HOUSE OF COMMONS

Select Committee on the Armed Forces Bill

Oral evidence: Armed Forces Bill, Session 4, HC 1281

Wednesday 17 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; Stephen Morgan.

Questions 168-215

Witnesses

I: Nicola Williams, Former Service Complaints Ombudsman.

II: Tony Wright, CEO at Forward Assist, Emma Norton, Founder at Centre for Military Justice, and Dame Vera Baird QC, Victims' Commissioner.

III: Caroline Paige, Joint Chief Executive at Fighting with Pride, Craig Jones MBE, Joint Chief Executive at Fighting with Pride, David McMullen, Citizenship4Soldiers, and Lieutenant Colonel (retd) Diane Allen OBE

Written evidence from witnesses:

AFB0005 – *Forward Assist*

Examination of witness

Witness: Nicola Williams.

Chair: Good morning and welcome to day four of the evidence-gathering sessions of the Select Committee on the Armed Forces Bill. My name is James Sunderland, and I am very privileged to welcome all of you as the Chair.

We have a very promising session this morning, with three panels and a host of expert witnesses, and Members of Parliament looking to ask questions of the expert witnesses in advance of the Armed Forces Bill going through the House. May I welcome our guest for the first panel, Nicola Williams, who is the former Service Complaints Ombudsman? Welcome, Nicola.

I will say to the wider audience that we have a number of Members on the Committee who will be asking a series of prescribed questions. I call Stephen Morgan to ask the first question.

Q168 **Stephen Morgan:** Thank you, Chair. Good morning Nicola and thank you for coming before the Committee to give evidence today. My question relates to clause 10(4) of the Bill, which proposes to reduce from six weeks to two weeks the time service personnel have to make appeals in service complaints cases and applications to the ombudsman. What impact do you think this will have on fair access to appeals?

Nicola Williams: Good morning, everyone. It is always a balance of needs. You have to balance speed, which is, I know, the fundamental reason why these changes are being proposed, and fairness in terms of fair redress. Looking at what is the wrong to remedy, I don't think that reducing the time for appeals, although well intentioned, is actually the way to do it.

Certainly in my experience as the ombudsman—I am speaking on the basis of five years' experience—the delays are in the front part of the system, not the back. In other words, the delay is usually on the way to a level 1 decision and not from a level 1 to a level 2, to appeal, or from appeals to the Service Complaints Ombudsman. Therefore, if you reduce the time limit from six weeks to two, not only is that a drastic reduction—a two-thirds reduction right off the bat—but it also will not actually address the wrong. It will come across, in my respectful submission, as if you are trying to prevent people from exercising their right to appeal, although there is no attempt in the Bill to reduce the length of time that the matter takes to get to a level 1 decision.

Q169 **Stephen Morgan:** Thank you. Clause 10 also limits the grounds to appeal. Do you have any concerns about this?

Nicola Williams: I see that the words are around whether the grounds are "just and reasonable". I don't know whether that is the same as "just and equitable", in terms of the wording that my office uses. My main

question is: who internally will be deciding what is "just and reasonable" in an internal level 1 to level 2 appeal? I know that the changes are proposed to affect my former office as well as the internal appeal. We have our own metrics for dealing with an appeal to us, but who internally will decide what is "just and reasonable"?

There is another matter that, respectfully, I think has been overlooked in the Bill. Assuming that "just and reasonable" is the same is "just and equitable", if you keep the same description, the same exemptions, the same terms and if you overlay them on a substantially reduced appeal time limit, are they weakened and therefore not ensuring fair access to redress? I do not think sufficient consideration has been given to that.

Q170 **Mr Jones:** Thank you, Nicola, and welcome to the Committee. In your experience, one issue in your annual reports has been the delays to investigations taking place. I think that in any disciplinary or HR procedure swift resolution of complaints is better not only for the complaint but for the complainant. The proposal in clause 10 would cut time limits. Do you think that similar limits or restrictions should be put on the length of investigations—that the MoD should be under an obligation to complete an investigation by a certain time?

