

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

*First Sitting*

*Tuesday 6 October 2020*

*(Morning)*

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#### CONTENTS

Programme motion agreed to.  
Written evidence (Reporting to the House) motion agreed to.  
Motion to sit in private agreed to.  
Examination of witnesses.  
Adjourned till this day at Two o'clock.

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**not later than**

**Saturday 10 October 2020**

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**The Committee consisted of the following Members:***Chairs:* † DAVID MUNDELL, GRAHAM STRINGER

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

**Witnesses**

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

Michael Sutcliff, Chairman, Armed Forces Support Group

Hilary Meredith, Chairman, Hilary Meredith Solicitors Ltd

Major Bob Campbell

# Public Bill Committee

Tuesday 6 October 2020

(Morning)

[DAVID MUNDELL *in the Chair*]

## Overseas Operations (Service Personnel and Veterans) Bill

9.27 am

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

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

*Ordered,*

That—

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

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

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

Date	Time	Witness
Tuesday 6 October	Until no later than 10.30 am	British Armed Forces Federation Armed Forces Support Group
Tuesday 6 October	Until no later than 11.00 am	Hilary Meredith Solicitors Limited
Tuesday 6 October	Until no later than 11.25 am	Major Robert Campbell
Tuesday 6 October	Until no later than 3.00 pm	Professor Richard Ekins, Policy Exchange Dr Jonathan Morgan, University of Cambridge John Larkin QC, Policy Exchange
Tuesday 6 October	Until no later than 4.00 pm	Association of Personal Injury Lawyers Centre for Military Justice
Tuesday 6 October	Until no later than 5.00 pm	Liberty Human Rights Watch

Table

Date	Time	Witness
Thursday 8 October	Until no later than 12.15 pm	Cobseo - the Confederation of Service Charities The Royal British Legion
Thursday 8 October	Until no later than 1.00 pm	General Sir Nick Parker
Thursday 8 October	Until no later than 3.15 pm	Princess of Wales's Royal Regiment Association
Thursday 8 October	Until no later than 4.00 pm	His Honour Judge Jeff Blackett, Judge Advocate General

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 6; Schedule 1; Clauses 7 and 8; Schedule 2; Clause 9; Schedule 3; Clause 10; Schedule 4; Clauses 11 to 16; new Clauses; new Schedules; remaining proceedings on the Bill;

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

*Resolved,*

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

*Resolved,*

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

9.29 am

*The Committee deliberated in private.*

### Examination of Witnesses

*Douglas Young and Michael Sutcliff gave evidence.*

9.35 am

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

**Douglas Young:** Yes, I can, Chair.

**Michael Sutcliff:** Yes, Chair, I can hear you.

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

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

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

**Stuart Anderson (Wolverhampton South West) (Con):** To err on the side of caution, I should say that I have served on overseas operations. I have also made a successful claim against the Ministry of Defence for my injuries during service.

**Peter Gibson** (Darlington) (Con): I am a former member of the Association of Personal Injury Lawyers, who are one of the witnesses.

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

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

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

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

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

Both my questions are directed at both of you. The first question of the day is, does the MOD do enough to provide a duty of care to those service personnel who go through investigations and litigations at the moment?

**Douglas Young:** In our opinion, the answer is no. Undoubtedly, the MOD has improved steadily. A lot of work has been done, but we are simply appalled by the experiences of some people who have absolutely been through the wringer for many years. One case, in particular, has only just come to an end, with a report by the Iraq fatalities inquiry. You can absolutely weep at the experiences of Major Robert Campbell and others who have been subjected to repeated investigations. Baroness Hallett's report was very clear that everyone involved in the British forces' deployment was completely innocent, and yet people say their lives have been ruined. That is awful. It has been recognised that a lot of work has been done, but it has not helped people who were already in the wringer. We certainly very much welcome the stated aims of this legislation.

**Michael Sutcliff:** I have to agree with the previous speaker. There is a great disappointment, Mr Chairman, that over the years there has been absolute chaos with this. If you look at the situation where Phil Shiner was allowed to spuriously bring all those cases so many

times, this begins to really rot the trust within the MOD. A lot of senior officers seemed to have sloping shoulders at one time. Hopefully, these things are getting better. I take the case of the Major who has, I think, been lined up 14 times—14 times he has been exonerated, and here we go again. As I said earlier, we seem to be looking at this situation that has been gone through a number of times, and hopefully this time will be successful.

**Q2 Chris Evans:** One of the issues that came out as this Bill began to make its way through Parliament was whether five years is the right period for cut-off. Why not seven or three, in your opinion? What is your opinion on the five-year rule?

**Douglas Young:** We said that it should be 10—I think 10 is the absolute cut-off and the absolute longstop. That certainly was an option in the MOD's original consultation. If you introduce shorter time limits, even more attention will have to be given to investigation and recording at the point that something occurs. I accept that this has been improved—I have no doubt that it has—but of course we are not currently subject to the intensity of operations, compared to the theatres where these cases first arose.

If you have a very short time limit of, say, five years, then there must be a huge effort in everyone's interests—in the interests of potential victims, but also very much in the interests of the personnel involved—to absolutely record everything and to interview people. It can be an absolute pest, and it can be very grim going through all that, but it has got to be done at the time, rather than relying on people's recollections afterwards, when, of course, they may have gone through a whole series of incidents during a six-month tour or longer and it can be very difficult to pick one out. So investigation and recording will be even more important than ever if you reduce the longstop time limit. I think we support the 10 years.

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

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

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

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

**Douglas Young:** There certainly are a number of very legitimate reasons for delaying. One would be simple concealment—perverting the course of justice and deliberate attempts to withhold evidence. Another one is where victims or complainants become aware of some evidence only later on because witnesses have been moved by the

exigencies of war—they are refugees in another country or they are in a refugee camp—and people never had the chance to obtain information until after a substantial delay.

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

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

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

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

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

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

There is no doubt that talk about being dragged into an investigation is accurate. However willing one might be to serve the ends of justice and truth, it is a strain, and it hangs over you for a very long time. It forces you to continuously go back over what at the time was

a stressful, difficult and challenging event. It possibly causes one to have to review one's own actions and decisions in a confusing situation, because nobody does everything absolutely right when things are going wrong.

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

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

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

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

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

**Douglas Young:** I think six years is a reasonable presumptive time limit for civil payment, and corresponds pretty much to the legal system in the different parts of the United Kingdom, but we would be concerned about the absolute longstop. As I mentioned before, claims of this type often originate during conflict or in post-conflict periods, when the claimants may be refugees or internally displaced persons. Perhaps a robust administrative payment system operating in-theatre would help to speed things up, because, clearly, some people have perfectly legitimate claims that should be met, and claims do not always imply criminal liability, which is what we are sometimes led to believe.

Imposing an absolute time limit places armed forces personnel claimants themselves at a disadvantage compared with civil claimants in ordinary life, where the court has discretion. Of course, the Minister has made it perfectly clear, absolutely correctly, that the time limit for this particular part of the Bill only starts to run at the point of knowledge. That is completely understood. That point of knowledge, diagnosis or whatever, could be many years later. Nevertheless, I would have a worry about an absolute longstop as proposed.

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

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

**Chris Evans:** I can't either.

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

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

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

**Michael Sutcliff:** I entirely agree. The covenant is fairly new, and as we progress and go through this, we will have to tweak it here and there. I see what is in front of me in the Bill as quite positive, but we need to look at these little things to ensure that service personnel are

not limited or restricted any more than civilians should be. The idea of the covenant is to help and support you in the civilian life you have just entered, so having sticking blocks in it is not a good idea.

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

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

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

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

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

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

**Chris Evans:** Thank you.

**Q10 Miss Sarah Dines (Derbyshire Dales) (Con):** It is a pleasure to serve under your chairmanship, Mr Mundell. I thank the witnesses for giving evidence today, albeit

[Miss Sarah Dines]

virtually. I have a couple of questions on the effects of the present regime on servicemen and women and their families. First, can each of you describe the effect of the present regime of repeated claims, sometimes over decades, on the mental health of the individual, of their fellow servicemen and women, and of their children and families?

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

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

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

We certainly support everything that has been done. Things have improved. The Ministry of Defence has been doing a lot in this area, as have charities such as Combat Stress, but there is always more to be done. I frequently meet people—not directly through that, but at veterans breakfasts and the like—who are clearly suffering. It is a huge problem, which we need to understand and perhaps not exaggerate. The vast majority of people who have served in the armed forces are very effective future employees, marriage partners and so on. They tend to do well. Our veterans are not all weighed down by problems.

**Michael Sutcliff:** To answer your question from my end, I have been doing this job for about 16 years now. I would put it this way: the stress from being in the armed forces is very different from that of the outside world. What does it do to marriages? In some cases, of course, it breaks a marriage, and it would be quite wrong to say that it does not. There are an enormous number of very supportive wives out there who help their husbands through. Certainly, if the family is mixed up and falling out, it affects the children.

