

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

Eighth Sitting

Tuesday 20 October 2020

(Afternoon)

CONTENTS

CLAUSE 8 agreed to.

SCHEDULE 2 under consideration when the Committee adjourned till

Thursday 22 October at half-past Eleven o'clock.

Written evidence reported to the House.

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

not later than

Saturday 24 October 2020

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

Public Bill Committee

Tuesday 20 October 2020

(Afternoon)

[DAVID MUNDELL *in the Chair*]

Overseas Operations (Service Personnel and Veterans) Bill

2 pm

The Chair: Members will be aware of the need to respect social distancing guidance. I will intervene if necessary to remind everyone. We will now continue line-by-line consideration of the Bill.

Clause 8

RESTRICTIONS ON TIME LIMITS TO BRING ACTIONS:
ENGLAND AND WALES

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clauses 9 and 10 stand part

New clause 2—*Restrictions on time limits: actions brought against the Crown by service personnel*—

“Nothing in this Part applies to any action brought against the Crown by a person who is a member or former member of the regular or reserve forces, or of a British overseas territory force to whom section 369(2) of the Armed Forces Act 2006 (persons subject to service law) applies.”

This new clause amends Part 2 of the Bill so that it explicitly excludes actions brought against the Crown by serving or former service personnel from the limitations on courts’ discretion that the Part imposes in respect of actions relating to overseas operations.

Mr Kevan Jones (North Durham) (Lab): It is a pleasure to have you in the Chair, Mr Mundell. I trust that everyone has had a nice lunch. I hope the Minister has not had too much raw red meat and that he has been able to have a lie-down after his exertions this morning. He will certainly not be eating haggis for his dinner or lunch, or at any time soon, after his comments about Scotland this morning. I shall let him enlighten you later on those points, Mr Mundell.

We were talking about the rights of veterans. My hon. Friend the Member for Islwyn raised the issue of asbestos and how asbestosis is one of a number of diseases that limits the serviceman or woman from bringing claims within the six-year period. As I said this morning, the Minister and I agree on one thing: we understand the limitation and the date of knowledge. The bit where we have a problem is where the Bill takes out veterans, apart from anyone else, from section 33 of the Limitation Act 1980. We heard evidence last week from the Association of Personal Injury Lawyers. I accept that there are certain people in the room who perhaps do not like lawyers—criminal, civil or whatever. The association told us that the Bill strips service personnel

and veterans of certain rights in relation to civil claims. I will come back to this later, but we were told that if the Bill is enacted, prisoners will have more rights than veterans or servicemen and women.

On the claims brought before the Ministry of Defence, clearly this Bill has its origins in what its promoters argue is a tsunami of unfounded civil claims that then led to criminal investigations, which then took many years. We have demonstrated in Committee that the actual number of prosecutions have been very small, but in terms of civilian claims there is also a very important set of claims that we should protect: the claims that allow servicemen and women and veterans to bring claims against the Ministry of Defence. That is done in two ways: via a civil claim or under the Human Rights Act. As I said this morning, some people in this place suddenly start frothing at the mouth as soon as the Human Rights Act is mentioned, but as I have said, it protects us all by giving us basic human rights.

The problem with part 2 of the Bill is that it will not only stop the straightforward civil claims, where people ask for compensation for injuries and other things; it would limit claims under the Human Rights Act. Such claims are important. I referred this morning to the Smith case involving Snatch Land Rovers, which was around the right to life and human rights. Hilary Meredith, who I thought had very good, detailed knowledge in the claims area, said in her evidence:

“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.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee, 6 October 2020; c. 18, Q30.*]

I said that I would not question the Minister’s motives for what he is trying to achieve, but again, we are the seeing the huge implications that this Bill could have. We have already discussed criminal cases and possible trials before the International Criminal Court, but it would be interesting to know how the longstop—which is stopping the rights we all have under the Human Rights Act for veterans and armed force personnel—will be put into practice legally if, as Hilary Meredith said in her evidence, the UK has certain rights that are not just governed by what we agree as a country, but are part of an international convention on human rights. How does that square with part 2 of the Bill? That needs some explanation, because I do not want veterans and armed services personnel not to be covered by the Limitation Act 1980 or the rights that we all get from the Human Rights Act.

Chris Evans (Islwyn) (Lab/Co-op): Does my right hon. Friend agree that the nub of the problem that he is driving at is that clause 8 and schedule 2 take away the court’s discretion under section 33 of the Limitation Act 1980 to disapply the time limit if

“it would be equitable to allow an action to proceed”?

That is being taken away from our service personnel, and it is the same under the Human Rights Act. Is not the nub of the problem with clause 8 that it is removing the court’s discretion to allow these actions to go ahead?

Mr Jones: It is. Again, this is about the rights of veterans and armed services personnel, which I thought this Bill was trying to protect. If we are taking away rights that everyone else has access to, that is a retrograde

step. We need an explanation of why that is being done and why it is necessary, because I certainly do not think it is proportional. Again, that is one of the things this debate has thrown up, in that the Bill is about protecting the MOD from litigation, whether by armed forces personnel or veterans, and that cannot be right.

Coming back to investigations, Hilary Meredith raised another important thing that does not apply:

“That is a really interesting point, actually. I had not thought of a time limit on investigations. Certainly under the Human Rights Act, there is a right to have a speedy trial, and that did not happen in these cases.”—[*Official Report, Overseas Operations Public Bill Committee*, 6 October 2020; c.19, Q31.]

This issue therefore cuts into investigations, another central point that we have been considering in this Bill.

When the Minister replies, I would be interested to know whether that has been cleared. I am not sure whether things still work this way, but when I was a Minister, the usual process for bringing forward a Bill involved sending a write-round to all Departments to get their agreement before it was sanctioned to come before the House. I do not know whether that still applies, because I know that, for a lot of things that this Government do now, they do not accept the usual common-sense conventions, which are there for very good reasons—to stop this type of thing—but how will the MOD be separate from the Human Rights Act?

Chris Evans: My right hon. Friend was a member of the Defence Committee, which wrote to the Secretary of State in July 2020 saying that

“the Bill may not be an effective way of achieving”

the aim of protecting personnel and veterans against

“vexatious and unnecessary investigations and prosecutions”.

My right hon. Friend was a member of that Committee. Does he agree with its finding that the Bill would have been better served by scrutiny from an ad hoc Select Committee before it came before Parliament?

Mr Jones: I am a big defender of pre-legislative scrutiny. I think I said a couple of sittings ago that our current system of pre-legislative scrutiny as part of the Bill Committee process is important. However, an important Bill such as this should have been road-tested a little more than just what we are able to do here, in terms of not only scrutiny, but the process that we are going through today.

I come back to the point that I do not understand why the Bill is now before us—well, I do understand, because the Minister gave it away the other day; it is an election commitment to bring it within 100 days of taking office—rather than what would have been a better place for it, the armed forces quadrennial review next year, which could have covered those issues. Now we are going to have a strange process: we will have this Bill and then the Armed Forces Bill next year, which we are now told will cover investigations, because the Secretary of State has now set up a commission to look at that. The best thing would have been to do those two things together, but that would not have met the political commitment that was put forward.

I do not think it is too late to make some changes to the Bill to improve it on investigations. Deleting part 2 would certainly be an important part of that, because part 2 changes the status of veterans and armed forces

personnel. I genuinely believe what the Minister said in a Sunday newspaper over the weekend: that he does not want this in any way to affect our armed forces personnel. As I said, if it were left to both of us, we would guarantee that this type of limitation would not apply to individuals, but eventually none of us will be here and it will be the law that takes it forward. That is the weakness.

I do not understand why the Government want to reduce the role of veterans, and certainly not this Minister, who has prided himself on trying to be a champion for veterans. It is not just me saying this, or some lawyers or anyone else; we only have to look at the transcripts of the evidence put before us by the Royal British Legion. On 8 October, we took evidence from Charles Byrne from the Royal British Legion and General Sir John McColl from Cobseo. My hon. Friend the Member for Portsmouth South asked whether this was a breach of the covenant. The covenant should be about not only protecting the rights of veterans and armed forces personnel, but, where it can, enhancing them. Charles Byrne from the RBL spoke in response to the Minister, when the Minister said:

“No, because what we are looking to do is to protect, and to ensure that our servicemen are not disadvantaged.”

Mr Byrne replied:

“I think it is protecting the MOD, rather than the service personnel—that is the debate that we have had.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 86, Q163.]

I think it is clear, as we have heard from other witnesses as well, that this goes against the armed forces covenant. I fully support the covenant, and not just in ensuring that the armed forces have no disadvantage and are treated the same. I take a very clear view on this. If people have served their country, they should be given certainly the same rights as everyone else, and in some cases better ones to recognise that service. That is important.

2.15 pm

When the Minister asked:

“You do not think it is a disadvantage?”,

Mr Byrne replied:

“I think this Bill would be a breach of the armed forces covenant.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 85, Q159.]

Again, I do not think that that is the Minister’s intention, but an unintended consequence, so if we can delete part 2, that would go a long way to help. The Bill is supposed to be on Report and Third Reading in a fortnight’s time, but I am not sure that, in the lead-up to Remembrance Sunday, it is a good look for the Government to have a Bill before Parliament that takes rights away from veterans and members of the armed forces.

New clause 9 is a probing amendment—I will not press it to a vote—to highlight the impact of part 2 of the Bill on veterans. It states:

“Within 12 months of this Act coming into force, the Secretary of State shall commission an independent evaluation”

of the impact of the Bill on access to justice for servicemen and women and reserve forces when serving overseas. I add that we need to compare that with asylum seekers and prisoners seeking to take action against the Crown.

Clearly, if the provisions in this part go through unamended and do not include armed forces veterans, prisoners will have more rights.

One of the arguments put forward by the Ministry of Defence and Ministers is that only very small numbers are affected. New clause 9 would be a way of looking at the actual effect on access to justice. On the numbers, I think 94% has been quoted for those on time. This comes back to what I said this morning: yes, we are talking about small numbers, but if that number is 94%, that means 6% of veterans and armed forces personnel will not be covered and will be disadvantaged. I accept that in the Minister's exchange there was some contention about what the actual numbers are, but for me—I make this clear to the Committee—one serviceman or woman or veteran who is denied justice by this Bill is one serviceman or woman or veteran too many.

Mrs Emma Lewell-Buck (South Shields) (Lab): On that point about the exchange between the Minister and the Committee, and the evidence sessions, is my right hon. Friend aware that the figure of 94% was based on an extrapolation of a sample of cases, and not on all post-six-year cases?

Mr Jones: It was, and that is where the disagreement about the figures comes from, and not for the first time in this Bill. Early on, we asked for the number of litigation cases, which was the reason why the Bill was introduced. We got various arguments, and one figure was 900 and another 1,000. If we want to act in the best interests of veterans, we need to know the extent of the problem, so my hon. Friend makes a good point. Again, even if we accept the figure of 94%, then 6% of people will not be able to take claims against the Ministry of Defence—including, as was argued by the personal injury lawyers, in those like the Snatch Land Rover cases and the ones that I outlined this morning. That cannot be right. I do not understand what the Government think is to be gained from taking away the rights of veterans and service personnel.

We are dealing with small numbers here, but this is important. If I was in prison—perhaps some on the Committee wish I was—and I made a claim against the Ministry of Justice, there would be certain time limits. But there are always cases under the Limitation Act that fall outside those limits. Prisoners have the right to take those cases out of time and stand before a judge, or have legal representation, to argue that they need their case considered out of time. They can do that because of section 33.

Asylum seekers can do the same. A claimant against the Ministry of Justice, whether on housing or anything else, can argue successfully to a judge that they had not brought the claim because of various circumstances, such as a refugee's trauma from being in a war zone, and that they need a chance to bring their case, although there is no guarantee that their case will be accepted. That is the case with veterans, too. The representative from the personal injury lawyers said that the numbers of such cases are small, but when the application does work and a judge says that the time limit does not apply, it is very important. Snatch Land Rover is a great example of a case against the MOD.

Would that be a case against the armed forces? No, it would be against the MOD. No disrespect to the MOD lawyers—they are just doing their job—but if this provision

is introduced, they will use that six-year backstop as a way of arguing that a case cannot go forward. The individual will have no rights whatever to go before a judge and argue that their case, for certain reasons, should be made an exception. The MOD is protected, rather than the veteran or serviceman or woman. That cannot be right.

We are brought back to the point of what is missing throughout the Bill. I accept what the Minister says: that he is passionate about these issues, and if it were down to him—if it were down to me and some others in this room, too, to be honest—veterans and servicemen and women would get first dibs every time, and quite rightly. But it will not be down to us; it will be down to officials in the Ministry of Defence.

Having worked with them, I have huge respect for officials in the Ministry of Defence, but they are in civil service mode. If they can protect the organisation, they will. That is not to be discredited. I remember dealing with lawyers in the MOD when I was there over the nuclear tests veterans cases, where, frankly, we were going to spend millions of pounds on a case that should have been settled. I successfully argued for a settlement proposal to be put forward; unfortunately, it was rejected by the other side. Again, the natural reaction was to defend the indefensible. I said, "Wait a minute—how much do you want to spend in lawyers' fees to do this?" That is what will happen here. It will be an easy get-out for the MOD, because it will have the protection of a backstop of six years in law. The individual will no longer have the right.

Judicial oversight is a problem throughout the entire Bill. Having employed lawyers in a previous life and dealt with them over many years, am I a great fan? I am a fan of some of them, because some are very good. Some are also very bad, as the hon. Member for Darlington will attest. The point is that they do their best on behalf of their client. They are not making things up; they are using the laws that we pass in this place to advance the case that someone has presented before them. We should not be putting obstacles in their way, in terms of servicemen and women and veterans.

This is really a probing amendment. Someone asked, "Is it a bit of fun?" No, it is actually a serious point. When the average person on the famous Clapham omnibus realises that we are taking rights away from veterans and that prisoners and asylum seekers will have more rights than veterans, they will rightly be appalled.

Even if the Minister cannot accept the amendments today, I urge him to reflect on part 2 to see whether we can remove it from the Bill. We should at least ensure that the disadvantage to servicemen and women and veterans is not enshrined in law. If that happens, it will be a travesty. It would actually be a disappointment to the Minister, because he is trying to protect victims—instead, he will have done something that makes their lot in life worse. As a number of people said in the evidence sessions, servicemen and women and veterans have too few rights as it is. Taking away more of them cannot be right.

Carol Monaghan (Glasgow North West) (SNP): First, I thank the right hon. Member for North Durham. I agree with everything he has said. Of course, I raised part 2 of the Bill on Second Reading—I have major issues with it. One of the SNP's amendments, which

unfortunately was not selected, was about removing time limits completely. Perhaps a better idea would be to remove part 2 of the Bill.

Having sat through Second Reading, four sessions of oral evidence and this morning's session, I still cannot see how a six-year limit on claims benefits veterans. I know the Minister has tried to explain the measure by saying it will allow them to make claims more easily, but the reasons why veterans are not claiming are very complex. Frankly, I have serious doubts about the time limit, as does the organisation that has arguably done more for veterans than any other: the Royal British Legion, which stated its concerns about part 2 of the Bill. It has said that, as currently drafted, part 2 introduces a time limit for civil claims from veterans, serving personnel and their families where one does not currently exist, and it risks a breach of the armed forces covenant, as there will continue to be no limit for civilians in relation to their employer.

During the evidence sessions, the Minister said it is a disadvantage to have to go and serve and put one's life at risk. We understand that—none of us is disputing that—but we are talking about whenever we are comparing like for like, claim for claim. Does the Bill put veterans at a disadvantage? It absolutely does. The Royal British Legion has said that part 2 of the Bill should be improved to ensure that no member of the armed forces community is left subject to a time limit when pursuing a civil claim against the Ministry of Defence as an employer, and to avoid a breach of the armed forces covenant.

Personal injury awards can be substantial, so we understand why the MOD wants to minimise the opportunity for such claims, but if harm has been done to individuals that is due to negligence, why are we making it more difficult for them to seek recompense?

2.30 pm

Earlier, I brought up the date of knowledge. There is a discussion to be had about that, because there is still a lack of clarity. I had a look at the issue over lunch and I am sure that the Minister did as well. I said earlier that the Minister had referred to the date of knowledge of the injury. We have heard examples of when that might be difficult to ascertain, and I will refer in a minute to a couple of them. But this morning, when we were referring to the Snatch Land Rovers, the Minister talked about the point of knowledge of the problem. I have had a look at the Bill, and people will have to excuse me if I have got this wrong, but I think that, in clause 11, proposed new section 7A(4) of the Human Rights Act 1998 says:

“The rule referred to in subsection (1)(b) is that overseas armed forces proceedings must be brought before the later of—the end of the period of 6 years beginning with the date on which the act complained of took place”.

Is “the act complained of” referring to when the injury took place, to when those Snatch Land Rovers were brought into service or to when we found out that there was an issue? New subsection (4) goes on to say:

“(b) the end of the period of 12 months beginning with the date of knowledge.”

The date of knowledge of what? Of the injury, of the issue—what is it that we are talking about? We need to know what exactly it is. The new section goes on to talk about knowledge

“of the act complained of, and...that it was an act of the Ministry of Defence or the Secretary of State for Defence.”

What is it that we are talking about? What is meant by “act”? We need clarity on that. Frankly, that grey area—that ambiguity—leaves the door open for the MOD to refuse such claims. I have real concerns about that. I hope that the Minister can provide some clarity on it.

Let me move on and talk about the numbers of veterans and personnel who could be excluded from seeking recompense for injuries. Even on the basis of the Government's own figures, we are looking at between 19 and 50 veterans and families who would be prevented by the time limit from taking forward their claim. Why are we trying to stop veterans from taking forward claims? I simply do not understand that. The Minister has talked about his desire to support veterans, and I do believe him when he says that, but I do not understand this particular provision. Again, the Royal British Legion says that injured and bereaved veterans and families who have been found by a court to have reasonable justification to take forward a claim would be prohibited from doing so under the proposed new limit. That is a problem for me.

Let us look at the reasons why a veteran might not bring forward a claim within the six years. Hearing loss, for example, has been mentioned a number of times. It might be difficult to ascertain exactly which incident caused the hearing loss in the first place, but even if we do know when the hearing loss injury occurred, this is a progressive situation. My own grandad lost his hearing and he was thoroughly embarrassed. He did not like to speak about it; he pretended that he could hear. He did not want to seek help and when he did, he did not want the family to know. There are reasons, including embarrassment, that might prevent an individual from looking for recompense for such things.

Mr Jones: I agree with the hon. Member on hearing loss cases, having dealt with such cases in shipbuilding. The person will agree that they have lost their hearing; it is about whether the hearing loss can be pinned back to where it was lost.

Carol Monaghan: We have also heard examples of veterans who have served in multiple conflicts or operations where they have been exposed to loud noises, explosions and all sorts—which one caused the hearing loss? Could it otherwise have been caused at a firing range in the UK? That is a real difficulty, and it causes problems.

Mr Jones: If overseas operations will be excluded after six years while for cases in this country a case could be made under the Limitation Act 1980, does the hon. Member not think that will also complicate hearing loss cases, if it must be determined where the hearing loss took place? It will be difficult to disaggregate these points.

Carol Monaghan: In such situations, we know that the person who will benefit is not the veteran. That is the problem with part 2 of the Bill and the six-year limit. There must be protections in place to ensure that veterans who have served and suffered personal injury can seek justice for those injuries.

[Carol Monaghan]

There are other examples, such as the nuclear test veterans. It was good to hear about the work done by the right hon. Member for North Durham on that. I have had interactions with those veterans, including a constituent of my own who, sadly, died. Many have waited decades and decades for compensation and have had nothing—not even any medals to recognise the service they undertook. There are still ongoing issues, and again the MOD has denied that the cancers that those veterans have suffered are related to their service, despite a number of them having similar cancers and there being no links other than the Christmas Island testing.

I could also mention Lariam, an anti-malarial drug that can cause real issues for individuals' mental health, but not always instantly—it can happen on a much later date. My own husband was given Lariam and suffered as a result. Thankfully, he has not had any long-term issues, but many individuals' mental health is affected many, many years beyond that.

Jack Lopresti (Filton and Bradley Stoke) (Con): I really enjoyed the hon. Member's speech this morning—I did not agree with most of it, but it was well presented, with a good argument made. Is she saying that there should be no time limit at all for actions being brought?

Carol Monaghan: I thank the hon. Member for his kind comments. There is already a limit, but that limit can be looked at and overridden in certain circumstances. That should remain in place; there is no reason to take that away. We are not saying, "We encourage all veterans to wait 30 or 40 years", but there must be some protections. There cannot be a hard stop that prevents them from taking any action.

We all understand the Bill's purpose and why it has been brought forward, even though we might not agree with all of it and we might have issues with some of it, but part 2 of the Bill makes no sense whatever. The Bill has been sold to veterans as protecting them and looking after them, with the Government having their back. Actually, part 2 does the opposite. Why do the Government want to prevent between 19 and 50 veterans from seeking justice? I would like to know that from the Minister, because we have not yet had a decent answer on that point.

Mrs Lewell-Buck: It is always a pleasure to serve under your chairmanship, Mr Mundell. I rise to speak briefly about part 2 of the Bill. I will try not to detain the Committee by repeating the comments of other hon. Members.

Time and again, concerns have been expressed in written and oral submissions to this Committee—they were mentioned again today by my right hon. Friend the Member for North Durham—about the civil litigation longstop. If this part of the Bill is unamended, there is a high risk that the Ministry of Defence will not be held accountable for violations of soldiers' and civilians' rights—the largest proportion of claims made against the MOD are claims of negligence and of breaches of the MOD's duty of care towards its soldiers. Between 2014 and 2019, the available data shows that such claims amounted to more than 75% of all claims.

Part 2 of the Bill will benefit only the Ministry of Defence, and yet the Ministry of Defence is the defendant in all those claims. That is a clear conflict. The Minister and the Department have created a policy that protects them from legitimate legal claims. I am unaware of any other instance of our legislation being drafted in such a way as to protect the defendant over the claimant. I find it astonishing that the Minister wants to treat our forces and veterans in that way, placing them as such gross disadvantage.

As my right hon. Friend the Member for North Durham said, there remains a lack of clarity about the number of people who would be disadvantaged by the longstop. It would be helpful if, in summing up, the Minister provided some transparent and accurate figures to clear the issue up, once and for all. We are making legislation without proper knowledge and without a proper basis.

In oral evidence, we heard over and over again that the Bill protects the MOD, but not our forces. It breaches the armed forces covenant. It gives our forces less protection than civilians and, in some cases, even prisoners. We heard that from not one or two witnesses, but a broad and wide-ranging group of organisations, some of which, traditionally, would not necessarily agree with each other: the Royal British Legion, the Centre for Military Justice, the Association of Personal Injury Lawyers, Liberty and Human Rights Watch. Written evidence struck the same chords. When the Minister gave evidence, he appeared unable to find literally anyone at all who supports the longstop. If someone does, I hope that the Minister will share that fact with us.

The whole point of Bill Committees, as I have said repeatedly, is to improve and amend legislation, so that it emerges better than it was when it arrived with us. Indeed, the Minister has stated many times on the record that he wants to work with people in and outside this place to make the Bill the very best it can be, so that it meets its intended aims. I sincerely hope that that commitment was not an empty gesture. A good way to prove that it was not is to consider our amendments, listen to our comments and take them on board, and ensure that so many people are not disadvantaged when making claims against the MOD.

Liz Twist (Blaydon) (Lab): I, too, will not occupy too much of the Committee's time, but I want to raise the issue of the impact on the ability of veterans and serving personnel to bring claims.

Yesterday, additional written evidence was circulated to us from a number of people, including Dr Jonathan Morgan of the University of Cambridge, in document OOB09, which refers to the impact of part 2 of the Bill on the ability of people to bring a claim; their rights will be restricted.

We also had evidence yesterday from Professor James Sweeney; I am afraid I do not have the reference number. He clearly points out deficiencies, and tackles head on, in paragraph 11 of his evidence, the Minister's assertions that we are reading the provisions incorrectly. I ask the Minister and his advisers to look at that closely. We had evidence from the Association of Personal Injury Lawyers, too. We have heard comments about people's views on personal injury lawyers and in whose interests things are, but to me that evidence is clear and well set out.

2.45 pm

However, the most persuasive evidence for me is the supplementary written evidence in document OOB10, presented by the Royal British Legion, which clearly sets out its concerns. We were able to question its representative in oral evidence, and the Minister took that opportunity to press them on the legion's concerns. Its written evidence says:

“Part 2 of the Bill should be improved to ensure that no member of the Armed Forces community is left subject to a time limit on pursuing a civil claim against the Ministry of Defence (MoD) as an employer, and to avoid a breach of the Armed Forces Covenant.”

I know how important the armed forces covenant is to the Minister and, indeed, to other people in this room. Most of us have worked with local authorities and other employers and organisations locally to ensure that the armed forces covenant actually means something. If the Royal British Legion, whose reason for existence is to support the armed forces and former armed forces personnel, is raising concerns about the impact of part 2 on those veterans, we really need to take note of that.

Mr Jones: The hon. Member for Glasgow North West, who speaks on behalf of the SNP, raised the issue of nuclear test veterans. In 2009, when they brought their case against the MOD, it was a limitations case, because the injuries happened in the 1950s. They won it because new evidence came forward and Mr Justice Foskett argued that the limitation case could go forward. Is it not clear that if that happened now, that case would not even have been heard?

Liz Twist: My right hon. Friend is absolutely correct. That is why it is important that this part of the Bill be either substantially amended to protect the rights of veterans, or perhaps taken away altogether.

The Royal British Legion, talking about disadvantage under the Covenant, says:

“The Armed Forces Covenant states: ‘those who serve in the armed forces, whether regular or reserve, those who have served in the past, and their families should face no disadvantage compared to other citizens in the provision of public and commercial services...in accessing services, former members of the Armed Forces should expect the same level of support as any other citizen in society’”.

We all need to take very seriously the concerns raised by the Royal British Legion about claims and the breach of the armed forces covenant. I have no doubt that it is not the Minister's intention to disadvantage people, but the Bill as drafted will do so. I ask him to look at this very seriously, and to consider amendments to the Bill.

The Minister for Defence People and Veterans (Johnny Mercer): It is good to see you back in the Chair, Mr Mundell.

I appreciate the opportunity to address some of the points raised. My intention is not to disparage Members' intentions, because I get it: people want to support our armed forces and do not want to disadvantage them. I do not want to disadvantage them. However, some things—the data is a good example—are being totally misused to promote these points. For example, on the statement that from 2014 to 2019 there were however many thousand claims, that number includes claims in the UK that people would bring under tort or civilian

law against an employer. This Bill does not apply to that; it is called the Overseas Operations (Service Personnel and Veterans) Bill. In no way are those comparisons being made in a fair manner. This Bill applies only to those allegations and claims that affect our service personnel overseas.

Carol Monaghan *rose*—

Johnny Mercer: I will get to my point. There were 552 employer liability claims from what happened in Iraq and Afghanistan. Today's *Daily Mirror* had sounded familiar to a couple of the speeches: it mentioned “21,000 claims”. It is total nonsense. That is the total number of claims that people have made against the MOD in the period from 2004 to 2017. They are claims in a civilian workplace environment, where there are civil liabilities claims, claims regarding exercises and so on in the UK, and breach of contract claims. In the Bill, we are talking specifically about overseas operations. Whoever is providing these figures is demonstrating a pretty basic misunderstanding of what is going on—or it is a deliberate attempt to mislead, but I am sure it is not. The two things are not comparable in any way.

Mr Jones: To me, that does not matter. Why should armed forces personnel be treated differently when something happens in this country, as opposed to overseas? It might not be in combat; it might be on a training mission, or something like that. As I said, if one veteran is disadvantaged, that is one veteran too many.

Johnny Mercer: It does matter. Facts do matter in this debate; figures do, too.

Mrs Lewell-Buck: Where can we find the figures that the Minister is quoting to us?

Johnny Mercer: The figures have been published in the impact assessment a number of times. The hon. Lady can shake her head, but again, we are in a space of alternative facts. The figures are in the impact assessment, which is before the House.

Carol Monaghan: The Minister is talking about overseas operations. We all understand that, and that the Bill applies to those serving overseas. However, if my employer sends me overseas, and I suffer an injury there due to the negligence of my employer here in the UK, I can sue the employer for the injury. The same should be the case for veterans. It is not about whether it is overseas or here; it is about having the same rights as civilian employees.

Johnny Mercer: I disagree, and this is why. Operational service overseas is fundamentally different from life in the UK, and from what we ask our people to do. The hon. Lady is absolutely right: we have a duty in this country to protect those overseas, whether it is against improvised explosive devices, bombs, electronic warfare, or indeed legal systems used to bring warfare by another means. That is what this Bill is trying to do.

I understand the assertion that if someone from the Royal British Legion was deployed on an operation, the six-year limit comes down. Viewed on its own, that is

[Johnny Mercer]

something that will happen to serviceperson, but not a civilian. Disadvantage is a comparable term. Disadvantage to who? The Government argue—this I am clear on—that these people are seriously disadvantaged by having no legal protection against these thousands of claims that we have seen come in over the last 15 or 20 years. What the Royal British Legion would like us to do is to put that to one side—[*Interruption.*] No, it is, because I have engaged with it extensively. It would like us to apply that to one side of the argument, which, again, is not legal. Under European human rights law, people are being disadvantaged and discriminated against based on the claimant, which is not legal. This cannot be brought in on one side.

Mr Jones: The Minister is taking rights away from servicemen and women. He talked about overseas operations, but let us say, for example, someone is in British Army Training Unit Suffield in northern Canada on a training exercise. If that is classed as an overseas operation, or a peacekeeping operation—

Johnny Mercer: It is not.

Mr Jones: A peacekeeping operation?

Johnny Mercer: No.

Mr Jones: Right. Nevertheless, there have been times—the Snatch Land Rover cases, for example—where there was quite a good reason why the case should have been argued out. Why is the Minister so determined to take that right away from people?

Johnny Mercer: Because what the right hon. Gentleman says—I have a lot of respect for him—is simply not true. BATUS is not an operational environment. It is not a peacekeeping mission. It is a training unit mission. As I said this morning, and speaking from a point of knowledge, when it came out in the inquiry about the Snatch Land Rover cases, that is when the six-year thing started. That would not have been affected by this legislation.

We could keep raising these points, but I am not going to change my view, because it is based on the truth. I cannot suddenly say, “Yes, BATUS is a war-fighting operation, so this stuff applies.” I cannot say, “These people would be affected in the Snatch Land Rover case,” because that is simply not the case.

Mr Jones *rose*—

Johnny Mercer: I will come back to the right hon. Gentleman in a minute. He talks about taking rights away from our service personnel. They have a right to be protected on the battlefield in all these areas. One area where they have a right to be protected is the use of lawfare to progress, and change the outcome of, a conflict through other means.

There were lots of wild sentiments thrown around—“lawyers don’t make things up,” and all the rest of it. Again, that does not collide with reality. Phil Shiner has been struck off. The reality—the world as we find it—is what this Bill is designed to deal with.

Jack Lopresti: On a point of clarification, would a deployment in Cyprus or Estonia be covered by the Bill?

Johnny Mercer: We are talking about overseas operations, wherever they take place outside the UK. UK operations and operations outside the UK are defined in the Bill.

Mrs Lewell-Buck: I think the Minister is falling foul of something that a lot of witnesses in the oral session said he would: he is confusing the criminal law with the civil law. Largely, our concerns around part 2 are about the civil aspect.

Johnny Mercer: What is being confused here is the difference between tort and human rights claims; that was being confused a lot in the comments made just now. Regarding the evidence sessions, I accept that there are aspects of this legislation that some of the people who came in—public interest lawyers, the Association of Personal Injury Lawyers, Hilary Meredith and others—do not like. I do not dispute that for a minute, but my job is to protect those who serve on operations from all those different threats, including lawfare, which has not been done before. Other nations do it, and we have a duty to protect these people as well.

Liz Twist: I can understand the Minister’s concerns about some of the comments, but the Royal British Legion exists to protect people who have served in the forces. That is one of their key aims. If they are saying to us that the provisions present an issue, is it not right that we take note of that, address it, and deal with it clearly?

Johnny Mercer: Absolutely; it is right to take note of it, and I have engaged with it extensively on this issue, but the legion does not own the covenant—nobody does. It belongs to the nation. The covenant was designed to ensure that when a service person and a civilian are in a comparable situation, the service person is at no disadvantage. It was never designed to ensure no disadvantage whatsoever. We send our people away from their families for six or seven months of a year—that is a disadvantage. We send them away to undertake dangerous work—that is a disadvantage.

The covenant was meant to mean that when two people are in the same situation, the service person is not disadvantaged, and that is why the Bill says that it applies to a civilian in these environments in exactly the same way. I heard the right hon. Member for North Durham say again this morning that civilians were not covered by this Bill. Well, they are. It is in the Bill.

Mr Jones: The Minister said these rights protect people, but the covenant is not about taking rights away from people. I know we fixate on the date of knowledge, but when he is no longer a Minister and none of us are here anymore, the Ministry of Defence lawyers will not use this provision to say that a case is time-barred. There is nothing in this Bill that says that. That is the problem he has. I do not for one minute think that he is suggesting otherwise, and he is perhaps well intentioned, but he is just wrong on this, and is trusting the MOD too much.

Johnny Mercer: I accept the right hon. Gentleman’s point. He will not find many Ministers who will say that half is the Department’s problem in terms of how it has

investigated and so on. I have a healthy interrogation of any advice I am given. I accept his point that there is a danger of abuse, but we have written into the Bill that point of knowledge. I am not fixated on it; it is just there in black and white.

3 pm

Mr Jones *rose*—

Johnny Mercer: I will come back to the right hon. Gentleman. I want to finish what I am saying—I do not want to repeat myself and bore everybody—and then I will take more interventions.

Clause 8, in conjunction with schedule 2, introduces new factors that the courts must consider when deciding whether to allow certain claims relating to overseas military operations to be brought after the normal time limit, and sets the maximum time limit for such claims at six years. The Government intend to ensure that claims for compensation for personal injuries or deaths arising from overseas military operations are assessed fairly and achieve a fair outcome for victims, for the service personnel and veterans called upon to give evidence, and for the taxpayer.

Section 2 of the Limitation Act 1980 sets an absolute time limit of six years for compensation in claims relating to most types of tort. Although sections 11 and 12 set a three-year limit for claims for personal injury or death, the three-year limit is not absolute. Section 33 of the Act gives the court discretion to allow claims to be brought beyond the time limit if it considers it fair to do so. Section 33 identifies six factors to which the court must have a particular regard when assessing fairness. In broad terms, those relate to the steps taken by the claimant to bring the claim, the reasons for delay and the effect of delay on the quality of the evidence. Those factors do not adequately recognise or reflect the uniquely challenging context of overseas military operations. The Government are concerned that unless the court is directed to consider relevant factors, it might wrongly conclude that it is fair to allow older claims to proceed. The clause, in conjunction with schedule 2, introduces three new factors that the Government consider properly reflect the operational context to which the court must have particular regard.

Mr Jones: Is it not for a lawyer, when they are arguing a limitations case, to make the case for special circumstances? They can do that now in law. If the measure goes through unamended—I accept that this is not the Minister's intention—the MOD will use it as a way of blocking cases. We only have to look at the nuclear test veterans case of 2009 and Judge Foskett's summing up. The MOD's argument in the limitations hearing was that the case was out of time, but it was successfully argued that new evidence had come forward. That was possible because it was before a court of law. This measure stops that.

Johnny Mercer: I will address that point in my final remarks on the clause. The factors that have to be considered are the extent to which assessment of the claim will depend on the memories of service personnel and veterans, the impact of the operational context on their ability to recall the specific incident, and the impact

of doing so on their mental health. The new factors reflect the reality of overseas military operations—the fact that opportunities to make detailed records at the time might be limited; that increased reliance might have to be placed on the memories of the personnel involved; and that as some of them might be suffering from mental health illnesses owing to their service, there is a human cost in doing so. The human cost obviously goes beyond that of the service person and will be felt just as much by their families and friends. Families of the military community are a core aspect of the armed forces covenant and must not be overlooked when we consider the measures in the Bill.

Clause 8, in conjunction with schedule 2, also introduces an absolute limit of six years for claims for personal injury or death arising from overseas military operations. This change brings the absolute time limit for personal injury or death claims in line with other claims for other torts that might occur on operations, such as false imprisonment. It also gives service personnel and veterans certainty that they will not be called upon indefinitely to recall often traumatic incidents that they have understandably sought to put behind them.

Finally, this clause, in conjunction with schedule 2, amends the Foreign Limitation Periods Act 1984, so that claimants cannot benefit from more generous time limits under foreign law. This change is needed for consistency and will ensure that no claim is brought after six years. I must emphasise that the Government are not seeking to stop meritorious claims or to avoid judicial scrutiny, nor are we seeking to put the armed forces or the Government generally in a more favourable position compared with their position as regards other defendants.

The changes that this clause and schedule 2 introduce go only as far as is necessary to ensure a fair outcome. They do not affect the way in which the time period is calculated or those provisions that suspend time in appropriate circumstances. They are also consistent with court rulings that claimants do not need to be provided with an indefinite opportunity to obtain a remedy. The courts have recognised that limitation periods have an important role to play in ensuring legal certainty and finality and in preventing injustice. The changes that this clause, in conjunction with schedule 2, introduces are a reasonable and proportionate solution to the problem of historical claims.

I will not repeat the same arguments for clauses 9 and 10, which amend the legislation in Scotland and Northern Ireland, but I will just add that the Limitation Act 1980 only covers claims brought in England and Wales. It is therefore necessary to extend similar provisions across the whole of the UK to prevent forum shopping. It would be deeply unsatisfactory if changes that the Government are introducing to achieve a fairer outcome in relation to claims brought in England and Wales could be circumvented by a claimant's bringing their claim in Scotland or Northern Ireland instead.

Turning our attention to new clause 2, none of the measures in part 2 of the Bill will prevent service personnel, veterans or their families from bringing claims against the MOD in connection with overseas operations within a reasonable timeframe, as historically most have done anyway. The purpose of the limitation longstops is to stop historical and often vexatious claims being

[Johnny Mercer]

brought against the military on overseas operations, which put our service personnel at the mercy of being called to provide evidence long after the alleged events in question, with all the harm and anxiety that might cause them.

To ensure fairness between claimants, we have not excluded service personnel from those provisions. They will apply equally to service personnel and veterans as they will to any other person bringing a claim against the MOD in connection with overseas operations. I am confident that these measures do not break the armed forces covenant. The new factors and limitation longstops only apply to claims in connection with overseas operations and will apply to all claimants in the same way. The court's discretion to extend the three-year time limit for death or personal injury claims and the one-year time limit for human rights claims remains unchanged in respect of any other claims, that is, those not connected to overseas operations brought against the MOD.

Additionally, our evidence suggests that 94% of those claims from service personnel are already brought within six years. We would expect that figure to rise in future, as we ensure that the armed forces community is made aware of the new measures and the relevant dates for bringing claims, including what is meant by the date of knowledge. That should encourage personnel to bring claims within six years, or earlier if possible, as after the primary time limit of three years for personal injury and death and one year for human rights claims expires, claimants must rely on persuading the courts to exercise their discretion to extend the time limit.

In summary, clauses 8 to 10, as they stand, do not breach the armed forces covenant and do not disadvantage service personnel or veterans. Let me make this clear point: on operations and in the area of modern warfare, we cannot lift human rights legislation and apply it to the battlefield. I accept that some people want to do that and think that is the right thing to do, but I respectfully disagree. The idea that people can go to court and argue for an extension produces exactly the position we find ourselves in now, where individuals such as Phil Shiner, who the right hon. Member for North Durham mentioned, have sought extensions under those situations, in order to bring thousands and thousands of claims against the MOD.

We are stuck in a position where we have to do something. In that scenario, I cannot apply something to one side, as I have indicated already, although the Legion would like me to. Similarly, we cannot take away all time limits, because that would defeat the entire purpose of the Bill, which is to provide some certainty for veterans. I accept what some hon. Members have said about people's ability to sue within that timeframe if they are serving overseas. If they were in the UK on exercise or in Canada, it would be different, but that is because the unique nature of operations is different.

We have a duty to protect those people, as I said, both physically, from what is on the battlefield, and in the court of law. We have seen some horrendous experiences over the years. We can say, "It's all too difficult", and that we need to walk away—the reason why, for 40 years, no Government have done this is that it is really difficult—but we are in a position where we have to make choices:

either we choose to leave the situation as it is now, letting it continue with no time limit, or we bring forward legislation to give certainty to our veterans.

Mr Jones: I am sorry—I do not agree with that. There is a way to improve the Bill, as with the issue of investigations raised earlier. We have talked about the Human Rights Act 1998, but if the Minister reads the judgment in the Smith case, he will see that the Supreme Court was clear about the Act's limitations. Will the Minister explain the proposal to have a one-year time limit on human rights cases? Will he explain how he will limit appeal if section 33 does not apply to human rights cases, which it will not if the Bill goes through? How does that fit with our obligations under the convention?

Johnny Mercer: Our obligations under the European convention on human rights are not changed in any way. We have to design an investigative framework that is resilient and robust in the face of challenge under the convention. I have to disagree with the right hon. Gentleman—clearly, there is a difference of opinion here. That is allowed, that is what this place is all about, but the reality is that those on the Government Benches have a different view, which is that we cannot let the situation that has persisted for the past 40 years continue ad infinitum. We have to bring in fair and proportionate legislation to go beyond saying nice things about our people, or, "Isn't it terrible that these people get dragged through the courts?", while being prepared to do absolutely nothing about it. I am afraid that those days have come to an end. We have to legislate to protect our people. I will give way once more, and then I will finish.

Mr Jones: There is nothing fair about taking rights away from veterans. On the Human Rights Act, the one-year limit to bring a claim is clearly still there, but at present someone could bring a late claim under section 33 if at the time they thought it was not there. The Minister said that we would be abiding by the convention. Will he point to where in the convention—on our side, in the Human Rights Act—it says that time limits and out-of-time claims are applicable? I cannot see that.

Johnny Mercer: As the right hon. Gentleman will remember from his time in government, all legislation has to be signed off as ECHR compliant. The Department has done that, recognising our responsibilities under the legislation and meeting its requirements. He talks about rights, but people such as Bob Campbell have a right to be protected from experiences such as his over the past 17 years, and the soldiers who went through al-Sweady have a right to be protected as well. This is not all in one direction—it is not a one-way street—and we are clear that those people have a right to be protected in the jobs that we asked them to do. That is what the clause is all about, so I ask that it stand part of the Bill.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Schedule 2

INTERNATIONAL CRIMINAL COURT ACT 2001

Stephen Morgan (Portsmouth South) (Lab): I beg to move amendment 29, in schedule 2, page 16, line 4, leave out "six" and insert "ten".

The Chair: With this it will be convenient to discuss the following:

Amendment 30, in schedule 2, page 16, line 35, leave out “six” and insert “ten”.

Amendment 31, in schedule 2, page 17, line 16, leave out “six” and insert “ten”.

Amendment 32, in schedule 2, page 18, line 34, leave out “six” and insert “ten”.

Amendment 33, in schedule 2, page 19, line 18, leave out “six” and insert “ten”.

Amendment 34, in schedule 2, page 19, line 26, leave out “six” and insert “ten”.

Amendment 35, in schedule 3, page 20, line 40, leave out “6” and insert “10”.

Amendment 36, in schedule 3, page 21, line 3, leave out “6” and insert “10”.

Amendment 37, in schedule 3, page 21, line 8, leave out “6” and insert “10”.

Amendment 38, in schedule 3, page 21, line 14, leave out “6” and insert “10”.

Amendment 39, in schedule 3, page 21, line 15, leave out “6” and insert “10”.

Amendment 40, in schedule 3, page 21, line 19, leave out “6” and insert “10”.

Amendment 41, in schedule 3, page 21, line 20, leave out “6” and insert “10”.

Amendment 42, in schedule 3, page 21, line 26, leave out “6” and insert “10”.

Amendment 43, in schedule 3, page 21, line 27, leave out “6” and insert “10”.

Amendment 44, in schedule 3, page 23, line 6, leave out “6” and insert “10”.

Amendment 45, in schedule 3, page 23, line 35, leave out “6” and insert “10”.

Amendment 46, in schedule 3, page 23, line 36, leave out “6” and insert “10”.

Amendment 47, in schedule 4, page 24, line 4, leave out “six” and insert “ten”.

Amendment 48, in schedule 4, page 24, line 28, leave out “six” and insert “ten”.

Amendment 49, in schedule 4, page 24, line 34, leave out “six” and insert “ten”.

Amendment 50, in schedule 4, page 25, leave out line 16 and insert—

“ten years is to be treated as a reference to the period of ten years”.

Amendment 51, in schedule 4, page 26, line 36, leave out “6” and insert “10”.

Amendment 52, in schedule 4, page 27, line 20, leave out “6” and insert “10”.

Amendment 53, in schedule 4, page 27, line 21, leave out “6” and insert “10”.

Amendment 54, in schedule 4, page 27, leave out line 27 and insert—

“10 years is to be treated as a reference to the period of 10 years plus —”.

Stephen Morgan: Ministers have said that the purpose of the Bill is to protect service personnel, but part 2 as drafted does the exact opposite. We are not here to score points or to play politics; we are here to work constructively with the Government and to highlight the areas of the Bill that must be improved. That does not need to be a binary choice. By moving the amendment, our objectives could not be simpler—to protect our

personnel’s access to justice and to redress the Bill’s negative implications for our forces’ welfare. Are those concepts that Ministers cannot get behind?

In the Committee’s witness sessions, there was consensus among the specialists from whom we heard. From decorated soldiers to human rights groups and from lawyers to armed forces charities, there was agreement. Consensus on the Bill in its current form may erode rather than enhance the rights of personnel. Most notably, we heard comments from the Royal British Legion, and I am sure that no one would question its age-old, unwavering commitment to the welfare of our troops.

With that in mind, I am concerned about what the Royal British Legion has said, which is that the Bill constitutes a potential breach of the armed forces covenant—a deeply worrying conclusion from the UK’s largest armed forces charity.

3.15 pm

Mark Eastwood (Dewsbury) (Con): The hon. Gentleman mentions the Royal British Legion. When my hon. Friend the Member for Wrexham asked Charles Byrne whether the Royal British Legion opposes the Bill, did he not say that it does not?

Stephen Morgan: It was clear that the Royal British Legion is in favour of the intent of the Bill but has concerns about part 2, which it believes breaches the armed forces covenant. Charles Byrne was very clear on that point.

Johnny Mercer: I make this point again. I have heard it said a number of times, “We support the intent of the Bill.” Over 40 years Members have spoken of supporting the intent of looking after our veterans and protecting them from vexatious claims. No one has done anything about it. Lots of people gave evidence and said they supported the intent of the Bill. It does not mean anything unless we get into the detail of the Bill. The Royal British Legion did not oppose the Bill; it said it had concerns about the armed forces covenant, which we addressed, but it did not oppose the Bill.

Stephen Morgan: I give way to my hon. Friend the Member for South Shields.

Mrs Lewell-Buck: I am looking at the transcript of the evidence given by the Royal British Legion, in which it said:

“Can we achieve those aims without disadvantaging service personnel? If we can do both, both should be done.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 89, Q168.]

It welcomed the intent behind the Bill and believed that it could “be improved.” No Labour Member is against the Bill per se; we are against part 2. We are trying to improve the Bill as the Royal British Legion suggested. I do not understand why the Minister does not grasp that.

Stephen Morgan: I thank my hon. Friend for the intervention. She hits the nail on the head: we want to work constructively with the Government to get the Bill right. Sadly, we are not seeing that engagement, and that concerns us. Are Ministers not concerned that the

[Stephen Morgan]

very Bill they claim is devised to help our armed forces is said to be doing the very opposite by an organisation as distinguished as the Royal British Legion?

We heard from other important witnesses. The Association of Personal Injury Lawyers, a not-for-profit organisation representing injured serving and ex-service personnel, said:

“This Bill leaves our veterans with less rights than prisoners.”

I will repeat that because it is so important:

“This Bill leaves our veterans with less rights than prisoners.”

That is a damning verdict delivered by lawyers who devote their lives to representing our troops. Our armed forces serve the nation with distinction. They deserve more than to have their rights stripped away.

I say to the Minister: do not dismiss the warnings of the legion and APIL; work with us to address them.

Let us take a closer look at what part 2 means. The Limitation Act 1980 results in the armed forces community and civilians being treated equally in seeking a claim for personal injury. A three-year cut-off point is in place. The courts retain the right to grant an extension to forces personnel. Section 33 provides the court with discretion to override the current three-year limit, but this Bill deliberately snatches courts’ ability to show discretion if the case relates to an overseas armed forces action. It makes a deliberate change to the Limitation Act. That makes no sense. There are already structures in place to ensure that only appropriate claims are brought. Courts routinely manage out-of-time proceedings and frequently throw out cases where delay is unjustified. The detailed criteria set out in the Limitation Act 1980 already address cases that do not have reasonable grounds or are unjustified. Why is the Minister actively removing an aspect of the Limitation Act that offers courts the right to grant an extension in cases relating to armed forces personnel?

Mr Jones: As I said earlier in an intervention on my hon. Friend the Member for Blaydon, the nuclear test veterans case is a good example. There was a limitations hearing in which the MOD argued that the case was out of time because the incident took place so long ago. In that case, Judge Foskett argued that new evidence meant the date of knowledge was current and he allowed it to be admitted. I accept that the numbers are not huge, but it is the exceptional cases that are important.

Stephen Morgan: I thank my right hon. Friend for his remarks. I hope the Minister addresses the points that he makes so eloquently later on, in his summing up.

The Bill removes the ability of our armed forces personnel to bring forward a civil claim at all after six years, even where it would have passed judicial scrutiny. Under the Government’s proposed changes, civilians will retain the right to pursue a civil claim against their employer. Armed forces personnel will not, which clearly breaches the armed forces covenant. Non-discretionary time limits undermine justice and arbitrarily prevent legitimate claims from proceeding. We must hear the Minister’s business case for setting that time limit.

We have established that part 2 of the Bill is flawed. It introduces a six-year time limit for any claimant or bereaved family in bringing civil claims against the Ministry

of Defence. That means that if someone suffers personal injury or even death owing to employer negligence and in connection with overseas operations, they can take no action after a six-year time limit. That is deeply concerning because a great many conditions might not come to light until after the time limit: for example, post-traumatic stress disorder.

Last year, *The Times* reported the case of Mark Bradshaw, aged 44, who had suffered from PTSD since being involved in a friendly-fire attack in 2010 while serving in the Royal Artillery. Despite the immediate onset of the condition, the veteran, who lives in Newcastle, was not given a diagnosis until 2016. By then he was drinking heavily and had suicidal thoughts. He had left the service and become alienated from his family. He was awarded £230,000 in a settlement, but feared that the proposed legislation could discriminate against those who do not develop PTSD or receive a diagnosis until many years later. He called the plan to impose a time limit on claims “horrendous”.

I have another example.

Mr Jones: Another issue concerns human rights cases. The impression being given is that they are always brought by people against the MOD and include litigants and people in foreign countries and so on, but Human Rights Act cases are also brought against the MOD by armed forces personnel. When Hilary Meredith gave evidence, she said:

“There is a difficulty putting a time limit on the Human Rights Act—I do not even know whether we can do that constitutionally”.—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 18, Q30.]

The Minister seemed to brush aside the fact that section 33 will be ignored in terms of time limits. Does he also think that that constrains the rights of veterans and service personnel from bringing cases against the MOD, which they can, under the Human Rights Act?

Stephen Morgan: We could spend all afternoon on different cases. That is why the amendment is so important. I have another example. It is about how legislation would have denied justice to a former royal marine with noise-induced hearing loss, according to the Association of Personal Injury Lawyers. The former marine received nearly half a million pounds for a noise-induced hearing claim on the grounds that his hearing loss and tinnitus was caused by a negligent exposure to noise. During his career the marine served in Northern Ireland, the Gulf and Afghanistan, and he was exposed to noise from thousands of rounds of ammunition, thunderflash stun grenades, helicopters and other aircraft and explosive devices. His claim related to his entire service.

When he left the Royal Marines in 2012 because of problems with his hearing, he was unaware that he was able to make a claim for compensation. He eventually spoke to a solicitor in late 2014, seven years after he was first aware that he had problems with his hearing. The MOD admitted liability and made no argument about his case being brought out of time. The time limit in this Bill, however, would have eliminated all aspects of the claim relating to the Marine’s extensive service overseas.

Johnny Mercer: I totally respect the manner and intent of the hon. Member’s remarks, but, again, the Mark Bradshaw case and the case of the royal marine, which we have looked at, would not be affected by this

legislation. When Bradshaw became aware of his PTSD being service-related, it would have been dealt with within six years. The same detail applies to the royal marine.

I do not know what else to say, but the stuff that is coming forward—I have to be honest and say that I have heard it before, because I know it comes from a campaign group—is just simply not true. I do not know what to do with the cases being presented to me, which are simply incorrect.

Stephen Morgan: The claim could have been made only in relation to negligent exposure in the UK. It might not have been possible to isolate the extent and the effect of negligent exposure in the UK, making it very difficult to claim any redress at all. Why are some medical conditions worthy of justice, and not others? Many other medical conditions are likely to fall outside the cut-off point, and there are conditions such as long-term deterioration of joints resulting from carrying heavy equipment.

Mr Jones: Does my hon. Friend agree that what the Minister is saying cannot be the case? He cannot give any guarantee that such cases will not be resisted by the MOD. He cannot direct the MOD, because he will not be there when he leaves the MOD, and no one else can do it either. It is about protecting future cases. In the two cases referred to, the Bill would allow the MOD to legitimately turn those cases down because they were out of time. Those two individuals would have no recourse to law in order to enforce their rights.

Stephen Morgan: My right hon. Friend is absolutely correct. We are saying it time and again, but the Bill protects the MOD; it does not protect our troops. I hope the Minister will take that point on board.

Carol Monaghan: Does the hon. Gentleman share my concern that the Minister is suggesting that we are raising concerns because of a campaign group? Personally, I am not raising concerns because of a campaign group; I am raising concerns because of the protections being taken away from armed forces personnel and veterans. When an individual gets a diagnosis of PTSD, I cannot imagine anybody thinking, “The first thing I am going to do is lodge a claim against the MOD.” When a condition gets progressively worse, they might think about doing so over time, but not necessarily within six years.

Stephen Morgan: I thank the hon. Member for that intervention. We are not here just to speak up for campaign groups and emails; we are here to speak up for our armed forces. That is why we are absolutely keen to see the Bill improved. I really hope the Minister engages with these points in his summing up.

Is the Minister satisfied that the Bill in its current form will prevent troops who are suffering from these conditions from receiving justice? As we heard from APIL in evidence sessions last week, many troops are not aware that they can bring a claim against the MOD. They are directed to the armed forces compensation scheme, which pays out much lower sums. Why is it that the MOD has scrapped the proposed better compensation

scheme, which would have seen payments that are closer to those offered in court settlements? Why is it that the Government are willing to introduce a six-year longstop for troops, but not for civilians? It puts troops at a patently clear disadvantage by comparison with civilians. As we heard last week from the director general of the largest armed forces charity in the UK—the Royal British Legion—it risks breaching our armed forces covenant.

Part 2 of the Bill in its current form protects the MOD; it does not protect our troops. Despite all this, it is not too late. The Opposition have proposed solutions today, and we can work together to address this issue. Protecting service personnel’s access to justice acts on the concerns voiced by friends such as the Royal British Legion.

