

Select Committee on the Armed Forces Bill

Oral evidence: Armed Forces Bill, HC 1281

Wednesday 10 March 2021

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Members present: James Sunderland (Chair); Stuart Anderson; Tonia Antoniazzi; Dan Carden; Miss Sarah Dines; Leo Docherty; Martin Docherty-Hughes; Darren Henry; Mrs Sharon Hodgson; Mr Richard Holden; Mr Kevan Jones; Jack Lopresti; Johnny Mercer; Carol Monaghan; Stephen Morgan; Mrs Heather Wheeler.

Questions 52 - 103

Witnesses

I: Councillor Ian Hudspeth, Chair, Community Wellbeing Board, Local Government Association; Mike Callaghan, National Policy Manager, Convention of Scottish Local Authorities; and Councillor Maureen Webber, Community Safety Spokesperson, Welsh Local Government Association.

II: Michael King, Local Government and Social Care Ombudsman.



Examination of witness

Witness: Michael King.

Chair: Good morning and welcome to the second evidence session of the Select Committee on the Armed Forces Bill today. I am delighted to welcome Mr Michael King as our guest witness, the local government and social care ombudsman. We have a prescribed list of questions for you, Mr King. You will be on the spot now for the next half an hour. I come first to Stuart Anderson.

Q90 **Stuart Anderson:** Hello, Mike. The first question is, how high is awareness of the covenant and its principles among ombudsman?

Michael King: First, thank you for inviting me and good morning to you all. I think the awareness of the covenant and the Bill is high among ombudsman schemes. We have already done a lot of work around this, following the introduction of the covenant. We have done a number of investigations and made decisions about those. Certainly, internally in my own organisation, I regularly hold casework briefings for the investigators who work for me on key developments. I have featured the Armed Forces Covenant a number of times in those. Also, we are conscious that, as well as investigating individual complaints, we feed back learning from complaints to local governments to improve local services. On Remembrance Day 2019, we brought together our experience of investigating these matters and issued guidance to local authorities, reminding them of their duties under the covenant, and giving them casework examples of where things had gone wrong and things that they could learn. Certainly, for us, it is high on our agenda.

Q91 **Stuart Anderson:** It is very good to hear that it is high on the agenda. Does that mean you have an armed forces champion?

Michael King: We do not have an armed forces champion—that is a considered decision. We are a quasi-judicial body, so we have to be careful not to do anything that might give a perception of bias. When we are investigating a case, we have to be absolutely impartial and not be seen to lean towards one side or another, so having an internal champion might not be appropriate. Having said that though, we are clear about two things in that regard. One is that we need to be aware of the realities of life for forces families to make informed, common-sense judgments on the cases that come to us. When the covenant was first introduced, we were part of, along with many of my colleagues and other ombudsman schemes, a familiarisation programme that was run by the forces where our staff visited Army, Navy and Air Forces bases, and were able to talk to staff and get a little under the skin of what forces life was like. I thought that was a positive way of getting that kind familiarisation. I think that is something that might be worth repeating—perhaps after the introduction of the Bill—both for ombudsman staff and local government staff.

The other area that I think is really important is raising awareness of our role among forces families. I have spoken on British Forces Broadcasting about some of the cases we have investigated, and I have spoken at



HOUSE OF COMMONS

British Legion conferences about it. That is one of the other areas where there is a significant challenge. Awareness of people's rights is possibly the biggest problem we have in this area.

Stuart Anderson: Thank you very much.

Q92 **Mrs Hodgson:** I want to ask about something that is not included in the Bill: social care. Given what you know about the sector, do you feel it is appropriate that it is not included, or do you think there should be something on the face of the Bill?

Michael King: Good morning.

Mrs Hodgson: Sorry, good morning.

Michael King: Thank you for the question. It is not for me to second-guess the policy intent behind draft legislation, but on a personal level, I was very surprised to see it excluded. When someone has a long-term condition, which may well arise from their service, the distinction between long-term healthcare and long-term social care is often a very blurred one. People might require both healthcare and social care support—indeed, they might move between health and social care at any point in their lives—so to exclude social care seems slightly odd to me, given that it is entirely foreseeable that people who have given service in the forces might well be in receipt of social care, and that social care might be directly linked to their service. The absence of that does seem like a gap.

When we investigate social care cases, we find huge pressures and problems in that area. We currently uphold about two thirds of the cases we investigate. It is certainly an area in which the public, when they come to us, are experiencing significant difficulties. I can only imagine that is true for forces families as well. It does appear to be a gap, and a somewhat inexplicable one, given that health is included.

Mrs Hodgson: Thank you so much, Michael.

Chair: I call Martin Docherty-Hughes.

Q93 **Martin Docherty-Hughes:** I just want to come in on Sharon's point. Michael, given what you have said, I am sure you would reflect on what was said on the previous panel. Health, specifically, has been devolved since 1947 in Scotland, and it is more or less the same in Wales. If that were to be a proposition in terms of social care, it must be reflected in the delivery methods for Scotland and Wales, as well as for Northern Ireland.

Michael King: I cannot speak on behalf of my colleagues in Wales, Scotland and Northern Ireland, but one of the things that is common to us all is that when we investigate complaints about health and social care, the issues often overlap between those two areas. Indeed, in Wales, Scotland and Northern Ireland, you have a single ombudsman that can look at health and social care in one body. In England, the arrangements are slightly different—you have a separate ombudsman for health from my scheme for local government. Because of that, we have had to create a



HOUSE OF COMMONS

joint team to look at cases that overlap health and social care. Such is the overlap and the intersection between those two that we have created a joint team that my organisation runs, so that we can investigate those things in a joined-up manner. Trying to separate those two would seem slightly odd in terms of the public experience of those services.

Martin Docherty-Hughes: Thank you. Back to you, Chair.

Chair: I call Darren Henry.

Q94 **Darren Henry:** Thank you very much for attending, Michael. The LGA's written evidence talks about being able to support covenant projects going forward, and says that they must be fully and sustainably funded. What are the resource implications of the Bill for you and other ombudsmen or their equivalents?

Michael King: Good morning. The implications for us in terms of resources are relatively modest. The ombudsman schemes in the UK have been established for up to 50 years. They are well ingrained into the way local government and the health service work. We already investigate cases under the covenant. I do not think that any fundamental redesign of the model is required. Our core business is entirely attuned to deliver the outcomes required under the Bill. Resources might be required, but they are relatively modest. We operate on a very lean model, and the root capacity that we have to deal with public complaints hardly ever matches the demand of public concerns.

At the moment, the number of complaints that come to us is relatively modest; that is perhaps something that we will come back to later in the session. If there was an increase in the number of complaints—I think there probably is unmet demand—I guess the only resources implications would be having the investigative capacity to investigate that elevated number of complaints. Certainly, in terms of my own scheme, we are talking about one or two people, and a relatively modest addition to existing resource, rather than having to invent something new.

There is only one other area where I would flag, potentially, the need for resource. As I have already mentioned, awareness of people's rights is one of the big challenges here. We don't have any internal capacity to do outreach work or awareness-raising work, so it might be that it would be beneficial to have some limited capacity for a period of time to try and do that kind of outreach and raise awareness of what people's rights are to challenge decisions when they think they have been unfairly disadvantaged.

Q95 **Darren Henry:** What sort of resources do you think you would allocate to an outreach project?

Michael King: I don't know. Again, I think it is relatively modest. The ombudsman schemes operate, as I say, on a very lean basis. We are not a huge, overblown organisation. It is very much focused on grassroots, frontline service delivery. As I say, in terms of my scheme, I'd be talking about one or two people to try and deliver this kind of capacity. A very



modest increase in resources would enable us to do a great deal in this space.

Darren Henry: Thank you. Back to you, Chair.

Chair: Thank you, Darren. The next question is from Tonia Antoniazzi.

Q96 **Tonia Antoniazzi:** Thank you, Chair. Hi, Mick. The Bill makes provision for the Secretary of State to issue statutory guidance. Would you and other ombudsmen expect to be consulted, and what would you need to see as part of that guidance?

Michael King: Thank you. Core to our work, often, in deciding whether or not a local authority has complied with its duties, is to look at guidance. Our role goes way beyond just normal ideas of what is lawful and unlawful, which a court might look at. We can look at codes of practice, guidance and, indeed, the covenant. We spend a great deal of time looking at guidance and trying to interpret it to see whether a local authority has complied with it. So it would be enormously helpful for the ombudsman community to be consulted about what that guidance looks like. If we are going to hold public bodies to account based on that guidance, it needs to be clear, strong and robust. In our experience, some guidance is very useful and clear to apply when it is unambiguous. Where things are woolly and unclear, it is very difficult both for practitioners and local government to do their job, but also for us to take an independent view of whether they have done the right thing or not. So clarity is absolutely fundamental for any guidance.

In terms of what we would like to see in it, there is one particular thing. This is probably the most important suggestion that I want to make to the Committee, if I may. I think the existing arrangements through local complaints processes and through ombudsmen are an incredibly effective tool to hold bodies to account around the kinds of pledges that are in the covenant and proposed in the Bill. However, the number of complaints we get at the moment is very small, and I think that is an under-representation of the number of people who perhaps might have concerns that should come to us. We can do the job, but we can only do that if people can get to us and are aware of their rights.

So I'd like to see two things in the guidance. First, I would like to see a very clear duty put on local authorities for them to explain to the people who are beneficiaries of the proposals in the Bill what their rights are: to complain through the local complaints process and then to come to an ombudsman. Secondly, I would like to see a very specific mandatory requirement in the guidance that public bodies directly signpost people at the end of their own complaints process to the relevant ombudsman scheme. I think, without that, we have got an enforcement tool that is effectively disconnected from people's rights. So, in addition to the guidance being very clear about what the duties are, I would like to see those very specific proposals telling people of their rights and signposting them to the independent stage where they can get an independent, fair investigation of what has gone on.



HOUSE OF COMMONS

Q97 Tonia Antoniazzi: Thanks, Mick. You spoke about the ombudsman scheme being very lean earlier. Do you feel it likely that the Bill will lead to a higher workload for you and other ombudsmen?

Michael King: I hope it does, because I genuinely feel that, where we have investigated complaints in this space, we have been able to produce some very useful and important outcomes, both in wider learning for local authorities and resolving everyday injustice for people. I think we have got an important role to play here, but I look at the numbers that have come to us and, frankly, they feel pitifully small compared to the numbers of complaints we get about other issues. I do feel there is unmet demand there.

So, in some ways, I do hope our workload in this area goes up. I think it should, because at the moment there is a disconnect, where people are not aware of their ability to come to us to seek resolution, or the fact that it is free and very simple and easy to use.

Tonia Antoniazzi: Thank you very much, Mick.

Q98 Chair: I'm going come in now with a question. As the Government does not wish to prescribe specific outcomes at this point in time, how can the Bill be enforced and, indeed, its effectiveness measured?

Michael King: I am not sure whether "enforcement" is the word I would use. We already have a track record of holding local authorities and social care providers to account in terms of their delivery against the covenant. I think it is very familiar territory for us to be able to look at something which sets general principles and general requirements on a local authority and apply that in practice.

We have investigated complaints about school admissions, school transport, blue badge parking passes, homelessness and housing applications, all of which are very specific and technical areas of local government duties. We have applied the principles of the covenant to those areas and been able to come to a judgment on whether somebody should have been given a school place and whether somebody should have been put on the housing allocations list. So it is very comfortable territory for us to make those judgments.

Where we have investigated, we have upheld 55% of the cases we have subjected to a detailed investigation. I should say that that is not atypical in terms of our general workload. But, in more than half the cases, clearly there has been a fault, and we have been able to investigate that and remedy it for the individual. So, in practice, this system works without creating anything new or burdensome.

As I say, I think we can do the job and give teeth to the Bill through the ombudsman scheme if people can get to us. I think the ombudsman mechanism is an effective, free, fair and independent way in which we can ensure compliance, as long as people can come to us.

Q99 Jack Lopresti: Thank you, Michael, for joining us this morning. How do



HOUSE OF COMMONS

we ensure that local authorities and relevant public bodies do not ignore the requirement to have due regard, given that it is a principle and it is intangible? Because of that, how likely are judicial reviews? Do you see part of your role being to prevent them?

Michael King: There are two issues there—one about the “due regard” duty and the other about judicial review. I will deal with due regard first. I think that is a concept which local government is familiar with, and certainly we are familiar with it. If you look at something like the Human Rights Act or the Equality Act, where there is an overarching duty that the local authority has to have regard to, because they are enshrined in law and they have a relatively high profile and are thinking of local authorities, when you see a Committee report, for example, there will often be a box at the bottom saying, “What are the Equality Act implications of this? What are the Human Rights Act implications of this?” I see no reason why local authorities could not have a similar check to say, “What the Armed Forces Bill implications?” So the concept of applying due regard to an overarching duty is familiar to local authorities, and I think that is a workable mechanism.

In terms of our ability to hold people to account around that, again it is very familiar territory to us. Most decisions that we make are not a binary decisions about whether the law has been followed or not. We will exercise our judgment to say, “Has the authority had proper regard to all the considerations that it should have had in exercising the discretion?” It is exactly the same situation here, and we have experience of having that relationship, for example on human rights. We issued a report against Nottinghamshire County Council just in the last couple of weeks, in which we said that they had failed to have due regard to somebody’s right to a family life in making decisions about how they had provided adult social care to that person. So, I think the “due regard” duty is something that is entirely workable, both for local authorities and for us.

As for judicial review, it sits alongside, and is complementary to, our role but is an entirely separate discipline. What the courts have said in previous case law is that they would normally expect most everyday complaints that people have about public bodies to come through the ombudsman before they should go to judicial review. Obviously, judicial review is costly. For most people, it would be seen as a fairly onerous and fairly intimidating process, despite the court’s best efforts. To come to an ombudsman, you don’t need a solicitor. Our process is very simple and down to earth. It costs you absolutely nothing.

So there isn’t a tension between judicial review and our role, but in practice, in most of our work, the vast majority of public concerns about public bodies—tens of thousands every year—come through the ombudsman. A relatively small number of perhaps much more serious issues, affecting major policy issues or affecting large numbers of people, would perhaps be more appropriate for judicial review. So I would see the two as complementary, and I think they already sit alongside each other in most of our work, without there being a particular tension there.



HOUSE OF COMMONS

Jack Lopresti: Thank you, Michael; that is very helpful and very reassuring. Back to you, Chair.

Chair: Thank you. I will come to Stephen Morgan in a moment, but let me say once again that this session will run to 11.15 am. There may be time for a question after Stephen, so please get your thinking caps on.

Q100 **Stephen Morgan:** Thank you, Chair. Michael, thank you ever so much for giving us evidence today, and good morning. I have a couple of questions, if I may. You have already covered some of this, but what redress could you offer the covenant beneficiaries who want to complain under this legislation in its current form?

Michael King: Fantastic question. Our approach is very different from that of the courts, and it is also very different from any of the kind of claims management compensation culture that might be out there. Maybe I will use a particular case to explain the way in which we would provide a remedy; that might be the best way of showing it.

This is a case that we investigated under the Armed Forces Covenant. In this case, one of the children in a forces family had cancer and was having treatment for it. They were living in very damp accommodation, and the child's health was being adversely affected by the conditions in the family's Army house. They had to move, and the Army moved them to a different property, but it was some distance away from the children's school.

The local authority then decided that they wouldn't give that family free school transport, because free school transport wouldn't be available to a non-forces family; that was their rationale. We investigated that, and we said that that was not within the spirit of the covenant. We found against the local authority, and we made a series of recommendations that will perhaps answer your question. They take a number of different forms.

First of all, we try to offer a personal remedy to the person. That is very much focused on common-sense, practical things to try and put things back in the position they should have been in. So we asked the local authority to apologise. We told them to urgently reinstate the free school transport that the family should be entitled to. That is very much an emphasis—to try to reinstate the service that people should be getting.

