



## **Association of Personal Injury Lawyers**

### **Briefing: Overseas Operations (Service Personnel and Veterans) Bill – Consideration of Lords amendments – April 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. We have warned at every opportunity that if the Bill is not amended, 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.

#### **Restrictions on time limits: actions brought against the Crown by service personnel**

Lords amendment 4, which added clause 13 to the Bill after report stage in the House of Lords, will exempt service personnel and veterans from the proposed six-year limitation longstop which means they will continue to benefit from the discretion of the courts to allow a claim to proceed after the limitation period has expired.

APIL has consistently argued that such protection is critical for service personnel who, for example, may be misinformed about their right to make a legal claim. Concerns have been raised by our specialist members that 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 have been too late for them without this amendment.

This amendment will also protect those unable to make a claim within six years because the nature of their injuries makes it incredibly difficult for them to do so, such as those who suffer with post-traumatic stress disorder (PTSD).

The Government has previously said that even if the longstop remains, claims for PTSD would 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.

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 originally proposed by the Government, becomes law. They will be denied the justice they deserve, and to which they should have a right.

### **A two-tier system**

While we welcome Lords amendment 4 in part, it does not go nearly far enough, as it effectively creates an unfair, two-tier system by disenfranchising MoD civilian employees, and the grieving families of deceased service personnel, who will still be unable to make valid claims because of the arbitrary absolute six-year time limit.

The position of grieving families who have lost loved ones because the MoD failed in its duty to look after those who put their lives on the line for our country must be recognised. These brave men and women volunteered to fight to defend us. It should never be considered acceptable that as a reward for their service, they should lose their lives because of an act which could, and should, have been avoided, and that their families are then denied an opportunity to hold the MoD to account.

For example, this restriction would have denied justice for a widow and her two children whose claim was settled with the MoD last year by one of our members. In 2005 her husband, then serving as a corporal in the British Army, was killed in Iraq while travelling in a Snatch Land Rover. It was only after the release of the Chilcot Report in July 2016 that she appreciated the failings of the MoD, and realised she was entitled to make a claim for loss of dependency, and a claim under the Human Rights Act on the basis that her husband had a right to life.

Subjecting grieving families to a six-year longstop will effectively make them second class citizens in a two-tier justice system. Those families should be treated no differently from anyone else by our civil justice system.

The Government must now listen to the genuine and overwhelming opposition to part two of this Bill, treat these families fairly, and drop its proposals for this unfair and discriminative longstop altogether.

### **Derogation from the ECHR**

We welcome the decision of the Government to remove proposals from the Bill which would have placed a duty on future governments to consider derogation from the European Convention on Human Rights (ECHR).

Derogation is permitted under Article 15 of the ECHR, but the European Court on Human Rights says it should only ever happen in “exceptional circumstances”<sup>1</sup>. Even then we should be cautious about any attempts to move away from what is an accepted international standard for human rights. To place a duty on future governments to consider derogation would have risked normalising a decision to derogate. It would have made it appear that derogation is perfectly acceptable, and something which should happen as standard whenever UK armed forces are engaged in overseas operations. The proposals would have only undermined our commitment to human rights, and the protection which the UK was so integral in establishing.

### **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.

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

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<sup>1</sup> 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](https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf)