

Defence Committee

Oral evidence: MoD support for former and serving personnel subject to judicial processes, HC 109 Wednesday 08 June 2016

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Written evidence from witnesses:

- [Hilary Meredith Solicitors Ltd. \(PSJ0001\)](#)
- [Lewis Cherry \(PSJ0002\)](#)

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Members present: Johnny Mercer (Chair); Mr James Gray; Mrs Madeleine Moon; Mr John Spellar

Questions 1-59

Witnesses: **Lewis Cherry**, Solicitor, **Reverend Nicholas Mercer** and **Hilary Meredith**, Solicitor, gave evidence.

Q1 Chair: Good morning, and thank you for coming to the first evidence session of our inquiry into the way in which current and former serving personnel are supported in the judicial process by the Ministry of Defence. It is a highly emotive subject and one that has deeply affected many people. We do not wish to add to that emotion or to cause any further distress, so I would like to make it clear that while the experience of individuals is helpful to us in understanding the process better, we are not a court of appeal and therefore cannot take up individual cases.

Thank you for coming along today. Please introduce yourselves and outline your background in this, starting with Hilary.

Hilary Meredith: I am Hilary Meredith, a CEO of my own practice, Hilary Meredith Solicitors. I am a civil lawyer and I have been representing members of the Armed Forces or their families for around 27 years.

Rev. Nicholas Mercer: I am Nicholas Mercer. I am a priest in the Salisbury diocese and I served with the Army as a military lawyer for 20 years.

Chair: And we are not related.

Rev. Nicholas Mercer: We are not related.

Lewis Cherry: I am Lewis Cherry, a director of Lewis Cherry Ltd solicitors. I am a solicitor in private practice and I act and have acted for about the last 20 years in the defence of servicemen and women and their families in a variety of legal processes, which I have set out to you in a letter that shows the range of the type of things I have done.

Q2 Chair: Can I ask you individually what your involvement has been in representing clients who have been investigated by the Iraq Historic Allegations Team? What has your specific role been in that? I will start with you, Hilary.

Hilary Meredith: As a civil lawyer I am not involved in the criminal proceedings or prosecutions, but I see the aftermath. In particular, I was contacted by three soldiers who had gone through the Al-Sweady inquiry. That inquiry was subsequently dropped and there was no case. They had had their lives on hold for five years and they wanted to know if anything could be done as a result of that. They did not have legal representation, as I understand it, at the inquiry. In my view, if they had been given legal representation of some sort maybe that inquiry would have concluded much sooner. In effect, there was nothing we could do for them, in reality, after the event.

I have been contacted by other soldiers and those acting for them who have said there are judicial proceedings going on, particularly relating to Iraq, where there is no framework of support in place for members of the Armed Forces, and particularly ex-members of the Armed Forces who are subsequently facing proceedings. I am signposting them mainly to Mr Cherry, who is a criminal lawyer, and offering some advice and support.

Q3 Chair: So that we get an idea, can you give us an outline? These former or serving servicemen and women come to you, and their lives have been put on hold because of this five-year investigation. Could you give the Committee an example of what impact that has had on the individual's life?

Hilary Meredith: For those I have spoken to, their lives are literally on hold. They feel that they have been "hung out to dry"—that is the expression used—by the military for the lack of support. Many of them have suffered from mental stress as a result, and if they had already had some mental stress or possibly PTSD as a result of service, that has been highlighted as a result of ongoing proceedings. One person in particular refuses to leave his house. He has lost all faith in anybody outside the walls of his home just from a lack of support.

Q4 Chair: Has that individual been charged with anything?

Hilary Meredith: I am not sure whether he has. This is through a third party, because he won't even speak to me. It is very difficult to get to speak to him. But it is not just legal support; it is welfare, health and mental support as well.

Q5 Chair: Can I put the same question to you, Reverend Mercer?

Rev. Nicholas Mercer: I am obviously not in practice any more, but I was a witness in the Baha Mousa court martial; I was a court participant in the Baha Mousa inquiry, and I gave a statement to the IHAT a few months ago, having made further complaints after I left the Army in 2011, so I too am one of the people caught up in it. I remember when I came back from Iraq, I said to my father, "I don't think this will be finished until about 2012." Here

we are in 2016, and I think 2022 would not be an unreasonable estimate of how long this will go on for.

I also get approached, because of what I have said and done, by people who say, “I’ve got matters that I’m concerned about,” so I have acted as a conduit. Obviously, I am still on the roll of solicitors, so I have a professional duty. I then report those allegations on behalf of an individual if the need arises. So I am caught up in a different way, but I have first-hand experience of being a witness and a member of the Armed Forces caught up in judicial proceedings.

Q6 Chair: Thank you. Mr Cherry, same question to you.

Lewis Cherry: Mine is slightly more detailed and involved. I have a number of clients who are currently being investigated by IHAT. Of those that are in the public domain, you will be aware that Public Interest Lawyers took a case some years ago to the High Court over Al-Sweady and others. There were five cases, two of which involved my clients, one of which is Baha Mousa. I had one defendant in the court martial—the war crimes trial—and eight court participants in the public inquiry, and of course they are all still pending. Reverend Mercer was one of the court participants; he is not pending from that side of it, but others are. I act for a number of other individuals who were not alleged to have been involved in the initial part but are being looked at for other things, as I understand it. There were other investigations at the time being run against the Queen’s Lancashire Regiment that are still possibly subject to IHAT.

There was Baha Mousa, and the fifth one of the five cases was that of Waleed Muzban. Lance Corporal S, as he was identified, was my client from the shooting in the tail end of 2003 in TELIC II—an on-duty shooting on the streets under circumstances. I acted for him at the police station. He was reported for prosecution for murder; we had a formal preliminary inquiry, and after that it was all dropped, so he presumed it was all over until IHAT came along and then it was reopened. He is still serving and is now much further up the ranks—I don’t want to say more because it would identify him. IHAT then reinvestigated. We had a series of interviews with IHAT. He was reported for prosecution and it went to the Service Prosecuting Authority. He maintained the case that he maintained right at the outset, and he was told last year that it had been dropped.

Q7 Chair: For a second time.

Lewis Cherry: Yes. So from 2003 to 2015—12 years—he has had that hanging over his head and has been running twice. As you can imagine, when it reopened—he is known, obviously, within his regiment, and it has made his life very difficult and it makes his ongoing career difficult.

Q8 Chair: How do your clients find you? How do they hear of you? How do they go from getting a knock on the door from IHAT or a notification from the MOD to coming and finding you, in particular?

Hilary Meredith: I think it is just from reputation. I am known for representing the Armed Forces, but there is no direct link or signposting to me. The group that contacted me was UK Veterans One Voice, which represents quite a number of military personnel who were very scared to come forward and even speak to me. They asked me if there was anything

we could do to put in place some sort of framework of support. It was really through them that I became very concerned about it.

Q9 Chair: What about you, Mr Cherry and Reverend Mercer? How have people come across you? Presumably from your work before.

Rev. Nicholas Mercer: Yes, the Baha Mousa inquiry. People have contacted me and said, “I don’t dare make this allegation,” and certainly in one case, “Will you do it for me?” I am obviously seeing this from a different angle, but talking to ex-military colleagues, things will come out in conversation that we all seem to have in common. By way of example, I did a Sunday worship last week and I was talking to a military chaplain who said, “I came across some soldiers beating up Iraqis. What do I do with that?” “There’s a duty to report it.” “I haven’t done so yet.” That was just a casual conversation with former military colleagues. There are so many of those things washing around.

Lewis Cherry: It is word of mouth. Obviously, I have appeared publicly on a number of things, probably from the first major case when I set on my own, which was Tim Collins and the investigation following that. That obviously had wide publicity, which helped. Then there was the Baha Mousa war crimes trial: my client was effectively the first acquitted there, and I gave interviews after that, too. Because I am an ex-serving officer, people in the system know me, and through word of mouth people always come to me because, in certain organisations, I have given specialist support and advice.

Q10 Chair: Finally from me, we have heard from Miss Meredith, but Mr Cherry and Reverend Mercer: what is your impression of the support that is given to service personnel who are going through this process? In this place we hear one side of it from the Ministry of Defence and another side of it from the serving soldiers. What is your view, caught in the middle?

Rev. Nicholas Mercer: Justice delayed is justice denied. It is an awful long time. I would rather like to put the Army behind me after all these years, but I think it just goes on and on. To give you my own personal circumstances, the IHAT came to see me in 2011 and I gave them a whole series of allegations I had made, and I thought that was that. Then I was rung up again and told, “You haven’t said this,” and I said it should all be in their notes. I was then contacted again, so over a five-year period I had three visits from the IHAT before my complaints were formally recorded in a statement. Why did it take five years?

Q11 Chair: How does it take five years to take a statement?

Rev. Nicholas Mercer: I do not know. My impression was that the submission of evidence to the ICC galvanised the IHAT, because then another body was sitting on the shoulder of the UK.

Lewis Cherry: To my knowledge, there are three separate systems within the Ministry of Defence for our service members to access. There is the Queen’s regulations for the Army, which has one route. There is a joint service publication—JSP 838—and there is a DIN.

Mr Gray: DIN?

Lewis Cherry: A defence information notice, which is not available on the internet but is available on the MOD intranet. My biggest problem with the DIN is that nobody seems to know about it. Every time I come across somebody that needs representation using the DIN, they call me and I produce the DIN. I give them a copy and tell them to take it to their chain of command, and it will tell the chain of command what they are supposed to do. There is a further complication with it: all three of them give contradictory advice. The DIN talks about representation throughout the UK and the world. The JSP says you can get things outside Great Britain, which again is wrong, because it only refers to Britain in what you will get the after support for. It is outside, so Scotland—

Q12 Chair: So it is not even legally correct?

Lewis Cherry: It is not even legally correct. The DIN says you should be supported from the outset, so from the police station interviews and onwards. The JSP says the chain of command should support after charge, which is further on in proceedings. They are all contradictory.

I know the system, but until someone comes to me—quite often we have a problem of servicemen and women and families, because families overseas are also subject to things—they don't know if the chain of command does not tell them, even though the Queen's regulations specifically says:

“Commanding officers are to ensure that those under their command are acquainted with current instructions on this subject and to advise those in need of legal assistance, including next of kin, to seek it without delay.”

That is J7.042.b. If the commanding officers don't know, they are never going to tell their soldiers, sailors, airmen and families, and of course it falls to people like me to tell people.

Chair: To pick up the slack.

Mr Gray: Can I just ask, is it correct that we are addressing you as Reverend Mercer? I has always thought Mr Mercer, or Doctor Mercer—or is it Reverend Mercer? Which is it?

Rev. Nicholas Mercer: Reverend is fine.

Q13 Mr Spellar: Moving slightly into the detail, what is your impression of the way that the IHAT investigators have conducted themselves and dealt with your clients? You have given some indication, but I just wondered if you could flesh that out.

Hilary Meredith: My view of the investigators, which I think is run by a company called Red Snapper, is that it is totally inconsistent in the way that it deals with those involved in criminal proceedings. There seems to be a heavy-handed manner in which they are going about this—in particular turning up to arrest people out of the blue.

There is one person who has contacted me who was actually acquitted within the military 10 years ago and then was faced with an arrest at the barracks gates by somebody purporting to be from Red Snapper. His commanding officer questioned them and their reference, and they found out first of all they were not police officers and there was no authority to arrest, and they went away; but we are talking about somebody who was fairly

high ranking there, who had a bit of forethought for the privates who maybe don't have access to higher-ranking officers. They don't know what to do.

Sometimes they have left the forces; they have settled in civilian life, and there is a knock on the door 10 years down the line to say "We are going to arrest you for an unlawful killing 10 years ago." They don't know what to do. There is no chain of command, because they are ex-service. They are unsure whether to contact a civilian solicitor, because they don't know whether they are breaching the Official Secrets Act, particularly in some of the circumstances that these cases involve. So whether there is a criminal case there or not, there is no procedure for them to find help and assistance. As I understand it, they are not even following the Police and Criminal Evidence Act 1984, but I know that Mr Cherry knows more about that.

Q14 Chair: Sorry to interrupt, John, but the Secretary of State made it very clear to me that none of these individuals are contacted by Red Snapper first—that they are all supported by the MOD. That first contact comes from the MOD. Are you telling me that is not the case?

Hilary Meredith: Certainly in this case, Red Snapper—

Q15 Chair: In how many cases? This may be a one-off.

Hilary Meredith: I am aware of at least four, but I think there are probably a lot more in the background, where there was just contact out of the blue by the Red Snapper investigation. In fact at one point they appeared at an ex-girlfriend's house and started interviewing her about whether he had tattoos, was he abusive, did he talk in his sleep?

Q16 Chair: My view of this is that it is a Government investigation that has got completely out of hand.

Hilary Meredith: It does seem that way, yes, from what I am hearing.

Q17 Mr Spellar: Do they give any justification for turning up unannounced? For example, if someone is still a serving officer or soldier, presumably the Government knows where they are, so there is absolutely no reason for turning up unannounced rather than just by appointment. Do they give any justification for this?

Hilary Meredith: No.

Lewis Cherry: I can probably assist. I don't know whether Hilary knows whether those individuals are suspects or witnesses. If they are witnesses they will just turn up. I am dealing with suspects, and I would say it is done properly for the suspects, from what I have seen. I have dealt with serving soldiers. I can see how it would happen to civilians. I have checked again quite closely, because I am expecting that some of the people who are now going to be called are going to be ex-serving.

For the serving soldier that I was dealing with last year, he was dealt with in exactly the same way as a serving soldier would be under the current system, and I have nothing to fault with it, in that he is told by his unit, "The service police want to speak to you," because it is actually a Royal Navy regulator who conducts the procedural part of the interview. Then there were two civilian investigators who were professional ex-civilian detectives, and they asked the questions. So the interview was run exactly the same as a

normal service police interview—properly run under PACE. I had nothing to fault with it. The professional investigators were very thorough and were very professional—absolutely faultless, from my point of view; but the interview is started by the Royal Navy regulator, a Royal Navy police officer effectively, and the regulator runs it in accordance with service police PACE conditions.

I would expect the difficulty to arise when someone is a civilian now and they wish to interview them. The query I have been waiting for is when they then come to try to get that person, who has ceased to be subject to service law. There is a provision under the Armed Forces Act 2006, section 57 or 58, that they can arrest for what would have been an offence under service law: that will be the provision that a person will be arrested for. I have had to advise clients, but we have not actually had a case yet. They will be arrested by the service police officer—the regulator. Then they will be brought into custody and interviewed in accordance with PACE under the service provisions. That could take place either in England and Wales or anywhere in the world where they currently reside.

There is a system in place to provide service legal aid under the armed forces criminal legal aid system, which I have checked will apply. I have spoken to the head of AFCLA to make sure that this will run exactly as if they were a serving soldier and I have been assured that it will. The interview that I had with the man who was Lance-Corporal S took place outside England and Wales and was paid for in accordance with the AFCLA provisions. It ran just the same as I would have expected it to run for any other serviceman or woman. From that point of view, the PACE—

Q18 Mr Spellar: Can I just pursue one aspect there? You said that the investigators were former or retired police—I wasn't sure which.

Lewis Cherry: They are retired civilian police officers.

Q19 Mr Spellar: So these are civilian police who have retired on pension and this is their post-pension job. So they have no interest in this inquiry ever finishing, have they? So their job will just keep running on.

Lewis Cherry: I can't speak for what their motivation is, but professionally, service police officers tend to be young and inexperienced. These are ex-CID officers who are very experienced and are probably quite good people to do such an investigation. They are only investigating very serious crimes, to my understanding—murders, manslaughter, war crimes and abuses. They are probably far better at it than a young service police officer, to be honest.

Q20 Mr Spellar: Have you spoken to either the MOD or IHAT directly about some of the concerns that you for example, Ms Meredith, have expressed here?

Hilary Meredith: I have, yes. It was under Chatham House rules—I don't know whether I should breach those rules, but I have been to see the MOD about the lack of framework and they have agreed with me that the framework is not what it should be.

Q21 Mr Spellar: Have you any evidence that they have actually followed that up with any action?

Hilary Meredith: Not at the moment, no.

Q22 Mr Spellar: Roughly when did you have that conversation with them?

Hilary Meredith: Around January. Could I add that I was phoned about three weeks ago by somebody who had been threatened with arrest by Red Snapper, asking what he should do? Mr Cherry has very kindly given me some advice to give to clients. I said, “First of all, you can instruct a solicitor. Secondly, they can’t arrest you till your solicitor is present, so make sure you have a solicitor present.” He phoned them back and repeated this, and they said that actually he was only a witness and he was no longer required.

Q23 Chair: So it would seem that when there is some sort of push-back or if you have a senior officer there who will ask “What is your authority to do that?” it is okay. But what do private soldiers, who may have served three or four years with three or four years out, do when one of these people turns up?

Lewis Cherry: Well, we hope that they ring us. The problem is that if you just called the duty solicitor in England and Wales, they would not have a clue. They would not have an inkling about how to deal with an allegation of some abuse or whatever in Iraq in 2004. Some of us are more specialist than others. I know how to advise people and what to tell them, but that is not available to the general public, effectively, unless they know to ring.

The old boy net is what is actually functioning, mainly. I have had a number of calls from people through regimental associations, through service charities, and even through the British Legion, because I have given advice regularly to that organisation. People then come and I give them advice. For most of these things at the moment the advice is, “Sit tight and wait until they come.” We don’t know whether they are going to be asked to give statements as witnesses or whether they are going to be suspects until the day that they come and either try to arrest them or try to take a statement from them.

Q24 Mrs Moon: I am still confused. Can I get this clarified? People are threatened with arrest by people who turn up announced and who, when they get push-back and are told, “I want my solicitor present,” say, “We don’t need to arrest you because you are only a witness”? Why on earth would you threaten to arrest a witness? I don’t understand why they’re behaving that way. Can someone explain?

Lewis Cherry: I can’t explain in one respect, because I don’t think it is lawful. The likelihood is that the vast majority of people approached probably say, “I want nothing to do with you,” and don’t want to raise internally some of the issues that they probably tried to put long behind them. They are probably wary of conduct that—

During the course of the Baha Mousa trial, it became public knowledge that the service police—bear in mind that these investigators will always be led by the service police, to my knowledge—were in the full knowledge that a witness had made a complaint that one individual who I was representing had abused prisoners. The police had that allegation, and then went to take a witness statement off that individual, which is absolutely forbidden. That was aired at the trial, so it is in the public domain. If that sort of conduct and behaviour is still going on, I could understand why a lot of people would say, “I am not talking to you at all, and I am not saying anything until there is a solicitor present.”

I was recently contacted by somebody from the Bloody Sunday inquiry—I gave you the brief before. He came to me, again through the British Legion, and I gave him advice. It

transpired when I spoke to them that they wished to interview him as a witness, and I gave him specific advice as to how he should deal with that. He had given evidence as a witness to Bloody Sunday, so I am assuming the IHAT will be somewhat similar. All of the clients that I am dealing with who have matters that I believe are under investigation are all there as suspects. There are very few I could think of who would potentially be coming as witnesses.

Q25 Mrs Moon: Do either of the other two have anything to say on that?

Hilary Meredith: I have spoken to people who are witnesses and who have been accused. The person I am hoping will give evidence to the Committee was accused after being acquitted by the military—10 years down the line he was suddenly arrested at the barracks gates for something he had been acquitted of 10 years previously. The other person who phoned me was a witness who was threatened with arrest. I don't know why, but after I gave him legal advice, they went away.

Rev. Nicholas Mercer: From a different angle, the IHAT came to see me in 2011, after I wrote to General Wall about my concerns, and refused to take details from me about a particular allegation that was potentially a war crime. I was then phoned up two or three years later after they had read something I had written, and they said, "Why didn't you report this?" I told them to read the notes, which should be on the police file. They went back and looked, and obviously the notes were there because they didn't contact me again. I was then contacted two years later, and I have to say as a former military prosecutor that this time it was all done absolutely as it should be. I was contacted and asked if they could come and take a witness statement. I said they could. We went through it, corralled all the exhibits, they came back with statements for me to sign and all the rest of it. Five years on from leaving in 2011, that was the first time I think it was dealt with satisfactorily.

I obviously spoke to the investigators, and I agree with Lewis that they are fairly experienced CID operatives, because they were very professional about the way they conducted themselves that time. They said, interestingly, that because of a lot of the negative coverage in the press, people had rung up. One person had rung the IHAT and said, "I was going to give you information but I am not going to now," so there is another angle to this. People are reluctant to come forward, either because they don't want to, or because it is being "dissed" in the press. In the interests of justice, these things need to be bottomed out.

