

Defence Sub-Committee

Oral evidence: Military exercises and the duty of care, HC 598

Wednesday 2 March 2016

Ordered by the House of Commons to be published on 2 March 2016.

Written evidence from witnesses:

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Members present: Mrs Madeleine Moon (Chair), Richard Benyon, Mr James Gray, Johnny Mercer

Questions 337–422

Witnesses: **Penny Mordaunt MP**, Minister of State for the Armed Forces, **General Sir Richard Barrons KCB CBE ADC Gen**, Commander of Joint Forces Command, **Adrian McDonald**, Senior Lawyer, Government Legal Department, Ministry of Defence, and **Humphrey Morrison**, Head of Legislation, Ministry of Defence, gave evidence

Q337 Chair: Can I first ask you to introduce yourselves and say a little bit about your responsibilities, where you have them, with respect to safety in training exercises and selection events?

Humphrey Morrison: I am Humphrey Morrison, one of the legal advisers to the Ministry of Defence. My broad responsibilities are in respect of legislation affecting the Armed Forces. I advise on all aspects of domestic law governing the Armed Forces, particularly command and discipline issues. My relevance to this work is in relation to the scope for prosecution and administrative action and how the Corporate Manslaughter and Corporate Homicide Act 2007 would apply in relation to the MoD.

Penny Mordaunt: I have been the Minister for the Armed Forces since May of last year. I am responsible for all of our operations and our force generation, so my responsibility is to ensure that our training is delivering what we need and that it is done well. There is some overlap with Mark Lancaster's portfolio in terms of some of the issues that come out of

the sorts of things that you are looking at, but I have also led on setting up non-statutory inquiries into, for example, the treatment of families when things go wrong. There is that overlap, but that is how my portfolio fits into this.

General Sir Richard Barrons: I am Richard Barrons, Commander, Joint Forces Command. I have responsibility for training in two directions. First, I am responsible for joint training or, in the jargon, tier 3 training where the three services and the enablers come together for major, large-scale training events. Within my command, I supervise a whole range of joint individual training, including specialist military units.

Adrian McDonald: I am a senior Government lawyer in the Government Legal Department. In the Ministry of Defence, I am an advisory lawyer in the central legal services general law team. As the title would suggest, general law has a very broad remit. Among many other things, we deal with oversight of litigation involving service deaths, meaning civil claims, inquests and all the related work that goes with that, and we have a responsibility for advising on health and safety issues as and when they arise.

Q338 Chair: Thank you. If we can start with you, Minister, we have heard some conflicting views during this inquiry. The improved design and delivery of training and better articulation of who is responsible have been expressed to the Committee, but we have also been told that there is a higher rate of injury and fatalities while practising for war than in combat. We were also told that there was a blasé attitude to attrition rates, particularly in training. How do those statements fit together?

Penny Mordaunt: I would question some of those statements. If you're trying to make a judgment about risk, I can understand why you might compare deaths on operations with those in training, but I would say that that is not a helpful comparison. Clearly, although there will be undiagnosed heart conditions and things that arise, you ideally want to mitigate all deaths in training. One of the key points is that unless you have training that is rigorous enough and also exposes people to the kinds of things they are going to experience out in theatre, you are failing in your duty of care to them on operations. That is why I support live-fire exercises and things like that. It needs to be well understood that if you don't take some risk in training, you pile on risks in your theatre of operations.

But I think that the set-up in your question is bogus. You can't mitigate against everything—for example, undiagnosed heart conditions—but you can try to drive down where deaths do arise. My experience as Minister for the Armed Forces is that there is not a blasé attitude. I try to get out once a week to go and see what is happening in our training establishments in particular, and I have been genuinely impressed. Recent visits include, for example, going to Infantry Battle School and out in BATUK, where there is dangerous training being done. The safety culture there is extremely good.

The DSA, which although it didn't happen on my watch is being implemented on my watch, is a massive step forward in providing that quality control and consistency between the services. I don't think there is a blasé attitude. Clearly, we want to learn lessons where things have gone wrong and a huge effort goes into that, so I would question and argue against some of those statements.

Q339 Chair: General Barrons, has the pace of operations in Iraq and Afghanistan contributed at all towards a different attitude to risk in training?

General Sir Richard Barrons: No, I don't believe so. If you cast your eyes back to the height of the campaigns in Iraq and Afghanistan, quite a lot of the services training regime was specific to those campaigns. You will recall the expression "mission-specific training", where you might spend, in all, a year preparing to deploy for your six-month turn of the handle in Iraq or Afghanistan. That training was very specific and very professionally geared to the needs of those campaigns. However, those campaigns have now concluded and, as you know, the Armed Forces are conducting a wide range of generally relatively small-scale things at the minute.

The point I would ask you to bear in mind is that the purpose of the Armed Forces is to be ready to conduct whatever operation they are presented with by circumstances and authorised by the Government. The training level must be determined by the true nature of operations in the round. It is very likely that the general approach to training in the Armed Forces will be conditioned to the most demanding potential circumstances. In many cases in recent years, that bar would be higher than the actual demands of some of the operations to which we have been committed, but it is fundamentally important to the health and effectiveness of the Armed Forces that training is set at the level that warfare demands and not conditioned to one particular sort of operation that we have to be conditioned to. If you don't do that, you will end up with Armed Forces that are appropriate for perhaps only the lowest common denominator of current operations. That would be a huge error.

Q340 Chair: Minister, are you at all concerned about the number of deaths and injuries we have in training and the extent of the injuries that have been caused?

Penny Mordaunt: The simple answer to that is yes. There will be things that are not within your control and that you cannot mitigate against, but there will be many things that you can. There is no one thing that you need to do; you need to do a whole raft of things. You need to ensure that the policy is right. You need to ensure that it is being properly disseminated, that people understand it and are receiving the right training, and that the right people are delivering that training. We can do and are doing more research on mitigating injury, for example. There are a whole raft of things. What has been drilled into me when I have visited some of our training establishments is that you have to cover all those bases. There are continual improvements that we can make and what is required to ensure that is that we have a system in place that is properly auditing it. Responsibility, who is responsible for what, and that people are held accountable are absolutely vital. That is what you need to do. So, yes, I am concerned about that, but I would say that there is generally not a lax attitude towards such things. On the contrary, I think the work of the DSA—I have been hugely impressed by their workstreams—is having an effect in each of the services. It is different, but the quality is consistent. I am reassured by that, but I am not complacent.

There are some things that I have initiated and set as challenges for the services. I have asked the Surgeon General to review all deaths, looking at trends. I have also initiated some work looking at defibs in our training establishments. Across education in general, we are very aware of our responsibilities. If the Department for Education is doing those pieces of work, the MoD should as well. So where I can see that it is necessary to set challenges, I am doing that, but this new body is incredibly competent and very practical about getting the results on the ground.

Q341 Richard Benyon: Minister and Sir Richard, we have heard concerns that there are “a plethora” of written guidance on the governance of training, exercises, and selection events, such as JSPs, single service instructions and unit and establishment standing orders, and that that is in addition to the subject knowledge required to provide the actual training. Do you think there is too much guidance?

Penny Mordaunt: From my point of view, we have to draw a distinction between the guidance and the expertise that is there, which does need to go down into the detail—when, why, how, and how frequently you need to do things. We need that detail. That is good practice. The question is how you get that to be applied practically and well understood. Clearly, training plays a part in that and you have to ensure that the right people are delivering it. We have also introduced potted, easily understandable versions, which can be used in practice and which translate the policy into how it actually should be applied on the day and disseminate the core information in a few pages that are of direct practical benefit. You do need the substance behind that because exercises are often complex and you have to cover off every aspect of safety. The policy is no good in a drawer. It has to be applied.

Chair: Just before Sir Richard comes in, can I ask you for a copy of one of the potted versions? It might be helpful for our inquiry if we actually see a condensed version.

Penny Mordaunt: Certainly.

General Sir Richard Barrons: There are plenty of publications. As you say, there are joint service publications, single service instructions and standing orders and then there are aides-mémoire. Not all of them apply to every single training event. So the point that I would make is that there is no shortage of guidance. It is important that that is the case, because we are dealing with a really complex, rigorous, demanding training environment, but that is only part of the solution. The guidance must first be written and it must be appropriate, and I think that that is pretty much in place. Then it has to be read and people have to be trained in its application. If it is not read or if people are not trained in its application, we are likely to fall short in the training regime that we provide.

The guidance must be read and understood and then trained and implemented. Commanding officers and others must ensure that that is the case. If you do all of those things, you stand a very good chance of reducing the risk in training to as low a level as is reasonably practicable. That is never going to mean the removal of all risk from training, and you would absolutely understand that that is not the case. There is a challenge, in that relatively inexperienced junior NCOs and officers in all three Armed Forces have to understand what “as low as reasonably practical” is. There is a risk that we would remove so much risk from training that we would send people on operations where they are working out how to use their equipment properly for the first time, or being presented with a physical challenge for the first time. That is not going to help us to win in the crucible of war. It is the duty of senior leaders such as myself to make sure that the balance of risk is maintained between reducing the risks you can reduce and maintaining people who are fit for operations.

Q342 Richard Benyon: That is a balance that we are very conscious of reflecting in our report. The point you made about editing down guidance so that it’s practical is really

important, because if it is to work, a young Commander—as you say, a relatively inexperienced NCO or junior officer—in his busy preparations for a training exercise needs to be able to make sure that he has gone through everything in a clear and defined way. Are you saying that you believe that, with all these different standing orders and other guidance, there is a workable tool that a young Commander can easily understand and use?

Penny Mordaunt: There is, but I would say that the person who is overseeing the training should be an expert. One of the factors in where things go wrong is if that person does not have deep knowledge and is not used to doing it as part of their core business. One of the biggest benefits of the aide-mémoire is that it ensures that everyone who is working on that exercise—who is part of the safety team working to deliver it—understands what needs to be done on the day. That is where the benefit really comes.

Q343 Richard Benyon: Are you updating the guidance? Are there any reviews we should know about? You say you learn from every accident and every tragedy; can you convince us that the process is organic and is completely revisited and updated?

Penny Mordaunt: It is, and I know that you will have received evidence from the DSA on its work streams, which are ongoing. There will be work done within each of the three services. They are probably the best placed to give you that information about the particular work they are doing, but I assume they could submit written evidence to that effect. There will be work within each service, but the DSA will be overseeing and quality assuring what they are doing.

Q344 Richard Benyon: Anything to add, Sir Richard?

General Sir Richard Barrons: No. It is absolutely essential that this is an organic and iterative process so that you learn lessons as you go along. The way the services operate changes all the time, so the training regime is going to have to change with that. I cannot speak for the three services, but each of them has their own regime to update their training methods on a constant basis. One reason why they must do that is to avoid simply an accretion of small measures that, over time, take you to a very difficult place where you are not operating your equipment effectively, or you end up with a burden of regulation that is so complex that no one can actually follow it.

You made a remark about young officers and junior NCOs in particular. It is really important that we all accept that experience and qualification are important parts of this. You cannot just say to a young officer: “Here’s a regulation. Go and read it and then crack on.” He absolutely has to read it and be trained in it, and then his commanding officer must assure himself that that officer is conducting training appropriately and safely. The commanding officer is accountable for that, so that it is a systemic approach to a safe training regime.

Q345 Mr Gray: Central to the balance that you describe—between the training necessary to perform properly in the theatre of war and risks—must be the risk assessment, whether that be at training level, at exercise or at selection. To what degree do you think that those risk assessments at various different levels are done properly?

Penny Mordaunt: Again, from the training that I have witnessed, I think they are done well.

Q346 Mr Gray: If the Minister was there, they would be, wouldn't they?

Penny Mordaunt: Yes, but as you know as I was a member of this Committee for three years, I occasionally ask questions on information that I am given. The key thing is that it is not a tick-box exercise. People are looking at what is happening during the course of the weekend, or the day, and they are changing their advice and other things depending on what is happening in the environment.

Q347 Mr Gray: That comes later, that there is a dynamic change to risk assessment during the exercise, but my question was about the initial bit of paper, the risk assessment that is done before each of these things. Our evidence says that these are very mixed and that very often people print off last year's, after search and replace, and changing the date, and say, "Jolly good, done it." My question therefore was, how convinced are you that these risk assessments are done properly, or are they what you described as tick-box exercises? I will come on in a moment to the way in which they change in the course of an exercise.

Penny Mordaunt: I mentioned that because that is the key thing and requires the most skill to do—

Q348 Mr Gray: That is not the question. The question is whether or not things are done properly in the first place. I will come back later to the point about whether they change during the exercise—let us leave that to one side for the moment. The first thing prior to the training, prior to the exercise, is that a piece of paper is produced, which is the risk assessment bit of paper. On the evidence we have received, those risk assessments are very mixed—sometimes they are good, sometimes bad, sometimes indifferent—and my question is, to what degree are you convinced that they are good, or that you can change them in such a way as to make them good?

Penny Mordaunt: I would say that the way you can be assured that that is being done is that those who are responsible for delivering the training and the commanding officer have ensured that at absolutely every level they have the correctly qualified individual undertaking the processes. They need to be properly audited and the commanding officer assured of that. Having that process is the only way in which—

Q349 Mr Gray: I beg your pardon, Minister, but you and I have known each other for a very long time. Of course that is what should happen—of course that is right. We know that the commanding officers should be in charge of these things and that they should be good, but that is not my question. My question is about whether or not they are good. I am looking for some degree of modesty in these things and being told, "No doubt sometimes they are good, sometimes they aren't", but just telling me that the commanding officer's duty is to make sure that they are good does not answer the question.

Penny Mordaunt: I think, again, from my experience of having looked at this, seeing what actually happens out on training courses, the audits that are done and the oversight of the DSA, I would say that they are done well. When things go wrong, those are generally one of four things: the processes were not followed; the right person was not doing it; or there was something awry with the environment or with the equipment. So, yes, I think these things are generally done well.

One of the reasons why the DSA was set up was that we wanted to ensure consistency and quality going on between each of the services, and that these things were properly audited. I would say that there has been, certainly in my time—I am not saying it is because of me, but it is what I have seen during my time in the Department—a greater emphasis on these things, in part because of lessons learnt.

Q350 Mr Gray: So you are convinced that risk assessments are being done properly—that seems to be your evidence. Quite different from Sir Richard—he nods—

General Sir Richard Barrons: Everyone is clear on the system, which is that there a requirement to conduct a risk assessment prior to undertaking these training activities. Everyone is clear that that process must be supervised. If a troop or platoon commander is running training, his company commander will ensure that, and his commanding officer, so it ought to be very difficult for this not to be done very well.

There is some scope for common sense in here. If you ask the Armed Forces to conduct a risk assessment every time they come out of the front door, such as if we are going to conduct a lesson in foot drill, you might expect that risk assessment to be slightly cursory, because the risks are self-evident and very small. If, however, you are conducting arduous, rigorous training, with or without live firing, then you would expect there to be—and there is—a body of regulation, experience and best practice, which must then be conducted and audited, and for which the chain of command will be held to account.

It is a combination of things. In the round, is the culture of doing these things becoming better entrenched? Yes, it is.

Q351 Mr Gray: Assuming that is correct, presumably one outcome of such rigorous risk assessments would be that the event, whether it be training or an assessment or a selection, was cancelled. That, presumably, might be one possible outcome. Can you give me an example of any occasion on which that has occurred?

Penny Mordaunt: Yes, I can. There was a Navy 30-mile march that I think took place last year, which was cancelled as a result of that—

Q352 Mr Gray: Lympstone?

Penny Mordaunt: I cannot remember the location; but I would say that the other thing that is critical in this is that there is a proper audit trail of those risk assessments. We could provide you, I am sure, with further examples of where that would be done.

Q353 Mr Gray: It would be helpful. It won't surprise you to know that the line of my questioning is to wonder whether or not the risk assessments are robust enough, or whether they are just printed off a machine and ticked off. One way of proving that they are robust would be if you would give us some examples of occasions on which the risk assessments were done and the conclusion you have come to is "It's too risky; cancel the exercise."

General Sir Richard Barrons: Certainly. I happened to be visiting my forces in Diego Garcia two weeks ago. I was meant to go and see a maritime security exercise in the lagoon. The weather turned for the worse; there was too much swell and too much rain to

make the training, not least the transfer between small boats and big ships, safe—so it was cancelled. That is just a sensible application of common sense.

Q354 Mr Gray: Moving on—I have been very rude this morning, Minister; I am sure you will forgive me—I interrupted you a moment ago when you were talking about what you might describe as dynamic risk assessments. In other words, the bit of paper has been done at the beginning of the exercise; during the course of the exercise commanders at one level or another might wish to change their assessment of the risk. Can you give us some examples of the way that occurs, or whether you think that is working properly?

Penny Mordaunt: Yes, certainly. There are a number of examples of where that has happened on selection weekends, for example, where the weather has changed dramatically or there has been snowfall and ice overnight, and the route changed accordingly—there are many examples that I could give you—and routes changed or routes reduced on the day.

Q355 Mr Gray: And in all three services are commanders at all levels given instructions that they can do that—that they should be constantly aware of risk and constantly considering whether or not to change it?

Penny Mordaunt: Yes, that is the case.

Q356 Mr Gray: You mentioned selection of one sort or another. Are either the written risk assessments at the beginning, or indeed the dynamic risk assessment during the selection process, different to what they would be in less arduous and less rigorous circumstances? Are there special circumstances attaching to risk assessment with regard to selection, as opposed to, for example, passing off at the end of a long course?

Penny Mordaunt: I think the principles are the same. Clearly the risk to an individual who might be doing much less arduous training but would be much less fit, for example, is still a considerable risk. It has got to be that the principles are the same. Clearly the individual decisions and judgments that will be made will vary considerably.

Q357 Mr Gray: And the procedure is the same.

Penny Mordaunt: Yes.

Q358 Chair: Before I move on to Johnny Mercer, can I just clarify, Minister: when we were at Lympstone, one of the things that really impressed us was the way the instructors clearly knew the candidates who were undertaking the training there. They talked about how, as part of their risk assessment, they would be able to tell if a candidate was not their usual self. They could pick up, because they knew the candidates extremely well, whether there was any minor change in the person's ability, just because daily contact breeds that greater understanding. Can you tell us what special measures are in place for events where the candidates perhaps are not known to the instructors and the directing staff? How do you overcome that? Can you say something about that?

Penny Mordaunt: I think this is a really critical point because, on some of the training or selection that is going on, really you are reliant on those instructors to say when someone

has had enough. You cannot rely on the individual because of the culture. It is incredibly important that instructors can make those judgments.

We should be ensuring that they know individual candidates and what they are capable of when they are showing signs of duress. We have adapted some of the training and selection pipeline to ensure that that happens. For example, Reservists will spend a week with their instructors prior to those particular courses or selections. They will have met them during the course of other training, but that is so that, particularly when they are building up to arduous training, they get to know them better. At the same time, we also make it very clear to those instructors, and we have adapted how we monitor individual candidates on those courses to ensure that any of the signs are picked up early. Where we can build it in so that they get to know them on an individual basis beforehand, we have done that. That is one of the recent changes we have made.

Q359 Johnny Mercer: I want to focus on what we are really trying to get at with this inquiry. It is a challenge for us, because clearly you have come before us today and we have heard that these things are done properly, that the risk assessments happen and that you have full confidence in that happening. We go on a very sanitised visit to Lymington and see all this stuff happening.

One the other hand, the Committee has some quite serious evidence that shows that that is not happening. We have examples where the accident that took place was just a complete waste of human life. Nobody on the Committee—certainly not me—should waste time by stating the obvious. No one has a problem with arduous training at all. Absolutely everybody understands that to perform in operations you must have your training at a set level. The problem I have is that something has gone wrong with some of the governance around the training. That is what we are trying to get to the bottom of.

We have heard several concerns about the MOD's ability to police itself in respect of deaths and accidents in Armed Forces training. People have given evidence who have genuine concerns about our ability to do that. What is your reaction to that, Minister?

Penny Mordaunt: I would say two things. First, when I have looked at particular cases where there have been deaths in training, it has been because policy hasn't been followed or the wrong people have been carrying out particular training. There has been a catalogue of failures. We need to look at why that happened and why it doesn't happen in other places, and we need to address that.

Although there are obviously still ongoing inquiries into some incidents, I am confident, sitting in front of you today, that where we have identified why a particular thing wasn't followed or why a particular individual wasn't conducting that aspect of training, those measures have been identified and are being addressed. Even in the short time that I have been in the Department, progress has been made in these areas. New systems have been brought in. There is a greater emphasis on training. Look at the work that the DSA, which was constituted only last April, is doing, and at the training courses and who it is training—an enormous amount has been done over the past few years, particularly over the past 12 months. You need to take that into account.

I would also say that the MOD does not police itself in respect of these incidents. You will probably want to ask questions of lawyers about what law covers who and under what

circumstances—I shall leave that to them—but the DSA, which is the internal governance that holds the services to account, does not mark its own homework. It obviously reports to services via their boards and to the Defence Board, but it is also, as its predecessors were, audited externally and that is in the public domain. As for our governance and internal processes, it is not that we mark our own homework. It is the subject matter experts, the Health and Safety Executive, the Civil Aviation Authority and others that do that. I will leave the legal—

Q360 Johnny Mercer: Thank you. On the figures that have been presented to the Committee, we understand that there have been no criminal prosecutions since 2000 and seven prosecutions by the Service Prosecuting Authority for negligently performing a duty since 2010 in respect of accidents and fatalities during training, exercises and selection events. One of the core issues here is accountability. We have the systems in place and we absolutely get that, but it is about whether they are actually followed and about not only the corporate accountability, but the accountability of individuals. What is your assessment of the fact that since 2000, the period at which we are looking, no individual criminal prosecutions have been forthcoming?

Penny Mordaunt: Having looked at the evidence that has been put in front of you, criminality is not a judgment for the MoD. Clearly, if people have committed criminal acts, that is dealt with under criminal law. It is not the case that in every instance when there is a death in training that someone will have committed a criminal offence. The heart of this is about an individual's accountability if they have not committed a criminal offence.

It is wrong to criticise the MoD for no one being criminally prosecuted, but it is a critical question for the chain of command that people understand who is responsible for what and that people are held to account for their actions. One of my sad duties is talking to next of kin, and, for them especially, understanding that people are being held responsible for things that they did or did not do is incredibly important. In addition to ensuring that lessons are learned, that things do not happen again, that inquiries can take place and that people are honest about their actions, which are all critical, people should be held to account for what they did or did not do. It is clear that that is not just the man or woman on the day who was undertaking the training; it is the commanding officer who holds that responsibility. I think that is a fair question, but I don't think it is fair to ask why more people haven't been criminally prosecuted.

Q361 Johnny Mercer: But would you accept the premise that if we have equipped our young soldiers, junior commanders, commanding officers and so on to go through the process of understanding a risk assessment, making an analysis and accepting that risk, and if we have given them all the tools required to ensure that we are conducting training very close to the line that we are trying to get to very carefully, it is a prosecutable offence if they choose not to follow that and that results in somebody else's death?

Penny Mordaunt: No; this is where I think you need to focus your line of inquiry—sorry, I am not telling you what to do. There will be things that will be done. There could be negligence or people could make poor judgments and be responsible for dreadful things happening or injury to people under their command or on their training. There will be situations that arise where it is not a criminal offence and therefore there is not a criminal

prosecution, but that does not absolve that individual from their responsibility. I think that it is fair to ask whether the right administrative—

Q362 Chair: May I just come in there? Minister, are you saying to us that, in all of the incidents that we have seen in front of us, there have only been seven occasions—because there were seven prosecutions by the Service Prosecuting Authority—when you have felt that the mistakes and the failures had been severe enough to warrant a service prosecution?

Penny Mordaunt: Forgive me, Chairman; I think that is slightly different from the question I was asked. We are talking about different types of investigation. We are talking about criminal investigations; we are talking about service prosecution investigations; and then there is also administrative action and disciplinary action within the service.

Q363 Chair: We are talking about the failures that have been sufficient to warrant any level of prosecution. There have been only seven prosecutions. Are you happy with that?

Penny Mordaunt: It is not a case of being happy with it or not. I think that these things are investigated incredibly thoroughly. That has been my experience in the Department. There will be things that have led to deaths in training that do not qualify for a criminal prosecution. We can think of many such scenarios, but that does not then absolve someone from facing—

Q364 Johnny Mercer: Absolutely. I think what we are trying to build a picture of here, Minister—forgive me—is that you are getting people to adhere to a risk assessment, to adhere to a way of conducting training, to understand that if you are going to conduct some pretty arduous training, you need to adhere to a set of guidelines that have been set out by people who are more qualified and more experienced than yourself, to help you conduct that training safely. If you fail to abide by those, surely a part of getting people to abide by them is a sanction. But what if there is no sanction there? We talk about Crown notices and Crown censure. If, in a civilian environment, someone chose not to follow some of the practices that we had trained them up to follow, and somebody lost their leg in an industrial accident, or lost their life, they would lose their job in that company. Has anyone left the Army as a result of this?

Penny Mordaunt: I am agreeing with you that clearly there will be thresholds on which you judge about a criminal prosecution—

Q365 Johnny Mercer: I understand that, but has anybody left the Army or the military—lost their job—as a result of a death in service?

Penny Mordaunt: There has been administrative action taken.

Q366 Johnny Mercer: No, a discharge from the military, not a Crown censure or administrative action—

Penny Mordaunt: No, that is what I am talking about. There are a whole variety of actions that could be taken against somebody.

Q367 Johnny Mercer: I absolutely get that, but has somebody lost their job in the Ministry of Defence as a serving soldier, sailor or airman, as a result of one of these deaths in the services?

Penny Mordaunt: We could certainly let you know that. I know that there has been administrative action taken against particular individuals—

Johnny Mercer: Yes, of course, there have been Crown notices and Crown censures, and we absolutely get that; but the point we are trying to make is that that sanction system is clearly not working if we are having continual incidents, if you like, on training. If we are going to get people to abide by a set of rules that are there to protect young men and women coming into the military to conduct arduous training, we need to have a rigorous set of sanctions. No one is looking to prosecute anybody or to catch anybody out, but you have to have a set of sanctions that make sure people follow the rules and, when we are conducting that very high-tier, delicate, dangerous training, our young men and women are kept safe. Would you not agree with that?

Penny Mordaunt: I do not think there is any disagreement with that at all, and what I am saying is that even if the bar for a criminal prosecution has not been met, that does not absolve someone, and therefore you have administrative action taken against individuals. I think that over the last few years there has been a strengthening of the ingredients, if you like, to enable that to happen. It is a clarification—no matter which service or unit it is—of who is responsible at the end of the day for ensuring that that training or selection, or whatever it is, is delivered correctly and safely, and that people do not have wiggle room to claim that they were not able to carry that out because they didn't have the right training or a way of understanding what was required of them and what their duties were. There has been a strengthening of the situation to enable that to happen. I absolutely agree that even if that criminal bar is not met, clearly there has to be accountability and a consequence if someone does not do what was required of them. There is no question about that.

Q368 Johnny Mercer: Let's talk about the exemption from the Corporate Manslaughter and Corporate Homicide Act for a moment. This comes back to what we were saying about corporate accountability. It is worth saying at this stage that nobody questions the systems that are in place, but it is whether those systems are abided by. If we look at what has happened over the last few years with deaths in training, which is what the Committee is looking at, there have been incidents—we are not going to talk about specific incidences—that would reasonably lead one to think that something had gone badly wrong. We are trying to balance what you are saying and what the MOD has said to the families and so on about systems being in place, and the reality of horrific accidents from time to time and individuals coming before the Committee expressing views contrary to those we are receiving from you.

Concern has been expressed that there is no corporate accountability. Would it be possible to amend the Act so that it applied to the military, including specialist military units, training and selection events, in a case of gross neglect in circumstances of such disregard for human safety and life that actions become reckless or criminal? That question is to you, Humphrey.

Humphrey Morrison: May I make a preliminary comment? I think you said there is no corporate responsibility. There are various ways in which the MOD can be held to account as a body, probably the most common of which is through claims in negligence. It is a relatively simple idea that if there has been negligence for which the MOD was responsible, at whatever level, there is a capacity to take it before the courts, to have that

negligence exposed and for a remedy to be provided. I mention that because it is important to put the corporate manslaughter Act into context. That approach is corporate responsibility through civil action.

Q369 Chair: Do you have figures to indicate how often that action has been taken?

Humphrey Morrison: Civil action has been taken a very large number of times. There are lots of civil actions going on. I don't know whether the Department holds that, but there is a whole section of the MOD dealing with claims.

Q370 Chair: That's fine. I just want it on the record that it is used.

Humphrey Morrison: Oh yes, definitely. It is worth drawing attention to the fact that the corporate manslaughter Act is a criminal Act. I know that you already know that, but it is important in itself. Addressing what should happen and talking about the Department being held criminally responsible for what it does, as opposed to civilly responsible, when the Act was debated in Parliament, the issue was raised of how far the MOD and other Departments should be subject to criminal sanctions and proceedings on the way it does things. The starting point is that the MOD and other Departments are subject to the corporate manslaughter Act and can be found guilty of a criminal offence, but there are exclusions from that liability for a range of military activities—not all, by any means—where, broadly speaking, those activities are so hazardous in their nature that to impose criminal liability for getting it wrong would be the wrong approach. Civil liability, yes; criminal liability, no.

I looked back at the debates in Parliament on the Bill that became the corporate manslaughter Act, and it was recognised that the need to provide hazardous training and to conduct operations was quite different from the normal responsibilities of employers, and so different that to impose criminal liability on the Department for getting it wrong would be inappropriate.

That does not mean there is some sort of complete exemption by any means. In normal training circumstances—in other words, circumstances where the training is not inherently hazardous or having to be carried out in a hazardous way in order for people to get ready for operations—the training, which is subject to criminal as well as civil penalties, has to be done in a way that maintains a high standard. In other words, there must be no negligence. In the case of criminal liability, there must be no gross negligence.

To summarise, the corporate manslaughter Act applies to the MOD. There are areas where the circumstances of what is having to be done do not allow for an exemption for the MOD and therefore the Armed Forces from corporate criminal liability. That is the area of normal training, normal selection—all that sort of thing. But there is another area where you have to do things that are dangerous. Where you know it is inherently dangerous and you have to do it that way, or where you have to conduct operations that are inherently dangerous, to be told, “If you make a mistake, you will be criminally liable”, was thought at the time to be the wrong approach.

Q371 Johnny Mercer: On reflection as to what has happened over the last seven or eight years in particular, would you stand by that now? Do you think there is no reason, no cause, to have another look at this? Surely, to prosecute at the criminal level, there has to be a high

threshold of proof and a high threshold of non-adherence to what you have been taught, trained or asked to do, so putting that in there would not be a bad thing.

Humphrey Morrison: The Act itself, as I hope I made clear, is only about the corporate responsibility of the Department. As has already been mentioned, there is the potential for individual criminal liability where an individual fails to meet the standard either of doing their duty in a non-negligent way—that is the disciplinary offence—or, at a more serious level, it would be something like manslaughter. On the question whether we should look again or whether Parliament should look again at whether this exemption should apply, I would merely say that the same issues and the same problems arise and would have to be confronted by Parliament if it were to amend this.

The issue is: is it right to say to people who are having to organise hazardous training or having to send people into dangerous situations, “We will examine the way you are doing this to look at whether you have failed to meet, or whether the way your Department is organised fails to meet, a required standard”? That is a difficult thing to do in respect of people who, often under great pressure of time, are having to make these sorts of decision and arrange this sort of training. It must always be right for Parliament to look at the way these things work, as indeed you are doing, but I think the arguments remain exactly the same as they were when the Act was passed.

Q372 Chair: Is it right that Special Forces should have a complete exemption?

Humphrey Morrison: That is the other exemption. There is an exemption for Special Forces for all their activities. On that, I think the arguments in Parliament were at the time, and would still be now, a combination of what I have just mentioned about the hazardous side and, more generally, the view that was taken that as far as Special Forces training, Special Forces selection and the way they do things was concerned, the issue of security and confidentiality was more important, or as important as the issue of the hazardous nature of it. I think in respect of Special Forces the arguments were much more about security of information, which led to the conclusion at the time that all their activities should not be subject to public scrutiny in the criminal courts in respect of a corporate liability. Obviously, if an individual member of SF commits a criminal offence—manslaughter—or a disciplinary offence, it can be looked at.

Q373 Johnny Mercer: I accept what you are saying. In an ideal world, that would be a good way to operate, but we have seen evidence that that is not taking place. There is what can only be described as a waste of life of some of the young men and women who we are putting through training because we have not adhered to some very basic stuff. How do we make them adhere to that stuff? Do we need to have a look at that criminal case again? That is something we will look at as a Committee.

General Sir Richard Barrons: Actually, I think that we are locked in violent agreement. Look at the history of the forces and go back as far as you want. There have always been deaths in training because of, as you are well aware, the nature of the training that must be done. You might assert that there will be deaths in training in the future for the same reasons. However, there are two important things. The first thing—and you will all understand this well—is that the constituent membership of the Armed Forces changes every single day. It will never be frozen so you are dealing with the same people in the

same roles; this is constant process. This regime is being learned and re-learned all the time, so there will be occasions when it falls short. Those occasions need to be minimised, of course.

My second point is that you have focused on the outcomes of seven cases. It is not reasonable to ask someone such as me or the Minister whether we think those outcomes are the right ones because, in law, we do not take those decisions. The question is whether those cases were properly investigated by the civil police, if there was a suggestion of criminal negligence, by the service police and by the chain of command. If you were satisfied that those investigations were done and done properly, you should have confidence in the outcomes. It may well be that they never hit those bars.

Behind your questions is a sense—almost an assertion—that there is a climate of immunity or impunity in the Armed Forces about the way that even arduous training is done. That is absolutely not the case. It cannot apply in law or in practice. It is never acceptable for a service person to die on training. It will occur for all the reasons you described, but if it has occurred because those supervising or executing that training have failed in their duties, they will be the subject of a sanction, whether it is criminal or administrative. We should never lose sight of that. We should recognise that this is an imperfect thing that will evolve over time, but that the climate is the right one.

Q374 Chair: I am happy to hear that assertion from you. I think that the public's concern is that this all happens within a closed system rather than in a publicly accountable system. That is part of where we are trying to get to. For example, how effective are Crown notices and Crown censures in effecting change in the Armed Forces? Can you give us some examples of changes to training, exercises and selection that you have implemented following a Crown notice of censure? We and the public need to see that you are not just saying, "We are a learning organisation," but demonstrating it.

General Sir Richard Barrons: I know we are not here to investigate a particular instance.

Chair: No, we are not.

General Sir Richard Barrons: But I am going to refer obliquely to one because it is the only one of which I have personal knowledge. There is a training catastrophe. Soldiers die on training and that should never occur. As a result, it is investigated by the Health and Safety Executive, the service police and the civil police. There is then a correspondence involving the Health and Safety Executive about what went wrong. In this case, coroners are directly and extremely helpfully engaged. As a result, it becomes clear that a whole range of things that should have been done were not done. The result of a combination of those things is the tragic outcome.

In those circumstances it is, to my mind, right that a Crown censure is applied if that is the judgment of the authorities, and it is right that that Crown censure is applied at the highest level, which, in the case of the Joint Forces Command, is me. On receipt of that, there is further discussion about what occurred, what lessons have been identified and what has been done, and there is complete clarity and public transparency about that. I am absolutely confident that, in those circumstances, these things cannot and must not be dealt with in the shadows. It is neither necessary nor healthy for the institution.

Penny Mordaunt: The further thing is that that provides the public accountability—well, it's not the only mechanism, but it's one. In terms of the censure being a trigger to action, you would hope and expect that any changes that needed to be made would have already been made because of the time it takes for investigations to happen and so forth. If the censure itself were a trigger to things being implemented and changed, there would have been, in my view, a failing, because you would have expected things to have already been implemented—either a coroner's recommendation or recommendations from your own investigations.

Q375 Chair: I go back to the nub of the question: what difference would it make if that complete exemption was removed—for Special Forces, say—to their capacity to fully and comprehensively train in preparation for the tasks placed in front of them?

General Sir Richard Barrons: In terms of the present arrangements, it provides a climate in which specialist military units and other forms of arduous training can take place at that level of the bar that we discussed, where you are preparing people for war, and you are going to have to take risks to prepare people for war. If you create a climate where the first thought in the commanding officer's mind, the troop commander's mind or the soldier's mind is that whatever he does, he is liable to face intense scrutiny and prosecution, the inevitable consequence is that people will drop the training threshold.

I would and do argue—the Minister knows, because we have had this conversation—that if you look at the Armed Forces now, because of the way that the duty holder concept is rolling out, we are already in a situation where at the middle levels of leadership we are acquiring an accretion of restrictions on training that are transferring risks to operations and making soldiers, sailors, airmen and marines afraid of their own equipment. We are beginning to become subject to a climate of reducing safety risks to, not as low as practicable, given operations, but as low as possible. That is a huge mistake.

There is a really careful balance to be struck. I come back to the point that if an individual at any level is that negligent in their performance of their duties now, they will be prosecuted under the civil law. We have to look at the investigation system, but the fact that that has not happened does not mean that it cannot happen; I feel really strongly about that. There is no immunity in the eyes of the law if you are criminally negligent, and there cannot be.

Q376 Chair: I go back to some of the evidence we have taken from individuals responsible for training, who have said to us that they feel the removal of that specific exemption for Special Forces would make no difference to their capacity to train and to train effectively. Would you agree with that?

General Sir Richard Barrons: No. We are in a very sensible place now, because we are not in a place where there is immunity to the law, but we are in a place where we can ask people to do really, really challenging things with the right degree of institutional confidence behind them. For example, the director came and spoke to you. I think he would be in a place where he feels he can discharge his operational and training challenge now, within these rules, without there being any sense of immunity for negligent behaviour.

Q377 Chair: There is a complete exemption for Special Forces. How can a prosecution take place?

General Sir Richard Barrons: Well, let's say there is a training accident with special forces; the civil police get to decide—the lawyer will correct me here if I get it wrong—whether they want to investigate it or not. If the civil police investigate, the normal law applies, and if it were to be found that the training had been done so catastrophically badly that the test of criminal negligence was passed, that individual would be prosecuted.

Humphrey Morrison: That equally applies on the service law side. As far as individuals are concerned, there is no exemption for members of Special Forces from either disciplinary offences or criminal law manslaughter. They can be prosecuted under the military system or under the civilian system—the civilian system obviously only for criminal offences and not for neglect of duty. The military system has the advantage that they can be prosecuted of either a criminal offence such as manslaughter or a disciplinary offence such as neglect of duty, which is treated and proceeded with as if it were a crime—the punishments are criminal.

Both of those options are available. Either the civilian police or the service police can get involved. There is an obligation to ensure under Armed Forces legislation that all possible service offences are appropriately investigated. Where, for example, there is an allegation or evidence of possible manslaughter—in other words, a criminal offence—that must go to the service police. So we have two lots of people who can get involved in the UK, either of whom may decide to take action depending on the exact circumstances of how the case comes before one or the other.

Could I mention, just in passing and going back slightly, one very small point on Crown censures? Although it is a small point, it is worth noting, in terms of the public aspect of Crown censures, that not only are they of course taken very seriously by the Armed Forces and the MoD, but they are also published by the HSE on its prosecutions website. So that notifies the public that, in effect, the MoD has been guilty of something that, but for the exclusion of prosecutions as far as Government Departments are concerned, amounted to a criminal offence. That in itself is a major piece of public news, if I may put it like that.

Q378 Chair: It is a major piece of public news, but I doubt whether it gives the public confidence that the Ministry of Defence is responding to and being held to account for it. That is the question. How do you assure the public, and particularly families, that where such negligence has been found, the changes necessary will be carried through and the responsibilities that should be felt are felt? That is the question, I would have thought, not just the fact that there was a public statement of failure.

Humphrey Morrison: Absolutely, and that is why one has to look at the regime as what is available as a whole: civilian claims; Crown censure as far as the Health and Safety at Work etc. Act 1974 is concerned; prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007 where training that should not be dangerous becomes dangerous through negligence—such prosecution is available against the MoD under that Act—prosecution of individuals, whether by the civilian authorities or the military authorities, for criminal or disciplinary offences; and, last but not least, the ability of individuals who seek to air issues of negligence publicly to bring civil claims. Beyond that

whole area of public accountability is the internal processes of administrative action. Those are not primarily a mechanism of public accountability, but they are one of the mechanisms available to seek improvement and, if necessary, to remove people from posts or even the Armed Forces as a whole if they are not able to meet the standards required.

Q379 Johnny Mercer: Briefly, coming back to the point you made, General Sir Richard, about where you are operating at the highest level, safety in training surely has something to do with the professional standard you are trying to achieve. If we are engaged in a relentless pursuit of excellence, in conducting that training safely and in looking after young men and women who come into our Army or military pipeline and who might not have exposed themselves to this sort of risk before, looking after them is surely the pinnacle of that professionalism, weighed up against the challenges that we are facing on operations.

I absolutely understand that you will get to a point in any training, any operations or anything like that where you will have done everything, but then you might have a bit of bad luck, something goes wrong and someone dies. Although that is catastrophic, everyone understands that. The problem, I think, is when we get to that stage and a series of things have not been followed. Then it is perhaps not good enough to say to the families, “Well, this was going on and that was going on, and we didn’t want Corporal Y or Captain X to be in the position that he didn’t want to conduct this training because he was worried about safety,” while they are sat there thinking, “Hang on a second, my young son or daughter entered this profession for you to look after them—yes, to go and fight operations, but I did not expect him not to have that level of professionalism applied to him during the training cycle for what you were asking him to perform on operations.”

Do you see what I mean? It comes back to the old argument, where if you were to have a friendly fire incident in combat, for example, people will always mention the fog of war, not knowing where troops were, yadda-yadda. The truth is that we train our blokes, our men and women, for that. We invest millions in time, resources and money in that, so you should get that decision right, and if you do not get that decision right, you will be held accountable for it. And surely that should also apply to training—so that we do not get to a point at which we say, “Actually, this was getting really difficult, everyone was shouting and we were hanging out the helicopter.” That is what you are paid to do: to get those decisions right.

General Sir Richard Barrons: Yes. Again, I think we are absolutely in agreement. We are agreed that training must be progressive.

Johnny Mercer: Yes.

General Sir Richard Barrons: And it would be a failing on our part to take someone who was very inexperienced and suddenly leapfrog them into a piece of training for which they were not ready. The systems approach to training is designed to make sure that does not occur. Secondly, I think we are absolutely agreed that if, on a piece of training where there was a catastrophic outcome, it was clear that the individual who was charged with that had performed negligently, the consequences in law would follow.

The challenge is that in many of these cases, what happens is the result of a combination of things, and there is a very difficult judgment as to whether one individual can or cannot be held personally criminally liable for that. That is a very hard test, and I think that

applies in many cases. It may be a combination of terrain, weather, circumstances, individual decisions, uncertainty, lack of information, poor communication—all those things and others may apply. In those circumstances, where a combination of things has led to a tragic outcome, there I think you are looking at an institutional failing, and there I think the route that takes you to a Crown censure is entirely appropriate.

In all those worlds, it has to be investigated by the right competent authorities; a judgment has to be made; and then there must be no sense, if there is a failing, that sanctions are not applied. That is not the case.

Q380 Chair: General Barrons, I'm awfully sorry to put you under this again—it's administrative action.

General Sir Richard Barrons: Yes.

Chair: Now, that really is a very closed system. What is your assessment of how often that has been used where there has been a failure to supervise or organise a training or selection event, and how do you feel we can make that more transparent so that there is greater awareness that a system is operating that makes sure that people are held to account for such failures?

General Sir Richard Barrons: Chairman, I don't want to dodge the question, but I think the most precise answer to that would have to come from the three individual services, because they exercise full command over their people. I would absolutely observe that the principle of administrative action is thoroughly applied. You know there are gradations of sanctions there.

Chair: I do.

General Sir Richard Barrons: Where it applies specifically to training accidents, I would look to an answer from the Defence Safety Authority and the way they report to the Defence Board and the Secretary of State. They should be able to describe what occurred and what happened as a result of that. Now, how much of that is—

Q381 Chair: But that does not answer the transparency issue.

General Sir Richard Barrons: And I cannot answer, I'm afraid, on how much of that is put in the public domain, but I do not see it as wrong or a challenge to be able to say that, as a result of this, this commanding officer was removed or some other sanction was applied.

Q382 Mr Gray: Moving on from the legal aspect to the training aspect, may I first of all slightly chide the Department? In evidence to us on 25 November, you indicated there had been 131 deaths, of which 14 were from specialist military units. It now transpires—this was because of a glitch in the statistical department—that there were in fact 134, of which 17 rather than 14 were of specialists. That seems to me to be regrettable. I think with 134 deaths over 15 years, we should be able to keep absolutely accurate records and knowledge of that. To give the Select Committee false information on something as important as deaths of soldiers in training seems to me to be regrettable. I am not asking for an answer, because I am sure that you would agree with me.

Penny Mordaunt: Yes, and to correct you, the actual figure is 135. I can reassure you. It is not that this was not captured; it was just there were a number that were not linked to training and should have been. I think—

Q383 Mr Gray: I am sorry to interrupt. Is it 135? The evidence we have been given by the Department is that it is 134.