We also said that the authority should give the family a token sum of £1,000 to recognise the kind of stress and difficulties that they had caused at a very difficult time in the family's life. We also asked the family to tell us how much they were out of pocket for having had to pay for transport; again, that was around £1,000. So, all of those remedies were agreed by the council and were given to the family.

However, we always want to go further than that; we always want to consider what learning we can take from an individual complaint to try and drive wider service improvement in that authority. So, in that case, we asked the local authority to revise their school transport policies, to make sure that they were considering the rights of forces families, and we also



HOUSE OF COMMONS

asked them to retrain their staff and raise awareness among them around the covenant, which again they agreed to do and agreed to implement.

Our remedies generally try to sort things out for the individual in a very practical way. They try to drive improvement in the local authority itself. But we also have a power such that if we see that large numbers of other people are affected by the same issue, we can broaden our investigation. Sometimes, from one complaint, we will investigate the case for hundreds or thousands of other people and provide a remedy for them. So it's a very broad and flexible approach, but focused as much as possible on service improvement rather than on a notion of compensation.

Q101 Stephen Morgan: Michael, thanks for that excellent example. I will ask a question linked to that, if I may. With a lack of measurable outcomes or enforcement mechanisms in the Bill, what difference do you think the Bill will make to service personnel in practice?

Michael King: Well, we get 99-plus per cent. compliance with all our recommendations, so I am confident that the system we have already got in place will work in terms of getting compliance. I think the difference the Bill will make, though, will be to raise the profile of this within local authorities. I have already mentioned that, when we investigate, we find 55% of the time that there has been fault; and certainly in the case I just talked about, the local authority had completely misunderstood what the issue of disadvantage that was being dealt with in the covenant was. So I think making the provision, the duty, more robust, making it a statutory duty and giving it a higher profile within public bodies, can only help remove some of the confusion but also raise awareness both among staff in public bodies and among the people who would potentially benefit. So I wholly welcome it.

Stephen Morgan: Thank you, Michael. Back to you, Chair.

Chair: Thank you, Stephen. We do have time for one last question, so is there anything that members wish to raise at this point? Martin Docherty-Hughes, please.

Q102 Martin Docherty-Hughes: This is just on the basis of the last question. Some would say that what the local authority could have done was made sure that the child was transported and then billed the MoD for the additional cost outside their local authority area, thereby ensuring full cost recovery. Could that have been a method to make sure that the local authority stepped up to the plate initially and then also made the MoD realise its part in the process, in terms of additional financial support?

Michael King: In terms of our role, our findings are always against the public body, and any recommended remedy will be against them. I think, though, the point you make is a very good one.

This is a slightly different analogy, but the same sort of principle. Increasingly, in a lot of local government—*[Inaudible]*—half by contractors; and sometimes, when we are finding fault, it is actually the contractor who has made the mistake. I know that some local authorities



have an agreement with their subcontractors that if they are responsible for the mistake, they will pay the bill. That is not something we can enforce on local authorities, but I think the principle that there is some traceability back to the cause of the problem is one worth exploring, although it is probably a question for the LGA and their equivalents rather than one for us. Our findings would be specifically against the body that is in our jurisdiction—in our case, normally a local authority.

Q103 Martin Docherty-Hughes: But from your experience, would it not also be a question for the Ministry of Defence, in terms of playing its part in ensuring that forces families who, for example, are living in dreadful forces accommodation are not disadvantaged, first of all by having to move house while a child is extremely sick? It would play its part, along with the local authority, in making sure that that child was supported.

Michael King: Armed forces aren't within our jurisdiction; we are looking solely at local authorities and social care providers. But that kind of question is something that potentially the Parliamentary and Health Service Ombudsman could look at, in terms of complaints directly about provision—services provided—by the MoD. So, yes, there is a different ombudsman scheme that could potentially address some of those issues.

Martin Docherty-Hughes: Thank you, Chair; that's all.

Chair: Perfect timing: it's 11.15 am, and we have just come to the end of the second panel this morning. May I thank Michael King for being an expert witness? I think we'll wrap up there.