3.30 pm

The premise of the amendment is very simple: stop section 2 restrictions from applying to serving and ex-serving personnel. That would ensure proper protection for our armed forces by safeguarding their right to bring claims against the MOD. It would do so by exempting veterans and serving personnel for six-year time limits. In short, our amendment flatly rejects the Bill’s attempts to prevent regular or reserve forces, or a member of a British overseas territory force, from bringing action against the MOD after six years. Labour cannot and will not stand for legislation that breaches our armed forces covenant. I urge the Minister to work with us and to put party politics aside. Let us build a consensus on a Bill that is worthy of the troops that it is set to serve.

Will the Minister clarify whether Ministers are not concerned that the very Bill they claim was devised to help our troops is said to be doing the opposite by such a distinguished organisation as the Royal British Legion? Why is he actively removing the aspect of the Limitation Act 1980 that offers courts the power to grant extensions in cases relating to armed forces personnel? Why are some medical conditions worthy of justice and not others? Is he satisfied that the Bill in its current form will exclude troops suffering from conditions such as PTSD from receiving justice? Why has the MOD scrapped the proposed better compensation scheme that would have seen payments closer to those offered in court settlements? Finally, why are the Government willing to introduce a six-year time limit to stop troops but not civilians?

Mr Jones: I rise to support my hon. Friend and to speak to my amendments 92 and 93, which I understand fall in this group of amendments—

The Chair: Order. They do not. They are in the next group.

Mr Jones: They do not—I am reading it wrongly as one big group, but they are two separate groups.

My hon. Friend the Member for Portsmouth South made a point about the backstop. I am sorry, I just cannot accept that backstop. The Minister seems to be misunderstanding the issue to do with the date of knowledge. The date of knowledge is clearly not only as laid out in the law of cases against the MOD, but as in

[Mr Kevan Jones]

civil law as well. As I said this morning, I used to deal all the time with the date of knowledge in asbestos cases. Some of those test cases were to do with ensuring that individuals—sometimes many years after they had left the industry in which they had contracted their disease—were able to take action. They were able to do so because of the Limitation Act.

The other thing that we need to knock on the head is the idea that bringing a section 33 case is easy. It is not easy; it is very difficult, and the threshold to meet is very high—rightly. As the Minister said, time limits rightly have to be fair in two ways: first, to give individuals enough time to ensure that they can bring a case; and, secondly, because evidence gets lost, whether in a civilian case or, more so, in such a case as we are addressing now. There is therefore a good reason for time limits, but there is also a good reason to have circumstances and exceptions in which those time limits should not apply.

My hon. Friend mentioned two cases, which the Minister said would be covered—but I am sorry, they would not. If they fell outside the six years, under the Bill as drafted those individuals would not be able to argue before a judge why limitations should not apply in their cases, and their case would just be dismissed. The Minister seems to have a lot of faith that the MOD's lawyers of the future—and now—would not use that measure to reduce and stop such claims. They would not be doing their job if they did not use it to stop those claims.

The important thing is that such an individual would then have no rights whatever—unlike you, me or anyone else: even a prisoner—to bring a case under section 33 of the Limitation Act. I understand what the Minister says about his trust and belief in the MOD now and in the future. I do not disparage what the MOD is doing. There was a reference in the evidence session that the Department employs good lawyers and that will be their job, and they will use this provision. As such, what the Minister said will not be the case.

My hon. Friend the Member for Portsmouth South raises the issue around the 94%, or whatever the figure is. I do not care, to be honest, because as I said earlier one case is a case too many. Like my hon. Friend, I want to ensure that armed forces personnel and veterans are treated on the same basis as everyone else in this country. If that does not happen, the armed forces covenant will protect their rights but the Bill will take their rights away. That cannot be right.

There is also the point, which I had hoped the Minister would answer, about the Human Rights Act. He said the one-year time period is still in there, which is fine, but as Hilary Meredith said, how do you then disapply the Limitation Act to the Human Rights Act? As she said, it is very difficult to see how you would do that in practice because we are part of an international convention.

The only response the Minister gave—he might want to write to me if he does not have it with him; I accept that on occasions he does not have all the facts to hand—is that it has been cleared as being Human Rights Act-compliant. Are we suggesting that for this group of veterans there will be a new thing—a time limit for out-of-time human rights cases? If that is so, it is very interesting. How has that been squared in terms

of the convention we have signed? Again—and likewise—everybody else will be able to use the Limitation Act to take a case forward outside that time.

The Minister said he is listening, but he is not. He has a fixated view of what goes forward in the Bill and that is what he is going to put forward. We have made attempts. I have said that I accept that amendments written by mere amateurs such as myself and others are not necessarily legally correct. However, what often happens on these occasions is that a Minister will say, “Yes, we agree. There is a point there. We will take it away, look at it and try to frame it in terms of how it fits into the Bill and the legal parameters.” That way, when we get to Report and Third Reading, they can be introduced, usually as Government amendments. However, that has not happened. We have had, “This is how it is going to be and that’s it.”

The situation is rather sad because there are things that can be done even at this stage—I am discussing one of them—that could improve the Bill. I accept that the Minister has already committed to look at investigations in the Armed Forces Bill next year, but he should stick the provisions in the damn Bill now. He could do it. The fact that the civil service might not want to do it—well, tough. He should just say, “You are going to do it” and put it in. Putting those investigation measures into the Bill will improve it immensely and do more than where the Minister has come from so far in the Bill. As Judge Blackett said, he has been

“looking at the wrong end of the telescope”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 8 October 2020; c. 120, Q246.]

The Minister is concentrating on prosecutions, but that ain't the problem: the problem is investigations and how the MOD operates. I will not support a Bill that is going to take away rights from our servicemen and women. That would be an absolute tragedy. I know that is not the Minister's intention, but unfortunately the Bill, as it is written, is going to do exactly that.

The Chair: To confirm, we are debating amendments 30 to 54, with amendment 29. If no other Members wish to speak to any of those amendments, I call the Minister.

Johnny Mercer: I wanted to address a couple of points about the limitation period. In the Stubbings ruling that we looked at, limitation periods are okay under ECHR regulation as long as there is compatibility with article 6, the right to a fair trial. That is the test that has been undertaken in this exercise and that is the advice that the Government have received. The right hon. Member for North Durham may well disagree with that, and is well entitled to.

Mr Jones: Will the Minister give way?

Johnny Mercer: Not at the moment. I have literally just stood up. I will get through a couple of points, if I may.

As to the idea that I have not engaged in the process, and that it is just “head down, drive on”, I should like to know whether there has been a Bill that has gone through this place in the past five years when the Minister has been more ready to say a number of times that he was willing to work cross-party to improve the Bill; but I have to deal—[*Interruption.*]

The Chair: Order. The Minister is not taking an intervention at this stage.

Johnny Mercer: Thank you, Mr Mundell. I have to deal in the real world. I have to deal with real facts and figures—not made-up stuff—and how they apply to the battlefield. There is clearly a difference of opinion between the Government and the Opposition about whether the ECHR should be applied on the battlefield. I accept that. That is the point—that ability to continue these extensions is part of ECHR compliance. The Government do not agree that the battlefield is the right place, or that retrospective application of the ECHR to the battlefield is appropriate.

I have seen comparisons with convicted criminals a number of times in a lot of campaign items. Hon. Members are comparing convicted criminals to armed forces veterans. That comparison—prisoners to veterans—has been made a number of times. I can tell Members that that goes down like a cup of cold sick in the veterans community. It is not comparing the same things.

Carol Monaghan: Will the Minister give way?

Johnny Mercer: I will give way in a moment.

The Bill has clearly been introduced to protect our servicemen and women when they conduct overseas operations. The purpose of the limitations is to stop large-scale out-of-time and often vexatious claims being brought against the military on overseas operations. I urge Members to think a bit more about comparing veterans with convicted criminals.

Mrs Lewell-Buck: On a point of order, Mr Mundell. The Minister keeps repeating something that is blatantly incorrect. No one at all on the Opposition Benches has compared prisoners to veterans or our armed forces. We have said that in the Bill the rights of veterans and members of our forces are less than those of prisoners. That is an important distinction and I ask the Minister to be correct when he makes accusations.

The Chair: I do not think that that is a point of order, but at least you have got your point on the record.

Johnny Mercer: As for the idea that we must withdraw part 2, the whole point of the Bill is to bring in time limits to provide certainty for veterans, so if colleagues take it away, what is the point of the Bill? Why are we here in the first place, if we will just continue as we currently are?

Mr Jones: Will the Minister give way?

Johnny Mercer: Not at the moment.

The six-year longstop for personal injury and death claims is an important part of the Bill. The measure will help to provide greater certainty for service personnel and veterans by requiring civil claims arising from overseas operations to be brought promptly. Effectively, service personnel will not have to worry about having to give evidence on what would have been very distressing events many years in the future.

The public consultation launched in 2019 sought views on the length of time for such a longstop, and asked whether 10 years was appropriate. Many respondents supported a period of less than 10 years, so we decided

to reduce the time limit for the longstop. Six years was chosen because it aligns with the limitation period for some other tort claims. That decision was further informed by the case of *Stubbings v. the UK*, in a judgment that has been repeatedly confirmed. The European Court of Human Rights upheld an absolute six-year limitation period. The Court noted the need in civil litigation for limitation periods because they ensure legal certainty and finality and the avoidance of stale claims, and prevent injustice where adjudication upon the events in the distant past involves unreliable and incomplete evidence due to the passage of time.

3.45 pm

Six years is considered to be a reasonable timeframe for claimants to gather the necessary evidence to bring a claim. Beyond this point, witnesses' recollections can fade, making it difficult for the claimant to pursue a claim and for the defendant properly to defend it. The six years can also run from the claimant's date of knowledge if that arises after the date of the incident. That will reduce the negative impact of an absolute longstop. It means that for personal injury claims relating to conditions like PTSD, which may not be diagnosed until much later, the six years start from the date the person is diagnosed and is aware that their injury is attributable to the MOD. That cannot be clearer for the Opposition.

The vast majority—around 94%—of relevant claims from service personnel and veterans already fall within the six-year time limit. We anticipate that claimants who in the past have brought claims after six years may in future bring their claims within six years, and we will ensure that the armed forces community is made aware of the new measures. I have given notice of that commitment before. Changing the longstop from six years to ten years will only increase the uncertainty that service personnel and veterans face from the threat of being called on repeatedly to give evidence relating to historical events. The statistics that I have outlined show that most service personnel and veterans bring their claims within six years. The amendments, therefore, would only increase the uncertainty, without giving any significant benefit.

Mr Jones: Will the Minister give way?

Johnny Mercer: Is there going to be a new point? I have given way a lot and we seem to be repeating the same points.

Mr Jones: The Minister is going backwards and forwards just reading out what he has in front of him—*[Interruption.]* I am sorry, but he is. He is not answering any questions at all. Can I ask the Minister this? He says the reason for the longstop, which disadvantages veterans, is to stop all these vexatious claims. In terms of the *Shiner* case, for example, how many of those cases were actually time-limited cases and argued in terms of this limitation? If that is the case and there were thousands of them—I would be very surprised if there were—I would imagine in most cases the Limitation Act would weed out most of those that were vexatious. To actually introduce this to solve that part of the problem is going to have a massive impact on servicemen and women who wish to bring claims against the MOD.

Johnny Mercer: Of Phil Shiner's claims through Public Interest Lawyers, 62% were brought more than six years after the date of the incident. The Bill imposes a six-year limit, meaning that 62% of those claims would have been out of time. This legislation is designed to redress the balance. We are operating in a very difficult area, I accept that. Doing nothing has been the easy option that this House has pursued for 40 years and it is an approach I disagree with.

Mr Jones *rose*—

Johnny Mercer: I am not going to give way again, there will be plenty of opportunity for the right hon. Gentleman to speak further. I recommend that the amendment be withdrawn.

Stephen Morgan: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Evans: I beg to move amendment 76, in schedule 2, page 16, line 5, leave out

“the section 11 relevant date”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

The Chair: With this it will be convenient to discuss the following:

Amendment 77, in schedule 2, page 16, line 30, leave out

“the section 11 relevant date (ignoring, for this purpose, the reference to section 11 (5) in paragraph (a) of the definition of that term)”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 78, in schedule 2, page 16, line 35, leave out

“the section 12 relevant date”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 79, in schedule 2, page 17, leave out from the beginning of line 35 to end of line 5 on page 18, and insert—

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

(a) of the act complained of;

(b) that it was an act of the Ministry of Defence or the Secretary of State for Defence;

(c) of the manifestation of the injury resulting from that act which is the subject of the claim, and

(d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in England and Wales so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 80, in schedule 3, page 20, line 41, leave out

“the section 17 relevant date”

and insert

“the date of knowledge (see subsection (13))”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 81, in schedule 3, page 21, line 4, leave out

“the section 18 relevant date”

and insert

“the date of knowledge (see subsection (13))”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 82, in schedule 3, page 21, line 9, leave out

“the section 17 relevant date”

and insert

“the date of knowledge (see subsection (13))”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 83, in schedule 3, page 22, leave out lines 12 to 17 and insert—

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

(a) of the act complained of;

(b) that it was an act of the Ministry of Defence or the Secretary of State for Defence;

(c) of the manifestation of the injury resulting from that act which is the subject of the claim, and

(d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Scotland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 84, in schedule 4, page 24, line 5, leave out

“the Article 7 relevant date”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations.

Amendment 85, in schedule 4, page 24, line 29, leave out

“the Article 7 relevant date (ignoring, for this purpose, the reference to Article 7(5) in paragraph (a) of the definition of that term)”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury out of overseas operations.

Amendment 86, in schedule 4, page 24, line 34, leave out

“the Article 9 relevant date”

and insert “the date of knowledge”.

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for wrongful death arising out of overseas operations.

Amendment 87, in schedule 4, page 25, leave out lines 25 to 43 and insert—

““the date of knowledge” means the date on which the person bringing the proceedings first knew, or first ought to have known—

- (a) of the act complained of;
- (b) that it was an act of the Ministry of Defence or the Secretary of State for Defence;
- (c) of the manifestation of the injury resulting from that act which is the subject of the claim, and
- (d) that they were eligible to bring a claim against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run in Northern Ireland so as to account for legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury and wrongful death arising out of overseas operations.