Q26 Mrs Moon: Before I move on, can I clarify for myself: is what we are hearing—in terms of the prosecutions, investigations and the length of time it is taking—normal after all conflicts, or has this got out of hand?

Hilary Meredith: My view is that it has got slightly out of hand. I think also that much of it is fuelled by compensation claims from Iraqi civilians. Sometimes they turn out to be insurgents and sometimes their stories are just not true, but the promise of compensation is definitely fuelling more claims than you would normally see.

Q27 Mrs Moon: Reverend Mercer, you have experienced this from the inside. Is this something that you saw before, when you were in service?

Rev. Nicholas Mercer: At a parish lunch I sat next to a chap who I started talking to. He was ex-military and had been the brigade commander at Bloody Sunday. He was still involved in judicial proceedings in his 80s, so it is not without precedent that this litigation goes on and on and on. It seems to be a factor of military life.

I think that Iraq is a sea change. We started to see in Northern Ireland that you had to conduct yourself really carefully, because every time you moved there would be some sort of allegation or compensation claim linked to the way we conducted ourselves. I think we got it there; we really understood it well. Then we move into an international armed conflict where, for the first time, the litigation is open. That has a double effect: there are genuine cases that need to be investigated and there are spurious cases mixed up among those.

I did some of the post-Iraq legal advice because I was divisional chief legal officer for the 1 Armoured Division. I picked out some bogus cases there and kicked them out, but IHAT came back to question me about kicking them out. So you were caught in a double vice there: “Why did you give inadequate legal advice?” I checked it flipping carefully and stopped the case, but then I was questioned as to why I stopped the case, and so I was under the microscope for that as well. If you watch “Eye in the Sky”, you see that everyone passes the buck to everyone else and it goes on and on forever; there is no ability to stop it. That is another of the problems.

Hilary Meredith: The case that I was looking at—the officer who had been threatened with arrest and was acquitted 10 years ago by the military—is subject to a compensation claim by the Iraqis. That is why it is has been reopened.

Lewis Cherry: For some of the people, probably the only wrongness about this is the delay in bringing it. Prosecutions should have been brought much nearer to the date. I have acted in some cases where there have been absolutely clear instances of prisoner abuse that were not prosecuted at the time and I was astonished—absolutely astonished. One case was abandoned by the Service Prosecuting Authority. Actually, a second case during the running of the Baha Mousa war crimes trial—I was told it was stopped and I was astonished, because the evidence was even better than that available at the Baha Mousa trial. It got dropped, but I fully expect that it is going to reopen. I see no reason why it should not and that is why I am expecting some calls.

These prosecutions and investigations should have been done in 2003 and 2004 and should have been coming to trial in 2005, not 10, 11 or 12 years later and so it runs on. We have not even touched the bottom of Afghanistan yet. There is currently an investigation team being formed to investigate Afghanistan issues and I have again advised people as to where we are going to go and what might happen.

Everything that Reverend Mercer says about the advice that he may have given as a legal officer falls to other people who have done similar in Iraq and Afghanistan and who are concerned that their legal advice has possibly been rejected, and then they are also subjected to investigation as to what went on. It is quite clear that abuses have taken place both in Iraq and in Afghanistan. I am well aware of both because of the client information that I am aware of.

Q28 Mrs Moon: If they should have been brought to trial by 2005, why have they not been? What caused the delay?

Lewis Cherry: Lack of proper investigation. To be fair, it was very difficult in those circumstances for the service police to gather the normal sort of investigation that we would expect out on the ground, because we did not control the ground. It is very difficult to do a forensic follow-up after a shooting in a disturbed area. Let me put it in these terms: people were winning Victoria Crosses out on the ground. Trying to gather the information as to what took place at the time when VCs are being awarded gives you a fair idea of just how difficult it might be. Those are the sort of problems they faced. I am aware of prisoner abuse cases that took place inside the barracks, where there is photographic evidence of what went on, and I am astonished that they have not been brought earlier.

Hilary Meredith: Whether there is a genuine war crime or whether it is fuelled by compensation claims, if there was a framework of legal support in place for the individual, the case would be driven by their lawyers as well, so you would not be waiting for something to happen from an IHAT team or an investigator; the individual's lawyer would be driving that case forward. I am sure that times would be reduced if there was either somebody driving it or a framework within the MoD that is pushing the case forward as well.

Lewis Cherry: Reverend Mercer spotted during his tour of Iraq in 2003 prisoners being abused in the interrogation centre. At the public inquiry, photographs of that abuse were found—not of the time that he was there, but subsequently. The MoD had denied it and said that the regime had changed, but photographs were produced at the inquiry showing prisoners hooded, kneeling in the sun and in unlawful, illegal conditions. To my knowledge, no prosecution has yet been brought, but that was done, authorised and allowed, and Reverend Mercer gave evidence to that effect as to what he saw prior to that.

Other photographs are in existence. I have seen a photograph in an investigation of a British soldier with an Iraqi prisoner who has black masking tape all round his head from his nose to his forehead, and the British soldier is holding him by the top of his head, giving a thumbs-up sign—absolutely clear abuse, but no prosecution was ever brought. I suspect it will be brought under the IHAT, but they have known that information since 2005, to my knowledge. It was on the same tour as the Baha Mousa incident.

Q29 Chair: You have to look at individuals who do this and think, “What are we not getting right in training prisoner handling?” If we had investigated this and done it properly at the time, we would have reduced this workload exponentially because people would have known what they were doing and these cases would not have come forward.

Hilary Meredith: That is a different point. It is clear in the Baha Mousa case that there was inconsistency of information about whether hooding was allowed or not. Of course, as Lewis knows, that goes back to Northern Ireland, when Ted Heath brought in the information that hooding was not allowed, but it has been lost over the annals of time in MoD literature, so by the time we get to Iraq, it is not actually known whether hooding is allowed or not. The incoming regiment, which saw prisoners hooded, thought it was okay because the previous regiment were doing it. So there was a lack of consistency of understanding of what was allowed and what was not allowed. That needs to be changed in the chain of command.

Rev. Nicholas Mercer: I was the lawyer who intervened against that, because it breached the Geneva conventions that apply in situations of international armed conflict. I was the first person to raise objections to the five techniques, but that was contested legal ground. I think the MoD contested it, and that was part of the problem. I remember after the Baha Mousa inquiry, Liam Fox stood up in the House of Commons and said, “Of course we will continue with harshing in interrogation.”

Mrs Moon: Harshing?

Rev. Nicholas Mercer: Harshing techniques. I have read the submissions to the ICC and a heck of a lot of them involve mistreatment in interrogation. It looks as if the Army has been drawn on to this dubious legal territory. Obviously lawyers are going to say it is illegal. We have *Ireland v. United Kingdom*; we have human rights law, common article 3 of the Geneva conventions and whatever law you want to throw at it. Before one is quick to criticise, there are some very genuine cases there about the legality of this various treatment.

Reading the anecdotal evidence, I have to take a view: is it genuine or not? I am open-minded. There is a remarkable consistency in terms of physical intimidation. There are quite a lot of allegations of sexual humiliation, and some of religious desecration with the Koran. Was that authorised by the Ministry of Defence? If it was, they can hardly complain when people bring compensation claims or seek that people are held to account for it. We are in a very difficult situation. Clearly, there are cases like al-Sweady that are bogus, but at the same time there are cases that are genuine and should properly be investigated.

Q30 Chair: As a last point, it is worth saying that on this Committee we are very firmly of the view that those who have committed these offences must absolutely be prosecuted to the highest level. We need to understand why this was not dealt with earlier so that we could have stopped it, and the support to those going through particularly the bogus cases, but we are absolutely committed to the view that those who have done wrong must be punished. The professionalism that drove a lot of us who served on operations with those who fell below that line means that we are of that view as well. There is no intent here at all to make excuses for that.

Lewis Cherry: Can I make it clear that the training video for the harsh interrogation technique that was being used by Chicksands and was played in public in the public inquiry had two breaches of the Geneva conventions in it? It had an assault of the prisoner and a threat to the prisoner, both of which breached the Geneva conventions. That was in the training video. If that’s what they were training our interrogators to do—and that is on the video that we saw; we have no idea what they actually did but the training video itself had two breaches of the Geneva conventions—clearly, there were going to be problems.

Hilary Meredith: You can see that there is confusion on the ground as to what is allowed and what is not allowed. The soldier thinks he is following orders and then later on he is prosecuted. You can see how they feel so let down that the MoD don’t stand behind them and say, “Well, actually, that’s what we told you to do.”

Q31 Mrs Moon: That is a good point you have taken us to. What is the MoD's policy for supporting service personnel who are under investigation? Is there a policy and are they following it?

Hilary Meredith: There are various regulations. There is Queen's regulation J17—legal representation of service personnel facing criminal charges. It took me a while to find it, and you have to go through two pages of when it's available and when it's not available. It is not generally known. Lewis has already highlighted other areas where support is supposed to be available but is inconsistent. There is nothing written down as a framework for men and women who have served to say, "This is the support that you will get. Whether you're guilty or not guilty, you are entitled to support from the MoD." That is particularly highlighted when veterans are involved, because there's no chain of command there anyway. They really are out on their own, on a limb.

Q32 Mrs Moon: So they are left with no support at all.

Hilary Meredith: No.

Lewis Cherry: You can see this in the briefing note that I sent to you. There is this DIN—the defence information notice. I only found out about this—the more recent version—a couple of weeks ago, because in researching for coming here, I checked and found online that there had been a replacement. I had not got a copy of it. I have had a series of clients with on-duty incidents. I currently have—I think I took note of it—13 clients pending who have been reported for prosecution for on-duty incidents, where they will be eligible under the DIN. Not one of them knew or had been told about the DIN—not one.

The problem is that even when you read it—I checked with the head of AFCLAA last week and she confirmed to me that the DIN is now being rewritten. But if you read—I sent you a copy of it—annexe A at the back of it, it specifically says: "Where it is considered the offence arose from an act committed by the individual during the course of employment or duties and whilst acting in accordance with any applicable regulations and orders, it may be appropriate for the MoD to assume responsibility" and so on. That is a catch-22 in the traditional sense. If it was correct that you have acted in accordance with every regulation and order, you would never be charged.

The issue invariably is that the man is charged with negligently performing a duty or failing to perform a duty, where the civilian offence does not apply. That is invariably the case, and what happens is that the individual says, "But I was obeying my duty as ordered. That's what the chain of command told me to do." I have never had a client who has been supported by the chain of command ever, and I checked with the head of AFCLAA last Friday and she confirmed to me that to her knowledge, no person has ever been supported by the chain of command for an on-duty incident like this.

The death of the three SAS Reservists was dealt with in an inquest last year, so it is in the public domain. A number of people gave evidence. I acted for the officer commanding and the chief instructor on the course both at the civvy police interviews and subsequently with all the service police matters and the health and safety inquiry. The individuals have always said—and this came out in the inquest—that they acted in accordance with their orders as they knew them. The chain of command, including their commanding officers and higher ranks, also said "I didn't know about JSP-539." It is not in the training

directive for them to follow it so they said, “That’s what I did,” and, of course, that was found to have been a shortcoming.

Now, 1A and 1B—one of whom was the OC—have been reported for prosecution by the service police for negligently performing their duty to the Service Prosecuting Authority, and we are waiting to see what goes on. Well, if the chain of command has never briefed them and they do not know about it, the chain of command will prosecute them under this and say, “Well, you weren’t acting in accordance with the regulation.” His defence will be, “I didn’t know. I did it as best, and I did what I was ordered to do,” and they should be supported.

I did some numbers checks. Over the past four years, I have done 110 court martials. I have had six court martials over that time where the individuals have been specifically on duty and charged for failing to do it. There was one in 2012, one in 2014 and four last year. There are 13 pending at the moment. It is exponentially rising. I have never had an individual convicted at any court martial, going back 20 years, for an offence of this nature where it is on duty. No court martial jury has ever convicted because, invariably, the individual has said, “I did as I was ordered and I followed my instructions.” I think we did one 15 years ago where Hilary was acting for the widow. Even the widow, as Hilary will confirm, said, “My two men should never have been court martialled.” It was quite clear that they did not know that the equipment that the MoD had issued was defective. The MoD knew and it was hidden from us. We found out eventually that the equipment was defective. They were trying to replace it.

Now, 1A and 1B are currently pending. Similarly, there are two officers and seven senior ranks pending for a range incident in Castlemartin. They have all been reported for prosecution. I have no expectation that the chain of command will support them, even though it is quite clear that the individuals at the lower end could have no knowledge of what was taking place because they are not qualified to have planned the range; they are just the safety supervisors. Sergeant-Major Lovell, who I gave you the note about, did exactly that. He was running a range in Afghanistan and an individual fired in breach of the orders, but the range officer and the senior range planning officer were both court martialled even though it was quite clear that they had given an order that this was not to happen. They were acquitted, but they were not supported and he had to pay £7,000 to help fund his own defence. I find that immoral.

There should be changes to the armed forces legal aid system, particularly for on-duty incidents. There is a system in place by which soldiers elect for trial and pay the contributions after the event if they are found guilty; if they are acquitted, they do not pay. The service system used to be that a soldier applied for service legal aid; he was granted legal aid and only if he was convicted did he have to pay contributions after the event, in accordance with the civilian system. That ceased two or three years ago and I think that the MoD did that purely on financial grounds.

What used to happen was: the soldier was granted legal aid, and if he was acquitted there was nothing to pay; if he was found guilty, he had to pay after the event. What happens now is that the soldier is required to pay money up front and he has to pay contributions. Sergeant-Major Lovell had paid £7,000 in legal aid contributions to the Army before the start of the trial. So the MoD stops it from his pay and holds his money. If he is acquitted,

they give him his money back afterwards with 2% interest, but if he is found guilty, he pays the cost of the legal aid.

