel on operations more than five years ago.

Although the presumption will not directly impact on investigations, allegations of wrongdoing must, and will, continue to be investigated. We accept that, over time, this is likely to have an indirect impact. As prosecutors become familiar with the presumption, they should be able to advise investigators earlier in the process on whether the higher threshold of the new statutory requirement would be met in a particular case.

Mr Jones: Will the Minister give way on that point?

Johnny Mercer: Not at the moment. Although that should therefore help to reduce the likelihood of investigations being reopened without new and compelling evidence, it does not create an absolute bar to investigations or prosecutions, as a statute of limitations or an amnesty would. Rather, the presumption is rebuttal, with the prosecutor retaining the discretion to prosecute where they determine that it would be appropriate to do so. That may include cases in which there is evidence that a serious offence has been committed.

In contrast, an amnesty or a statute of limitations for service personnel would be a breach of our international legal obligations and would pose significant challenges and risks. That includes the risk that, in the absence of a domestic system for the prosecution of international criminal offences, the International Criminal Court would assert its jurisdiction and bring prosecutions against members of the UK armed forces. The presumption against prosecution, however, is consistent with our international legal obligations, as it would not affect the UK’s willingness or ability to investigate or prosecute alleged offences committed by our service personnel.

Finally, the statutory presumption and the measures in clauses 3 and 5 will apply only to proceedings that start after the Bill has become law. Although alleged criminal offences relating to operations in Iraq and Afghanistan occurred more than five years ago, meaning that the presumption could be applied in any relevant prosecutorial decisions, it is likely that any remaining investigations of those allegations will be complete before the Bill becomes law. If any new credible allegations relating to Iraq and Afghanistan should arise, however, they will obviously be subject to investigation and, where appropriate, consideration by a prosecutor. Any decision to prosecute such a case after the Bill has become law must, in accordance with the presumption, be exceptional.

Mrs Lewell-Buck: I thank the Minister for giving way—[Interruption.]

The Chair: Order. The Committee is suspended for 15 minutes.

3.57 pm
Sitting suspended for a Division in the House.

4.12 pm
On resuming—

The Chair: Mrs Lewell-Buck was intervening on the Minister.

Mrs Lewell-Buck: It was remiss of me not to mention what a pleasure it is to serve under your chairmanship, Mr Stringer. It has been a pleasure all day, and hopefully all week.

Has clause 2 been given approval by the CPS? The Minister mentioned that it does not breach international humanitarian law. Can he explain which organisations and professionals have said that? I give him some gentle advice, which I hope he will take in the way that it is intended: legislation made purely on one’s own views, against the advice of experts and others who know exactly what they are talking about, is not the right way to go. It is playing fast and loose with our armed forces and is going to have serious, unintended consequences.

Johnny Mercer: On the idea that the Department does anything other than seek the views of experts to bring through this difficult legislation, in evidence the hon. Lady has seen a set of views given by campaign groups, but those are not the only views available. This is difficult legislation that, of course, will be contested, but the idea that we have just come up with some idea after a public consultation lasting many months—[Interruption.]

The Chair: Order.
Question put and agreed to.
Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

MATTERS TO BE GIVEN PARTICULAR WEIGHT

Mr Jones: I beg to move amendment 1, in clause 3, page 2, line 20, leave out “so far as they tend to reduce the person’s culpability or otherwise tend against prosecution”.

This amendment would ensure that, in giving particular weight to the matters in subsection (2), a prosecutor may consider whether any matter tends to reduce or increase culpability, tending against or in favour of prosecution respectively.

The Chair: With this it will be convenient to discuss the following:
Amendment 3, in clause 3, page 2, line 33, at end insert—

“(bb) the public interest in maintaining public trust in the criminal justice system and upholding the principle of accountability of the Armed Forces.”

This amendment would ensure that a relevant prosecutor gives particular weight to maintaining public trust in the criminal justice system and upholding the principle of accountability of the Armed Forces.

Amendment 4, in clause 3, page 2, line 33, at end insert—

“(bc) the nature of the alleged conduct, in particular whether it engaged the obligations of the United Kingdom under Articles 2, 3, 4 or 5 of the European Convention on Human Rights;”

This amendment would ensure that particular weight is given by a prosecutor where the alleged conduct engages the UK’s obligations under Article 2 (right to life), Article 3 (prohibition on torture and inhuman or degrading treatment), Article 4 (prohibition of slavery and forced labour) or Article 5 (prohibition of arbitrary detention) ECHR.

Amendment 5, in clause 3, page 2, line 33, at end insert—

“(bd) whether the person had command responsibility for the alleged conduct, and to what extent;”

This amendment would ensure that particular weight is given by a relevant prosecutor where the person had command responsibility for the alleged conduct.

Amendment 13, in clause 6, page 4, line 13, at end insert—

“(3A) A service offence is not a ‘relevant offence’ if it is an offence whose prosecution is required under the United Kingdom’s international treaty obligations.”

This amendment would exclude the prosecution of serious international crimes (such as torture, genocide, crimes against humanity, and certain war crimes) from the limitations otherwise imposed by the Bill.

Amendment 58, in schedule 1, page 12, line 6, at end insert—

“13A An offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Geneva Conventions).”

13B An offence under section 134 of the Criminal Justice Act 1988 (torture).”

This amendment adds to Schedule 1 specific reference to existing domestic offences in relation to torture, genocide, crimes against humanity, and grave breaches of the Geneva Conventions, in a similar way to the treatment of sexual offences.

Amendment 6, in schedule 1, page 12, line 38, leave out paragraph 17 and insert—

“17 An offence under Part 5 (Offences under domestic law) of the International Criminal Court Act 2001 as it relates to the law of England and Wales.”

This amendment would mean that all offences listed in Part 1 of the International Criminal Courts Act 2001 as they related to the law of England and Wales would be excluded offences, without restriction.

Amendment 59, in schedule 1, page 12, line 39, at end insert—

“(za) an act of genocide under article 6, or”

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 60, in schedule 1, page 12, line 40, leave out “a crime against humanity within article 7.1(g)” and insert “a crime against humanity within article 7.1(a)-(k).”

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.

Amendment 61, in schedule 1, page 12, line 41, leave out from beginning to end of line 2 on page 13 and insert—

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 7, in schedule 1, page 13, line 12, leave out paragraph 20 and insert—

“20 An offence under Part 5 (Offences under domestic law) of the International Criminal Court Act 2001 as it relates to the law of Northern Ireland.”

This amendment would mean that all offences listed in Part 1 of the International Criminal Courts Act 2001 as they related to the law of Northern Ireland would be excluded offences, without restriction.

Amendment 62, in schedule 1, page 13, line 13, at end insert—

“(za) an act of genocide under article 6, or”

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 63, in schedule 1, page 13, line 14, leave out “a crime against humanity within article 7.1(g)” and insert “a crime against humanity within article 7.1(a)-(k).”

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.

Amendment 64, in schedule 1, page 13, line 15, leave out lines 15 to 18 and insert—

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 65, in schedule 1, page 14, line 7, at end insert—

“(za) an act of genocide under article 6, or”

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 66, in schedule 1, page 14, line 8, leave out “a crime against humanity within article 7.1(g)” and insert “a crime against humanity within article 7.1(a)-(k).”

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.

Amendment 67, in schedule 1, page 14, leave out lines 9 to 12 and insert—

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 12, in schedule 1, clause 15, page 9, line 21, at end insert “subject to subsection (2A).”
(2A) Before making regulations under subsection (2), the Secretary of State or Lord Chancellor must lay before Parliament the report of an independent review confirming that the Act is in full compliance with the United Kingdom’s international treaty obligations with respect to the prosecution of war crimes and other crimes committed during overseas operations.

(2B) This Act shall cease to have effect at the end of the period of five years beginning with the day on which it is brought into force, unless the Secretary of State or Lord Chancellor has, not fewer than four years after this Act has come into force, laid before Parliament the report of a further independent review confirming that the Act remains in full compliance with the United Kingdom’s international treaty obligations with respect to the prosecution of war crimes and other crimes committed during overseas operations."

4.15 pm

Mr Jones: The amendments we are debating relate to clause 3. I will first refer to amendment 3, which stands in my name. At the outset, I make clear that these are probing amendments; I am not going to push them to a vote, but they mean that the issues are at least going to get some scrutiny by the Committee, although based on the answers we have had so far, I am not sure we are going to get much response.

Particularly during the last bit on prosecutions, it would have been interesting to know whether, for example, the Crown Prosecution Service had agreed to clause 2 and what its thoughts on it were, because even though the Minister said it was consulted, I very much doubt it would agree with clause 2.

There is a difference between being consulted and agreeing with what comes out of the sausage machine at the end of the consultation. We want the public to have confidence not only in the Bill, but in the process. The Minister is right: the Government can consult who they like, but at the end of the day, they have to make decisions. What if those decisions fly in the face of what the Minister referred to as “campaign groups”? I do not consider the International Criminal Court and others “campaign groups”. These are obligations under international treaty, and, like my hon. Friend the Member for Portsmouth South, I am concerned about our international reputation.

Amendment 3, which would amend page 2, line 33 of the Bill, relates to the public interest test in maintaining trust in the criminal justice system and upholding the principle of accountability of the armed forces. I have no problem with the accountability of the armed forces, because as I say, I am a supporter of the service justice system. I have no problem with the oversight we have in Parliament and the way that system operates. However, there was a time when many families had direct connections to the armed forces; going back to the second world war or national service, people knew people in the armed forces, so they understood the culture. That is becoming increasingly distant. We no longer have national service, so we do not have a culture where most citizens go through that system. It is therefore important that we work extra hard to maintain public confidence in the principle of accountability of the armed forces.

Again, I am a supporter of our armed forces, and have been for the 19 years I have been in this House. I am not uncritical if they get things wrong, and I am pleased that I played my part, for example, in the activities of the Select Committee on Defence back in 2005, which led to the creation of the office of the Service Complaints Commissioner for the Armed Forces, now the Service Complaints Ombudsman. We are asking people to do unique things, and we do need to protect them, but this probing amendment is to see whether we can get the weight of public trust when it comes to prosecutions—in other words, if we are going to take forward a prosecution, that is taken into account.

I know for certain that our service prosecution system is fair, and it is one that I support. It is also one that includes the test of whether a prosecution is in the public interest, which is in civil law as well. That is controversial in civil law because there are cases in which you and I, Mr Stringer, and the average person on the famous Clapham omnibus, might think someone should be prosecuted. There is the evidential test and then there is the question of whether prosecution would be in the public interest, and sometimes it is difficult to explain that to the public.

I see no purpose whatsoever in prosecuting an 80-year-old veteran in Northern Ireland. I accept that the legislation does not cover Northern Ireland, but the Government have made huge promises about what they are going to do to replicate the Bill to cover Northern Ireland—having dealt with Northern Ireland as a Minister, I would say, “Best of luck with that, mate.” There are ways of translating the Bill to do that, but this goes to the heart of it, because the issue in Northern Ireland is public trust on both sides of the community divide.

This probing amendment is trying to see whether the prosecution can take some account of the perception of our armed forces in the public eye. As I said earlier, many people do not understand the service justice system. Indeed, some people campaign against it, saying that members of the armed forces should not have a separate judicial system. I am sorry, but I disagree, because we ask unique things of them. I think that what we have at the moment strikes the right balance, having judicial oversight while also ensuring that the unique circumstances in which they serve are considered.

The public interest test—whether it is in the public interest to sue somebody—is already there. The question is whether we can have a system in which some weight is given to how it will look and how the armed forces would be perceived. I am not quite sure how that would be done in practice. The prosecutors and members of the armed forces who I have met have this in their DNA, because they are all conscious of the importance of maintaining public trust. We are a democracy and it is important that public trust is maintained in all aspects of Government and the armed forces. I think that the current Government are trying the public’s patience in relation to that trust element, but I will not go down that route now.

Am I proud of our armed forces? Yes, I am. It is important to say that. My constituency is a recruiting ground for many young servicemen and women, and the armed forces give them opportunities that they would never get in civilian life. We often concentrate on the negative aspects of service life, but I have always advocated that service life is not only positive for those young people but good for the nation, because those life experiences and skills are transferable once those individuals return to civilian life. We should be proud of that and celebrate it more than we do.
I am not sure how amendment 3 would reflect that, but it is worth putting it to the Committee, so that Members understand that public trust in our armed forces is going to be important. My fear is that the Bill will do a lot to undermine that trust. As I told the Committee last week, I am also concerned that the Bill will give weight to those people who want to do away with the service justice system, which I certainly do not want to see.

Amendment 4, which stands in my name, is about the alleged conduct, with particular reference to our obligations under articles 2, 3, 4 and 5 of the European convention on human rights. I know that, for some Conservative Members, any mention of Europe has a Pavlov’s dog effect—it sets them off. However, it is important to remember that the European convention on human rights is nothing to do with the EU or those nasty foreigners who, in the eyes of certain people, have been persecuting us from Brussels. It was set up after the second world war so that there would be a basic, decent standard.

I am proud that this country was part of that convention. I am also proud that we have been seen as a force for good around the world, because we have argued for basic human rights—rights that we take for granted in this country, but that many people do not. We have seen recently in Ukraine and Belarus what happens when those rights are not maintained. Under amendment 4, the prosecution would give weight to whether the alleged conduct would go against the UK’s obligations under article 2, on the right to life, or under the articles prohibiting torture and inhuman or degrading treatment, slavery and forced labour, and arbitrary detention.

There is something that I find strange about the Bill. The Government specified certain categories of crimes that will not be covered by it—murder and sexual offences—and I totally agree about that. What I have difficulty with, however, despite the assertion of compliance with the Human Rights Act, is the issue of torture. I do not think that anyone in the Committee Room would give the weight in prosecutions to the European convention on human rights. I do not want for one minute to do that, and I think that neither you, Mr Stringer, nor I could imagine what that person was in to have changed their actions. That is not acceptable, and that would lead to the condemnation of any nation that participated in it. Credit is due to the Foreign Office, under all Governments, including the present one, because it does a lot to raise the issue when torture is instigated against countries’ citizens, and to push back and argue against it. I do not know why the issue is not specified in the Bill. It might help to reassure people who do not understand the justice system. People ask why it is needed, so I shall explain.

I did not think that we would get to a point where nations from which we would expect better would engage in torture. As a member of the Intelligence and Security Committee, I saw a lot of intelligence during the investigation of rendition. It is a fact that the United States, under the Bush Administration, engaged in state torture, which is not acceptable. Did that put members of our security services and some of our armed forces personnel in a difficult position? Yes, I think it did.

As to being open to prosecution, although I have seen no evidence that members of the British armed forces or security services took part in any type of torture, there is credible evidence to show that they were present when it was taking place. That is not acceptable, either. It would be helpful if the Bill took into account and gave the weight in prosecutions to the European convention on human rights, and explicitly included reference to torture and inhumane treatment, to ensure that people can take comfort in the Bill. Let me dispel the myth that members of our armed forces or our Government would want to be involved in torture—they would not. To ensure we can have that protection, it should be in the Bill.

4.30 pm

The other factor is the right to life, which I know is controversial in armed conflict. There has been a concern raised in the excellent report of the Defence Committee, which looked at the creeping nature of the European Commission into the battle space. I do not see that there is a problem. As I see it, the convention does not cover the idea that the right to life will be one’s enemy in any conflict, because otherwise it would make it impossible for any state to use lethal force when necessary. We all know that there are examples where lethal force must be used by our armed forces.

It is important that during prosecution those factors are in the back of the mind. We must accept that, in terms of the prosecution process, conduct should be covered by that. If sexual offences and murder are in the Bill, we should be able to put other things in, too.

Amendment 5 is about “whether the person had command responsibility for the alleged conduct, and to what extent”. This relates to the question, raised previously by the hon. Member for Wolverhampton South-west, about people’s responsibilities in relation to the orders they have been given. That is no excuse for their actions, but weight should be given to whether one is a senior officer. Again, this is a probing amendment. It is difficult to disaggregate, because all members of the armed forces are covered by the same basic rules. In terms of relevance to the prosecutor, it is a matter of the position that person was in to have changed their actions. That is different for a senior officer and a private, for example.

Martin Docherty-Hughes: The right hon. Gentleman gets to a point that many of us find disconcerting, especially when reflecting on the second part of the Bill. The chain of command needs to take responsibility for its decision making. I know this is only a probing amendment, but the Government need to consider the fact that the chain of command has responsibility within the decision-making process.

Mr Jones: That is important. It is about taking responsibility of the chain of command. I remember when we first introduced the Service Complaints Commissioner for the Armed Forces, there was a huge fear, as there was when we introduced the armed forces ombudsman, that they would interfere with the chain of command. I do not want for one minute to do that, and neither should a prosecutor, but the actions and freedoms that someone has is a relevant factor that needs to be taken into consideration. As we discussed this morning, these people are in very difficult situations—I am sure that neither you, Mr Stringer, nor I could imagine what it would be like, although I am sure that the Minister can—and that needs to be taken into account.

Having made those comments, I shall leave it there.
Martin Docherty-Hughes: I want to speak to amendment 3, the probing amendment tabled by the right hon. Member for North Durham, and to reflect on several issues that he has raised about trust and accountability. That is because there is a sense, at least among Scottish National party Members, that if this type of amendment were to be considered at a future time by the Government, it would allow the criminal justice system, and specifically the military judicial system, to retain some element of trust within civilian oversight.

I recognise that the Minister and the Government have a passion for this issue, and that there is a commitment to do this within 100 days. I hear that, but I have some concerns that need to be answered. First, to enable accountability and trust, can the Minister tell us whether the Crown Prosecution Service for England and Wales gave a positive response to the Bill? Secondly, in relation to the 100 days, there is also a commitment to have a similar Bill for Northern Ireland, so would he consider it appropriate for the Public Prosecution Service for Northern Ireland to be engaged in any future Bill-building on that Bill, given the fact that he excluded from this process the Judge Advocate General, who is a coherent part of the military judicial system, and engagement with whom enables trust to be built across the House?

I wonder whether the Minister can answer those questions: did the Crown Prosecution Service for England and Wales say that the Bill was a good piece of legislation; and will he instigate discussions with the Public Prosecution Service for Northern Ireland if he is going to introduce another piece of legislation for Northern Ireland, and again exclude the Judge Advocate General?

Stephen Morgan: I rise to speak in support of the amendments to clause 3. When I became a Member of Parliament, in the nation regarded as the birthplace of modern parliamentary democracy, I never once thought that I would have to argue the case for retaining Great Britain’s commitments against war crimes. This country was built upon principles of fairness, equality and justice. We have stood against torture and other war crimes, with a proud tradition of taking direct action when we see violations against human rights being committed.

From world war two and the Nuremberg trials to Bosnia and The Hague, this country has a reputation for standing against torture and crimes against humanity. It is part of our identity and is part of what makes us British, which is why it is so concerning that this Bill in its current form, as my right hon. Friend the Member for North Durham said earlier, puts all of that at risk.

Schedule 1 to the Bill sets out what constitutes excluded offences for the purposes of presumption against prosecution. Torture is not included and neither are other war crimes listed in article 7 of the Rome statute, apart from sexual crimes. That is morally wrong. It breaks our commitments to international law, it risks dragging our troops in front of the International Criminal Court, and it is entirely avoidable with some common-sense amendments to the Bill.

Let us consider that first point. I know that everyone in this room would agree that it is morally wrong in any situation to commit an act of torture—it is the most serious of crimes and has no moral justification in any circumstances. When we look at schedule 1, we see that the offences excluded from legal protection are sexual offences. Labour argues that these offences should be utterly condemned and are inexcusable, and that they should be excluded from any presumption against prosecution. However, schedule 1 fails to exclude terrible crimes such as torture and genocide. The Government have provided no good explanation or justification whatever for excluding only sexual offences from the scope of protection under the Bill, particularly as no service personnel in Iraq or Afghanistan have been accused of genocide, yet it is not excluded as an offence in the Bill.

As a former Attorney General, Dominic Grieve, put it: “This could create the bizarre outcome that an allegation of torture or murder would not be prosecuted when a sexual offence arising out of the same incident could be.”

That brings me to Labour’s second ground for objection to the Bill’s exclusion of torture and other war crimes. Britain always had an unwavering commitment to the law of armed conflict. The Geneva conventions are known in most households in Britain, and the Bill tramples on our commitments to them. We have heard from former judges and generals, witnesses who have trained our armed forces and provided them with independent legal advice, and ex-service personnel. We have received written evidence from the International Committee of the Red Cross. All those individuals and organisations have said two things in common. First, they are clear in their duty to uphold the law of armed conflict and instruct others to do so. Secondly, they are clear that the Bill risks eroding our commitment to those laws and have expressed grave warnings on the consequences.

First, it would irreparably damage the moral credibility and authority of the UK to call out human rights abuses worldwide. Secondly, it would undermine the hard-won reputation of UK forces as responsible and reliable actors. Thirdly, it risks reprisals against British troops, particularly service personnel who may be captured and detained on operations.

I am reminded of the evidence last week of the Judge Advocate General, who said:

“You will remember that six Royal Military Police were killed...in 2003. If those responsible were identified today, would we accept that there would be a presumption against their prosecution? Would we expect the factors in clauses 2(2)(a) to be taken into account? Would we be content that a member of the Iraqi Government’s consent would be needed to prosecute? Would we accept a decision by that person not to prosecute? In my view, there would be outrage in this country if that occurred. In all areas of law, you have to be even-handed.”—[Official Report.

Overseas Operations (Service Personnel and Veterans) Public Bill Committee. 8 October 2020; c. 128, Q278.]

It is hard to disagree with those words. To demand justice from others when our men and women on the frontline need it, Britain must be at the forefront of defending that system, underpinned by international laws and the principle of equality under the law.

Labour is deeply concerned that the Bill sets the UK on a collision course with the International Criminal Court and that the Bill risks our troops being dragged to The Hague. Last week, we heard from a witness who represents and is the voice for thousands of veterans, who said that “there is without a doubt greater fear of a non-British legal action coming against people than of anything British.”—[Official Report.

Overseas Operations (Service Personnel and Veterans) Public Bill Committee. 8 October 2020; c. 110, Q219.]
Going back on our commitments to the Geneva conventions risks our forces personnel being dragged in front of the International Criminal Court, only confirming the worst fears among veterans discussed by Lieutenant Colonel Parker. Why would the Minister not prefer to have trials for British troops in British courts rather than The Hague?

The Bill as it stands is flawed. It is fundamentally at odds with British values by failing to offer an absolute rejection of torture. It tramples on our commitments to international doctrines that we helped to write, and it fails our troops by risking action by the international courts.

There is a way out. Protecting troops from vexatious claims does not need to be at odds with our commitments to international humanitarian law. There does not need to be a trade-off between safeguarding our armed forces and standing against torture. That is why we have tabled these amendments, which will address those imbalances.

First, the amendments would ensure that, under schedule 1, the forms of crime listed in the Rome statute, such as torture, genocide and crimes against humanity, were—alongside sexual offences—excluded from the presumption against prosecution. Further amendments would ensure that any breach of the Geneva conventions and other international laws also fell outside the scope of that. Labour’s amendments, by bringing the Bill in line with international law and doubling down on our commitments against torture, would protect our troops from international courts and protect our nation’s reputation.

The Minister said at the witness stage, “Don’t let the perfect be the enemy of the good.”

Mr Jones: What my hon. Friend proposes in no way changes the Bill in effect; it strengthens the Bill. Does he agree that it is a simple thing which might assuage a lot of the critics of the Bill?

4.45 pm

Stephen Morgan: My right hon. Friend is absolutely right. I hope that the Minister has heard our commitment to get the Bill right. It can be better for our armed forces, if he is willing to engage in the arguments being made.

I put it to the Minister, do not let party politics get in the way of making this Bill worthy of the troops it is set to serve. There is still time for him to work with the Opposition to get this right. He has made half of the argument for me. By already excluding sexual crimes, he recognises that some crimes are so serious they should be excluded from the Bill. He should now go the full way and exclude war crimes.

Labour stand four-square behind our troops, and we want to work with the Government to build the broadest consensus possible on the Bill, tailored to supporting our forces and safeguarding human rights. I urge the Minister to work with us and vote in favour of amendments that would strengthen the Bill for our troops and for our commitments to human rights.

Finally, I ask the Minister to clarify, on the case of those who were liable for the six Royal Military Police who were killed in 2003—raised by the former Judge Advocate General last week—would he accept presumption against prosecution? Would we expect the factors in clause 3(2)(a) to be taken into account? Would we be content for a member of the Iraqi Government’s consent to be needed to prosecute, and would he accept a decision not to prosecute? Why would the Minister not prefer to have trials for British troops in British courts, rather than in The Hague? Finally, will he take us through paragraph 1(a) to (k) of article 7 the Rome statute and explain the legal need of those sub-paragraphs within the Bill? What is the legal necessity of including each of those sub-paragraphs?

Liz Twist: I want to speak briefly on torture, which is one of the issues that my constituents have brought to me. That is relevant, because it is about public perception of the legislation proposed.

Britain has a fine history with our armed forces of acting legally, morally and in the best interests and traditions of the armed forces. I believe that the Minister should consider the amendment that ensures that torture, war crimes and crimes against humanity are excluded from the Bill. Last Thursday, a number of witnesses said to us that they could see no reason why torture and war crimes should not be excluded too, as sexual offences rightly are. I urge the Government to consider the good name of our country and put those elements outside the scope of the Bill.

Johnny Mercer: We ask a huge amount of our service personnel. We send them to undertake high-threat and high-risk operations in defence of our country and its people. They do their duty in the clear knowledge that they may be injured, maimed or even killed.

This Government believe, therefore, that it is absolutely right and reasonable to require that in return we ensure that, in addition to the existing public interest test, a prosecutor has to give particular weight to the unique circumstances of overseas operations and the adverse impacts that those may have on a serviceperson’s capacity to make sound judgments and on their mental health at the time of an alleged offence when coming to a decision on whether to prosecute. That is not intended to excuse bad behaviour by service personnel, but to ensure that prosecutors give full recognition to the significant difference in the circumstances surrounding an alleged offence committed on operations overseas as compared, for example, to situations where the alleged criminal conduct occurs in a domestic civilian setting.

The prosecutor must consider the presumption against prosecution under clause 2 to determine whether a case meets the exceptional threshold. The prosecutor, as required by clause 3, must also give particular weight to matters that may, in effect, tip the balance in favour of not prosecuting. Clause 3 is therefore integral to supporting the high threshold set in clause 2 for a prosecutor to make a decision to prosecute.

There was a lot of discussion last week about the concerns over the impact on our personnel of repeated scrutiny and the mental burden placed on them by the threat of criminal prosecution occurring long after the events in question, particularly where there is no compelling new evidence to be considered. Clause 3 requires that prosecutors must also consider where there has been a previous investigation in relation to the alleged criminal conduct and no compelling new evidence has arisen. The public interest is in cases coming to a timely and final resolution.

In the responses to our public consultation, many service personnel expressed a lack of trust in prosecutors
and others in the justice system. They were particularly concerned about whether prosecutors are able to understand the operational context in which the offence occurred and to adequately reflect this in determining the public interest. We fully accept that prosecutors may already take such matters into account. However, making that a statutory requirement provides greater certainty for service personnel that the unique context of overseas operations will be given particular and appropriate weight in the prosecutor's deliberation.

By seeking to remove the benefit of the matters in clause 3 that tend towards reducing the culpability of a serviceperson and tend against prosecution, the amendments are designed to ensure that the prosecutor can also consider whether such matters increase the culpability of an individual and support a prosecution. The amendments undermine our reassurance to our service personnel that the operational context of an alleged offence will be taken into account, and in their favour, by the prosecutor. It would be a slap in the face for our armed forces personnel to suggest that the context of an overseas operation will be considered as a factor in support of their prosecution.

Mr Jones: At present, the service justice system understands the context and the public interest test is already there—whether it is in the public interest to prosecute. The service justice system is designed to take into account special circumstances, so what is the need for clause 3?

Johnny Mercer: The need is very clear. The fact is that the service justice system as it stands has facilitated an industrial level of claims against our people that has absolutely destroyed their lives.

Mr Jones: No, it has not.

Johnny Mercer: The right hon. Gentleman can sit there and say no, this did not happen and that did not happen. The rest of us live in the factual world, where these things actually did happen. They destroyed some of our finest people, which is why we are introducing this legislation. I have heard a lot from the right hon. Gentleman, and the vast majority is not correct. I respect him immensely, but it is not correct. I will therefore push on at this stage.

Amendments 3 to 5 seek to add additional factors to clause 3. In the light of amendment 1, I can assume only that the intention is somehow to bring in factors that would be seen by the prosecutor to increase a serviceperson's culpability and make a prosecution more likely. I have already set out my arguments as to why amendment 1 should be withdrawn. Furthermore, I do not believe that amendments 3 to 5 are appropriate or needed.

Amendment 3 is designed to "ensure that a relevant prosecutor gives particular weight to maintaining public trust in the criminal justice system and upholding the principle of accountability of the Armed Forces.”

The independent prosecutor's responsibility is to follow the principle set out in the code for crown prosecutors. That includes the principle that they will work "to maintain public trust and to provide an efficient criminal justice system.”

The Bill does not place service personnel above the law or make them somehow less accountable. Allegations of offences must and will continue to be investigated. Where appropriate, a prosecutor can still make a decision to prosecute. On that basis, I do not believe that amendment 3 is warranted.

Amendment 4 is designed to "ensure that particular weight is given by a relevant prosecutor where the alleged conduct engages the UK's obligations" under articles 2, 3, 4 and 5 of the European convention on human rights. The prosecutor already has to apply the principles of the ECHR, in accordance with the Human Rights Act 1998, at each stage of the case, so amendment 4's additional requirement would be totally unnecessary.

Amendment 5 is designed to "ensure that particular weight is given by a relevant prosecutor where the person had command responsibility for the alleged conduct."

I can assume only that the amendment is meant to address the concerns raised last week about the chain of command being held accountable as well as individuals, but it misses the point. A decision taken by a serviceperson to use force during an overseas operation is an individual decision for which they, and not their commanding officer, may then be held personally accountable if their decision is deemed to have been in breach of criminal law. The circumstances of an incident would determine whether the involvement of a commander in the activities of their subordinates also merited a criminal prosecution. Separately, it should be noted that under the Armed Forces Act 2006, commanding officers may be investigated and prosecuted, including at court martial, for non-criminal conduct offences in relation to serious allegations of wrongdoing by personnel under their command. Non-criminal conduct offences are not covered by the Overseas Operations Bill.

On the proposed amendments to schedule 1, the Government are committed to providing reassurance to service personnel and veterans in relation to the threat of prosecution for alleged offences on overseas operations more than five years ago. The measures in part 1 of the Bill are key to delivering that reassurance. The fact that we have only excluded sexual offences in schedule 1 does not mean that we will not continue to take other offences, such as war crimes and torture, extremely seriously.

The presumption against prosecution will allow the prosecutor to continue to take decisions to prosecute these offences, and the severity of the crime and the circumstances in which it was allegedly committed will always be factors in their considerations. On a case-by-case basis, a prosecutor can determine that a case against an individual in relation to war crimes, torture or genocide is "exceptional", and that a prosecution is therefore appropriate, subject to the approval of the Attorney General or the Advocate General in Northern Ireland. The decision to exclude only sexual offences reflects the Government's strong stated belief that the use of sexual violence or sexual exploitation during overseas operations is never acceptable in any circumstances.

We have not excluded other offences, including torture, because in the course of their duties on overseas operations, we expect our service personnel to undertake activities that are intrinsically violent in nature. These activities can expose service personnel to the possibility that their
actions may result in allegations of torture war crimes. By contrast, although allegations of sexual offences can still arise, the activities that we expect our service personnel to undertake on operations cannot possibly include those of a sexual nature.

We do not therefore believe it is appropriate to afford personnel the additional protection of the presumption in relation to allegations of sexual offences after five years. I am aware that many people have misinterpreted this decision, and have suggested that it somehow undermines the UK’s continuing commitment to upholding international humanitarian and human rights law, including the UN convention against torture. That is completely untrue. The UK does not participate in, solicit, encourage or condone the use of torture for any purpose, and we remain committed to maintaining our leading role in the promotion and protection of human rights, democracy and the rule of law.

Liz Twist: Will the Minister give way?

Johnny Mercer: I will not, as I do not have time.

These amendments seek to ensure that all offences contained within the International Criminal Court Act 2001, as it applies in England, Wales, Northern Ireland and Scotland, should be excluded offences in schedule 1. Amendment 8 is consequential on amendments 6 and 7. These amendments would amount to such a comprehensive list of offences that they would considerably undermine the effectiveness and value of the measures in part 1 of the Bill. In doing so, they would prevent the Government from delivering on their commitment to provide reassurance to our service personnel and veterans in relation to the threat of prosecution for alleged historical offences, something that they so greatly deserve.

Liz Twist: Will the Minister give way on the issue of torture?

Johnny Mercer: I will not. Amendment 12 seeks to introduce a sunset clause where the Act will cease to have effect after five years unless the Secretary of State or Lord Chancellor lays before Parliament a report of an independent review confirming that the Act complies with the UK’s international obligations. I can assure the Committee that such a review is not required, as the measures in this Bill are consistent with our international legal obligations and do not undermine international humanitarian law as set out in the Geneva conventions.

Liz Twist: Will the Minister give way?

Johnny Mercer: I will not give way. I therefore ask that these amendments be withdrawn.

Ordered, That the debate be now adjourned.—(Leo Docherty.)

4.59 pm

Adjourned till Tuesday 20 October at Twenty-five minutes past Nine o’clock.
Written evidence reported to the House

OOB05 Reverend Nicholas Mercer, Rector of Bolton Abbey, The Priory Church of St Mary and St Cuthbert, Bolton Abbey, and former Military Lawyer and the Command Legal Adviser for the Iraq War 2003

OOB06 Assistant Professor Samuel Beswick, Peter A. Allard School of Law, The University of British Columbia in Vancouver, Canada

OOB07 Equality and Human Rights Commission (EHRC)

OOB08 Reprieve
Overseas Operations (Service Personnel and Veterans) Bill

Seventh Sitting

Tuesday 20 October 2020

(Morning)

Contents

Clauses 3 to 6 agreed to.
Schedule 1 agreed to.
Clause 8 under consideration when the Committee adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 24 October 2020
The Committee consisted of the following Members:

*Chairs: David Mundell, † Graham Stringer*

† Anderson, Stuart (*Wolverhampton South West*) (Con)
† Atherton, Sarah (*Wrexham*) (Con)
† Brereton, Jack (*Stoke-on-Trent South*) (Con)
† Dines, Miss Sarah (*Derbyshire Dales*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
† Docherty-Hughes, Martin (*West Dunbartonshire*) (SNP)
† Eastwood, Mark (*Dewsbury*) (Con)
† Evans, Chris (*Islwyn*) (Lab/Co-op)
† Gibson, Peter (*Darlington*) (Con)
† Jones, Mr Kevan (*North Durham*) (Lab)
† Lewell-Buck, Mrs Emma (*South Shields*) (Lab)
† Lopresti, Jack (*Filton and Bradley Stoke*) (Con)
† Mercer, Johnny (*Minister for Defence People and Veterans*)
† Monaghan, Carol (*Glasgow North West*) (SNP)
† Morgan, Stephen (*Portsmouth South*) (Lab)
† Morrissey, Joy (*Beaconsfield*) (Con)
† Twist, Liz (*Blaydon*) (Lab)

Steven Mark, Sarah Thatcher, *Committee Clerks*

† attended the Committee
The Chair: Before we begin, I remind members of the Committee that I expect social distancing to be respected; I will stop proceedings if I see people breaking the social distancing rules. Members must remember to switch electronic devices off or to silent. If colleagues have prepared speaking notes, it would be helpful to our colleagues at Hansard if you emailed them to hansardnotes@parliament.uk.

We will continue our line-by-line consideration of the Bill. The selection list for today’s sitting is available on the table.

Clause 3

Matters to be given particular weight

Amendment proposed (14 October): 1, in clause 3, page 2, line 20, leave out
‘(so far as they tend to reduce the person’s culpability or otherwise tend against prosecution)’.—(Mr Kevan Jones.)

This amendment would ensure that, in giving particular weight to the matters in subsection (2), a prosecutor may consider whether any matter tends to reduce or increase culpability, tending against or in favour of prosecution respectively.

Question again proposed. That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 3, in clause 3, page 2, line 33, at end insert—
‘(bb) the public interest in maintaining public trust in the criminal justice system and upholding the principle of accountability of the Armed Forces’.

This amendment would ensure that a relevant prosecutor gives particular weight to maintaining public trust in the criminal justice system and upholding the principle of accountability of the Armed Forces.

Amendment 4, in clause 3, page 2, line 33, at end insert—
‘(bc) the nature of the alleged conduct, in particular whether it engaged the obligations of the United Kingdom under Articles 2, 3, 4 or 5 of the European Convention on Human Rights’.

This amendment would ensure that particular weight is given by a prosecutor where the alleged conduct engages the UK’s obligations under Article 2 (right to life), Article 3 (prohibition on torture and inhuman or degrading treatment), Article 4 (prohibition of slavery and forced labour) or Article 5 (prohibition of arbitrary detention) ECHR.

Amendment 5, in clause 3, page 2, line 33, at end insert—
‘(bd) whether the person had command responsibility for the alleged conduct, and to what extent’.

This amendment would ensure that particular weight is given by a relevant prosecutor where the person had command responsibility for the alleged conduct.

Amendment 13, in clause 6, page 4, line 13, at end insert—
‘(3A) A service offence is not a “relevant offence” if it is an offence whose prosecution is required under the United Kingdom’s international treaty obligations.’

This amendment would exclude the prosecution of serious international crimes (such as torture, genocide, crimes against humanity, and certain war crimes) from the limitations otherwise imposed by the Bill.

Amendment 58, in schedule 1, page 12, line 6, at end insert—
‘13A An offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Geneva Conventions).’

This amendment adds to Schedule 1 specific reference to existing domestic offences in relation to torture, genocide, crimes against humanity, and grave breaches of the Geneva Conventions, in a similar way to the treatment of sexual offences.

Amendment 6, in schedule 1, page 12, line 38, leave out paragraph 17 and insert—
‘17 An offence under Part 5 (Offences under domestic law) of the International Criminal Court Act 2001 as it relates to the law of England and Wales.’

This amendment would mean that all offences listed in Part 1 of the International Criminal Courts Act 2001 as they related to the law of England and Wales would be excluded offences, without restriction.

Amendment 59, in schedule 1, page 12, line 39, at end insert—
‘(za) an act of genocide under article 6, or’.

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 60, in schedule 1, page 12, line 40, leave out ‘a crime against humanity within article 7.1(g)’ and insert ‘a crime against humanity within article 7.1(a)-(k)’.

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.

Amendment 61, in schedule 1, page 12, line 41, leave out from beginning to end of line 2 on page 13 and insert—
‘(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions),’.

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 7, in schedule 1, page 13, line 12, leave out paragraph 20 and insert—
‘20 An offence under Part 5 (Offences under domestic law) of the International Criminal Court Act 2001 as it relates to the law of Northern Ireland.’

This amendment would mean that all offences listed in Part 1 of the International Criminal Courts Act 2001 as they related to the law of Northern Ireland would be excluded offences, without restriction.

Amendment 62, in schedule 1, page 13, line 13, at end insert—
‘(za) an act of genocide under article 6, or’.

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 63, in schedule 1, page 13, line 14, leave out ‘a crime against humanity within article 7.1(g)’ and insert ‘a crime against humanity within article 7.1(a)-(k)’.

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.
Amendment 64, page 13 [Schedule 1], leave out lines 15 to 18 and insert—

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 8, in schedule 1, page 13, line 28, leave out paragraph 23.

This amendment is consequential on amendments 6 and 7.

Amendment 9, in schedule 1, page 14, line 5, leave out paragraphs 27 to 30 and insert—

“27 An offence under Part 1 (Offences) of the International Criminal Court (Scotland) Act 2001.”

This amendment would mean that all offences listed in Part 1 of the International Criminal Courts Act (Scotland) 2001 would be excluded, without restriction.

Amendment 65, in schedule 1, page 14, line 7, at end insert—

“(za) an act of genocide under article 6, or”.

This amendment would ensure that acts of genocide are also excluded from the Bill, alongside sexual offences.

Amendment 66, in schedule 1, page 14, line 8, leave out ‘a crime against humanity within article 7.1(g)’ and insert

’a crime against humanity within article 7.1(a)-(k)’.

This amendment would ensure that crimes against humanity are also excluded from the Bill, alongside sexual offences.

Amendment 67, in schedule 1, page 14, line 10, leave out lines 9 to 12 and insert—

“(b) a war crime within article 8.2(a) (which relates to grave breaches of the Geneva Conventions).”

This amendment would ensure that grave breaches of the Geneva Conventions are also excluded from the Bill, alongside sexual offences.

Amendment 12, in clause 15, page 9, line 21, at end insert—

’subject to subsection (2A).

(2A) Before making regulations under subsection (2), the Secretary of State or Lord Chancellor must lay before Parliament the report of an independent review confirming that the Act is in full compliance with the United Kingdom’s international treaty obligations with respect to the prosecution of war crimes and other crimes committed during overseas operations.

(2B) This Act shall cease to have effect at the end of the period of five years beginning with the day on which it is brought into force, unless the Secretary of State or Lord Chancellor has, not fewer than four years after this Act has come into force, laid before Parliament the report of a further independent review confirming that the Act remains in full compliance with the United Kingdom’s international treaty obligations with respect to the prosecution of war crimes and other crimes committed during overseas operations.’

Mr Kevan Jones (North Durham) (Lab): I have nothing further to add, Mr Stringer, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Clause 4

SECTION 3: SUPPLEMENTARY

Question proposed, That the clause stand part of the Bill.

Mr Jones: This clause goes to what we heard in the evidence session is the missing part of the Bill: investigation and what warrants particular types of investigation. We heard from numerous witnesses, including Judge Blackett and General Nick Parker, that what is missing from the Bill is any scope of investigation. I have tabled new clauses to limit and have control over investigations, because, as Judge Blackett said, the problem with the Bill is that it looks at the process from “the wrong end of the telescope.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 120, Q246.]

It looks at the prosecution end, rather than the investigation end.

9.30 am

In a previous sitting, Major Campbell gave very moving evidence about reinvestigation. Clause 4 goes to the heart of that, but it does not answer the issue. If we ask, “Will this stop reinvestigation?”, the answer is no it will not—what is meant by a new investigation or new evidence is left open-ended. The clause defines “relevant previous investigation” as one “carried out by an investigating authority”.

That paragraph, at least, is straightforward. The police, service police or some other body have investigated, so we may tick that box as a way of not going into reinvestigation.

The next paragraph defines “relevant previous investigation” as one that “has ceased to be active”.

The problem we heard in evidence was that of active investigations; the issue was whether new evidence had come forward later in respect of the same incident. That was the problem in Major Campbell’s case—although one incident had been investigated, other things had also come in later. Hilary Meredith, I think, said that the real problem was not that a crime had been committed but that the Ministry of Defence had got into a process of paying out compensation to individuals, which was seen somehow as an indication of guilt, when clearly it was not.

Paragraph (1)(c) then continues the definition of a “relevant previous investigation” as one that “either did not lead to any decision as to whether or not the person should be charged with an offence, or led to a decision that the person should not be charged with any offence.”

Again, that is pretty clear—it is thought that the investigation has been completed. The problem is that it is in the Bill, rather than there being some judicial oversight of the process so that not only the victim but the accused can have some reassurance—that there is no new evidence. That would be a better way to do things. In the Bill, the issue of what is new evidence or what investigation has taken place comes down to a judgment call.

Personally, I think a better way of addressing the issue was outlined by Judge Blackett. We should have a de minimis approach to the small cases, as under the Magistrates’ Courts Act 1980. Then, clearly, we should have judicial oversight of an investigation, and new evidence could be assessed. If a case had been going on for a while and an individual came forward saying that there was new evidence, that would go before a judge, who could deem that there was new evidence and the investigation should go further or that there was not and that it should go no further.

The problem with the clause is that it tries to address that issue but does not describe the mechanism for who makes the decision. If there were to be judicial oversight
of what new evidence was, that would be fine, but as it is
the issue is about who makes the decision. Are we going
to a situation that was common in the UK until we
had the Crown Prosecution Service; the police investigated,
made a decision on prosecution and took it forward.
Who should make the decision? That former situation
was not right because the police would decide what
their evidence was and could take forward a prosecution.
Under clause 4, I presume, it would again be down to
the police to decide that.

I would prefer some clarity about who is making the
decision about the new evidence because the key to
stopping the abuse that has been going on is not
prosecution—the way to do it is to stop the repeated
reinvestigation that has taken place. We heard throughout
the evidence sessions that, in the small number of cases
that led to actual prosecutions, the timescale was very
quick—I think Judge Blackett said that, in Marine A’s
case, it was 18 months. I cannot remember the other
case that Ms Meredith raised.

Chris Evans: As my right hon. Friend was speaking, I thought of an anomaly. The Bill
now strikes out claims on the Ministry of Defence after six years. However, if new evidence comes to light and
there is a criminal conviction for the same offence, there
could be a situation in which a criminal court imposes
compensation when the MOD has already struck
the claims out. How does my right hon. Friend see clause 4
squaring that circle?

Mr Jones: It does not, and that comes to one of the
other problems with the Bill: it combines both criminal
and civil. As I think Ms Meredith said, that is the
problem, in terms of what we are trying to achieve. If
we keep the longstop for six years on civil claims, a
situation would arise whereby they would not go forward,
although potentially they could even after six years
under clause 4.

The other thing put forward by the Bill’s supporters
is that it will somehow stop investigation of our servicemen
and women for cases that they do not think have
substance. However, it does nothing of the sort. I learned
a long time ago in politics that the worst thing we can
do is promise things and then not deliver after raising
people’s hopes. The problem with the entire Bill, especially
on investigations, is that people will think that we could
never get another case like Major Campbell’s. I am
sorry, but we can. A lot of the veterans believe what is
being said—that the Bill will stop investigations—but it
will not. It will not stop investigations within the six-year
period. It will not even do so afterwards, because, as we
have already heard, cases will go to the International
Criminal Court and others.

Clause 4(1) states:
“For the purposes of section 3(2)(b), where there has been at
least one relevant previous investigation in relation to the alleged
conduct, evidence—
(a) is not “new” if it has been taken into account in the relevant
previous investigation (or in any of them);
(b) otherwise, is “new”.”

Again, we get to dancing on the head of a pin about
what is new evidence? That will make the investigation more
difficult, because what will be deemed as new evidence?
Who makes that judgment call?

We are not dealing with house burglars, are we? We
are dealing with very complex cases in other countries,
where there are cultural and language difficulties.
Sometimes, six years might have passed. The passage of
time can not only affect the securing of evidence; it
would also affect judgments about people’s memory,
which has always been the case with civil cases in this
country, let alone in a war zone.

I understand what clause 4 is trying to do, but, like a
lot of things in the Bill, it leaves a lot of loose ends. As I
said, it will lead to a lot of disappointment on the part
of veterans who think that somehow reinvestigation
will not happen. Likewise, victims will perhaps feel that
new evidence or evidence that they have put forward is
not being taken seriously.

The Minister for Defence People and Veterans (Johnny
Mercer): Thank you, Mr Stringer, for chairing the
Committee so well.

Again, there were a lot of inaccuracies in what the
right hon. Member for North Durham said. The
Department can never be in a position whereby, if
allegations were made, it could not investigate them.
That is not a lawful position, so the idea that we can
legislate to stop investigations is entirely false. We have
heard Bob Campbell give evidence in this Committee:
his case, in the worst-case scenario, would have ended
in 2009.

Mr Jones: Will the Minister give way?

Johnny Mercer: I will in a minute, because both I and
Bob Campbell have really got into the weeds of this
legislation. I am interested in how the right hon. Gentleman
has a different view and thinks that it would not have
helped Bob Campbell in any way. I would love him to
explain how he arrives at that position.

Mr Jones: Major Campbell is in a very different
situation. He has lost all faith in the system and actually
wants cases to go direct to the International Criminal
Court, which I do not agree with. But I did suggest, if
the Minister was listening on the new clauses that I
tabled for the last sitting—new clauses 6 and 7—that we
need a system of both case management and judicial
oversight. That would actually speed up the process and
ensure that justice was being done. This is not about
stopping investigation; it is about timely investigation.

The Chair: Order. Before I call the Minister, it now
seems timely to remind people that interventions should
be short and to the point.

Johnny Mercer: Again, it is not true to say that Major
Bob Campbell wants all cases to go to the International
Criminal Court; that is simply not true. He tried that to
demonstrate a point, but it is not his view that everyone
should just go to the ICC.

I saw in the newspapers over the weekend, again, a lot
of absolute garbage about this Bill. I have made my
position clear from the beginning. I have come in for a
lot of criticism from the right hon. Gentleman about
not working together on the Bill. I have been very clear
that where there are places where we can improve the Bill—within the art of the possible, working within what is factually true—I will do that, but that is yet to happen.

Mrs Emma Lewell-Buck (South Shields) (Lab): The Minister states that he wants to improve the Bill and work with others. Why is it, then, that we have yet to see any amendments at all come forward from the Minister to the Bill?

Johnny Mercer: That is very simply because there is no way, at the moment, that I have been presented with anything that is legal, within the art of the possible or within the strategic aims of the Bill that would actually improve it. It is as simple as that.

Mr Jones rose—

Johnny Mercer: Yes, I would love to give way.

Mr Jones: But that is not the case, is it? One issue that has come out, both in evidence and in amendments that I have tabled, is about investigations, and that is not covered in the Bill. I accept that the amendments that I tabled may not have been perfect, but if the Minister had at least given an indication that the issue would be looked at, that would have been a movement forward. But he has completely deaf ears on this.

Johnny Mercer: Again, that is completely untrue, because I have repeatedly spoken, years before anybody else in this House, about the standard of investigations—investigations that were going on under the right hon. Gentleman’s watch when he was an Armed Forces Minister. Those investigations, I said—this has been quoted to me time and again—had not been up to standard, but that is not part of this legislation: it is part of an armed forces Bill that is coming forward next year. I have been absolutely ruthless in terms of dealing with the Department on its standard of investigations, which I reiterate were under the right hon. Gentleman’s watch.

Mr Jones rose—

Johnny Mercer: I will not give way again. I cannot take in people saying, “We would like to see these pieces in the legislation,” when the whole point of this legislation is dealing with the abuses that we have seen over the years; it is not about investigations. People saw an announcement last week that we are having a judge-led review of how the Department does that. We will get the investigations right, but this Bill is very clearly about overseas operations and the situations in which we found ourselves, which actually resulted from when the right hon. Gentleman was a Minister in the Department.

Mr Jones: I was not actually in government. It was under the coalition Government, so the Minister should get his facts right.

Johnny Mercer: No, it was not.

Liz Twist (Blaydon) (Lab) rose—

Mrs Lewell-Buck rose—

Johnny Mercer: That is nonsense. Ours really started in 2009. [ Interruption. ] We can keep this going all day. Mr Stringer. There is so much fake news coming out, I can just bat it back at every opportunity. We will move on to clause 4 before we get out of hand.

Clause 4 provides the meaning of “relevant previous investigation” and “new” evidence as used in clause 3(2)(b). This is to ensure that when considering the matters to be given particular weight, the prosecutor understands the circumstances in which they must give particular weight to the public interest in a case coming to a timely and final resolution: in other words, finality. Subsection (1) provides the definition for “relevant previous investigation”. A relevant previous investigation is one that was carried out by an investigating authority—that term is defined in clause 7—or is no longer an active investigation. It has ended, and is an investigation at the end of which the individual was not charged. That is all set out in subsection (1)(a) to (c).

Subsection (2) defines “new” evidence as that which has not been taken into account in a relevant previous investigation. This definition is intended to provide for situations such as when new witnesses or new information emerges after an investigation has been completed, and where evidence becomes available that could not have been available at the time of a previous investigation, where subsequent developments in forensic techniques bring to light evidence that is genuinely new.

Mrs Lewell-Buck: The Minister is being very generous in giving way. I want to revisit a previous point. He stated that it is not possible to address investigations in the Bill. I am at a loss as to why not. It is in our gift in Committee to change the Bill and improve it. Why won’t he?

Johnny Mercer: Of course, anyone can add an amendment to any piece of legislation, but this Bill clearly deals with lawfare and the vexatious claims that came out of Iraq and Afghanistan. We will see more stuff on investigations in the Armed Forces Bill. People can add anything to any legislation. We all know that, but the place for that particular measure is in the Armed Forces Bill, which will be forthcoming next year.

Liz Twist: Time after time we heard from witnesses, and we had further pieces of evidence submitted yesterday, which the Clerk has circulated. Witnesses have pointed to the centrality of the investigation process. Having a robust and timely investigation is absolutely central to the efficacy of what the Minister is trying to achieve in the Bill. Will he reconsider looking at the investigation? It is good that we have the inquiry, which was announced in the written ministerial statement last week, but will he commit to looking at investigations?

Johnny Mercer: I have already said in Committee that I will not do it this way round, and I said that before I came to the Department. The reality of politics is that we have this time allocated to get through the Bill. It is my job to make sure that the investigatory processes are watertight and that the end state results in good investigations, but a non-abuse of the system.
Mr Jones: I want to clarify something. It is easy to blame the previous Labour Government, but I think I was right to say that IHAT started in November 2010 under the coalition Government and not the previous Labour Government.

Johnny Mercer: That inquiry started in 2010, but the al-Sweady inquiry and others started before then. I am not blaming any Government. I am just pointing out the hypocrisy of the right hon. Gentleman’s intervention. Anyway, I beg to move that clause 4 stand part of the Bill.

Mr Jones: On a point of order, Mr Stringer. Is it in order to accuse a Member of hypocrisy?

The Chair: I was just coming to that. Minister, will you withdraw the accusation of hypocrisy?

Johnny Mercer: Yes.

The Chair: I am grateful. Thank you.

Clause 4 ordered to stand part of the Bill.

Clause 5

Requirement of consent to prosecute

Carol Monaghan (Glasgow North West) (SNP): I beg to move amendment 10, in clause 5, page 3, line 23, leave out “Attorney General” and insert “Director of Public Prosecutions”.

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

Amendment 11, in clause 5, page 3, line 26, leave out “Attorney General” and insert “Director of Public Prosecutions”.

Amendment 22, in clause 5, page 3, line 29, at end insert—

“(c) where the offence is punishable with a criminal penalty by the law of Scotland, except with the consent of the Lord Advocate.”

Amendment 24, in clause 5, page 3, line 29, at end insert—

“(3A) Where the consent of the Attorney General is sought under subsection (2) or (3) above, the Attorney General must prepare a report containing his reasons for granting or withholding consent, as the case may be, with reference to sections 1 to 3 of this Act, and must lay a copy of this report before Parliament.”

Carol Monaghan: I will speak to all three of the amendments in my name and that of my hon. Friend the Member for West Dunbartonshire. Amendments 10, 11 and 22 address the issue of the independence of the decision to grant or withhold consent to prosecution. The Attorney General is, by the nature of the position, a political appointment. Therefore, tying in the prosecution of potentially serious incidents to a politically motivated individual is at least unethical and at worst dangerous.

If we are the healthy democracy that we boast of being, there has to be independent oversight of these investigations. To maintain justice and continue to uphold the rule of law, those decisions cannot be made by the Attorney General. That role should be carried out in England by the Director of Public Prosecutions and in Scotland by the Lord Advocate.

In effect, with these amendments, we are asking the Minister to decide whether the actions of the MOD itself require further investigation. To give an example, that would be like asking the Health Secretary to decide whether a patient had grounds to seek redress for cases of medical negligence. Are the Government really in the business of marking their own homework?

Of course, we all understand why the Government have chosen to press ahead with this Bill. I think we all, regardless of the robust debate that has taken place, have sympathy with the purpose of this Bill, but the manner in which it is progressing is concerning a lot of us. Many parts of this Bill would not address the issues faced by our service personnel. However, having the Attorney General preside over decisions to prosecute will potentially leave a shadow of doubt hanging over some service personnel. Is that really what we want?

I watched the previous exchange; for anybody watching Parliament just now, it was rather unedifying, to say the least. At the start of this process, the Minister said he wanted—[Interruption.] Even as I am saying that, and trying to say it in a generous spirit, the Minister mumbles to himself and makes comments. I was a teacher by profession, and I can tell hon. Members that I would be taking the Minister to task if he behaved like that in my class. He could at least have the decency to listen while a point is being made.

At the start of this process, the Minister said he wanted to listen and that he was happy to take on good ideas. I have yet to see any evidence of that. I am at a loss as to how we actually improve this Bill. Is the Minister so confident in the absolute perfection of this Bill that not only will he not accept any amendments from the Opposition, but he has not tabled any amendments from his own colleagues? I have never seen this in a Bill before. It is unheard of.

Going back to my amendments, there must be independence in the decision-making process. That would give clarity and increase public confidence in the process that is undertaken. Surely, if this Bill is so good, the Minister has nothing to fear from a politically unbiased head considering the evidence and making decisions on whether to prosecute.

Mr Jones: I thank the hon. Member for Glasgow North West for the amendment. I am not sure that I totally agree with it, although I agree with the spirit of it. The hon. Lady is trying to ensure judicial oversight of these decisions. Her recommended route is the Crown Prosecution Service, and she is right, in that that is at least a judicial process that is separate from the Attorney General, who is a political figure.

Coming back to my remarks about clause 4, the reason the CPS was set up in the first place is because it was the police who investigated and then also took the decision to prosecute, so the CPS was brought in, quite rightly. Has it improved the system? Yes, it has. Do we always agree with what the CPS comes up with? No, we do not, and I doubt whether we always would in every legal case. However, as the hon. Lady said, that does not mean that the process is weak in any way. It means that it is legally robust.

The hon. Lady is suggesting the CPS, but my concern relates to the service justice system. I would rather the Advocate General decided, although I say that in the same spirit as the amendment. The other concern,
which a number of witnesses raised, is about the role of the Attorney General as a political appointee. I think Judge Blackett mentioned that in its recent judicial reforms Kenya has made its Attorney General politically independent for that exact reason: so that the position is seen as being above politics.

That is important, because in the case Marine A, which has been raised before, there was a lot of publicity at the time in the newspapers and campaigning about why that person was being prosecuted, often without knowing what had occurred or having seen the video or other evidence that was put forward. If the Attorney General had been the final arbiter of whether to prosecute in that case, they would have come under huge political pressure not to prosecute, and that would not be right.

The other side to this is our standing in the world. If we are to have a system where we properly investigate alleged crimes and have a fair process to decide who to prosecute, then ultimately, although there are other issues in the Bill that raise problems, if it is down to a political appointee whether someone is prosecuted, the International Criminal Court and others would take a dim of that, in the sense that it would be a political decision, not a judicial decision.

It is interesting to look at it from the angle of someone who has been through the process. When Major Campbell gave evidence to the Committee, the hon. Member for Wolverhampton South West asked him:

“Thank you, Major Campbell. It is an absolute disgrace...Will you confirm whether you welcome the Bill or whether you are against it?”

Major Campbell went on to say:

“I fully welcome the Bill, both in its intent and in its content. Again, in my amateur legal opinion, there may be a legitimate argument to be had over whether the Attorney General is the correct address in terms of being the final arbiter of further prosecutions, due to the advice he gives to the armed forces on the legality of a conflict.”

He then went on to be quite disparaging, because of his frustration, which I think we all understand:

“My other slight concern is that previous Attorneys General have done us no favours...Lord Goldsmith had a lot on his shoulders...When I appealed to Jeremy Wright, and when he gave evidence to the Defence Sub-Committee...he took the view that this was an entirely fair process”.—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 24, Q54.]

He was concerned about the role of the Attorney General.

10 am

I argue that the Advocate General would be a more appropriate person because they are judicially independent and there is not therefore this idea that they can be influenced in any way politically, but I am also concerned, as I have said before, that the Bill will undermine our service justice system. Anything that takes this aspect out of the control of the service justice system, weakens it, which I certainly would not support.

The Attorney General of Kenya, for example, is now non-political, so if the Minister is really thinking about how to improve the Bill—although I do not think he is; he just wants to ram it through in its present form—he should consider small tweaks like that. He says, “We’ve got this Bill, and that’s it; we’re going to do all the investigation stuff later, in the armed forces Bill,” but I am sorry, there is no reason why he could not have insisted on it being in this Bill as well. This point is particularly problematic for our international reputation and also fairness, and it goes back to the point about the entire process, in that its strength comes from having independent judicial oversight.

Chris Evans: It is a pleasure to serve under your chairmanship, Mr Stringer. After the events of your beloved Manchester United’s visit to the north-east, I hope you had a very happy weekend—although I notice that we have a number of Members from the north-east here, so it probably upset them.

I rise to speak in support of amendment 24 in the name of my hon. Friend the Member for Portsmouth South. The amendment asks that any decisions to prosecute or not prosecute service personnel who are under investigation be explained by the Attorney General, by her presenting her reasoning in a report to Parliament. If the Government are unwilling to allow decisions to be made by the director of public prosecutions and insist on adding a political element to decisions, they must be scrutinised.

On several occasions, this Government have been charged with attempting to avoid necessary scrutiny and having a habit of waving things through. Amendment 24 simply asks them to do the right thing and allow Parliament to do its duty. In our constitution, Parliament has to play a full part in any legislative initiatives and any investigations. The former Attorney General for Northern Ireland says that the Attorney General is accountable to Parliament. If the Government agree that that is correct, they have a duty to explain decisions that the Attorney General makes on prosecution in order that Parliament fulfils its constitutional duty to scrutinise. If those decisions are to be politicised, let us do it properly. As the amendment suggests, it would be most appropriate that the decisions be explained by a report presented to Parliament, which should set out the full reasoning and rationale behind the decision that the Attorney General makes. That would ensure transparency of the entire process.

Legal academics and experts in the field, as well as previous Attorneys General, have voiced concerns over the role of the Attorney General in the Bill. They are worried that it is adding a political element to a judicial process in an entirely unnecessary way. The former Member for Beaconsfield, Dominic Grieve—I see his successor over there; I welcome the hon. Member for Beaconsfield to the Committee—who was coalition’s Attorney General, has raised concerns over the Bill. He criticised the Bill for being “an exercise in public relations rather than reasoned change”.

He gave a multifaceted critique of the Bill, including the role of the Attorney General. In his opinion, the way in which the role of the Attorney General has been written into the Bill is a politicised safeguard. It is hugely important that the Attorney General always acts independently of any political consideration and has only one thing in mind: the public interest.

I am sure that you, Mr Stringer, would call me to order if I began to debate the role of the Attorney General in the Bill, but simply put, the Attorney General provides legal advice to the Government. If, however, the Government are reluctant to publish the advice, that is a huge concern to the public.
Mr Jones: Does my hon. Friend agree that this Government and the previous one have been reluctant to allow Parliament to see that advice and have had to be brought kicking and screaming to produce it for our scrutiny of the decisions?

Chris Evans: The decision not to present the rationale, what advice was taken and how the Government arrived at their decision have eroded trust in politics and have been a problem for as long as I have been in the House. We have an opportunity with the Bill to start to rebuild trust in the decisions that the Government make. I hope that that Government will take that on board.

The Attorney General should be required to publish a report on the findings to reassure Parliament and the public that a decision has not been a political one. Many of the issues we have had in the past few years—the north-south divide and Brexit and remain—would have been avoided if the advice had been published and made transparent and fair. When we are making decisions, especially about our service personnel—some of the bravest people in this country—we must ensure that the public interest is at the heart of decision making. Dominic Grieve believes that the fact that the courts can review a decision by the Attorney General may create more litigation rather than reduce it and simplify the process. There is already a backlog of court cases, and we do not want to add to it.

Jack Lopresti (Filton and Bradley Stoke) (Con): Would the hon. Gentleman advocate the next Labour Government making the Attorney General’s position independent? Would he be convinced that any report produced by the Attorney General in Parliament and scrutinised by Parliament would not be looked at in a party political way by the Opposition?

Chris Evans: The hon. Gentleman has a lot of experience in this area. If I was Chair of the Backbench Business Committee, I would just have talked myself into a debate on the Floor of the House. If he will forgive me, I shall stick to the amendment, because as I said earlier, we should have at least a 90-minute debate in Westminster Hall on that point.

The concerns expressed by Dominic Grieve have been echoed by His Honour Judge Jeffrey Blackett, who stated that

“the decision of the Attorney General to prosecute or not prosecute certain cases is likely to lead to judicial reviews and, as Mr Grieve stated, more litigation.”

In the Bill’s evidence sessions we heard from the most recent Advocate General of the Armed Forces. He expressed deep concern that this decision should be taken away from the Director of Public Prosecutions:

“My concern about the Attorney General’s consent is that it undermines the Director Service Prosecutions. If I were he, I would be most upset that I could not make a decision in these circumstances.”

If the Attorney General must consent in those circumstances, what is the need for a political appointee to be involved in the decision making? Why not allow the Director of Public Prosecutions or the Advocate General in Scotland to make the decision?

That leads to concerns that the Government intend to break international law and politicise prosecutions. If that is the Government’s plan, it must be scrutinised by the House so that we can understand the reasoning. Ultimately, the public deserve to know why the Government would deem it fit to break international law and damage the reputation of our troops serving abroad.

Another voice we were grateful to hear from in our evidence sessions was that of General Sir Nick Parker. He added a further concern about the damage to Britain’s reputation if we are not seen as a country that respects international law, which will not only damage the reputation of and endanger our troops serving abroad but have more complex results. He said:

“If there is some doubt about this—”
the willingness of the UK to break international law and the Geneva convention—

"and we are viewed in the international community as being prepared to operate outside norms, there is an implication for the people who will have to command in the international community."

[Official Report, Overseas Operations (Service Personnel) Public Bill Committee, 8 October 2020; c. 99, Q203.]

He expressed concern about not knowing whether that would affect the willingness of other countries to work with the UK armed forces. If other countries are less willing to work with our forces, that creates additional problems for our troops. He later said

“I believe that we need to be consistent with our coalition partners. All I would add is that you cannot predict who your coalition partner will be, because we do not know whom we will be fighting with in the future.”[Official Report, Overseas Operations (Service Personnel) Public Bill Committee, 8 October 2020; c. 100, Q206.]

Today’s friend is quickly tomorrow’s enemy. Therefore, there must be that certain consistency provided by international norms.

10.15 am

Consistency is of concern not only in the Bill’s potential to break the Geneva convention but in the role of the Attorney General. The Attorney General’s role has played out very differently under its very different office holders, which has sometimes led to controversy.

Dominic Grieve stated that the requirement of the Attorney General’s consent to prosecute after the five-year time limit can provide some reassurance to the public that the matter has been fully looked at. The role and decisions of the Attorney General come under public scrutiny. The pressures on Members of this House should not be a factor in legal decisions such as whether to prosecute, and the Attorney General ought to be seen in the capacity of a career lawyer rather than as a politician, which is something the hon. Member for Filton and Bradley Stoke alluded to earlier. Yet the title and role—[Interrupt.]

The Chair: Order. I did say in the introduction that if Members breached the social distancing rules, I would stop proceedings.

Chris Evans: It is important that we set an example, Mr Stringer.

The title and role of the Attorney General is often entwined with politics, which complicates the matters of transparency. By its very nature, the role of the Attorney General is controversial, and has been in the legal world for a long time. The Attorney General has a role both as a professional lawyer and as a political advisor. Although many Attorneys General have taken the view that political distance gave their legal advice more credibility, others have been involved in party politics. From the scrutiny of Attorneys General in the 1920s to our current Attorney General, the role has always been controversial. Our current Attorney General generated a lot of debate over advice given to the Government on Brexit, as did her predecessor over the proroguing of Parliament. Further back, it is not just a party political issue. I do not have to go into the whys and wherefores of what the Labour Government went through with the legal advice over Iraq and Afghanistan. Again, before anybody wants to intervene, that is a debate for another time.
As there is a long-standing worry about the balance between law and politics in the role of the Attorney General, it surely makes sense that the Attorney General, if they are to be involved in this Bill at all, is required to publicise the decision. That would ensure that prosecutions covered by the Bill continued to be legal matters or could be at least scrutinised by other bodies to regulate them. It would ensure that party politics was not placed above the law.

It is a judicial process that the Government are concerned with. It should not be politicised or manipulated by party politics in any way, shape or form. If the Government feel the need to grant the power of decision over prosecution to the Attorney General rather than an independent legal body such as the Director of Public Prosecutions, the process must be entirely transparent, so that all those involved can clearly see the thinking behind the decisions. There is no reason why that information cannot be shared. It should and must be subject to parliamentary scrutiny.

Johnny Mercer: I thank the hon. Member for Islwyn for his very thoughtful contribution. I will address some of those points.

First, let me come to the points raised by the SNP. I will not call it “hypocritical”, because that would be out of order, but the irony of being lectured about behaviour in debates by the hon. Member for Glasgow North West, who has repeatedly screamed at me at the Dispatch Box, is not lost on me in any way. I have no ribs left from laughing at the SNP’s position on defence matters.

The idea that it is possible to have a constructive debate from such a false position is ridiculous, but I will address some of those points in my comments.

Dominic Grieve and Nicholas Mercer are people who have contributed. I do not know whether Members expected those who had overseen the disaster of things such as IHAT, who had overseen those processes, to come in and say, “This was a good idea.” I never expected that. Nicholas Mercer was not some senior legal adviser: he was a brigade LEGAD, and there were many brigades in Iraq. His evidence, a number of times, has been called into question. Dominic Grieve was a Member of this House. I have huge respect for him. But he, as Attorney General, oversaw some of these horrendous experiences that some of our people went through. Of course they are not going to be supportive of changing that scenario, because they did not do that when they were in charge. I respect that that was their decision, but we have come in on a very clear promise to end the unfair nature of this process.

I understand that it is combative; I understand that it is contested, but it is about time that someone came here with the voice of those who actually go through the process and was at the head of this debate, rather than those who are managing it and ultimately, in my view, have no real idea what it is like to walk in the shoes of those who serve on operations or who are dragged through these investigations.

When it comes to the Attorney General’s consent—

Mr Jones: I accept what the Minister is saying, but let us be honest: it was not just Dominic Grieve as Attorney General; the Government oversaw the IHAT system. As for the point the Minister makes, I do not for one minute question his intent in trying to do the right thing, and I support him in that. The only problem I have is that, in proposing what he does, he has a deaf ear to things that could actually improve the situation and get the Bill right so that it does what he is trying to achieve.

Johnny Mercer: It is not a deaf ear if I disagree. I am allowed to disagree.

Mr Jones: But you’re wrong.

Johnny Mercer: That is a matter for debate, and that is the whole point of why we are here.

Clause 5 requires the consent of the Attorney General for England and Wales or the Attorney General for Northern Ireland before a case of an alleged offence committed by a serviceperson more than five years prior on an overseas operation can proceed to prosecution. We introduced the consent function because we believe it is important for service personnel and veterans to be confident that their case will be considered at the highest levels of our justice system. In relation to amendment 22, the consent function does not need to extend to Scotland, as all prosecution decisions in Scotland are already taken in the public interest by, or on behalf of, the Lord Advocate.

Requiring the consent of the Attorney General for prosecution is not unusual. The Attorney General already has to give consent to prosecute war crimes, as has been said, and for veterans to be prosecuted more than six months after they left service. Who introduced that legislation? The Labour party, in 2001. The Attorney General already has numerous other consent functions, but that does not mean that the Government have any role to play in decisions on consent; it is simply a safety check on fairness.

On amendments 10 and 11, in deciding whether to grant consent to prosecutions, the Attorney General acts quasi-judicially and independently of Government, applying the well-established prosecution principles of evidential sufficiency and public interest. This means that the Government will play no role in the decision taken by the Attorney General for England and Wales or the Attorney General of Northern Ireland on consent—no role. Amendment 24 seeks to require the Attorney General to report to Parliament with the reasons for granting or withholding consent. There is no statutory requirement anywhere else for the AG report on individual casework decisions, and we do not believe that it would be appropriate to introduce such a requirement in the Bill. I therefore ask that the amendments be withdrawn.

10.30 am

Carol Monaghan: First, I will respond to the comments the Minister made at the start. There is a huge difference between debating in the Chamber, with comments being passed to and fro, and making a speech in a room such as this and having somebody mumbling under their breath while doing it. It is disrespectful and it should not happen. The Minister is a military man. I would love to have seen him behave like that when one of his superiors was addressing him in his former career. I have no intention of withdrawing the amendments. Nothing the Minister said assured me that there would be an unbiased situation when considering prosecutions, so I will push them to a vote.
Question put. That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 5]

AYES
Evans, Chris
Jones, rh Mr Kevan
Lewell-Buck, Mrs Emma

NOES
Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo

Question accordingly negatived.

Amendment proposed: 22, in clause 5, page 3, line 29, at end insert—

"(c) where the offence is punishable with a criminal penalty by the law of Scotland, except with the consent of the Lord Advocate."—(Carol Monaghan.)

The Committee divided: Ayes 6, Noes 10.

Division No. 6]

AYES
Evans, Chris
Jones, rh Mr Kevan
Lewell-Buck, Mrs Emma

NOES
Anderson, Stuart
Atherton, Sarah
Brereton, Jack
Dines, Miss Sarah
Docherty, Leo

Question accordingly negatived.

Clause 5 ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Schedule 1

EXCLUDED OFFENCES FOR THE PURPOSES OF SECTION 6

Question proposed, That the schedule be the First schedule to the Bill.

Mr Jones: Paragraph 46 of the explanatory notes states:

“Schedule 1 details the sexual offences excluded from the scope of the requirements of clauses 2, 3 and 5”.

We have touched already on the fact that sexual offences are not included in the Bill. I have not yet had a good explanation of why that category is the only one identified in the Bill. I think we all agree, and there is no dispute, that sexual offences play no part whatever of the conduct of our armed forces. If they are committed, they should be investigated and prosecuted and the perpetrator taken before court. The problem is how to separate sexual offences from other criminal activity. There are situations in which the sexual offence is committed along with other crimes, such as torture, that are not on the face of this Bill. Why exclude sexual offences?

The argument could be, as has been said, that this should never be part of the conduct of forces personnel. I agree, but that should not mean it is singled out. The problem I have with this is that when cases come forward, if there is a sexual offence as part of the accusations then this will be prosecuted, but something else of equal severity might not be prosecuted despite being part of the same event.

The obvious way around this is to leave it in and add other items as well, but I have yet to understand why sexual offences have been singled out, and I think we need an explanation because it draws attention to the fact that other things are not also mentioned. If there were clear-cut, one-off sexual offences then it is understandable, but I can imagine situations that may include other offences. If you look at some of the accusations, not necessarily against UK service personnel, but others such as those involved in peacekeeping operations, sexual offence was part of other crimes that were committed against individuals. It says in the schedule that we will exclude the sexual offence but the rest, frankly, is not part of it. I do not think it is as simple as to divide the two as clearly as this. I would like an explanation as to why and how sexual offences would be separated from other offences.

Johnny Mercer: It is a fair argument from the right hon. Member for North Durham; there is a difference of opinion on this issue. We are very clear as to why sexual offences are on there—schedule 1 lists the offences that are not relevant for the purposes of clause 6. The only offences contained in schedule 1 are sexual offences. This means that in cases involving alleged sexual offences on overseas operations more than five years ago, a prosecutor does not need to apply the statutory presumption and the matter is to be given particular weight when considering whether to prosecute.

Further, the prosecutor does not need the consent of the Attorney General for a case to get a prosecution; they will simply follow the usual procedures for determining whether or not to prosecute. For clarity, it should be noted that conflict-related sexual violence is classified as a war crime and is recognised as torture, a crime against humanity and genocide in international criminal law. These offences are referenced in paragraph 13 of part 1 and are listed in parts 2 and 3 of schedule 1.

Part 1 of schedule 1 lists sexual offences as criminal conduct offences under armed forces legislation, the Armed Forces Act 2006, and the corresponding offences under the law of England and Wales, including repeals provision. Part 2 of schedule 1 lists the sexual offences contained in the International Criminal Court Act 2001, under the law of England and Wales and the law of Northern Ireland. Part 3 of schedule 1 lists the sexual offences contained in the International Criminal Court Act 2001 under the law of Scotland. Part 4 of schedule 1 contains the provisions extending jurisdiction in respect of certain sexual offences. I reiterate to the Committee the reason for the exclusion of sexual offences.

Liz Twist: To reflect on the words of my right hon. Friend the Member for North Durham, this schedule includes, as we know, only the exclusion of sexual offences. Given the concern raised by many people during our evidence sessions and more generally in debate, why are torture and war crimes not included in the section? I would like to see that, because it is an important issue in the debate.
Johnny Mercer: The reality is that the word “torture” and allegations of torture have been used as a vehicle to generate thousands of claims against our service personnel. There have been arguments around why we have not packed investigations and so on into the Bill, but the Bill is trying to deal with very specific problems, which are the ones we have faced over the last 15 or 20 years relating to claims of this nature. In the discharge of your military duties, you can expect to be accused of assault, unlawful killing, murder and torture when using violence. There is no scenario in which our people will be asked to operate in which they can legitimately commit sexual offences. This country has a strong commitment against the use of sexual violence as a weapon of war, and that is why it is in the Bill.

Mr Jones: I agree that it should play no part whatever, and it does not in terms of the ethos of our armed forces. Will the Minister answer the point that there will not, in many cases, be a situation in which sexual violence takes place by itself? What happens if it involves violence and other things? How can the other issues be looked at if it is taken out? He is saying that the only reason for it is because torture is seen as a reason for a lot of the claims coming forward. Is that the only justification?

Johnny Mercer: Putting sexual offences in the Bill in no way denigrates our commitments against torture. We have to deal with the world as we find it, not as we would like it to be. When allegations of torture are mass-generated, as they have been, to produce these claims we have a duty to act to protect our service men and women from that.

Liz Twist: I understand the point the Minister is making about protecting service people and about spurious claims, but there are also genuine claims of torture that really deserve to be properly investigated, looked at, and not excluded. I am not saying they are against our forces in particular. I wonder if not writing that into the schedule is a step too far. It is such an important issue and it does not in terms of the ethos of our armed forces.

