HOUSE OF COMMONS

# Select Committee on the Armed Forces Bill

## Oral evidence: Armed Forces Bill, HC 1281

Thursday 11 March 2021

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Watch the meeting

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 104-167

### Witnesses

I: His Honour Shaun Lyons CBE, and Professor Sir Jon Murphy, Professor of Advanced Policing Studies, Liverpool John Moores University.

II: His Honour Jeff Blackett, former Judge Advocate General.

III: His Honour Judge Alan Large, Judge Advocate General, and Jonathan Rees QC, Director of Service Prosecutions.

# Examination of Witnesses

Witnesses: His Honour Judge Alan Large and Jonathan Rees QC.

**Chair:** Good afternoon. It is a great privilege to welcome a number of guests for the next, final witness session of this Select Committee on the Armed Forces Bill hearing. The aim of the session is, of course, to generate evidence to support our work on the Armed Forces Bill. I am very honoured to welcome, first of all, His Honour Judge Alan Large, who is the Judge Advocate General, and secondly, Jonathan Rees QC, who is the Director of Service Prosecutions. You are both very welcome indeed; we look forward to hearing what you have to say.

We have a list of prescribed questions, which we will run past you, and then, once that has been completed, we will open the floor to all members. To start with, I will ask Sharon Hodgson to please come in.

Q152 **Mrs Hodgson:** Thank you, Chair. Welcome, good afternoon, and thank you so much for attending this session with us today.

The Bill contains a requirement for the Director of Service Prosecutions and the heads of civilian prosecution services to agree protocols where there is concurrent jurisdiction. Could you please briefly explain how that works at the moment, and what the new requirement will change?

***Jonathan Rees:*** Shall I start, given that the duty is on me to come to an agreement on the protocol with the DPP and others in Scotland and Northern Ireland? As you know, there is currently a protocol that addresses the problem of concurrent jurisdiction—criminal conduct that could be tried, in the instance of England and Wales, either in the civilian system or the service justice system.

On the whole, the protocol works relatively well, and that is because the principles set out in the protocol are easily understood—in shorthand, if there is a civilian element, it is tried in the civilian system—and it is generally applied well by the police, who turn up at the scene of any criminal complaint.

However, there are occasions when prosecutors—no doubt both at the CPS and at the SPA, the authority of which I am the head—look and see that, on the facts of a particular case, the protocol doesn't appear to have been properly applied. Because we have very good relations with the CPS, we get involved in discussions to see whether there a possibility of changing the jurisdiction. As previous witnesses have said, part of the key to this is making sure that the police protocol, which is contained in a memorandum of understanding dating back to 2008, is developed in conjunction with the protocol that I have to agree with the DPP, for example, so that they complement each other and the new principles that we are planning to put into the new protocol, which we have to agree under the Bill, are reflected in the police protocol.

As to changes, as you can see from clause 320A, for example, "relevant prosecutors" is a new concept. Our protocol is going to ensure that

relevant prosecutors have to address their mind to the topic of jurisdiction when they become aware that concurrent jurisdiction exists. We are going to have mechanisms for resolving issues where agreement cannot be reached and, in respect of the cases that cause the most problems and perhaps have the biggest impact on public confidence, cases of murder, manslaughter, rape— MMR—and other serious sexual offences, we are planning that there has to be consultation between both the SPA and the CPS as to where proper jurisdiction lies. The mechanism for escalating those issues if agreement cannot be reached eventually ends up with myself and the Director of Public Prosecutions, Max Hill, having a discussion. Both of us can seek the advice of the Attorney General. The protocol will also accept the primacy of the DPP if, ultimately, agreement cannot be reached, but both of us are extremely experienced lawyers used to prosecuting cases, so I doubt that will happen.

I suppose the other thing that reflects on public confidence is that we are going to expand the list of factors that people have to take into consideration in deciding which jurisdiction should take precedence on a case-by-case basis. That is going to be the subject of consultation. That was a long answer, but I hope it set the scene.

