

MoD consultation on Military Immunity

On Monday 21st October there was a short exchange during Oral Questions in the House of Commons, which went as follows:

Mr Ranil Jayawardena (North East Hampshire) (Con)

Thank you, Mr Speaker. I welcome what the Minister has just said and what the Prime Minister has said repeatedly—in March, in July and last week—that we must not let politics trump justice. I trust that legislation is coming to stop vexatious prosecutions, but when?

Johnny Mercer

The Department has completed a consultation—it closed only last week—brought forward by the previous Secretary of State on enhanced legal protections. We are now collating the responses and look forward to introducing a Bill early in the new year.

This brief moment could easily have been overlooked, especially as it was not immediately evident what it was about, coming, as it did, at the very end of the Oral Questions being answered by Johnny Mercer, Minister for Military Personnel and Veterans.

The “consultation” to which he refers, was launched in July 2019 by Defence Secretary Penny Mordaunt. It was to be a public consultation on new measures to provide stronger legal protections for serving and former armed forces personnel from alleged historical offences.¹ When this consultation was initially announced, it was likely that many members of the public would feel that it was important for soldiers to be given legal protection for what they might do in the heat of battle; others, on the other hand, might worry that this might be a way of covering up abuse, inhuman and degrading treatment or even torture, in incidents which British military personnel have perpetrated in the past.

At Q-CAT, we are aware that military operations overseas have given rise to thousands of allegations of wrongdoing, most of which emerged years after the event. These have sometimes been the subject of criminal investigations, causing significant stress for members or veterans of the armed forces and for those who have been called upon to give evidence, no matter which side of the case. The Ministry of Defence has had to deal with thousands of civil claims, at great cost to the taxpayer.

The Defence Select Committee had already produced a document calling for a Statute of Limitations to protect veterans.² In their report, “Drawing a Line”, they criticised the government for failing to protect veterans of Northern Ireland’s Troubles from the “spectre” of repeated investigations of events that occurred decades ago. It also commended the

¹ <https://www.gov.uk/government/news/public-consultation-on-new-laws-launches-to-protect-armed-forces-from-historical-allegations>

² <https://publications.parliament.uk/pa/cm201719/cmselect/cmdfence/1224/1224.pdf>

three-year-old suggestion by the government for the military to opt out from the European Convention on Human Rights (ECHR) during future conflicts.

Introducing the report, the committee said: “We have been determined to ensure that justice prevails for veterans and for current service personnel whilst ensuring that wrongdoing and criminality are appropriately investigated and punished.” The committee chairman, Julian Lewis MP, said: “We believe in what we term a qualified statute of limitations – one that draws a line after a decade has elapsed unless compelling new evidence can be produced. To meet the requirements of international law that adequate investigation must have taken place, this process could include a truth recovery process where evidence can be taken, without threat of prosecution, finally to uncover the facts.”³

As Quakers with a concern for the spiritual well-being of perpetrators as well as of victims, we of course would not wish to inflict unnecessary suffering on anyone. One of our concerns is that it is often the soldiers who face prosecution rather than their officers. But our over-arching concern in this case is for justice for the victims, anywhere in the world, although the most high-profile cases have been in Northern Ireland and Iraq.

When the Consultation was announced, it echoed the views of the Defence Select Committee, “drawing a line” after ten years, and also amending the law “to reflect operational context and the unique pressures faced by military personnel - particularly junior soldiers”. It also proposed extending the time limit for civil litigation from three to ten years, referring to the situation in Iraq which led to “claims being brought against the MOD on an industrial scale, with nearly 1000 claims seeking compensation for personal injury or death.”

The Consultation did not address the question of **whether** to limit the ability to bring charges, but only the practicalities of doing so. It was clear that the government had already decided that there would be no opportunity to raise the question of whether or not the public think this would be a good idea. Given the attitude of all the political parties and the media to the armed forces, which are presented to us as part of the narrative which binds our country together, it might in any case only be a vanishingly small minority who would raise this issue.

Q-CAT made a submission to the Consultation, in which we went into some considerable detail on the questions which were posed. In particular, we stated our view that government’s proposed changes may not be in the best interests of soldiers and that we fear that the government action is moved more by ideological and political considerations than by a drive to ensure support of human rights and safety of soldiers and civilians caught up in armed conflict. We reiterated our view that we do not support a distinction being made between being liable only when ‘on duty’ and not when ‘off duty’, and that we do not agree with a time limit. (Please contact gcat@hotmail.com if you would like a copy of our full submission.)

We know that Quakers are among the small minority who do not support a time limit on military immunity and we therefore urge you to write to your MP (especially if the MP is a member of the Defence Select Committee, see below).

As many MPs might not be aware of the discussions around this consultation, we advise you to use the heading *Ministry of Defence Consultation on Military Immunity* in your correspondence, and raise the following points:

³ <https://www.theguardian.com/uk-news/2019/jul/22/mps-call-10-year-limit-prosecution-of-soldiers>

- Ask your MP to enquire if the MoD at any time considered the question of principle, i.e. whether or not there should be no statute of limitations.
- Remind your MP of the recent UNCAT report (see Briefing 62, August 2019) in which it was recommended that the government establish without further delay an independent public inquiry and in particular should refrain from enacting legislation to grant amnesty or pardon where torture is concerned.
- Remind MPs that the degree of seriousness is not recognised in international law of armed conflict, referring to the fact that in the Al Sweady inquiry (2014) some of the claims were dismissed as “trivial”.⁴
- Challenge the implication that illegal behaviour can be excused because of extreme stress and pressure, and the mental health of the perpetrator. This is not a recognised defence in international law.

Not having seen the results of the consultation yet, we cannot make any specific comments in detail; but we can certainly express our dismay at the premises and assumptions stated beforehand.

Please let us know if you receive a reply from your MP.

Defence Select Committee members:

Dr Julian Lewis (Chair)	Conservative
Leo Docherty	Conservative
Martin Docherty-Hughes	Scottish National Party
Mr Mark Francois	Conservative
Graham P Jones	Labour
Johnny Mercer	Conservative
Mrs Madeleine Moon	Labour
Gavin Robinson	Democratic Unionist Party
Ruth Smeeth	Labour
John Spellar	Labour
Phil Wilson	Labour

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The next Newsletter is planned for early December.
The next Briefing is planned for mid-January.

Website www.q-cat.org.uk or www.qcat.org.uk

4
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