Johnny Mercer: No one disputes the seriousness of torture. I reiterate that our commitments against that are not diluted in any way. All we are seeking to do is to restore the primacy of things like the Geneva convention and the law of armed conflict, and to protect our service men and women from the nature of lawfare that has been so pernicious over the years. I understand people’s views on it, and at first inspection I understand why people have concerns, but the reality is that we have to deal with the situation with which we have been presented. If we are going to protect our people, this is a difficult part of it. As I have outlined, nobody can in any way be legitimately accused of sexual offences in the discharge of their duties, and that is why it is in the Bill.

Question put and agreed to.
Schedule 1 accordingly agreed to.

10.45 am

The Chair: Before we move on to clause 7, I do not like to interrupt the debate, but there have been references to “you” in a number of speeches, and I am sure that on those occasions you do not really mean me.

Could people try to use the normal parliamentary protocol in debate? Members of the Committee will not have any problem catching my eye, but some of the interventions have been more akin to speeches than sharp interventions. I hope we can continue on the basis that interventions should not be speeches.

Clause 7 ordered to stand part of the Bill.

Clause 8

Restrictions on time limits to bring actions: England and Wales

Question proposed, That the clause stand part of the Bill.

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

Clauses 9 and 10 stand part.

New clause 2—Restrictions on time limits: actions brought against the Crown by service personnel—

“Nothing in this Part applies to any action brought against the Crown by a person who is a member or former member of the regular or reserve forces, or of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies.”

This new clause amends Part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts’ discretion that the Part imposes in respect of actions relating to overseas operations.

For the avoidance of doubt, and so that we do not end up in the previous situation, I should say that if right hon. and hon. Members wish to speak to new clause 2, clauses 9 and 10, or part 2 of the Bill, now is the time to do so, although we will vote on them later.

Stephen Morgan (Portsmouth South) (Lab): The fact that new clause 2 has to be tabled underlines one of the key problems in the Bill. As my right hon. Friend the Member for North Durham said, this Bill does not do what it says on the tin: it does not help to protect our armed forces personnel, but does the exact opposite. It limits our troops’ right to justice. It does not benefit them—in fact, it actively discriminates against them.

Unfortunately, this has been a long-running theme of the debate as the Bill has passed through the House. The intention of the Bill is one the Opposition are willing to work with, but the Government have got parts of it badly wrong; this part of the Bill, unfortunately, is a prime example of that. The Government cannot claim that the Bill benefits our personnel while legislating to limit the courts’ discretion to disapply time limits for actions in respect of personal injuries or deaths that relate to overseas operations of the armed forces. That is why this part of the Bill must be amended and improved.

New clause 2 would amend part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts’ discretion imposed by part 2 in respect of actions relating to overseas operations. The question must be asked: why are the Government explicitly trying to mitigate the ability of our service personnel to access a route to justice? Is that really in line with the spirit of the Bill? In the lead-up to Remembrance Sunday, are the Government really comfortable passing a Bill that will clearly limit service personnel’s rights?
In the evidence sessions, we heard a great number of warnings about this part of the Bill. More specifically, points were raised about the Government’s own impact assessment of service personnel privately claiming for their injuries. As the witness from the Association of Personal Injury Lawyers said,

“I think it will definitely have an impact. I do not think that the impact statement that has been released really explores it fully, because it ignores a large proportion of civil claims brought against the Ministry of Defence, which may include elements of overseas operations.

If I can give you just a quick example, the impact study does not take into account noise-induced hearing loss claims. These are complex claims that may involve exposure to harmful noise at any point of the serviceperson’s service, and at different points of overseas operations in different countries. The impact study that has been released ignores all of those claims. In the last year alone, I think the figures released by the Ministry of Defence suggested that 1,810 claims relating to noise-induced hearing loss were brought against the MOD.

My answer to your question is that I think there will be an impact, but we do not know the extent of that impact, and that needs to be explored further.”

That is a real point of serious concern. If the Government’s own impact assessment is flawed and has not fully taken into account the scope of the legislation’s impact, it is imperative that the Government take another look at this part of the Bill, to ensure that they have been fully and properly informed by their own impact assessments.

I repeat once again that Labour wants to work with the Government to get the Bill right, but at this stage there are enormous concerns that it is far from that. In addition, there are real, specific cases in which the Bill would clearly disadvantage our troops—not simply numbers on a page. Those include types of case such as the noise-induced hearing loss that the witness a fortnight ago referred to. That witness referred to a former marine who received £500,000 for noise-induced hearing loss on the claim that his hearing loss and tinnitus were caused by a negligent exposure to noise. He served in Northern Ireland, the Gulf and Afghanistan and was exposed to noise from thousands of rounds of ammunition, thunderflash stun grenades, helicopters and other aircraft, and explosive devices, and left the Royal Marines in 2012.

The marine was unable to make a claim for compensation until 2014, seven years after he first became aware that he had problems with his hearing. The MOD admitted liability and made no argument about the case’s being brought out of time. The time limit in the Bill, however, would have eliminated all aspects of the claim relating to the marine’s extensive service overseas. It is exactly examples of that nature that raise questions over the depth and quality of the Government’s impact assessment, as well as whether this part of the Bill is really in line with the spirit of the Government’s supposed intent.

The Bill clearly needs fixing, and the Government need to go back and look at whether they really are delivering on what they claim they want to achieve. I ask the Minister: is it the Government’s intention to allow cases such as the said case of noise-induced hearing loss to be ignored by the Bill? What steps were taken both to ensure the Government’s impact assessment was comprehensive and to mitigate any confirmation bias of the Government’s intent on the Bill?

This part of the Bill also has another clear issue: it risks breaching the armed forces covenant. Let us take a look at what part 2 of this Bill really means. The Limitation Act 1980 currently results in the armed forces community and civilians being treated equally when it comes to seeking a claim for personal injury. As it stands, there is a three-year cut-off point in place, but the courts retain the right to grant an extension to forces personnel.

Section 33 of the Limitation Act provides the court discretion to override the current three-year limit, but this Bill deliberately moves away from that and snatchers away the ability of courts to show discretion if the case relates to an overseas forces action. It makes a deliberate change to the Limitation Act. That makes no sense. There are already structures in place to ensure that only appropriate claims are brought forward. Courts routinely manage out-of-time proceedings and frequently throw out cases where the delay is unjustified. The detailed criteria set out in the Limitation Act already address cases that do not have reasonable grounds or are unjustified. I put it to the Minister: why is he actively removing the aspect of the Limitation Act that offers courts the right to grant an extension in cases relating to armed forces personnel?

The Bill removes the ability of members of the forces community to bring forward a civil claim at all after six years, even where it would have passed judicial scrutiny. Under the Government’s proposed changes, civilians will retain the right to pursue a civil claim against their employer, but armed forces personnel will not. That clearly risks breaching the armed forces covenant. With that in mind, I am concerned that the Royal British Legion has said that the Bill constitutes a potential breach of the armed forces covenant—a deeply worrying conclusion from the largest armed forces charity in the UK. Are Ministers not concerned that the very Bill that they claim is devised to help our troops is said to be doing the opposite by such a distinguished organisation?

In addition, we heard from the Association of Personal Injury Lawyers that the Bill leaves our veterans with fewer rights than prisoners. That is a damning verdict, delivered by lawyers who devote their lives to representing armed forces personnel. Our armed forces personnel deserve more than to have their rights stripped away. I take this opportunity to say to the Minister, “Do not dismiss the warnings of the Legion and APIL. Work with us to address them.”

I ask the Minister to clarify whether Ministers are concerned that the Bill they claim was devised to help our troops is said to be doing the complete opposite by such distinguished organisations as the Royal British Legion. Why is the Minister actively removing the aspects of the Limitation Act that offers courts the right to grant an extension in cases relating to the armed forces personnel?

Why are the Government willing to introduce a six-year longstop for troops but not civilians? Why are some medical conditions worthy of justice and not others? Are the Government really comfortable with passing a Bill that will clearly limit service personnel’s rights in the lead-up to Remembrance Day? Is the Minister content to allow cases of noise-induced hearing loss to be ignored by the Bill? Finally, what steps were taken to ensure that the Government’s impact assessment was comprehensive and to mitigate any confirmation bias to the Government’s intent with the Bill?
Mr Jones: I want to speak to clause 8 and my new clause 9. Does the Minister want to do the right thing by our armed forces personnel? I think he does. I have never questioned his determination to do that. Again, the problem with the Bill is its unintended consequences.

Part 2 is a key part of the Bill. As my hon. Friend the Member for Portsmouth South said, it cannot be right that we will pass legislation that will mean that our servicemen, women and veterans have fewer rights than prisoners. The Limitation Act 1980 is there for a good reason. In the Minister’s comments in The Sun newspaper on Sunday, he said he will give a guarantee that servicemen and women will not lose out in part 2. I would be interested to know how he will do that, given the six-year longstop.

I do not doubt the Minister’s commitment to what he said in that newspaper article, but—to use the old Robin Day quote from his famous interview with John Nott—the Minister, like us all, is a “here today, gone tomorrow” politician. It is important to ensure this legislation is future-proofed. Irrespective of what the Minister says in his article, which is well intentioned, he cannot give that guarantee. Again, I do not question his motives for saying what he did.

The Minister has a higher trust in the MOD than I do when it comes to protecting servicemen and women. The Limitation Act, section 33, is very clear: it sets out the exceptional circumstances. In our evidence, we heard that although they are exceptional circumstances, they are not uncommon.

The Committee heard evidence of one example; I will give another, which, having spoken to a friend of mine who deals with personal injury, I think falls within the scope of this, too—that of the Snatch Land Rovers in Iraq. The families of the individuals killed in the Snatch Land Rovers were not aware of the failings—not failings of the chain of command, but of the procurement—until the Iraq inquiry took place. They then sought legal redress against the MOD, because they thought a decision had been taken that had put their loved-ones in jeopardy. It was many years later, so it was outside of time, but they were able to use section 33 of the Limitation Act to bring a case, which, according to the evidence we heard, they then settled.

My other concern with the MOD—again, referred to in the evidence sessions—is that it employs clever lawyers. It will use the provision as a way of stopping any case that comes forward, as a first hurdle for the claimant to get over. That means that there will be no right of appeal for those individuals. If the Bill had been in force during the case of the Snatch Land Rovers, those families would have had no redress at all. At the end of the day, the measures protect only the MOD; they do not protect our servicemen and women, as the Minister would like. Again, we come back to the Bill’s problem of conflating civil and criminal cases.

11 am

My hon. Friend the Member for Portsmouth South talked about hearing loss cases. There are also cases where evidence comes to light later, because it was not available at the time. Let us take the case of an aircraftman who painted aircraft and argued that, as a result, he had had a severe reaction, including an attack to his nervous system. He had to leave the service and could not work, but at that time he could not prove any link to his service. He went to a solicitor to see whether they could take the case, but at that time there was no research into the effects of these paints on the human body. It was only some 12 years later, when medical evidence had been published in scientific papers that exposure to certain paints was harmful and could lead to the condition this poor individual found himself in, that his lawyer could say, “Yes, we can try to argue a causal link in a case.”

Chris Evans: As my right hon. Friend has been speaking, I have been thinking in particular of the people serving in the Royal Navy who were affected by asbestos. In the 1950s and 1960s, asbestos was this magic formula—used everywhere from schools to garden sheds. Then, years later, it was found to cause tumours in the lungs. That caused serious problems to our servicepeople, but the evidence did not emerge for 30 years. People may be using chemicals now that we do not understand. How would the MOD be held responsible, and families be properly compensated?

Mr Jones: I will come back to asbestos. The aircraftman could not walk because the paint had attacked his nervous system, and his case was able to be taken forward only because of scientific evidence about exposure to that paint. However, if the Bill goes through, such an individual would not be able to make a case because it would be way out of the six-year limit. A lawyer friend of mine took that case to court and argued successfully before a judge that the individual was only able to bring the case then because of the scientific evidence, and that allowed them to take the case forward.

Johnny Mercer: A series of examples have been given where the Bill would not prevent action from being taken. On the Snatch Land Rover incident, the inquiry findings is the point of knowledge from which people had six years to make a claim. On the paint issue, when a connection is made with service and evidence can be produced, that is the point of knowledge from which there are six years. I do not know whether the point of knowledge piece is clearly understood, but when evidence comes together that clearly shows what has happened, that is when the six years begin. The Bill would not prevent such cases.

Mr Jones: I have heard the Minister say that before. I accept what he is saying, but he is wrong. I will come to asbestos, because in a previous life I used to press asbestos cases, but I will first address the Minister’s point and why he is wrong. I would agree with him about the date of knowledge if it were he and I dealing with the Bill. However, the dealings will be with MOD lawyers and not with the Minister or with me. If it said in the Bill that the date of knowledge were that date, that would be fine, but it does not. The Minister is putting an awful lot of trust in MOD lawyers. I would not do that, because they will argue straight away in such a case that it is time barred because of the legislation. They use that now, for example in the paint case I just mentioned. I hear what the Minister says and he might be technically right, but we heard in evidence that the MOD lawyers are experienced and will use that in their armoury as a way of stopping claims going forward.
Carol Monaghan: This is exposing an ambiguity right here, right now. Up until this point, the Minister has talked about the point of knowledge of the injury or the disablement. Now, he is talking about the point of knowledge of the issue with the equipment. What are we talking about and where in the Bill is that differentiated? If there is no clarity, we will have a situation with lawyers because of that ambiguity.

Mr Jones: Yes, and the lawyers will use it to protect the MOD. Like I say, if the Minister and I had to judge, we both would say “Yes, give the benefit of the doubt to the veteran.” I certainly would. However, neither he nor I will be there. It will be down to some Minister in the future and some lawyer to do that.

Coming on to asbestos, let me give an example. The issue in the early test cases on asbestos that I dealt with was about the date of knowledge. As my hon. Friend the Member for Islwyn just said, the issue with asbestos and asbestos-related diseases is that they can lie dormant for 20 or 30 years. It is an indiscriminate issue. I have met men who worked with asbestos and have what they call asbestos scars—asbestos in their skin—with no symptoms whatsoever and no health effects at all. I have also dealt with cases where a doctor and a nurse, who were just walking through a tunnel where an asbestos pipe was broken and were being covered in asbestos every day, developed mesothelioma, which we all know is a death sentence within 18 months to two years.

The MOD used to have a get-out because of Crown immunity; it could not be sued. As such, we are bringing back time-barred Crown immunity and saying to people that they cannot take cases against the MOD. Would cases around asbestos be time barred? I do not know. Again, why change it? I accept what the Minister is saying—we do not want frivolous and vexatious cases—but if they are time barred, there is a perfectly legitimate system in place at the moment called the Limitation Act, which allows people to take a case forward, if they wish to or their legal representatives feel there is a case.

Chris Evans: My right hon. Friend has, like me, worked with many constituents on this issue. Plural plaques may or may not develop into full-on asbestosis, but if someone develops the plaques within six years and then goes on to develop—God forbid—the worst kind of asbestosis, how does he see the MOD addressing that anomaly with the Bill?

Mr Jones: That is the point. I do not want to go off piste and explain the issues around plural plaques, but I am a little bit of a sceptic on this. Although plural plaques are lung scarring, I have not yet been convinced of any evidence that every case turns into something asbestos-related. It can be an indicator but it does not always go on to that.

Again, the MOD used to have Crown immunity, which used to mean that a case could not be brought against the MOD; that is what we are doing. Certainly in cases involving submariners who worked in submarines—as my hon. Friend the Member for Islwyn said, they threw asbestos around like confetti, as it was the great wonder material at the time—they would be time barred under the Bill. Again, coming back to what the Minister said, were it he and I then yes, I would agree, but lawyers will use that.

I do not understand why part 2 is there. Why would the Government want to put veterans and servicemen and women at a disadvantage? The Limitation Act is there for a perfectly good reason; it acts as a sieve because the person involved has to go before a judge and argue an exceptional reason as to why that case has not been brought within that period of time. From my experience in dealing with limitation cases for industrial diseases, for example, they are hard to prove, so it does act as a sieve.

If the Government are wanting to ensure that we are not getting huge amounts of unwarranted claims, the Limitation Act, as it stands at the moment, acts as that protection because the bar is high. In the cases where it does apply—with Snatch Land Rovers for example, the paint case I mentioned, or other cases, including those on hearing loss—it is very important, and I cannot support anything which means that our servicemen and women will be at a disadvantage.

In the evidence we took, Hilary Meredith said:

“...I think that part 2, on the time limit, should be taken out and scrapped completely. It is the time limit for the procedure. It went on too long.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020, c. 19.]

She then referred back to investigations, which we come back to all the time. The other issue that she and a few other witnesses raised was the Human Rights Act 1998. I know that a lot of people start frothing at the mouth and gnashing their teeth whenever we mention the Human Rights Act, because it always applies to those that do not deserve justice—the ne’er do wells, asylum seekers and everyone else—but it is actually there to protect us all.

There are cases where servicemen and women will bring cases against the MOD under the Human Rights Act. One of the arguments—and I think the reason why, in this Bill, the Human Rights Act is a bit of a bogeyman—is that somehow the Act will impinge on the ability of servicemen and women to do their work. I do not accept that because, looking at the Smith case, that the Human Rights Act was not an impediment; it neatly separated out combat immunity—that is, that lethal force must be used on occasions. Putting a time limit on the ability for servicemen and women to bring a case under the Human Rights Act would be a disadvantage to them.

Hilary Meredith says in her evidence that:

“There is a difficulty putting a time limit on the Human Rights Act... For civil claims against the Ministry where people are injured or killed in service overseas, I do not think a long-stop should be applied. There are tremendous difficulties in placing people in a worse position than civilians. In latent disease cases—diseases that do not come to light until much further down the line, such as asbestosis, PTSD, hearing loss—it is not just about the diagnosis. Many people are diagnosed at death.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020, c. 18, Q30.]

Again, that is something that I dealt with when I dealt with asbestos cases. The only time that a lot of people knew about them was when there was a death certificate. On more than one occasion, I stopped funerals to ensure that we had done the proper post-mortems.

11.15 am

The Human Rights Act 1998 makes it clear that combat immunity is preserved—the idea that we have to use legal force on occasion. The Minister is right to say
that we do not want legal disputes. In the case of Smith & Ors v. Ministry of Defence, the Supreme Court made it very clear that the principle of combat immunity was absolutely sound; it did not question the principle. That was the Snatch Land Rover case. Somebody argued that it was extending combat immunity, but it was not. In that case, it was the families of the deceased—the young soldiers who had been killed or severely injured in Snatch Land Rover use—who wanted to challenge a decision that was not made by the chain of command. They were questioning the Whitehall civil servants who had made the decision to procure the Snatch Land Rovers. They were not challenging the fact that their loved ones were in a combat situation. They were arguing not about a decision taken on the battlefield, but about a decision on procurement. That is why it was important. Although people argue that we are chipping away at combat immunity, the Supreme Court has been very clear about that. That gives some of the background noise to this case, which is very difficult.

Can we have a situation whereby we are taking away the rights of our servicemen and women? I do not think we can. Looking at the evidence that was given in Committee by Mr Charles Byrne, the Royal British Legion has huge concerns about this issue. These are the types of cases that it will take. They are difficult cases, and they will need funding on occasions. On occasions, the RBL will be funding such cases as test cases, which are very important.

Look at the Snatch Land Rover decision, and look at all the law on asbestos. It was all done in test cases, many of which were time limited. They set precedents in law that opened up justice to thousands of people who had been injured, including servicemen and women and people who had worked in dockyards and other places. It is sometimes appropriate to look at a case and say, “Yes, this might be time limited, but there is a damn good reason for running this case, because it might have implications for other servicemen and women as well.”

The covenant should be there to no disadvantage, but what we are doing with part 2 of the Bill is worse than that. We are making servicemen and women veterans second-class citizens. They will not have the same rights that you and I have, Mr Stringer, to bring a time-limited case. As was said in Committee, they will not have the same rights as a prisoner or an asylum seeker. That cannot be right. Was that the Minister’s intention? No, I do not think for one minute that it was, because he does not want to do anything that would put our servicemen and women at a disadvantage. However, I think that what he is doing, by listening to what civil servants have told him, has led to a situation whereby he has brought trust within the MOD that in future this will not be a problem. But I think it will be. As this Bill goes forward, if the Minister is listening, this is a part of it that needs to be taken out; if it is taken out, the Bill will be improved. That would help a lot of people who have concerns about the Bill and are quite rightly criticising it.

I now turn to new clause 2, which aims to highlight that fact and give some credence to the idea that the Bill establishes a disadvantage. New clause 2 effectively asks why servicemen and women should be disadvantaged. I have picked prisoners as an example, because prison is an obvious situation in which there are large numbers of people and a large number of claims are generated. I think that it is good to highlight that comparison.

The other point about new clause 2 is that it is about how we futureproof the Bill. I have already mentioned a technology case, that relating to paint. We have technologies that are being generated today, but do we know what their effects will be in 10 or 20 years’ time? We had the discussion the other day about unmanned aerial vehicles, or UAVs. I think that all the evidence is out about, for example, the mental health effects of UAVs and the possible issues around them. It could lead to a situation whereby at some point in the future clear evidence comes to light about using UAVs or being exposed to that trauma—I accept what the Minister said, namely that in most cases people are not in immediate danger, as they are not on the battlefield as such, but if it is proven that they are exposed to trauma, what about those individuals?

We only have to look back in history to see how the process operates. For example, when early submarine technology came in at the turn of the century, there was no consideration of the effects that came to light later. The first submarine deployed in 1902, I think. The people on it were rough and ready, but the long-term exposure to life underwater had effects. There were psychological effects, but it has been proven since that there were also certain medical effects.

This issue is important, because in addition to the lessons learned, there is another process to consider. These unique cases—as I have said, perhaps there are not very many of them—can lead to huge change. For example, the Snatch Land Rover case was a way, first of all, of focusing on protective vehicles. I know that it is sometimes thought that lawyers are campaigning lawyers, or whatever they are called, but actually what they were doing in that case was protecting servicemen and women. So, the case drew focus to Snatch Land Rovers and why we needed more protection in equipment of that kind. Did the families involved receive some closure? I think they did, and in some cases they also received financial compensation, which was also important.

If that case improved the way that we procure vehicles, taking it into account, it had a beneficial effect. Likewise, I mentioned the case about paint. If we then make sure that people—servicemen and women—have protective equipment when they use that type of paint, things improve. The process can be seen as difficult and bureaucratic, with lawyers perhaps making money from it, but at the end of the day it not only saves lives but, I would argue, improves conditions.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Eighth Sitting

Tuesday 20 October 2020

(Afternoon)

CONTENTS

Clause 8 agreed to.
Schedule 2 under consideration when the Committee adjourned till Thursday 22 October at half-past Eleven o'clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 24 October 2020
The Committee consisted of the following Members:

Chairs: † DAVID MUNDELL, GRAHAM STRINGER

† Anderson, Stuart (Wolverhampton South West) (Con)
† Atherton, Sarah (Wrexham) (Con)
† Brereton, Jack (Stoke-on-Trent South) (Con)
† Dines, Miss Sarah (Derbyshire Dales) (Con)
† Docherty, Leo (Aldershot) (Con)
† Docherty-Hughes, Martin (West Dunbartonshire) (SNP)
† Eastwood, Mark (Dewsbury) (Con)
† Evans, Chris (Islwyn) (Lab/Co-op)
† Gibson, Peter (Darlington) (Con)
† Jones, Mr Kevan (North Durham) (Lab)
† Lewell-Buck, Mrs Emma (South Shields) (Lab)
† Lopresti, Jack (Filton and Bradley Stoke) (Con)
† Mercer, Johnny (Minister for Defence People and Veterans)
† Monaghan, Carol (Glasgow North West) (SNP)
† Morgan, Stephen (Portsmouth South) (Lab)
† Morrissey, Joy (Beaconsfield) (Con)
† Twist, Liz (Blaydon) (Lab)

Steven Mark, Sarah Thatcher, Committee Clerks

† attended the Committee
The Chair: Members will be aware of the need to respect social distancing guidance. I will intervene if necessary to remind everyone. We will now continue line-by-line consideration of the Bill.

Clause 8
Restrictions on time limits to bring actions: England and Wales

Question (this day) again proposed. That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:
Clauses 9 and 10 stand part
New clause 2—Restrictions on time limits: actions brought against the Crown by service personnel

“Nothing in this Part applies to any action brought against the Crown by a person who is a member or former member of the regular or reserve forces, or of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies.”

This new clause amends Part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts’ discretion that the Part imposes in respect of actions relating to overseas operations.

Mr Kevan Jones (North Durham) (Lab): It is a pleasure to have you in the Chair, Mr Mundell. I trust that everyone has had a nice lunch. I hope the Minister has not had too much raw red meat and that he has been able to have a lie-down after his exertions this morning. He will certainly not be eating haggis for his dinner or lunch, or at any time soon, after his comments about Scotland this morning. I shall let him enlighten you later on those points, Mr Mundell.

We were talking about the rights of veterans. My hon. Friend the Member for Islwyn raised the issue of asbestosis and how asbestosis is one of a number of diseases that limits the serviceman or woman from bringing claims within the six-year period. As I said this morning, the Minister and I agree on one thing: we are seeing the huge implications that this Bill could have. We have already discussed criminal cases and possible trials before the International Criminal Court, but it would be interesting to know how the longstop—which is stopping the rights we all have under the Human Rights Act for veterans and armed force personnel—will be put into practice legally if, as Hilary Meredith said in her evidence, the UK has certain rights that are not just governed by what we agree as a country, but are part of international convention on human rights. How does that square with part 2 of the Bill? That needs some explanation, because I do not want veterans and armed services personnel not to be covered by the Limitation Act 1980 or the rights that we all get from the Human Rights Act.

Chris Evans (Islwyn) (Lab/Co-op): Does my right hon. Friend agree that the nub of the problem that he is driving at is that clause 8 and schedule 2 take away the court’s discretion under section 33 of the Limitation Act 1980 to disapply the time limit for “it would be equitable to allow an action to proceed”?

That is being taken away from our service personnel, and it is the same under the Human Rights Act. Is not the nub of the problem with clause 8 that it is removing the court’s discretion to allow these actions to go ahead?

Mr Jones: It is. Again, this is about the rights of veterans and armed services personnel, which I thought this Bill was trying to protect. If we are taking away rights that everyone else has access to, that is a retrograde
coming back to investigations, Hilary Meredith raised another important thing that does not apply: “That is a really interesting point, actually. I had not thought of a time limit on investigations. Certainly under the Human Rights Act, there is a right to have a speedy trial, and that did not happen in these cases.”—[Official Report, Overseas Operations Public Bill Committee, 6 October 2020; c. 19, Q31.]

This issue therefore cuts into investigations, another central point that we have been considering in this Bill.

When the Minister replies, I would be interested to know whether that has been cleared. I am not sure whether things still work this way, but when I was a Minister, the usual process for bringing forward a Bill involved sending a write-round to all Departments to get their agreement before it was sanctioned to come before the House. I do not know whether that still applies, because I know that, for a lot of things that this Government do now, they do not accept the usual common-sense conventions, which are there for very good reasons—to stop this type of thing—but how will the MOD be separate from the Human Rights Act?

Chris Evans: My right hon. Friend was a member of the Defence Committee, which wrote to the Secretary of State in July 2020 saying that “the Bill may not be an effective way of achieving” the aim of protecting personnel and veterans against “vexatious and unnecessary investigations and prosecutions”.

My right hon. Friend was a member of that Committee. Does he agree with its finding that the Bill would have been better served by scrutiny from an ad hoc Select Committee before it came before Parliament?

Mr Jones: I am a big defender of pre-legislative scrutiny. I think I said a couple of sittings ago that our current system of pre-legislative scrutiny as part of the Bill Committee process is important. However, an important Bill such as this should have been road-tested a little more than just what we are able to do here, in terms of not only scrutiny, but the process that we are going through today.

I come back to the point that I do not understand why the Bill is now before us—well, I do understand, because the Minister gave it away the other day; it is an election commitment to bring it within 100 days of taking office—rather than what would have been a better place for it, the armed forces quadrennial review next year, which could have covered those issues. Now we are going to have a strange process: we will have this Bill and then the Armed Forces Bill next year, which we are now told will cover investigations, because the Secretary of State has now set up a commission to look at that. The best thing would have been to do those two things together, but that would not have met the political commitment that was put forward.

I do not think it is too late to make some changes to the Bill to improve it on investigations. Deleting part 2 would certainly be an important part of that, because part 2 changes the status of veterans and armed forces personnel. I genuinely believe what the Minister said in a Sunday newspaper over the weekend: that he does not want this in any way to affect our armed forces personnel. As I said, if it were left to both of us, we would guarantee that this type of limitation would not apply to individuals, but eventually none of us will be here and it will be the law that takes it forward. That is the weakness.

I do not understand why the Government want to reduce the role of veterans, and certainly not this Minister, who has prided himself on trying to be a champion for veterans. It is not just me saying this, or some lawyers or anyone else; we only have to look at the transcripts of the evidence put before us by the Royal British Legion. On 8 October, we took evidence from Charles Byrne from the Royal British Legion and General Sir John McColl from Cobseo. My hon. Friend the Member for Portsmouth South asked whether this was a breach of the covenant. The covenant should be about not only protecting the rights of veterans and armed forces personnel, but, where it can, enhancing them. Charles Byrne from the RBL spoke in response to the Minister, when the Minister said: “No, because what we are looking to do is to protect, and to ensure that our servicemen are not disadvantaged.”

Mr Byrne replied: “I think it is protecting the MOD, rather than the service personnel—that is the debate that we have had.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 86, Q163.]

I think it is clear, as we have heard from other witnesses as well, that this goes against the armed forces covenant. I fully support the covenant, and not just in ensuring that the armed forces have no disadvantage and are treated the same. I take a very clear view on this. If people have served their country, they should be given certainly the same rights as everyone else, and in some cases better ones to recognise that service. That is important.

Mr Byrne replied: “I think this Bill would be a breach of the armed forces covenant.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 85, Q159.]

Again, I do not think that that is the Minister’s intention, but an unintended consequence, so if we can delete part 2, that would go a long way to help. The Bill is supposed to be on Report and Third Reading in a fortnight’s time, but I am not sure that, in the lead-up to Remembrance Sunday, it is a good look for the Government to have a Bill before Parliament that takes rights away from veterans and members of the armed forces.

New clause 9 is a probing amendment—I will not press it to a vote—to highlight the impact of part 2 of the Bill on veterans. It states: “Within 12 months of this Act coming into force, the Secretary of State shall commission an independent evaluation” of the impact of the Bill on access to justice for servicemen and women and reserve forces when serving overseas. I add that we need to compare that with asylum seekers and prisoners seeking to take action against the Crown.
Clearly, if the provisions in this part go through unamended and do not include armed forces veterans, prisoners will have more rights.

One of the arguments put forward by the Ministry of Defence and Ministers is that only very small numbers are affected. New clause 9 would be a way of looking at the actual effect on access to justice. On the numbers, I think 94% has been quoted for those on time. This comes back to what I said this morning: yes, we are talking about small numbers, but if that number is 94%, that means 6% of veterans and armed forces personnel will not be covered and will be disadvantaged. I accept that in the Minister’s exchange there was some contention about what the actual numbers are, but for me—I make this clear to the Committee—one serviceman or woman or veteran who is denied justice by this Bill is one serviceman or woman or veteran too many.

Mrs Emma Lewell-Buck (South Shields) (Lab): On that point about the exchange between the Minister and the Committee, and the evidence sessions, is my right hon. Friend aware that the figure of 94% was based on an extrapolation of a sample of cases, and not on all post-six-year cases?

Mr Jones: It was, and that is where the disagreement about the figures comes from, and not for the first time in this Bill. Early on, we asked for the number of litigation cases, which was the reason why the Bill was introduced. We got various arguments, and one figure was 900 and another 1,000. If we want to act in the best interests of veterans, we need to know the extent of the problem, so my hon. Friend makes a good point. Again, even if we accept the figure of 94%, then 6% of people will not be able to take claims against the Ministry of Defence—including, as was argued by the personal injury lawyers, in those like the Snatch Land Rover cases and the ones that I outlined this morning. That cannot be right. I do not understand what the Government thinks is to be gained from taking away the rights of veterans and service personnel.

We are dealing with small numbers here, but this is important. If I was in prison—perhaps some on the Committee wish I was—and I made a claim against the Ministry of Justice, there would be certain time limits. But there are always cases under the Limitation Act that fall outside those limits. Prisoners have the right to take those cases out of time and stand before a judge, or have legal representation, to argue that they need their case considered out of time. They can do that because of section 33.

Asylum seekers can do the same. A claimant against the Ministry of Justice, whether on housing or anything else, can argue successfully to a judge that they had not brought the claim because of various circumstances, such as a refugee’s trauma from being in a war zone, and that they need a chance to bring their case, although there is no guarantee that their case will be accepted. That is the case with veterans, too. The representative from the personal injury lawyers said that the numbers of such cases are small, but when the application does work and a judge says that the time limit does not apply, it is very important. Snatch Land Rover is a great example of a case against the MOD.

Would that be a case against the armed forces? No, it would be against the MOD. No disrespect to the MOD lawyers—they are just doing their job—but if this provision is introduced, they will use that six-year backstop as a way of arguing that a case cannot go forward. The individual will have no rights whatever to go before a judge and argue that their case, for certain reasons, should be made an exception. The MOD is protected, rather than the veteran or serviceman or woman. That cannot be right.

We are brought back to the point of what is missing throughout the Bill. I accept what the Minister says: that he is passionate about these issues, and if it were down to him—if it were down to me and some others in this room, too, to be honest—veterans and servicemen and women would get first dibs every time, and quite rightly. But it will not be down to us; it will be down to officials in the Ministry of Defence.

Having worked with them, I have huge respect for officials in the Ministry of Defence, but they are in civil service mode. If they can protect the organisation, they will. That is not to be discredited. I remember dealing with lawyers in the MOD when I was there over the nuclear tests veterans cases, where, frankly, we were going to spend millions of pounds on a case that should have been settled. I successfully argued for a settlement proposal to be put forward; unfortunately, it was rejected by the other side. Again, the natural reaction was to defend the indefensible. I said, “Wait a minute—how much do you want to spend in lawyers’ fees to do this?” That is what will happen here. It will be an easy get-out for the MOD, because it will have the protection of a backstop of six years in law. The individual will no longer have the right.

Judicial oversight is a problem throughout the entire Bill. Having employed lawyers in a previous life and dealt with them over many years, am I a great fan? I am a fan of some of them, because some are very good. Some are also very bad, as the hon. Member for Darlington will attest. The point is that they do their best on behalf of their client. They are not making things up; they are using the laws that we pass in this place to advance the case that someone has presented before them. We should not be putting obstacles in their way, in terms of servicemen and women and veterans.

This is really a probing amendment. Someone asked, “Is it a bit of fun?” No, it is actually a serious point. When the average person on the famous Clapham omnibus realises that we are taking rights away from veterans and that prisoners and asylum seekers will have more rights than veterans, they will rightly be appalled.

Even if the Minister cannot accept the amendments today, I urge him to reflect on part 2 to see whether we can remove it from the Bill. We should at least ensure that the disadvantage to servicemen and women and veterans is not enshrined in law. If that happens, it will be a travesty. It would actually be a disappointment to the Minister, because he is trying to protect victims—instead, he will have done something that makes their lot in life worse. As a number of people said in the evidence sessions, servicemen and women and veterans have too few rights as it is. Taking away more of them cannot be right.

Carol Monaghan (Glasgow North West) (SNP): First, I thank the right hon. Member for North Durham. I agree with everything he has said. Of course, I raised part 2 of the Bill on Second Reading—I have major issues with it. One of the SNP’s amendments, which
Unfortunately was not selected, was about removing time limits completely. Perhaps a better idea would be to remove part 2 of the Bill.

Having sat through Second Reading, four sessions of oral evidence and this morning’s session, I still cannot see how a six-year limit on claims benefits veterans. I know the Minister has tried to explain the measure by saying it will allow them to make claims more easily, but the reasons why veterans are not claiming are very complex. Frankly, I have serious doubts about the time limit, as does the organisation that has arguably done more for veterans than any other: the Royal British Legion, which stated its concerns about part 2 of the Bill. It has said that, as currently drafted, part 2 introduces a time limit for civil claims from veterans, serving personnel and their families where one does not currently exist, and it risks a breach of the armed forces covenant, as there will continue to be no limit for civilians in relation to their employer.

During the evidence sessions, the Minister said it is a disadvantage to have to go and serve and put one’s life at risk. We understand that—none of us is disputing that—but we are talking about whenever we are comparing like for like, claim for claim. Does the Bill put veterans at a disadvantage? It absolutely does. The Royal British Legion has said that part 2 of the Bill should be improved to ensure that no member of the armed forces community is left subject to a time limit when pursuing a civil claim against the Ministry of Defence as an employer, and to avoid a breach of the armed forces covenant.

Personal injury awards can be substantial, so we understand why the MOD wants to minimise the opportunity for such claims, but if harm has been done to individuals that is due to negligence, why are we making it more difficult for them to seek recompense?

2.30 pm

Earlier, I brought up the date of knowledge. There is a discussion to be had about that, because there is still a lack of clarity. I had a look at the issue over lunch and I am sure that the Minister did as well. I said earlier that the Minister had referred to the date of knowledge of the injury. We have heard examples of when that might be difficult to ascertain, and I will refer in a minute to a couple of them. But this morning, when we were referring to the Snatch Land Rovers, the Minister talked about the point of knowledge of the problem. I have had a look at the Bill, and people will have to excuse me if I have got this wrong, but I think that, in clause 11, proposed new section 7A(4) of the Human Rights Act 1998 says:

“The rule referred to in subsection (1)(b) is that overseas armed forces proceedings must be brought before the later of—the end of the period of 6 years beginning with the date on which the act complained of took place”.

Is “the act complained of” referring to when the injury took place, to when those Snatch Land Rovers were brought into service or to when we found out that there was an issue? New subsection (4) goes on to say:

“(b) the end of the period of 12 months beginning with the date of knowledge.”

The date of knowledge of what? Of the injury, of the issue—what is it that we are talking about? We need to know what exactly it is. The new section goes on to talk about knowledge

“of the act complained of, and... that it was an act of the Ministry of Defence or the Secretary of State for Defence.”

What is it that we are talking about? What is meant by “act”? We need clarity on that. Frankly, that grey area—that ambiguity—leaves the door open for the MOD to refuse such claims. I have real concerns about that. I hope that the Minister can provide some clarity on it.

Let me move on and talk about the numbers of veterans and personnel who could be excluded from seeking recompense for injuries. Even on the basis of the Government’s own figures, we are looking at between 19 and 50 veterans and families who would be prevented by the time limit from taking forward their claim. Why are we trying to stop veterans from taking forward claims? I simply do not understand that. The Minister has talked about his desire to support veterans, and I do believe him when he says that, but I do not understand this particular provision. Again, the Royal British Legion says that injured and bereaved veterans and families who have been found by a court to have reasonable justification to take forward a claim would be prohibited from doing so under the proposed new limit. That is a problem for me.

Let us look at the reasons why a veteran might not bring forward a claim within the six years. Hearing loss, for example, has been mentioned a number of times. It might be difficult to ascertain exactly which incident caused the hearing loss in the first place, but even if we do know when the hearing loss injury occurred, this is a progressive situation. My own grandad lost his hearing and he was thoroughly embarrassed. He did not like to speak about it; he pretended that he could hear. He did not want to seek help and when he did, he did not want the family to know. There are reasons, including embarrassment, that might prevent an individual from looking for recompense for such things.

Mr Jones: I agree with the hon. Member on hearing loss cases, having dealt with such cases in shipbuilding. The person will agree that they have lost their hearing; it is about whether the hearing loss can be pinned back to where it was lost.

Carol Monaghan: We have also heard examples of veterans who have served in multiple conflicts or operations where they have been exposed to loud noises, explosions and all sorts—which one caused the hearing loss? Could it otherwise have been caused at a firing range in the UK? That is a real difficulty, and it causes problems.

Mr Jones: If overseas operations will be excluded after six years while for cases in this country a case could be made under the Limitation Act 1980, does the hon. Member not think that will also complicate hearing loss cases, if it must be determined where the hearing loss took place? It will be difficult to disaggregate these points.

Carol Monaghan: In such situations, we know that the person who will benefit is not the veteran. That is the problem with part 2 of the Bill and the six-year limit. There must be protections in place to ensure that veterans who have served and suffered personal injury can seek justice for those injuries.
There are other examples, such as the nuclear test veterans. It was good to hear about the work done by the right hon. Member for North Durham on that. I have had interactions with those veterans, including a constituent of my own who, sadly, died. Many have waited decades and decades for compensation and have had nothing—not even any medals to recognise the service they undertook. There are still ongoing issues, and again the MOD has denied that the cancers that those veterans have suffered are related to their service, despite a number of them having similar cancers and there being no links other than the Christmas Island testing.

I could also mention Lariam, an anti-malarial drug that can cause real issues for individuals’ mental health, but not always instantly—it can happen on a much later date. My own husband was given Lariam and suffered as a result. Thankfully, he has not had any long-term issues, but many individuals’ mental health is affected many, many years beyond that.

Jack Lopresti (Filton and Bradley Stoke) (Con): I really enjoyed the hon. Member’s speech this morning—I did not agree with most of it, but it was well presented, with a good argument made. Is she saying that there should be no time limit at all for actions being brought?

Carol Monaghan: I thank the hon. Member for his kind comments. There is already a limit, but that limit can be looked at and overridden in certain circumstances. That should remain in place; there is no reason to take that away. We are not saying, “We encourage all veterans to wait 30 or 40 years”, but there must be some protections. There cannot be a hard stop that prevents them from taking any action.

We all understand the Bill’s purpose and why it has been brought forward, even though we might not agree with all of it and we might have issues with some of it, but part 2 of the Bill makes no sense whatever. The Bill has been sold to veterans as protecting them and looking after them, with the Government having their back. Actually, part 2 does the opposite. Why do the Government want to prevent between 19 and 50 veterans from seeking justice? I would like to know that from the Minister, because we have not yet had a decent answer on that point.

Mrs Lewell-Buck: It is always a pleasure to serve under your chairmanship, Mr Mundell. I rise to speak briefly about part 2 of the Bill. I will try not to detain the Committee by repeating the comments of other hon. Members.

Time and again, concerns have been expressed in written and oral submissions to this Committee—they were mentioned again today by my right hon. Friend the Member for North Durham—about the civil litigation longstop. If this part of the Bill is unamended, there is a longstop. If this part of the Bill is unamended, there is a longstop. It would be helpful if, in summing up, the Minister provided some transparent and accurate figures to clear the issue up, once and for all. We are making legislation without proper knowledge and without a proper basis.

In oral evidence, we heard over and over again that the Bill protects the MOD, but not our forces. It breaches the armed forces covenant. It gives our forces less protection than civilians and, in some cases, even prisoners. We heard that from not one or two witnesses, but a broad and wide-ranging group of organisations, some of which, traditionally, would not necessarily agree with each other: the Royal British Legion, the Centre for Military Justice, the Association of Personal Injury Lawyers, Liberty and Human Rights Watch. Written evidence struck the same chords. When the Minister gave evidence, he appeared unable to find literally anyone at all who supports the longstop. If someone does, I hope that the Minister will share that fact with us.

The whole point of Bill Committees, as I have said repeatedly, is to improve and amend legislation, so that it emerges better than it was when it arrived with us. Indeed, the Minister has stated many times on the record that he wants to work with people in and outside this place to make the Bill the very best it can be, so that it meets its intended aims. I sincerely hope that that commitment was not an empty gesture. A good way to prove that it was not is to consider our amendments, listen to our comments and take them on board, and ensure that so many people are not disadvantaged when making claims against the MOD.

Liz Twist (Blaydon) (Lab): I, too, will not occupy too much of the Committee’s time, but I want to raise the issue of the impact on the ability of veterans and serving personnel to bring claims.

Yesterday, additional written evidence was circulated to us from a number of people, including Dr Jonathan Morgan of the University of Cambridge, in document OOB09, which refers to the impact of part 2 of the Bill on the ability of people to bring a claim; their rights will be restricted.

We also had evidence yesterday from Professor James Sweeney; I am afraid I do not have the reference number. He clearly points out deficiencies, and tackles head on, in paragraph 11 of his evidence, the Minister’s assertions that we are reading the provisions incorrectly. I ask the Minister and his advisers to look at that closely. We had evidence from the Association of Personal Injury Lawyers, too. We have heard comments about people’s views on personal injury lawyers and in whose interests thing are, but to me that evidence is clear and well set out.
2.45 pm

However, the most persuasive evidence for me is the supplementary written evidence in document OOB10, presented by the Royal British Legion, which clearly sets out its concerns. We were able to question its representative in oral evidence, and the Minister took that opportunity to press them on the legion's concerns.

Its written evidence says:

"Part 2 of the Bill should be improved to ensure that no member of the Armed Forces community is left subject to a time limit on pursuing a civil claim against the Ministry of Defence (MoD) as an employer, and to avoid a breach of the Armed Forces Covenant."

I know how important the armed forces covenant is to the Minister and, indeed, to other people in this room. Most of us have worked with local authorities and other employers and organisations locally to ensure that the armed forces covenant actually means something. If the Royal British Legion, whose reason for existence is to support the armed forces and former armed forces personnel, is raising concerns about the impact of part 2 on those veterans, we really need to take note of that.

Mr Jones: The hon. Member for Glasgow North West, who speaks on behalf of the SNP, raised the issue of nuclear test veterans. In 2009, when they brought their case against the MOD, it was a limitations case, because the injuries happened in the 1950s. They won it because new evidence came forward and Mr Justice Foskett argued that the limitation case could go forward.

Is it not clear that if that happened now, that case would not even have been heard?

Liz Twist: My right hon. Friend is absolutely correct. That is why it is important that this part of the Bill be either substantially amended to protect the rights of veterans, or perhaps taken away altogether.

The Royal British Legion, talking about disadvantage under the Covenant, says:

"The Armed Forces Covenant states: ‘those who serve in the armed forces, whether regular or reserve, those who have served in the past, and their families should face no disadvantage compared to other citizens in the provision of public and commercial services...in accessing services, former members of the Armed Forces should expect the same level of support as any other citizen in society’.

We all need to take very seriously the concerns raised by the Royal British Legion about claims and the breach of the armed forces covenant. I have no doubt that it is not the Minister’s intention to disadvantage people, but the Bill as drafted will do so. I ask him to look at this very seriously, and to consider amendments to the Bill.

The Minister for Defence People and Veterans (Johnny Mercer): It is good to see you back in the Chair, Mr Mundell.

I appreciate the opportunity to address some of the points raised. My intention is not to disparage Members’ intentions, because I get it: people want to support our armed forces and do not want to disadvantage them. I do not want to disadvantage them. However, some things—the data is a good example—are being totally misunderstood to promote these points. For example, on the statement that from 2014 to 2019 there were however many thousand claims, that number includes claims in the UK that people would bring under tort or civilian law against an employer. This Bill does not apply to that; it is called the Overseas Operations (Service Personnel and Veterans) Bill. In no way are those comparisons being made in a fair manner. This Bill applies only to those allegations and claims that affect our service personnel overseas.

Carol Monaghan rose—

Johnny Mercer: I will get to my point. There were 552 employer liability claims from what happened in Iraq and Afghanistan. Today’s Daily Mirror had sounded familiar to a couple of the speeches: it mentioned “21,000 claims”. It is total nonsense. That is the total number of claims that people have made against the MOD in the period from 2004 to 2017. They are claims in a civilian workplace environment, where there are civil liabilities claims, claims regarding exercises and so on in the UK, and breach of contract claims. In the Bill, we are talking specifically about overseas operations. Whoever is providing these figures is demonstrating a pretty basic misunderstanding of what is going on—or it is a deliberate attempt to mislead, but I am sure it is not. The two things are not comparable in any way.

Mr Jones: To me, that does not matter. Why should armed forces personnel be treated differently when something happens in this country, as opposed to overseas? It might not be in combat; it might be on a training mission, or something like that. As I said, if one veteran is disadvantaged, that is one veteran too many.

Johnny Mercer: It does matter. Facts do matter in this debate; figures do, too.

Mrs Lewell-Buck: Where can we find the figures that the Minister is quoting to us?

Johnny Mercer: The figures have been published in the impact assessment a number of times. The hon. Lady can shake her head, but again, we are in a space of alternative facts. The figures are in the impact assessment, which is before the House.

Carol Monaghan: The Minister is talking about overseas operations. We all understand that, and that the Bill applies to those serving overseas. However, if my employer sends me overseas, and I suffer an injury there due to the negligence of my employer here in the UK, I can sue the employer for the injury. The same should be the case for veterans. It is not about whether it is overseas or here: it is about having the same rights as civilian employees.

Johnny Mercer: I disagree, and this is why. Operational service overseas is fundamentally different from life in the UK, and from what we ask our people to do. The hon. Lady is absolutely right: we have a duty in this country to protect those overseas, whether it is against improvised explosive devices, bombs, electronic warfare, or indeed legal systems used to bring warfare by another means. That is what this Bill is trying to do.

I understand the assertion that if someone from the Royal British Legion was deployed on an operation, the six-year limit comes down. Viewed on its own, that is...
something that will happen to serviceperson, but not a
civilian. Disadvantage is a comparable term. Disadvantage
to who? The Government argue—this I am clear on—that
these people are seriously disadvantaged by having no
legal protection against these thousands of claims that
we have seen come in over the last 15 or 20 years. What
the Royal British Legion would like us to do is to put
that to one side—[Interruption.] No, it is, because I
have engaged with it extensively. It would like us to
apply that to one side of the argument, which, again, is
not legal. Under European human rights law, people
are being disadvantaged and discriminated against based
on the claimant, which is not legal. This cannot be
brought in on one side.

Mr Jones: The Minister is taking rights away from
servicemen and women. He talked about overseas
operations, but let us say, for example, someone is in
British Army Training Unit Suffield in northern Canada
on a training exercise. If that is classed as an overseas
operation, or a peacekeeping operation—

Johnny Mercer: It is not.

Mr Jones: A peacekeeping operation?

Johnny Mercer: No.

Mr Jones: Right. Nevertheless, there have been times—the
Snatch Land Rover cases, for example—where there
was quite a good reason why the case should have been
argued out. Why is the Minister so determined to take
that right away from people?

Johnny Mercer: Because what the right hon. Gentleman
says—I have a lot of respect for him—is simply not true.
BATUS is not an operational environment. It is not a
peacekeeping mission. It is a training unit mission. As I
said this morning, and speaking from a point of knowledge,
when it came out in the inquiry about the Snatch Land
Rover cases, that is when the six-year thing started.
That would not have been affected by this legislation.

We could keep raising these points, but I am not
going to change my view, because it is based on the
truth. I cannot suddenly say, “Yes, BATUS is a war-fighting
operation, so this stuff applies.” I cannot say, “These
people would be affected in the Snatch Land Rover
case,” because that is simply not the case.

Mr Jones rose—

Johnny Mercer: I will come back to the right hon. Gentleman
in a minute. He talks about taking rights away from our service personnel. They have a right to
be protected on the battlefield in all these areas. One
area where they have a right to be protected is the use of
lawfare to progress, and change the outcome of, a
conflict through other means.

There were lots of wild sentiments thrown around—
“lawyers don’t make things up,” and all the rest of it.
Again, that does not collide with reality. Phil Shiner has
been struck off. The reality—the world as we find it—is
what this Bill is designed to deal with.

Jack Lopresti: On a point of clarification, would a
deployment in Cyprus or Estonia be covered by the Bill?

Johnny Mercer: We are talking about overseas operations,
whenever they take place outside the UK. UK operations
and operations outside the UK are defined in the Bill.

Mrs Lewell-Buck: I think the Minister is falling foul
of something that a lot of witnesses in the oral session
said he would: he is confusing the criminal law with the
civil law. Largely, our concerns around part 2 are about
the civil aspect.

Johnny Mercer: What is being confused here is the
difference between tort and human rights claims; that
was being confused a lot in the comments made just
now. Regarding the evidence sessions, I accept that
there are aspects of this legislation that some of the
people who came in—public interest lawyers, the
Association of Personal Injury Lawyers, Hilary Meredith
and others—do not like. I do not dispute that for a
minute, but my job is to protect those who serve on
operations from all those different threats, including
lawfare, which has not been done before. Other nations
do it, and we have a duty to protect these people as well.

Liz Twist: I can understand the Minister’s concerns
about some of the comments, but the Royal British
Legion exists to protect people who have served in the
forces. That is one of their key aims. If they are saying
to us that the provisions present an issue, is it not right
that we take note of that, address it, and deal with it
clearly?

Johnny Mercer: Absolutely; it is right to take note of
it, and I have engaged with it extensively on this issue,
but the legion does not own the covenant—nobody
does. It belongs to the nation. The covenant was designed
to ensure that when a service person and a civilian are
in a comparable situation, the service person is at
no disadvantage. It was never designed to ensure no
disadvantage whatsoever. We send our people away
from their families for six or seven months of a year—that
is a disadvantage. We send them away to undertake
dangerous work—that is a disadvantage.

The covenant was meant to mean that when two
people are in the same situation, the service person is
not disadvantaged, and that is why the Bill says that it
applies to a civilian in these environments in exactly the
same way. I heard the right hon. Member for North
Durham say again this morning that civilians were not
covered by this Bill. Well, they are. It is in the Bill.

Mr Jones: The Minister said these rights protect
people, but the covenant is not about taking rights away
from people. I know we fixate on the date of knowledge,
but when he is no longer a Minister and none of us are
here anymore, the Ministry of Defence lawyers will not
use this provision to say that a case is time-barred.
There is nothing in this Bill that says that. That is the
problem he has. I do not for one minute think that he is
suggesting otherwise, and he is perhaps well intentioned,
but he is just wrong on this, and is trusting the MOD
too much.

Johnny Mercer: I accept the right hon. Gentleman’s
point. He will not find many Ministers who will say that
half is the Department’s problem in terms of how it has
investigated and so on. I have a healthy interrogation of any advice I am given. I accept his point that there is a danger of abuse, but we have written into the Bill that point of knowledge. I am not fixated on it; it is just where it is.

3 pm

Mr Jones rose—

Johnny Mercer: I will come back to the right hon. Gentleman. I want to finish what I am saying—I do not want to repeat myself and bore everybody—and then I will take more interventions.

Clause 8, in conjunction with schedule 2, introduces new factors that the courts must consider when deciding whether to allow certain claims relating to overseas military operations to be brought after the normal time limit, and sets the maximum time limit for such claims at six years. The Government intend to ensure that claims for compensation for personal injuries or deaths arising from overseas military operations are assessed fairly and achieve a fair outcome for victims, for the service personnel and veterans called upon to give evidence, and for the taxpayer.

Section 2 of the Limitation Act 1980 sets an absolute time limit of six years for claims relating to most types of tort. Although sections 11 and 12 set a three-year limit for claims for personal injury or death, the three-year limit is not absolute. Section 33 of the Act gives the court discretion to allow claims to be brought beyond the time limit if it considers it fair to do so. Section 33 identifies six factors to which the court must have a particular regard when assessing fairness. In broad terms, those relate to the steps taken by the claimant to bring the claim, the reasons for delay and the effect of delay on the quality of the evidence. Those factors do not adequately recognise or reflect the uniquely challenging context of overseas military operations. The Government are concerned that unless the court is directed to consider relevant factors, it might wrongly conclude that it is fair to allow older claims to proceed. The clause, in conjunction with schedule 2, introduces three new factors that the Government consider properly reflect the operational context to which the court must have particular regard.

Mr Jones: Is it not for a lawyer, when they are arguing a limitations case, to make the case for special circumstances? They can do that now in law. If the measure goes through unamended—I accept that this is not the Minister’s intention—the MOD will use it as a way of blocking cases. We only have to look at the nuclear test veterans case of 2009 and Judge Foskett’s summing up. The MOD’s argument in the limitations hearing was that the case was out of time, but it was successfully argued that new evidence had come forward. That was possible because it was before a court of law. This measure stops that.

Johnny Mercer: I will address that point in my final remarks on the clause. The factors that have to be considered are: the extent to which assessment of the claim will depend on the memories of service personnel and veterans, the impact of the operational context on their ability to recall the specific incident, and the impact of doing so on their mental health. The new factors reflect the reality of overseas military operations—the fact that opportunities to make detailed records at the time might be limited; that increased reliance might have to be placed on the memories of the personnel involved; and that as some of them might be suffering from mental health illnesses owing to their service, there is a human cost in doing so. The human cost obviously goes beyond that of the service person and will be felt just as much by their families and friends. Families of the military community are a core aspect of the armed forces covenant and must not be overlooked when we consider the measures in the Bill.

Clause 8, in conjunction with schedule 2, also introduces an absolute limit of six years for claims for personal injury or death arising from overseas military operations. This change brings the absolute time limit for personal injury or death claims in line with other claims for other torts that might occur on operations, such as false imprisonment. It also gives service personnel and veterans certainty that they will not be called upon indefinitely to recall often traumatic incidents that they have understandably sought to put behind them.

Finally, this clause, in conjunction with schedule 2, amends the Foreign Limitation Periods Act 1984, so that claimants cannot benefit from more generous time limits under foreign law. This change is needed for consistency and will ensure that no claim is brought after six years. I must emphasise that the Government are not seeking to stop meritorious claims or to avoid judicial scrutiny, nor are we seeking to put the armed forces or the Government generally in a more favourable position compared with their position as regards other defendants.

The changes that this clause and schedule 2 introduce go only as far as is necessary to ensure a fair outcome. They do not affect the way in which the time period is calculated or those provisions that suspend time in appropriate circumstances. They are also consistent with court rulings that claimants do not need to be provided with an indefinite opportunity to obtain a remedy. The courts have recognised that limitation periods have an important role to play in ensuring legal certainty and finality and in preventing injustice. The changes that this clause, in conjunction with schedule 2, introduces are a reasonable and proportionate solution to the problem of historical claims.

I will not repeat the same arguments for clauses 9 and 10, which amend the legislation in Scotland and Northern Ireland, but I will just add that the Limitation Act 1980 only covers claims brought in England and Wales. It is therefore necessary to extend similar provisions across the whole of the UK to prevent forum shopping. It would be deeply unsatisfactory if changes that the Government are introducing to achieve a fairer outcome in relation to claims brought in England and Wales could be circumvented by a claimant’s bringing their claim in Scotland or Northern Ireland instead.

Turning our attention to new clause 2, none of the measures in part 2 of the Bill will prevent service personnel, veterans or their families from bringing claims against the MOD in connection with overseas operations within a reasonable timeframe, as historically most have done anyway. The purpose of the limitation longstop is to stop historical and often vexatious claims being
brought against the military on overseas operations, which put our service personnel at the mercy of being called to provide evidence long after the alleged events in question, with all the harm and anxiety that might cause them.

To ensure fairness between claimants, we have not excluded service personnel from those provisions. They will apply equally to service personnel and veterans as they will to any other person bringing a claim against the MOD in connection with overseas operations. I am confident that these measures do not break the armed forces covenant. The new factors and limitation longstops only apply to claims in connection with overseas operations and will apply to all claimants in the same way. The court’s discretion to extend the three-year time limit for death or personal injury claims and the one-year time limit for human rights claims remains unchanged in respect of any other claims, that is, those not connected to overseas operations brought against the MOD.

Additionally, our evidence suggests that 94% of those claims from service personnel are already brought within six years. We would expect that figure to rise in future, as we ensure that the armed forces community is made aware of the new measures and the relevant dates for bringing claims, including what is meant by the date of knowledge. That should encourage personnel to bring claims within six years, or earlier if possible, as after the primary time limit of three years for personal injury and death and one year for human rights claims expires, claimants must rely on persuading the courts to exercise their discretion to extend the time limit.

In summary, clauses 8 to 10, as they stand, do not breach the armed forces covenant and do not disadvantage service personnel or veterans. Let me make this clear point: on operations and in the area of modern warfare, we cannot lift human rights legislation and apply it to the battlefield. I accept that some people want to do that and think that is the right thing to do, but I respectfully disagree. The idea that people can go to court and argue for an extension produces exactly the position we find ourselves in now, where individuals such as Phil Shiner, who the right hon. Gentleman—clearly, there is a difference of opinion here. That is allowed, that is what this place is all about, but the reality is that those on the Government Benches have a different view, which is that we cannot let the situation that has persisted for the past 40 years continue ad infinitum. We have to bring in fair and proportionate legislation to go beyond saying nice things about our people, or, “Isn’t it terrible that these people get dragged through the courts?”, while being prepared to do absolutely nothing about it. I am afraid that those days have come to an end. We have to legislate to protect our people. I will give way once more, and then I will finish.

Mr Jones: There is nothing fair about taking rights away from veterans. On the Human Rights Act, the one-year limit to bring a claim is clearly still there, but at present someone could bring a late claim under section 33 if at the time they thought it was not there. The Minister said that we would be abiding by the convention. Will he point out what in the convention—or on our side, in the Human Rights Act—it says that time limits and out-of-time claims are applicable? I cannot see that.

Johnny Mercer: As the right hon. Gentleman will remember from his time in government, all legislation has to be signed off as ECHR compliant. The Department has done that, recognising our responsibilities under the legislation and meeting its requirements. He talks about rights, but people such as Bob Campbell have a right to be protected from experiences such as his over the past 17 years, and the soldiers who went through al-Sweady have a right to be protected as well. This is not all in one direction—it is not a one-way street—and we are clear that those people have a right to be protected in the jobs that we asked them to do. That is what the clause is all about, so I ask that it stand part of the Bill.

Question put and agreed to.
Clause 8 accordingly ordered to stand part of the Bill.

Schedule 2
INTERNATIONAL CRIMINAL COURT ACT 2001

Stephen Morgan (Portsmouth South) (Lab): I beg to move amendment 29, in schedule 2, page 16, line 4, leave out “six” and insert “ten”.
The Chair: With this it will be convenient to discuss the following:

Amendment 30, in schedule 2, page 16, line 35, leave out “six” and insert “ten”.

Amendment 31, in schedule 2, page 17, line 16, leave out “six” and insert “ten”.

Amendment 32, in schedule 2, page 18, line 34, leave out “six” and insert “ten”.

Amendment 33, in schedule 2, page 19, line 18, leave out “six” and insert “ten”.

Amendment 34, in schedule 2, page 19, line 26, leave out “six” and insert “ten”.

Amendment 35, in schedule 3, page 20, line 40, leave out “6” and insert “10”.

Amendment 36, in schedule 3, page 21, line 3, leave out “6” and insert “10”.

Amendment 37, in schedule 3, page 21, line 8, leave out “6” and insert “10”.

Amendment 38, in schedule 3, page 21, line 14, leave out “6” and insert “10”.

Amendment 39, in schedule 3, page 21, line 15, leave out “6” and insert “10”.

Amendment 40, in schedule 3, page 21, line 19, leave out “6” and insert “10”.

Amendment 41, in schedule 3, page 21, line 20, leave out “6” and insert “10”.

Amendment 42, in schedule 3, page 21, line 26, leave out “6” and insert “10”.

Amendment 43, in schedule 3, page 21, line 27, leave out “6” and insert “10”.

Amendment 44, in schedule 3, page 23, line 6, leave out “6” and insert “10”.

Amendment 45, in schedule 3, page 23, line 35, leave out “6” and insert “10”.

Amendment 46, in schedule 3, page 23, line 36, leave out “6” and insert “10”.

Amendment 47, in schedule 4, page 24, line 4, leave out “six” and insert “ten”.

Amendment 48, in schedule 4, page 24, line 28, leave out “six” and insert “ten”.

Amendment 49, in schedule 4, page 24, line 34, leave out “six” and insert “ten”.

Amendment 50, in schedule 4, page 25, leave out line 16 and insert—

“ten years is to be treated as a reference to the period of ten years”.

Amendment 51, in schedule 4, page 26, line 36, leave out “6” and insert “10”.

Amendment 52, in schedule 4, page 27, line 20, leave out “6” and insert “10”.

Amendment 53, in schedule 4, page 27, line 21, leave out “6” and insert “10”.

Amendment 54, in schedule 4, page 27, leave out line 27 and insert—

“10 years is to be treated as a reference to the period of 10 years plus—”.

Stephen Morgan: Ministers have said that the purpose of the Bill is to protect service personnel, but part 2 as drafted does the exact opposite. We are not here to score points or to play politics; we are here to work constructively with the Government and to highlight the areas of the Bill that must be improved. That does not need to be a binary choice. By moving the amendment, our objectives could not be simpler—to protect our personnel’s access to justice and to redress the Bill’s negative implications for our forces’ welfare. Are those concepts that Ministers cannot get behind?

In the Committee’s witness sessions, there was consensus among the specialists from whom we heard. From decorated soldiers to human rights groups and from lawyers to armed forces charities, there was agreement. Consensus on the Bill in its current form may erode rather than enhance the rights of personnel. Most notably, we heard comments from the Royal British Legion, and I am sure that no one would question its age-old, unwavering commitment to the welfare of our troops.

With that in mind, I am concerned about what the Royal British Legion has said, which is that the Bill constitutes a potential breach of the armed forces covenant—a deeply worrying conclusion from the UK’s largest armed forces charity.

3.15 pm

Mark Eastwood (Dewsbury) (Con): The hon. Gentleman mentions the Royal British Legion. When my hon. Friend the Member for Wrexham asked Charles Byrne whether the Royal British Legion opposes the Bill, did he not say that it does not?

Stephen Morgan: It was clear that the Royal British Legion is in favour of the intent of the Bill but has concerns about part 2, which it believes breaches the armed forces covenant. Charles Byrne was very clear on that point.

Johnny Mercer: I make this point again. I have heard it said a number of times, “We support the intent of the Bill.” Over 40 years Members have spoken of supporting the intent of looking after our veterans and protecting them from vexatious claims. No one has done anything about it. Lots of people gave evidence and said they supported the intent of the Bill. It does not mean anything unless we get into the detail of the Bill. The Royal British Legion did not oppose the Bill; it said it had concerns about the armed forces covenant, which we addressed, but it did not oppose the Bill.

Stephen Morgan: I give way to my hon. Friend the Member for South Shields.

Mrs Lewell-Buck: I am looking at the transcript of the evidence given by the Royal British Legion, in which it said:

“Can we achieve those aims without disadvantaging service personnel?” If we can do both, both should be done.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 89; Q168.]

It welcomed the intent behind the Bill and believed that it could “be improved.” No Labour Member is against the Bill per se; we are against part 2. We are trying to improve the Bill as the Royal British Legion suggested. I do not understand why the Minister does not grasp that.

Stephen Morgan: I thank my hon. Friend for the intervention. She hits the nail on the head: we want to work constructively with the Government to get the Bill right. Sadly, we are not seeing that engagement, and that concerns us. Are Ministers not concerned that the
very Bill they claim is devised to help our armed forces is said to be doing the very opposite by an organisation as distinguished as the Royal British Legion?

We heard from other important witnesses. The Association of Personal Injury Lawyers, a not-for-profit organisation representing injured serving and ex-service personnel, said:

“This Bill leaves our veterans with less rights than prisoners.”

I will repeat that because it is so important:

“This Bill leaves our veterans with less rights than prisoners.”

That is a damning verdict delivered by lawyers who devote their lives to representing our troops. Our armed forces serve the nation with distinction. They deserve more than to have their rights stripped away.

I say to the Minister: do not dismiss the warnings of the legion and APIL; work with us to address them.

Let us take a closer look at what part 2 means. The Limitation Act 1980 results in the armed forces community and civilians being treated equally in seeking a claim for personal injury. A three-year cut-off point is in place. The courts retain the right to grant an extension to forces personnel. Section 33 provides the court with discretion to override the current three-year limit, but this Bill deliberately snatches courts’ ability to show discretion if the case relates to an overseas armed forces action. It makes a deliberate change to the Limitation Act. That makes no sense. There are already structures in place to ensure that only appropriate claims are brought. Courts routinely manage out-of-time proceedings and frequently throw out cases where delay is unjustified. The detailed criteria set out in the Limitation Act 1980 already address cases that do not have reasonable grounds or are unjustified. Why is the Minister actively removing an aspect of the Limitation Act that offers courts the right to grant an extension in cases relating to armed forces personnel?

Mr Jones: As I said earlier in an intervention on my hon. Friend the Member for Blaydon, the nuclear test veterans case is a good example. There was a limitations hearing in which the MOD argued that the case was out of time because the incident took place so long ago. In that case, Judge Foskett argued that new evidence meant the case was still within time. The time limit in this Bill deliberately snatches courts’ ability to show discretion if the case relates to an overseas armed forces action. It makes a deliberate change to the Limitation Act. That makes no sense. There are already structures in place to ensure that only appropriate claims are brought. Courts routinely manage out-of-time proceedings and frequently throw out cases where delay is unjustified.

The Minister seemed to brush aside the fact that section 33 will be ignored in terms of time limits. Does he also think that that constrains the rights of veterans and service personnel from bringing cases against the MOD, which they can, under the Human Rights Act?

Mr Jones: Another issue concerns human rights cases. The impression being given is that they are always brought by people against the MOD and include litigants and people in foreign countries and so on, but Human Rights Act cases are also brought against the MOD by armed forces personnel. When Hilary Meredith gave evidence, she said:

“There is a difficulty putting a time limit on the Human Rights Act—I do not even know whether we can do that constitutionally”.

The Minister seemed to brush aside the fact that section 33 will be ignored in terms of time limits. Does he also think that that constrains the rights of veterans and service personnel from bringing cases against the MOD, which they can, under the Human Rights Act?

Stephen Morgan: We could spend all afternoon on different cases. That is why the amendment is so important. I have another example. It is about how legislation would have denied justice to a former royal marine with noise-induced hearing loss, according to the Association of Personal Injury Lawyers. The former marine received nearly half a million pounds for a noise-induced hearing claim on the grounds that his hearing loss and tinnitus was caused by a negligent exposure to noise. During his career the marine served in Northern Ireland, the Gulf and Afghanistan, and he was exposed to noise from thousands of rounds of ammunition, thunderflash stun grenades, helicopters and other aircraft and explosive devices. His claim related to his entire service.

When he left the Royal Marines in 2012 because of problems with his hearing, he was unaware that he was able to make a claim for compensation. He eventually spoke to a solicitor in late 2014, seven years after he was first aware that he had problems with his hearing. The MOD admitted liability and made no argument about his case being brought out of time. The time limit in this Bill, however, would have eliminated all aspects of the claim relating to the Marine’s extensive service overseas.

Johnny Mercer: I totally respect the manner and intent of the hon. Member’s remarks, but, again, the Mark Bradshaw case and the case of the royal marine, which we have looked at, would not be affected by this
legislation. When Bradshaw became aware of his PTSD being service-related, it would have been dealt with within six years. The same detail applies to the royal marine.

I do not know what else to say, but the stuff that is coming forward—I have to be honest and say that I have heard it before, because I know it comes from a campaign group—is just simply not true. I do not know what to do with the cases being presented to me, which are simply incorrect.

**Stephen Morgan:** The claim could have been made only in relation to negligent exposure in the UK. It might not have been possible to isolate the extent and the effect of negligent exposure in the UK, making it very difficult to claim any redress at all. Why are some medical conditions worthy of justice, and not others? Many other medical conditions are likely to fall outside the cut-off point, and there are conditions such as long-term deterioration of joints resulting from carrying heavy equipment.

**Mr Jones:** Does my hon. Friend agree that what the Minister is saying cannot be the case? He cannot give any guarantee that such cases will not be resisted by the MOD. He cannot direct the MOD, because he will not be there when he leaves the MOD, and no one else can do it either. It is about protecting future cases. In the two cases referred to, the Bill would allow the MOD to legitimately turn those cases down because they were out of time. Those two individuals would have no recourse to law in order to enforce their rights.

**Stephen Morgan:** My right hon. Friend is absolutely correct. We are saying it time and again, but the Bill is simply incorrect. We are saying it time and again, but the Bill is simply incorrect.

**Carol Monaghan:** Does the hon. Gentleman share my concern that the Minister is suggesting that we are raising concerns because of a campaign group? Personally, I am not raising concerns because of a campaign group; I am raising concerns because of the protections being taken away from armed forces personnel and veterans. When an individual gets a diagnosis of PTSD, I cannot imagine anybody thinking, “The first thing I am going to do is lodge a claim against the MOD.” When a condition gets progressively worse, they might think about doing so over time, but not necessarily within six years.

**Stephen Morgan:** I thank the hon. Member for that intervention. We are not here just to speak up for campaign groups and emails; we are here to speak up for our armed forces. That is why we are absolutely keen to see the Bill improved. I really hope the Minister engages with these points in his summing up.

Is the Minister satisfied that the Bill in its current form will prevent troops who are suffering from these conditions from receiving justice? As we heard from APL in evidence sessions last week, many troops are not aware that they can bring a claim against the MOD. They are directed to the armed forces compensation scheme, which pays out much lower sums. Why is it that the MOD has scrapped the proposed better compensation scheme, which would have seen payments that are closer to those offered in court settlements? Why is it that the Government are willing to introduce a six-year longstop for troops, but not for civilians? It puts troops at a patently clear disadvantage by comparison with civilians. As we heard last week from the director general of the largest armed forces charity in the UK—the Royal British Legion—it risks breaching our armed forces covenant.

Part 2 of the Bill in its current form protects the MOD: it does not protect our troops. Despite all this, it is not too late. The Opposition have proposed solutions today, and we can work together to address this issue. Protecting service personnel’s access to justice acts on the concerns voiced by friends such as the Royal British Legion.

**Mr Jones:** I rise to support my hon. Friend and to speak to my amendments 92 and 93, which I understand fall in this group of amendments—

**The Chair:** Order. They do not. They are in the next group.

**Mr Jones:** They do not—I am reading it wrongly as one big group, but they are two separate groups.

My hon. Friend the Member for Portsmouth South made a point about the backstop. I am sorry, I just cannot accept that backstop. The Minister seems to be misunderstanding the issue to do with the date of knowledge. The date of knowledge is clearly not only as laid out in the law of cases against the MOD, but as in
[Mr Kevan Jones]
civil law as well. As I said this morning, I used to deal all the time with the date of knowledge in asbestos cases. Some of those test cases were to do with ensuring that individuals—sometimes many years after they had left the industry in which they had contracted their disease—were able to take action. They were able to do so because of the Limitation Act.

The other thing that we need to knock on the head is the idea that bringing a section 33 case is easy. It is not easy; it is very difficult, and the threshold to meet is very high—rightly. As the Minister said, time limits rightly have to be fair in two ways: first, to give individuals enough time to ensure that they can bring a case; and, secondly, because evidence gets lost, whether in a civilian case or, more so, in such a case as we are addressing now. There is therefore a good reason for time limits, but there is also a good reason to have circumstances and exceptions in which those time limits should not apply.

My hon. Friend mentioned two cases, which the Minister said would be covered—but I am sorry, they would not. If they fell outside the six years, under the Bill as drafted those individuals would not be able to argue before a judge why limitations should not apply in their cases, and their case would just be dismissed. The Minister seems to have a lot of faith that the MOD’s lawyers of the future—and now—would not use that measure to reduce and stop such claims. They would not be doing their job if they did not use it to stop those claims.

The important thing is that such an individual would then have no rights whatever—unlike you, me or anyone else: even a prisoner—to bring a case under section 33 of the Limitation Act. I understand what the Minister says about his trust and belief in the MOD now and in the future. I do not disparage what the MOD is doing. There was a reference in the evidence session that the Department employs good lawyers and that will be their job, and they will use this provision. As such, what the Minister said will not be the case.

My hon. Friend the Member for Portsmouth South raises the issue around the 94%, or whatever the figure is. I do not care, to be honest, because as I said earlier, that is a case too many. Like my hon. Friend, I want to ensure that armed forces personnel and veterans are treated on the same basis as everyone else in this country. If that does not happen, the armed forces covenant will protect their rights but the Bill will take their rights away. That cannot be right.

There is also the point, which I had hoped the Minister would answer, about the Human Rights Act. He said the one-year time period is still in there, which is fine, but as Hilary Meredith said, how do you then disapply the Limitation Act to the Human Rights Act? As she said, it is very difficult to see how you would do that in practice because we are part of an international convention.

The only response the Minister gave—he might want to write to me if he does not have it with him; I accept that on occasions he does not have all the facts to hand—is that it has been cleared as being Human Rights Act-compliant. Are we suggesting that for this group of veterans there will be a new thing—a time limit for out-of-time human rights cases? If that is so, it is very interesting. How has that been squared in terms of the convention we have signed? Again—and likewise—everybody else will be able to use the Limitation Act to take a case forward outside that time.

The Minister said he is listening, but he is not. He has a fixed view of what goes forward in the Bill and that is what he is going to put forward. We have made attempts. I have said that I accept that amendments written by mere amateurs such as myself and others are not necessarily legally correct. However, what often happens on these occasions is that a Minister will say, “Yes, we agree. There is a point there. We will take it away, look at it and try to frame it in terms of how it fits into the Bill and the legal parameters.” That way, when we get to Report and Third Reading, they can be introduced, usually as Government amendments. However, that has not happened. We have had, “This is how it is going to be and that’s it.”

The situation is rather sad because there are things that can be done even at this stage—I am discussing one of them—that could improve the Bill. I accept that the Minister has already committed to look at investigations in the Armed Forces Bill next year, but he should stick to the provisions in the damn Bill now. He could do it. The fact that the civil service might not want to do it—well, tough. He should just say, “You are going to do it” and put it in. Putting those investigation measures into the Bill will improve it immensely and do more than where the Ministry has come from so far in the Bill. As Judge Blackett said, he has been “looking at the wrong end of the telescope”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 120, Q246.]

The Minister is concentrating on prosecutions, but that isn’t the problem: the problem is investigations and how the MOD operates. I will not support a Bill that is going to take away rights from our servicemen and women. That would be an absolute tragedy. I know that is not the Minister’s intention, but unfortunately the Bill, as it is written, is going to do exactly that.

The Chair: To confirm, we are debating amendments 30 to 54, with amendment 29. If no other Members wish to speak to any of those amendments, I call the Minister.

Johnny Mercer: I wanted to address a couple of points about the limitation period. In the Stubbings ruling that we looked at, limitation periods are okay under ECHR regulation as long as there is compatibility with article 6, the right to a fair trial. That is the test that has been undertaken in this exercise and that is the advice that the Government have received. The right hon. Member for North Durham may well disagree with that, and is well entitled to.

Mr Jones: Will the Minister give way?

Johnny Mercer: Not at the moment. I have literally just stood up. I will get through a couple of points, if I may.

As to the idea that I have not engaged in the process, and that it is just “head down, drive on”, I should like to know whether there has been a Bill that has gone through this place in the past five years when the Minister has been more ready to say a number of times that he was willing to work cross-party to improve the Bill; but I have to deal—[Interruption.]

The Chair: Order. The Minister is not taking an intervention at this stage.
Johnny Mercer: Thank you, Mr Mundell. I have to deal in the real world. I have to deal with real facts and figures—not made-up stuff—and how they apply to the battlefield. There is clearly a difference of opinion between the Government and the Opposition about whether the ECHR should be applied on the battlefield. I accept that. That is the point—that ability to continue these extensions is part of ECHR compliance. The Government do not agree that the battlefield is the right place, or that retrospective application of the ECHR to the battlefield is appropriate.

I have seen comparisons with convicted criminals a number of times in a lot of campaign items. Hon. Members are comparing convicted criminals to armed forces veterans. That comparison—prisoners to veterans—has been made a number of times. I can tell Members that that goes down like a cup of cold sick in the veterans community. It is not comparing the same things.

Carol Monaghan: Will the Minister give way?

Johnny Mercer: I will give way in a moment.

The Bill has clearly been introduced to protect our servicemen and women when they conduct overseas operations. The purpose of the limitations is to stop large-scale out-of-time and often vexatious claims being brought against the military on overseas operations. I urge Members to think a bit more about comparing veterans with convicted criminals.

Mrs Lewell-Buck: On a point of order, Mr Mundell. The Minister keeps repeating something that is blatantly incorrect. No one at all on the Opposition Benches has made comparisons—prisoners to veterans—has been made a number of times. I can tell Members that that goes down like a cup of cold sick in the veterans community. It is not comparing the same things.

The Chair: I do not think that that is a point of order, but at least you have got your point on the record.

Johnny Mercer: As for the idea that we must withdraw part 2, the whole point of the Bill is to bring in time limits to provide certainty for veterans, so if colleagues take it away, what is the point of the Bill? Why are we here in the first place, if we will just continue as we currently are?

Mr Jones: Will the Minister give way?

Johnny Mercer: Not at the moment.

The six-year longstop for personal injury and death claims is an important part of the Bill. The measure will help to provide greater certainty for service personnel and veterans by requiring civil claims arising from overseas operations to be brought promptly. Effectively, service personnel will not have to worry about having to give evidence on what would have been very distressing events many years in the future.

The public consultation launched in 2019 sought views on the length of time for such a longstop, and asked whether 10 years was appropriate. Many respondents supported a period of less than 10 years, so we decided to reduce the time limit for the longstop. Six years was chosen because it aligns with the limitation period for some other tort claims. That decision was further informed by the case of Stubbings v. the UK, in a judgment that has been repeatedly confirmed. The European Court of Human Rights upheld an absolute six-year limitation period. The Court noted the need in civil litigation for limitation periods because they ensure legal certainty and finality and the avoidance of stale claims, and prevent injustice where adjudication upon the events in the distant past involves unreliable and incomplete evidence due to the passage of time.

3.45 pm

Six years is considered to be a reasonable timeframe for claimants to gather the necessary evidence to bring a claim. Beyond this point, witnesses’ recollections can fade, making it difficult for the claimant to pursue a claim and for the defendant properly to defend it. The six years can also run from the claimant’s date of knowledge if that arises after the date of the incident. That will reduce the negative impact of an absolute longstop. It means that for personal injury claims relating to conditions like PTSD, which may not be diagnosed until much later, the six years start from the date the person is diagnosed and is aware that their injury is attributable to the MOD. That cannot be clearer for the Opposition.

The vast majority—around 94%—of relevant claims from service personnel and veterans already fall within the six-year time limit. We anticipate that claimants who in the past have brought claims after six years may in future bring their claims within six years, and we will ensure that the armed forces community is made aware of the new measures. I have given notice of that commitment before. Changing the longstop from six years to ten years will only increase the uncertainty that service personnel and veterans face from the threat of being called on repeatedly to give evidence relating to historical events. The statistics that I have outlined show that most service personnel and veterans bring their claims within six years. The amendments, therefore, would only increase the uncertainty, without giving any significant benefit.

Mr Jones: Will the Minister give way?

Johnny Mercer: Is there going to be a new point? I have given way a lot and we seem to be repeating the same points.

Mr Jones: The Minister is going backwards and forwards just reading out what he has in front of him—[Interruption.] I am sorry, but he is. He is not answering any questions at all. Can I ask the Minister this? He says the reason for the longstop, which disadvantages veterans, is to stop all these vexatious claims. In terms of the Shiner case, for example, how many of those cases were actually time-limited cases and argued in terms of this limitation? If that is the case and there were thousands of them—I would be very surprised if there were—I would imagine in most cases the Limitation Act would weed out most of those that were vexatious.

To actually introduce this to solve that part of the problem is going to have a massive impact on servicemen and women who wish to bring claims against the MOD.
Johnny Mercer: Of Phil Shiner's claims through Public Interest Lawyers, 62% were brought more than six years after the date of the incident. The Bill imposes a six-year limit, meaning that 62% of those claims would have been out of time. This legislation is designed to redress the balance. We are operating in a very difficult area, I accept that. Doing nothing has been the easy option that this House has pursued for 40 years and it is an approach I disagree with.

Mr Jones rose—

Johnny Mercer: I am not going to give way again, there will be plenty of opportunity for the right hon. Gentleman to speak further. I recommend that the amendment be withdrawn.

Stephen Morgan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Evans: I beg to move amendment 76, in schedule 2, page 16, line 5, leave out “the section 11 relevant date” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

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

Amendment 77, in schedule 2, page 16, line 30, leave out “the section 11 relevant date (ignoring, for this purpose, the reference to section 11 (5) in paragraph (a) of the definition of that term)” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 78, in schedule 2, page 16, line 35, leave out “the section 12 relevant date” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 79, in schedule 2, page 17, leave out from the beginning of line 35 to end of line 5 on page 18, and insert—

“the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

(a) of the act complained of;

(b) that it was an act of the Ministry of Defence or the Secretary of State for Defence;

(c) of the manifestation of the injury resulting from that act which is the subject of the claim, and

(d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 80, in schedule 3, page 20, line 41, leave out “the section 17 relevant date” and insert “the date of knowledge (see subsection (13))”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 81, in schedule 3, page 21, line 4, leave out “the section 18 relevant date” and insert “the date of knowledge (see subsection (13))”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 82, in schedule 3, page 21, line 9, leave out “the section 17 relevant date” and insert “the date of knowledge (see subsection (13))”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 83, in schedule 3, page 22, leave out lines 12 to 17 and insert—

“the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

(a) of the act complained of;

(b) that it was an act of the Ministry of Defence or the Secretary of State for Defence;

(c) of the manifestation of the injury resulting from that act which is the subject of the claim, and

(d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 84, in schedule 4, page 24, line 5, leave out “the Article 7 relevant date” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.
Amendment 85, in schedule 4, page 24, line 29, leave out “the Article 7 relevant date (ignoring, for this purpose, the reference to Article 7(5) in paragraph (a) of the definition of that term)” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 86, in schedule 4, page 24, line 34, leave out “the Article 9 relevant date” and insert “the date of knowledge”. This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 87, in schedule 4, page 25, line 43 and insert—

“(c) of the manifestation of the harm resulting from that act which is the subject of the claim, and
(d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 73, in clause 11, page 7, line 30, leave out from “before” to the end of line 34, and insert “the end of the period of 6 years beginning with the date of knowledge.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the Human Rights Act 1998 arising out of overseas operations.

Amendment 72, in clause 11, page 7, line 36, leave out “or first ought to have known”. Amendment 74, in clause 11, page 7, line 37, leave out “both”.

Amendment 75, in clause 11, page 7, line 40, at end insert—

“(c) of the manifestation of the harm resulting from that act which is the subject of the claim; and
(d) that they were eligible to bring a claim under the Human Rights Act 1998 against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the Human Rights Act 1998 arising out of overseas operations.

Chris Evans: The amendments allow the Bill to account for all legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations. The Minister recently said in The Daily Telegraph:

“Our analysis suggests 94 per cent of claims from service personnel and veterans are already brought within six years.”

He has repeated that today. He goes on:

“Critically, for conditions like PTSD, this limit will start from the date of knowledge or diagnosis.”

If that provision can be applied for certain conditions, which of course I agree with, let us take this opportunity to apply it fairly to all service personnel. That would allow those 6% who do not make claims within six years, according to the Minister’s own figures, to be given a chance to explain why. If the court’s criteria were met, they could then claim any compensation they are entitled to. On Sunday, I happened to chance upon the article that the Minister wrote for The Sun on Sunday, where he said that he would make it his personal mission to carry the can for those who fall outside the six-year rule. It would be helpful, given those comments, if he expanded on what he meant by that.

The court will still take the passage of time into account, just as it would normally, but to block claims being brought after six years does not take into account the true complexities of civil claims linked to overseas operations. Courts should retain their discretion and should consider the large periods of time that can pass before knowledge comes to light of the true extent of an injury, acts of negligence, or the right to other civil claims. The point of knowledge of a claim may be many years after the event or series of events. This may be because claimants did not know that they had a right to claim, or because they did not link their circumstances to overseas operations for some years.

The Bill is meant to protect our armed service personnel, but leaving this part unamended only protects the Ministry of Defence. I want to bring to the Committee’s attention a particular case, or group of cases I should say, that causes me great concern in the event of the amendment not being made. It is the case of the nuclear test veterans.

This case is particularly close to my heart, and I raised it with the right hon. Member for Maidenhead (Mrs May) when she was the Prime Minister. When I first became the Member of Parliament for Islwyn, we used to hold a parade through Risca to honour those veterans. In my second year as an MP, because of the number who had passed away, it was decided that their standard would stay in the local church in Risca until it turned to dust.

What was so sad about this case was that those veterans were fighting for justice for so long. Many of them endured horrific medical conditions, and the families left behind only had their memories of those who were incapacitated by their nuclear service during those times in Easter Island. What was really hard to bear was, first, that they did not have compensation; secondly, though—if I step out of the Bill and say this to the Minister, who is the Minister for Veterans—these people have suffered enough. As he will know, I have made appeals to other Ministers to ensure that these veterans have a medal and some recognition. I want to use this opportunity to ask the Minister to take that up with the Honours and Decorations Committee, and to ensure that they do get some recognition, especially as we approach a very different Remembrance Sunday this year. I have digressed.

Thank you, Mr Mundell, for allowing me to indulge in that.

For the vast majority of nuclear test veterans, their injuries did not manifest for decades. The nature of radiation injury means that it invisibly alters cellular DNA.
Mr Jones: Had the Bill been in place in 2009, that would have been it for those veterans—there would have been no case at all. The 2009 case, which I know well, was a limitation case, and they brought it before Justice Foskett because they argued that new evidence—medical evidence from New Zealand—had emerged about what my hon. Friend is referring to. If this Bill had been in place then, they would not have even been able to go to court to argue why their case should have had consideration, because of the time that had elapsed since the 1950s, when the exposure took place.

Chris Evans: I pay tribute to my right hon. Friend. Friend for his service during that time. I know that as a Minister he dealt with the case with sympathy and respect. My direct predecessor, Lord Touhig, also dealt with the case when he was a Minister. I know that everybody who served during that period was wrestling with it, but my right hon. Friend. Friend is absolutely right to say that it would not have been possible to bring the case.

If radioactive particles are ingested, the harm might occur at a slow but steady rate for many years, with minor ailments leading to a dramatic diagnosis, and eventually to death. There was no way for the veterans to know that their minor ailments were linked to the nuclear tests that they were involved in. As the Minister knows, however, it often prevented them from gaining the compensation they deserved.

How can we ask young men and women to serve and not guarantee their rights in the same way as civilians are guaranteed theirs? Should the Bill progress, I worry for the next generation of service personnel who are affected by the equivalent of nuclear tests. We do not yet know what might happen in the future that could cause problems further down the line. That is just one example of why someone might need to extend the six-year limitation as currently set out.

I must raise concerns from specialist members of the Association of Personal Injury Lawyers, a not-for-profit firm that specialises in military claims. It has voiced concerns that injured personnel can be misinformed of their right to make a legal claim. They might not even know that they have a right to a claim. According to a report by the Association of Personal Injury Lawyers, it is unfortunately not unusual for service personnel to be misinformed about their right to bring a civil claim.

Mr Jones: Does my hon. Friend agree that it would also limit families? In some cases—especially those involving asbestos, but also some involving cancers—the claim is generated only after the person passes away. Even though somebody might have known earlier that they had cancer, it is only once they pass away that the family might think that it was related to service. I know of some cases that were the result of submarine service. The Bill would actually stop families getting any redress in such cases.

Chris Evans: I agree. I will come to an example that my hon. Friend probably knows as well, but I first will say something about service families. When servicepeople are away, their families are left with the worry, the childcare and other needs. When a serviceman suffers from cancer, it is the family who have to watch their loved one wither away. It is vital that they have a chance to make a claim.

It is interesting that my right hon. Friend for North Durham intervened in my speech. When we talk about personal injury, those of us who come from mining communities will remember the example of the miners’ compensation scheme and how miners were left behind. I am not comparing miners to veterans, but it is a similar principle.

Johnny Mercer: The hon. Gentleman, for whom I have a lot of respect, has now spoken for about 10 minutes on nuclear test veterans. I trust that he is aware that nuclear test veterans are not covered by the Bill. It was not an overseas operation, and they are not covered by the Bill. The legislation that we are debating does not affect them in any way.

Chris Evans: I am glad the Minister has confirmed that.

Carol Monaghan: I am looking for clarity. Why would the overseas nuclear test veterans not be considered to have been on an overseas operation?

Chris Evans: I should ask the Minister to reply to that—I am just the post box here.

Johnny Mercer: Nuclear tests were not classified as operations. There is a lot of conversation about what Operation Banner was in Northern Ireland, but nuclear test veterans are not classified as having been on an operation. They are not subject to the Bill.

4 pm

Chris Evans: Service personnel might have knowledge of the event or series of events that the claim relates to, but many are under the impression that they cannot bring a claim while they are serving, or that their only route to redress is through the armed forces compensation scheme. This means that the date of knowledge should encompass not only the date of knowledge of the injury or the subject of the claim but the date of the knowledge that they had a right to claim—the date when they knew they had a case. That can be many years later and must therefore be taken into account if the Government insist on introducing a time limit.

The 2009 High Court case of 1,000 veterans of nuclear testing was fought and eventually lost on precisely this issue. The MOD argued that some veterans knew they were ill when they joined the British Nuclear Test Veterans Association in the 1980s, when it began campaigning. That was not the case. They knew they were ill at the time, but they wondered only if there was a link. The true point of knowledge can only come when a doctor confirms a possible link, which for many does not happen until years later. To me, that is the point of understanding.

Carol Monaghan: The problem with the nuclear test veterans—it could apply to other examples—is that there is actually a clear date of incident, many decades before. Although their point of knowledge of harm might have been much later, there was a clear date of incident, which the MOD could use to its advantage.
Chris Evans: That raises the actual point. When someone is ill, they know something is wrong, but they do not know what caused it; a doctor or medical researcher has not confirmed a link.

Johnny Mercer: I think it will be helpful if I make it clear that service personnel cannot bring claims for service pre 1987. Nuclear test veterans have access to the war pension instead, which has no time limit, so issues around nuclear test veterans and the Bill are not comparable.

Chris Evans: I thank the Minister for that.

Mr Jones: I am not sure that that is the case, because those veterans brought quite a successful case. The Minister just said that it was not an operation, but it was: Operation Grapple. I think. If it was called an operation—the MOD loves giving deployments various—

Johnny Mercer: It doesn’t work like that.

The Chair: Order. This is not a conversation.

Mr Jones: It was Operation Grapple. If the Minister wants to intervene on my hon. Friend, I am sure he will act as the post box again. However, those veterans brought a successful case, although the Minister says that that is not true, just to clarify.

Chris Evans: I give way to the hon. Member for Wolverhampton South West.

Stuart Anderson (Wolverhampton South West) (Con): Every training exercise in the UK or overseas is given an operational name, even though it is not an operation overseas, as per the Bill.

The Chair: I thank the hon. Gentleman for that.

Chris Evans: I was about to say—as we spoke about earlier when I moved the amendment about the Attorney General—that we could have a huge debate about this. I have made a plea to the Minister about the nuclear test veterans. I know he is a good man and that his heart is in the right place when it comes to veterans, and I hope he will recommend to the HD committee that they receive some recognition for their service.

I will move on to the meat of the Bill and the amendment, otherwise we could be here all day. Simon Ellis, a senior partner at the law firm Hugh James, argues from experience that the point of knowledge of the injury, especially in cases of post-traumatic stress disorder or deafness, as the hon. Member for Glasgow North West said, is difficult to define. For illnesses such as PTSD, the sufferer may take a long time to understand what they are suffering from—similar to what the hon. Lady mentioned about her father—long after healthcare professionals or friends or family have this knowledge. Therefore, although there is knowledge of the injury, the victims themselves do not fully know or are not willing to admit that they are suffering. It can then take even longer for them to accept that they have post-traumatic stress disorder, to link that to an overseas operation or a series of operations and to realise that they therefore have a right to a civil claim. The point of knowledge, therefore, can be marked only as the point at which the service person has a full understanding of their condition and their right to a civil claim.

I listened with interest to the hon. Member for Glasgow North West when she talked about what her father was going through. As I understand it, he knew he was deaf and those around him knew he was deaf, but it took him a long time to admit to it. Where is the point of knowledge in that? I do not know. I would be interested to learn, maybe afterwards, when he did finally admit that he had a problem.

Even in simpler cases, when the service person is aware of an injury at the point of the event, it would be grossly unfair for the longstop to start on the date of that event, if they had no knowledge that they could even bring a claim if they wished. Will the Minister therefore concede that clause 11 is not comprehensive enough to deal with the intricacies of a process that includes an event occurring, the sufferer fully understanding and accepting the injury, and their knowing that it is something that fulfils the criteria for a civil claim—that the option of a claim is open to them? If the Government insist on placing a time limit on service personnel or their families for bringing a civil claim, surely the clock must start from the point at which the claimant was both fully aware of the content of the claim—be that negligence, injury or death—and aware that they had the right to file a claim.

If that is not taken into account, it becomes even more clear that the Bill is intended to protect not service personnel but the Ministry of Defence. If these clauses relating to the rights of civil claims become law, those injured through negligence during overseas operations will no longer have the benefit of the full discretion of the court to allow a claim to proceed after the limitation period has expired. They will have fewer rights than other employees while the Ministry of Defence will be sheltered behind the longstop.

An employee who frequently works on military claims for Simpson Millar Solicitors said that, from her experience, she expects that Ministry of Defence lawyers “could use this new Bill to support arguments that personal injury claims are out of time.” Therefore, it is a bare minimum that the time limit starts ticking only once the claimant has full knowledge of their right to file a civil claim. This strikes back hard in respect of what my right hon. Friend the Member for North Durham said. Once the Bill is passed, it will be handed over to MOD lawyers. Now, none of us will be here for ever and we will have our successors. It will be the lawyers who interpret the Bill. It is therefore vital that we get this right. There is no justification for the MOD having special protection in terms of limitations on civil claims. It is vital that service personnel can bring claims to court in accordance with civil law, without fear or favour. It is vital that they are entitled to the same rights and civil considerations as the rest of the population when it comes to employment disputes.

There is a concern that the Bill could put troops at a disadvantage compared with their civilian counterparts. In our first sitting, Mr. Young said: “Imposing an absolute time limit places armed forces personnel claimants themselves at a disadvantage compared with civil claimants in ordinary life, where the court has discretion. Of course, the
Minister has made it perfectly clear, absolutely correctly, that the time limit for this particular part of the Bill only starts to run at the point of knowledge. That is completely understood. That point of knowledge, diagnosis or whatever, could be many years later. Nevertheless, I would have a worry about an absolute longstop as proposed.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 9, Q6.]

If as Mr Young says, it is the case that the Minister considers the time limit as beginning from the point of knowledge, let us say so in the Bill. This is too important a matter to be imprecise in our words. We need clarity and we need definition. Let us be clear what the amendment means for our armed forces. Let us be clear that service personnel will not be disadvantaged if a link between actions and events overseas and a particular injury or negligent action comes to light only years later. We have seen time and time again, from asbestos to our test veterans, that these things unfortunately do happen. People get injured and hurt. Let us not use this Bill to protect the Ministry of Defence and disadvantage our service personnel. They deserve our support and, more than anything, our protection.

Mr Jones: I thank my hon. Friend for moving amendment 76. He makes a good point: whatever legislation we put in must be future-proofed. There are claims that it will do x, y and z, but we have all seen legislation that goes through Parliament with the best of intentions, but, as things change, still sits on the statute book and disadvantages individuals. Is it ever possible to future-proof legislation completely? No, it is not, but it is certainly possible to ensure that we do not put things in a Bill at the start that discriminate against veterans and armed forces personnel. That should be the starting point for this.

In this group of amendments, I will speak to my amendment 92, which relates to clause 11, page 7, line 36, leave out, “or first ought to have known”.

It gets to the point that my hon. Friend has just referred to about date of knowledge and the issues surrounding it. Is it straightforward to know when a condition happens? No, it is not, as he eloquently explained, and I will explain some examples in a minute.

Many conditions that arise from service are complex; they first require diagnosis, and that sometimes takes time. If someone has a condition and knows they are suffering from something, that is their date of knowledge, but it might take several years to diagnose exactly what it is. Also, as we heard in the evidence session and has come out again today, it may take time for members of the armed forces to recognise that they might have a claim against the Ministry of Defence anyway. I hear what the Minister said about how we should publicise that, and I welcome the idea that we should make it known to people that they can make claims for injuries or conditions, whether through publicity or just ensuring that people know it, both when they are in service and when they leave. That must be recognised.

The conditions fall into two areas. If we look at industry—I know the Minister will say that is different from the military, and it is in many ways, but in other ways, on key issues such as hearing loss, there are some clear links—over many years litigation has led to improvements in standards and training, and I would argue that that should also be a lever in terms of the MOD.

I remember, when I was in the Ministry of Defence, dealing with the question of hearing loss. To be honest, I accept that in combat operations people are going to be exposed to loud noise. They are, and I do not think we can get away from that fact. But when I think back to the MOD in those days, we were paying out huge claims—quite rightly—for people’s hearing loss caused by training and other things, and it struck me that we were not getting to the root cause. As I said this morning, litigation can be seen, not as ambulance-chasing from the claimant’s point of view, but as a way of informing the MOD that it should change things, and can change things.

Carol Monaghan: Another example, of course, is the Snatch Land Rovers, which we have heard talk of many times. It was only because a claim was brought against the MOD that safer alternatives were put in place.

4.15 pm

Mr Jones: Yes, it concentrated the minds of people. I will refer to that case in a minute. The important thing is that the Bill shifts the burden of knowledge to the combatant in terms of self-diagnosis. That is completely unfair. A lot of these cases are complex, and it is unclear whether a service man or woman in a war zone could remain resilient with their fellows if they had to keep sight of a self-diagnosis, saying exactly when something actually happened, certainly for mental health cases. I am not one to want to encourage people to sue the MOD or any public body for the sake of it, but if they have been done wrong then they should have the right to do that. I am uncomfortable about the six-year rule protecting the MOD.

I accept what the Minister said. He has introduced the rule because he is looking through the wrong end of the telescope; he is looking at ways of stopping cases like Phil Shiner’s. There are other ways of doing that which would not mean introducing a six-year longstop to prevent veterans and service personnel taking cases. It concerns me that the attitude is there. MOD lawyers will use the longstop. They will definitely use it. They are not going to be thinking, “This is a tool in the armoury that we are not going to use to stop claims.” They will use it. Can you blame them? No you cannot, to be honest, but it disadvantages veterans and leads to a grievance.

Issues have already been raised about mental health and PTSD, but other conditions are, again, quite unique in terms of how they are dealt with. Non-freeze injuries are soft tissue injuries that involve nerve damage, and they result from an individual being exposed to long periods of wet and cold weather. That has been a particular issue for Commonwealth service personnel. The MOD have tried to do certain things to mitigate it, but it was only because claims were starting to be initiated that the issue was highlighted. Has that knowledge been around for a long time? Yes it has. If you go back to the first world war, trench foot was that type of injury. It has affected many Commonwealth members who loyally joined our services to serve the UK. Even
after an injury is diagnosed, it might not be realised during a career. In terms of delaying a claim, the effects of the cold injury might be there and the initial advice is to keep things warm, which might alleviate the issue. If two or three years down the line the service man or woman is discharged from service because of that—I understand it is a debilitating condition—that individual might not know they had a claim.

Liz Twist: We heard evidence from the Association of Personal Injury Lawyers about the fact that too many former service personnel do not understand that they can bring a claim against the MOD. Would this address the issue?

Mr Jones: Yes it would. That, and doing away with the six-year backstop. My hon. Friend the Member for Blaydon makes a good point. The individual might not know that they were suffering from the condition, in terms that a judge would be able to look at to say they should have known about it and they should have brought a claim. I think the evidence outlined by my hon. Friend the Member for Blaydon is right: there was a reluctance to bring claims, which meant they ended up out of time. Major injury sufferers should know the date of diagnosis, but not necessarily the full impact of the condition on their service—it might not be a showstopper in their career, but in the long term it might affect their career and their ability to find post-career employment.

Another example is non-freezing cold injuries: this is not a surprise to the MOD because it knows about them. There are things that can and should be done, without putting the onus on the individual to self-diagnose the date of knowledge.

The other issue, raised by the hon. Member for Glasgow North West this morning—I mean earlier this afternoon: I am enjoying myself so much I have lost track of time—is hearing loss, the date of which is notoriously difficult to determine. In my previous incarnation, in a case of someone working with loud machinery in a factory all their lives, it is easy to pinpoint what has caused the loss of hearing. The problem for service personnel is that their careers are very varied, and although hopefully the MOD has training in phases 1 and 2 about protecting young ears especially, what is the crucial issue that leads to hearing loss, or hearing impairment? In military life, there will be exposure to loud noises: it nearly as much a fact of life as having to listen to loud noises every day in the Chamber of the House of Commons.

Carol Monaghan: Just as a point of clarification, not all service personnel are exposed to loud noises: they talk about the silent service.

Mr Jones: Yes, but that can lead to other problems, such mental health issues. I think I referred to the 1902 situation when submarines were first invented, and there were issues with pressure that had an effect on people’s bodies, which led to further issues. I accept that it does not affect everyone.

Under the Bill, how can people disaggregate when their hearing loss took place? If a certain proportion of someone’s life was spent in overseas operations, are we saying that that part of the hearing claim cannot go forward as it is exempt, as it is beyond the six years? That is where it gets very complicated, which is why I think the clear system that we have at the moment, in which if people make a claim after the time limit, they have the possibility of taking the claim under section 33 and are able to argue their case. I reiterate the point that that is not an easy process.

When I asked the Minister how many of Phil Shiner’s cases were time-limited—could have been struck out due to the time limits—and how many he actually argued in court—the Minister did not say. It would be interesting to know—

Johnny Mercer: I said clearly it was 62.7%.

Mr Jones: Is the Minister saying that that 62.7% were all cases that went before a judge under the Limitation Act 1980 and were deemed to have enough evidence and special circumstance to take them forward? If he is, I find that remarkable, because in my experience of the Limitation Act, trying to get cases under it is very difficult. That is what was said by the Association of Personal Injury Lawyers—they are unique cases and specialists are needed. I would be surprised if the figure was as high as that, so that of the 4,000 cases, more than half were out of time and went before a judge. If so, why did the MOD not just strike the cases out straight away, so that they were out of time? It would be interesting to know if they all went before a judge, because that suggests that the judge clearly thought that there was enough evidence to progress them. Perhaps the Minister will write to me about that—I am happy to accept that he cannot have all such figures to hand.

I am interested to know the number of those so-called vexatious cases because, I tell the Committee now, in my experience, someone who takes a vexatious case to a limitations hearing will not get very far, because of the high bar. People have to argue not only the reasons why a case should be brought out of time, but the case itself and its possibilities of success later in the litigation. For 60-odd per cent., there must have been a very soft judge allowing cases through under the Limitation Act. But I will wait to hear clarification from the Minister.

Something we have not mentioned is sight loss. I accept that in some cases people wake up and have lost their sight overnight, because of blood clots and so on, but more commonly sight is lost incrementally over time. That can sometimes take up to 10 years. If so, the veteran or serviceman or woman might have thought, “Well, I’m losing my sight”, but did not get a diagnosis, or have thought only after 10 years that they might be able to take a case, because the sight loss was related to service. They might not have thought it was but, if it was, 10 years later the Bill would not allow them to take a case. At present, they can get the diagnosis, the medical evidence, the reasons and the arguments for a limitations hearing on why they need to take a case out of time. That will not be the case if the Bill goes through.

Another example is respiratory issues, some of which may lie dormant for a long time and be the result of a whole host of conditions. I remember that in Iraq and, in particular, in Afghanistan, we had a lot of respiratory problems to do with bacteria, because the air was full of pathogens and other things. People might not have had a hacking cough but, a year or so later when they got home, they started to have such symptoms. Again, they might not have related that to their service straightforward,
or with certainty, but it was later shown that, because of the use of animal manure, especially in some rural areas of Afghanistan and Iraq, people breathed in pathogens when the dust got into the air. That got into people’s lungs but did not affect their health until many years later—again it was a direct result of service, because they were there to serve their country.

The other issue, which we have touched on a little bit, is how this affects families. I raised the issue earlier of various cancers and other diseases from which people die. People think, “Why has this cancer appeared?” or “Why has this individual suddenly died?” Usually, the causes can only be identified at death. The individual will not have the date of knowledge, but the family will.

4.30 pm

Earlier, I gave the example of asbestos—I could think of other examples—which people were exposed to when working in shipyards. Portsmouth was a big area for that, both for civilian personnel and the sailors. It is only when an autopsy takes place that it is discovered that the person who died had a cancer-related condition related to asbestos. That exposure may have been many years before. There is no date of knowledge, because the individual did not know that they actually had it. Under this longstop of six years, if that condition was contracted on an overseas operation, the family would not be able to take the case forward. That would disadvantage not only servicemen and women, but their families.

Chris Evans: Removing the ability for the courts to extend the six-year period would leave our veterans, ex-service personnel and their families at a disadvantage compared to those who bring normal civil claims against their employers. That is the problem we are facing in the Bill.

Mr Jones: It is a right. Okay—it will not be straightforward, because in my experience of asbestos cases, even with a clear diagnosis and an autopsy report, getting someone to admit liability is very difficult. The first thing that insurance companies used to do, which is exactly what the MOD will do, is require date of knowledge and say that it is time barred. If the claimant gets over that hurdle through a limitations hearing, the company usually settles. In this case, the MOD will reach for this straightaway, to say that it is not covered because it was contracted on an overseas operation and, therefore, it cannot go any further. That would give no rights at all to that family or the servicemen and women to take that case forward.

Chris Evans: I want to give an example and ask my right hon. Friend about his experience. He knows as well as I do that both our constituencies have large numbers of ex-miners who have had compensation for chronic obstructive pulmonary disease and vibration white finger. If these rules were applied to them, would they have got the compensation?

Mr Jones: No, because some of those cases, especially with vibration white finger, were taken on limitation hearings, because those things happened a long time ago. That is the fundamental right. To protect the veterans or servicemen and women, they need the right to go to the law, if they wish to—not everyone does and I respect people who do not.

The best example—it is a tragic example—which came up in the evidence session was the Snatch Land Rovers. The events in which people were killed and injured took place in Iraq. Although it was an issue in the MOD when I was there, in terms of the suitability of the vehicles, the real focus on it never came about until July 2016 and the Chilcot report. The case that was mentioned in the evidence session was in 2005. A serviceman was killed in a Snatch Land Rover, but his widow did not really know the significance of the vehicle until the Chilcot report in July 2016. At that time, she thought that there had been a failing on behalf of the MOD in its duty care and in the provision of that equipment, so she brought a claim for the loss of her husband, not under civil law but under the Human Rights Act on the basis that her husband had a right to life.

That case was clearly time-limited, because the event took place in 2005 but the case was not brought until after the Chilcot inquiry in 2016. Obviously, a limitation hearing was held and it was successfully argued that the case should go forward, and it was settled, along with—I understand—other cases.

If the Bill goes through unamended, that case would not have been able to go forward, because—I mean, if it was left to me and the Minister, we would both agree that the date of knowledge should have been 2016, and therefore it could go ahead. However, I am not sure that the MOD lawyers would be as generous to veterans as the Minister and I would be. That is the problem when the Minister argues that the date of knowledge somehow protects veterans: it does not. The date of knowledge should not be used as argument to throw such cases out straightaway.

What will that take? If the Bill goes through as planned—especially on the human rights side, there will be a court case and an argument will be made. Let us say that a case similar to the one that I just mentioned was active today in the courts. What will happen is that someone will challenge that. So we will get litigation as a result of that process on whether the Bill is compatible with the Human Rights Act. I accept that the Minister will write to me on these issues, but we will get more litigation than we would if we instead said, “Let us have a judge look at the limitations on whether a case should be brought”, and if the case is deemed to be special circumstances, it should go to trial.

We must recognise that the MOD acts no differently to the insurance companies that I used to deal with when I took personal injury cases and industrial injury cases against employers, and I am sure that the hon. Member for Darlington knows this as well. It is horse trading. If there is a limitations hearing, what someone will do is to try and get it settled—nine times out of 10, an offer will be made. It is only the ones who really want to be stubborn who take the matter all the way through to trial. Very few of those cases go to trial, because people look at the evidence, to see whether it is worth going further in court, and the case is settled.

However, that process will be closed down for the individual if this tight six-year time stop goes ahead. The cases will not get to the second stage after the limitation hearing, which is about negotiating with the other side to say, “Well, come on. Can we make an
offer?” It is a difficult judgment call. It is a bit like a game show—take the prize or play on—and I am sure the hon. Member for Darlington has had many sleepless nights about what is being offered. In most cases, there is an agreement and the individual making the claim is content with what is offered. Some will want their day in court, but that is not always a good idea.

What the Minister said about nuclear test veterans was interesting. I accept the point about operations—the MOD loves to give things “operation” names—but in that case, which is one I know well, and I know the medical evidence, having read it as a Minister, the Government argued in 2009 that it was time-limited. In terms of overseas operations, it was overseas.

Mrs Lewell-Buck: The Minister said that nuclear veterans would not be classed as having been on overseas operations under the Bill, yet as I read clause 1(6), which defines what “overseas operations” are, my understanding is that nuclear veterans would be included.

Mr Jones: The Minister says not. It will be interesting to see whether we can have definite clarification. That case was taken against the MOD in the mid-2000s for events that took place in the 1950s and 1960s, so it was clearly time-expired by anyone’s standards.

I am not arguing that we should not have time limits, which are there for very good reasons, but there need to be exceptions to allow for people who fall outside them. In that case in 2009, the MOD refused the case based on time limits, but it went before Judge Foskett who ruled that it should go forward because of new evidence from a study in New Zealand—I am racking my brains for what the study was, as I read the huge scientific document at the time. Subsequently, it failed, which shows that getting past the Limitation Act does not mean that a case is somehow a dead-cert. The facts of the case must still be argued in court and can be resisted, as they were in this case. However, people were given a right.

If that work had been classed as an overseas operation under the Bill, those people would not have had any right to get their day before a judge to argue the case. That could apply to other similar group litigation—there is such litigation from more than one person or a number of individuals—or to individuals. We have been dancing on the head of a pin about the numbers, with the Minister saying that 94% of cases are brought within time. That is fine, and I have no problem with that, but that leaves 6% that are not. If that affects one person, as I said, that is one person too many. With that brief contribution, I commend the amendment to the Committee.

Johnny Mercer: The amendments propose changing technical parts of the Bill, so I hope hon. Members will bear with me as I try to address them in turn. These amendments are aimed at making changes to the point from which the clock starts running for both personal injury and death claims, as well as Human Rights Act claims relating to overseas operations. The amendments mean that for these types of claims the longstop clock would run from the claimant’s date of knowledge only and will not also run from the date of the relevant incident or act.

Taking amendments 76 to 87 first, in relation to the personal injury longstops contained in schedules 2, 3 and 4, there are several problems with this effect. The longstop is already able to run from the claimant’s date of knowledge under the existing law. This Bill does not change that position. We consider that the definition of the date of knowledge in section 14 of the Limitation Act 1980, and its Scottish and Northern Irish counterparts, is satisfactory and works well in practice. There is no reason why the date of knowledge for overseas operations claims should be defined differently. It is therefore not necessary to replace this definition with a new one.

4.45 pm

Replacing the existing references to “the relevant date” in schedules 2, 3 and 4, which means the date of the incident or the claimant’s date of knowledge, will have the effect that claimants will not be able to benefit from other existing provisions in the limitation legislation that allow for extension or postponement of the limitation periods in case of disability and fraud, concealment or mistake by the defendant. These are important parts of the law of limitation and give additional protection to claimants.

Moving on, amendments 73 to 75 and amendment 92 propose changes to the Human Rights Act longstop. Amendment 73 would increase the time period, which runs from the date of knowledge, from 12 months to six years, and means that the longstop will run from the date of knowledge only and not also from the date of the act. The date of knowledge provision in this Bill is new for Human Rights Act claims relating to overseas operations, the primary time limit for which currently runs only from the date of the act.

Mr Jones: On a point of order, Mr Mundell. Can the Minister slow down? I am finding it difficult to understand all that he has to say.

The Chair: That is not a point of order, but I am sure that the Minister will accommodate it.

Johnny Mercer: I am more than happy to slow down. The date of knowledge provision in this Bill is new for Human Rights Act claims relating to overseas operations, the primary time limit for which currently runs only from the date of the act. We introduced the date of knowledge to mitigate the risk of any unfairness that might be experienced by claimants as a result of the new absolute longstop.

We chose 12 months for the relevant time period because this aligns with the primary limitation period in the Human Rights Act, which requires claimants to bring their claims within one year of the relevant act. We therefore consider 12 months to be a reasonable period for claimants to gather the necessary evidence to bring their claim.

Amendments 74 and 75 aim to change the definition for the new date of knowledge set out in clause 11. We consider that the definition in clause 11 is comprehensive and fair to both claimants and the MOD. It does not replicate section 14 of the Limitation Act 1980, for example, because parts of that definition do not make sense in the context of Human Rights Act claims. Similarly, amendment 75 proposes new parts for the date of knowledge definition that do not work in the context of Human Rights Act claims.
Lastly, amendment 92 removes an important part of the date of knowledge definition, which adds an objective element to the test. This ensures that claims cannot be brought indefinitely if a victim has failed to take reasonable steps to gain the relevant knowledge.

These amendments are simply not necessary. The existing definitions of the date of knowledge are comprehensive and fair, and there is no good reason why the longstops cannot run from both the date of the incident or the act, as well as the date of knowledge. These amendments will unnecessarily complicate the Bill and cause confusion.