Q153 **Mrs Hodgson:** Thank you so much, Jonathan. As a follow-up to that, in agreeing those protocols, would you look to make broad agreements about types of offences such as MMR, or something more granular?

***Jonathan Rees:*** It is an extremely good question. A balance has to be struck, because you have to allow sufficient flexibility in the protocol to be able to treat each case on a case-by-case basis. Experience shows that casework can just throw up a huge number of scenarios. The principles that we are going to identify—the factors that people will have to take into account in deciding where the appropriate lies—are not going to be exhaustive, because you cannot simply predict what influences may be brought to bear in respect of a particular case as to which jurisdiction should take precedence.

However, as I said, in terms of certain cases—MMR, to use the shorthand—we will, if not actually specifying specific factors, require there to be consultation between the two authorities so the widest variety of views can be shared, and the expertise on both sides can be shared, in deciding where a particular case of MMR should be tried. I do not think that one ought to be too prescriptive, because one might end up with unintended consequences—there has to be a certain amount of flexibility—but I am hoping that that consultation that we are going to engage in will help to identify certain factors, some of which will be applicable to MMR cases, some of which will be of more general application.

**Mrs Hodgson:** Thank you so much. Judge, do you have any thoughts or general comments around those questions?

***Judge Alan Large:*** I don't think I do. This is really the directors' area—both of them—and you are hearing if from the horse's mouth. I do not think I can add anything on this one.

Q154 **Mrs Hodgson:** Excellent. I am sure you will on my next question, if I may be so bold as to squeeze one more in. It is a general question to you both: is there anything not in the Bill that you would like to have seen added? Let us start with you, Judge.

***Judge Alan Large:*** I was appointed about five months ago. It was clear when I came into office that the amount of time for this Bill was going to be limited. There were some very nuts-and-bolts points that we tried to get in. We were able to get in things that are actually really significant at the coalface: the deprivation orders, the disqualification orders, and things like that. There are one or two other little ones.

I think you can rest assured that when we look ahead, I will have a shopping list, which I have already started, to make sure that we make some significant changes. One of those—this is quite relevant to some of the issues that we might discuss later—is to make sure that our jurisdiction can use prerecorded cross-examination of vulnerable complainants, which at the moment we don't have the power to do. The sooner we get that, the better, so I shall be fighting hard to try to get that as part of our system, and I hope to be coming back to talk about it in front of you in a little while.

***Jonathan Rees:*** I would certainly echo what Judge Large said about implementing the provisions that are currently to be found in the Youth Justice and Criminal Evidence Act 1999, with regard to filming cross-examination—video-recording cross-examination and the like.

Also, to go back to what Judge Blackett said, it seems to me that the ability to transfer one case from one jurisdiction to another, not only in respect of sentencing, as he identified, but also because if it only transpires after charge that the case may be in the least appropriate jurisdiction, it is extremely difficult now to effect a change, whereas were it in the legislation, it would be less difficult and you would avoid certain difficulties.

***Judge Alan Large:*** My experience when I sit in the Crown court is that Crown court circuit judges are often frustrated by the fact that they have a serviceperson in front of them for sentence—it might have been a trial, it might have been a guilty plea, but this is particularly after a guilty plea—and they don't have the range of sentencing options that we would have in the court martial if we were dealing with the defendant. They have to consider, "What are the consequences of the sentence in relation to the defendant's career. If we pass a suspended sentence of imprisonment, will that affect him being dismissed or otherwise?" If they send it back to us, we know what the facts are and we can get on and deal with it. There are circuit judges out there who would also like the ability to be able to send cases back to the specialist court martial.

**Mrs Hodgson:** Thank you so much. That makes absolute sense. I appreciate both your answers.

Q155 **Tonia Antoniazzi:** My question is for Jonathan. Separate protocols will need to be agreed with the DPP for England and Wales, the Lord

Advocate for Scotland and the DPP for Northern Ireland. Will you be trying to agree uniformity with all three?

***Jonathan Rees:*** Yes is the short answer, because there is no real reason why the protocols should differ in substance. The fact is that although there is an existing protocol that I have with the DPP, or certainly that he is a signatory to, we don't have any protocols that cover concurrent jurisdiction in Scotland or Northern Ireland. There are, of course, cases where service personnel do commit criminal conduct in both of those jurisdictions, and actually it isn't a problem. It's probably because the broad principles that apply in England and Wales are applied also in both those jurisdictions, because, of course, the service police, who are bound to get involved at some stage, are aware of them. Other than just recognising that there may be minor differences between how certain offences are described in the criminal law, I can see from the different clauses that are intended to be put into the Act—320A, 320B and 320C—that there should be no significant difference between the protocols. I shall be speaking to the Lord Advocate tomorrow. I expect that to be his position, but I can confirm that at a later date, if it is convenient.

Q156 **Mr Jones:** Jonathan, could you comment on something that Judge Lyons raised about jurisdiction? The issue was sexual offences and a court martial not being able to put somebody on the sex offenders register. Is that the case?

***Jonathan Rees:*** Can I defer to Judge Large on that? He will have sentenced people in the court martial, so he is very much the expert on that?

***Judge Alan Large:*** What Judge Lyons was referring to was this. In cases where someone has or should have been charged with sexual assault, for which, had they been convicted, depending on the sentence, they would have been placed on the sex offenders register, if they are charged with the service offence of disgraceful conduct of an indecent kind—an offence contrary to the Armed Forces Act—they won't go on sex offenders register. That is a concern. I do not doubt this for a moment. If Sir Jon, Judge Lyons or whoever it was who said it went to MCTC Colchester and found a whole batch of people who should have been convicted of sexual offences but were in fact only convicted of disgraceful conduct, that is wrong.

I can tell you that the position today is that the service judiciary is very alert to the differences in the way that those two offences are viewed and the consequences of them.

There are cases when it is right for a sexualised incident to be dealt with by disgraceful conduct of an indecent kind, but we rely as judges on the prosecutors—Jonathan and his team—to make the right decision as to what charges should be brought, and then the judges get on and try the cases. But it would be entirely wrong, if it was happening—it is not happening now, I can assure you—for people to duck a sexual offence charge just because of the fact that it might look bad for their career or they might go on the sex offenders register. That would be wrong.

Q157 **Mr Jones:** Am I right to assume, therefore, that if somebody is charged in a military court martial with a sexual offence, the court martial can actually add them to the sex offenders register, just like in a civilian court?

***Judge Alan Large:*** The same rules apply. We have no choice. We have no discretion. If it qualifies, it qualifies.

**Mr Jones:** Right. I just needed to clarify that. Thank you very much.

***Jonathan Rees:*** Could I just add something, Mr Jones? We have a policy when we consider cases that are referred to us by the service police, which deals very carefully with when, in extremely rare cases, it may be appropriate to advise a charge on disgraceful conduct as opposed to a sexual offence. The circumstances are extremely rare. We patrol it very carefully. I would not want anyone to think that it is a common problem.

We realise, as I am sure that the Committee realise, that, both in the courts and the SPA, we are extremely well aware that we are under very close scrutiny when it comes to how we perform in sexual offences.

Q158 **Mr Jones:** Could you give us an example of where that would be appropriate?

***Jonathan Rees:*** Well, you can get extremely odd contact. You might have people who are drunk in a bar, for example, where there is a lot of horseplay, so there is physical contact between the suspect and a complainant. On one view, it could be viewed, I suppose, as sexual contact rather than just joshing and horseplay—so there is some sort of physical level of contact—but you might think that, in all of the circumstances when you look at it, when you apply the code as to whether or not it is a sexual offence and there is a realistic prospect of conviction, it fails at that evidential sufficiency stage. But there is still plainly some contact, which is better reflected in a disciplinary offence and which ought to be marked, so you don't ignore it—you mark it with what is appropriate when you apply the code and compare the two different sets of offences.

Q159 **Mr Jones:** So, in a case like that, you are actually putting the template of the sexual offence against it first of all, to see whether it meets that threshold, and if it doesn't—

***Jonathan Rees:*** Quite so. If something looks like a sexual offence, you would always consider whether or not there was an appropriate sexual offence that reflects the conduct.

Q160 **Chair:** I am going to come to Stephen Morgan shortly, but could I ask a question of both of the witnesses? You are both practitioners. You clearly stand to benefit in some way from the legislation—you are both practitioners within the service justice system within the armed forces. Do you feel that the armed forces would welcome this Bill?

***Judge Alan Large:*** I am confident that they will welcome the Bill. I haven't had a lot of discussions with them about it, but I think it is fair to

say that if they wouldn't welcome the Bill, they probably would have been having some discussions with me about it.

There are things in there that are positive for the forces. I think reducing the seniority of the board members is positive for the forces. I think the proposals in relation to the way we are going to change majorities is very positive for the forces, and I think it is very good news for the forces that—and I know this sounds like a minor thing to some of you—we can now disqualify people from driving. I have been trying very serious cases, including death by dangerous driving, and I have been able to send a defendant to prison, but I haven't been able to take him off the road when he has been released. I think it is very good that we can do that now. There is a range of issues in the Bill that are positive for the services. I am pretty confident that they will be pleased to see it enacted.

***Jonathan Rees:*** Broadly speaking, I would echo that. There are a lot of good things in the Bill. It is a useful and helpful Bill. The introduction of qualified majorities generally will increase confidence in the system—going beyond the simple majority to a qualified majority. I think that being able to rectify mistakes is a good, practical measure. It will cut down some of the cases that now appear at the summary appeal court. The service police complaints part of the Bill is excellent in addressing people's confidence in the performance of the police and the fact that there will be independent scrutiny of that. Deprivation orders was something that was not widely available in the court martial system, and now it is, so it means that certain cases that we would have to take to court martial because the commanding officer could not deal with them can now be dealt with by the commanding officer. So, there are lots of good, practical measures in the Bill.

Q161 **Chair:** Thank you. To both witnesses again, can I please ask you for your view on the importance of HM forces retaining their own justice system? Secondly, do you feel there may have been a risk to that system had the UK remained part of the EU?

***Judge Alan Large:*** I think it is essential that the services have their own justice system. Judge Blackett went through the reasons for it, and mine would be exactly the same. I am not going to repeat them, but you need a system to support operational effectiveness and to support the maintenance of discipline in any fighting force, so there has to be a system. If you'll forgive me, I would rather duck the second question, because I don't have the information to answer it. I am very sorry.

***Jonathan Rees:*** I don't think I can do much better than Judge Blackett did in setting out the rationale for a separate service justice system. For those who are unfamiliar with the Armed Forces Act 2006, which underpins the system, there are in the first 19 sections 19 different disciplinary offences which really aren't reflected in the criminal law of England and Wales. You need it there because you are dealing with people who operate within a chain of command and who fulfil a highly specific function on a day-to-day basis.

I am very new to the system. I was 33 years at the self-employed criminal Bar. I knew very little about the system before I had to read up when I applied for the job and was appointed last November. Certainly, over the four or so months that I have been in post, I am absolutely convinced of the need for a separate service justice system.

I will follow Judge Large, if I may, on the second question. I am simply not qualified to give you an answer, and I have no information touching upon it. I am sorry. I can find out about it for you, but I am not in a position to give you a considered answer now.

**Chair:** Thank you, and I appreciate both of your answers. Can I please move across now to Stephen Morgan?

Q162 **Stephen Morgan:** Thank you both for giving evidence before the Committee today. To follow on from Kevan Jones's earlier question, do you agree with recommendation 1 of the service justice review regarding court martial jurisdiction, and how do you think the requirement for protocol answers the concerns some have raised about the prosecution of serious offences?

