



Supplementary written evidence submitted by the Royal British Legion (OOB10)

Overseas Operations (Service Personnel and Veterans) Bill

House of Commons Committee Stage written evidence

1. Summary

The Legion is grateful for the opportunity to have been able to present oral evidence at the committee stage of the Overseas Operations (Service Personnel and Veterans) Bill. In addition, we are pleased to submit written evidence with further detail.

As outlined in our previous briefing issued for the second reading of the Bill and in our oral evidence, whilst the Legion welcomes the intent of the Bill, the Legion has concerns with Part 2 of it. 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 risks a breach of the Armed Forces Covenant as there will continue to be no limit for civilians in relation to their employer.

The Legion believes 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 on pursuing a civil claim against the Ministry of Defence (MoD) as an employer, and to avoid a breach of the Armed Forces Covenant.

2. Civil litigation longstop

Part 2 of the Bill introduces a maximum time limit of six years (after the date of incident or knowledge) for any claimant, including for bereaved families and injured personnel, to bring civil claims for personal injury or death against the MoD in connection with overseas operations.

Under Section 11 of the Limitation Act 1980 (and in equivalent legislation for Scotland and Northern Ireland), personal injury claims are already obliged to be brought within three years of the date of an incident. Where a claim falls outside of this time limit, the MoD under existing legislation can raise limitation as a defence to a claim. However the limitation period can be extended by a court taking into account factors such as the reasons for the delay, the duration of any disability that arose, and the conduct of the defendant (in this case the MoD). Safeguards therefore already exist to ensure that claims are only brought forward where judged appropriate. The Bill introduces further safeguards to ensure that the wellbeing and mental health of serving and former personnel, who may be required to provide evidence in the case, is also considered.

Removing the ability for members of the serving and ex-Service community to bring forward a civil claim *at all* after six years, even where it would have passed judicial scrutiny to be worthy of pursuit, is therefore unnecessary. It could also limit the ability for lessons to be learnt where an injury or death of a serving person highlights failings in policy or practice,

and which unless identified, could otherwise persist to the potential detriment of other personnel.

3. The Armed Forces Covenant

Scope of the Armed Forces Covenant

It has been suggested that the principle of 'no disadvantage' in the Covenant should not apply when comparing those who are injured or bereaved as a result of overseas operations with the general civilian population.

No such caveat exists within the wording of the Covenant and we would be concerned at any attempts to narrow its scope less than ten years on from our successful, and hard fought, campaign to have it recognised in legislation in the Armed Forces Act 2011. Furthermore, the Covenant explicitly states that not only are those who are injured or bereaved within scope of the Covenant, they are additionally eligible for special consideration in recognition that they have given the most in Service – which would point in the direction of greater, not lesser, legal protection.

It is therefore right and proper, and in line with the principles of the Covenant, that those who are injured or bereaved should face no disadvantage compared to other citizens as a result of the sacrifice the nation asks of them.

Disadvantage under the Covenant

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”;

and

“in accessing services, former members of the Armed Forces should expect the same level of support as any other citizen in society”

In line with this principle, the Limitation Act 1980 (and its equivalent legislation for Scotland and Northern Ireland) currently enables parity of treatment between those who are taking a claim for personal injury or death against the MoD, and those who do so within the civilian world. Where discretion is appropriate, the Legion agrees that an independent arbiter, such as the judiciary, is a necessary component for this to take place.

The Legion is therefore concerned that the Bill creates a unique deviation from the Limitation Acts of the UK, by removing the ability after 6 years from an incident or date of knowledge for members of the Armed Forces community to bring a claim for injury or death where it is deemed to have worth by a court. This will constitute a disadvantage for members of the Armed Forces community in comparison to civilians, who will retain an ability to pursue a civil claim against another body or their employer after 6 years.

4. Numbers affected by a 6-year backstop

The government's impact assessment for the Bill states that 70 of the 552 Employer's Liability claims brought so far by current and former service personnel and their families since 1 May 2007, where a date of incident has been recorded and the country of incident has been recorded as either Iraq or Afghanistan, were brought after 6 years. It also states

that overall, “analysis indicates that 93.8% of claims brought on behalf of current and former service personnel would fall within the proposed absolute limitation longstop of six years.”

In order to reach the 93.8% figure, the assessment states that the government analysed 39 of the 70 claims brought after 6 years. Of those analysed, 19 were more than 6 years after date of knowledge. The analysis for the impact assessment then assumes that the remaining 31 unexamined cases will split the same way.

This therefore raises a number of concerns:

- The 93.8% figure is based on an extrapolation from a sample of cases, and not on an actual examination of all post-6 year cases.
- A footnote in the impact assessment notes that these figures are a *minimum*, as incident locations are not always recorded and some claims (e.g. hearing loss) list various countries – all of these claims “*have been excluded from the analysis.*”
- The sample further only concerns those on operations in Iraq or Afghanistan, and not the full range of overseas operations.
- Even on the basis of the government’s figures, there are still between 19 and 50 veterans and families who would have been prevented by this time limit from taking forward a claim where the MoD was potentially at fault had it been in place at the time of their claim.
- The policy rests on two uncertainties: that the unexamined claims split on the same basis; and that in future people would bring their claims sooner.

Even if the calculation of the 93.8% figure were certain, we would remain concerned at its conclusion, given that the result shows that there would be injured and bereaved veterans and families, who have been found by a court to have reasonable justification to take forward a claim, who would have been prohibited from doing so under the proposed new limit.

5. Point of Knowledge vs Date of Incident

The Legion is aware that there is debate as to whether the time limit proposed for the civil litigation longstop will be mitigated by the period beginning at the point of knowledge or diagnosis rather than the point of incident.

However, the figures, as set out by the Government’s own impact assessment of the Bill, show that at a minimum there are 19 injured or bereaved members of the Armed Forces community whose claims from operations in Iraq and Afghanistan would have been blocked had the limit as currently set out been in place at the time. Given the impact assessment’s concession that its figures are an underestimate due to the exclusion of cases from the analysis, the final total is almost certainly higher.

It is difficult to know how a claimant, having undergone a difficult or traumatic event such as injury or bereavement, may react or behave and the Limitation Act as it currently stands is in place to judge the validity of a delay. However, as outlined by other Committee witnesses, there are many reasons why meritorious claims may be brought after the proposed 6-year time limit, including but not limited to:

- Concern over impact on a career
- Progressive conditions such as hearing loss where there is arguable point of knowledge
- Conditions where attributability may not be established or realised until much later
- Lack of knowledge of the ability to make a claim, especially in the case of bereaved families who may not see the MoD as a liable employer

- Changing external knowledge in cases where new evidence comes to light on the health impact of historic MoD decision making.
- Ingrained help-seeking stigma within the Armed Forces community

However, this discussion overlooks the central issue beyond the debate about how the time limit is calculated – namely the fact that the Bill will introduce a time limit in circumstances where none currently exists.

Further Information

For further information, or to discuss this briefing further, please contact The Royal British Legion's Public Affairs and Public Policy team, on publicaffairs@britishlegion.org.uk.

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