



Joint Committee on Human Rights Legislative Scrutiny: The Overseas Operations (Service Personnel and Veterans) Bill

A response from the Association of Personal Injury Lawyers (APIL) – September 2020

Beneficial for the MoD, not service personnel

We welcome the opportunity to provide evidence to the Joint Committee on Human Rights as part of its scrutiny of the Overseas Operations (Service Personnel and Veterans) Bill. As a not-for-profit organisation which campaigns on behalf of people injured through no fault of their own, we have restricted our comments to part two of the Bill.

Part two of the Bill goes against everything the UK stands for as a progressive and developed democracy. It is contrary to the Armed Forces Covenant, which is “a promise by the nation ensuring that those who serve or who have served in the armed forces, and their families, are treated fairly”¹. These proposals are far from fair.

We reject entirely the assertion made by the Government that the proposals will be beneficial to service personnel and veterans. Those injured as a result of negligence during overseas operations will have less protection under the law. Only the Ministry of Defence (MoD) will benefit, as it will escape responsibility for some of those who are injured through its own negligence.

An assault on rights

Under the current law there is a three-year limitation period for personal injury claims and a one-year limitation period for a claim to be brought under the Human Rights Act 1998. While a three-year time limit for personal injury claims may seem generous, the current law recognises that it may not always be possible to bring a claim within that time limit. Judicial discretion exists to allow a claim to proceed after limitation has expired. This discretion also exists for claims under the Human Rights Act.

¹ <https://www.armedforcescovenant.gov.uk/>

This Bill will limit that judicial discretion as judges will be unable to allow a claim to proceed after an arbitrary time limit of six years. There has been no explanation from the Government as to why a six-year time limit has been proposed. Some injured service personnel and veterans will be denied the justice they deserve, and to which they have a right. This Bill is an assault on the legal rights of injured service personnel and veterans.

The limitation period is never disregarded by the courts without good reason. The reasons why a case should be allowed to proceed out of time must be considered carefully. In England and Wales section 33 of the Limitation Act 1980 states that a court “shall have regard to all the circumstances of the case...” and lists six particular factors which must be considered². These include the length and reason for the delay, as well as the impact of the delay on the available evidence in the claim. This is vital to ensure that it is fair for both the claimant and defendant for the claim still to proceed. Fairness should, after all, be at the core of our justice system.

The Bill proposes additional factors which must be considered by a court before allowing a claim related to overseas operations to proceed after the three-year limitation period has expired. These new considerations include the effect of the delay on evidence, as well as the mental health of any witnesses. These so-called ‘additional factors’ must already be considered by a court. The concern, however, is that these ‘additional factors’ together with the policy objective of reducing claims, may be interpreted by judges as a reason to reject a claim. In any event, a claim would still be subject to the six-year limitation longstop.

Reasons for delayed claims

In the call for evidence, the joint committee asked if the proposed time limit of six years to bring a claim is a reasonable period of time. It is not. Full judicial discretion should remain.

There will be many reasons why a claim might not be brought within three years, six years, or even longer. Our members have found that injured personnel can be misinformed about their right to make a legal claim, for example. Some are told they are unable to make a claim while still in service, which is incorrect, or told by those higher up the chain of command that they do not have a valid claim.

² Section 33, Limitation Act 1980 <https://www.legislation.gov.uk/ukpga/1980/58/section/33>

The culture of the armed forces is such that if people are told they can't make a claim, it is unlikely that this will be questioned. It is only when people leave the service that they discover they could have been entitled to make a claim after all. That could then be too late if this Bill becomes law.

Access to justice denied

Had the Bill already been law it could have prevented a claim by former Royal Marine Alastair Inglis, which was covered in the media last year³. Mr Inglis received compensation from the MoD on the grounds that his hearing loss and tinnitus was caused by negligent exposure to noise during his service. Mr Inglis' service included postings during overseas operations. Mr Inglis was made aware he had problems with his hearing in 2007, but it was only in late 2014 that he became aware he could make a claim for compensation: one year after the cut off proposed in this Bill. Furthermore, if this Bill had already been law, Mr Inglis' claim could only have been made in relation to negligent exposure to noise in the UK. It may not have been possible to isolate the extent and effect of the negligent exposure in the UK given his overseas postings, making it very difficult to proceed with the claim.

We're also aware of a widow who made a claim eleven years after her husband's death. Her husband was killed in Iraq in an incident involving a Snatch Land Rover in 2005. It was only after the release of the Chilcot Report in July 2016 that she appreciated the failings of the MoD and decided to make a claim for compensation. The legal action included a claim for loss of dependency, and a claim under the Human Rights Act 1998 on the basis that her husband had a right to life under Article 2 of the European Convention on Human Rights. Under the terms of this Bill, a widow would have been denied the compensation to which she should be entitled.

Loss of human rights protection

The Bill also risks stripping armed forces personnel sent overseas of their protection under the European Convention on Human Rights (ECHR). Proposals in the Bill would place a duty on all future governments to consider derogation from the ECHR every time UK armed forces personnel are involved in overseas operations.

³ <https://metro.co.uk/2019/05/09/ex-royal-marine-wins-500000-explosions-battle-destroyed-hearing-9459427/>

Derogation from the ECHR, as permitted under Article 15, should only ever happen in “exceptional circumstances”⁴. It is not something which should be considered as standard whenever British forces are involved in overseas operations. To place a duty on future governments to consider derogation risks making a decision to derogate routine. It makes it appear derogation to be perfectly acceptable, and something which should happen as standard whenever UK armed forces are engaged in overseas operations. It does nothing but undermine our commitment to human rights, and the protection in the European Convention on Human Rights which the UK was so integral in establishing.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,100 members who are committed to supporting the association’s aims, and all are signed up to APIL’s code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

For further information please contact:

Sam Ellis
Public Affairs Officer, APIL
Email: sam.ellis@apil.org.uk
Tel: 0115 943 5426

Lorraine Gwinnutt
Head of Public Affairs, APIL
Email: lorraine.gwinnutt@apil.org.uk
Tel: 0115 943 5404

⁴ Guide on Article 15 of the European Convention on Human Rights, European Court of Human Rights, page 5 https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf