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Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Tenth Sitting

Thursday 22 October 2020

(Afternoon)

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Monday 26 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

Thursday 22 October 2020

[Graham Stringer *in the Chair*]

Overseas Operations (Service Personnel and Veterans) Bill

Clause 12

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."—*(Chris Evans.)*

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.

2 pm

Question again proposed, That the amendment be 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:

"After 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 in the sense that people start foaming at the mouth and think that it has something to do with Brussels and Brexit, but it is nothing of the sort. That is important to remember in view of the rights that it gives us and the signatories to it. The Act covers all 47 states that have signed the European Convention on Human Rights. As my hon. Friend said, this country has a proud history of acting as a champion of human rights under the convention, and was instrumental in the convention's creation in 1950. It was championed by Winston Churchill, mainly as a result of the issues arising from the second world war. It is also important to note that the people who wrote it were members of the United Kingdom Government, and lawyers as well. That convention contains a fundamental part of British DNA—in fact it goes back to Magna Carta and the 1679 Habeas Corpus Act. We build up laws in this country over time, but the horrors of the second world war prompted us to enshrine basic rights for everyone. As I have said before, the Human Rights Act has been portrayed—as it has in terms of the Bill—as the means for nasty foreigners to be able to sue the Ministry of Defence. But the opposite is true: it is fundamental for members of our armed forces. I have already mentioned how it was used in the Smith case in connection with Snatch Land Rovers.

The Bill, as drafted, asks for derogations from the human rights convention. Such derogations are allowable, 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 of 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 had 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 withholding 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

[Chris Evans]

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 EHCR 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.

Johnny Mercer: Requiring a debate before an order is made may also result in discussion of operations that rely on an element of surprise. That would defeat the purpose of derogation in relation to overseas military operations, which should enhance operational effectiveness. I therefore strongly recommend that the amendment is withdrawn.

Mr Jones: Will the Minister give way?

Johnny Mercer: Next time.

Chris Evans: I am not going to go on forever and I will withdraw the amendment.

Mr Jones: I thank my hon. Friend for giving way. It is interesting that the Minister has read his speech into the record like he used to, and his Whip told him to sit down. Can my hon. Friend think of an example that was so urgent for operational reasons that it would have to be rushed through on this basis? The Minister clearly did not want to give one.

Johnny Mercer: I can—

Chris Evans: Does the Minister want to intervene?

Johnny Mercer: I am happy to—for example, when the French conduct an operation in Mali and, without going too far, conduct counter-terrorism operations such as hostage rescue, whatever that may be, which will require them to detain in the country where there is not an agreement already, they will be required to derogate from ECHR compliance in order to make those detentions and those arrests.

Chris Evans: Does anyone else want to intervene now? I feel like a post box at the moment. With the amount of whys coming over my left shoulder, it was just like my four-year-old son asking me why all the time—I do not mean to offend my right hon. Friend the Member for North Durham.

I hope this matter is revisited on Report. I believe the derogation is very important and, as my right hon. Friend mentioned, article 15 is so important. It is usually in states of emergency that derogation is asked for. That means it needs to be scrutinised in both Houses. I will withdraw the amendment at this stage, but I hope that we will revisit the issue on Report, when the Bill comes back to the Floor of the House. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Clause 13

POWER TO MAKE CONSEQUENTIAL PROVISION

Question proposed, That the clause stand part of the Bill.

Mr Jones: We are moving in the direction of a lot of things in this House being done by regulation. Here again:

"The Secretary of State or the Lord Chancellor may by regulations make provision that is consequential on any provision made by this Act."

We have just had a discussion about the Human Rights Act, and I am less than convinced. The other issue—because, again, this is a contentious area—is the statutory instruments that will be used, and how the provisions

[Mr Kevan Jones]

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—*

"Within 12 months of this Act coming into force, the Secretary of State shall commission 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—*

"Within 12 months of this Act coming into force, the Secretary of State shall commission 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 civil 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 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 wider pastoral support, both 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 damning 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 evidence 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, Q44.]

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 the way a piece of equipment is designed. 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 staff 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 not get the support they need when it comes to this? 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 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…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 should see whether there is access to justice.

The new clause is about access to justice for servicemen. It says:

"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."

The reason why I use those two examples is that if the Bill goes through as it is—the Minister seems determined to ensure that—we will have, as I said this morning, a situation whereby servicemen and women, just on, for example, section 33 of the Limitation Act 1980, will have fewer rights than prisoners and asylum seekers. That, to me, cannot be right.

This proposal would also allow us to test the situation that the Minister is so confident of. How many people do not get access to justice? For me, one is too many. The Minister seemed quite content that 6% do not get access to justice; he thinks that that is fine. I do not personally, because I think this goes to the heart of how we support our servicemen and women and the issues that surround the covenant.

Therefore, this proposal would allow us to look at the issue about section 33, but also to look at other issues, which I have already raised. What is the experience of the members of our armed forces regarding access to justice? I do not think that at the moment that is a level playing field, as I said, but I also do not think that it is being looked at by the MOD. I think that, as my hon. Friend the Member for Islwyn said, that is because it is seen as a threat, potentially, to the chain of command. I just 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 IHAT. 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 a missed opportunity, because such a provision could have been added. I understand why, even if the Minister wanted to, his civil servants would perhaps resist including it, but if we really mean what we say about standing up for our servicemen and women, we have to do it.

Even if that meant some finance, which it would—though I doubt that it would cost anything near the £60 million that IHAT cost—it would at least do two things: it would reinforce the covenant, and it would lead to a situation whereby we can say that we are standing behind and supporting servicemen and women who have limited rights and cannot get legal redress elsewhere. It is the decent and right thing to do.

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.

(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."

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 law 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 not 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

[Chris Evans]

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 mutilated …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 Prosecutions 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 Prosecutions by the service police, as well as matters referred to the Director of Service Prosecutions 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 does it mirror that system? Unfortunately, over the last few years the cutbacks in the legal aid system have made it difficult for many people who we—including myself, the Minister and you, Mr Stringer—would not think of as having access to a lot of resources, and they are 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