Penny Mordaunt: It is 135.

Chair: There is a new bulletin out today that moves it to 135.

Penny Mordaunt: Yes, and I can assure you that—

Mr Gray: Sorry, but—

Penny Mordaunt: You are absolutely right. I have personally looked into why that happened, and the way that will be captured in future will ensure that is happening. Again, coming back to the DSA, it is ensuring that whatever is going on in each individual service is consistent, that we can get data that is correct and meaningful, and that we can monitor how things are being done. I apologise for that, but I understand fully why it was done.

Q384 Mr Gray: I think when it is a serviceman's death, you can probably do it quite easily without capturing data or other things. The information from the Department was 134 until today. It is now 135. We should know these things in detail, and I think that data capture and all that stuff—let's leave that to one side for the moment.

Focusing on the 14 regular and three reservist deaths from specialist military units—and bearing in mind that we are in open session and that we are not making reference to any particular cases—how certain are you that the training regime for specialist military units is as safe as it can be given your aim, which we have talked about? Is it safe?

Penny Mordaunt: I know that you are sceptical about what information my going and looking at such things gives me, but having seen such training and selection in action, I had recommended that if the Committee were interested in seeing how the tracker systems and the technology that has been brought in works, that would be incredibly useful to you. I think that we have looked at every lesson that we can learn from when it has gone wrong in the past and that it is as safe as it can be. The number of deaths in training over the years is high, but the only way that we are able to tackle that is by looking at what has happened in each instance. There will be some things that we cannot plan for or mitigate, but there is a much improved culture across all the services. You have seen the Royal Marines, but I think it is consistent. The internal governance that assures that is in place and the DSA has brought things on dramatically. So yes, I do think it is as safe as it can be.

Q385 Mr Gray: Right. So you would say that it is as safe as it can be now, but there have been deaths over the past 10 or 15 years, so what changes have there been to training procedures?

Penny Mordaunt: There have been an enormous number, so—

Mr Gray: What sort of things?

Penny Mordaunt: Some of the areas that were a concern to me were how reservists are prepared for such courses, the consistency between particular units, the understanding of the COs who are signing off people to go and do this training, how those candidates are then prepared and acclimatised, and how the instructors know them as individuals and know what they are capable of, which we have already touched on. It is about those procedures and investment in new technology. It is a whole raft of things. Again, some have been a reaction to particular incidents. Others have been initiated because they are good practice and the DSA has done a lot of work in that area. A lot of things have been done, and it is a continual process.

Q386 Mr Gray: Focusing on specialist military unit's training—not general training, but specialist military units—how would you react to the argument that there is such a culture of must win, must pass off, must succeed that if you don't, you're a wimp—"Pull yourself together sonny-boy. This is a man's army." That kind of culture does exist and has always existed. To what degree is that overcome in specialist military unit's training and selection? Where is the balance between "Pull yourself together, sonny" and "Let's be safe about it"?

Penny Mordaunt: I think that because of candidates, quite understandably, not wishing to not complete a particular exercise, the onus has to be on the instructors and the safety team on those events. That, in my view, is very clearly understood. The onus must be on them; the responsibility has to sit with them. The changes I have mentioned in technology—how you monitor those individuals and how you understand what an individual is capable of prior to those exercises—are recent changes that have been made, and they help that.

Q387 Mr Gray: General Sir Richard, do you think that that culture has been sufficiently overcome in more recent years?

General Sir Richard Barrons: I absolutely hope not, because it is in the nature of specialist military units that they must be obsessively, aggressively and mercurially determined to win. That is the point of specialist military units. To some degree, you have to protect them from themselves. I would distinguish between the regime for selection—as a result of catastrophic events, a whole range of changes in that regime are now in place that moderate that risk, but the fact is that you will still have individuals operating as individuals in extreme circumstances.

In the collective training of those who have passed selection and are in specialist military units, they will be exercising at the edge of what is humanly possible, in the most extreme climate and terrain and with some unique and complex equipment. They will be doing that in preparation for operational conditions where the margin for success or failure is tiny and comes down to seconds and the very last edge of physical advantage. It would be a disaster if we tried to not make them think and feel that way.

In making sure that we can train effectively and, indeed, operate effectively, it is a combination of: do people understand the law and regulations; are they trained in it; does the chain of command make sure that is implemented; and are they held to account for it? As you have seen, the director personally takes decisions about what is or is not done on training, as he does on operations, and really there is a very small difference.

Mr Gray: Uncharacteristically, may I say that I think that was a virtually perfect answer to my question? Thank you very much.

Q388 Richard Benyon: May I come in on the back of that and suggest a process that you might tell me already exists for specialist military unit's selection? An individual will go for selection and may, if not hide, then try to put out of their mind a particular medical condition, for example. They may have worked hard and gone through much pain to get as fit as they have got, and they just want to get past this phase. Back in their parent unit, their company commander or their commanding officer will have written a report saying, "This is an outstanding individual who I think will do well in the specialist military units." They want the individual to succeed, so they are part of that process.

If there is a particular factor in an individual's life that might cause difficulty, be it a medical condition or something similar, there ought to be a parallel process where their company commander or commanding officer can say, "Look, I think you should know about this"—not in a way that diminishes the suitability of that person to ultimately get in. It is a very difficult thing for a commander to do, because they want the best for their people. Do you think that either exists or could exist? What we saw at Lympstone was extraordinary and brilliant; we saw people who had got right into the heads of their recruits over many weeks. That does not happen when they go for selection for the specialist military units.

General Sir Richard Barrons: The first point is that we absolutely have to rely on the integrity of the commanding officer to put forward candidates who he thinks are appropriate. That will be a combination of their physical suitability and their mental suitability. In many cases in selection, it is the mental suitability that is the critical thing. The second point is that as they go forward for selection, as the Minister has described, there is now a different procedure where—particularly for reservists, who will have less profile—the staff observe them before we get to the critical moment of selection.

On selection, if an individual removes themselves, they may not attempt selection again. That is about maintaining the attitude that we want. The onus is on the experienced staff who monitor training to observe those people who they know, by experience and the development of intuition, have not got what it takes to pass this test, and they will pull them off. When they pull them off the training, they may elect to provide a medical reason for it—a soft landing, if you like—or they may simply say, right up to the last day of selection, "You're not going to pass this." I place great reliance on the fact that you have the most experienced people within the Special Forces community observing those who want to join them and exercising close proximate judgment. When you are conducting events where people are very dispersed—for example, you have people at checkpoints—and where you are seeing them in really extreme terrains such as jungle, there is a greater degree of supervision because the risks are higher. All those measures that you wish to see are in place. The fact is that you are still going to deal with a margin of risk.

Q389 Chair: You made an important point on the issue of protection from yourself—not the system, but your own drive, determination and driving commitment to succeed. One of the things that was amazing to see in Lympstone was that, because they are responsible for commando training, recruitment and selection, they are aware of monitoring and watching throughout for the issue of protecting from the self. In fact, we saw instances of people driving themselves, and they said, "No. Enough. Stop that now." They pulled people out. What are the advantages and disadvantages of that and can it be replicated in other parts of the Armed Forces?

General Sir Richard Barrons: It is replicated in other parts of the Armed Forces. Of course, there are gradations of training across the Armed Forces. The single services would give you a more authoritative view of their own regimes. One physiological challenge is that in some conditions, such as hyperthermia, when you get to a certain point you are not aware of how much damage you have done to yourself and how it is not recoverable. That is why the staff, on all forms of arduous training, look very carefully at people and look for the signs that someone is now on that limit, and they must pull them off.

The second risk is that people try to give themselves an edge on training like that. Mr Benyon described how people might want to conceal an injury. Well, generally that presents itself eventually. In the past, people have tried all sorts of novel diets and supplements to try to give them that physical edge. Despite all the training, advice and testing, people will still be tempted to do that and it may have difficult consequences when they are at their most physically challenged. People are searched to see that they do not have these things and they cannot have them on selection.

At the heart of it is that you have to have SQEP—suitably qualified and experienced persons—monitoring the training at an individual level in the conditions. They are people who have been there, done it and know what they are looking for, and they will exercise their leadership and moral courage to do the really hard thing of taking someone off the test in the biggest moment in their lives. They just have to be good enough to do that.
[Interruption.]

Chair: I don't think that the roll of thunder has anything to do with your evidence.

Richard Benyon: It added weight, though.

Q390 Mr Gray: Can I move on to the Defence Safety Authority? How will you measure its effectiveness and authority? Will it work well and, if so, how will you check that that is the case?

Penny Mordaunt: As well as the Defence Board ensuring that it is doing what it is supposed to do and that it is implementing the elements of its work programme, there will be an external check on the quality of what it is doing.

Q391 Mr Gray: You mentioned that. Who by?

Penny Mordaunt: It is a long list of organisations, but it will include the Health and Safety Executive. For more specialist areas such as aviation, there will be the appropriate civil—

Q392 Mr Gray: So there is not one auditor but a series.

Penny Mordaunt: It is a series of auditors, but ultimately the responsibility sits with the Defence Board to ensure that that part of the MoD is doing its job.

Q393 Mr Gray: General Richard, what is your interaction with the DSA in your command?

General Sir Richard Barrons: It is exactly the same for the three single services. We have an annual discussion. All the training for which I am responsible is subject to the same

regime as any conducted in a single service environment. Some of my training—particularly the high-level joint training—is very much focused on headquarters and simulation. The degree of physical risk, other than loss of sleep, is very small.

For the other bit of my organisation that does very specialist training—things like cyber—the physical risk is, again, significantly less than the spiritual risk in some cases. It is really only in the specialist military units where we need the sort of relationship that we have been talking about this morning. I am now creating a small assurance organisation in Joint Forces Command that is able to look across all those things in order to provide me with a level of assurance that interacts with the DSA and others.

Q394 Mr Gray: I see, a small specialist organisation within your command.

How do you react to this? We took evidence from two leading Defence lawyers—people who represent families and others—and we asked them what they thought of the DSA. These are two of the best lawyers in the land, and they said that they had never heard of it. We said, “You’ve never heard of it?” They said, “No, we didn’t know it exists. What is that?” How do you react to that?

General Sir Richard Barrons: I would question your award of the title “best Defence lawyers in the land” if they have never heard of the DSA.

Q395 Mr Gray: Well, Hilary Meredith is a great, leading lawyer on the matter. She has been involved with the MoD for many years and she has been doing all this stuff for a long time. She had never heard of the DSA, and she knew nothing about the duty holder concept. Wouldn’t this be evidence that the DSA was not advertising itself sufficiently well?

Penny Mordaunt: I find that incredible. It is a new organisation, but it is not in an ivory tower; it is out working not just with third parties outside the MoD that have responsibility and expertise but with other nations. Part of its auditing will include experts in other Armed Forces. I was shocked when I read that, and the only thing I can think of is that it is a new entity—

Mr Gray: That’s right. That is what she was saying.

Penny Mordaunt: As I said, it only stood up in April, but I find it incredible.

Q396 Mr Gray: I think that was the point she was making. Part of the audit perhaps must be to make sure that every part of the armed services knows about this organisation, otherwise there is no particular point in having it. She also raised the interesting point with us that in the old days when something came up, on behalf of a client she had reasonably easy access to the MoD, but she said that that avenue of approach has now been completely closed off to her and that she can no longer speak easily to officials in the MoD. How do you react to that?

Penny Mordaunt: Again, I found that rather odd. I am not sure who she has tried to talk to and under what circumstances, but I do find that odd.

Q397 Mr Gray: All right. If we could clarify that in writing, would you be prepared to reopen those avenues?

Penny Mordaunt: I would be happy to write back. There are many merits of having this new organisation. Rather than having a plethora of organisations that didn't really have the consistency and clout within the MoD, one of the benefits—I have already mentioned others about consistency and quality—is that, if you have an issue, it is easy to identify who to talk to about it. There are not 12 different organisations; there is one.

Q398 Mr Gray: Sure. I think we accept the principle behind the DSA, but from the point of view of the lawyers, they would say that if they find some area that needs flagging up with officials and Ministers, in the old days, if it was reasonable, they had pretty good access to the Department, whereas that has apparently now been—

Penny Mordaunt: I would be very interested to see what contact had been made to whom and why. If you can get me some more information, I would be happy to look at it.

Q399 Chair: Perhaps Adrian McDonald has some examples—you have sat there very patiently.

Adrian McDonald: It might be due to the restructuring in the Department and the creation of what is known as the Directorate of Judicial Engagement Policy, which is about the liaison between the Department and any court process, so the external solicitors should be fully aware and will be aware of what we call DJEP.

Mr Gray: Catchy.

Adrian McDonald: It's a snappy name. DJEP only came into existence in 2010, and they took over what had previously been dealt with by a claims directorate. There was a claims officer, and Hilary Meredith's evidence was that she had a relationship and a line of communication with the chief claims officer.

Q400 Chair: This wasn't for individual cases that she was talking about. It was where she was seeing trends or issues of general concern.

Adrian McDonald: Exactly. As Mr Morrison explained, there are numerous civil claims brought against the Department. Those claims were handled by the claims branch, now DJEP. Miss Meredith has more recently, since having given evidence to this Committee, met with senior officials in DJEP, and I believe they found that meeting very useful. But it is not a question of not having a channel of communications.

Chair: We are glad to see they have reopened. Let's put it that way.

Q401 Mr Gray: On conclusions from the various inquiries—section 28 reports from the coroners, or from service inquiries and health and safety inquiries—the Armed Forces react in a variety of ways, as we have described just now, but the DSA annual report does not reflect that. Would it not be better if the DSA's annual report said, "Here are the various things from other organisations that occurred during the year, and here is what we have done to correct what they raised"?

Penny Mordaunt: In principle, I don't see an issue with that as part of their reporting. Some of those issues were issues for the front line commands in particular, but you could certainly pursue that with the DSA.

Q402 Mr Gray: No, no, no, Minister. We are asking you about this; we are not pursuing the DSA. The question is: if coroners' section 28 reports or Health and Safety Executive or service inquiries come up with something that has gone wrong, and then the armed services put that right, surely it would be right for the DSA to report that and say, "Here is what happened. Isn't this great? Here are the things that we have corrected because of errors that were made"? At the moment, that does not happen, and we are asking you as the Minister whether you think that should happen.

Penny Mordaunt: If I didn't make it clear, I am happy for that to happen. I have no issue with that. The DSA may have reasons why it thinks that is not the best course of action, but, as far as I am concerned—

Q403 Mr Gray: Yes, but you are the Minister.

Penny Mordaunt: I am saying that, as far as I am concerned, I am happy for that to happen.

Q404 Mr Gray: That's great. Thank you. So that is an outcome. Will you be looking into the DSA in future to see whether or not they have done a good, bad or indifferent job?

Penny Mordaunt: Yes, absolutely. I don't sit on the Defence Board, but many issues that I am responsible for report into it. It is ultimately the Defence Board that will decide on these matters.

Q405 Mr Gray: The Defence Board will routinely examine what the DSA have done?

Penny Mordaunt: They look at their performance against the things that they are supposed to be implementing. There are other boards within the MoD that they report into, and I meet with them routinely.

Q406 Chair: Air Marshal Garwood told us that he was not aware where administrative action has taken place. Would it be helpful, where administrative action is taken, if the outcome of that is also reported to the Defence Safety Authority so that they can also report on that? Would you look at that?

Penny Mordaunt: Yes, I would. Part of the difficulty historically with this is that that information has sat in individual services, but the DSA is now a body that sits across.

Q407 Chair: And therefore it would be appropriate for it to have that information.

Penny Mordaunt: Yes.

Q408 Johnny Mercer: Our witnesses have broadly welcomed the duty holder concept, but we have heard concerns that although it had made who holds responsibility for various aspects of training much clearer at the higher levels, it had not made a lot of difference at the lower levels, up to unit command. Do you recognise this observation, and could more be done to ensure that the duty holder concept is actively applied at lower levels?

General Sir Richard Barrons: It is a work in progress. It has had both positive and negative effects. The positive effect is that it is breeding a better culture and a professional approach to safety and training, but I think that in the middle and lower levels of the

Armed Forces we are beginning to see a misinterpretation of what the Health and Safety Executive and the legislation actually mean about how to bear down on risk in training, particularly in the operation of equipment and live ammunition. My own view is that it is now necessary to have another go at this culture, because we are acquiring in some areas a set of restrictions, on training in particular, which are making people operate their equipment in such a narrow way that they are not ready to go on operations.

Q409 Johnny Mercer: Yes, and that is clearly a dangerous threshold to cross. Is there a stage where health and safety and the nailing down of risk is slightly misunderstood to inhibit training in the military? Could we do more to get people to understand that this is about safe training, not useless training that will not equip you to go to theatre?

General Sir Richard Barrons: Yes, that is very real risk. It is about inexperience in the application of the principles and to some degree it is about an absence of leadership to push back at these things. People tend to accept that we are going to change this drill now and we are not going to do this anymore, because of ALARP, and they have absolutely misinterpreted what ALARP is actually about. The net effect of that is that bits of the Armed Forces are less ready than they need to be to go on operations.

Q410 Richard Benyon: Partially answered, but please expand on the MoD mechanisms and processes for learning lessons from training accidents and incidents. Apart from the annual recruit trainee survey and the Armed Forces continuous attitude surveys, what other mechanisms are available for service personnel to report safety concerns and is there a way for urgent concerns to be raised, even on the day of training?

Penny Mordaunt: Yes, there is. Again, there has been a number of fairly recent changes within each of the services in how that happens, with the DSA being the catalyst. The services would probably be able to give you complete chapter and verse on that. I can give you examples of where particular responsibilities sit and how particular processes have been changed, but it will be the services that can give you the full details, because it will vary between the three.

Q411 Richard Benyon: Would you say there is a need, as has been put to us, for an independent training commissioner to be appointed to monitor training standards and to investigate failings? We have created the Armed Forces Ombudsman post and those who are promoting this idea envisage a parallel, independent, or semi-independent, organisation or individual who could look into this.

