



Association of Personal Injury Lawyers

Briefing: Overseas Operations (Service Personnel and Veterans) Bill – House of Lords committee stage – March 2021

Introduction

Repeatedly, ministers have defended part two of the Overseas Operations (Service Personnel and Veterans) Bill as beneficial to service personnel and veterans. This assertion is completely without foundation and we reject it utterly. 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 the responsibility of compensating some of those who are injured through its own negligence.

Removal of clauses

Clauses 8, 9, 10, and 11 should be removed from the Bill. They restrict the rights of those injured during overseas operations, who will no longer have the benefit of the full discretion of the courts to allow a claim to proceed after the limitation period has expired. Instead, they will be shackled by an arbitrary and absolute six-year time limit in which to pursue either a personal injury claim or a claim under the Human Rights Act.

Safeguarding amendments

If the Government continues to insist that the six-year time limit should remain in the Bill, we urge peers to accept the amendments in the names of Baroness Smith of Newnham and Lord Thomas of Gresford which will amend Clause 11 and Schedules 2, 3 and 4. These amendments will provide safeguards for service personnel, veterans and their families.

The six-year longstop would still apply, unless a court is satisfied there are certain legitimate reasons which mean a claim could not have been brought within six years. A court would be allowed to disapply the six-year longstop if a delay in making a 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.

These amendments still respect the Government's policy objective to ensure claims are made as soon as possible, but provide safeguards for those who are unable to make a claim within six years through no fault of their own.

Six years may seem like a generous time limit to some but, as these amendments recognise, there can be many reasons why someone is unable to make a claim within that time limit.

Concerns have been raised by our specialist members that injured service 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 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 cannot 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. It is those veterans who will be protected by these amendments.

These amendments would also protect those who have been unable to make a claim within six years because of the nature of their injuries. This could include those who suffer with post-traumatic stress disorder (PTSD). An answer to a recent parliamentary question has revealed an increase in the number of service personnel assessed as suffering from PTSD at a Ministry of Defence Department for Community Mental Health¹. In the past ten years, the assessment rate has increased by 50 per cent, with an increase of 22 per cent in the last year alone. A report published by MoD last year also revealed that the rates of PTSD "were far higher in those who had previously deployed to Iraq and/or Afghanistan than those not deployed there"².

The Government has said that claims for PTSD will still be able to be made more than six years after the incident which caused it, as long as the claim is made within six years of diagnosis. There is a difference, however, between what the law allows, and the actual ability of an injured person to comply with it.

¹ <https://questions-statements.parliament.uk/written-questions/detail/2021-01-27/144827>

² UK Armed Forces Mental Health: Annual Summary & Trends Over Time, 2007/08 - 2019/2020, page 14, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892426/20200618_Annual_Report_19-20_O.pdf

The symptoms of PTSD can vary enormously from one person to another. It is the experience of our members that, even after diagnosis, it can still be many years before some people feel able to talk about what happened to them without fear of reliving the trauma. By the time they are ready to talk and ask for legal help, it could then be too late if this Bill, as drafted, becomes law. They will be denied the justice they deserve, and to which they should have a right.

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 campaign group which has been committed to injured people for more than 30 years. Our vision is of a society without needless injury but, when people are injured, they receive the justice they need to rebuild their lives. We have more than 3,200 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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