Amendment 73, in clause 11, page 7, line 30, leave out from “before” to the end of line 34, and insert

“the end of the period of 6 years beginning with the date of knowledge.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.

Amendment 92, in clause 11, page 7, line 36, leave out “or first ought to have known”.

Amendment 74, in clause 11, page 7, line 37, leave out “both”.

Amendment 75, in clause 11, page 7, line 40, at end insert—

- “(c) of the manifestation of the harm resulting from that act which is the subject of the claim; and
- (d) that they were eligible to bring a claim under the Human Rights Act 1998 against the Ministry of Defence or Secretary of State for Defence in the courts of the United Kingdom.”

This amendment is one of a series that changes the relevant date from which the six-year longstop starts to run so as to account for legitimate and explicable delays commonly experienced by persons bringing claims under the HRA arising out of overseas operations.

Chris Evans: The amendments allow the Bill to account for all legitimate and explicable delays commonly experienced by persons bringing civil claims for personal injury arising out of overseas operations. The Minister recently said in *The Daily Telegraph*:

“Our analysis suggests 94 per cent of claims from service personnel and veterans are already brought within six years.”

He has repeated that today. He goes on:

“Critically, for conditions like PTSD, this limit will start from the date of knowledge or diagnosis.”

If that provision can be applied for certain conditions, which of course I agree with, let us take this opportunity to apply it fairly to all service personnel. That would allow those 6% who do not make claims within six years, according to the Minister’s own figures, to be given a chance to explain why. If the court’s criteria were met, they could then claim any compensation they are entitled to. On Sunday, I happened to chance upon the article that the Minister wrote for *The Sun on Sunday*, where he said that he would make it his personal mission to carry the can for those who fall outside the six-year rule. It would be helpful, given those comments, if he expanded on what he meant by that.

The court will still take the passage of time into account, just as it would normally, but to block claims being brought after six years does not take into account the true complexities of civil claims linked to overseas operations. Courts should retain their discretion and should consider the large periods of time that can pass before knowledge comes to light of the true extent of an injury, acts of negligence, or the right to other civil claims. The point of knowledge of a claim may be many years after the event or series of events. This may be because claimants did not know that they had a right to claim, or because they did not link their circumstances to overseas operations for some years.

The Bill is meant to protect our armed service personnel, but leaving this part unamended only protects the Ministry of Defence. I want to bring to the Committee’s attention a particular case, or group of cases I should say, that causes me great concern in the event of the amendment not being made. It is the case of the nuclear test veterans.

This case is particularly close to my heart, and I raised it with the right hon. Member for Maidenhead (Mrs May) when she was the Prime Minister. When I first became the Member of Parliament for Islwyn, we used to hold a parade through Risca to honour those veterans. In my second year as an MP, because of the number who had passed away, it was decided that their standard would stay in the local church in Risca until it turned to dust.

What was so sad about this case was that those veterans were fighting for justice for so long. Many of them endured horrific medical conditions, and the families left behind only had their memories of those who were incapacitated by their nuclear service during those times in Easter Island. What was really hard to bear was, first, that they did not have compensation; secondly, though—if I step out of the Bill and say this to the Minister, who is the Minister for Veterans—these people have suffered enough. As he will know, I have made appeals to other Ministers to ensure that these veterans have a medal and some recognition. I want to use this opportunity to ask the Minister to take that up with the Honours and Decorations Committee, and to ensure that they do get some recognition, especially as we approach a very different Remembrance Sunday this year. I have digressed. Thank you, Mr Mundell, for allowing me to indulge in that.

For the vast majority of nuclear test veterans, their injuries did not manifest for decades. The nature of radiation injury means that it invisibly alters cellular DNA.

Mr Jones: Had the Bill been in place in 2009, that would have been it for those veterans—there would have been no case at all. The 2009 case, which I know well, was a limitation case, and they brought it before Justice Foskett because they argued that new evidence—medical evidence from New Zealand—had emerged about what my hon. Friend is referring to. If this Bill had been in place then, they would not have even been able to go to court to argue why their case should have had consideration, because of the time that had elapsed since the 1950s, when the exposure took place.

Chris Evans: I pay tribute to my right hon. Friend for his service during that time. I know that as a Minister he dealt with the case with sympathy and respect. My direct predecessor, Lord Touhig, also dealt with the case when he was a Minister. I know that everybody who served during that period was wrestling with it, but my right hon. Friend is absolutely right to say that it would not have been possible to bring the case.

If radioactive particles are ingested, the harm might occur at a slow but steady rate for many years, with minor ailments leading to a dramatic diagnosis, and eventually to death. There was no way for the veterans to know that their minor ailments were linked to the nuclear tests that they were involved in. As the Minister knows, however, it often prevented them from gaining the compensation they deserved.

How can we ask young men and women to serve and not guarantee their rights in the same way as civilians are guaranteed theirs? Should the Bill progress, I worry for the next generation of service personnel who are affected by the equivalent of nuclear tests. We do not yet know what might happen in the future that could cause problems further down the line. That is just one example of why someone might need to extend the six-year limitation as currently set out.

I must raise concerns from specialist members of the Association of Personal Injury Lawyers, a not-for-profit firm that specialises in military claims. It has voiced concerns that injured personnel can be misinformed of their right to make a legal claim. They might not even know that they have a right to a claim. According to a report by the Association of Personal Injury Lawyers, it is unfortunately not unusual for service personnel to be misinformed about their right to bring a civil claim.

Mr Jones: Does my hon. Friend agree that it would also limit families? In some cases—especially those involving asbestos, but also some involving cancers—the claim is generated only after the person passes away. Even though somebody might have known earlier that they had cancer, it is only once they pass away that the family might think that it was related to service. I know of some cases that were the result of submarine service. The Bill would actually stop families getting any redress in such cases.

Chris Evans: I agree. I will come to an example that my right hon. Friend probably knows as well, but I first will say something about service families. When servicepeople are away, their families are left with the worry, the childcare and other needs. When a serviceman suffers from cancer, it is the family who have to watch their loved one wither away. It is vital that they have a chance to make a claim.

It is interesting that my right hon. Friend the Member for North Durham intervened in my speech. When we talk about personal injury, those of us who come from mining communities will remember the example of the miners' compensation scheme and how miners were left behind. I am not comparing miners to veterans, but it is a similar principle.

Johnny Mercer: The hon. Gentleman, for whom I have a lot of respect, has now spoken for about 10 minutes on nuclear test veterans. I trust that he is aware that nuclear test veterans are not covered by the Bill. It was not an overseas operation, and they are not covered by the Bill. The legislation that we are debating does not affect them in any way.

Chris Evans: I am glad the Minister has confirmed that.

Carol Monaghan: I am looking for clarity. Why would the overseas nuclear test veterans not be considered to have been on an overseas operation?

Chris Evans: I should ask the Minister to reply to that—I am just the post box here.

Johnny Mercer: Nuclear tests were not classified as operations. There is a lot of conversation about what Operation Banner was in Northern Ireland, but nuclear test veterans are not classified as having been on an operation. They are not subject to the Bill.

4 pm

Chris Evans: Service personnel might have knowledge of the event or series of events that the claim relates to, but many are under the impression that they cannot bring a claim while they are serving, or that their only route to redress is through the armed forces compensation scheme. This means that the date of knowledge should encompass not only the date of knowledge of the injury or the subject of the claim but the date of the knowledge that they had a right to claim—the date when they knew they had a case. That can be many years later and must therefore be taken into account if the Government insist on introducing a time limit.

The 2009 High Court case of 1,000 veterans of nuclear testing was fought and eventually lost on precisely this issue. The MOD argued that some veterans knew they were ill when they joined the British Nuclear Test Veterans Association in the 1980s, when it began campaigning. That was not the case. They knew they were ill at the time, but they wondered only if there was a link. The true point of knowledge can only come when a doctor confirms a possible link, which for many does not happen until years later. To me, that is the point of understanding.

Carol Monaghan: The problem with the nuclear test veterans—it could apply to other examples—is that there is actually a clear date of incident, many decades before. Although their point of knowledge of harm might have been much later, there was a clear date of incident, which the MOD could use to its advantage.

Chris Evans: That raises the actual point. When someone is ill, they know something is wrong, but they do not know what caused it; a doctor or medical researcher has not confirmed a link.

Johnny Mercer: I think it will be helpful if I make it clear that service personnel cannot bring claims for service pre 1987. Nuclear test veterans have access to the war pension instead, which has no time limit, so issues around nuclear test veterans and the Bill are not comparable.

Chris Evans: I thank the Minister for that.

Mr Jones: I am not sure that that is the case, because those veterans brought quite a successful case. The Minister just said that it was not an operation, but it was: Operation Grapple, I think. If it was called an operation—the MOD loves giving deployments various—

Johnny Mercer: It doesn't work like that.

The Chair: Order. This is not a conversation.

Mr Jones: It was Operation Grapple. If the Minister wants to intervene on my hon. Friend, I am sure he will act as the post box again. However, those veterans brought a successful case, although the Minister says that that is not true, just to clarify.

Chris Evans: I give way to the hon. Member for Wolverhampton South West.

Stuart Anderson (Wolverhampton South West) (Con): Every training exercise in the UK or overseas is given an operational name, even though it is not an operation overseas, as per the Bill.

The Chair: I thank the hon. Gentleman for that.

Chris Evans: I was about to say—as we spoke about earlier when I moved the amendment about the Attorney General—that we could have a huge debate about this. I have made a plea to the Minister about the nuclear test veterans. I know he is a good man and that his heart is in the right place when it comes to veterans, and I hope he will recommend to the HD committee that they receive some recognition for their service.

I will move on to the meat of the Bill and the amendment, otherwise we could be here all day. Simon Ellis, a senior partner at the law firm Hugh James, argues from experience that the point of knowledge of the injury, especially in cases of post-traumatic stress disorder or deafness, as the hon. Member for Glasgow North West said, is difficult to define. For illnesses such as PTSD, the sufferer may take a long time to understand what they are suffering from—similar to what the hon. Lady mentioned about her father—long after healthcare professionals or friends or family have this knowledge. Therefore, although there is knowledge of the injury, the victims themselves do not fully know or are not willing to admit that they are suffering. It can then take even longer for them to accept that they have post-traumatic stress disorder, to link that to an overseas operation or a

series of operations and to realise that they therefore have a right to a civil claim. The point of knowledge, therefore, can be marked only as the point at which the serviceperson has a full understanding of their condition and their right to a civil claim.

I listened with interest to the hon. Member for Glasgow North West when she talked about what her father was going through. As I understand it, he knew he was deaf and those around him knew he was deaf, but it took him a long time to admit to it. Where is the point of knowledge in that? I do not know. I would be interested to learn, maybe afterwards, when he did finally admit that he had a problem.

Even in simpler cases, when the service person is aware of an injury at the point of the event, it would be grossly unfair for the longstop to start on the date of that event, if they had no knowledge that they could even bring a claim if they wished. Will the Minister therefore concede that clause 11 is not comprehensive enough to deal with the intricacies of a process that includes an event occurring, the sufferer fully understanding and accepting the injury, and their knowing that it is something that fulfils the criteria for a civil claim—that the option of a claim is open to them? If the Government insist on placing a time limit on service personnel or their families for bringing a civil claim, surely the clock must start from the point at which the claimant was both fully aware of the content of the claim—be that negligence, injury or death—and aware that they had the right to file a claim.

If that is not taken into account, it becomes even more clear that the Bill is intended to protect not service personnel but the Ministry of Defence. If these clauses relating to the rights of civil claims become law, those injured through negligence during overseas operations will no longer have the benefit of the full discretion of the court to allow a claim to proceed after the limitation period has expired. They will have fewer rights than other employees while the Ministry of Defence will be sheltered behind the longstop.

An employee who frequently works on military claims for Simpson Millar Solicitors said that, from her experience, she expects that Ministry of Defence lawyers

“could use this new Bill to support arguments that personal injury claims are out of time.”

Therefore, it is a bare minimum that the time limit starts ticking only once the claimant has full knowledge of their right to file a civil claim. This strikes back hard in respect of what my right hon. Friend the Member for North Durham said. Once the Bill is passed, it will be handed over to MOD lawyers. Now, none of us will be here for ever and we will have our successors. It will be the lawyers who interpret the Bill. It is therefore vital that we get this right. There is no justification for the MOD having special protection in terms of limitations on civil claims. It is vital that service personnel can bring claims to court in accordance with civil law, without fear or favour. It is vital that they are entitled to the same rights and civil considerations as the rest of the population when it comes to employment disputes.

There is a concern that the Bill could put troops at a disadvantage compared with their civilian counterparts. In our first sitting, Mr Young said:

“Imposing an absolute time limit places armed forces personnel claimants themselves at a disadvantage compared with civil claimants in ordinary life, where the court has discretion. Of course, the

[Chris Evans]

Minister has made it perfectly clear, absolutely correctly, that the time limit for this particular part of the Bill only starts to run at the point of knowledge. That is completely understood. That point of knowledge, diagnosis or whatever, could be many years later. Nevertheless, I would have a worry about an absolute longstop as proposed.”—[*Official Report, Overseas Operations (Service Personnel and Veterans) Public Bill Committee*, 6 October 2020; c. 9, Q6.]

If as Mr Young says, it is the case that the Minister considers the time limit as beginning from the point of knowledge, let us say so in the Bill. This is too important a matter to be imprecise in our words. We need clarity and we need definition. Let us be clear what the amendment means for our armed forces. Let us be clear that service personnel will not be disadvantaged if a link between actions and events overseas and a particular injury or negligent action comes to light only years later. We have seen time and time again, from asbestos to our test veterans, that these things unfortunately do happen. People get injured and hurt. Let us not use this Bill to protect the Ministry of Defence and disadvantage our service personnel. They deserve our support and, more than anything, our protection.

Mr Jones: I thank my hon. Friend for moving amendment 76. He makes a good point: whatever legislation we put in must be future-proofed. There are claims that it will do x, y and z, but we have all seen legislation that goes through Parliament with the best of intentions, but, as things change, still sits on the statute book and disadvantages individuals. Is it ever possible to future-proof legislation completely? No, it is not, but it is certainly possible to ensure that we do not put things in a Bill at the start that discriminate against veterans and armed forces personnel. That should be the starting point for this.

In this group of amendments, I will speak to my amendment 92, which relates to clause 11, page 7, line 36, leave out,

“or first ought to have known”.

It gets to the point that my hon. Friend has just referred to about date of knowledge and the issues surrounding it. Is it straightforward to know when a condition happens? No, it is not, as he eloquently explained, and I will explain some examples in a minute.

Many conditions that arise from service are complex; they first require diagnosis, and that sometimes takes time. If someone has a condition and knows they are suffering from something, that is their date of knowledge, but it might take several years to diagnose exactly what it is. Also, as we heard in the evidence session and has come out again today, it may take time for members of the armed forces to recognise that they might have a claim against the Ministry of Defence anyway. I hear what the Minister said about how we should publicise that, and I welcome the idea that we should make it known to people that they can make claims for injuries or conditions, whether through publicity or just ensuring that people know it, both when they are in service and when they leave. That must be recognised.

The conditions fall into two areas. If we look at industry—I know the Minister will say that is different from the military, and it is in many ways, but in other ways, on key issues such as hearing loss, there are some

clear links—over many years litigation has led to improvements in standards and training, and I would argue that that should also be a lever in terms of the MOD.

I remember, when I was in the Ministry of Defence, dealing with the question of hearing loss. To be honest, I accept that in combat operations people are going to be exposed to loud noise. They are, and I do not think we can get away from that fact. But when I think back to the MOD in those days, we were paying out huge claims—quite rightly—for people’s hearing loss caused by training and other things, and it struck me that we were not getting to the root cause. As I said this morning, litigation can be seen, not as ambulance-chasing from the claimant’s point of view, but as a way of informing the MOD that it should change things, and can change things.

Carol Monaghan: Another example, of course, is the Snatch Land Rovers, which we have heard talk of many times. It was only because a claim was brought against the MOD that safer alternatives were put in place.

4.15 pm

Mr Jones: Yes, it concentrated the minds of people. I will refer to that case in a minute. The important thing is that the Bill shifts the burden of knowledge to the combatant in terms of self-diagnosis. That is completely unfair. A lot of these cases are complex, and it is unclear whether a service man or woman in a war zone could remain resilient with their fellows if they had to keep sight of a self-diagnosis, saying exactly when something actually happened, certainly for mental health cases. I am not one to want to encourage people to sue the MOD or any public body for the sake of it, but if they have been done wrong then they should have the right to do that. I am uncomfortable about the six-year rule protecting the MOD.

I accept what the Minister said. He has introduced the rule because he is looking through the wrong end of the telescope; he is looking at ways of stopping cases like Phil Shiners’. There are other ways of doing that which would not mean introducing a six-year longstop to prevent veterans and service personnel taking cases. It concerns me that the attitude is there. MOD lawyers will use the longstop. They will definitely use it. They are not going to be thinking, “This is a tool in the armoury that we are not going to use to stop claims.” They will use it. Can you blame them? No you cannot, to be honest, but it disadvantages veterans and leads to a grievance.

Issues have already been raised about mental health and PTSD, but other conditions are, again, quite unique in terms of how they are dealt with. Non-freeze injuries are soft tissue injuries that involve nerve damage, and they result from an individual being exposed to long periods of wet and cold weather. That has been a particular issue for Commonwealth service personnel. The MOD have tried to do certain things to mitigate it, but it was only because claims were starting to be initiated that the issue was highlighted. Has that knowledge been around for a long time? Yes it has. If you go back to the first world war, trench foot was that type of injury. It has affected many Commonwealth members who loyally joined our services to serve the UK. Even

after an injury is diagnosed, it might not be realised during a career. In terms of delaying a claim, the effects of the cold injury might be there and the initial advice is to keep things warm, which might alleviate the issue. If two or three years down the line the service man or woman is discharged from service because of that—I understand it is a debilitating condition—that individual might not know they had a claim.

Liz Twist: We heard evidence from the Association of Personal Injury Lawyers about the fact that too many former service personnel do not understand that they can bring a claim against the MOD. Would this address the issue?

Mr Jones: Yes it would. That, and doing away with the six-year backstop. My hon. Friend the Member for Blaydon makes a good point. The individual might not know that they were suffering from the condition, in terms that a judge would be able to look at to say they should have known about it and they should have brought a claim. I think the evidence outlined by my hon. Friend the Member for Blaydon is right: there was a reluctance to bring claims, which meant they ended up out of time. Major injury sufferers should know the date of diagnosis, but not necessarily the full impact of the condition on their service—it might not be a showstopper in their career, but in the long term it might affect their career and their ability to find post-career employment.

Another example is non-freezing cold injuries: this is not a surprise to the MOD because it knows about them. There are things that can and should be done, without putting the onus on the individual to self-diagnose the date of knowledge.

The other issue, raised by the hon. Member for Glasgow North West this morning—I mean earlier this afternoon: I am enjoying myself so much I have lost track of time—is hearing loss, the date of which is notoriously difficult to determine. In my previous incarnation, in a case of someone working with loud machinery in a factory all their lives, it is easy to pinpoint what has caused the loss of hearing. The problem for service personnel is that their careers are very varied, and although hopefully the MOD has training in phases 1 and 2 about protecting young ears especially, what is the crucial issue that leads to hearing loss, or hearing impairment? In military life, there will be exposure to loud noises: it nearly as much a fact of life as us having to listen to loud noises every day in the Chamber of the House of Commons.

Carol Monaghan: Just as a point of clarification, not all service personnel are exposed to loud noises: they talk about the silent service.

Mr Jones: Yes, but that can lead to other problems, such mental health issues. I think I referred to the 1902 situation when submarines were first invented, and there were issues with pressure that had an effect on people's bodies, which led to further issues. I accept that it does not affect everyone.

Under the Bill, how can people disaggregate when their hearing loss took place? If a certain proportion of someone's life was spent in overseas operations, are we saying that that part of the hearing claim cannot go forward as it is exempt, as it is beyond the six years? That is where it gets very complicated, which is why I

think the clear system that we have at the moment, in which if people make a claim after the time limit, they have the possibility of taking the claim under section 33 and are able to argue their case. I reiterate the point that that is not an easy process.

When I asked the Minister how many of Phil Shiner's cases were time-limited—could have been struck out due to the time limits—and how many he actually argued in court—the Minister did not say. It would be interesting to know—

Johnny Mercer: I said clearly it was 62.7%.

Mr Jones: Is the Minister saying that that 62.7% were all cases that went before a judge under the Limitation Act 1980 and were deemed to have enough evidence and special circumstance to take them forward? If he is, I find that remarkable, because in my experience of the Limitation Act, trying to get cases under it is very difficult. That is what was said by the Association of Personal Injury Lawyers—they are unique cases and specialists are needed. I would be surprised if the figure was as high as that, so that of the 4,000 cases, more than half were out of time and went before a judge. If so, why did the MOD not just strike the cases out straight away, so that they were out of time? It would be interesting to know if they all went before a judge, because that suggests that the judge clearly thought that there was enough evidence to progress them. Perhaps the Minister will write to me about that—I am happy to accept that he cannot have all such figures to hand.

I am interested to know the number of those so-called vexatious claims because, I tell the Committee now, in my experience, someone who takes a vexatious case to a limitations hearing will not get very far, because of the high bar. People have to argue not only the reasons why a case should be brought out of time, but the case itself and its possibilities of success later in the litigation. For 60-odd per cent., there must have been a very soft judge allowing cases through under the Limitation Act. But I will wait to hear clarification from the Minister.

Something we have not mentioned is sight loss. I accept that in some cases people wake up and have lost their sight overnight, because of blood clots and so on, but more commonly sight is lost incrementally over time. That can sometimes take up to 10 years. If so, the veteran or serviceman or woman might have thought, "Well, I'm losing my sight", but did not get a diagnosis, or have thought only after 10 years that they might be able to take a case, because the sight loss was related to service. They might not have thought it was but, if it was, 10 years later the Bill would not allow them to take a case. At present, they can get the diagnosis, the medical evidence, the reasons and the arguments for a limitations hearing on why they need to take a case out of time. That will not be the case if the Bill goes through.

Another example is respiratory issues, some of which may lie dormant for a long time and be the result of a whole host of conditions. I remember that in Iraq and, in particular, in Afghanistan, we had a lot of respiratory problems to do with bacteria, because the air was full of pathogens and other things. People might not have had a hacking cough but, a year or so later when they got home, they started to have such symptoms. Again, they might not have related that to their service straightaway,

[Mr Kevan Jones]

or with certainty, but it was later shown that, because of the use of animal manure, especially in some rural areas of Afghanistan and Iraq, people breathed in pathogens when the dust got into the air. That got into people's lungs but did not affect their health until many years later—again it was a direct result of service, because they were there to serve their country.

The other issue, which we have touched on a little bit, is how this affects families. I raised the issue earlier of various cancers and other diseases from which people die. People think, "Why has this cancer appeared?" or "Why has this individual suddenly died?" Usually, the causes can only be identified at death. The individual will not have the date of knowledge, but the family will.

4.30 pm

Earlier, I gave the example of asbestos—I could think of other examples—which people were exposed to when working in shipyards. Portsmouth was a big area for that, both for civilian personnel and the sailors. It is only when an autopsy takes place that it is discovered that the person who died had a cancer-related condition related to asbestos. That exposure may have been many years before. There is no date of knowledge, because the individual did not know that they actually had it. Under this longstop of six years, if that condition was contracted on an overseas operation, the family would not be able to take the case forward. That would disadvantage not only servicemen and women, but their families.

Chris Evans: Removing the ability for the courts to extend the six-year period would leave our veterans, ex-service personnel and their families at a disadvantage compared to those who bring normal civil claims against their employers. That is the problem we are facing in the Bill.

Mr Jones: It is a right. Okay—it will not be straightforward, because in my experience of asbestos cases, even with a clear diagnosis and an autopsy report, getting someone to admit liability is very difficult. The first thing that insurance companies used to do, which is exactly what the MOD will do, is require date of knowledge and say that it is time barred. If the claimant gets over that hurdle through a limitations hearing, the company usually settles. In this case, the MOD will reach for this straightaway, to say that it is not covered because it was contracted on an overseas operation and, therefore, it cannot go any further. That would give no rights at all to that family or the servicemen and women to take that case forward.

Chris Evans: I want to give an example and ask my right hon. Friend about his experience. He knows as well as I do that both our constituencies have large numbers of ex-miners who have had compensation for chronic obstructive pulmonary disease and vibration white finger. If these rules were applied to them, would they have got the compensation?

Mr Jones: No, because some of those cases, especially with vibration white finger, were taken on limitation hearings, because those things happened a long time ago. That is the fundamental right. To protect the veterans

or servicemen and women, they need the right to go to the law, if they wish to—not everyone does and I respect people who do not.

The best example—it is a tragic example—which came up in the evidence session was the Snatch Land Rovers. The events in which people were killed and injured took place in Iraq. Although it was an issue in the MOD when I was there, in terms of the suitability of the vehicles, the real focus on it never came until July 2016 and the Chilcot report. The case that was mentioned in the evidence session was in 2005. A serviceman was killed in a Snatch Land Rover, but his widow did not really know the significance of the vehicle until the Chilcot report in July 2016. At that time, she thought that there had been a failing on behalf of the MOD in its duty care and in the provision of that equipment, so she brought a claim for the loss of her husband, not under civil law but under the Human Rights Act on the basis that her husband had a right to life.

That case was clearly time-limited, because the event took place in 2005 but the case was not brought until after the Chilcot inquiry in 2016. Obviously, a limitation hearing was held and it was successfully argued that the case should go forward, and it was settled, along with—I understand—other cases.

If the Bill goes through unamended, that case would not have been able to go forward, because—I mean, if it was left to me and the Minister, we would both agree that the date of knowledge should have been 2016, and therefore it could go ahead. However, I am not sure that the MOD lawyers would be as generous to veterans as the Minister and I would be. That is the problem when the Minister argues that the date of knowledge somehow protects veterans: it does not. The date of knowledge should not be used as argument to throw such cases out straightaway.

What will that take? If the Bill goes through as planned—especially on the human rights side, there will be a court case and an argument will be made. Let us say that a case similar to the one that I just mentioned was active today in the courts. What will happen is that someone will challenge that. So we will get litigation as a result of that process on whether the Bill is compatible with the Human Rights Act. I accept that the Minister will write to me on these issues, but we will get more litigation than we would if we instead said, "Let us have a judge look at the limitations on whether a case should be brought", and if the case is deemed to be special circumstances, it should go to trial.

We must recognise that the MOD acts no differently to the insurance companies that I used to deal with when I took personal injury cases and industrial injury cases against employers, and I am sure that the hon. Member for Darlington knows this as well. It is horse trading. If there is a limitations hearing, what someone will do is to try and get it settled—nine times out of 10, an offer will be made. It is only the ones who really want to be stubborn who take the matter all the way through to trial. Very few of those cases go to trial, because people look at the evidence, to see whether it is worth going further in court, and the case is settled.

However, that process will be closed down for the individual if this tight six-year time stop goes ahead. The cases will not get to the second stage after the limitation hearing, which is about negotiating with the other side to say, "Well, come on. Can we make an

offer?" It is a difficult judgment call. It is a bit like a game show—take the prize or play on—and I am sure the hon. Member for Darlington has had many sleepless nights about what is being offered. In most cases, there is an agreement and the individual making the claim is content with what is offered. Some will want their day in court, but that is not always a good idea.

What the Minister said about nuclear test veterans was interesting. I accept the point about operations—the MOD loves to give things “operation” names—but in that case, which is one I know well, and I know the medical evidence, having read it as a Minister, the Government argued in 2009 that it was time-limited. In terms of overseas operations, it was overseas.

