

Defence Sub-Committee

Oral evidence: [MoD Support for former and serving personnel subject to judicial processes](#), HC 109

Wednesday 14 December 2016

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[Watch the meeting](#)

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

Questions 516-618

Witnesses

I: Rt Hon. Sir Michael Fallon MP, Secretary of State for Defence, Air Marshal Sir Stuart Peach GBE KCB ADC DL, Chief of Defence Staff, and Peter Ryan, Director, Directorate of Judicial Engagement Policy.

Written evidence from witnesses:

- [Ministry of Defence \(PSJ0005\)](#)
- [Ministry of Defence \(PSJ0009\)](#)
- [Ministry of Defence \(PSJ0013\)](#)

Examination of witnesses

Witnesses: Sir Michael Fallon MP, Air Marshal Sir Stuart Peach and Peter Ryan.

Q516 **Chair:** This is the last evidence session in this inquiry. We have received a large body of evidence, which has highlighted fundamental flaws in the way that IHAT has operated, many of which have had a serious and detrimental impact on our armed forces. As a diligent Secretary of State, I know that you will have read that evidence. Indeed, you have described some aspects of it as a witch hunt. We have limited time this morning, so we do not need to rehearse the evidence before the Committee. Therefore, we will endeavour to ask short questions, and I will be very grateful if we can have concise answers.

Secretary of State, thank you very much for coming in today. The MoD has paid out more than £22 million to Iraqis following the war in that country. I understand that that has been done without accepting any liability. Could you explain why that has happened and what message it sends about standing by our soldiers in this country today?

Sir Michael Fallon: Good morning, Mr Mercer. I apologise for my voice, which is almost disappearing. May I say two things by way of introduction very briefly? The vast majority of our servicemen and women carry out their jobs with great professionalism. Nearly 150,000 British troops served in Iraq between 2003 and 2011. However, Parliament itself, through the Armed Forces Act 2006, has required that where there are allegations of criminal behaviour, they be properly investigated. That is the origin, as I am sure you understand, of the IHAT system.

Secondly—I will not go on at length—I share the Committee's frustration about the whole IHAT process, but it is important to note that progress is now being made. There were 3,392 claims received; 1,667 have been dismissed and there are only 1,000 left. That will fall to 250 by January and, I suspect, to 60 by mid-2017. If your Committee has any further proposals for how we can improve or streamline the process, we would be very willing to hear them.

Chair: Excellent, thank you.

Sir Michael Fallon: I just say that by way of introduction. Peter Ryan will explain some of the technical details of the payments in more detail, but the vast majority of them arise from the rulings from the European Court of Human Rights. Their human rights provisions extend to detention—to the number of civilians who were detained in Iraq. It is because of the extension of that law by the European Court that we have had to make payments to a whole series of Iraqi civilians during different phases of Operation Telic. There were some other payments made, in terms of fatalities or personal injury cases, but once we had had the judgment that—article 5?

Peter Ryan: Yes.

Sir Michael Fallon: Article 5 applied to the operation of our troops in detaining civilians who might have been firing on them, or threatened them, or from whom further information was required. Once the Court had ruled that, it became impossible to defend these cases and payments had to be made.

Q517 **Chair:** Absolutely; I understand that. I think the problem comes where we have paid out for cases where an incident has happened where there was not detention, and we have essentially paid out, sometimes without even speaking to the soldiers involved in that incident. The impression that gives is that we have moved from innocent until proven guilty to guilty until proven innocent, because we are just paying out. Does that not therefore encourage this sort of machine of claims that has come forward?

Sir Michael Fallon: I do not think it is possible to say that if we paid out fewer civil claims, there might have been more or fewer criminal allegations, because the legal basis for each claim is obviously independent. Peter might be able to say a little bit more, if you would allow him, on the detail of the payments.

Peter Ryan: Twenty-two million pounds has been paid out, roughly, of which £2 million would have been paid by area claims officers for things like property damage, road traffic accidents, and reasons of those kinds. Quite a lot of money was paid out in the case of Baha Mousa, to the deceased's family and other people who were victims of what was pretty horrible behaviour. The bulk of the rest, as the Secretary of State has said, came about because we had the wake of the Al-Jedda judgment—

Q518 **Chair:** I understand that, but specifically why have we paid out for cases without speaking to the soldiers involved in that incident?

Peter Ryan: Because—

Chair: And I am not talking about detentions.

Sir Michael Fallon: We are.

Q519 **Chair:** But I am talking about specific instances other than detentions where we have paid out money to Iraqis in compensation without speaking to soldiers involved in that process.

Peter Ryan: On legal advice the view was taken that to take certain cases to court would be extraordinarily expensive and would probably result in a worse outcome for the Ministry of Defence and would incur all sorts of problems for soldiers and others.

Q520 **Chair:** I understand that. Forgive me, because time is short, but how does that make our soldiers feel, if we are paying out money for incidents that they have been involved in without even speaking to them? You must understand what I am getting at.

Peter Ryan: I understand the question. The answer is that we have to make a whole range of judgments. We pay out something in the region of £100 million in compensation claims for all sorts of things across Defence in a year.

Chair: Yes, I understand that.

Peter Ryan: And we do that on the basis of a legal appraisal of where we stand against the law and our liability. In some cases it is important to call on soldiers, particularly where we are resisting the claims. Of course that would be the case. Where it is conceded that there was illegality—I say illegality rather than criminality, because the law said detention was illegal—

Chair: I do not dispute the detention ones. I am very clear with you I am not talking about that.

Sir Michael Fallon: That is the vast majority of cases.

Q521 **Chair:** I accept that, Secretary of State. Looking at the evidence, it appears that Abu Jamal was at one stage working for Public Interest Lawyers, Leigh Day and yourselves. Is that your understanding?

Sir Michael Fallon: When we found that out we put a stop to it. It was quite wrong for him to be paid by both sides, as it were. As soon as we were made aware of that we stopped it.

Q522 **Chair:** But that went on for six years, didn't it?

Sir Michael Fallon: As soon as we were aware of it we stopped it.

Q523 **Mr Gray:** That is not the point. We know that as soon as you were aware of it you stopped it. The point is that it went on for six years. Surely there is some culpability for paying this guy for six years—acknowledging that once you found out about it you stopped it.

Peter Ryan: Look, decisions were made by the IHAT against an extraordinary background. This is the most scrutinised investigation in the history of the world—by the Court, by Ministers, by the ICC, by the senior ranks in the armed forces. At the time that decisions were made we were faced with having to advise the then Secretary of State that unless we got on with investigations, the Court would impose a public inquiry, which would have been ruinously expensive. Decisions were made by the IHAT to try to kick-start these investigations. As the Secretary of State said, when it became apparent that Abu Jamal had been in this position, the then Minister of State for the Armed Forces said, "That's it. We're not having this anymore," and it stopped. It is as simple as that.

Sir Michael Fallon: But I don't think it was six years; I think it was three years.

Q524 **Chair:** Three years—forgive me. Secretary of State, you have made a lot of statements about Public Interest Lawyers and I agree with you on them. We do not need to rehearse them all now, but in this process from your Department they have been paid nearly £210,000. Can you justify how you can come to the House of Commons, saying that these are the worst sort of behaviours that we have seen—that has been carried on by the Minister for the Armed Forces—but then go back to main building this year and pay Public Interest Lawyers more money?

Sir Michael Fallon: There were payments authorised before this year to Public Interest Lawyers that were then paid this year, so you need to be careful about the dates. Let us be very clear: Public Interest Lawyers would not have been dismantled in the way they have if we had not compiled a dossier of some of these abuses and sent it to the Solicitors Regulation Authority. We did that—that was us at the Ministry of Defence. We started this process of dealing with the abuses and we have now successfully dealt with Public Interest Lawyers.

Q525 **Chair:** There is no doubt that since you came into post, this process has begun to close down—that is absolutely right—but I am very careful with the dates. On 27 January Min(AF) stated that they are “the enemy of justice and humanity”—Public Interest Lawyers—yet on that same day, your Department paid them £6,817.50. I understand that you make these agreements before, but do you not see the impression it gives to people if you are saying one thing here and then going down the road and paying them money?

Sir Michael Fallon: These were contractual payments that were organised from the contract from the previous year. But we were not just making speeches about Public Interest Lawyers; we were doing something about it. We compiled the dossier, took it to the Solicitors Regulation Authority and now, far too slowly, you have the result: we no longer have Public Interest Lawyers. That is a success.

Q526 **Chair:** I accept that. On 18 April, the Minister said that no more public money is to be used to pay for agents. On 1 July, £27,000 was paid to them—two months later. I understand that we have contracts we need to fulfil, but would it not be more honest to say, “We have to end these contracts, but we will give them a whole load more public money and then we’ll end them,” rather than saying, “We will give no more money to Public Interest Lawyers.”?

Sir Michael Fallon: If there was a contractual obligation to pay Public Interest Lawyers for work that had been done in the previous year, we would still be bound by that.

Q527 **Chair:** But if you know they are breaking the law—

Sir Michael Fallon: Well, we did not know they were breaking the law. We believed that they were abusing the procedures that they are bound to follow.

Q528 **Chair:** Why did you not withhold that payment? If you thought that they were breaking the law and abusing those procedures, and you saw this coming, why did you not withhold that payment?

Sir Michael Fallon: We need to be careful about phrases like “breaking the law”. We saw the abuse of the system, and we became aware of that, of course, when we had the Al-Sweady report in December ’14. We then began to see the scale of the misrepresentation and the abuse involved, but obviously there were payments that were previously contracted and we were still obliged to pay those.

Peter Ryan: May I add to that? This is in the context of the court-authorised arrangement, whereby the IHAT, to get the investigations under way, had effectively to accept a PIL presence. When the new head of the IHAT came in, he fought very hard to eliminate that but had to concede in a court-brokered deal that there would still be one PIL—

Q529 **Chair:** You are right: it was a court-brokered deal at that point. When it first started, it was not a court-brokered deal; it was a decision made by Director IHAT that we could not do this process without them. So we essentially contributed to setting up this machine to bring in all these claims.

Peter Ryan: PIL were already very active. As I say, at the time the investigations were going nowhere. We were under immense pressure from the court. The Al-Sweady inquiry had done this and a judgment was made. It was a devil and the deep blue sea judgment.

Q530 **Chair:** What is difficult to understand, Peter—forgive me—is why we would contribute and pay into a system that is prosecuting our own soldiers, to Public Interest Lawyers. We have a duty as a Government to absolutely fulfil our obligations, as has been mentioned, but do we have to pay people like Phil Shiner to operate with them?

Peter Ryan: In very unusual circumstances people made operational decisions for very good reasons at the time, to get these investigations completed. The Court is very clear—the Secretary of State is very clear—Parliament requires investigations where there are credible allegations of serious criminality.

Chair: No one disputes that for a minute.

Peter Ryan: Well, the advice legally was that this would not happen unless PIL allowed it to happen.

Q531 **Chair:** Do you see that from where we are standing now—I accept that hindsight is 20:20 vision—a lot of the advice and decisions you are talking about have been shown to be completely wrong?

Sir Michael Fallon: Just a minute: it was the Court that told us that PIL had to be represented at each interview. That was laid down by the Court, not by us.

Q532 **Chair:** In 2013. I am talking about 2011; and it was first laid down by IHAT. That was not a Court decision in 2011. That was a decision by the Commander IHAT that you could not complete this process without that. All I am putting to you is that these decisions have helped to bring this about—this machine that has just got completely out of control.

Sir Michael Fallon: Well, it is not out of control. We are bringing it back under control, but I think we have to be clear—

Q533 **Chair:** It must be out of control if you need to bring it back into control, Secretary of State.

Sir Michael Fallon: Nobody foresaw the huge, industrial scale of the number of claims that were going to be launched, but let us be very clear:

if we were unable to demonstrate that these things were being properly investigated, we could have ended up—the Court opening the way to the International Criminal Court. That would have got us into a far more difficult situation.

Q534 **Mrs Moon:** Secretary of State, we have heard a number of complaints about the conduct of IHAT staff—IHAT staff posing as police officers; arriving with no warning; confused individuals who were not sure if they were being treated as suspects or witnesses. When did you first become aware of these claims, what have you done about it, and how can we be assured that this won't continue happening?

Sir Michael Fallon: First of all, given that there were 3,300 cases, there have been remarkably few complaints. I am only aware of two complaints to the Ministry of Defence, and I am only aware of seven complaints that have been lodged with IHAT itself about the conduct of their investigations. That is a very small number of complaints. I believe there was an allegation that an investigator involved in this was posing as a police officer. That case was investigated and I believe he was convicted, so that was dealt with.

Q535 **Chair:** It says in here all the complaints came in in 2016. I have got one here in 2015. I have got a phone call here in 2014 where Commander IHAT spoke to an individual who had made a complaint in this process. You have not seen any of that evidence?

Sir Michael Fallon: We have seen the evidence. I have said we are aware of seven complaints.

Q536 **Chair:** All in 2016. What I am saying to you is that they have been happening before that, but you are not aware of those.

Sir Michael Fallon: I am aware of seven complaints in total about IHAT's processes—and two to my Ministry.

Q537 **Mrs Moon:** It seems clear to this Committee that there has been covert surveillance of soldiers and veterans as part of this process. What is your reaction to that—to the surveillance?

Sir Michael Fallon: I would need to see details of that.

Q538 **Mrs Moon:** If it were happening, what would your reaction be? Is it acceptable that serving personnel and veterans are subject to covert surveillance?

Sir Michael Fallon: I am not aware of that. Are we aware of that?

Chair: It came out in a review this year by the judge who conducted a review—Sir David Calvert-Smith. It was in that, that we are using powers to place men and women under surveillance for this investigation. The question is: what do you think about that?

Mrs Moon: Is that acceptable behaviour?

Sir Michael Fallon: I don't know the answer to that. We do not normally confirm or deny where there is surveillance involved in cases like this.

Q539 **Mrs Moon:** I am not asking you to confirm or deny. A judge has said it is happening. Do you find it acceptable that the Ministry of Defence has condoned covert surveillance of serving personnel and veterans?

Sir Michael Fallon: I would have to get back to you on that.

Mrs Moon: Mr Ryan, do you want to say something?

Peter Ryan: Yes—just that the powers available to the police are not just about covert surveillance. The police—

Q540 **Mrs Moon:** These are not powers available to the police. These are IHAT investigators. They are not police officers.

Peter Ryan: All IHAT activity is supervised by service police and authorised by service police. The activities of police organisations in this country are well understood and well regulated.

Q541 **Mrs Moon:** So you do think it is acceptable that serving personnel and veterans are subject to covert surveillance.

Peter Ryan: Covert surveillance and other tactics are used in various circumstances, quite legitimately, by police and other agencies as part of the rule of law in this country.

Sir Michael Fallon: Provided it is properly authorised and properly supervised, as part of an investigation.

Q542 **Mrs Moon:** So we will take that as a yes—you do think it is acceptable for serving personnel and veterans to be subject to covert surveillance.

Sir Michael Fallon: If it is properly authorised and properly supervised, yes.

Q543 **Mrs Moon:** As part of an IHAT investigation that has been shown to have involved false allegations against large numbers of serving personnel and veterans, you still think covert surveillance is acceptable, despite knowing the number of cases—1,667—that have been dismissed.

Sir Michael Fallon: We cannot be sure how many of the remaining cases will turn out to be deserving of their investigation. The fact that 1,000 or so have already been dismissed does not mean that there may not be some serious cases. You will recall there were some very serious cases much earlier on in Iraq that certainly needed to be investigated. There may well be, in the remaining 250 or finally by next summer the remaining 60 cases, some very serious cases that certainly will need investigation.

Q544 **Mrs Moon:** So it is okay to investigate covertly, using surveillance, those who may well be innocent because there may within that group be one or two who are guilty. Sir Stuart, how do you feel about that? These are your men and women.

Air Marshal Sir Stuart Peach: I do not know if there is any evidence we have seen that any investigations are being conducted outside the law.

Q545 **Chair:** Forgive me, Sir Stuart, but impersonating a police officer is outside the law, and that has been committed.

Air Marshal Sir Stuart Peach: Yes, but as the Secretary of State made clear, Mr Mercer, that case is being investigated.

Q546 **Chair:** So there is clearly some sort of illegal activity going on. That has come to court and been investigated, but that is not the only time we have heard of that.

Air Marshal Sir Stuart Peach: That is one case.