I have to tell you that, from my personal point of view, I was not suffering from anything other than the fact that I joined the services at 15 and came out at

30-something into the big wide world. My wife and I were strangers—that was an example. It worried me so much some years ago that I have actually taken a course on service mental health, so that I can understand myself. [*Inaudible.*]

I agree that it is getting better. There are a number of groups out there that can help in this situation. The local NHS here is very good. We have some good doctors. We operate here in our little world. The door is open and we say, “If you have a problem, come and talk to us about it.” We get people who do that. We have dragged one or two back from the brink, which I am very happy about, but it is not thousands. Do not get too carried away with that. I have spoken to the local colonel and he said to me, “Everybody thinks that every soldier, sailor and airman has PTSD, and it works out at about 3% of us.” However, that 3% goes back to Cyprus and everywhere else—there is a lot in the 3%.

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

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

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

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

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

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

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

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

**Douglas Young:** [*Inaudible.*]

**The Chair:** We did not hear the start of your answer, Mr Young. Will you start again? We had a technical issue.

**Douglas Young:** There have been very serious allegations concerning the approach taken by investigators earlier on, under the IHAT investigation. We do not know fully the truth of those, but certainly in cases investigators who had no actual police powers acted excessively. I do not believe—or, certainly, I have not been told—that that sort of thing has been happening more recently.

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

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

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

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

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

I have very serious concerns about torture being treated differently from sexual offences—that sexual offences have been singled out as not subject to the same time limits that torture is. I would say that the two broad areas of offence are very similar. They may take place for base motives. They are certainly inappropriate. They are about using power against someone who has no control over the situation. And they very often take place behind closed doors, so it may be very difficult to take evidence—if torture or sexual offences have occurred within a base, other people in the area

may not know about it at the time. So I have very serious concerns about the exemption, if you like, for torture and it being treated differently from sexual offences. The suggestion is that that is for reasons of political correctness: “Sexual offences? Oh no, we must keep them aligned, but torture we won’t oppose.” I do have worries about that.

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

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

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

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

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

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

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

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

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

**Q18 Carol Monaghan:** Without an absolute longstop limit, do you foresee difficulties, or have you had any experience where people have had injuries that have only come to light, or where they have only claimed, much later than that six years?

**Douglas Young:** On the first point about coming to light, we are all right with that. The time limit only starts at that point. I do not have any experience of facts that came to light.

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

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

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

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

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

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

**Carol Monaghan:** Thank you, gentlemen.

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

#### Examination of witness

*Hilary Meredith gave evidence.*

10.30 am

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

**Hilary Meredith:** Yes, I am Hilary Meredith.

**The Chair:** Thank you. As you have seen from the previous session we have some logistical issues, because Members who wish to question you will have to move to

a seat where there is a microphone, or we have a standing microphone just behind you. I hope that you will bear with us as we move forward with those logistics. The two Members who have indicated that they wish to question you during this session are Emma Lewell-Buck and Carol Monaghan. If there is anyone else—Sarah Atherton, I will take you as well. So, Emma.

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

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

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

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

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

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

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

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

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

**Hilary Meredith:** I am against any cut-off, to be honest. I think the reason why the cases became historic is not the date of the accusation—any of the criminal accusations under human rights law, for example, came within 12 months of the incident taking place. It was the prolonged procedure that was bungled afterwards that made those cases historic. It is the procedure and investigation in the UK that need to be reviewed and overhauled, and not necessarily a time limit placed on criminal or civil prosecutions.

Also under that heading, I have an issue with the longstop applying to civil cases where personnel are overseas on operations and military personnel have a longstop placed on their claims as well. I understand that that has been put in on an equitable basis, so that if there is a longstop for a criminal prosecution, it also has to apply to civil law, but I am not sure about that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

about the connection to service. That connection to service may come much later down the line, and by that time they will be out of time to bring a claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Hilary Meredith:** I think there are two issues. The Human Rights Act civil cases were brought for abuse and detention. When you look at the charge sheet, there are masses—hundreds—just as abuse and detention. The civil human rights were brought by the Iraqi civilians against the Ministry of Defence. That, then, culminated in human rights criminal activity against individual members of the armed forces. Which takes precedent? I think you will have to ask a constitutional lawyer, but my concern is that if we are putting time limits on the Human Rights Act 1998, I am not sure if in the UK we have the power or authority to do that. A constitutional lawyer would be able to advise you better.