Nicola Williams: It is good to see you again, Kevan. The metric has always—long before I became the ombudsman—been for 90% of complaints to be resolved within 24 weeks. I would be happy if that 24-week period was even met. I am sure some of you who have been on the House of Commons Defence Committee know that in my very first annual report as ombudsman, I made a recommendation to look at that time limit and see what could be done to address it, because nobody is meeting it.

If nobody is meeting it, what can be done to address that? With respect, I do not see anything in the Bill that tries to fundamentally address that issue. Tinkering around—maybe that is a controversial term to use, but that is what I see it as—with the reduction in the time to make an appeal does not get to the fundamental heart of the matter, because the delay is in the front half of the system, from the time a matter is deemed admissible to its level 1 decision conclusion, rather than in when someone decides to appeal and therefore whether that time limit is reduced.

Q171 **Mr Jones:** As you say, the military already has a matrix for dealing with complaints in a certain period of time. Do you think there is any benefit to putting that on the face of the Bill, and saying that if you are going to reduce the time limit for appeals, you should put the onus on the MoD to resolve these in a certain period of time?

Nicola Williams: I would absolutely welcome that—actually, I would go further and say that it is essential. You have to realise, as I am sure many members of the Committee already know, that the vast majority of people who could make a legitimate complaint choose not to do so because they do not have any confidence in the system. There are many reasons for that, which were gone over in detail in my in reports when I was the ombudsman.

If you have the vast majority of people not having confidence in the system and then you have a Bill that fails to tackle the delays up to a level 1 decision—that is, to ensure that 90% of complaints are dealt with within 24 weeks—and only addresses the delays there might be on appeal, that could appear to a serviceman or servicewoman who wants to make a legitimate complaint as though there is more concern about reducing their right to appeal by a drastic reduction in the time limits and by asking for specified reasons, which could be judged inadequate, than about speeding up the initial process. If the initial process is taking not months but sometimes years before a level 1 decision, and then you ask the complainant to keep to a two-week appeal timeframe, with reasons, you can see how that is not exactly going to engender further confidence in the service complaints system, either from a complainant or from a respondent.

Q172 **Mr Jones:** Regarding the inclusion of the term "justified and reasonable", I agree with you that they need to be able to define that, but that is quite a big change and it is also unique in terms of other employment law, where, in my experience, people automatically have a right of appeal against a decision in most disciplinary procedures. First, what do you think the reason for that is? Secondly, do you think, before the Bill is agreed, we should publish the definition of "just and reasonable"?

Nicola Williams: I think the reason for it is explained in the explanatory notes to the Bill. There seems to be a view that there are a number of speculative appeals that people are making just because they can. I can tell you that the number of people who make complaints anyway is very small, and the number of people who will appeal a complaint is smaller still. It is a sledgehammer to crack a nut. Coming back to the issue of confidence in the system, it is not in the appeals section, it is in the early part of the programme, or the early part of the progression of a complaint to a level 1 decision.

There should be some definition of "just and reasonable in the Bill. If it is going to be included, it should be very closely defined. Otherwise, there is going to be a perception—as you know, sometimes perception is reality—that it is making it harder for people to appeal an initial decision, rather than encouraging people to make a justifiable complaint in the first place and speeding up the process so that that complaint is resolved and so that the complainant and the respondent, even if both are not going to be happy, will know that it will be responded to or resolved in a timely fashion.

Q173 **Chair:** To come in personally, if I may. As you may know, I have painful, personal experience of the service complaints system, both as a deciding officer and a prescribed officer. My experience is quite clear on this, in the sense that senior officers being given these complaints to plough through are doing this in their spare time. The Army is running hot, full stop. I'm sure all three services are. In your mind, is there a legitimate way of enforcing the 24-week limit?

Nicola Williams: I have to say that is difficult. When I was at SCOAF, my team and I were trying to do that over the five-year period that I was in post. That metric of 90% to be decided within 24 weeks predated my time as ombudsman. It was not a metric that my office had imposed; it was one that I inherited.

There were improvements tri-service; some services improved more than others, but there were improvements across the piece. One reason I was never able, unfortunately, to adjudge the service complaints system as efficient, effective and fair was because that metric was being consistently missed.