Q547 **Mrs Moon:** Sir Stuart, the Secretary of State and Mr Ryan have said that so long as it is carried out by police officers as part of the IHAT investigations, they are quite happy for covert surveillance to take place.

Air Marshal Sir Stuart Peach: In accordance with the law.

Q548 **Mrs Moon:** Given that the vast majority of these cases have been dismissed, are you happy for covert surveillance to take place on your serving personnel, many of whom may well be totally innocent, and veterans who have served their country?

Air Marshal Sir Stuart Peach: Covert surveillance is part of the law, and as long as the investigation is carried out in accordance with the law, that is proper practice. When it is made clear to a serviceman that a case is being investigated, support is offered in a variety of ways, which we can go into in detail.

Chair: We will come on to that.

Q549 **Mrs Moon:** I have to say, I find that incredible. We have a situation where we know that Public Interest Lawyers have been involved in paying witnesses. We know that people have impersonated police officers. We know that people have been treated as suspects when in fact they are witnesses. We know all of that, yet you still are not condemning the use of covert surveillance.

I will move on. Secretary of State, we are informed by the IHAT command team that they will be down to 60 investigations by next summer. They believe that the majority of those will not result in prosecutions. Those are their words—the majority of those 60 will not result in prosecutions. Why then are we going to have this big investigatory team paid through to 2019? Surely we can begin to wind it down now.

Sir Michael Fallon: No, because we have to make sure that all these allegations are properly investigated. We have a legal obligation to do that; the Court has been very clear about that. We do not have any power to turn this off. This is a Court -directed process and I have no power as a Minister to stop it. We have to comply with what the Court has directed.

You are right that only a very small number of cases have so far been referred through to the Services Prosecution Authority. I think it has been three cases to date and two of those have been turned down, so we may

in the end be dealing with only a handful of cases, but the courts are very clear that, however many allegations there are and however many turn out to be spurious, we still have to do this work. It has to be done; it is a court requirement.

Q550 **Mrs Moon:** I am not disputing that the work needs to be done; I am talking about winding down and reducing the number and cost of the investigations.

Sir Michael Fallon: You are suggesting that a Minister of the Crown can somehow interfere with a court-directed process and say, "We have had enough of that. We are going to turn it off." We are not allowed to do that. Ministers cannot do that with a court process.

Q551 **Mrs Moon:** I am not talking about stopping the court process. I thought I had made that quite clear. I am talking about winding down. There are large numbers of people employed here, at high cost. If they are going to be involved in investigating only 60 cases, the majority of which, they have already told us, they do not expect to lead to any prosecutions, into 2017, why do we need to carry on paying until 2019?

Sir Michael Fallon: We set 2019 as the date by which this whole process should be completed, but when we get into those final 60 cases by next summer, we may find that they then turn out to be some of the more complex and difficult cases and not simply yet another raft of spurious allegations that can be dismissed quickly. It may well be that more time then needs to be spent on those cases, but that is not something that Ministers can or should interfere with. This is a court-directed process and it cannot be short-circuited in the way that you suggest. We cannot use words like "winding down"; we do not have the power to do that.

Q552 **Mrs Moon:** Okay. You called the allegations from legal firms "spurious" and "patently false". The IHAT investigations are costing £59 million. Why, therefore, were soldiers and veterans having to pay for their own legal defence for the last several years? Why did it take until September to announce that you would meet the legal costs? Will those legal costs be met retrospectively for those who had to pay their own?

Sir Michael Fallon: On the first point, because of the number of these allegations and the proportion that turned out to be spurious, I thought it was right to make sure that we would not be reclaiming from service personnel any assistance that we had provided. I thought it was right to clarify that. As for going back over previous cases, would you like to comment on that?

Peter Ryan: First of all, there have been remarkably few people in the position of having to seek legal support. I think about 28 people have been interviewed under caution, seven arrested—

Q553 **Chair:** So in your experience 20 people have had to seek legal support in this process?

Peter Ryan: No, no, what I said was 28 people would have been in the position of wishing to have legal support because they were going to be

interviewed under caution or after caution. So far the number is small, but it could well grow. Legal aid is and has been available to people on a means-tested basis. I have no idea of the extent to which repayments have been demanded of people. The Secretary of State has taken the view that because of the historic nature of the Iraq and Afghanistan allegations and the very peculiar circumstances in which people have found themselves, it would be appropriate to waive the means-tested element in those cases from now on.

Q554 **Mrs Moon:** Would we not, rightly, be responsible for doing that retrospectively given how many of the allegations were spurious and false? People were forced to use their own money to defend themselves from spurious and false allegations. If those spurious and false allegations came later in the process, they became liable for legal aid. Why are we not extending that retrospectively to many of those who have paid hundreds of thousands of pounds to cover their legal costs?

Peter Ryan: I will clarify: people interviewed after caution get legal support free of charge. It is only when it goes on to further processes, where they have to potentially engage further legal support, that means testing would have been an issue. I don't believe that that has been the case so far, but that is something we can check. If there is a case for this, we will advise the Secretary of State.

Q555 **Chair:** You don't think that any soldiers have had to pay for their own legal aid or any legal fees?

Peter Ryan: I will have to double-check that, Mr Mercer.

Mrs Moon: Will you double-check that and come back to the Committee with your findings?

Chair: It has been in all the newspapers.

Q556 **Mrs Moon:** We have had evidence from people talking about having to find hundreds of thousands of pounds to defend themselves.

Peter Ryan: I cannot speak outside the Iraq and Afghanistan allegations.

Q557 **Chair:** I don't know about that figure, but there is no doubt that soldiers have had to pay their own legal fees. You must have seen the coverage in the newspapers. Indeed, Sir Michael, you made that announcement after it was shown that we were going to have to start docking people's pay to get those legal fees back. You haven't seen any evidence of soldiers having to pay their own legal fees?

Sir Michael Fallon: Not from the IHAT investigation, no.

Chair: Okay.

Q558 **Mrs Moon:** Can we move on to the issue of taking evidence from serving personnel? We were looking as a Committee to take evidence from serving soldiers in a private session with no transcripts taken and with the condition that any evidence taken would be anonymised. Secretary of State, you wrote to us and said that would not be possible. In the past, it has been the agreement that where evidence was taken on policy matters, obviously serving personnel would not provide evidence, except

with your permission; but when it was talking about personal experiences, that was acceptable. Why did you stop them giving evidence this time?

Sir Michael Fallon: Are you speaking about evidence to this Committee?

Mrs Moon: Yes.

Sir Michael Fallon: First, service personnel are servants of the Crown. They cannot appear in front of Parliamentary Committees in any kind of personal capacity. Secondly, if any of them are actually under investigation, it would be quite improper for them to appear in front of a Committee.

Q559 **Mrs Moon:** These were people who had evidence to give about their experience of going through the process and perhaps coming out of the process with no prosecution at all, but giving evidence as to the inadequacy of the process.

Sir Michael Fallon: No, I am not prepared to change the long-standing practice. As I said, service personnel are servants of the Crown. They cannot appear in front of Committees in a personal capacity and talk about their personal experiences.

Chair: That has happened three times before, around Deepcut and other inquiries. They have submitted evidence to inquiries.

Mrs Moon: Where it was personal experience—not policy.

Sir Michael Fallon: Well I'm not in favour of that.

Q560 **Mr Gray:** Secretary of State, can we turn to the future? First, earlier this year, in October, you and the Prime Minister announced with some aplomb that you were looking to derogate from the ECHR with regard to troops in combat overseas in the future. Can you tell us how that would work?

Sir Michael Fallon: Yes. We will be taking a power, which is provided for under the human rights legislation, to come to Parliament to say in particular circumstances of a particular conflict, we would resile from the key articles—particularly the article so far as detention is concerned, because clearly that would—and does—inhibit our forces operating in this kind of conflict. They have to be able to detain when necessary to obtain intelligence very quickly. Without that, they would be far less effective. Other countries do that, and I want us to be in the same position.

Q561 **Mr Gray:** Would you accept that most of the IHAT cases have been with regard to torture, illegal imprisonment and the poor treatment of prisoners?

Sir Michael Fallon: No, I think the majority of the IHAT cases were to do with detention.

Q562 **Mr Gray:** Ill treatment in detention and torture? Would you accept a good number have been, and would you accept that the ECHR does not allow derogation from those particular clauses?

Sir Michael Fallon: No, it does not allow derogation for torture, or indeed the right to life¹, but it would help us. Detention is a key part—I am sure the CDS would like to add to this—of military operations. Our forces that we send into conflict must have the power to operate freely on that.

Q563 **Mr Gray:** You declared this derogation with great aplomb as if it were solving the IHAT problem, but would you not accept that it actually does not solve very much at all, because most of the IHAT cases would not have been derogated from, as it were, even if you had had that power before now?

Sir Michael Fallon: No, I have explained to you that a large number of these cases do specifically relate to detention—the power to detain itself. This is of course not the only reform we are making. We are coming forward with a whole package of reforms looking at recovery of legal costs, streamlining the Solicitors Regulation Authority, putting a time limit on cases—we are working with the Ministry of Justice on a whole series of reforms to ensure that we do not get into this particular process again. But I would ask the CDS just to comment on the military point on detention.

Air Marshal Sir Stuart Peach: In your question, you said you would like to look to the future. Surely the simple way of putting it is: we need to do all we can within the law to ensure that in future we can operate effectively. That is all we are trying to do—within the law.

Q564 **Mr Gray:** And you think it will have a significant effect.

Sir Michael Fallon: Yes. Had we derogated in Iraq, for example, we would have avoided paying out around £20 million of compensation for the article 5 detention cases.

Q565 **Mr Gray:** Some 87 of the IHAT cases are to do with mistreatment in detention. They would not have been exempt, would they?

Sir Michael Fallon: No, but the vast majority were straightforward detention cases. We would have saved a lot of money.

Q566 **Mr Gray:** The point I am getting at is that it might have saved some of these cases, but it would by no means have been the magic wand that I think the Prime Minister and you were indicating in the announcement you made in October.

Sir Michael Fallon: I don't agree with that. I think it would have got rid of a substantial number of cases and, as I have said, would have saved this country £20 million had we been able to derogate.

Q567 **Mr Gray:** It would have saved this country £90 million if you had not started down this track in the first place by setting up IHAT.

Sir Michael Fallon: That is the purpose of the package of reforms that we are working on with the Ministry of Justice—to avoid us getting into this position again.

¹ Note by witness: Except in respect of deaths resulting from lawful acts of war

Q568 **Mr Gray:** Our learned Clerk has provided some useful information. Some 1,361 of the original IHAT cases were with regard to ill treatment. We are now down to a very much smaller number. So, 1,361 IHAT cases would not have been avoided under the derogation had that derogation existed. All I am getting at is: would you not accept the thesis that the possible derogation from ECHR in the future would not stop this thing happening again?

Sir Michael Fallon: No. That is not right. A derogation would have prevented a substantial number of these cases. You started by talking about torture and you moved on to ill treatment in detention. They are not quite the same thing.

Mr Gray: Indeed not. I wasn't for a second suggesting they were the same thing.

Sir Michael Fallon: Torture is a matter of international law. Any claim of torture would have to be investigated, but detention is at the root of a large number of these cases.

Q569 **Mr Gray:** Not ill treatment in detention. That cannot be derogated from.

Sir Michael Fallon: I don't think that is right.

Mr Gray: I think it is right, actually.

Peter Ryan: The Secretary of State has made the point very clearly that the problem has arisen because of a panoply of different circumstances, including the expansion of the European convention on human rights, the widespread availability of legal aid and the propensity of legal firms to behave very badly. What the Secretary of State has said is that a raft of measures has been taken—this is not a one-golf-club response. There is a raft of measures that together will have a very big impact and mitigate the risk of anything like this happening again. It is not solely derogation, but derogation would be in principle a key part if the circumstances were appropriate.

Q570 **Mr Gray:** Moving on to a similar area, Secretary of State, have you or your office had any detailed discussions with the International Criminal Court on any of these matters?

Sir Michael Fallon: There has been contact between the International Criminal Court and the IHAT team, rather than my office.

Q571 **Mr Gray:** The question was about your office, not the IHAT team.

Sir Michael Fallon: Not directly with my office, but we are obviously aware that there has already been a visit by the Office of the Prosecutor to IHAT, and I think there is due to be another visit in January. We are being watched very closely by the International Criminal Court, and I have to have regard to that.

Q572 **Mr Gray:** Are you certain/content/hopeful that cases that are being investigated by IHAT will not be subject to prosecution under the ICC?

Sir Michael Fallon: I hope so, but we have to show that, however tedious or frustrating it is, all these cases are properly investigated and dealt with. That may take a little more time when we get down to the harder 60 cases, but we have to go through that process, because I am not prepared to see this country dragged in front of the International Criminal Court like some dictatorship.

Q573 **Mr Gray:** But you are saying it is possible that servicemen would be. You are saying that, even if it had been investigated by IHAT already, it is at least theoretically possible that they will then be prosecuted by the ICC. Is that correct?

Sir Michael Fallon: No, I am saying that if we had not been able to demonstrate to the Court that we are investigating these cases properly, if we had not continued to reassure Mr Justice Leggatt that these cases had been properly investigated, then we would end up in front of the International Criminal Court. I am not prepared to—

Q574 **Mr Gray:** I am not talking about whether the United Kingdom appears in front of the ICC accused of these sorts of things; I am talking about whether individual cases and individual servicemen who have already been investigated by IHAT might themselves appear in the ICC.

Sir Michael Fallon: Let me get you a legal answer to that.

Peter Ryan: The Secretary of State is entirely right. The International Criminal Court is keeping an eye on this. We deal with the Foreign Office and the Attorney General's office on these sorts of issues, and all of our advice is that if the United Kingdom—in this case the Ministry of Defence—discharges its duties properly then, in my personal opinion, it would be inconceivable that the International Criminal Court would take any action whatever.

Q575 **Chair:** May I explore that point about the ICC quickly? Sorry, James. The ICC informed Sir George Newman that it could not guarantee that people would not be prosecuted, but that "we are only interested in those who bear the greatest responsibility of the gravest of crimes". That is not individual soldiers. The ICC is not interested in individual soldiers; it is interested in those who bear the greatest responsibility for the gravest of crimes. That does not fit with what IHAT is looking at: one-line pieces of evidence against an anonymous soldier.

Peter Ryan: No, the IHAT is looking at quite a lot of evidence in some cases. The court has made this very plain: cases involving manslaughter, serious bodily injuries, sexual indignities, cruel, inhuman and degrading treatment, and large-scale violations of international humanitarian law. Personally, I do not believe that when the IHAT completes its investigations this by and large will be borne out, but we just do not know. As the Secretary of State has made very clear, there has to be a process that people can take comfort from and have confidence in that the United Kingdom did this properly, so that when these 3,400 or so are actually shown to be a tiny handful of criminal offences, if any, the United Kingdom will be able to hold its head up and say, "We lecture other people on the rule of law, but here we are, we are holding ourselves to this."

Q576 **Chair:** Okay, hold our head up—we have done this for the ICC, but what about the effect on our guys in the process? You look perplexed by that, but do you understand the effect that going through the process has had on our young men and women?

Sir Michael Fallon: Absolutely, and I do not want this to happen again, which is why we are determined to carry out this package of reforms that Mr Gray and I were discussing a little earlier. But it is very clear that officials in The Hague are watching this process very closely indeed. They have already visited IHAT; IHAT has had to make submissions to The Hague on at least three occasions, in April 2015, August 2015 and again this year; and we are expecting another visit to IHAT early in the new year. We have to be very clear about this: we have to do everything we can to avoid any involvement by the ICC.

Q577 **Mr Gray:** You say you never want this to happen again, but you will be aware that the Police Service of Northern Ireland has just announced that it is launching a major investigation into all sorts of allegations with regard to troubles, and Operation Northmoor is getting going on alleged war crimes in Afghanistan. Surely what we are doing there is in effect relaunching a new IHAT regarding Northern Ireland and Afghanistan. What can we do to make sure that does not happen?

Sir Michael Fallon: Northmoor is already under way. It is a much smaller investigation than IHAT, and there are some very specific terms of reference to investigate criminal allegations with regard to the treatment of detainees, from the point at which they were captured until release or being handed over to the Afghan judicial system. IHAT of course is looking right across the field in Iraq, and that is what we do not want to see again. The Northmoor investigation is very specific—

Q578 **Mr Gray:** How do we stop it becoming a witch hunt?