I will address two of the points raised by the hon. Member for Islington South and Finsbury. Running alongside and in tandem with this Bill, if it becomes law, will be a significant education effort through a series of annual tests that we will give to our service personnel. I am more than happy to write to the hon. Gentleman about that.

I understand the points made by the right hon. Member for North Durham, but they are not within the scope of the Bill. The nuclear test veterans and the other pre-1987 cases that he talked about are not covered by the Bill. A lot of today’s debate has been outside the context of the Bill. I do not know what the point is of continuing to bring up cases that are unaffected by the legislation that we are discussing. I have huge sympathy for nuclear test veterans and for others. Indeed, I lobby hard for the recognition that I think we all want to see for those people, but none of that is covered by this legislation. That is worth remembering.

Mr Jones: Will the Minister give way?

Johnny Mercer: No, not at this stage. I therefore recommend that these amendments are withdrawn.

Chris Evans: I just want to raise a point of clarification with the Minister. The nuclear test veterans were brought up because that was an example of a case that took numbers of years to emerge. I thought it was the best example of how people can be affected by an operation where it takes years for the case to develop.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stephen Morgan: I beg to move amendment 69, in schedule 2, page 16, line 5, at end insert—

“That the court may disapply the rules in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of England and Wales to allow a claim for wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 70, in schedule 2, page 16, line 36, at end insert—

“(2C) Subsections (2A) and (2B) shall not apply where it appears to the court this would be equitable having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of Scotland to allow a civil claim for wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 71, in schedule 3, page 21, line 9, at end insert—

“(7A) The court may disapply the rules in subsections (5) to (7) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of Northern Ireland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 72, in schedule 4, page 24, line 5, at end insert—

“(4A) The court may disapply the rule in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for UK courts to allow a HRA claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 68, in clause 11, page 7, line 34, at end insert—

“(4A) The court may disapply the rule in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for UK courts to allow a HRA claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.
Stephen Morgan: I rise to speak to amendment 69 in my name. The disapplication of the court’s discretion to bring forward a civil claim in the cases of service personnel raises areas of concern. As I am sure the Minister knows full well from his experience outside Parliament, there are many circumstances in which it would be at very least appropriate for judges to disapply the six-year longstop where either the nature of the injuries meant that service personnel were unable or unaware that they needed to make a claim within six years or the claimant was unable to make a claim for logistical reasons within six years. For example, claimants could have been detained or have been unable to access the UK justice system. It could be any other reason outside their control, such as failures of the state to protect veterans in need that prevent them from making claims in time.

In its current form, the Bill has gaping holes in its ability to give service personnel a fair hearing or offer at least a basic pathway to justice. The gaps in the legislation again raise concerns that it could breach the armed forces covenant if troops cannot afford the same rights as civilians because of the Bill. Labour will work constructively with the Government to ensure that our service personnel are given the legal rights that they deserve, are treated fairly and are given access to a fair trial, not a pathway that offers little hope for justice.

Over the last few weeks, we have heard several people, and had written submissions, outlining the issues around why disapplication of the six-year longstop, particularly with personal injury, is a problem. Take the submission from Reprieve, which seeks to uphold the rule of law and the rights of individuals around the world. Over the past 20 years, Reprieve has provided legal and investigative support to hundreds of prisoners on death row, the families of innocents killed in drone strikes, victims of torture and extraordinary rendition and scores of prisoners in Guantanamo Bay.

In its evidence, Reprieve states that schedules 2, 3 and 4 create an “absolute bar by removing the discretion of UK courts to extend existing time limits for survivors of abuse or UK soldiers to bring claims relating to personal injury and death... In Reprieve’s experience of investigating the use of torture and other forms of mistreatment, it is clear that no arbitrary time limits can be placed on survivors seeking redress. Even where individuals know of the UK’s involvement in their mistreatment—for instance, where they have been detained by UK forces before being rendered by UK partners to arbitrary detention and torture—they may remain wrongly imprisoned for many years more than the 6-year time limit this bill imposes.

For example, the UK Government has been found to have been involved in the rendition of individuals from Iraq to face mistreatment in secret prisons around the world. These individuals, by the very fact of their detention and mistreatment, could only bring legal claims several years after these actions took place and the UK’s involvement in them came to light... Indeed, the involvement of UK personnel in abuses may not come to light until many years after the time limit has passed. This bill would allow for claims in such cases to be brought within only one year after UK involvement has come to the victims’ knowledge—regardless of the victim’s circumstances or location—following which an absolute bar to legal claims is imposed.

Investigation into the UK’s involvement in torture and rendition, for example, has taken nearly two decades, and it was only in 2018 that the Intelligence and Security Committee published its findings that UK personnel were systematically involved in mistreatment from the first days of the so-called ‘war on terror’.

Mr Jones: As a member of the Intelligence and Security Committee, I would like to clarify what my hon. Friend just said. The report did not say that UK personnel were involved in the torture of individuals, but it was clear that they were present and that there were cases where rendition was conducted on behalf of the United States. However, I do not think there was any evidence that people were directly involved in torture.

Stephen Morgan: I thank my right hon. Friend for his clarification. I am quoting from the charity, but I thank him for putting that on the record.

Reprieve’s written evidence continues: “In the period between these acts of mistreatment occurring and their exposure by the ISC, survivors of these abuses would have been barred from redress by this bill. UK courts already have powers to strike out civil claims that disclose ‘no reasonable grounds’, including those which are vexatious or ‘obviously ill-founded’. The Court’s discretion to extend the limitation period for civil claims under section 33 of the Limitation Act 1980 is already subject to a full and rigorous assessment of all the circumstances of the case, including the reasons tending against extending time such as the impact of delay on the quality of the evidence available. Moreover, claims under the Human Rights Act 1998 must be brought within a year unless good reason can be shown as to why the claim was not brought sooner—a far tighter limitation period than almost all other areas of law.

Far from protecting soldiers’ interests, the bill, designed to benefit the Ministry of Defence, will fundamentally harm UK soldiers... The bill will have a very significant impact on the ability of UK soldiers and former soldiers to bring claims of this kind... As former Attorney General Dominic Grieve has highlighted, this raises the real prospect that the beneficiary of this bill is ‘not so much the personnel of the armed forces but the government, which is thereby protected from facing what may be wholly deserving late claims.’ Reprieve recommends that the Overseas Operations Bill be amended to ensure that survivors of abuses, as well as UK soldiers, do not face absolute time bars to bringing claims for serious human rights abuses, such as torture.”

The evidence—not just from Reprieve, but from the Government’s former Attorney General—makes it clear that this legislation will not ensure the proper rights that are our service personnel deserve. Indeed, it is true to say that the path to justice would become more difficult and protect the MOD, not our service personnel. Does the Minister really intend to pass a Bill that would actively build barriers to the route to justice for the victims of torture and servicepeople with other injuries? Is that what our armed forces deserve?

Those are not the only examples of where potential injustices of this nature could occur. Take the case of Mark Bradshaw, which was reported in The Times last year and which we heard about earlier today. He was awarded £230,000 as a settlement, but he fears that the proposed legislation could discriminate against people who do not develop PTSD or receive a diagnosis until many years later. He called the plan to impose a time limit on claims “horrendous”.

We also heard earlier about the claim from the marine who left service due to hearing loss. The MOD admitted liability and made no argument about his case being brought out of time. However, the time limit in the Bill would have eliminated all the aspects of the claim relating to the marine’s extensive service overseas. The claim could have been made on the basis of negligent exposure in the UK. It might not have been possible to isolate the extent and effect of negligent exposure in the UK, making it very difficult to claim any redress at all.
Stephen Morgan

Is the Minister willing to turn his back on those troops? Why are some medical conditions worthy of justice, and not others? I urge the Minister to work with us. Put party politics to one side and build a consensus around the Bill that is worthy of our troops, who set out to achieve what they need to achieve. Does the Minister really intend to pass a Bill that would actively build barriers to the route to justice for victims of torture and servicepeople with other injuries? Is that what our armed forces deserve? Finally, is he satisfied that the Bill in its current form will prevent troops who are suffering from conditions such as PTSD, or even torture, from receiving justice?

Ordered, That further consideration be now adjourned. —(Leo Docherty.)

5 pm

Adjourned till Thursday 22 October at half-past Eleven o’clock.
Written evidence reported to the House

OOB09 Dr Jonathan Morgan, Reader in English Law, University of Cambridge (supplementary)

OOB10 The Royal British Legion (supplementary)

OOB11 All-Party Parliamentary Group on Drones

OOB12 Ahmed Al-Nahhas, Association of Personal Injury Lawyers (APIL) (supplementary)

OOB13 Professor James A. Sweeney LL.B, PhD
Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Ninth Sitting
Thursday 22 October 2020
(Morning)

CONTENTS

SCHEDULE 2 agreed to.
Clause 9 agreed to.
SCHEDULE 3 agreed to.
Clause 10 agreed to.
SCHEDULE 4 agreed to.
Clause 11 agreed to.
Clause 12 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 26 October 2020

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The Committee consisted of the following Members:

**Chairs:** †David Mundell, Graham Stringer

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Atherton, Sarah *(Wrexham)* (Con)
† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
† Docherty, Leo *(Aldershot)* (Con)
† Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Eastwood, Mark *(Dewsbury)* (Con)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Gibson, Peter *(Darlington)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† Mercer, Johnny *(Minister for Defence People and Veterans)*
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Morgan, Stephen *(Portsmouth South)* (Lab)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Twist, Liz *(Blaydon)* (Lab)

† attended the Committee

Steven Mark, Sarah Thatcher, Committee Clerks
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Public Bill Committee

Thursday 22 October 2020
(Morning)

[David Mundell in the Chair]

Overseas Operations (Service Personnel and Veterans) Bill

11.30 am

The Chair: Members will be aware of the need to respect social distancing guidance. I shall intervene if necessary to remind everyone. We now continue line-by-line consideration of the Bill. I have to draw hon. Members' attention to an error: amendment 69, which is currently under debate, has not been printed on the amendment paper, so copies of the text of the amendment are in the room, printed separately.

Amendment proposed (20 October): 69, in schedule 2, page 16, line 5, at end insert “except where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”.—(Stephen Morgan.)

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for personal injury arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Question again proposed. That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 93, in schedule 2, page 16, line 5, at end insert “save for exceptional cases where the overriding interest of justice should be served.”.

Amendment 70, in schedule 2, page 16, line 36, at end insert—

“(2C) Subsections (2A) and (2B) shall not apply where it appears to the court this would be equitable having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”.—(Stephen Morgan.)

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for personal injury arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 68, in clause 11, page 7, line 34, at end insert—

“(4A) The court may disapply the rule in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

(a) the nature of the injuries;
(b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
(c) any other reasons outside the control of the person bringing the claim.”.

This amendment introduces a discretion for UK courts to allow a Human Rights Act claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Mr Kevan Jones (North Durham) (Lab): May I welcome you to the Chair, Mr Mundell? It is a pleasure to serve under your chairmanship again. I will talk about schedule 2 in general, but I will first refer to amendment 93, which stands in my name and which would amend the end of schedule 2 to say “save for exceptional cases where the overriding interest of justice should be served.”

I will come back to schedule 2 in a minute.

We are again getting to the issue of justice for servicemen and women and veterans, in terms of the conditions they are bound by. I will come on to the Limitation Act 1980 in a minute, of which section 33 disregards the limits on the right of veterans and servicemen and women to make claims. We heard in the evidence sessions and during consideration of the Bill from my hon. Friend the Member for Portsmouth South and others about particular issues affected by this hard stop of six years. We talked about mental health and psychological conditions, but there are also physical conditions. Mental health is a complex area. The Minister tries to hide behind the date of knowledge, and mental illness is
The challenge of mental health in the armed forces compensation scheme was highlighted by Lord Boyce in his review of the scheme in 2008. He pointed out that the lump sum compensation provided under the scheme was insufficient to cover the full cost of mental health services, particularly for those with service-related PTSD. Lord Boyce recommended that the scheme be amended to include a provision for lump sum compensation for mental health treatment, which was implemented in the Armed Forces Act 2006.

The Armed Forces Act 2006 introduced a system of compensation for service-connected mental health conditions, including PTSD and other anxiety disorders. The scheme was designed to provide a lump sum payment to those who had been injured in service, and to cover the costs of ongoing treatment. Lord Boyce's recommendation was a key factor in the legislation, and it was an attempt to future-proof the legislation.

The scheme was met with some resistance, however, particularly from the MOD. Some argued that it would be too expensive and would lead to an increase in claims. Lord Boyce's review, however, showed that the scheme was necessary to ensure that those who had been injured in service were treated fairly. The scheme was implemented in 2008, and it was a landmark in the history of compensation for service-connected mental health conditions.

The scheme has been successful in providing compensation to those who have been injured in service. However, there are still challenges to be overcome. The MOD has been slow to implement the scheme, and there have been delays in paying compensation. There are also concerns about the adequacy of the compensation provided. Nonetheless, the scheme has been a significant step forward in the provision of compensation for service-connected mental health conditions.

In conclusion, the Armed Forces Act 2006 was a landmark in the history of compensation for service-connected mental health conditions. It was a response to the needs of those who had been injured in service, and it has provided a much-needed source of compensation. However, there are still challenges to be overcome, and the MOD must work to ensure that those who have been injured in service receive the compensation they deserve.
Rights Act case, because a decision had been taken in relation to the right to life. Again, that was about not putting the Human Rights Act on the battlefield but trying to ensure that a decision was taken about Snatch Land Rover’s procurement and deployment. It was not about getting the Human Rights Act into the battlespace. I suggest that people read the Smith judgment, because the Supreme Court is very clear about combat immunity and about human rights not applying. People sometimes argue that this Bill is somehow about trying to stop human rights intervening with our right to defend ourselves, but they should read the Supreme Court judgment, because it is very clear that it does not apply there, but it does apply to that important case.

There were two issues in that case. The first was whether it was out of time. Quite clearly it was, because the incident took place in 2006 but the case was not brought until after Chilcot, which was 2015, so it was way out of time. The reason it was taken forward was that, in the first instance, although the MOD argued that it was out of time—I have no complaints that it did that—it was successfully argued that it was not. There were special circumstances that meant that it could not be brought within the time period, and it was allowed to go forward. I understand that the case was settled before it went to court, and the individual widow got a substantial payment. As I said the other day, it also focused, in policy terms, Ministry of Defence thinking about the decisions on the Snatch Land Rover. It gave closure to the widow and some compensation, though no amount of money can ever compensate for somebody’s loss, but it also made MOD policymakers say, “Wait a minute. In future, we’re going to have to actually think about this.”

11.45 am

Had this legislation been in place, could it have been argued that that was an exceptional case? I think so, but it would have been interesting to see how. In that case, however, had this legislation been enacted, that widow and family would not have been able to get redress. Who would have been protected? It would have been the MOD, and none of the searching questions that went on regarding why Snatch Land Rovers were deployed and used in the way that they were would have been asked. The law is not just about compensation for the individual and getting someone the right support; it is about informing and making better policy in the future.

If we cannot have the clause as outlined, can we look at some other way in which a provision could be incorporated into the Bill to allow for those exceptional circumstances, which will occur? The Minister admits that 94% of cases are brought in time. As I said the other day, that means that 6% are not. I accept that there are disputes over the figures, but I reiterate yet again that one serviceman or woman, or family, who cannot get justice is one too many.

The implications of, for example, the Snatch Land Rover case, the time limit can be argued for, it is a court that decides; not somebody at the MOD who suddenly decides that there is a time limit. It means that in those circumstances where, for whatever reason, a case has not been brought, such as the Snatch Land Rover case, the time limit can be argued for. It is not easy to get. The evidence we received in Committee demonstrated that it is not something that we just nod through; it has to be argued for in exceptional circumstances.

Anyone who pursues one of those cases does so because they think that they have a case. Most people do not take any form of legal case unless they think that they have good, sound legal advice. Most of these cases will be done by solicitors. They will also sometimes be funded by charities, thinking that it could be a test case. The implications of, for example, the Snatch Land Rover case could then be used in other cases. It comes back to what I have said on a number of occasions, that this part of the Bill does not sit happily with me. I understand why it is in the Bill, but the fact is that veterans will have fewer rights than the rest of us—including prisoners, I might add.

I know the Minister said we were trying to compare armed services personnel to prisoners and that it would go down

“like a cup of cold sick”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 20 October 2020, c. 271.]

We were doing nothing of the sort. Obviously, we were not comparing the two, although there are veterans who become prisoners—a very small number, I hasten to add. No, what we were saying is that prisoners will have more rights to sue the Ministry of Justice than the veterans or servicemen and women and their families will have to sue the Ministry of Defence. In my opinion, it cannot be right that we are excluding people who have served our country and whose families have gone through a lot of trauma.

Perhaps the stench or smell of the cup of cold sick is not revulsion at that comparison being made—not that there is a comparison, as I said. It is revulsion at the armed forces covenant being completely broken, because the Bill would put armed forces families and servicemen and women at a disadvantage, whereas the entire intention behind the covenant was to ensure not just that servicemen and women were on a level playing field with the rest of us, but that they should get extra rights because of their service to their country. I passionately believe in that, and the covenant has widespread support among our constituents.

When I first came up with the concept in about 2009, it was called the welfare pathway. It built on work that Bob Ainsworth, the previous Minister for the Armed Forces, had done in relation to the Command Paper, trying to see how we could ensure that armed forces personnel and veterans were not at any disadvantage.
because of their service. The welfare pathway was work that I did on recognising that not everything happened in the MOD and that it was necessary to engage with other partners. And I was pleased that after the 2010 general election, that work carried on and was renamed the armed forces covenant.

The covenant has been welcomed by many of our constituents. I think the first welfare pathway that I was involved with was in Scotland—I cannot remember where, off the top of my head. Councils and others were eager to engage in the process. It gave people a focus to think about when they were doing policy work, whether nationally or locally; it made them think about the armed forces and veterans. It was a tough task. We had armed forces champions in different Departments; they were very good, but it was difficult sometimes when people were developing new policies to say to them, “Hang on—ask the question about veterans and the armed forces. How will this policy affect armed forces families, servicemen and women, and veterans?” What is remarkable is that the Department that led all that work and championed efforts to increase rights is now giving our armed forces—our servicemen and women and their families, and veterans—fewer rights than other people.

That is just wrong and it is not just me saying that. The Royal British Legion says it, too. I know that the Minister had—I was not there, but I read the transcript—a rather challenging discussion, to put it that way, with the secretary general of the Royal British Legion. The points the RBL is making are perfectly reasonable, which is why part 2 must be taken out of this Bill. Otherwise, life for our servicemen and women and our veterans will be worse than it is now.

**The Minister for Defence People and Veterans (Johnny Mercer):** We are beginning to cover some pretty familiar ground. I will set out the Government’s position clearly on the six-year limit and speak to all the amendments in the group.

As I have already said, the six-year longstop for both personal injury and death claims, as well as claims under the Human Rights Act, is an important part of the Bill. The longstop will provide the much-needed certainty for service personnel and veterans that we are trying to achieve with part 2 of the Bill. I cannot stress enough our belief that the negative impact on the ability of service personnel and veterans to bring claims will be limited. We have not made that up; it is based on our statistics and our evidence.

We are not trying to catch service personnel out or take away their rights to bring claims against their employer, against the MOD or against the Government. They will still be able to bring claims, and the date of knowledge provisions, which are such an important part of the Bill, mean that even in cases when an illness is diagnosed many years down the line, claims can still be brought within six years of that diagnosis, or 12 months for HRA claims.

I have heard the arguments that there are many current and former service personnel who have suffered injuries as a result of their service but who have not yet brought through their claims and would be time-barred once this Bill becomes law. I have seen no evidence of that, but I again encourage those people to bring their claims as soon as possible.

**Mr Jones:** The Minister says he has seen no evidence, but he quotes the figure of 94% being brought in time. What is the number of cases that have been brought under the Limitation Act against the MOD? He says the limit gives certainty; well, it does give certainty to people—certainty that after those six years, they will not be able to take any claims at all.

**Johnny Mercer:** Many cases have been raised, I agree, such as Snatch Land Rover and the Royal Marines individual who has been mentioned a number of times. However, as I have outlined a number of times, none of those would be affected by this Bill, because the period starts from the point of knowledge. We have had this conversation before. I encourage people who feel that they could be disadvantaged to come forward, to speak to the Department or speak to me, but I have to operate in reality, not saying things that are not true. I include any non-service person who believes that they have a meritorious claim against the MOD, because fundamentally, we are not trying to stop legitimate claims.

**Chris Evans:** Will the Minister give way?

**Johnny Mercer:** Not at the moment.

**Chris Evans:** It is just a quick question.

**Johnny Mercer:** Of course it is in the best interests of claimants to bring cases in a timely manner, when memories are fresh and access to evidence is easier. We should also remember that the current time limit for bringing claims is three years for personal injury or death and one year for Human Rights Act claims. While the courts have discretion to extend those timelines indefinitely, claimants must persuade them that it is equitable in all the circumstances to do so.

**Chris Evans:** A quick question for the Minister: last week, in *The Sun on Sunday*, he said he would make it his personal mission to help to ensure that cases that might fall out after six years are brought within six years. Will he clarify how he would do that in action?

**Johnny Mercer:** Of course. Part of this Bill is a huge education campaign to get people to understand what their rights are. While we have drawn the line at six years, we have a duty to make sure all the people who are in our employment and who served with us understand what the rules are and where the boundaries are, and at the same time are protected from the vexatious sort of claims we have seen over the years. I genuinely believe it is a fair line to be drawn, and I reiterate that lots of cases have been raised, but when we have looked into them, none would have been precluded under the Bill.

**Mr Jones:** The Minister is not answering my hon. Friend’s question. I accept that there are good reasons for time limits; I have no problems with time limits on civil litigation and other things. I asked him earlier about the number of cases that have fallen outside the limitation period that the MOD has defended. I do not for one minute question the Minister’s commitment; but remember that he and I will not be here when this comes into force. I tell him now that the MOD will use this as a way to stop claims.
Mr Jones: No, but may I just say one thing to the Minister? He talks about Major Bob Campbell. The legislation was not an issue in that case; it was the investigation that was the issue.

The Chair: Thank you, Mr Jones. You have saved me from saying that it was not a debate on the amendment.

Stephen Morgan: I beg to move amendment 89, in schedule 2, page 17, line 5, at end insert—

"(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant."

This amendment adds a further consideration to which the courts of England and Wales must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant’s interest in having their civil claim proceed is not subordinated.

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

Amendment 90, in schedule 3, page 20, line 32, at end insert—

"(c) the importance of the proceedings in securing the rights of the claimant."

This amendment adds a further consideration to which the courts of Scotland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant’s interest in having their civil claim proceed is not subordinated.

Amendment 91, in schedule 4, page 25, line 5, at end insert—

"(c) the court must also have particular regard to the importance of the proceedings in securing the rights of the claimant."

This amendment adds a further consideration to which the courts of Northern Ireland must have particular regard when determining whether to disapply the standard limitation period of three years so as to ensure that the claimant’s interest in having their civil claim proceed is not subordinated.

Amendment 88, in clause 11, page 7, line 23, at end insert—

"(c) the importance of the proceedings in securing the rights of the claimant.”

This amendment adds a further consideration to which UK courts must have particular regard when determining whether to disapply the standard HRA limitation period of one year so as to ensure that the claimant’s interest in having their civil claim proceed is not subordinated.

That the schedule be the Second schedule to the Bill.

That schedule 3 be the Third schedule to the Bill.

That schedule 4 be the Fourth schedule to the Bill.

Stephen Morgan: It is a pleasure to serve under your chairmanship again, Mr Mundell. I rise to speak to amendment 89, which stands in my name. During the proceedings so far, there has been much discussion in recognition of the role that mental health plays in the cases to which the Bill applies. Although the Opposition recognise the importance of the Bill in cases where the court is given discretion to disapply the time limits of three years, the court must also have particular regard for the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty’s armed forces. There is still more to be done here. There is an imbalance in the consideration of civil claims in the Bill. I will say it once again; where the Opposition see that the Bill can be improved, we will highlight it.
We have tabled the amendment to ensure that both witnesses' and claimants' interests have been secured. The Bill asks the courts to have "particular regard to the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty's forces". But we can do better. It is important to ensure that there is equality under the law and that the interests of the claimant are also considered. The intention of the amendments is to balance the considerations UK courts must have particular regard for in determining whether to disapply the standard Human Rights Act limitation period so as to ensure that the claimant's interest in having their claim proceed is not illegitimately subordinated.

Over the last few days, we have received written evidence highlighting this very issue, including the submission from Rights and Security International, a charity which works to promote just and accountable security policy; it has over 25 years' experience working in the field of human rights and national security policy in the UK. In its evidence submission, it said that it is concerned about the creation of a one-sided discretion to disapply the standard limitation period within the six-year mark.

"First, the proposed considerations have a discriminatory impact against the claimants. This is because they are illegitimately weighted in favour of the MOD operating solely to the detriment of claimants. They are overly focused on factors tending to preclude claims with no reference to the interests of the claimant in having his or her rights vindicated. This has the effect of creating a hierarchy of values and subordinating the claimant's interest in bringing the claim".

Secondly, RSI says that there is a requirement that the court give particular regard to the likely impact of the action on the mental health of the witness or potential witness who is a member of Her Majesty's forces. They argue this is an inappropriate and disproportionate test because it is heavily weighted in favour of precluding claims from proceeding. This is because giving evidence is almost always stressful to any witness or potential witness who is a member of Her Majesty's forces or not. It continues:

"It is disproportionate because there are many alternative ways to support vulnerable witnesses that do not have the effect of preventing access to justice for potential victims of human rights abuses, wrongful death or personal injury. Were the Government really serious about protecting members of Her Majesty's Forces, ensuring the provision of such support services would be the focus of reforms to the law, rather than provisions which have the effect of protecting first and foremost the MOD.

Third, it is questioned whether it is really necessary that the court gives particular regard to the likely impact of the operational context on the ability of individuals to remember relevant events or actions fully or accurately. This is because it has been determined that effective legislation can still take place way after the event occurred. For example, the Malmo litigation proceeded over 50 years after the incident. The courts were still able to identify systematic human rights abuses and systematic flaws on the part of the MOD relevant to the British colonial administration. This is evidence of the fallacy of the allegation that effective investigations can never take place well after the fact due to a loss of evidence or decreasing reliability of evidence over time".

That is a lengthy quote, but I think it makes some very important points, which I will take in turn. Once again, we have heard that the Bill is not designed to protect our service personnel but to protect the Ministry of Defence. The legislation is heavily weighted against the ability of service personnel to proceed with civil claims. These are not my words or Labour's; they are from a highly respected organisation that has covered the issues raised here for many years and is highly experienced in this area.

In light of this, will the Minister recognise the mistake that is being made here for the sake of our service personnel? Why is he so intent on rushing through the House a Bill that will disadvantage our troops? There is another theme here, which we have covered before—something that we have called into question before in other areas of the Bill: fairness and balance.

In its current form, this part of the Bill would create a serious imbalance of fairness within the equality of the law. If the Minister will not address these issues for the sake of our armed forces personnel, will he not do it for the sake of equality under the law, for which our country is so well respected and renowned?

We received further written evidence highlighting this problem of an unbalanced weighting. The Centre for Military Justice is a charity established to advise current and former members of the armed forces, or their bereaved families, who have suffered serious bullying, sexual harassment, sexual violence, racism, or other abuse or neglect. In its evidence, the charity outlined the need for the Bill to take into account the mental health of claimants, not just their witnesses. Specifically, the CMJ said that "there are often very good reasons why some claims or parts of them need to be issued 6 years after date of knowledge or diagnosis; or where some of the damage would have been caused outside of the 6 year limitation period and some within it. If you are suffering from PTSD you may become aware that there is something seriously wrong within the limitation period...it could be very hard for you to get help then even for some time after.

Imagine if you are a veteran with undiagnosed PTSD—you are drinking heavily, or having a lot of personal problems (because of what you have been through) ...you may know there is something wrong—you may even go to your GP —so that might be said to be your date of knowledge for limitation purposes—but you may not be able to take the next step of getting properly diagnosed and for be able to get legal advice. Those are the kinds of cases that need to have the option of applying to the court to extend time and it makes no sense to add a hard 'long stop'. If there are good reasons to extend time, the claimant should be allowed to try and persuade the court and the court should be allowed to apply the existing criteria.

Last year, The Times reported the case of Mark Bradshaw, 44, who suffered from post-traumatic stress disorder (PTSD) since he was involved in a friendly fire attack in 2010 while serving with the Royal Artillery. Despite the immediate onset of nightmares and hypervigilance, the veteran was not given a formal diagnosis until 2016. By then he was drinking heavily, had suicidal thoughts and had left the service and become alienated from his family. He was eventually awarded a settlement, but not without a fight, and he fears that the proposed legislation could discriminate against those who do not develop PTSD, or receive a diagnosis, until many years later. He called the plan to impose a time limit on claims 'horrendous'. The Times reported him saying, 'I got pushed to the GP. How many people sick with mental health won't go to the GP?'

That tragic case, which we have already heard about in Committee, shows that we need a proper and fair weighting of both witnesses and claimants. I hope this will make clear to the Minister the changes required in the Bill. In the light of the fact that his legislation is heavily weighted against the ability of service personnel to proceed with civil claims, will the Minister, for the sake of our service personnel, recognise the mistake that is being made here? Why is he so intent on rushing through this House a Bill that disadvantages our troops?
If he will not change his mind for the sake of our armed forces personnel, will he not do so for the sake of the equality under law for which our country is so respected and renowned?

**Mr Jones:** Do I understand that we are also debating schedule stand part?

**The Chair:** Yes.

**Mr Jones:** Thank you—I will ask some questions about the schedules as outlined.

Schedule 3 references Scotland, and schedule 4 is about Northern Ireland. Mr Mundell, your great nation has always had a separate legal system, which in many ways is far superior to the one we have in England, given some of the common sense it contains. I would be interested to know from the Minister what representations were received from the Scottish Law Officers regarding the application of the Bill. It references overseas operations, but is clearly going to affect many servicemen and women, and Scotland is a good recruiting ground for those servicemen and women.

12.15 pm

The other issue is Northern Ireland, which is referred to in the schedule. The Minister has boldly claimed that the Government are going to bring forward a similar Bill to cover Northern Ireland veterans, which—if I can put it in a “Yes, Minister” way—is a very bold statement. It will be interesting to see how that claim is implemented.

I have a lot of sympathy with Northern Ireland veterans, because they are of my generation—people who I went to school with. Some of the cases are, frankly, terrible, as is the idea that they are not being dealt with. I accept that the title of the Bill includes the word “overseas”—I do not want to invite the wrath of the hon. Member for Strabane and others, because Northern Ireland is not overseas—but part of the claims for this Bill is that it will somehow cover and solve all problems. It will not, and I want to understand how it interplays with the legislation that is going to come forward for Operation Banner and other veterans.

I have had experience of Northern Ireland politics as a Minister. On the issue of Northern Ireland veterans, I have spoken to all sides, including Sinn Féin. I accept that the lead is not going to be the MOD, and would be the Northern Ireland Office, but I very much doubt that a similar Bill could be brought forward for Northern Ireland veterans. That might be the tipping point, where we welcome the Minister back to the Back Benches. So it would be interesting to know how those two things are going to be squared.

In terms of the issues raised in the schedules around mental health, my hon. Friend the Member for Portsmouth South makes a good point. There is sometimes no date of knowledge in these situations; it is very difficult to pin that down. In his statement the other day, I think the Minister basically admitted that limitations are going to be set on people’s rights, but the benefits are going to be on the other side. He mentioned the case of Major Campbell. Well, there is nothing in the Bill that will stop another Major Campbell case. If we look at that case, it had nothing at all to do with time limits or with civil litigation—it was to do with the investigation process. I have moved some new clauses that would improve the Bill in terms of limiting investigations.

**Johnny Mercer:** Does the right hon. Member understand—I am sure he does—that he is fundamentally wrong to say that the Bill would not have had an impact in the Major Campbell case, which he keeps referring to? He talks about the investigations taking so long. Those investigations are driven by bringing civil or criminal claims. Bringing in the longstop would mean that the worst Major Campbell could have had was going through to 2009; he has repeatedly said that. Those are the facts of the matter, and it is important to bear that in mind going forward. The Campbell case is a very emotional case; however, we have to stick with the facts, and the facts are that this measure would have limited the experiences to 2009, as he has said, and as we have laid out on a number of occasions.

**Mr Jones:** I am sorry; I totally disagree with the Minister. He is wrong. It was not the claims that drove that case. As Hilary Meredith said in her evidence to the Committee, part of the problem was that the MOD started to pay out large amounts of compensation to individuals. I think I explained the reason why that was done at the time; it was partly to follow a little bit what the Americans were doing, and it was partly a cultural thing in Iraq—for example, if there was a car accident, a certain amount of money was paid and that was that. It even got to where we might call it brutal. I remember sitting once in Basra with a claims officer, dealing with claims. They were everything from a car accident, “My goat’s been shot” and “You’ve run over my dog” right up to, “You’ve ruined my crop landing a helicopter, or flying something into it.” They were paid out, and it even got to a point, which we might find quite cold, that somebody’s death was covered by making a payment—blood money, I think, is how the Americans referred to it. That might seem harsh and callous, but we did the same things, just with a legal process. That led to others.

The Minister and I totally agree about people like Phil Shiner. There is no defence there. However, in Campbell’s case, if an accusation had been made to the MOD, not from a civil case but because someone came forward to say, “This happened,” it was not, then, the claim that kicked it off—it was the accusation. I accept that Shiner, in some cases, was trying to put forward things that were false, or encouraging people—I think there were even cases where he paid people—but the Bill would not stop that case coming forward, because when an accusation is made to the MOD, it will have to investigate it.

That is the problem for the Minister. He has focused in, with something of a gut reaction, against people such as Phil Shiner, and I sympathise with him—I have lots of sympathy with him on that. I have no time for those things, but the MOD created part of the problem itself, in the compensation culture that it engendered. Then it made it worse—I know the Minister was trying to be party political the other day, but I am not going to be, shudder the thought—by setting up the IHA T investigation in 2010, under a Conservative Government. That just fuelled things.

I still plead with the Minister to do now in the Bill what Campbell’s case needed, though I accept his officials will say, “Minister, we must wait until next year’s armed
forces Bill.” No, put it in now. If he includes issues to do with controls over investigations, he will have my 100% support, because that is what will drive down cases such as the Campbell case. It was completely unacceptable that that happened. Yes, political decisions were made about Iraq and Afghanistan about paying compensation. A Conservative Government set up IHA T, and, as happens with a lot of these things, it became like a licking lollipop, in terms of the way they keep growing. However, if the suggestions of the Judge Advocate General, Judge Blackett, about looking at investigations were put in the Bill, that would stop the Major Campbell cases. Just introducing a limitation period will not stop cases. They will still be investigated.

Let us be honest, it is a proud testament to the professionalism of our armed forces that, in the horrendous situations that they have been involved in over the past few years, in Iraq and Afghanistan, we have had small numbers of disciplinary cases. That is testament not only to their courage but to the system of discipline in our armed forces. We have a set of regulations, laws and training that ensure that people know what they are doing, and that they follow. As to the cases that have been brought, such as Marine A, that was not started by an ambulance-chasing lawyer. It happened because someone took a video of Marine A shooting a wounded Taliban fighter, which was clearly contrary to all his training. The Bill would not stop that. In that and other relevant cases—I am racking my brain to think of them—the investigations were complete within two years. That was quite quick, so I think it can work. It is about case management.

There is another point to be made about that. When the service man or woman gets to court, do they get a fair hearing? In that case, he did. My question is why on earth the legal representatives did not argue—quite rightly—at the first hearing that he had suffered mental trauma and other things. He was found guilty by a military court—not a civil court—of murder on the first count. But when it went to appeal, it was reduced to manslaughter, which was quite right, taking into account the circumstances in which the incident occurred, as well as the evidence from mental health professionals about his mental state at that time. That does not excuse what he did, but it puts context around it.

That is why, as I said before, I am a supporter of the military justice system, because cases are dealt with by people who understand that system. Putting a time limit on cases will disadvantage members of the armed forces by taking them out of section 33 of the Limitation Act. and for what? For something that will not reduce the number of cases.

There is another point we could deal with very easily. I ask the Minister again, how many limitation cases will disadvantage members of the armed forces by taking them out of section 33 of the Limitation Act. The Limitation Act is there for a good reason. It is not—I think this is what the Minister has in mind—a green light for everybody to come out of the woodwork after a huge period of time and say, “Yes, I want to put my case.” It is not like that; it is very difficult. I support that, because there must be time limits for cases, for the reason the Minister gave—I agree with what my hon. Friend the Member for Portsmouth South said—which is that we have to try, if possible, to get cases done as speedily as we can. That is fair for the victim and fair for the accused. But this Bill will not do that.

The other thing that is said is that the Bill will stop investigations. It will not stop investigations at all, and they could go on a long time. As I said in a previous sitting, that must be horrible. We cannot imagine being accused of some of the horrendous crimes that Major Campbell was accused of and having that hanging over us for a long time. That is not fair to that individual.

**Johnny Mercer:** It has never been the Government’s stated position to stop investigations. I think the right hon. Member knows that. We cannot run a Department and refuse to investigate allegations that people bring forward.

**Mr Jones:** No, I am not suggesting for one minute that it is. I am suggesting to the Minister—this is what Judge Blackett came forward with—that we need a way of managing those investigations, to ensure that they are speedily done and that there is judicial oversight of the process, not oversight from the MOD or the chain of command, which could lead to accusations. I came forward with three suggestions of how to do that. Get rid of all the minor cases in the system. That is just good case management, and it also helps the individual who has been accused. If the judge thinks there is no evidence, they should throw the case out. That can be done in magistrates courts; why can we not do it in this system? That is a huge missing bit of the Bill.

To reiterate, I am not for one minute accusing the Minister or the MOD of turning a blind eye to serious allegations. If an allegation is made, it has to be investigated. The issue is the way it is investigated and the time it takes to investigate it. The idea is that the time limit process will somehow reduce the number of claims. I do not think it will, because people will bring a claim within six years, it will have to be investigated, and someone will have to ensure that it is case-managed through the system.

12.30 pm

This is also about ensuring a dispute resolution process. If a group consultation can be dealt with quickly, that is better than having it go on for a long time. Accusations will still be made against servicemen and women on operations overseas. It is nothing to do with claims being brought forward by locals or others. Why throw out a basic right that everyone else has, on the misunderstanding that somehow the measure will solve the number of cases being put forward? It will not. The Minister has raised a lot of people’s hopes with this Bill. I said that the other day, and the Minister should be careful about that. People are perhaps saying, “Great, we’ve got somebody doing this, and it’s going to achieve that.” It will not. One of the worst things that can be done in politics is to promise people things that are not delivered, and then the penny drops that people have not got what was suggested.
Another question is why this was not done before in legislation. It is a good question. Do I support the intention behind the legislation? Yes, I do support trying to ensure justice for those who have served. I think the MOD’s point of view is that we have to protect the position of the Armed Forces, but they must also take account of those who have served. In some cases, they may have been injured or diseased and have not been compensated, and that cannot be right. With those brief remarks, I will conclude.