The recommendation I made in my first annual report as ombudsman, about addressing that—if it is being missed, find a metric that is workable; a stretch target but something that is achievable, rather than something that is routinely missed—was, at the end of my tenure, still substantially not complied with. I am pretty sure now, in mid-March, that that hasn't changed.

There is a service complaints and justice transformation team that is looking at that. I am surprised that any recommendations that I made were still outstanding by the time that I left. Those would have been three and a half, nearly four, years ago now.

Chair: Indeed, thank you. Sarah Dines.

Q174 **Miss Dines:** Thank you, Chair, and thank you to all the witnesses today for attending remotely. Nicola, would you think a little and talk to us about minority ethnic and female personnel, who are disproportionately represented in the complaints. Do you think enough is being done? How does the Bill assist in putting that right?

Nicola Williams: Thank you for the question. I can answer this one very briefly, but possibly in a way that is not going to please the Committee. I don't think enough is being done generally. I can understand why, although I do not agree with the approach. There has been less attention paid to the specific needs and experiences of those particular cohorts, and more a one-size-fits-all approach. That has not worked and never has worked for both ethnic minority and female personnel within the service complaints system. That is because equality, which is one size fits all, is not the same as equity, which should bear in mind the unique experiences of those cohorts.

Both of these groups—women and ethnic minority service personnel—are more than likely to have legitimate matters about which they could complain, including but not limited to, bullying, harassment and discrimination, because a lot of those complaints come out of career management issues and people not being promoted, with the concern being that they are not being promoted due to sexism or racism. But even though they are more likely to have legitimate matters about which they could complain, they are much less likely to complain and the AFCAS figures bear that out. So it seems to me that, if there is a real desire to

help here, you need to look at improving the system in general and making changes before the appeal stage in this Bill, which we have already dealt with in the first two questions.

The second part of your question was whether there is anything in the Bill that focuses on the specific needs of these groups. Not that I can see. If there is anything, I would be grateful to see it, but I have read the Bill—I have had a very interesting weekend reading this Bill—and I do not see anything that has been done that could focus on those specific needs.

If I can make one suggestion—it is only one suggestion; I am sure there are many others—one thing that could be done is, if a servicewoman is complaining about, for example, sexually motivated bullying, harassment or discrimination, or something in which she believes that sexism is a component, those handling the complaint and the assisting officer should be specially trained to do so and specially trained in other sensitive matters. That is also a recommendation that was made in my first report as ombudsman—recommendation 1.7, if anyone wishes to read it. I am sure I will be corrected if I am wrong, but I do not believe that recommendation has been substantially complied with to date. That is just one example; there are of course lots of others. The overarching thing is that a one-size-fits-all approach, an equality approach, is not the same as an equity approach, which is bearing in mind the unique experiences of those particular groups.

Q175 **Mrs Hodgson:** Good morning, Nicola. It is lovely to see you again.

Nicola Williams: Lovely to see you too, Sharon.

Mrs Hodgson: You sort of covered my first question in the answer you have just given. Would you go as far as to say that the current system discourages people from making complaints?

Nicola Williams: Well, I don't know what has happened in the three months since I left, but certainly, as at the time I left, I think the system is good; it is certainly an improvement on what there was before, when there was a commission and not an ombudsman.

The problem is delay. Delay is the single most corrosive factor in service complaints from top to bottom. Coming back to the Bill, I think it is a golden opportunity which I hope will not be missed to address the issues of delay, because there is a lot of concern about stopping people making what are deemed to be speculative appeals by reducing the time limit to a third of the existing time limit, but there is nothing that I have seen in the Bill—if I am wrong, colleagues, please correct me—that addresses what happens at the point that a matter is deemed admissible and therefore can start the process to a level 1 decision. Instead of matters taking 24 weeks, some are taking years. They were still taking years at the time I left—yes, I see your dismay; you can imagine how dismayed I was when I saw that. Not all matters took years, but there were matters that were taking years to resolve, rather than months. The Bill could rectify that.

Q176 **Mrs Hodgson:** It could, but it doesn't, in your opinion.

Nicola Williams: Absolutely. It doesn't at present.