Penny Mordaunt: I think that that is the benefit of the DSA. I take the point about external accountability and expertise, but the way it is constructed, how it is audited and who it reports to does that. It is critical that we have someone from the forces running that aspect of it. There is a huge amount of development work in progress—you have seen the work streams—but it is happening even more swiftly than that in the safety regulatory reviews that are undertaken by it, how it is changing the training that is done, for example, on the duty holder concept, and how that is being mapped out in the training of junior and non-commissioned officers and those they are responsible for.

That is actually why that body was set up. Accountability has to be done, I think, by the subject matter experts. With what we are doing on aviation safety or anything else, we will need an external expert, as opposed to one office, to look at that and say, “Actually, that is

not good enough. You have to change that.” That is the construct that we have. Clearly that is all—and it needs to be—in the public domain. Given that this is a new body, it seems to be doing sterling work. We will obviously review it. That was clearly the objective when it was set up. If it does not deliver that, then we will look again, but I think that that is what it set out to do.

Q412 Richard Benyon: I remain to be convinced that another independent person or body looking in on training is the right answer, but if in those circumstances it was, would you agree that it would have to have a very clearly defined remit? Ultimately, they should not be taking away from commanders, trainers, selectors the ultimate purpose of what they are trying to do, which was better described by Richard.

Penny Mordaunt: Absolutely. That is why you need the forces to be doing it. You need someone who understands what the objective is of the training. I have seen examples where judgments might have been made to try to make something safer but will mean that we are failing in our other duty of care to that individual when they are going out on operations. That is absolutely at the heart of this, and I know the Committee recognises that. The remit of an independent and entirely separate person to make those judgments would be so narrow that you would lose the whole point of the exercise.

Humphrey Morrison: May I just add one point? It may be too obvious to say that, in addition to a very clear remit, it would be very important to have a very clear definition of what this person’s power were and how they fitted in with the other powers that exist, whether prosecution powers, powers of the chain of command to take administrative action, the powers of coroners to give section 28 reports and so on. Otherwise, legally, it could add to the confused messages. People apply different tests with different powers, almost adding to the fog of supervision that can quite easily be created if one simply adds another person who can interfere and cut across other decisions.

Penny Mordaunt: In particular, the Health and Safety Executive, for example.

Q413 Chair: I was interested in your statement about the duty holder potentially passing the risk further down the line. We heard evidence of examples where the duty holder imposed a requirement within training, using health and safety as the reasons for it, that actually added to the risk of carrying on. So they passed it from their responsibility to further down the line. I am glad you are aware of that, and the need to protect from that.

Penny Mordaunt: Yes.

Q414 Chair: Do the DSA have the powers to call in an external expert, should they feel there is an area that they need additional information about? Does that power exist?

Penny Mordaunt: Yes. It is very clear what they are required to do. If they need external expertise or, indeed, expertise from foreign Armed Forces, they can bring that in.

Q415 Chair: Thank you. On external accountability, one of the places where the military is not held externally accountable is with coroners. Can I have an assurance from you, Minister, that you will ensure that it is written into the responsibilities of your office to meet on a regular basis with the chief coroner, so that you can ensure that you get feedback and meet any additional requirements for that special cadre of coroners for additional training?

Penny Mordaunt: Yes, certainly. Ministers' portfolios change but it is my intention to do that. Also, the Minister who will usually be concerned with inquests and so forth, for personnel, veterans and welfare, will also do that.

Q416 Johnny Mercer: We are coming to the end of the session now. We have looked in detail at some of the bodies and legal aspects. I just wanted to take our heads out of that mire for a minute and focus on the families of individuals who have been through training and have had these catastrophic tragedies happen to them. I think it would be fair to say that some of the evidence that we have had submitted to us from families has made for very challenging reading. No matter what we are doing as a Government or as an MOD to look after these people, something is not going right. What recent improvements have been made in establishing and maintaining contact with the families of those injured or killed during training exercises and selection events?

Penny Mordaunt: On particular cases that I have been dealing with in my time, I was concerned about some of the treatment that the families had had to endure in addition to the tragedy. I have commissioned a non-statutory inquiry into that, which has been ongoing and will report soon, although I do not control the timetable of it.

I think that many parts of the Armed Forces, whether someone has lost someone through a training exercise or indeed in operations or through an accident in service, deal with support for families incredibly well, but when that does not happen, we need to look at why. It could be a combination of things. It could be that the responsibilities for doing particular things were not clear. It could be about the quality of support that has been provided. It could be about lack of support for the individuals who are supposed to be providing that support. There is a whole range of possibilities. I am obviously not running that inquiry, but I have had an interim report. The inquiry will make a number of recommendations—probably about 25 to 30—as to how we can improve on that and ensure that many years hence, support and respect and continuity are provided indefinitely.

Q417 Johnny Mercer: Have you had an opportunity to read some of the submissions from families, particularly in relation to recent incidences that we are looking at?

Penny Mordaunt: I do. I read everything. I read evidence given to coroners. I meet next of kin. I think I have a good understanding of what goes on. In my view, there is a mixture of quality with how things are done, and because I think we did not act as we should have with certain individuals—*[Interruption.]*

Q418 Chair: Can I just stop you? Can I ask one of the Clerks to ask what is going on outside? It is not fair for you, Minister, while you are giving such serious evidence—I do not want us not to hear everything that you are saying.

Penny Mordaunt: Thank you. It is because of that that I set up an inquiry to look at what had happened in particular cases, the treatment that the families had had and where things that I think you and I and the public would expect and want to happen were not happening. I am grateful to those families who have assisted with that inquiry. Again, it is ongoing and the final report is yet to be produced. I think it has been looking at the right things and I think that the recommendations it will make will be extremely beneficial, not just for

these kinds of episodes, but for where we have deaths, in whatever circumstances they occur.

Q419 Chair: Will that report be public?

Penny Mordaunt: Yes, it will. I am sorry, let me clarify. The recommendations will be public, but some of the evidence may need to be confidential.

Q420 Johnny Mercer: One of the challenges we face on this inquiry is that we get a very good picture from the MOD, from yourselves and from other boards of what is supposed to happen. You said something earlier—every lesson has been learned from things that have gone wrong. The challenge we face is that that is contradicted quite strongly by individuals who have come to give us evidence and by families who have got in touch.

Everybody understands—we are all human on this panel—that things go wrong and that mistakes are made, but it would appear that, whatever we have done as a corporate group or as a Government, some of the treatment of the families still leaves them feeling extremely embittered about what is going on. Does that chime with you, that there is something not right here—something systemically not right here—for the number and the strength of the representations to come through on this issue of dealing with the families?

It can go one of either of two ways. Either we deal with our families very well sometimes, and that is because of individuals who are very good and absolutely get it, or it's because—as a system and as a service—we don't take it seriously enough. We rely on the individuals to carry us through, and we could do a lot more in getting people to understand how important it is to a father or mother to lose their son or daughter in training.

Penny Mordaunt: I agree absolutely. We cannot leave these things to chance. I wouldn't want that; the public wouldn't want that. That is why I set up the inquiry last year. It's been running for several months. It's taken a huge amount of evidence. It's incredibly thorough and although the catalyst for that was, in my view, what families had had to endure in addition to losing their loved one, the benefits of the inquiry will be far-reaching.

In part it is about providing support for the individuals who we're relying on to support families, making sure that they're not doing that work very frequently and that they are given respite from those particular roles. Part of it is about their training and the support given to them. Part of it is about having systems in place that are consistent and so that people understand who has responsibility for particular things, even many years hence. For example, who has responsibility, 20 years from now, for inviting a family to Remembrance Day?

Q421 Johnny Mercer: What are the answers to that? Who does have responsibility?

Penny Mordaunt: There's an inquiry under way, Johnny, that will come out, and I have had an interim report. I think it will make about 30 recommendations that will benefit not only the circumstances that these particular families were in but how we look after next of kin across the services.

I think that there is incredibly good work that is done within the forces and by the amazing organisations that support them, but we need to do this work consistently and it needs to be of the quality that the public would want. Because I thought it was not consistent and, in certain cases, not of the quality that we want, I initiated an inquiry, which will report soon; I can't tell you when, because I'm not running it. However, from the interim report I have received, I think that it is work of very good quality. They are looking at what happened to the families, what the families' needs are and when they need particular things, but they are also looking at those who are providing these services as well. I think it is a good piece of work and I hope the Committee will approve of its recommendations.

Q422 Chair: Thank you. We need to pull the evidence session to a close, but may I just ask you for some comments, please? In a recent BBC Wales interview—a good place to do your interviews—the Chief of the General Staff said that there has been a culture change in the forces after a number of deaths on duty and, “It would be very difficult for those sorts of things to happen again.” How would you describe the culture change and, if it exists, how will you measure it?

Penny Mordaunt: Although it is recognised that there are some things you cannot mitigate against, the ultimate judgment will be in the reduction of deaths in training. We can clearly see why certain deaths have occurred and those numbers need to come down. There has been a greater emphasis on these issues. We have to work hard to provide the balance that the General spoke about, so that we do not lose our duty of care in operations. But that culture change has, in part, led to the DSA being set up. It is a very good organisation. You have obviously met the director, who I think is an exceptional individual. Ultimately, those numbers need to go down.

Chair: I thank all four of you for your time this morning and for the evidence you have given. It was extremely valuable to have the legal advice here with you both. Thank you for the openness and frankness of your evidence.