***Judge Alan Large:*** Jonathan, do you want to go first on that one? I will come after you this time.

***Jonathan Rees:*** Yes. I feel slightly conflicted, in the sense that I think it is for Ministers to answer whether or not they are going to adopt and accept the recommendations in Sean Lyons's report, and in particular the recommendation that court martial jurisdiction no longer includes murder, manslaughter and rape, except with the consent of the Attorney General. As I understand it, the Secretary of State's position is that he is going to maintain what is, in law, the status quo, which is jurisdictional concurrency. Given that that is an issue that has to be addressed when service personnel commit criminal offences in England and Wales, there needs to be a protocol that it be decided on a case-by-case basis.

If the question is whether the public should have confidence in the service justice system to deal with cases of murder, manslaughter and rape, certainly my experience over the last four months is yes, because although it has been acknowledged that the conviction rate in respect of rape offences is low, there is good reason for that, because of the profile of the cases that go before the service justice system and are heard in court martial. I will not expand on what Judge Blackett said about that.

I have experience of both jurisdictions now. The prosecuting officers whom I have at hand to go to the court martial and prosecute serious sexual offences are the equivalent of their counterparts in the civilian system. They have the same training. They need to have a sufficient amount of experience before I allow them to do cases at a certain level. Some of them have been at the Bar. Some of them, as I say, have had huge amounts of experience and training. They are extremely good at what they do, but these are difficult cases. I am confident, certainly about the part

that I can control—the quality of the prosecution—that the SPA is fit for purpose in that sense.

I am slightly ducking the question. In terms of what I think is the underlying concern, even if you look at Sean Lyons's recommendation, he is not saying, and he cannot say, that the service justice system is not fit for purpose when it comes to trying those sorts of cases. Even in his recommendation, he makes the concession that, should the Attorney General give consent, such cases will be tried in the court martial, and obviously we have extraterritorial jurisdiction outside the UK. If it really comes down to a question of public confidence, which is one of the features of his report, I think that having a mechanism by which the two prosecuting authorities in England and Wales—the CPS and the SPA—have to consult, on a case-by-case basis, as to where these cases should be tried, and if there is a mechanism for us to consult the Attorney General as to where the appropriate jurisdiction is, that would go quite a long way to restoring public confidence, as will the consultation process whereby the Secretary of State, the Attorney General, the police council and other stakeholders have an opportunity to identify the factors that they suggest are relevant in deciding jurisdiction.

Q163 **Stephen Morgan:** Jonathan, thank you. Your Honour, did you want to respond?

***Judge Alan Large:*** Mr Morgan, you will understand that, as a serving judge, I cannot really comment on the policy. That is a matter for you. Please forgive me for not doing that. However, I can talk about the capability of the system, as Jonathan has just done. I was quite keen that he answered that question first, because I am dyed in the wool in this system—I have been here as an assistant judge advocate general for about 11 years before becoming JAG—so you might not expect me to say something controversial about the capability of the system, but just look at our Director of Service Prosecutions. I hope he will not be too embarrassed about my saying this, but he has come into this organisation from a highly successful civilian practice as a senior member at the Bar. I do not think he would have come if he did not regard the organisation as professional and fit for purpose. I have no doubt that he looked very carefully at it. His predecessor, Andrew Cayley, QC—I am desperately trying to remember the formal title; Jonathan will help me—was in office for about six years and has now gone to be Her Majesty's Chief Inspector of the Crown Prosecution Service. Before then it was Bruce Houlder, QC. These are senior people who have come into the SPA because it is a professional organisation.

If you will forgive me for my own point of view, I have stayed in and worked in the service justice system for 10 years because I share the same view of it. I do not come to court every day as a judge advocate—now as a JAG—and go home at night thinking, "Gosh, that was a shambles. All very embarrassing. Another travesty." I go home every day thinking, "Justice has been done where it can be done." Now, obviously, from time to time you raise an eyebrow at a decision here and there, and an awful lot of the time you think, "Gosh, those cases are so difficult to

prove," because of all the reasons that you have heard from Judge Blackett and Jonathan Rees: one word against another; doors closed; everyone's drunk.

So there is the background to the people involved in it. We are here because we think it is a good system. No, is not perfect, and Sir Jon Murphy, who spoke about policing, identified significant issues. It looks to me as if they are being addressed. We are never going to address the issue of the service police being as experienced as civilian police, but we can do what we can to make that right. It seems to me that a combination of cross-training, cross-pollination and the DSCU—all that sort of thing—is likely to help, and people need to give focus to the service police, stop pulling them every way and let them get on with their job. If they are SIB specialists, let them be SIB specialists and let them be professional.

My experience of the courts is that, yes, there is an occasional car crash, but most of the time, in the cases I see, the investigation of cases, be they rape, be they murder or be they manslaughter, is not the focus of the defence attack. That is because there is nothing to attack. If they could, they would. If I had a criticism at the moment of the service police, it is that they are a bit too thorough. That is probably because of inexperience, because they are looking under every stone and checking every page of the guidebook rather than moving it along. But that is a criticism that I can live with.

Jonathan has dealt with SPA, and I share his views of the prosecutors. We do not get those straight out of the box when coming here to prosecute a rape; you get people who know what they are doing, who are experienced and who are trained. And judges, well, we are all now sitting in the Crown court—not as much as we would like—and appointed by the Judicial Appointments Commission. We are independent, and I would like to think that we know what we are doing. I would say that, wouldn't I?

But I do add this to you all: there is a lot of comment about the capability of the court martial and the poor conviction rate—it is a poor conviction rate, for the reasons that have been aired, and I am happy to go into them with you—but do come and have a look. Come and sit through a case like the one I heard fairly recently of a young naval lieutenant and a university student under his command. Spend three days with us and if you go away thinking, "What a shambles! That was a travesty. I can't understand how that verdict was returned," I will very happily discuss it with you within the confines of what I can. But these are really, really tricky cases that we are talking about, and they are tricky in any court.

It would be quite interesting to look at the conviction rate for, let's say, university students, who are usually thoroughly decent young people of good character. They drink too much; they end up in the wrong bed. The rest is history. It is a rape allegation. It goes to court. What is the conviction rate? I do not know the answer, but I would have thought it was about the same as the one we get, because our servicepeople are thoroughly good people, but they drink too much, something goes wrong and they end up in court.

You may get the impression that I am rather proud of our system—I am. I think it is very good. I think it is fit for purpose, and I know, because I do them week in, week out, that we can try cases—not murder, as I don't do murder cases week in, week out; but rape cases—in the same way as we can try, as I am trying at the moment, a major general charged with fraud. But I am not going to talk about that anymore. Why should we be able to try one and not the other? If I may say so, I do not quite see the logic in that.

**Stephen Morgan:** Thank you, both, for your thorough answers. Back to you, Chair.

Q164 **Chair:** We have 25 minutes left, if we need it. I will open this to the floor shortly, but first another question from me, please, to both witnesses. It is about commanding officers and the ability to rectify mistakes—though, clearly, I cannot imagine for one second that our well trained and highly eminent commanding officers would make mistakes. Do you welcome the new powers to rectify mistakes? If so, what is your impression of how those powers might manifest themselves?

***Judge Alan Large:*** From my perspective, yes, I do. I am utterly confident, Chair, that you never made any mistakes in command, but had you done so, at the moment it would have had to come through a formal process to the summary appeal court.

We would have to convene ourselves, with me and two Army officers, probably a lieutenant colonel, maybe a warrant officer, a captain or a major. We would then have to listen to what the case was about and notch the fine down, as Judge Blackett said, from £550 to £500. That would all take about half an hour, there would be a whole load of paperwork, and it is costly and very slow. What we need is the same system that exists in the civilian courts, which is a slip rule—when there is a slip, it can be fixed.