Q177 **Mrs Hodgson:** Right. We need to rectify that. You mentioned your outstanding reports from 2016 to 2019 and particularly drew our attention to recommendation 1.7, which remains unaddressed. Are there other recommendations from your excellent reports that have not been addressed that you would like to alert us to?

Nicola Williams: Thank you for the compliment; that is great. There are a number of recommendations that have been outstanding from the 2016 to the 2019 reports. The ones that I suppose are the most concerning are the two—I am just limiting it to these two—that are outstanding from my very first report. First, concerning because the report came out in April 2017 and here we are in March 2021 and they still haven't been complied with, and also concerning because they go to two twin issues that bedevil the service complaints system.

One is about delay: if 90% of complaints cannot be resolved within 24 weeks and that is not an appropriate metric, look at what could be an appropriate metric. The other was about the disproportionality of women and ethnic minority personnel of whatever gender in the service complaints process. I recommended that there be an independent study commissioned on the reasons for why things happen more to those groups, why they do not make a complaint when they have legitimate reason to do so and if delay is one of the reasons that is putting them off. Delay puts off everyone from making a service complaint because, sadly, things are not kept as confidential within the services as they should be—people work closely together, and things get out. Once they get out, you might think, "Well, I could deal with that for six months," but you cannot deal with it for a year or two or three years—you cannot deal with it for that long. It is unfair to expect anyone to do so.

Q178 **Miss Dines:** I would like to ask about the new body to oversee the service police. Do you think this is the right approach? Is it a step forward?

Nicola Williams: I was particularly interested in this because—you may or may not know—in a past life, I was a commissioner at the independent police complaints commission, as was, and I always felt that there was this lacuna where service police were not covered by myself or IPCC or IOPC, as it is now. I think a separate body is the right approach. There were some discussions early on that my office would deal with those types of complaints, but we were not set up to deal with that. The types of complaints that people would make—and this is the reason why separate offices are better—would be about criminal matters. The SCOAF is not set up to deal with criminal matters, so a separate body is definitely better.

Q179 **Tonia Antoniazzi:** What is your view of the Government's progress in implementing the recommendations of the Wigston review?

Nicola Williams: I think it is too slow—that is my brief and succinct view. I think the report is excellent. I had always said that, and it was not even a report that I had authored, although I was consulted on it. I recall when

the report came out the summer before last, all of its recommendations were accepted by the then Min(AF) in its entirety. Fast forward to now, only one of the 36 recommendations has been implemented, which is either an anti-bullying or whistleblowing helpline—a helpline of sorts.

All the other recommendations have not been implemented and the most central one is the proposal to have the defence authority, or it might have been called the independent defence authority, to look at bullying, harassment and discrimination complaints separately. In other words, the original proposal was if, for example, a complaint like that was made by a soldier in the Army, instead of it being dealt with by the service, it would go to the defence authority to look at. That body would have specialist people trained to deal with those types of complaints, but they would not have greater powers than the ombudsman—so they would come in at the level below the ombudsman. I thought that was an excellent recommendation. Clearly, the then Min(AF) thought so too because all the recommendations were accepted in their entirety. To date, as far as I am aware, as of the end of last year, only one of those recommendations has been implemented. What has happened instead? There has been a review of that review. In my experience, the best way to kick something into the long grass is to do reviews of reviews.

Q180 **Tonia Antoniazzi:** It is not the way forward, is it? The Lyons service justice review recommended that murder, manslaughter and rape were tried in the civilian courts when committed in the UK. Given your experience, do you feel that this is the right course of action?

Nicola Williams: I think so, and this is no disrespect to the military justice system. It is just that the civilian system—I speak now with my other hat on; as you know, I am also a part-time Crown court judge—sadly has more experience of dealing with that, just because there are more of them, so there is more expertise within the civilian system than there is within the military justice system.

I do not know what other reasons Judge Lyons would want to put forward but, from my perspective, for that reason alone there is a greater repository of knowledge within the civilian system to be able to deal with those very serious criminal offences. I am not saying that all types of criminal offences should be taken outside the military justice system, but certainly with the very serious ones, I think there is a strong argument to be made that they should be.

Chair: We are now four minutes to the hour, so this is probably the last question. I will bring in Martin Docherty-Hughes.

