

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Third Sitting

Thursday 8 October 2020

(Morning)

CONTENTS

Examination of witnesses.
Adjourned till this day at half-past Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 12 October 2020

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The Committee consisted of the following Members:

Chairs: † DAVID MUNDELL, GRAHAM STRINGER

† 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)	† attended the Committee

Witnesses

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

Charles Byrne, Director General, Royal British Legion

General (Retd) Sir Nick Parker KCB CBE

Public Bill Committee

Thursday 8 October 2020

(Morning)

[DAVID MUNDELL *in the Chair*]

Overseas Operations (Service Personnel and Veterans) Bill

11.30 am

The Committee deliberated in private.

Examination of Witnesses

General Sir John McColl and Charles Byrne gave evidence.

11.32 am

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

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

The Chair: Thank you very much.

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

The Chair: It is always best to put these things on the record.

Thank you, Mr Byrne, for joining us in person. Will you say who you are for the record, and who you are here on behalf of?

Charles Byrne: I am Charles Byrne, director general of the Royal British Legion.

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

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

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

Q155 Stephen Morgan (Portsmouth South) (Lab): Thank you, Chair. May I place on the record our gratitude for the work of the British Legion and other charities in this challenging time for our country? It has been an important year for the nation. Charles, does any aspect of the Bill risk breaching the armed forces covenant?

Charles Byrne: Thank you for the question. We welcome and understand the good intent behind the Bill. However, we have raised concerns that the six-year longstop could be a breach of the armed forces covenant, because it

restricts the ability of armed forces personnel to bring a civil claim against their employer. As far as I understand it, that longstop limit does not apply elsewhere. That is the concern we have exactly.

Stephen Morgan: So it would breach the armed forces covenant, in your view?

Charles Byrne: That is what we think, yes.

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

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

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

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

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

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

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

Q157 Stephen Morgan: I understand that the British Legion has seen a copy of the Bill's impact assessment. Are there any concerns in there that you want to bring to the attention of the Committee?

Charles Byrne: No. To be honest, I have not been through it in detail.

The Chair: I think the Minister has a follow-up question, which he will have to deliver from the microphone.

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

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

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

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

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

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

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

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

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

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

Johnny Mercer: But is being killed a disadvantage?

Charles Byrne: Is that an inherent risk of—

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

Charles Byrne: Exactly.

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

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

Johnny Mercer: Sorry.

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

Johnny Mercer: On overseas operations.

Charles Byrne: On overseas operations.

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

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

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

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

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

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

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

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

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

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

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

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

Q164 Stuart Anderson: I have a supplementary question on that point. Everybody keeps talking about the longstop, but nobody brings in the one year from point of knowledge. That point of knowledge could be 25 years afterwards. We cannot have the longstop argument without that point. If there was no—[*Interruption.*]

The Chair: Just to explain it to you, General McColl, that bell is not a fire alarm or for a vote; it signals the fact that the House of Commons has suspended its sitting in the Chamber for three minutes. We will hear another bell shortly, so just be aware of that.

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

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

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

There has to be education about the Bill as well. I really respect the work your organisation does, but within and outside the military there is a need to educate our troops and let people know about this. How do we connect with people who are now 60 or 70 years of age and let them know about the point of knowledge? It is not all about the Bill. I believe we have a role to educate the community, which we know well, about the point of knowledge. At the armed forces breakfasts and through all the different routes of communication, we can try to reduce that number. There will always be people who fall through, but we should do everything to stop them and there is a role for education. Do you see that role?

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

Stuart Anderson: I have another supplementary on that.

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

Stuart Anderson: I will come back to it.

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

Charles Byrne: Can you say that again?

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

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

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

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

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

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

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

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

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

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

Charles Byrne: We certainly welcome the intent behind what we see the Bill is trying to do in, as the general said, trying to reduce pernicious, vexatious claims. However,

we are looking to say, “Can we achieve those aims without disadvantaging service personnel?” If we can do both, both should be done.