Now, the legal aid is done on his earnings, not on what the cost of the trial will be. For example, there is a standard fixed fee for a trial in Germany—I get paid £1,000 for certain work—but I have had private soldiers being told, “Your contribution for legal aid will be £3,000, so you have to pay first before we will grant it,” even though at the end of the trial my bill can be no more than £1,000, because it is a fixed fee. It is iniquitous. The MoD has the money up front, and it is held back from the soldier’s pay. To me, it is a shortcoming of the system. It is absolutely wrong, in my view, and it should change, particularly for on-duty incidents. Where a person is on duty, this DIN should support him.

Chair: Okay. We are going to have to move on a little bit.

Q33 Mrs Moon: I want to ask about the support to veterans. We are really shocked to know that the Ministry of Defence ever does anything in its own interest—we are really, really, shocked that it defends itself rather than the serving personnel. We are surprised to hear that. But what about veterans? What about the support that they get? Should there be greater responsibility for support to veterans?

Lewis Cherry: The problem is—Reverend Mercer will probably know this as well as I—that they are no longer in anybody’s chain of command, so somebody has to assume responsibility for them. Their regiment may well be overseas or on deployment when something happens. The problem is: who is going to tell them, and who is going to support them? There are regimental systems in place for when you have casualties when you are overseas—the rear operations group or the regimental headquarters may do it—but I am not aware that there is a system in place. There is a legal aid system in place that will support them, but somebody has to know to tell them and, as we have said already, it doesn’t even work for people who are serving, so it is even less so for veterans.

Hilary Meredith: I understand that the Ministry of Defence thinks that the veterans agency that deals with pensions and the armed forces compensation scheme is the route for veterans to go and seek advice. I have been on their website, and it took me quite a while to find out, somewhere hidden on the website, what happens if you are facing legal proceedings. It basically just says, “You will be arrested, you will be taken to a police station, this will happen and that will happen.” It just says what will happen to you; it doesn’t actually say, “If you need legal advice, come to us,” or, “We will provide a solicitor for you.” There is no advice like that on the veterans website. How the veterans agency that deals with pensions is going to assist is beyond me.

Q34 Mrs Moon: Reverend Mercer?

Rev. Nicholas Mercer: I have nothing to add.

Chair: James?

Mr Gray: I don’t think I’ve got anything to add.

Chair: Do you want to ask question 8?

Mr Gray: I’m very sorry. Perhaps you will take it.

Q35 Chair: Of course. What role do you think law firms suing the Ministry of Defence on behalf of alleged victims of war crimes have had in building demand for investigations by organisations such as IHAT? We are specifically looking at things such as settling claims by paying out sums to claimants while not accepting legal responsibility.

Hilary Meredith: I think I understand that question.

Rev. Nicholas Mercer: I'm not sure I do.

Q36 Chair: I will break it down. What role do you think law firms suing the MoD on behalf of alleged victims of war crimes have had in building demand for investigations by organisations such as IHAT? What role have the law firms played in that?

Hilary Meredith: I understand that there is a large amount of IHAT investigations at the moment because of Iraqi civilian claims. For example, the law firm that brought the al-Sweady case supposedly shredded a document one year before the case was abandoned, which would have proved that they were Iraqi insurgents, not Iraqi civilians, so that case collapsed. The amount of taxpayers' money that was spent investigating that case over five years—I understand that it was on legal aid money, so those lawyers are paid, win or lose—is quite horrific. A lot of IHAT time was taken up investigating those cases.

Rev. Nicholas Mercer: I would turn it around. I would say look at Baha Mousa. That was an absolutely genuine claim and it was a public inquiry, and it cost a huge amount of money.

I want to step in on the al-Sweady thing before we all get carried away with lawyer-baiting, because I do not think it is fair. I know a bit about the case, and when I read certain details I thought, "This is just nonsense," because if you have served in a brigade headquarters, what they alleged could never have happened. But if you work it through and say, "Okay, bodies were taken from the battlefield, thrown into the back of 4-tonne lorries or chucked into the back of Land Rovers," we all know what soldiers are likely to do—you know, the boot goes in a bit: treading on people and that sort of thing. The middle bit was obviously bogus, but you get the deceased person back and there is a post-mortem by an Iraqi doctor that says that the body has been shot—well, they certainly had on the battlefield—and mutilated and all the rest of it, and if you are a defence lawyer and someone comes to you and says, "Look, I've got this post-mortem certificate and these are the allegations," what are you meant to do as a lawyer?

Let's also put it on the record that this inquiry may not have gone ahead at all had the MoD not buried an ICRC complaint—another ICRC complaint; there's one on Baha Mousa that came to light, I remember, and there was one for al-Sweady—

Q37 Chair: Can you just explain what that is, please?

Rev. Nicholas Mercer: The ICRC is obviously independent and confidential and the most highly respected authority in the world in terms of what goes on on the battlefield, and its mandate is to ensure that the Geneva conventions are applied. As I understand it, they had made a formal complaint about prisoner abuse at the time, and at the preliminary proceedings before al-Sweady, this ICRC report was not disclosed by the Government. Well, I'm sorry; if you are trying to defend proceedings and you do not disclose a document, it doesn't look very good to the judge. I spoke to lawyers about it and they said

that the lawyer acting for the Government said, “We’re stuffed after this.” Just before we all bay for blood, I think you have to turn it the other way around. I know some of these lawyers, because they have spoken to me after Baha Mousa—I was a key witness—when I had left the Army, and I do not find them to be ambulance chasers; I find them to be people wanting to hold the Government to account for what they supposedly have done.

Hilary Meredith: I think the key there is holding the Government to account. A lot of this goes back to corporate responsibility and your previous inquiry, “Beyond endurance?” The MoD is not taking corporate responsibility; it is just leaving the individual soldiers hung out to dry, as they have told me, without support.

Q38 Chair: But if there is a clear case, as with what Mr Cherry was saying about a video instructing on prisoner handling that contains two breaches of the Geneva convention, why are the MoD—we will get them in, but in your view—allowing these solicitors to go after individuals rather than fronting up and taking the hit, so to speak, for structural deficiencies and training deficiencies?

Hilary Meredith: I don’t know—

Lewis Cherry: I don’t do civil litigation now, but I used to, obviously, in the past. I suspect part of the problem may well have been that the Ministry of Defence, through the Government lawyers, have tried to settle small cases by paying a sum of money without prejudice and hoping—

Chair: To make it go away.

Lewis Cherry: —to make it go away, because it is cheaper than trying to defend an expensive case. But of course £1,000 here is not quite the same as £1,000 if you are perhaps a marsh Arab. If you make a complaint that you were beaten, kicked or whatever at some checkpoint on one day and they are going to give you £1,000, it is Christmas—or whatever.

Q39 Chair: Yes. That goes on to the next question. Do you agree with the Department’s approach of settling claims by paying out sums to claimants while not accepting responsibility?