**Q38 Joy Morrissey:** What about the national security element of the person's defence? Who was there to make that national security defence for the armed forces personnel that was being prosecuted? Many of the things they were asked to do were a result of a national security issue, so who was there to defend them in terms of the national security element?

**Hilary Meredith:** Nobody.

**Joy Morrissey:** No one.

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

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

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

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

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

**Q41 Sarah Atherton (Wrexham) (Con):** I was reading your discussion points and I was interested to read that the majority of lawfare cases arose out of compensation claims brought by Iraqis and Afghans. That opened the floodgate, which paved the way for lawfare civil compensation claims. Can you expand on that? Can you give the Committee some idea of the numbers we are looking at? How many criminal allegations, how many prosecutions, and how many were false?

**Hilary Meredith:** Going back to the Al-Skeini case: the decision that opened the door for human rights in a foreign territory where we had control, and the situation where we had control was detaining prisoners. Of those who claimed civil compensation—I keep using Major Campbell's case. That was not in detention but that was somebody who was said to have drowned in a river. These prosecutions just go on and on. I have forgotten the question.

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

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

**Q43 Sarah Atherton:** How many of those were false?

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

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

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

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

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

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

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

**Q47 Joy Morrissey:** Hilary, do you agree that it is impossible to actually reach a fair verdict if you do not have the national security background or the military files on what was decided at the time? If that is restricted information—some of those documents may be classified

[Joy Morrissey]

for several years or decades—how is the service person supposed to defend themselves if they do not have that level of information?

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

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

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

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

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

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

#### Examination of Witness

*Major Bob Campbell gave evidence.*

11 am

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

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

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

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

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

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

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

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

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

**Q51 Stephen Morgan:** How was the chain of command? Did they take responsibility? Should they have done?

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

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

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

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

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

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

On top of that, there was just to be no concession on how we were supposed to conduct ourselves in our day-to-day life. Because there was no single point of contact, we had nowhere to address our concerns. I had

a very tedious series of correspondence, again with all those people I just named, who all responded, “If you’ve got a problem with it, complain to IHAT.” That is not the most helpful piece of advice.

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

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

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

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

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

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

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

My other slight concern is that previous Attorneys General have done us no favours at all. Lord Goldsmith had a lot on his shoulders for how we ended up in Iraq and the manner in which we conducted operations there. When I appealed to Jeremy Wright, and when he gave evidence to the Defence Sub-Committee on this several years ago, he took the view that this was an entirely fair process and that there was absolutely no reason to stop IHAT or even to scrutinise it any further than necessary.

The last point I would make about the Bill is that I cannot really adhere to some of the arguments against it. When I wrote to all these people, such as the CGS, the Adjutant General and previous Ministers Mordaunt, Penning, Lancaster and Fallon, they would all express a variation of, “Well, we have to be seen to be doing something.” I do not believe that public relations and being seen to be doing something are a good enough reason to destroy a soldier’s life or to drive them to suicide. I do not think that is morally acceptable in any way, but apparently they thought that was a price worth paying.

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

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

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

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

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

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

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

I decided to test that theory, and I wrote to the chief prosecutor of the ICC, Ms Bensouda, asking in exasperation whether I, SO71 and SO72 could surrender ourselves to the ICC rather than go through several more appalling

years at the hands of the Ministry of Defence. Ms Bensouda responded that our allegation does not fall within her remit, because her job is not to prosecute individual soldiers; her job is to prosecute commanders and policy makers for the most grave crimes. In her orbit, manslaughter, which is what I was accused of, is not a war crime. It is a domestic crime—a regular crime, as opposed to what she would normally deal with. I reported that rejection to the Ministry of Defence, which continued to repeat that the ICC would fall in.

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

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

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

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

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

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

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

**Major Campbell:** That is a good question, because I do not know. The reason I say that is that I do not believe that there is a police force in the United Kingdom that would be able to carry out such a contested,

political and adversarial investigation. If you think about the way that it has been done in the past, when IHAT got this group of ex-detectives who were used to domestic crime, and they are asked to investigate an allegation in a country they have never been to, in a culture they do not understand, in a combat environment they have never experienced and in a language they do not speak, I just think that you are already on a hiding to nothing if those are your parameters.

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

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

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

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

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

**Major Campbell:** Thank you.

11.25 am

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

*Adjourned till this day at Two o'clock.*