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

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

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

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

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

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

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

Charles Byrne: Thank you.

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

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

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

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

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

Charles Byrne: Of course, yes.

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

Charles Byrne: Absolutely, and this cuts both ways. We recognise that if we are asking that the armed forces maintain the highest standards when they go out and

serve in difficult situations, there is an equally fair onus on their employer, the Ministry of Defence, to provide them with what is needed do that and the support that is needed.

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

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

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

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

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

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

Carol Monaghan: I am talking specifically about part 2.

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

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

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

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

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

Charles Byrne: I am glad you called that out, but I do not think I am in any way qualified or able to answer that question.

Q181 Liz Twist: Okay. Perhaps I could ask Cobseo to answer that question, then? Would you like me to repeat it?

General Sir John McColl: Could you repeat it?

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

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

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

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

Liz Twist: Thank you very much to both witnesses.

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

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

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

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

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

Charles Byrne: I think this is a point we have covered previously, so forgive me if I repeat myself. I think it is the same sort of question. We have seen the evidence

that there are 19 cases where veterans' families would not be able to bring a claim against the MOD because it would fall out of the proposed six-year time limit after the point of knowledge and all those other caveats. Those are the examples that we think would follow from the Bill and that is only of the ones that we know, and the ones where the data exists, for Afghanistan and Iraq.

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

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

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

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

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

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

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

You said that if this Bill addresses everything the Legion is looking for, it might not get through. There is not everything in there; there is a single focus point. There is a restriction introduced by the Bill, and if it can be removed, the Bill will be better. It seems to me that that is a good thing to do. As Sir John says, everybody

wishes vexatious, pernicious claims against veterans to be addressed and reduced, and we fully support that intent. We want to make this better, which is why we have contributed and have always been very clear about our concerns in this area. If the Bill can be made better, I am sure you and veterans would welcome that.

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

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

Stuart Anderson: That is outside my remit.

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

Stuart Anderson: Thank you. I appreciate the comments.

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

Examination of Witness

General (Retd) Sir Nick Parker gave evidence.

12.6 pm

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

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

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

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

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

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

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

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

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

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

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

General Sir Nick Parker: In the complexity of the frontline, there is an enormous amount going on and it is very difficult to produce accurate, timely records of what is occurring. It may be that someone will stand up and contradict me, but when I served we had a thing called a battalion war diary, which was very nearly a mandraucic, hand-written process. We need to change our culture of record keeping on the frontline so that

there are sophisticated ways of recording exactly what is going on, so that when somebody comes to look at an allegation of bad behaviour, they have good, accurate records that are endorsed by the people who gave the orders to those who have undertaken the act and they are also held accountable for what happened. That needs to be investigated not, in my view, by an RMP lance corporal who has been trained to do a whole load of important but relatively menial things, nor by an independent constable from Northumbria who has no idea of the activity on the frontline, but by a properly found investigative organisation that is a genuine independent part of the organisation and respected by both those on the frontline and those outside the armed forces as an effective body. That certainly did not exist when I was serving, and I think it would require resources to create it.

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

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

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

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

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

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

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

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

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

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

General Sir Nick Parker: Yes.

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

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

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

General Sir Nick Parker: I do not understand why sexual acts have been excluded, but not murder and torture. I do not understand why that distinction has

been made and whether it undermines the fundamental credibility of the Bill. As I said at the beginning, I am not a legal expert, but I have been told by people whose views I respect that even putting in conditions for prosecution that separate your military from the normal process will be viewed with some suspicion by those who uphold international law more generally.

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

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

General Sir Nick Parker: Yes.

Q198 Sarah Atherton: Is there any reason why?

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

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

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

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

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

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

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

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

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

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

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

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

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

General Sir Nick Parker: I am concerned. If you look at things like the report on the Baha Mousa investigation, you see the potential for some sort of cultural resistance to the fact that an investigation is taking place. We need to address how the chain of command approach the issue, because they are fundamentally responsible for what their subordinates do. As an aside, I am slightly nervous that the focus on the prosecution of individuals almost feels as if one is focusing on the people on the frontline as if they are the guilty parties, and we the system are failing to address the issues that we should

address because it is our responsibility in the first place. Somebody might accuse me of trying to stand up to the Bill and not looking after our boys and girls. That is fundamentally not what I am saying. I am saying that we are failing to address the responsibility of the chain of command—its cultural approach to these sorts of issues, and its ability to maintain records and then allow people independently to investigate what is happening, so that we can deal with things quickly. I would suggest that if that were in place, what happened to Bob Campbell would never have happened. For a start, they would not have lost the records of the communications. Why did they lose the communication records in the week of his incident? That will not happen if you have an effective system.

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

General Sir Nick Parker: I honestly do not know, and that should worry us. If one is in a coalition with a Danish contingent, and if the Danes consider that the way we are approaching dealing with our people is different from their way and they feel that it is culturally incompatible for some reason, that would create difficulties. It might seem slightly pathetic, but I would defer to the eminent legal opinion, which I would not profess to have. All I would say is that when there is a considerable amount of noise about something, I would hope that it is taken seriously. My feeling is that the Bill is moving at such a pace that there are certain key people who should be able to present their evidence—people such as the Judge Advocate General. These are people who have really important views. If there is some doubt about this and we are viewed in the international community as being prepared to operate outside norms, there is an implication for the people who will have to command in the international community.

Carol Monaghan: Thank you, General Parker.

The Chair: I am going to call Joy Morrissey, who is going to address us from the standing microphone.

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

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

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

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

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

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

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

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

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

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

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

I feel very conscious of the responsibility that I had at every level, and I am also acutely aware of the nature of the responsibility that you have as a platoon or section commander, which is different from the responsibilities you have as a company commanding officer and so on, but there is a critical connection between every level of

the hierarchy that requires us to enact things like mission command effectively. So, if you are going to tell somebody what to do, you need either to resource them properly or, at least, to have a conversation with them about why are you not giving them sufficient resources, so you both understand and manage the risk. That is something that should be inherent in our training anyway.

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

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

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

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

General Sir Nick Parker: That is a political question.

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

General Sir Nick Parker: I am very prepared to give a view, but treat it with the contempt it deserves. As I said right at the beginning, I welcome the willingness of the Government to deal with this issue, and I welcome the fact that it was an election pledge and we are going to deal with it really quickly, but I am really concerned that that good intent could end up creating more challenges than we need and indeed not address the issue, which, as you said, may not need to be brought to Parliament at all.

Now, you have to decide how the Bill proceeds, and I am sure the Minister would expect it to proceed. What I would like is to try to mitigate against the risks of legitimacy that I perceive—you may not agree—and concurrently for much more energy and effort to be put into the business of how we investigate these things effectively so that the people who are guilty are dealt with quickly and the people who are not are properly protected.

I will just go back to Dover. I know you would believe that if somebody had done something that was genuinely illegal and outside the orders they were given, you would pray that they would be dealt with quickly and effectively.

Stuart Anderson: One hundred per cent.

General Sir Nick Parker: And I am not sure that we are able to do that if we are so vulnerable to malicious claims, because that is clogging the system up. We need to address that.

Stuart Anderson: Thank you. It is a pleasure to talk to you again, General.

General Sir Nick Parker: I am wearing a rifles tie, rather than—

Stuart Anderson: I had my green jackets one on yesterday.

The Chair: If there are no further questions from Members, I thank you very much, General Parker, for your evidence and for joining the Committee online. That brings us to the end of our morning session. The Committee will meet again in this room at 2.30 pm under the chairmanship of Graham Stringer to take further evidence.

Ordered, That further consideration be now adjourned.—(Leo Docherty.)

12.43 pm

Adjourned till this day at half-past Two o'clock.