Q181 **Martin Docherty-Hughes:** Nicola, it is really good to see you and I hope that you are enjoying not being in your former role.

Nicola Williams: I am still very busy.

Martin Docherty-Hughes: May I first ask you a very generic question: are there any other provisions or areas in the Bill that you would like to comment on?

Nicola Williams: I have thought about areas of wider reform, which is probably not exactly on point with your question but it might go to—

Martin Docherty-Hughes: I think it might be—keep going.

Nicola Williams: Alright. I think that there are things that should be done as part of a reform programme; they either should be in this current Bill or should be in later legislation, or they might not need legislation at all. For example, things should be done to ensure that all the outstanding recommendations from my office are substantially complied with, particularly because, as I said, some of them are nearly four years old—the outstanding ones. That does not require legislation, but I think that some pressure should be put on so that those are substantially complied with as soon as possible, but certainly no later than when the Armed Forces Bill eventually becomes law.

I also think that in terms of the Wigston review, which we talked about, the recommendations in that should be implemented in their entirety and if they cannot all be implemented at the same time, the proposal around the defence authority should definitely be given priority out of all of them.

In response to the questions earlier about timeliness and whether reduction of time limits for appeals would go to the heart of timeliness issues, it would not, so this Bill should really look at what is happening with regard to that, because delay is weakening confidence in the service complaints system and is also weakening morale, not just for the complainant but also for the respondent as well—because for every complainant there is a respondent—and if a matter is taking longer than 24 weeks to resolve, that has a corrosive effect on everyone.

I have also just thought of one that I mentioned in my last appearance as ombudsman before the House of Commons Defence Committee. It is that consideration should be given, either within this Bill or in future legislation, to having an ombudsman for the Armed Forces, as opposed to a Service Complaints Ombudsman; that person would have a much wider remit.

Q182 **Martin Docherty-Hughes:** Finally, you have talked about wider reform and ombudsmen etc., and other areas. Last week, we had Judge Lyons talking about the criminal system—the Armed Forces system—and saying that ranks below seven were not fit basically to be on a court martial board or a panel, no matter how long they have served, based primarily on the fact that that is just culture and that that is the way we do it in the Armed Forces. I asked you the last time you came to the Defence Committee about possible wider reform for an Armed Forces representative body, which would allow collective agreement, organisation and co-operation.

Now, the MoD does not even recognise the employment rights of members of the Armed Forces. Isn't the big challenge here the cultural attitude towards predominantly the ranks who appear in front of court martial boards or who have a serious complaint to make, who are predominantly women or members of black and minority ethnic communities?

Nicola Williams: I certainly agree with you with regard to the need for cultural change, but that is one of those phrases that it is easy to say—this is no reflection on what you said, because I say it as well—but hard to define. However, in terms of service complaints and the lower ranks—if I have understood you correctly, did Judge Lyons say that he didn't believe that ranks below grade seven should be on a court martial?

Q183 **Martin Docherty-Hughes:** Yes. It is not what the Armed Forces told us they wanted, but I have got to admit that he never told us who the "Armed Forces" were.

Nicola Williams: Well, that might be his view; it is a view that I fundamentally disagree with. I know that courts martial are not assessed or set up in the same way as civilian jury trials, but if you think about it, a civilian jury trial involves a cross-section of people, because you are supposed to be adjudged by your peers.

Somebody who is from the junior ranks might believe, if they come up before lots of officers, that they are not being judged by their peers.

That is no reflection on the officers. I am not saying that they would not be fair and balanced in their decisions. I am sure that they would be, but you want someone to have confidence in the system, and if you have someone coming up before everyone who seems to be effectively on the top of Mount Everest in professional terms compared with him or her, you can see that they might already feel that they have one hand tied behind their back when they come before a court martial. You want people to have confidence in whatever system they are in, whether it is a civilian system or a military system.

Martin Docherty-Hughes: That was clearly the point that Judge Lyons did not agree with me on. Thank you, Nicola.

Chair: It has just gone 10 o'clock, so that wraps panel 1. I thank Nicola Williams, the former Service Complaints Ombudsman, for her candour this morning. It was a fascinating session. Nicola, thank you so much.