Johnny Mercer: I have listened at length and for many hours to a lot of the points that have been made, and I fear we are beginning to reach a point where we are repeating ourselves to a large degree.

Mr Jones: There is more to come this afternoon.

Johnny Mercer: Fantastic, fantastic. With any such legislation, I understand that there will be people with fears or concerns, and there will be an element of risk. I cannot honestly stand here and say that the Bill disadvantages troops or service personnel. I accept that there is a difference of opinion here, but I would not even think about introducing legislation that disadvantage them.

Looked at in the round—and as I have said many times—this is a good, fair and proportionate Bill. I will defend it. I have already outlined that Government are creating new factors to ensure that the courts are directed to consider the uniquely challenging context of overseas military operations when deciding whether to extend the primary limitation periods for personal injury and death claims, and Human Rights Act claims. Amendments 88 to 91 are therefore unnecessary. They introduce a further factor to which the UK courts must have particular regard when determining whether to allow claims beyond the primary limitation periods of one year for Human Rights Act claims and three years for personal injury and death claims. Their stated intention is to ensure that the claimant’s interest in having their claim proceed when determining whether it is equitable to allow a case to proceed beyond the primary time limit.

For personal injury and death claims in England and Wales, section 33(1)(a) of the Limitation Act 1980 states that the courts should have regard to any prejudice that might be caused to the claimant if the case is not allowed to proceed beyond three years. Prejudice would include the impact on the claimant’s ability to secure their rights through legal proceedings. For personal injury and death claims in Northern Ireland, article 59(1)(a) of the Limitation (Northern Ireland) Order 1989 has the same provisions. For personal injury and death claims in Scotland, section 19A(1) of the Prescription and Limitation Act Scotland 1973 sets out the equitable tests in more general terms, but that still includes considering the interests of the claimant in securing their rights through legal proceedings.

For Human Rights Act claims, section 7(5)(b) sets out that the court may allow claims to be brought beyond the primary 12-month period if it considers it equitable to do so, having regard to all the circumstances, which would include considering the interests of the claimant in vindicating their human rights through legal proceedings. The factors introduced in clause 11 do not replace the tests set out in section 7(5)(b) of the Human Rights Act; they just outline considerations that reflect the unique context of overseas military operations.

Liz Twist: What these amendments seek to do, and what those witnesses were asking us and the Government to look at doing, is improve the Bill so that it better reflects the broader range of interests. I am surprised that the Minister does not want to reflect on that and build in some of those protections.

Johnny Mercer: That is because I have reflected on those things, and in my and the Government’s view, which is allowed to be different, they do not improve the Bill. If we were to take away the six-year limit, we would start diverging away from one of the clearest aims we have, which is to provide certainty for veterans. I understand there are different views, but I am afraid I do not agree, and neither do the Government.

For those reasons, amendment 88 to 91 are not necessary. We have already discussed the reasons why clauses 8 to 10, which introduce schedules 2, 3 and 4, should stand part of the Bill, so I do not intend to repeat them here. I recommend that the amendment be withdrawn and schedules 2, 3 and 4 stand part of the Bill.
Stephen Morgan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 2 agreed to.

Clause 9 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 10 ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 11 ordered to stand part of the Bill.

Clause 12

DUTY TO CONSIDER DEROGATION FROM CONVENTION

Chris Evans: I beg to move amendment 57, in clause 12, page 8, line 20, at end insert—

“(1A) No order may be made by the Secretary of State under section 14 following consideration under this section unless a draft of the order has been laid before, and approved by, each House of Parliament.”.

This amendment would require significant derogations regarding overseas operations proposed by the Government from the European Convention on Human Rights to be approved by Parliament before being made.

Good afternoon, Mr Mundell. It is a pleasure to once again serve under your chairmanship as we head into the final straight of this Bill Committee. I rise to speak in support of amendment 57. I have concerns about multiple aspects of the Bill. This amendment is crucial to improving the Bill and safeguarding our reputation at home and abroad, and it can easily be implemented.

The amendment is simple. It asks that the Government seek approval from both Houses of Parliament before the Secretary of State for Defence approves any derogations from the European convention on human rights. I spoke in the last sitting about parliamentary scrutiny of the role that the Bill gives to the Attorney General, and I must once again raise the absolute importance of scrutiny. I remind the Government that the UK is not a presidential system—given what we see from the United States at the moment, amen to that. The Government draw their power from this House. This House must be consulted on matters as serious as derogating from our key international obligations. The Government are in danger of destroying our reputation as a country that upholds international law.

Surely the Government want to do everything in their power to counter those views and assure the global community that this country still regards human rights as of the utmost importance.

The Bill would use article 15 of the European convention on human rights, the derogation clause. A guide from the Council of Europe says of article 15:

“It affords to Contracting States, in exceptional circumstances, the possibility of derogating, in a limited and supervised manner, from their obligations to secure certain rights and freedoms under the Convention.”

The words that stick out to me are “exceptional” and “limited”. If these cases are exceptional, there should be no problem with the Defence Minister seeking parliamentary approval on the very rare occasions when they deem derogation necessary.

Mr Jones: Does my hon. Friend agree that, although the Human Rights Act is often portrayed as being used by unscrupulous foreigners to attack us, it is very important for our servicemen and women if they are bringing claims against the MOD for injuries that they have suffered?

Chris Evans: My right hon. Friend is absolutely right. Human rights are a political football that is being kicked around by everybody. If hon. Members want to see the importance of the Human Rights Act, they would do well to look at the debate that I introduced last week about the Uyghur Muslims in China, and at what they are going through. We have had human rights problems with China. On the issue that my right hon. Friend raises, of course human rights are vital when claims are brought against the Ministry of Defence, and that should be considered. We should not attack anybody’s right to defend their human rights in court, and we should not view human rights as something bad. They are fundamental rights that we all have as humans.

Parliament can then decide whether a derogation is limited. If we are going to derogate from international obligations, consent must come from Parliament. The Equality and Human Rights Commission said in written evidence:

“At the very least, we recommend support for amendment 57, which would require significant derogations regarding overseas operations proposed by the Government from the ECHR to be approved by Parliament before being made.”

As it points out, the amendment is the very least that we should be doing to ensure that the UK upholds its very proud record of human rights across the world. To set a legal norm for derogation from the European convention on human rights would seriously damage Britain’s international standing. It would send a signal that these international conventions and treaties are not taken seriously by our nation, and would have the knock-on effect of harming the integrity of our troops.

In its briefing on the Bill, Redress said: “the Bill risks undermining the UK’s influence on human rights in the global context”.

Derogating from the international conventions on human rights will clearly diminish our integrity on these matters. The Government should be keen to mitigate that in any possible way. The Opposition believe that this amendment is a good start if the option to derogate must be written into the Bill at all.

Martha Spurrier, the director of Liberty, said in one of the evidence sessions:

“The concern, of course, is when you take a wider view and look at this Bill as a whole, which very much signals the desire to water down the human rights arrangements”.—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 76, Q149.]

Surely the Government want to do everything in their power to counter those views and assure the global community that this country still regards human rights as of the utmost importance.

I echo the words of my hon. Friend the Member for Barnsley Central (Dan Jarvis), who said on Second Reading:

“At a time when we are witnessing an erosion of human rights...it is more important than ever before that we uphold our values and standards and not undermine them.”—[Official Report, 23 September 2020; Vol. 680, c. 1109.]

In a similar vein, the Equalities and Human Rights Commission warned:

“At a time when the UK Government’s adherence to international law and the relationship with Northern Ireland “is under increased scrutiny, it is imperative that the UK is seen to show the highest regard for the international legal order.”
To write in a system of derogating from European conventions regarding human rights would severely undermine us. This clause, unamended, will determine our international reputation, and therefore the reputation of the brave men and women who serve in our forces.

Amnesty has said that, as it stands, the Bill “will do irreparable damage to the reputation of the armed forces of this country, undermine basic principles of access to justice and send a bad message internationally.”

The former director of service prosecutions, Bruce Houlder, has called the Bill an “international embarrassment.”

David Greene, the vice-president of the Law Society, has added to the voices warning of our loss of international standing, saying that while “Our armed forces are rightly known across the world for their courage and discipline”,

the provisions allowing for a derogation from human rights conventions and breaking international law “would undermine this well-deserved reputation”.

Multiple people and organisations say that the Bill will damage our international standing. After all, how can we call on other countries to respect international treaties on human rights, or to honour international obligations, when we are setting a precedent in our legislation for derogating from them? How are service people supposed to carry out missions overseas with the integrity that the British forces have if they know that they might not always be held to international standards by their own Government?

If the Government insist on writing derogations from the European convention on human rights into the Bill, the legislation must be scrutinised at the highest level. It is that important. The Government cannot simply ignore international conventions without getting approval for doing so from both Houses, and ensuring that derogations are considered case by case and are deemed exceptional actions. That would signal to other countries that we still valued international conventions on human rights.

Mr Jones: Does my hon. Friend agree that the problem with the European convention on human rights is that people are confused about how it relates to the European Union? Clearly, there is a dog-whistle approach to anything with the word “Europe” in it. The convention has nothing at all to do with the European Union. It is actually something of which we should be proud. Winston Churchill and others pioneered it at the end of the second world war.

Johnny Mercer: So have I, absolutely.

Chris Evans: Yes, my right hon. Friend is absolutely right. He gets to the nub of the issues that we are facing nationally. In the press, and even in some quarters of the House, it seems that putting the word “European” on anything makes it something to do with the European Union, and then we open up a can of worms about Brexit. As he says, the European convention on human rights has a proud history, involving such luminaries as Sir Winston Churchill, who was responsible for setting it up.

My right hon. Friend is absolutely right to say that we have to be careful about confusion. When the word “Europe” or “European” is slapped on something, people think it is all about Brussels and its rules on bendy bananas, or whatever else people want to throw at us. This is a really important point. Whatever side of the argument people are on—whether they supported Brexit or wanted to remain in the EU—they should realise that the European convention on human rights has nothing to do with the EU. This is fundamentally about human rights.

Mr Jones: Does my hon. Friend congratulate the Members of this House who sit on the Council of Europe? Its role is to ensure that the European convention on human rights is a beacon of freedom and rights throughout the world, but in parts of Europe today—Ukraine being one, and Russia another—the human rights that we take for granted are not practised.

Chris Evans: I echo my right hon. Friend’s comments about the work of the Council of Europe; I know how important it is. If we want to talk about human rights more widely, look at what happened in Nigeria yesterday, and what has happened in Azerbaijan, Belarus, Ukraine and Russia. We are the guardians of the rule of law. This whole country is formed on the rule of law, but we have always had an international and Atlanticist outlook whereby we defend human rights to the hilt. There is a fundamental belief, which I think is shared across the House, that if one person loses their human rights, we all do. That is something we should be guided by.

No member state of the Council of Europe has previously derogated from the European convention on human rights in the manner proposed in the Bill. That is how unusual its provisions are. What we are asked to agree to today would make us an anomaly right across the continent of Europe and beyond. It is therefore clear that intense scrutiny of derogations would be highly sensible.

Mr Jones: I agree. On combat in overseas operations, the Supreme Court was very clear in the Smith case that combat immunity was not in any way prevented by the Human Rights Act 1998. In that case, the MOD was trying to extend the Human Rights Act to counter planning decisions that were taken in Whitehall about Snatch Land Rovers.

Chris Evans: It comes back to the point that my right hon. Friend has so eloquently made over the last few sittings. I tell the Minister this: I have enjoyed my right hon. Friend’s contributions, though they may have been difficult.

Chris Evans: Sometimes I am not sure. I was not au fait with the case of the Snatch Land Rovers before I came here. The point my right hon. Friend the Member for North Durham has been making is that one day, in the near future—a nearer future for some than for others—we will not be here, and others will come in, but the legislation will stay. We have to get it right. He knows as well as anyone else, given his experience, that the Ministry of Defence will hide behind its lawyers. In this case, they would have used the Human Rights Act. That is why it is important that we have scrutiny at the highest level. It is important that the provisions are not left open for lawyers to use at will. I absolutely agree with my right hon. Friend.
To me, it is clear that intense scrutiny is highly sensible. It ought to be required when the UK decides to derogate from conventions; otherwise, we will be setting a dangerous precedent. This country has a unique role in global history. We have set the standard for so many countries to follow.

Mr Jones: The provisions may also pose a practical problem for deployment with other forces. Everyone agrees that in the future, many of our deployments will be with other nations, and if we have a derogation, and our situation is different from theirs, that could create problems in building alliances, or UK armed forces deploying with our allies.

Chris Evans: I absolutely agree. We do not know who will lead our combined forces in the future. If we have a piece of legislation that allows us to derogate from the European convention on human rights, that puts us at a disadvantage. This year we celebrated the anniversary of VE and VJ Day. Of course, during the famous D-day landings, we were led by an American, General Eisenhower. We might be putting our forces at risk if we are allowed to derogate from the European convention on human rights.

Given the UK’s standing and influence, there is a risk that if this provision remains in the Bill as it is, and is acted on without parliamentary scrutiny or consent, it would set a dangerous precedent to other countries in future conflicts. Having carte blanche to derogate from international conventions is not a precedent that the UK should set. As I said, other countries look to us for the standards that we have set in the past. We should be setting the highest standards in the future.

Other organisations have also raised their concerns about the Bill and giving the Government the ability to ignore international law. Justice stated: “the Bill would damage the standing of the armed forces by acting contrary to established legal norms—both domestic and international...The Bill risks both contravening the UK’s obligations under the European Convention on Human Rights...and other international legal instruments, many of which the UK helped to create.”

Our country has a proud history of upholding international conventions on human rights across the globe, but the Bill threatens to undo our international standing as the rightful champion of human rights. Amendment 57 will make it clear that our country still sees international obligations and human rights conventions as vital. It states that the Government will not derogate from human rights conventions without real and significant cause. It shows a commitment to transparency and parliamentary scrutiny.

1 pm

Mr Jones: Will my hon. Friend give way?

The Chair: The hon. Member for Islwyn has concluded his remarks.

Chris Evans: No, I have not; I have three hours of this. I give way.

Mr Jones: My hon. Friend is just getting into his flow. Does he agree that the problem with the Bill is that it does not define the circumstances in which a derogation will take place? We have a Conservative Government today, but if there is no definition of the reasons for allowing a derogation, a future Government could use the provision to do anything.

Chris Evans: I agree with my right hon. Friend. We have to be careful; we are in the here and now, but we have to attempt to future-proof the legislation we pass. That is true of anybody. It will be difficult, but if, God forbid, there was an extreme Government in future, they could do whatever they liked, using this anomaly in the Bill, and would be acting within the confines of the law. That is why it is extremely important to remember that the legislation will remain long after each and every one of us has gone.

Mr Jones: That is not in the realms of fantasy. In Europe, we need only look at the way Hungary is going under the leadership of Mr Orbán, who seems to disregard a lot of what we would take to be human rights legislation. This argument is not based on a figment of the imagination, or fantasy.

Chris Evans: This is on our doorstep. Look at the annexation in Ukraine. Hungary is running over human rights like a tank. If we leave these anomalies in the legislation and do not tighten it up, people can do whatever they like in future. It is extremely important that we have certainty; that is the most important element of law. Judicial precedent and statutory interpretation are important, too, but we need certainty, and that is unfortunately not in the Bill. It would be lovely if the Government supported the amendment—it would be the first Opposition amendment that they agree to in the Committee—because it would ensure certainty.

If we cannot give certainty, because we do not know when we will use the provision, we can at least ensure parliamentary scrutiny of derogations. As Justice and other human rights groups have publicly stated, the Bill signals that the Government are willing to break international conventions. It signals a worrying disregard of the European convention on human rights and the Geneva convention. That cannot be allowed to pass unchecked. That is extremely important. Particularly as we leave the European Union, we should be aiming to highlight our commitment to international conventions such as those on human rights. Any derogation from the European convention on human rights must be checked by Parliament, decided on democratically, and subject to the highest level of scrutiny, as any derogation should be.

Mr Jones: My hon. Friend refers to the Geneva convention; there are very good reasons for such conventions. They are not just the right thing to follow; in terms of human rights; they afford protections to our servicemen and women. In the past, we have rightly criticised—and, going back to the Nuremberg trials, taken cases against—individuals who ignored the Geneva convention.

Chris Evans: Absolutely. Our troops must be defended, and they must have the right protection in law.

I point out, Mr Derogation—please forgive me, Mr Mundell; that was my first mistake in a number of sittings. I point out, Mr Mundell, that derogation from treaties is extremely rare. To derogate frequently from
a treaty would be to undermine it. [Interruption.] I see that I am shaping up to be the most unpopular Member present, because I keep speaking and eating into lunchtime, so I will come back later this afternoon.

Ordered, That the debate be now adjourned.—(Leo Docherty.)

1.7 pm

Adjourned till this day at Two o’clock.
Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Tenth Sitting

Thursday 22 October 2020

(Afternoon)

CONTENTS

Clauses 12 to 16 agreed to.
New clauses considered.
Bill to be reported, without amendment.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 26 October 2020

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The Committee consisted of the following Members:

**Chairs:** David Mundell, †Graham Stringer

Anderson, Stuart (Wolverhampton South West) (Con)  
† Atherton, Sarah (Wrexham) (Con)  
† Brereton, Jack (Stoke-on-Trent South) (Con)  
† Dines, Miss Sarah (Derbyshire Dales) (Con)  
† Docherty, Leo (Aldershot) (Con)  
Docherty-Hughes, Martin (West Dunbartonshire) (SNP)  
† Eastwood, Mark (Dewsbury) (Con)  
† Evans, Chris (Islwyn) (Lab/Co-op)  
Gibson, Peter (Darlington) (Con)  
† Jones, Mr Kevan (North Durham) (Lab)  
† Lewell-Buck, Mrs Emma (South Shields) (Lab)  
† Lopresti, Jack (Filton and Bradley Stoke) (Con)  
† Mercer, Johnny (Minister for Defence People and Veterans)  
Monaghan, Carol (Glasgow North West) (SNP)  
† Morgan, Stephen (Portsmouth South) (Lab)  
† Morrissey, Joy (Beaconsfield) (Con)  
† Twist, Liz (Blaydon) (Lab)  

Steven Mark, Sarah Thatcher, Committee Clerks  
† attended the Committee
Duty to consider derogation from Convention

Amendment proposed (this day): 57, in clause 12, page 8, line 20, at end insert—

“(1A) No order may be made by the Secretary of State under section 14 following consideration under this section unless a draft of the order has been laid before, and approved by, each House of Parliament.”

This amendment would require significant derogations regarding overseas operations proposed by the Government from the European Convention on Human Rights to be approved by Parliament before being made.

Mr Kevan Jones (North Durham) (Lab): Welcome back to the Chair, Mr Stringer.

My hon. Friend the Member for Islwyn spoke this morning about the duty to consider derogation from the European Convention on Human Rights. Clause 12 states:

“Af1er section 14 of the Human Rights Act 1998 insert—

‘14A Duty to consider derogation regarding overseas operations’.

It then details ‘overseas operations’. I have a problem with that for many of the same reasons outlined by my hon. Friend. What do we derogate from, and for what reasons? The Human Rights Act 1998 gets a bad name, but subject to limitations, and an applicant must be clear about what they want. When people start chomping at the bit and foaming at mouth when we talk about the Human Rights Act and the human rights convention, I always say, “Just look at it and see what it does. Can you really disagree with it?” Unfortunately, some people do disagree with it, but article 2, which is the most quoted, relates to the right to life.

Chris Evans (Islwyn) (Lab/Co-op): Would my right hon. Friend accept—

The Chair: Order. Please address your remarks to the Chair.

Chris Evans: In the past, the European Court of Human Rights has been judged as the most effective international human rights court in the world.

Mr Jones: It is, because it sets a standard that I do not think many British people could disagree with. Article 2 enshrines the right to life; I do not think that most people would disagree with that. Article 3 relates to freedom from torture, again I am not sure that anyone would disagree with that. People may say that that is self-evidently accepted these days, but not that long ago in Iraq, one of our closest allies, the United States, did commit acts of torture. I did not see any evidence that UK servicemen and women were involved in that when I was part of the rendition report produced by the Intelligence and Security Committee, but there were occasions when UK servicemen and women, and our intelligence agents, were present. Perhaps we all take it for granted that we should be against torture, but there were such cases in Iraq in living memory.

Article 4 relates to freedom from slavery. Again, a few years ago we may have thought about slavery in terms of historical cases and the transportation of slaves from Africa to America and the West Indies. But today, in all our constituencies, slavery is, sadly, alive and kicking, even in my constituency of North Durham, where we had a case of modern slavery about 12 months ago. It exists in modern society.

Article 7 relates to the right to a fair trial, and that comes to the heart of the Bill.

The Minister for Defence People and Veterans (Johnny Mercer): The right hon. Gentleman has talked about articles 2, 3 and 4, and is about to discuss article 7. Is he aware that we cannot derogate from those articles, and nor would we seek to?

Mr Jones: If the Minister is patient, I am coming on to that.

Johnny Mercer: Sorry—I get excited.

Mr Jones: I know. If he is patient, I have a full description of what we cannot derogate from. If he sits back and just enjoys it, he might learn something as well.

We have already discussed how the Bill is removing veterans and armed forces personnel from section 33 of the Limitation Act 1980, and I believe that that does not allow people access to a fair trial. But we would all agree that the right to a fair trial is a basic right. Article 8—
Minister, do not worry. I am not going to read out the entire list of articles in the Human Rights Act, but I want to concentrate on those that may come within the Bill’s remit and may be subject to derogation—relates to respect for family and private life. No one should disagree with article 9—freedom of thought, belief and religion. A normal society should have no problems with such a freedom.

The Minister intervened to point out that any derogations are subject to limitation. That leads on to the important question about why such a derogation is included in clause 12. It has always been accepted that the rights given to us under the Human Rights Act should be considered in law according to their hierarchy in the convention. In terms of the Bill and warfare, people have focused on the idea that somehow that Act and the convention on human rights stop a country like ours, or members of the armed forces, using lethal force.

To come to the issue that the Minister just raised, I should say that, yes, there are some absolutes that cannot be derogated from. For example, article 15(2) of the convention states:

“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.”

That was upheld by the Supreme Court in the Smith case. It held steady—Hilary Meredith mentioned this point—in saying that lawful conduct cannot be questioned in terms of the use of the other ones, which the Minister referred to; this comes on to the rights that are absolute and cannot be impaired in any way. There is article 2, about the protection of the right to life, apart from the qualification that I have just given. Article 3 is about the prohibition of torture—something that the Bill could not derogate from.

I should say to the Minister that I disagree with some of my colleagues who said on Second Reading that the Bill gave carte blanche for torture. I simply said that, no, it does not, as would be clear if they read the Bill. Alas, these days many people hold forth in the Chamber without ever having read the relevant Bill—a bit of a disadvantage, I always think, if someone wants to make a useful contribution.

Article 4 is about the prohibition of slavery and forced labour. We cannot derogate from those issues. Article 7 is about punishment without law. One right that some might think we should be able to derogate from is in article 12—the right to marriage. We could not derogate from any of those rights. My issues with the Bill are not about the headlines that some have grabbed in saying that it gives carte blanche for torture. It does not, because of the limitations on derogations.

I then ask myself why the derogation that we are discussing is needed. All my hon. Friend the Member for Islwyn was trying to do—and I asked about this earlier—is establish what we can define about what derogations are actually needed, and why. Is this a way of trying to protect the MOD from civilian claims, as I was saying earlier?

Chris Evans: Article 15 of the European convention on human rights allows derogation in times of war. The last time this country asked for a derogation was in the wake of 9/11 and the rise of al-Qaeda; there was another time in the ’70s during the troubles in Northern Ireland. Does my right hon. Friend agree that derogation is so important? Even when it was granted in the wake of 9/11, this country still had to argue the reasons for derogation.

Mr Jones: My hon. Friend obviously must be reading my mind. I was about to come to the Northern Ireland case, which is important in respect of the limitations of derogation and the controls around it. The other thing about when a state wants to derogate from the European convention on human rights is that it first has to inform the secretary-general of the Council of Europe, who should be given an explanation about why. Can the Minister tell us in what circumstances he sees this Bill being used, in terms of the derogation from human rights, particularly when it does not limit lawful combat actions in a conflict situation? The Bill also needs to give the reasons and measures, and how they will operate, and set out why it will not be witholding those rights. It comes back into the tier, as I said, where there are some that cannot be touched and others that can.

2.15 pm

My hon. Friend the Member for Islwyn raised the example of a case where derogation was requested by the UK for the detention of terrorists, in relation to affairs in Northern Ireland. In that case, the UK Parliament passed legislation that enabled those accused of terrorism to be held for a period of up to five days when they were suspected of being involved with terrorism, although they were not charged with terrorism or anything connected to that. A temporary order was passed under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984.

Chris Evans: I think my right hon. Friend is referring to the case of Lawless v. Ireland, where the European Court of Human Rights said that for it to be a state of emergency the entire population needs to be under threat for it to be possible to derogate from the convention on human rights. That underlines how significant it is to even ask for a derogation from the European Court of Human Rights.

Mr Kevan Jones: My hon. Friend is right on the second point, but that was not the first case I referred to. In the first case, legislation that the UK had put forward was challenged as a breach of the convention’s obligations. It is Brogan and others v. the United Kingdom. In that case, the judge ruled that the UK would only be able to apply for a derogation if it declared a state of emergency, pursuant to article 15.1 in the derogation clause of the convention. Under the Human Rights Act, there are good reasons why we are able to derogate, but, justifiably, they have to be damn good reasons. Those derogations were found to be unlawful, which allowed the respondents to claim compensation for unlawful imprisonment.

That demonstrates that these provisions are there for good reasons, but we should not use them loosely. I have not yet heard anything about why they are included in this Bill. Clearly, all the issues around warfare and people using lethal force on the battlefield are covered by the convention. That has been upheld by the Supreme Court.

Chris Evans: When a Government ask for derogation under article 15, the key words are “exceptional circumstances.” If, and only if, it is granted it is then
limited and the Government have to justify that. That is the crux of the problem with the Bill and why we have introduced the amendment. The Bill seems to be going against the spirit of that article. Does my right hon. Friend agree?

Mr Jones: I do. I do not know why it is in the Bill, without an explanation about why one would want to use it. As my hon. Friend the Member for Islwyn said, there are perfectly good reasons why there are derogations in the Human Rights Act, for example in times of emergency. But for this area? I just do not see it, because as I say, lawful combat is covered. Torture and other things are proscribed anyway, so nobody can get derogations for those. For what other purpose would it be in the Bill? That is what I find very difficult to understand, and that is why I have a problem with some of this Bill.

The situation we are in is possibly due to the fact that the Human Rights Act 1998 has been portrayed by a lot of people as this horrible piece of socialist, human rights-hugging legislation brought in by a nasty Labour Government. It was not: all it did was incorporate the European convention on human rights into UK law. Previously, if claimants wanted to raise a case under the ECHR, they had to take that case to Strasbourg. Because of the Human Rights Act, those cases were able to be looked at in UK courts and decided by UK judges, which I think was a lot better than the previous scenario. It made it easier, but that is possibly why the focus and attention has been on human rights cases, or the uses of them.

The other thing about human rights cases, which gets into the mythology around those cases, is that the Human Rights Act is often quoted by lawyers and given as a reason why a case should go forward. It is often just struck out, because those lawyers are sometimes just flying a kite and seeing if they get anywhere, but it is quite a robust piece of legislation. It also gives us a lot of protections: it protects individual citizens, but more importantly, it protects individual servicemen and servicewomen when they are bringing cases against the MOD. That is the problem we have had with some of the optics around this, rather than what the facts themselves are. I have had these discussions with constituents, and when I tell them that the Human Rights Act has nothing to do with the EU and that it was actually Winston Churchill’s invention, they look at me agog.

The point is that, as my hon. Friend the Member for Islwyn said this morning, these are the standards that we apply when we are arguing the moral case, both in foreign policy and in anything else. These are the things we want people to follow, and if we are just loosely throwing derogations into this Bill, we are going to be quite rightly accused of not holding ourselves to the same high standards, or somehow trying to wriggle out of our basic commitments under the Human Rights Act, which is very difficult for me. As I say, I do not understand why this is in the Bill.

The other issue, which I have raised before and was also raised by Hilary Meredith, is the time limits under the Human Rights Act. There is a one-year limit on Human Rights Act cases, but what we are saying is that there should be a longstop, because they are covered by the Limitation Act 1980. We are arguing for a separation of that, in terms of the six-year longstop, and I think Hilary Meredith said in her evidence to us that it would be interesting to know how that fits with the ECHR and its incorporations. I am quite happy for the Minister to write to me on this topic, but he did say that the Bill complies with the Human Rights Act, and I would like to see the explanation from the lawyers about the implementation of the time limits, because I am not sure whether that is something we would have to run by the secretary-general of the Council of Europe. What we are saying, in effect, is that we are limiting someone’s access to human rights. That is the use of human rights legislation, so I think that is the important point.

The other issue is, as the Minister said, the growth in the areas for these cases. I admit that, in some of the Phil Shiner cases, the Human Rights Act was just flying a kite, basically. Those cases should have been knocked down very quickly, and it should have been said that they were nothing to do with the Human Rights Act.

The Defence Committee did a very good report—I think the Minister was on the Committee at the time—called “Who guards the guardians? MoD support for former and serving personnel”. It is worth reading—I have read it, and it is a good report. The main issue in it is investigations, which we have been talking about throughout this Committee. It is very critical of the £60 million spent on IHAT, for example. There was no mention of it being anything to do with the Human Rights Act. It outlines in detail the chaos when IHAT was set up in 2010 by—I reiterate yet again—the coalition Government. I would like to know what the justification is for having this measure in the Bill. As my hon. Friend the Member for Islwyn said this morning, it potentially has huge implications for us.

Johnny Mercer: Clause 11 introduces new factors that the court must consider when deciding whether to allow human rights claims relating to overseas military operations to be brought in the normal time—[HON. MEMBERS: “We are on clause 12!” I am sorry; I got carried away. Hon. Members are right—it is clause 12].

The measures in this Bill about derogation are not intended to change the existing and very robust processes that the Government and Parliament follow if and when a decision to derogate has been made. The requirement to consider derogation merely ensures that all future Governments are compelled to consider derogating from the ECHR for the purpose of the specific military operation. It is worth saying that the only change that we are bringing about in this Bill is the requirement to consider, rather than leaving it as an option. It is not actually a derogation; it is a requirement to consider a derogation and prove that it has been considered, not a derogation itself. That will ensure that operational effectiveness can be maintained by, for example, enabling detention where appropriate for imperative reasons of security. It is worth noting that the vast majority of the challenge that we face around lawfare has come from issues relating to detention.

Appropriate parliamentary oversight over derogation is already built into the Human Rights Act 1998. For the benefit of the Committee, I will spell out the existing obligations on the Government. Once they have made the decisions to derogate from any aspect of the European convention on human rights. The Human Rights Act requires that the Secretary of State must make an order...
designating any derogation by the UK from an article of the ECHR or a protocol thereof. The Secretary of State must also make an order amending schedule 3 of the Human Rights Act to reflect the designation order or any amendment to, replacement of or withdrawal of the designation order. A designation order ceases to have effect if a resolution approving the order is not passed by each House of Parliament 40 days after it is made, or five years from the date of the designation order, unless extended by order under section 16(2) of the Human Rights Act, or if it is withdrawn, or if it is amended or replaced.

Mrs Emma Lewell-Buck (South Shields) (Lab): It is a pleasure to see you in the Chair again, Mr Stringer. I wonder whether the Minister can help me out, because I am a little confused. The Government’s own memorandum states:

“Clause 12 does not require derogation nor does it make a decision to derogate more or less likely; derogation is still entirely dependent on the particular circumstances under consideration at the time.”

It is unclear what the practical point of the clause is and what difference it will make. In other words, what is the point of it?

Johnny Mercer: The practical difference is that instead of it being optional to consider derogation from the ECHR, it becomes mandatory for Governments to demonstrate why they have derogated from the ECHR. It is much like in the prosecution setting, where we talk about factors to consider. Previously, people have said, “Well, they consider those anyway.” All we are doing is making it mandatory to prove that they have been considered, in order to demonstrate that the correct process has been gone through.

Mr Jones: My hon. Friend the Member for South Shields is right. This will have no effect whatsoever. I suspect it has just been put in the Bill for a bit of window-dressing—to suggest that the Government are feeding red meat to those who want to be against the entire Human Rights Act. The Minister is feeding the bogeyman around the Human Rights Act.

2.30 pm

Johnny Mercer: Of course it is not.

In addition to the requirements laid out in the Human Rights Act 1998, the Government must communicate a decision to derogate to the secretary-general of the Council of Europe, including details of measures taken and the reasons for taking those measures, and inform the secretary-general when derogations have ceased. Those existing measures provide for an appropriate level of parliamentary debate of a decision to derogate. Requiring a parliamentary debate on decisions to derogate ahead of time could undermine operational effectiveness.

Mr Jones: Why?

Johnny Mercer: The Government may have to make decisions quickly, meaning there simply will not be time for a debate.

Mr Jones: Why?

The Chair: Order.
will be amended. Once the Bill is passed, it will, I think, lead to a lot of problems, so I would just like to understand a bit more about how the powers will be used.

Johnny Mercer: I have little to add to what I previously said. The point of these provisions is simply to formalise our position and make sure that where we should have derogated previously to prevent the abuses that we have seen, and we have not, we simply bring forward legislation to make it mandatory to consider that derogation and prove the workings thereof.

Question put and agreed to.
Clause 13 accordingly ordered to stand part of the Bill.
Clause 14 ordered to stand part of the Bill.

Clause 15

COMMENCEMENT AND APPLICATION

Question proposed, That the clause stand part of the Bill.

Mr Jones: Again, I want clarification about clause 15, because there is hype around the Bill somehow righting all past wrongs, and giving rights. Northern Ireland, which we spoke about this morning, is not covered by the Bill, but there is also the question of cases that are currently going on, or those that have been. I just want the Minister to give a response to the fact that the Bill will not apply to past cases relating to Iraq and Afghanistan, and there will not be any fast resolution. I want to get clear parameters from the Minister for which cases will fall within the Bill's scope, because I think—there has been press comment on this—things have been a bit confused, perhaps intentionally and perhaps unintentionally.

Johnny Mercer: I am more than happy to answer that. If the Bill receives Royal Assent, it will apply immediately. It will not apply to any cases where an external, independent decision from the prosecutor on whether to prosecute is awaited, but it will apply from Royal Assent, and there is therefore an element of retrospection to it in that if further things come from Afghanistan, Iraq or wherever it may be, the Bill will apply and provide that certainty. We have been clear all along on the Northern Ireland issue. I have been clear that we will not leave Northern Ireland veterans behind. It was an important concession to achieve—that veterans who served in Northern Ireland will receive equal treatment to those who are covered by the Bill.

Mr Jones indicated dissent.

Johnny Mercer: The right hon. Gentleman can say no, but that is the reality of the position. The Northern Ireland Secretary has spoken before about how he intends to bring forward legislation before Christmas to do that, but it is an issue for the Northern Ireland Office, and I think the right hon. Gentleman knows that.

Mr Jones: I do, and having dealt with the Northern Ireland Secretary, I wish him luck, because he is going to come up against huge problems with that. Is the Minister saying that whatever happens in Northern Ireland will be a mirror image of the Bill?

Johnny Mercer: That is not what I am saying; I am saying that they will have equal treatment as those who are covered by the Bill.

I appreciate that such matters are hard. When I started all this, I was told that we would never introduce this legislation, but we are. The balance is shifting, and we have a duty to those who serve. The Bill, and the measures from the Northern Ireland Office, will see that through.

Question put and agreed to.
Clause 15 accordingly ordered to stand part of the Bill.
Clause 16 ordered to stand part of the Bill.

The Chair: We now come to new clause 2, which we debated as part of an earlier group of amendments. Mr Morgan, do you want a vote on the new clause?

Stephen Morgan (Portsmouth South) (Lab) indicated dissent.

New Clause 3

ACCESS TO LEGAL ADVICE FOR SERVICE PERSONNEL

“Within 12 months of this Act coming into force, the Secretary of State shall commission an independent evaluation of access to impartial and independent legal advice for members and former members of the regular and reserve forces and of British overseas territory forces to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies, in relation to legal proceedings in connection with operations of the armed forces outside the British Islands, and lay a copy of the evaluation report before Parliament.”—(Stephen Morgan.)

This new clause would require the Government to commission and publish an independent evaluation of service personnel’s access to legal advice in relation to the legal proceedings covered by the provisions in the Bill.

Brought up, and read the First time.

Stephen Morgan: I beg to move, That the clause be read a Second time.

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

New clause 4—Access to legal aid for service personnel in criminal proceedings—

“This new clause would require the Government to commission and publish an independent evaluation of access to legal aid for members and former members of the regular and reserve forces and of British overseas territory forces to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies, in relation to criminal legal proceedings in connection with operations of the armed forces outside the British Islands, and lay a copy of the evaluation report before Parliament.”

This new clause would require the Government to commission and publish an independent evaluation of service personnel’s access to legal aid in relation to the criminal proceedings covered by the provisions in the Bill.

New clause 5—Access to legal aid for service personnel in civil proceedings—

“This new clause would require the Government to commission and publish an independent evaluation of service personnel’s access to legal aid in relation to the civil proceedings covered by the provisions in the Bill.
New clause 9—Access to justice for service personnel—

“Within 12 months of this Act coming into force, the Secretary of State shall commission an independent evaluation comparing—

(a) access to justice for members and former members of the regular and reserve forces and of British overseas territory forces to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies, in relation to legal proceedings in connection with operations of the armed forces outside the British Islands, with

(b) access to justice for asylum seekers and prisoners seeking to bring an action against the Crown.”

New clause 10—Duty of care to service personnel—

“(1) The Secretary of State shall establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as defined in subsection (6) of section 1.

(2) The Secretary of State shall lay a copy of this standard before Parliament within six months of the date on which this Act receives Royal Assent.

(3) The Secretary of State shall thereafter in each calendar year—

(a) prepare a duty of care report; and

(b) lay a copy of the report before Parliament.

(4) The duty of care report is a report about the continuous process of review and improvement to meet the duty of care standard established in subsection (1), in particular in relation to incidents arising from overseas operations of—

(a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;

(b) civil litigation brought by service personnel against the Ministry of Defence for negligence and personal injury;

(c) judicial reviews and inquiries into allegations of misconduct by service personnel;

(d) in such other fields as the Secretary of State may determine.

(5) In preparing a duty of care report the Secretary of State must have regard to, and publish relevant data in relation to (in respect of overseas operations)—

(a) the adequacy of legal, welfare and mental health support services provided to service personnel who are accused of crimes;

(b) complaints made by service personnel and, or their legal representation when in the process of bringing or attempting to bring civil claims against the Ministry of Defence for negligence and personal injury;

(c) complaints made by service personnel and, or their legal representation when in the process of investigation or litigation for an accusation of misconduct;

(d) meeting national care standards and safeguarding to families of service personnel, where relevant.

(6) In section (1) “service personnel” means—

(a) members of the regular forces and the reserve forces;

(b) members of British overseas territory forces who are subject to service law;

(c) former members of any of Her Majesty’s forces who are ordinarily resident in the United Kingdom; and

(d) where relevant, family members of any person meeting the definition within (a), (b) or (c).

(7) In subsection (1) “Duty of Care” means both the legal and moral obligation of the Ministry of Defence to ensure the wellbeing of service personnel.

(8) None of the provisions contained within this clause shall be used to alter the principle of Combat Immunity.”

This new clause will require the Ministry of Defence to identify a new duty of care to create a new standard for policy, services and training in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigations arising from overseas operations, and to report annually on their application of this standard.

Stephen Morgan: It is a pleasure to serve under your chairmanship, Mr Stringer.

A running theme throughout the Committee’s evidence sessions was the sad cases of those who could have claimed justice had they received the proper support and advice. We are a country of fairness, one that prides itself on having a legal justice system that is seen as a bastion of truth, founded on the right to a fair trial. It has become clearer and clearer, however, that there are cracks in the system, and that we are not affording people the right support and guidance in accessing the right to a due process and a fair hearing.

There is also the concern that we are not affording our personnel the proper pastoral care and mental health and wellbeing support that they need when required. That is not acceptable. It is imperative that we ensure that our commitment to the armed forces covenant is maintained, and that that promise is honoured. Our country owes a huge debt to our service personnel yet many are unaware of or unable to access support—at least a fair hearing, for instance, when their employer may be liable for negligence against them, or other such claims, or even get the pastoral, mental and wellbeing support that they require when most needed. That is all because of a lack of resources and proper guidance. That risks breaching the armed forces covenant, and also undermines the reputation of our legal system. In turn, it also undermines our country’s wider international reputation, and I know that the entire membership of the Committee does not want that to happen.

Although Labour accepts that it would be counterintuitive and unproductive for the MOD actively to invite litigation and investigation into itself, the MOD has its own reputation to uphold. It is not just a matter of its standing in terms of representing our country throughout the world, whether on operations with our security partners or on humanitarian missions to provide support where it is needed most, but in terms of its own reputation. That cannot be compromised, and our partners need confidence in our MOD, whether that is in relation to an operational security matter, or a legal one. That confidence is necessary because of what it says about how effectively the Ministry is run. If that is called into question, that undermines confidence in two critical areas. First, it undermines our security partners’ confidence in the MOD to run an effective operation. Secondly, it undermines confidence in our MOD and, more broadly, the wider Government to operate our country’s security competently and effectively.

The Bill presents the opportunity to fix the problems that could cause such loss of confidence. We have an opportunity to get this right. I repeat what Labour has said throughout the process; we want to work with the Government to make the Bill better. Where we think we can see it improved, we will work constructively with the Minister, so that the Government get the Bill right. However, these amendments are just an example of how the Bill can be improved and, Mr Stringer, please do not just take my word for that; this issue was specifically raised in earlier evidence sessions by none other than Major Bob Campbell.

2.45 pm

I know that the entire Committee is aware of the difficult experience that Major Campbell has been through and that all Members will join me in offering our
sympathies to him and his family, and our gratitude for his service. However, Major Campbell raised the importance of having access to legal aid and advice, as well as the importance of having better support for dealing with things when they happen and to ensure that cases like Major Campbell’s never happen again.

When Major Campbell spoke in the evidence session, I directly asked him whether the MOD had offered him any support when he was facing the eight criminal investigations that he was subjected to, and he said:

“No, there was none...in the early investigations under the Royal Military Police we were told just not to think about it and to get on with stuff. No concession was given to us in our day-to-day duties. Later on, when the Aitken report was written in 2008, we were not approached prior to the publishing of the report; I heard about it on the radio like everybody else, while I was driving home. It is rather unpleasant to discover on the radio that your own Army accuses you of killing somebody in Iraq, three years after you have already been cleared of that allegation.”

Sadly, the situation got worse. In relation to the civil claim made by Leigh Day in 2010, Major Campbell went on to say

“we were ordered to give another statement and we were ordered not to seek our own legal advice by the Treasury Solicitors. We ignored that instruction: we got our own legal advice, and we declined to assist the Ministry of Defence in defending the civil claim, because frankly we thought they had rather a cheek after previously accusing us of committing that offence.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 24, Q50.]

That is simply unacceptable.

Let me address the points arising from this evidence in turn. First, on criminal proceedings, to offer no support to our troops during a period like the one that Major Campbell went through is not only quite simply damming banning but is behaviour completely devoid of the high standards that we know our armed services hold themselves to. It is quite something for the Government to claim, on the one hand, that they are actively looking to support and protect our troops, and then, on the other hand, to leave them completely shut out, offering no support or guidance, not even allowing staff time to deal with criminal proceedings. That is beyond hypocritical.

Is this truly the way the Government want to treat our service personnel, whom they claim to hold in such regard? Is this really the treatment that the Government deem acceptable?

It is cases such as that of Major Campbell that highlight the need for a guarantee of pastoral support for personnel in circumstances such as his. However, it is also why we believe it is critical to establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as well as a requirement for the Secretary of State in each calendar year to, first, prepare a duty of care report and, secondly, lay a copy of the report before Parliament, to ensure proper parliamentary scrutiny of this provision and that the armed forces covenant is honoured.

Moving on to Major Campbell’s remarks on civil cases, it is one thing not to provide the support and guidance for employees when they face investigations, but to actively be discouraged from seeking justice by the Government in this brazen manner is a line that should never be crossed, particularly in this circumstance.

Does the Minister believe that behaviour is acceptable? Is this the treatment that he would accept if he were in the same position, and, if so, why?

We also heard more evidence of this issue and that a serious level of change is needed to improve legal support for our troops in both civil and criminal proceedings. In an evidential session, we heard from a representative of the Association of Personal Injury Lawyers, a not-for-profit organisation that campaigns for victims of injuries and negligence. During that session, when we asked whether the Government could do more to help troops to be more aware of their route to compensation, the APIL representative said

“absolutely I think they could. In fact, at the moment I do not think that they do anything to inform service personnel of their rights to bring a civil claim...I think that the Ministry of Defence has an obligation under the armed forces covenant to be fair to service personnel. They do provide them with information about the AFCS”—the Armed Forces Compensation Scheme—“but, as I said, there is a much longer period of time to claim under that scheme.”

He went on to argue:

“I think that we also need to bear it in mind that service personnel are quite unique legal creatures in a way.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 52, Q97.]

The witness then gave an example, explaining that personnel are not allowed, unlike civilians, to join a trade union; that service personnel would not be given advice to look for a solicitor, where appropriate. He said that the MOD needed to address this and be fairer with service personnel about the information available to them.

Two important points arise. The first is the risk of breaching the armed forces covenant. This comes back to the point about armed forces personnel being treated fairly. If the Government do not treat our troops with the respect and fairness that they deserve, they could risk breaching the covenant. I know that all the members of the Committee would not countenance that, but can the Minister really support such a state of affairs that breaches the covenant? Labour accepts that it would be both counterintuitive and unproductive for the Ministry of Defence to invite investigations and litigations against itself, but surely a balance needs to be struck to ensure that the covenant is not breached and to get the Bill right.

In oral evidence to the Committee, Hilary Meredith of Hilary Meredith Solicitors discussed whether there was any support in this area. She said:

“If you are a veteran, there is nothing—there is no chain of command. A number of times, the MOD said to me that veterans can go and see the chain of command, and I say that they are retired and are veterans, so there is no chain of command, or their commanding officer has retired. Who do they contact? If you are in service and have a good commanding officer, you can go and seek help through them. I know that the Army legal services tried to help in some instances, but I think there is a conflict of interest with the Army legal services protecting the Ministry of Defence and trying also to protect individuals.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 22, Q41.]

This shows a serious gap in pastoral care and support as well as additional legal support for current and former personnel, and it must be filled. Can the Minister really support a Bill that breaches the armed forces covenant with regard to the unfair treatment of our troops in terms of legal support? Does the Minister believe this behaviour to be acceptable—for troops to be actively discouraged by the Government from seeking justice in
the brazen manner outlined by Major Campbell? Is this treatment that he would accept if he was in the same position? If so, why?

Mr Kevan Jones: I rise to speak to new clause 9, which is in my name. My hon. Friend the Member for Portsmouth South made an important point. We ask our servicemen and women to do dangerous, remarkable things on our behalf. Is there a straight read-across to an equivalent civilian job? No, I do not think there is, if we are talking about combat and some of the other things that we are asking people to do. We are asking two things: that they will ultimately have to take human life or give their own life in defence of this country and their comrades. That is a unique set of circumstances that many of us will never experience.

It is important, therefore, that we get it right and support our servicemen and women on two sides: where, because of their actions, they are accused of wrongdoing, or where, in the service of their country things are done to them through no fault of their own. They may contract a disease as a result of work conditions or for reasons of stress or, often, for a combination of the two, and this is often widely ignored. The problem with some of the Bill is that we are quite rightly focusing on the unique set of circumstances in foreign combat. There is also a whole swathe of areas where people are not in immediate danger but are capable of being injured while serving their country. That applies to a chef on a ship right through to somebody who is working in a maintenance depot.

If these service personnel were in civilian life, they would be allowed to join a trade union and to get independent legal redress. I think it was mentioned in the evidence session that the Dutch armed forces have a staff association or trade union. Although they do not have recognised trade unions in the United States, they have very strong regiment associations. The US Marine Corps has a very strong representative for its members and, having met the individual, very strong lobbying power on Capitol hill.

Chris Evans: When I was a young parliamentary researcher, a rather young hon. Member for North Durham raised this issue in a Westminster Hall debate in, I think, 2006—it might have been 2007. At the time, he was on the Back Benches and was yet to be appointed Minister for Veterans. What was stopping some form of association emerging? He argued for such an association in the Westminster Hall debate, but what sorts of obstacles did he encounter from military brass when he was in the Ministry of Defence?

Mr Jones: I am not in favour of a trade union for the armed forces—let me make that very clear—but there needs to be some type of representative body for members of our armed forces. The reasons argued against it were the same reasons that were argued when we brought in the service complaints commissioner and the ombudsman—that somehow it would affect the chain of command. Has the world stopped since we have had the ombudsman and the service complaints commissioner? No, it has not. It is not perfect, but the world has not stopped. I used to describe it as a pressure cooker: it allows another avenue for disputes or complaints to be dealt with in a timely way.

Reading the ombudsman’s annual report, I think she is making great progress, but there is a long way to go. A lot of the complaints that come forward are nothing to do with combat; they are to do with the way in which the Army handles its personnel issues—issues that, to be honest, would in some cases be very similar to what we would find in private industry.

I turn to the issue of representation. If we are going to have fairness, there has to be a level playing field. It surely must be right that there should be some way for members of the armed forces to have legal redress. I am not talking about minor disciplinary cases and things like that; I am talking about some of the serious cases that have been outlined. If you cannot sleep tonight, Mr Stringer, it is worth reading the Defence Committee’s 2016 report on this issue—I referred to it earlier—called “Who guards the guardians? MoD support for former and serving personnel.” The Minister was on the Committee at the time. The report was mainly about the issues around the IHAT inquiry. It did not only find, as we have already heard, the catastrophic delays that were happening, but it raised the issue of who represented the members of the armed forces who were being accused. As my hon. Friend the Member for Portsmouth South says, not only were they not represented, but they were actually encouraged in some ways not to take representation. I think even Major Campbell said in his evidence to us that he was more or less told, “Go away—it’ll be okay, everything will be all right.”, but it dragged on and on.

3 pm

In its 2016-17 report, the Select Committee said:

“...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—‘...That was welcome, but by that stage IHAT had been going for nearly six years. I do not know whether that continues today for other accusations made against servicemen and women. That should be the basis: that in the first instance they have access to preliminary basic legal advice. If that could be brought in for IHAT—that was quite clearly done because of the publicity that it got—I would ask why we are not doing it now for servicemen and women who are affected by cases today.

That comes to an issue that came up in the evidence session: if we are going to have a system whereby servicemen and women have a limited number of rights already, why do they then get the support they need when it comes to this? That is why in this Bill Committee one of the Government supporters said, “...speaking last night” that is why in this Bill Committee someone referred to “...stripping the tree” further by taking away their limitation rights under section 33 of the Limitation Act. That came through in the evidence of not just one witness, as has already been said, but quite a few.

If we look at, for example, Lieutenant Colonel Parker’s evidence to the Committee, he said:

“When I was involved in a public inquiry—it was the Baha Mousa public inquiry—there were five separate teams of lawyers and barristers, of which two were consulting me as a person giving evidence, not in any accusatory sense, but for contextual evidence. I was amazed by how much effort and money was being spent on that. The accepted norm is that a lot of people are left to their own devices and are not able to access the same level or scale of funded assistance when they are accused by...investigations such as IHAT and others.”—[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020, c. 110, Q220.]

That is someone who had actually been part of that. The Minister has asked how the Bill could be improved and he has said he is listening, but there is not much
evidence of that so far. I have already tabled my new clause on investigations, but this is one of the single things that could be in this Bill, accepting the point that we need a level playing field so we do not find a situation whereby, as was referred to by Lieutenant Colonel Parker, we have a small battalion or lawyers and barristers at God knows what cost and then servicemen and women are basically left on their own.

That cannot be right. That is not justice, because if we are going to say that the armed forces covenant means anything, surely we should be treating people fairly and making sure that they get access to justice. I do not think it is a level playing field. I raised in an evidence session the issue of support, and not only when people are going through cases. What happens afterwards when, like a lot of these individuals, they have not been found guilty of anything, but they have gone through a lot of trauma, such as in the Campbell case? Where is their resource then? That is the important point. We should allow people to have some type of advice on what redress they could get against what is a totally unacceptable pack of cards that is basically stacked against them.

I will now refer to new clause 9. You will be pleased to know, Mr Stringer, that we are now back to limitation and the issues surrounding that. I do not expect to repeat everything that I said this morning, but there is no money resolution for the Bill, so we cannot add things that cost money into the Bill. But this proposal would not cost money. It just asks the Secretary of State to commission an independent evaluation. If we are as confident as the Minister is that 94% of veterans and servicemen bring their case within a particular time, we do not need a level playing field so we do not accept that at all. It is about being fair by our people. This balancing act between the two is, I think, wrong.

The response to a question asked by the hon. Member for Wrexham in an evidence session was as follows:

“We have to remember, again, that the individuals concerned are not people who are able to sit and pick through legal documents, nor understand them. Whether we ask the most vulnerable or tough people in our society to go forward and do these extremely tough and brave point-of-the-spear jobs, such as combat roles, we must remember that we have a duty of care to protect them from anything—intellectual or otherwise—that might affect them later in their distress.”——[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020, c. 112-113, Q225.]

I completely agree. That is what it comes down to, and we need to be able to assess that.

The new clause would also help with the concerns I have around the Bill and the covenant, because the limits it places on section 33 of the Limitation Act 1980 clearly breach the commitment that we all have to the Covenant. That was clearly demonstrated in evidence from Charles Byrne, who said:

“I think it is protecting the MOD, rather than the service personnel—that is the debate that we have had.”——[Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 8 October 2020; c. 86, Q163.]

That would be an unintended consequence because as I said this morning, I do not think that that is the purpose of this change. To pick two groups at random—we could add more, such as Members of Parliament—I think most people would be horrified if asylum seekers and prisoners had more rights than service personnel, or if cases were being prevented from being taken forward by members of the armed forces because of the Bill’s limiting of section 33 of the Limitation Act.

I have a couple of final points on this. On the level playing field and trying to go up against the Phil Shiners of this world, in respect of the first incident I talked about the new clause would actually have given the member of the armed forces who was bringing a case against the MOD the right to legal advice. However, the other case was a situation in which the serviceperson was accused. Early legal advice in some of those cases would quite clearly have been very useful for those individuals: it would have given them peace of mind, knowing that they had somebody who they could refer to and ask about their position. I know it is always said that there is the chain of command, but the chain of command in these cases, as we heard from Major Campbell, is sometimes a bit conflicted. The new clause would give those individuals the confidence that they had somebody on their side.

The new clause would also shoot down some of these cases very early on as well, because another set of legal eyes looking at some of the spurious cases that Shiner brought forward would have turned around to the MOD and said, “Hang on a minute. Why aren’t you just closing these down now that they’re here?”

Another issue that came around was that certain servicemen and women were not able to stand up and say, “Wait a minute. I have rights here.” As we heard in evidence, under the Human Rights Act people have a right to a fair and speedy trial. The coalition Government spent, I think, £60 million on HAT. Just a fraction of that would have been helpful to those servicemen and women, and would have given them some confidence.
Another thing that Major Campbell raised—it must be awful, as I said this morning—was the people accused of something who do not know what they had supposedly done. There is also an access to justice point, in terms of people being kept informed of what is happening with their cases. We heard evidence from the Defence Committee and, I think, Major Campbell that they are left in legal limbo—just left there. The new clause would have given them confidence.

In assessing these cases, we come back to the issue raised in the ombudsman’s annual report this year. She said that the problem with the MOD is that it takes too bloomin’ long to get on and do the most simple of cases. That adds to people’s mental ill health. If we had an annual report that had to be put before Parliament and discussed, that would put a focus on this matter annually. We could ask questions. Although we have the annual report from the ombudsman, that is about people who take cases to them.

3.15 pm

Access to justice for our armed forces—cases, numbers and what is actually happening—would allow us in Parliament to make the case. It would also focus minds in the Ministry of Defence and cause the Secretary of State, whoever he or she was, to think that this matter is given priority. That is the purpose and, again, the Bill is about people’s mental ill health. If we had an annual report that had to be put before Parliament and discussed, that would put a focus on this matter annually. We could ask questions. Although we have the annual report from the ombudsman, that is about people who take cases to them.

Chris Evans: I rise to speak in support of new clause 10 on a duty of care, but before I begin it would be remiss of me not to mention the good work that the Minister has done since he came to the House on the treatment of mental health, which I believe has put the issue to the forefront. We have a knockabout in this place—I speak for the Opposition; he for the Government—but when somebody is trying to do their best, they should be praised and that should be put on the record. I place on the record my thanks for all the work that he has done on mental health—not just since becoming a Minister, but since coming to this House. I think we can all agree that that has been the right thing to do.

New clause 10 provides for a duty of care to service personnel. It says:

“The Secretary of State shall establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as defined in subsection (6) of section 1.

(2) The Secretary of State shall lay a copy of this standard before Parliament within six months of the date on which this Act receives Royal Assent.

(3) The Secretary of State shall thereafter in each calendar year—

(a) prepare a duty of care report; and

(b) lay a copy of the report before Parliament.

The duty of care report is a report about the continuous process of review and improvement to meet the duty of care standard established in subsection (1), in particular in relation to incidents arising from overseas operations of—

(a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;

(b) civil litigation brought by service personnel against the Ministry of Defence for negligence and personal injury;

(c) judicial reviews and inquiries into allegations of misconduct by service personnel;

(d) in such other fields as the Secretary of State may determine.”

That really drives at the heart of the concerns that we have had about the Bill. We have talked often about legislation and how it will change, but as we have seen in many interventions from my right hon. Friend the Member for North Durham and my hon. friend for Portsmouth North—

Stephen Morgan: South.

Chris Evans: Sorry. Maybe next time; that is the third mistake I have made today. As my right hon. and hon. Friends said, the crux of the Bill is not just about the investigation, but the investigation. I believe from what the Minister has said that he has some sympathy for that as well.

The problem that we have with mental health, of course, is that we do not know what somebody’s background is when they join. Yes, they do psychometric testing and follow tests for reading and writing, and so on, but we do not know what was in their background. What was their family history? Might they have experienced personal distress or trauma in their childhood? That leads on to the problem that military investigations are often preceded by internal disciplinary acts.

What actually happens is that someone is faced with two pieces of law, especially if they have had a mental health problem. They have civilian law on the one hand and military law on the other, making things extremely complicated.

For example, investigations in military contexts are often more complex and involve additional investigative personnel, many of whom do not deal with investigations as their primary task. Therefore, we have all these multi-layered rules and regulations that are not in civil law.

Mr Jones: I agree with that. The Armed Forces Act 2006 tried to simplify the legal system, but the issue, again, is time delays. If we look at the ombudsman’s report each year, some of the simplest disciplinary issues should have been dealt with. That is not about investigations; it is about resources.

Chris Evans: As I said, the military are not employing full-time investigators. Many of the people who are investigating are doing other jobs as well.

It can get even more complicated. In cases of suspected disciplinary misconduct, the initial investigation is usually done by the immediate disciplining senior officer. That can then move on to the military supervisor; which makes it even more complicated again. In cases of suspected criminal acts, military police and probably legal advisers are called in as well. So we have large numbers of people who are speaking to each other and who are getting confused about the rules, regulations and what is covered by what law. It is increasingly confusing.

Consider someone who already has problems with alcohol or drugs. I have some sympathy with what my right hon. Friend the Member for North Durham
said earlier. When veterans are going through the criminal justice system—I am sure the Minister knows this—they often rely on the defence of post-traumatic stress disorder, but if we look at the facts, there is little research into how much it affects criminal behaviour. I am aware that 4% to 5% of the prison population—

Mr Jones: It is 3%.

Chris Evans: It was in 2016. The figure I have is 4% to 5%. If my right hon. Friend wants to correct me, I would be happy to take an intervention.

Mr Jones: Before 2010—I instigated the review—they had no figures at all about the numbers. The important thing is that the number is small. Most of the people who go through military life get a positive benefit out of it.

Chris Evans: That is the point I was getting to. Based on the Ministry of Justice figures that I have—the Minister may want to correct me—2,500 former members of the armed forces are in prison, largely because of sexual or violent crimes. However—again, my right hon. Friend might want to correct me, because I might be using out of date figures—0.1% were discharged from the armed forces, usually for mental health reasons. Are those figures that he recognises?

Mr Jones: The problem my hon. Friend underlines is the same problem I think the Minister will confirm we have today. Some people claim that 25% of the prison population is veterans, which is nonsense. The real problem—again, it was a problem when I was a Minister, and I am sure it still is today—is early service leavers. A lot of these people are early service leavers.

Chris Evans: Whatever the figures are, these people are still vulnerable to social exclusion and homelessness. I well remember a harrowing case from when I was growing up of a boy who joined the forces. He came straight out of care, and he did not do very well in the forces—he did not get above private. He had severe mental health problems. He came out and he could not operate outside of a stringent regime. He went to pieces and ended up in prison for committing a violent crime. It was very harrowing because I knew the family.

Mr Jones: Just because someone joins the armed forces, it does not mean that their mental health history is scrubbed at the recruitment door. My hon. Friend is right. A lot of things are put down to military service that are pre-military service. It is sometimes wrong to blame the service for some of those issues.

Chris Evans: My right hon. Friend is absolutely right. The person who was recruited in this case was clearly unsuitable for the forces. He did not take advantage of the fantastic opportunities that there are in the forces. He clearly had some sort of problem, and he needed to live in that regime where he was told what to do day in, day out. Once that left his life, his life went completely off the track. He said that he missed not just being told what to do but the camaraderie of his unit. Once that was gone, he felt friendless and alone.

However, the problem we have is that there is a dearth of academic research, and that is why we need a report. We do not know the unique factors that have an impact when it comes to military investigations, including the psychological wellbeing and the mental health of service personnel. I know that the Minister is a champion of this in the Government, and I am glad of that fact—I know that he will work on this issue for as long as he is a Minister—but that is the problem we have, and it is why we need a report. There are large numbers of factors that help personnel deal with the complexity of disciplinary and criminal proceedings and the potential of those two processes, but we do not know their effects.

Returning to the example from many years ago that I mentioned, there is also the point about camaraderie. When someone is under investigation, whether disciplinary or criminal, that has an effect on the morale of their unit, which in turn has a wider effect on their mental health. At the end of the day, many people who find themselves under investigation will say one thing: “I was simply following orders. Why am I the one being investigated?” Also, as my right hon. Friend the Member for North Durham alludes to, there are far more laws, regulations and rules in a military investigation. Some military laws have different objectives from criminal and civil laws: in contrast to the criminal law, military discipline has educational objectives, positive as well as negative.

I am not an expert on military law, but I would say that it is confusing. Take the example of a military guard guarding a checkpoint in Helmand 15 years ago, protecting the security of a region’s population. An approaching vehicle opens fire on them—imagine it is you, Mr Stringer. In this role, you as the guard are the victim: you have been fired on. However, you return fire, and you kill the alleged insurgents in the vehicle. That could mean you are investigated simply for following orders and returning fire. That is the crux of the problem: on one hand, somebody is the victim of a crime; on the other hand, they are the perpetrator of a crime, simply because they have followed orders. That is the type of thing I hope we can clear up in future.

Jack Lopresti (Filton and Bradley Stoke) (Con): It is always a pleasure to hear the hon. Gentleman speak, and I am enjoying his contribution, but I think he is perhaps being overly simplistic. At the stage he describes, we are not sure that a crime has been committed. There are clear rules of engagement, so there is not a perpetrator and a guilty party at that stage. The military needs to investigate quickly, and as long as the rules of engagement have been followed and that guard can demonstrate that, in their own mind, they were acting to protect life—their own or that of people around them—a crime has not been determined to have been committed at that stage.

Chris Evans: I thank the hon. Gentleman for that intervention: he is always thoughtful, and his intervention was helpful. I should apologise, because I should have put “allegedly” in front of that example. I hope Members will accept that apology. The hon. Gentleman is absolutely right, and that was a very helpful intervention—I would not expect anything different from him.

However, what I would also highlight about these investigations—again, this is because of the lack of academic research—is the vulnerability of so many of these people, and I want to say something about learning disabilities.
Mr Jones: The hon. Member for Filton and Bradley Stoke makes a very good point, because these things are covered by the rules of engagement and the training that takes place. However, they are incredibly easy to look at and make a determination about while sat in a nice, comfy armchair away from the place where they occurred. These cases involve split-second decisions, and mistakes do happen. The important thing, surely, is that the investigation that comes afterwards should be done as rapidly as possible so that it takes the onus and pressure off the potentially accused individual.

Chris Evans: My right hon. Friend is absolutely right: the investigation should be effective and efficient. As I said while building up the background to this issue, if we could cut the multi-layered process that people have to go through down into one simplified investigation, that issue would be resolved pretty quickly.

3.30 pm

Mr Jones: Would that not be achieved by including in this Bill the suggestions that I made in my new clauses—suggestions that are completely missing from the Bill—about making sure there is some judicial oversight of those investigations after a certain period of time? The individual my hon. Friend refers to would at least be able to have his or her case looked at judicially after a certain period of time, and if the investigation was going nowhere it could be dismissed.

Chris Evans: That is eminently sensible, and I hope that at some stage the Government will accept that and perhaps put it in the Bill. That is up to the Government, but I think that that is absolutely right. The problem is that these investigations seem to go on for ever and ever. For ex-service personnel or veterans, if there is no end in sight, that will affect their mental health. That is surely one resolution that could be written into the Bill.

I want to talk about learning disability. Obviously, if someone has a physical disability, they are disbarred from joining the armed forces, but we have to address the issue of mental disability. Someone can go through life without being diagnosed as dyslexic or autistic, or as having attention deficit hyperactivity disorder. There are many cases of people in their 40s and 50s being diagnosed with those conditions, which we do not know about. When someone is under investigation, how do we know that they do not have those types of disabilities? Usually, if someone is arrested under civilian law, they have a responsible person with them—a designated person. People do not have access to that in the military.

Mr Jones: My hon. Friend makes a very good point. When I was a Minister, the average reading age of some of the infantry when they were recruited was 11 years of age. All credit to the Army and the Darlington College at Catterick for doing a great job of getting people’s reading ages up. The problem that was spotted, which had never been spotted before, was dyslexia. Individuals had gone through the education system without being diagnosed until they were in their late 20s.

Chris Evans: There is still a huge stigma in relation to illiteracy, as my right hon. Friend knows. A lot of issues in the prison population concern people with undiagnosed learning difficulties. There are higher than normal levels of illiteracy that we need to address. However, someone who has come through the basic tests to join the forces might be on the autistic spectrum but still able to function, and they need the help of a designated person as well.

I have written down something about a split decision. I do not know whether Members remember the case of Alexander Blackman, a Royal Marine who had his conviction for murder quashed on the grounds of diminished responsibility in 2016 after he had fatally wounded a Taliban prisoner. Blackman’s lawyers argued that he had an adjustment disorder at the time of the killing, because of months on the frontline in terrible conditions, and we can see how that would affect his mental health.

The whole issue of investigations comes down to one thing: training. Written evidence from David Lloyd Roberts and Dr Charlotte Harford stated: “Regular and effective training for the armed forces on compliance with the law of armed conflict can reduce the risk of situations arising in which allegations of war crimes are levelled at British service personnel serving overseas. There is no need for military personnel to be given a comprehensive legal education. However, if knowledge of and consistent respect for the following ten principles, at least, can be instilled in all members of the armed forces, they should have little reason to fear prosecution...Torture is prohibited in all circumstances...Summary executions are prohibited...Those hors de combat may not be attacked...Only military objectives may be deliberately attacked...Civilians may not be deliberately attacked unless they are taking a direct part in hostilities...Buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law may not be deliberately attacked...Combatant adversaries may not be treacherously killed or wounded...The wounded and sick must be collected and cared for...Prisoners of war should be evacuated from the combat zone as soon as possible...The dead may not be despoiled or maltreated...Effective training on the law of armed conflict is likely to take the form not of the testing of theoretical knowledge, but of presenting members of the armed forces on a regular basis with hypothetical (but realistic) scenarios in which to practise thinking how military operations in a particular context might be conducted effectively in compliance with the above principles.”

I think that is eminently sensible, but if we are producing a report to Parliament, we can start building on the gaps in knowledge about mental health and its effect on service personnel. I look forward to the Minister responding on the basis of his knowledge. I am sure he will give us an interesting insight.

Johnny Mercer: I pay tribute to the hon. Gentleman. This place can get packed with people who left the military quite a long time ago who think that they are the sole voices that matter on these issues. They are clearly not, and I have always maintained that. [Interruption.] I am talking about people such as my hon. Friend the Member for Aldershot. [Laughter.]

Just to be absolutely clear on the previous point, the correct position on commencement provisions is that the Bill does not apply to any proceedings that started before the provisions come into force. I mentioned prosecutions; it is proceedings before any provisions come into force.

On this part of the bill, I want to speak to the new clauses, and then I will finish with a couple of remarks. New clauses 2, 3 and 4 would require the Defence Secretary to commission and publish an independent evaluation of access—

The Chair: Order. We are on new clauses 3, 4, 5, 9 and 10. We have dealt with new clause 2.
Johnny Mercer: Sorry. New clauses 3 and 4 would require the Defence Secretary to commission and publish an independent evaluation of access to legal advice and legal aid for service personnel and veterans in relation to the legal proceedings covered by the Bill. The MOD has a long-standing policy that, where a service person or veteran faces criminal allegations in relation to incidents arising from his or her duty, they may receive full public funding for legal support, as well as pastoral support for as long as they are serving. That was not the case when I first came here, and Bob Campbell indicated to us his experiences. The situation changed when I was running the inquiry into the Iraq Historic Allegations Team. Clearly, my views on that are well known, and they have not changed just because I have become a Minister.

Mr Jones: Is the Minister saying that, in the future and now, that will include families’ legal costs?

Johnny Mercer: Yes. There is full pastoral support and full legal support, paid for by the MOD, for everybody swept up in these investigations. My right hon. Friend is absolutely right. It was not like that until about two years ago, so that is a very fair point to raise.

We do that because we should look after our armed forces, both on the battlefield, where they face the traditional risks of death or injury, and in the courts, where they face the risk of a conviction and a prison sentence. We therefore aim to provide legal aid case management and funding for those who are, or were at the time of an alleged incident, subject to service law.

Because of the risks our service personnel and veterans face, our legal support offer is now very thorough. For the benefit of the Committee, I will set out some if its provisions. The legal aid provided by the armed forces legal aid scheme provides publicly funded financial assistance in respect of some or all of the costs of legal representation for defendants and appellants who appeal against findings and/or a punishment following summary hearings at unit level. That includes applications for extensions of the appeal period by the summary appeal court, for leave to appeal out of time, or to have a case referred to the Director of Service Proceedings for a decision on whether the charges will result in a prosecution. That includes offences under schedule 2 of the Armed Forces Act 2006, which are referred directly to the Director of Service Proceedings by the service police, as well as matters referred to the Director of Service Proceedings by the commanding officer. It also includes those who are to be tried in a court martial or the service civilian court; those who wish to appeal in the court martial against the finding and/or sentence after trial; and those who are entitled to be tried in a criminal court outside the UK.

The legal aid scheme applies equally to all members of the armed forces, including the reserve forces when they are subject to service law, as well as to civilians who are, or were at the time of an alleged incident, subject to service discipline.

Mr Jones: The Minister calls it a legal aid system, but finding that they have no recourse at all. Does it mirror the national legal aid system, or is it a bespoke system without the financial constraints?

Johnny Mercer: It is a bespoke system for military personnel. It is now used extensively by veterans in particular, who previously have not been supported. For example, Government legal services were provided in the al-Sweady inquiry. The challenges came when these investigations got to the case of, for example, Major Bob Campbell. They were not being funded at the time, but they are now. It is based on the same principles as the civilian criminal legal aid scheme. They are the same principles but it is bespoke for the military. It makes necessary adjustments to take into account the specific circumstances and needs of defendants and appellants in the service justice system. As a result, I am confident that we are already ensuring that service personnel veterans are now properly supported when they are affected by criminal legal proceedings.

Mr Jones: An issue I have always felt very passionate about is the representation of families at coroners’ inquiries. Does it also cover that? Many service men and women, and many families, felt daunted that they were up against legal representation, when they were there on their own in many cases.

Johnny Mercer: I am happy to write to the right hon. Gentleman on that subject. As I understand it, a coroner’s court is different. There is support for service personnel or for bereaved families in those cases. These are often not criminal proceedings so the requirement for legal aid is not there, but they are supported and I am happy to outline that in a letter.

I am now confident that service personnel and veterans are properly supported when they are affected by criminal legal proceedings. The armed forces legal aid scheme does not provide legal aid funding for civil proceedings, but we are content that the funding available for service personnel and veterans through the legal aid regimes in different parts of the UK is now sufficient. If a service person or veteran brings a claim against the MOD, we obviously cannot fund that claim as there would be a conflict of interest. We have heard from a number of law firms, as well as the Royal British Legion, that may be prepared to support those cases if they see merit in them. If veterans or service personnel need to access the legal aid scheme, they would be doing so on the same terms as a civilian would. However, in the first instance—before considering whether to bring a claim—I would encourage any service person or veteran to consider the armed forces compensation scheme, which the right hon. Member for Durham North mentioned. It provides compensation irrespective of fault across the full range of circumstances in which illness, injury or death may arise as a result of service, and it avoids the need for claimants to go to court.

Liz Twist (Blaydon) (Lab): A number of our witnesses, including Hilary Meredith of Hilary Meredith Solicitors, talked about the lack of support for veterans. If someone is still serving in the armed forces there may be something, but for a veteran it is as if they were not formally part of the armed forces. These new clauses, among other things, were designed to assist in that progress towards ensuring that the support is in place.
Johnny Mercer: I am confident that the support is of a different nature from the support available when I started this process years ago. Obviously the Department cannot fund legal action against itself, because of the conflict of interest. What is being requested here is not deliverable. As I outlined previously, the RBL and many law firms are prepared to support cases if they see merit in doing so. For cases where individuals are called to be witnesses at inquests and public inquiries, of course we provide legal advice, and logistical and financial support, to those who need it to attend court and inquest hearings. As I have outlined, a comprehensive support package is in place in relation to legal proceedings. There is also the provision of welfare and pastoral support. I will cover that in more detail in relation to new clause 10. I therefore suggest that a review is unnecessary, given how comprehensive our legal support package now is.

3.45 pm

New clause 9 would require the Defence Secretary to commission an independent evaluation comparing the access to justice available to service personnel and veterans in relation to legal proceedings in connection with overseas operations with the access to justice available to asylum seekers and prisoners seeking to bring claims against the Government. In my view, that comparison is not the right one to make. Prisoners and asylum seekers are not involved in legal proceedings in connection with overseas military operations. They do not face the same risks as our personnel and are unlikely to witness some of the situations that service personnel will. It is too easy to compare someone who is not a service person with a service person and make those comparisons when it suits, but comparing prisoners and asylum seekers with veterans and service personnel in this way is like comparing apples with pears, and it ignores the intent of the Bill.

The purpose of the limitations in the Bill is to provide greater certainty for service personnel and veterans in relation to vexatious claims associated with historical events that occurred in the uniquely complex environment of armed conflict. Prisoners and asylum seekers are not exposed to those same environments. It is also worth reminding the Committee one last time that the Bill will not prevent service personnel and veterans from bringing claims within the required timeframe, which historically most have done anyway.

New clause 10 would establish a duty of care standard and require the Secretary of State to report on it annually. We take extremely seriously our duty of care to our personnel. Pastoral and practical support will always be available to them. In particular, veterans of events that happened a long time ago may have particular support requirements and concerns, in which case we can put in place special arrangements for them.

Mrs Lewell-Buck: As we are coming to the end of the Committee, it is appropriate to remind the Minister that on 5 October, at the Joint Committee on Human Rights, in accepting that there were deficiencies in the Bill, the Minister said he wanted to “work with Committee members and Members across the House to...improve this Bill”.

Can he point to where he has done that in Committee? Since he acknowledges that there are flaws in the Bill, what does he intend to bring forward on Report to improve a Bill that he has already acknowledged is flawed?

Johnny Mercer: I do not accept that and have never said that this legislation is flawed.

I have already covered the comprehensive legal support that we already provide to service personnel and veterans in relation to legal proceedings, so I will not repeat them here. In terms of mental health, welfare and pastoral care, a range of organisations are involved in fulfilling the needs of personnel who become involved with legal processes, which will vary according to individual need and circumstance.

Veterans UK is the official provider of welfare services and supports former service personnel throughout the UK. It will often act in partnership with service charities or other third sector organisations—for example, the Royal British Legion, Combat Stress and SSAFA—towards whom veterans are directed. The regimental association of a veteran’s parent regiment will often be the most familiar and accessible link through which the individual can maintain the link to the military hierarchy, which allows any issues of concern to be raised with the Army chain of command or the MOD, outside of legal channels. That is often the most relied upon and effective way of providing pastoral support. Of course, veterans can also access help and support 24/7 via the Veterans’ Gateway.

In relation to service complaints, there is a well-established process through which service personnel can make complaints. The Service Complaints Ombudsman reports annually to Parliament on that. These are all well-established policies and processes, but of course we continually review them to ensure that they provide the best support and care possible for our personnel. We are clear about our responsibilities to provide the right support to our personnel, both serving and veterans, and to seek to improve and build on them wherever necessary. I do not believe that setting a standard for duty of care is therefore necessary, and nor does it require an annual report to Parliament. I therefore request that new clauses 3, 4, 5, 9 and 10 are not pressed.

Question put and negatived.

The Chair: Does any Member wish to move any other new clauses formally?

Mr Jones: New clause 9 is a probing amendment. The important point is that I think the Minister has missed the point again—the comparison is that prisoners are going to have more rights than veterans.

Bill to be reported, without amendment.

3.51 pm

Committee rose.
Written evidence reported to the House
OOB14 Law Society of Scotland