Lewis Cherry: My understanding is that those claims were being brought and the lawyers bringing the claims were being paid by the Government as well, so it encouraged a process that went on.

Rev. Nicholas Mercer: Saying “without responsibility” is a sort of legal nicety—an easy way of settling it—but if the MoD isn’t likely to pay out, it won’t. It generally settles where it is in a corner and knows it has no defence. There are plenty of rendition cases, for instance, where we know what has happened and the Government have paid out; it is highly likely that these events occurred. A cost of £20 million for 323 cases is an awful lot of money, and it must be with substance and some merit, otherwise someone is incredibly negligent in all of this.

Q40 Chair: Sorry, who is being incredibly negligent?

Rev. Nicholas Mercer: If you are paying out money just willy-nilly, that is an awful lot of money for an awful lot of—

Q41 Chair: And at no stage of that eye-watering sum of money going out has anybody made an effort to say, “What is going on here? Do we need to have an audit about how we are looking after prisoners and training our men going on operations?” That has not happened.

Hilary Meredith: Not as far as I know, but again I think it goes back to taking corporate responsibility for training and communication within the Armed Forces.

Lewis Cherry: Nicholas gave advice prior to the war about how prisoner handling should be conducted and there were lectures and training for the troops before they invaded in the full knowledge—the corporate battle plan was that we could catch 13,000 prisoners on day one and you have to make plans for them and camps to accommodate them. Because the Kuwaitis would not allow us to build prisoner of war camps in their country that meant that we were not going to have a prisoner of war camp ready to receive them on day one, which meant that we could not then comply with our Geneva convention duties for the prisoners. I suspect that every one of those prisoners is entitled to a claim, because there was a breach of the Geneva convention—he was kept in the open until a camp was constructed some days later.

Rev. Nicholas Mercer: I would not go as far as that because in the international legal framework quite a lot of latitude is given to an occupying power because of the sheer physical difficulty of doing it. I have not got a problem with that; actually I disagree with Lewis on that one. But I do think that wherever the interrogation procedures got signed off—they certainly were not signed off by the Army, because we were clear that we did not give that advice because it was wrong—that has drawn the Army into litigation of its own making. That is the reason for the compensation. That is the reason for some of the corporate kick-back on it, and I think soldiers are caught up in the middle of all this.

Q42 Chair: Lastly, what role has the Human Rights Act had in bringing these cases forward, if any?

Hilary Meredith: Nearly all of the cases are brought under the Human Rights Act.

Lewis Cherry: We know that because the litigation was obviously—again, Nicholas gave advice prior to the invasion that he thought it would apply and of course that was rejected—

Q43 Chair: That was rejected.

Lewis Cherry: That was rejected. However—

Q44 Chair: Who by?

Rev. Nicholas Mercer: The Ministry of Defence. It is documented—

Lewis Cherry: It is in the Baha Mousa public inquiry documents. However, there has been a High Court case that said, much the same way as the Armed Forces Act applied, “Wherever in the world the British troops are, the law of England and Wales applies.” In the camp, where we controlled the camp, we could enforce our law. We could not enforce

it on the streets, but we could in camp. But all these abuses took place in camp. Our servicemen and women are subject to the European convention on human rights wherever we serve, and that is where it took place. That happened in Iraq and it went on in Afghanistan, too.

Rev. Nicholas Mercer: I would obviously champion that, because actually there is a safety net so that, wherever we serve in the world, there is this common standard. If you try to manoeuvre out of the Geneva convention, which is increasingly happening in asymmetric warfare, you have this common standard that will apply wherever we serve in the world, and thank goodness. If you are talking about corporate responsibility, the great thing about the Human Rights Act is that Ministers are winkled out of their offices to give account of themselves at public inquiries for what they did, and no other system will give you that sort of latitude. If you are talking about corporate responsibility, the Human Rights Act is your thing.

Q45 Mrs Moon: Can I go back to who signed off the interrogation technique—the training video? Somebody did it, and I assume it was someone in the Ministry of Defence.

Lewis Cherry: Probably within the Defence Intelligence and Security Centre at Chicksands at the time, but that was the system. Staff had been trained like that for quite some time, and obviously that was the centre's training video. It only became public to us when the investigation into the public inquiry went on. That was the scheme and obviously somebody in the MoD—quite how far down the chain, I cannot say—knew, but obviously it was there and that was what was going on.

I do not know how many years people had been trained like that, because obviously it must have gone on for year after year after year. I can say that afterwards the system changed because one of my clients from Baha Mousa subsequently went on the tactical questioning course and he was very familiar with all that had gone on after the trial and after the public inquiry. He then saw what they were now doing and he said it was greatly reformed.

Q46 Mrs Moon: You were within the prosecution service. Have you any idea whether there is legal oversight of training material for interrogation techniques? Is advice given from military lawyers as to whether it is appropriate?

Rev. Nicholas Mercer: Again, that was examined in the Baha Mousa court martial. There was advice given in 1999, which talked about Geneva conventions and the European convention on human rights applying. That clearly was not accepted, but there was no embedded lawyer at Chicksands to do these things. The question as to who signed off on interrogation techniques is still a mystery. You are quite right. Obviously, someone did somewhere, but it certainly was not the Army military lawyers.

Lewis Cherry: There is now an embedded lawyer at Chicksands.

Rev. Nicholas Mercer: That is not quite as straightforward as it seems. I spoke to the embedded lawyer and there is a bit of a cat and mouse game going on with what the lawyer can and cannot attend, and so on and so forth, so I am not sure that that actually solves the problem. That is from a colleague of mine who served there.

Q47 Mrs Moon: But it still brings it down to a corporate decision and a corporate responsibility.

Rev. Nicholas Mercer: I would imagine so. Interestingly, when the interrogators were questioned by me and other senior members of the divisional staff as to what on earth do you think you are doing here in this interrogation facility, the interrogators made it very clear that they did not answer to us—in other words, the division; they answered to London. We found it to be a sort of bolt-on unit outwith our chain of command, even with a J2X operative within the divisional headquarters. That was unexpected. When they say, “We answer to London”, the question is what does that mean, and I still don’t know.

Q48 Mrs Moon: Who in London?

Rev. Nicholas Mercer: I don’t know.

Lewis Cherry: We found out in the inquiry that they answer to a colonel who I think was in Bahrain or Kuwait. You had a discussion with him at one point.

Q49 Mrs Moon: Sorry, I did not hear what you said.

Lewis Cherry: There was a senior officer, a full colonel, whom they answered to. He was in theatre, he answered to London, and he was totally removed from the divisional chain of command. He was a specialist intelligence officer dealing with this type of work.

Q50 Mrs Moon: Reverend Lewis, you talked about the gentleman you sat next to at lunch. He was an 80-year old and he was still involved in issues in relation to Bloody Sunday. Is this an ongoing problem of, years later, people being prosecuted and having to go back over events that at the time were perhaps compliant with regulations with which they were issued and guidance on behaviour with which they were issued, but, time having moved on, are now seen as unacceptable? Is that the case? Should there be a statute of limitations on civil claims against military action?

Rev. Nicholas Mercer: A statute of limitations in cases of war crimes, clearly not. War crimes are war crimes. You must be accountable for the rest of your days for those offences, just as people are brought to trial for serious incidents from the second world war. To this day they are brought before trial. I would not advocate that. I think we are in a new legal paradigm and the Army has been caught out badly. I used to say that you could provide all-round defence for a unit location, but you have got to provide all-round defence legally as well. You can do that very easily. I reckon you could get rid of 70% or 80% of these claims by bearing down on your procedures, particularly for prisoner handling, because that is where most of the claims come from. Get that right and the vast majority will go away. All you are left with then is shooting-type incidents, which I think are wholly different and distinct, and then you look at that particular category alone. I think this is an own goal. We have waded right into it and you could design it out very readily with the right procedures.

Q51 Mr Spellar: If we have a new legal paradigm, how did that arise?

Rev. Nicholas Mercer: I served from 1991 to 2011. When I joined the Army we were in cold war mode, so we would sit there for Army exercises expecting a huge nuclear exchange across the plains of Europe and the lawyers did a bit of discipline while they

were doing that. Northern Ireland came along, and a lot of things went on there that weren't accounted for. Lee Clegg came along and, of course, he was prosecuted for the murder of Karen Reilly. And the lawyers got it—in other words, now soldiers can be held to account for what happens on duty like never before.

As I said, with IRA prisoners, if you captured someone, you were very conscious of bringing them to conviction. You only had to sneeze in the wrong place and there was an allegation that someone was abused, or whatever. It was audited all through the process, so we got very good at dealing with litigation in a conflict situation. What I think people didn't realise was that that was inevitably going to follow the next time we had an international armed conflict, which, of course, we did. There was a bit in Kosovo and a bit in Bosnia, but nothing really of such magnitude and scale. For the first time, we have entered a new legal world. It is the litigious world.

I said to the commandant at the prisoner of war camp, "Can you account for all the prisoners?" He said, "About 90%." I said, "If you miss one prisoner, you will have lawyers crawling all over this camp."

Q52 Mr Spellar: Maybe, but that is what lawyers may want to do. It doesn't mean that Parliament should allow them to do it, so how has this happened?

Rev. Nicholas Mercer: I am sorry, I do not agree with you. We are a professional Army and we apply the highest standards wherever we serve in the world. It is as simple as that and anything else just won't do. So I am sorry, I part company with you on that.

Q53 Mr Spellar: I was asking how it had arisen. You are saying that it has really arisen through actions by lawyers, and not through any willing action by a democratically elected Parliament.

Hilary Meredith: I think it is the Human Rights Act that has assisted the countries that we have been to—Iraq and Afghanistan—so the civilians in Iraq are now using the Human Rights Act to bring claims against soldiers. I think it is the use of the Human Rights Act that has increased the amount of claims.

Rev. Nicholas Mercer: You cannot actually bring an individual claim under the Human Rights Act. It is a claim against the Government, so that is a myth.

Hilary Meredith: But they are bringing them though, aren't they?

Rev. Nicholas Mercer: You may cite the Human Rights Act, but it is a claim against the state. It holds the state to account, which is why it is so essential that we keep it, so that the state is held to account for these things. We cannot simply magic it away through legislation. It is here to stay and we just have to adapt the correct procedures for our combat operations.

Q54 Mr Spellar: I know we are near the end of our time but actually, we can, as a sovereign Parliament, make whatever decision we want. That is perfectly proper. I slightly worry, you see, when people from the legal profession tell us what we can and cannot do as a democratically elected Parliament. There is not some higher priesthood. It is absolutely right that we should have the argument about what is right and wrong, but that is quite different

from what is constitutionally legitimate. I do worry when lawyers try and tell us, “You just cannot do any of this.” Yes we can as a democratic society.

Hilary Meredith: Could I also add that it is about the supply of legal aid to fund the cases as well? Iraqi civilians are privy to the British legal aid fund to bring those cases. The fact that they are being funded through British taxpayers’ money is also—

Q55 Mr Spellar: From your knowledge, does any other country in the world provide legal aid to people in those circumstances?

Hilary Meredith: I don’t think so.

Mr Spellar: We all operate under the same Geneva convention.

Hilary Meredith: I am not so sure that other countries have the same legal aid that we do.

Q56 Mrs Moon: Can I just get this clear? Iraqi civilians can get British legal aid to make their claims, but serving veterans—British soldiers—cannot get legal aid. That is what you are telling us.

Hilary Meredith: Probably because they are in receipt of pay, they are financially ineligible for legal aid.

Q57 Chair: They then have to pay for their own defence, as in the case of the individual you mentioned.

Hilary Meredith: That is where we think the Ministry of Defence should step in.

Q58 Mrs Moon: Even when they have received inappropriate training and guidance in their training, they are responsible for defending themselves when the MOD has broken the law in telling them how to act.

Hilary Meredith: Yes.

Lewis Cherry: I have 13 individuals who, I believe, have acted in accordance with their duties as ordered and trained, who are currently pending charges. All have been reported for prosecution and are pending charges. I have discounted all those ones who are on duty who I think have actually broken the law or got it wrong. There are 13 currently pending charges who I believe have acted in accordance with their orders and training. Every one of them is going to have to pay for his own legal—

Q59 Mrs Moon: Parliament has not authorised any of that training. In fact, if they are in breach of the law, it would not have parliamentary approval.

Lewis Cherry: Parliament has enacted the Armed Forces Act, which carries certain sections of service disciplinary law that allow the service prosecutions to be brought against them. The issue tends to be that the service police investigate. If they do not investigate thoroughly and properly, the Service Prosecuting Authority do not realise what the man has actually done or not done and therefore they charge and prosecute. It then becomes clear only subsequently—when the individual comes to trial and gives evidence—that it appears the chain of command did order him or train him to do it that way. That is why I said I have never had one successfully prosecuted.

Hilary Meredith: It is highlighted in the two cases that Lewis has referred to and the death by drowning that I was involved in, where there was, quite obviously, a two-year report showing how inherently dangerous the British military diving suit was. It was sat on for two years; it caused two more deaths. Yet they still went on to court martial the two men who ran the diving exercise. It was the same in Brecon. I was involved in that case. I am shocked to hear that, even after the “Beyond endurance?” inquiry that Parliament did and the corporate responsibility suggested there, the MOD are still court-martialing two of the captains involved in that exercise for not taking responsibility.

Chair: Okay. I am sorry to cut you short but we have to call it a day there. Thank you so much for coming in. It is really, really fascinating. I would reiterate that the Committee has a very firm view that those who break the law and do not hold those standards that a lot of us worked very hard to attain should be prosecuted, but it would appear that the entire thing is a complete mess, and the people who are suffering from this are, I am afraid, the people who always suffer: the men and women of the Armed Forces.

Mrs Moon: And civilians.

Chair: Yes, that’s correct. Thank you very much for coming in and giving us that evidence.