



Association of Personal Injury Lawyers

Briefing: Overseas Operations (Service Personnel and Veterans) Bill – House of Commons committee stage – October 2020

Removal of clauses 8, 9, 10 and 11

APIL supports attempts to remove clauses 8, 9, 10, and 11. These clauses restrict the rights of service personnel, veterans, and their families by setting a six-year absolute longstop for personal injury claims and claims under the Human Rights Act. If these clauses 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. Instead, those who have served overseas, potentially risking their lives in the service of their country, will be shackled by an arbitrary absolute six-year time limit in which to pursue either a personal injury claim or a claim under the Human Rights Act.

Repeatedly, ministers have defended these proposals as beneficial to service personnel and veterans. We reject entirely this assertion. 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.

Defence minister Johnny Mercer has told MPs that “it is simply wrong to assert that the Bill prevents service personnel, veterans or their relatives from bringing claims, because it does not change how the time limit is calculated”¹. The fact that the Bill does not change how the time limit is calculated is not in dispute.

¹ House of Commons urgent question, 16 July 2020 <https://bit.ly/2RrmlYj>

Previously, the Government has also said the proposals “should ensure that claims are brought promptly...”², but the Bill fails to take into account the many reasons why a personal injury claim is not always made promptly, especially by service personnel.

Concerns have been raised by our specialist members that injured personnel can be misinformed about their right to make a legal claim. Some personnel are told that they are unable to pursue a claim while still serving, or are told by those higher up the chain of command that they don't have a valid claim. 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. This could then be too late if this Bill becomes law.

Clause 11 represents a complete reversal from the original intention of the Government in relation to the Human Rights Act. In the consultation which preceded the Bill, the Government said that “in line with our commitments to continue to safeguard human rights, we are not proposing to restrict the Court's discretion to extend the time limits for bringing claims relating to human rights violations”³. Clause 11, however, does exactly that, with no explanation for this reversal.

Alternative amendments 68, 69, 70, 71, and 72

If clauses 8, 9, 10, and 11 are not removed from the Bill, we urge the committee to vote in favour of amendment 68 to clause 11, amendments 69 and 70 to schedule 2, amendment 71 to schedule 3, and amendment 72 to schedule 4.

These amendments will provide safeguards for service personnel, veterans and their families, while still respecting the Government's policy objective to ensure claims are made as soon as possible. The six-year longstop will still apply, unless a court is satisfied this is not possible. A court would be allowed to disapply the six-year longstop if a delay in making the claim was because of the nature of the injuries, difficulties in securing the services required to make a claim (as long as the claimant was making all reasonable attempts to secure such services) or any other reasons outside the control of the claimant.

² Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 18
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf

³ Legal Protections for Armed Forces Personnel and Veterans serving in operations outside the United Kingdom, page 18
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819101/20190718-MOD_consultation_document-FINAL.pdf

In support of the removal of clauses 8, 9, 10, and 11, we warned that injured personnel can be misinformed about their right to make a legal claim. We repeat that warning in support of these amendments.

These amendments recognise that some personnel are told that they are unable to pursue a claim while still serving, or are told by those higher up the chain of command that they don't have a valid claim. Again, 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. It is those veterans who will be protected by these amendments.

These amendments will ensure that those service personnel and veterans do not have their access to justice automatically blocked by this Bill. Judicial discretion will remain for those for whom it is most desperately needed.

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.

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