On the precise mechanics of how they are going to do it, I have not been involved in those discussions yet, but we need to be able to do it. How big is the problem? Not very big. I have been trying to get numbers, but I have not got them for you, I am afraid. I would have thought it was 30 or 40 cases across the system a year, but they are a pain in the neck. They take up a lot of time, and if we can fix them quickly and fairly, that will be great.

**Chair:** Thank you very much. Jonathan, please.

***Jonathan Rees:*** I have a team behind me who keep pretty good statistics. Generally, I share them with Judge Large, but these are fairly hot off the press. You may know this, Chair, but others might not: each summary hearing is subject to review by a service-specific summary hearing review authority, to check the lawfulness of the hearing and any orders made. Where they spot that there has been an error—for example, in a sentence or a penalty that has been administered—it goes to the summary appeal court. In the figures I have, the SPA receives on average about 50 appeals arising from summary hearings per year. About a third

of those are appeals brought by the summary hearing review authorities. Judge Large's instinct is absolutely spot on. We anticipate that if the slip rule becomes law, as it is expected to, there will be a reduction in the caseload of the summary appeal court of something in the region of 20 to 25 cases a year.

Judge Large spoke about the amount of paperwork, effort and manpower that that entails, so it is obviously extremely sensible to apply the same sort of system that we have in the civilian system—the slip rule—to summary hearings and mistakes made there. For the sake of argument, for example, were someone tried at a summary hearing and asked to give a lecture by way of punishment or penalty, that would be an unlawful thing to do. That would be picked up and spotted. The suspect could be brought back before the commanding officer and the matter rectified, with a lawful sentence passed, without having to go all the way to the summary appeal court and back. A hugely sensible thing to do; why it has not been done before is difficult to understand.

**Chair:** Thank you, that is very encouraging. I will hand over to Kevan Jones now.

Q165 **Mr Jones:** First, Judge Large, I totally agree with your comments about the professionalism of the military justice system. I think I have sat on every single Armed Forces Bill Committee for the past 20 years, and I was involved in the 2006 Act, which moved things on tremendously. Having been a Minister and seen the system in action when at the MoD, it does work. One of the issues that Jeff Blackett raised, which is something I have come across as well, is the length of time that investigations take. You raised the issue—I think you said that one of the problems with the military police is that sometimes they are too thorough. Do you think that there is a role—this is a question for both of you, actually—for the prosecutor and yourselves in terms of being able to case manage some of these cases, so that they move through the system quicker and get to a decision on prosecution, rather than seeming to take a long time, which creates a sense of frustration for the person accused and ties up a lot of time? In saying that, I accept that some very complex cases involve people possibly in different parts of the world, and that is the reason why they take so long, for example.

***Judge Alan Large:*** Let me go first, Jonathan, because, as you know, this is my complete hobby horse. Yes, is the answer to your question. I feel very strongly that there is a role for me, and there is a role for Jonathan, in pushing cases along. There will always be hard cases. There are cases involving the internet that require sometimes dozens of devices to be analysed, and there is a huge backlog on that.

There are difficult ones, but there are an awful lot of cases that can be progressed quickly, and it is important that we do that in the service justice system, because if you have a case, for example, of a soldier who is alleged to have assaulted a sergeant in the same platoon, that is a festering sore. Many of you have been in the services. You will know that

that is a festering sore until it is resolved. We need to push those matters along as quickly as we can.

The reassurance that I can give you, Mr Jones, is that I have been involved in trying to improve the efficiency of the SJS really since I started. I think that things are better, but now that I hold the office that I do, I am able to do more on the back of what Judge Blackett did. Jonathan and I have already discussed this a number of times. We are meeting the provost marshals in April to look again at the targets that we have for cases to be dealt with, and how long they will take. We are talking about straightforward cases.

If targets are not realistic, there is no point in having them, so we have to look at those again, work out what realistic targets are, and then—someone mentioned it earlier—make sure that we have the management information and data to check on those targets and find out where it is going right and where it is going wrong. Whether everyone agrees in the SJS that I have a role or not, as far as I am concerned I do, and right at the top of my shopping list of things to continue improving is the efficiency of the system. It is better than it was last year. It is better than it was the year before, but we have a way to go.

Q166 **Mr Jones:** Before Jonathan comes in, in terms of some of the minor offences that seem to take a long time, one of the proposals was that we should look at a system whereby, like in a magistrates court, we can strike them out after a period of time. Would you agree that something like that needs to be looked at?

***Judge Alan Large:*** Do you mean that, if the summary appeals have not been investigated in six months, they should not be proceeded with?

**Mr Jones:** Yes, that is right.

***Judge Alan Large:*** I think that is quite tricky, because the court martial appeal court has looked at that specific issue, and at the moment the legislation does not apply to it, so the service courts are not constrained by that particular limitation. Again, it is a policy matter whether that should change. It is not something that comes up in our jurisdiction as a problem very often.

**Mr Jones:** Thank you, and sorry, Jonathan.

***Jonathan Rees:*** Not at all. I was going to start by confirming that it certainly is one of Judge Large's favourite hobby horses, often ridden and often involving me having to explain why there might have been some delay at our end. Yes, the SPA does have an important role to play and it is all about early engagement in investigations. You will appreciate that we cannot direct how the police investigate, but we can provide advice, so the key, both from the police point of view and our point of view, is early engagement, and we do that by what is known as Form-3 advice.

If the police get in touch with us at an early stage and request advice, we can provide it. Also, we can superintend the investigation. For example, on

the no stone left unturned principle, what we can often do in certain cases is say that we have enough to charge at this stage. Now, that does not mean to say that your investigations stop, because there is time before the case will come, for example, to a court martial, but we have enough to charge; we can charge at this stage, and your investigations can continue. Sometimes, the delay occurs because we do not get to hear about an investigation at an earlier stage—there is no early engagement—and the police keep on investigating and investigating, and we do not get the referral until the end of that investigation, which actually might have taken a longer time that it need be before you can make the charging decision, if that makes sense.

Q167 **Mr Jones:** But in the civilian world, the CPS, for example, has lawyers who advise the police on ongoing cases. You are saying you are not getting the cases until you actually know about them, therefore do you think there needs to be a system set up whereby military police ask advice earlier on in cases, rather than just keep investigating until they actually think they have enough evidence to put before you?

***Jonathan Rees:*** Yes, and we have a forum in which we can discuss these matters with the service police, so they are aware of our views on it.

The other thing we have, which is also an advantage, is that we get a daily crime briefing. It is a service provided, I think, by the Army, but essentially it identifies all noteworthy cases, allegations, arrests and other matters of note that have arisen during literally the last 24 hours in respect of each of the three services. It is not completely comprehensive—you do not record everything—but certainly it is things of note, and both myself and my deputy director, as well as other people within the SPA, look at this. If there is anything that plainly sticks out and rings alarm bells, we say, "We ought to get involved in that at an early stage." It might actually be on the issue of concurrent jurisdiction: if, on the face of it, it is being investigated by the less appropriate police force, we do get involved. I am not saying it is a widespread problem, but I am saying that we have a superintending role that can help to make sure that things work their way efficiently through the system.

**Mr Jones:** Thanks very much. Back to you, Chair.

**Chair:** I've got no more questions on my pad here, so I am going to throw it open to the floor now. We can finish slightly early if you wish—it is entirely up to you—but the floor is yours if you need it.

Okay, I think we are going to draw stumps there. It just remains for me to say thank you to the two expert witnesses: first of all to His Honour Judge Alan Large the Judge Advocate General, and secondly to Jonathan Rees, QC, Director of Service Prosecutions. It has been a very informative session. I thank you so much indeed for your time, and wish you all the best.