Mrs Lewell-Buck: The Minister said that nuclear veterans would not be classed as having been on overseas operations under the Bill, yet as I read clause 1(6), which defines what “overseas operations” are, my understanding is that nuclear veterans would be included.

Mr Jones: The Minister says not. It will be interesting to see whether we can have definite clarification. That case was taken against the MOD in the mid-2000s for events that took place in the 1950s and 1960s, so it was clearly time-expired by anyone’s standards.

I am not arguing that we should not have time limits, which are there for very good reasons, but there need to be exceptions to allow for people who fall outside them. In that case in 2009, the MOD refused the case based on time limits, but it went before Judge Foskett who ruled that it should go forward because of new evidence from a study in New Zealand—I am racking my brains for what the study was, as I read the huge scientific document at the time. Subsequently, it failed, which shows that getting past the Limitation Act does not mean that a case is somehow a dead-cert. The facts of the case must still be argued in court and can be resisted, as they were in this case. However, people were given a right.

If that work had been classed as an overseas operation under the Bill, those people would not have had any right to get their day before a judge to argue the case. That could apply to other similar group litigation—there is such litigation from more than one person or a number of individuals—or to individuals. We have been dancing on the head of a pin about the numbers, with the Minister saying that 94% of cases are brought within time. That is fine, and I have no problem with that, but that leaves 6% that are not. If that affects one person, as I said, that is one person too many. With that brief contribution, I commend the amendment to the Committee.

Johnny Mercer: The amendments propose changing technical parts of the Bill, so I hope hon. Members will bear with me as I try to address them in turn. These amendments are aimed at making changes to the point from which the clock starts running for both personal injury and death claims, as well as Human Rights Act claims relating to overseas operations. The amendments mean that for these types of claims the longstop clock would run from the claimant’s date of knowledge only and will not also run from the date of the relevant incident or act.

Taking amendments 76 to 87 first, in relation to the personal injury longstops contained in schedules 2, 3 and 4, there are several problems with this effect. The

longstop is already able to run from the claimant’s date of knowledge under the existing law. This Bill does not change that position. We consider that the definition of the date of knowledge in section 14 of the Limitation Act 1980, and its Scottish and Northern Irish counterparts, is satisfactory and works well in practice. There is no reason why the date of knowledge for overseas operations claims should be defined differently. It is therefore not necessary to replace this definition with a new one.

4.45 pm

Replacing the existing references to “the relevant date” in schedules 2, 3 and 4, which means the date of the incident or the claimant’s date of knowledge, will have the effect that claimants will not be able to benefit from other existing provisions in the limitation legislation that allow for extension or postponement of the limitation periods in case of disability and fraud, concealment or mistake by the defendant. These are important parts of the law of limitation and give additional protection to claimants.

Moving on, amendments 73 to 75 and amendment 92 propose changes to the Human Rights Act longstop. Amendment 73 would increase the time period, which runs from the date of knowledge, from 12 months to six years, and means that the longstop will run from the date of knowledge only and not also from the date of the act. The date of knowledge provision in this Bill is new for Human Rights Act claims relating to overseas operations, the primary time limit for which currently runs only from the date of the act.

Mr Jones: On a point of order, Mr Mundell. Can the Minister slow down? I am finding it difficult to understand all that he has to say.

The Chair: That is not a point of order, but I am sure that the Minister will accommodate it.

Johnny Mercer: I am more than happy to slow down. The date of knowledge provision in this Bill is new for Human Rights Act claims relating to overseas operations, the primary time limit for which currently runs only from the date of the act. We introduced the date of knowledge to mitigate the risk of any unfairness that might be experienced by claimants as a result of the new absolute longstop.

We chose 12 months for the relevant time period because this aligns with the primary limitation period in the Human Rights Act, which requires claimants to bring their claims within one year of the relevant act. We therefore consider 12 months to be a reasonable period for claimants to gather the necessary evidence to bring their claim.

Amendments 74 and 75 aim to change the definition for the new date of knowledge set out in clause 11. We consider that the definition in clause 11 is comprehensive and fair to both claimants and the MOD. It does not replicate section 14 of the Limitation Act 1980, for example, because parts of that definition do not make sense in the context of Human Rights Act claims. Similarly, amendment 75 proposes new parts for the date of knowledge definition that do not work in the context of Human Rights Act claims.

[Johnny Mercer]

Lastly, amendment 92 removes an important part of the date of knowledge definition, which adds an objective element to the test. This ensures that claims cannot be brought indefinitely if a victim has failed to take reasonable steps to gain the relevant knowledge.

These amendments are simply not necessary. The existing definitions of the date of knowledge are comprehensive and fair, and there is no good reason why the longstops cannot run from both the date of the incident or the act, as well as the date of knowledge. These amendments will unnecessarily complicate the Bill and cause confusion.

I will address two of the points raised by the hon. Member for Islwyn about education for those who are in the armed forces. Running alongside and in tandem with this Bill, if it becomes law, will be a significant education effort through a series of annual tests that we will give to our service personnel. I am more than happy to write to the hon. Gentleman about that.

I understand the points made by the right hon. Member for North Durham, but they are not within the scope of the Bill. The nuclear test veterans and the other pre-1987 cases that he talked about are not covered by the Bill. A lot of today's debate has been outside the context of the Bill. I do not know what the point is of continuing to bring up cases that are unaffected by the legislation that we are discussing. I have huge sympathy for nuclear test veterans and for others. Indeed, I lobby hard for the recognition that I think we all want to see for those people, but none of that is covered by this legislation. That is worth remembering.

Mr Jones: Will the Minister give way?

Johnny Mercer: No, not at this stage. I therefore recommend that these amendments are withdrawn.

Chris Evans: I just want to raise a point of clarification with the Minister. The nuclear test veterans were brought up because that was an example of a case that took numbers of years to emerge. I thought it was the best example of how people can be affected by an operation where it takes years for the case to develop.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stephen Morgan: I beg to move amendment 69, in schedule 2, page 16, line 5, at end insert—

“except where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

- (a) the nature of the injuries;
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for personal injury arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

The Chair: With this it will be convenient to discuss the following:

Amendment 93, in schedule 2, page 16, line 5, at end insert—

“save for exceptional cases where the overriding interest of justice should be served.”

Amendment 70, in schedule 2, page 16, line 36, at end insert—

“(2C) Subsections (2A) and (2B) shall not apply where it appears to the court this would be equitable having regard to the reasons for the delay, in particular whether the delay resulted from—

- (a) the nature of the injuries;
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of England and Wales to allow a civil claim for wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 71, in schedule 3, page 21, line 9, at end insert—

“(7A) The court may disapply the rules in subsections (5) to (7) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

- (a) the nature of the injuries;
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of Scotland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 72, in schedule 4, page 24, line 5, at end insert—

“except where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

- (a) the nature of the injuries;
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for the courts of Northern Ireland to allow a civil claim for personal injury or wrongful death arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Amendment 68, in clause 11, page 7, line 34, at end insert—

“(4A) The court may disapply the rule in subsection (4) where it appears to the court that it would be equitable to do so having regard to the reasons for the delay, in particular whether the delay resulted from—

- (a) the nature of the injuries;
- (b) logistical difficulties in securing the services required to bring a claim, so long as the claimant was making all reasonable attempts to secure such services, or
- (c) any other reasons outside the control of the person bringing the claim.”

This amendment introduces a discretion for UK courts to allow a HRA claim arising out of overseas operations to proceed in prescribed circumstances so as to account for legitimate and explicable delays commonly experienced by persons bringing such claims.

Stephen Morgan: I rise to speak to amendment 69 in my name. The disapplication of the court's discretion to bring forward a civil claim in the cases of service personnel raises areas of concern. As I am sure the Minister knows full well from his experience outside Parliament, there are many circumstances in which it would be at very least appropriate for judges to disapply the six-year longstop where either the nature of the injuries meant that service personnel were unable or unaware that they needed to make a claim within six years or the claimant was unable to make a claim for logistical reasons within six years. For example, claimants could have been detained or have been unable to access the UK justice system. It could be any other reason outside their control, such as failures of the state to protect veterans in need that prevent them from making claims in time.

In its current form, the Bill has gaping holes in its ability to give service personnel a fair hearing or offer at least a basic pathway to justice. The gaps in the legislation again raise concerns that it could breach the armed forces covenant if troops cannot afford the same rights as civilians because of the Bill. Labour will work constructively with the Government to ensure that our service personnel are given the legal rights that they deserve, are treated fairly and are given access to a fair trial, not a pathway that offers little hope for justice.

Over the last few weeks, we have heard several people, and had written submissions, outlining the issues around why disapplication of the six-year longstop, particularly with personal injury, is a problem. Take the submission from Reprieve, which seeks to uphold the rule of law and the rights of individuals around the world. Over the past 20 years, Reprieve has provided legal and investigative support to hundreds of prisoners on death row, the families of innocents killed in drone strikes, victims of torture and extraordinary rendition and scores of prisoners in Guantanamo Bay.

In its evidence, Reprieve states that schedules 2, 3 and 4 create an

“absolute bar by removing the discretion of UK courts to extend existing time limits for survivors of abuse or UK soldiers to bring claims relating to personal injury and death... In Reprieve's experience of investigating the use of torture and other forms of mistreatment, it is clear that no arbitrary time limits can be placed on survivors seeking redress. Even where individuals know of the UK's involvement in their mistreatment—for instance, where they have been detained by UK forces before being rendered by UK partners to arbitrary detention and torture—they may remain wrongly imprisoned for many years more than the 6-year time limit this bill imposes.

For example, the UK Government has been found to have been involved in the rendition of individuals from Iraq to face mistreatment in secret prisons around the world. These individuals, by the very fact of their detention and mistreatment, could only bring legal claims several years after these actions took place and the UK's involvement in them came to light... Indeed, the involvement of UK personnel in abuses may not come to light until many years after the time limit has passed. This bill would allow for claims in such cases to be brought within only one year after UK involvement has come to the victims' knowledge—regardless of the victim's circumstances or location—following which an absolute bar to legal claims is imposed.

Investigation into the UK's involvement in torture and rendition, for example, has taken nearly two decades, and it was only in 2018 that the Intelligence and Security Committee published its findings that UK personnel were systematically involved in mistreatment from the first days of the so-called 'war on terror'.

Mr Jones: As a member of the Intelligence and Security Committee, I would like to clarify what my hon. Friend just said. The report did not say that UK personnel were involved in the torture of individuals, but it was clear that they were present and that there were cases where rendition was conducted on behalf of the United States. However, I do not think there was any evidence that people were directly involved in torture.

Stephen Morgan: I thank my right hon. Friend for his clarification. I am quoting from the charity, but I thank him for putting that on the record.

Reprieve's written evidence continues:

“In the period between these acts of mistreatment occurring and their exposure by the ISC, survivors of these abuses would have been barred from redress by this bill.

UK courts already have powers to strike out civil claims that disclose 'no reasonable grounds', including those which are vexatious or 'obviously ill-founded'. The Court's discretion to extend the limitation period for civil claims under section 33 of the Limitation Act 1980 is already subject to a full and rigorous assessment of all the circumstances of the case, including the reasons tending against extending time such as the impact of delay on the quality of the evidence available. Moreover, claims under the Human Rights Act 1998 must be brought within a year unless good reason can be shown as to why the claim was not brought sooner—a far tighter limitation period than almost all other areas of law.

Far from protecting soldiers' interests, the bill, designed to benefit the Ministry of Defence, will fundamentally harm UK soldiers... The bill will have a very significant impact on the ability of UK soldiers and former soldiers to bring claims of this kind... As former Attorney General Dominic Grieve has highlighted, this raises the real prospect that the beneficiary of this bill 'is not so much the personnel of the armed forces but the government, which is thereby protected from facing what may be wholly deserving late claims.' Reprieve recommends that the Overseas Operations Bill be amended to ensure that survivors of abuses, as well as UK soldiers, do not face absolute time bars to bringing claims for serious human rights abuses, such as torture.”

The evidence—not just from Reprieve, but from the Government's former Attorney General—makes it clear that this legislation will not ensure the proper rights that are our service personnel deserve. Indeed, it is true to say that the path to justice would become more difficult and protect the MOD, not our service personnel. Does the Minister really intend to pass a Bill that would actively build barriers to the route to justice for the victims of torture and servicepeople with other injuries? Is that what our armed forces deserve?

Those are not the only examples of where potential injustices of this nature could occur. Take the case of Mark Bradshaw, which was reported in *The Times* last year and which we heard about earlier today. He was awarded £230,000 as a settlement, but he fears that the proposed legislation could discriminate against people who do not develop PTSD or receive a diagnosis until many years later. He called the plan to impose a time limit on claims “horrendous”.

We also heard earlier about the claim from the marine who left service due to hearing loss. The MOD admitted liability and made no argument about his case being brought out of time. However, the time limit in the Bill would have eliminated all the aspects of the claim relating to the marine's extensive service overseas. The claim could have been made only in relation to negligent exposure in the UK. It might not have been possible to isolate the extent and effect of negligent exposure in the UK, making it very difficult to claim any redress at all.

[Stephen Morgan]

Is the Minister willing to turn his back on those troops? Why are some medical conditions worthy of justice, and not others? I urge the Minister to work with us. Put party politics to one side and build a consensus around the Bill that is worthy of our troops, who set out to achieve what they need to achieve. Does the Minister really intend to pass a Bill that would actively build barriers to the route to justice for victims of torture and servicepeople

with other injuries? Is that what our armed forces deserve? Finally, is he satisfied that the Bill in its current form will prevent troops who are suffering from conditions such as PTSD, or even torture, from receiving justice?

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

5 pm

Adjourned till Thursday 22 October at half-past Eleven o'clock.

Written evidence reported to the House

OOB09 Dr Jonathan Morgan, Reader in English Law, University of Cambridge (supplementary)

OOB10 The Royal British Legion (supplementary)

OOB11 All-Party Parliamentary Group on Drones

OOB12 Ahmed Al-Nahhas, Association of Personal Injury Lawyers (APIL) (supplementary)

OOB13 Professor James A. Sweeney LL.B, PhD