Sir Michael Fallon: It is not a witch hunt. They are investigating as Parliament has required. They are investigating serious allegations against our service personnel. It is far too early to say whether it is a witch hunt or not.

Northern Ireland has independent investigators and prosecuting authorities. The Police Service of Northern Ireland is not something Ministers control. It is looking at some of the historic cases. However, following the Stormont House agreement of the summer 2014, we are now looking at how we can ensure that this process in Northern Ireland is not random, but is properly proportionate—in other words, that murders by terrorists are fully investigated if there are to be investigations into any deaths at the hands of our service personnel. We are looking at the time limits that should apply and the safeguards for those who might be investigated about events a very long time ago.

Q579 **Mr Gray:** Your predecessor in that chair on the launch of the IHAT inquiry made similar nice noises about how we were going to ensure, and it was all very important and all that stuff. Don't you see that we think a pattern is emerging here? Your men and women of the armed services are under appalling legal pressure because of the threat of this

happening, whether in Afghanistan or Iraq, and the veterans—some as old as in their eighties or nineties—are apparently going to be under investigation for what they did in the name of the Crown, under order in Northern Ireland 40 or 50 years ago. There is a pattern emerging that makes it impossibly difficult for our servicemen to do their job because of the threat of legal inquiry hanging over their heads. Don't you regret that worry?

Sir Michael Fallon: I share that worry. That is why we are introducing these reforms: to make sure that in any future operations cases cannot be brought as easily as they have been in the past. That does not get us round some of the subscriptions of this country to international agreements. We remain members of the International Criminal Court. We are still bound by the ECHR.

Q580 **Mr Gray:** We know all that. We know the reasons behind doing it. If you think the Northern Ireland thing and the Afghanistan thing are going to be rather different from the Iraq thing, in retrospect and with regard to IHAT, what would you do differently? Where did we go wrong with IHAT and how can we make sure that doesn't happen again?

Sir Michael Fallon: As I have said—you don't seem to accept this—had we derogated from article 5 we would have had many, many fewer cases, so that could have been put right. We did not forecast—perhaps we should have—the industrial scale of the claims that would be lodged. I am going to make very sure that if this process accelerates in Northern Ireland I will be working with the Northern Ireland Secretary to ensure that this process is properly balanced, proportionate and does not involve very elderly veterans having to recall exactly what happened 40 or 50 years ago.

Q581 **Mr Gray:** I am glad to hear that. Thank you for that. With that as the background, what extra support, whether legal or financial, are you planning to give to veterans of Northern Ireland or indeed Afghanistan, to make sure they are not under the same pressures as some of our veterans or service holders in Iraq?

Sir Michael Fallon: They will be fully supported. We have made improvements to that system—the CDS will say something about that. They are supported legally, as we have said, and they are supported in terms of legal costs, but we have also introduced better welfare support for those who may be investigated. I will ask the CDS to add to that.

Air Marshal Sir Stuart Peach: There is now a comprehensive package that changes over time as we learn the lessons from the last few years. That package obviously includes the chain of command for serving soldiers through their commanding officer. When it comes to veterans, it is more complicated—I think the Committee would accept that—so we have to work with a variety of people to make sure that if the veteran wants to reach back to his former regiment or commanding officer, we can make that arrangement. That may not work for geography, so we then have to work with the Veterans Welfare Service and other organisations. I am pleased to say that Combat Stress and SSAFA have also agreed to offer support in some of these cases. I think you would accept, Mr Gray, that

this is an emerging issue in terms of the breadth of the population at risk. Therefore, we need to continue to look at the schemes by which we support serving personnel, Reserve personnel and veterans.

Q582 Mr Gray: It is an emerging problem but it is a problem that we are examining with regard to Iraq. Our interest is in ensuring that you have plans in place to ensure that something similar does not happen in Northern Ireland. We are talking about 70, 80, 90-year-old people. Their chain of command is probably long dead.

We want to know whether you are going to provide legal, financial and other support. We want to know what support you are going to provide for these brave veterans who did what they were told in Northern Ireland but are apparently now going to be subject to investigation.

Sir Michael Fallon: I made clear that they are going to be supported financially and legally, and CDS has described the welfare support, but we are not going to allow the Northern Ireland process to develop into another IHAT. I am working at the moment with the Northern Ireland Secretary who will, I think, be consulting on proposals to ensure that the process of the current series of investigations that have been opened up by the PSNI is better balanced in future.

Q583 Chair: Thank you very much. I was with the SRA yesterday talking about Phil Shiner's case. Leigh Day are going through as well, as you well know. They have admitted a lack of integrity in all this. Why are we still using their evidence to drag our men and women through this process? Mr Ryan, you are shaking your head. What is not right about that?

Peter Ryan: From the beginning, I think it is fair to say that we in Defence have been very sceptical about much of what Mr Phil Shiner has said, but the IHAT have to take any allegations that they have. As you have heard from them and the Secretary of State, many of those have been removed without speaking to a single soldier. There is no credibility attached at all—there never has been—to what Mr Phil Shiner says. This is what there is: somebody says something happened, let's look at it, is there any evidence?

Q584 Chair: Yes, and he is collecting that evidence, isn't he? That is what he has admitted: his lack of integrity and his recklessness. So, why did you shake your head at that statement?

Peter Ryan: Because the IHAT cannot just dismiss an allegation because of the source from which it came. What they do is look very sceptically at what is put in front of them. That is why they have been able to dismiss so many cases and we are confident that they will dismiss many more.

Q585 Chair: We are running short of time and we need to get answers on this. If this whole bucketload of evidence has come in and the people who collected it are going through processes at the moment for paying witnesses, and we have helped fuel that process by flying people out to Turkey and Lebanon, why do we not take a fresh look at that evidence and say, "Right. I am beginning to pick up on this picture here. A lot of this might be generated to make money for those involved."?

Sir Michael Fallon: That is what IHAT is doing. It is looking at these allegations, seeing whether there really is evidence that stands up and, if there isn't, chucking them out. That is why we have been able to make quite significant progress in the past few months in getting the number of cases down. But this is a legal investigation. If somebody presents evidence, you cannot simply put it aside. It has to be looked at, despite the source of that evidence.

Q586 **Chair:** Absolutely, but the prosecutors have the opportunity to look at the quality of that evidence.

Sir Michael Fallon: They are doing that. That is why we are getting down from 3,000 cases to only 60. That is why it is happening.

Peter Ryan: May I add directly to a very fair point? The director of IHAT is in touch with the Director Service Prosecutions to ask that question, so it is a perfectly fair question. Is there anything in what is emerging through the SRA process that could have a bearing on how this is conducted? We will watch very closely.

Q587 **Chair:** Exactly. I understand what you are saying, but—. On from that—not a but, at all—we are reducing these to 60 cases. I don't dispute for a minute the work that you have personally done on this, Sir Michael, in reducing that caseload down and providing legal aid, but this started in 2010 and these guys have gone through this process for six years.

If it is down to 60 cases, why can't you say, "Right. IHAT has clearly become a poisoned well. Why don't we just get rid of that and investigate these properly, with the checks and balances that the military always has done, as is being done with Operation Northmoor?" Why not just get rid of IHAT and focus on these clear cases, under another name or body if necessary? Why not focus resources on those 60 cases and get rid of this? IHAT was set up to deal with the industrial scale of claims, wasn't it?

Peter Ryan: No.

Q588 **Chair:** That is a response that has come from the MoD before: IHAT was set up to deal with the industrial scale of the claims.

Peter Ryan: IHAT was set up originally because the then 165 cases were beyond the capability of the Royal Military Police to be able to deal with on their own. It was set up to help the Royal Military Police. Subsequently it was found that the Royal Military Police were barred by the court from investigating, so they had to be withdrawn, which meant more IHAT personnel had to be fed in. Then, just as the thing was going to be on schedule to complete, they were swamped by a vast number of new cases. This has been a bit like boiling a frog. I understand and share your frustration; this has been something we have been living with for a long time, but if the IHAT can get through this process in the way that they are doing—leaving aside the criticism that I hope has been remedied—this will be a signal achievement.

Sir Michael Fallon: I will look again at your suggestion that it should somehow be rebadged or relabelled or whatever, but I think we are getting there. We are getting down, as I said, from 3,000 cases to the 60

investigations that are obviously going to be more complex. I would not want to do anything that makes that process longer or more convoluted than it already is.

Q589 **Chair:** But IHAT is such a poisoned well now. You have seen all these allegations. If it is down to 60, let's just go for it with a new organisation with the investigators that you need and get it done. The trouble is, they are on contract until 2019, aren't they?

Peter Ryan: No, we can draw this down. IHAT has a contract that allows them to draw this down as and when appropriate. The director of IHAT, believe you me, given the poisonous press he has seen repeatedly—the invasion of his and his family's privacy—is desperate to get this completed as soon as possible. He has very strong reasons. It would be great from his perspective if he could do this properly and if pretty much every allegation was not followed through. But he is doing his job professionally and he will complete it as quickly as he can.

Sir Michael Fallon: I am prepared to look—indeed, the Committee's report may help us on this—at the best way of dealing with the 60 final investigations. If there is a better way of doing that, I have an open mind on that. If you want to make recommendations on how that can be better handled, I look forward to reading them.

Chair: Thank you.

Q590 **Mr Gray:** The reason for RMP not doing Iraq was because it was deemed that they were insufficiently independent. In that case, why are they being allowed to do Northmoor?

Sir Michael Fallon: In Iraq they would have been investigating actions that may have involved in some cases the RMP themselves.

Peter Ryan: The Secretary of State is absolutely right. The court took the view that in Iraq the circumstances there meant that in some cases the Royal Military Police would have had to investigate themselves. They said they were not disputing the propriety of the RMP, but that from a public perception perspective they could not allow that to happen.

Q591 **Mr Gray:** The court ruling came before IHAT. Your argument a moment ago was that because there were 165 cases—that is the number you used—the RMP were insufficiently large to handle that. That was long before the court case—

Peter Ryan: That was capacity.

Q592 **Mr Gray:** That was your answer a moment ago. But now you are saying that they have the capacity to deal with Afghanistan. How many cases do you think?

Peter Ryan: There have been about 600 allegations made in respect of Afghanistan.

Q593 **Mr Gray:** So they can handle 600 in Afghanistan, but they were not big enough to handle 165 in Iraq.

Peter Ryan: The circumstances have changed very markedly. Following the Armed Forces Act 2006, the situation is very different. The Royal Military Police are much more self-confident and better resourced. Frankly, I would expect many of the allegations coming out of Afghanistan to be handled pretty quickly and in most cases just disappear.

Q594 **Mr Gray:** Is there not an argument that, leaving aside the cases against the Royal Military Police themselves—plainly, there would be a conflict of interest—

Sir Michael Fallon: Which we are not aware of in Afghanistan.

Mr Gray: Nevertheless, coming back to IHAT and leaving aside cases where the RMP themselves might be involved—plainly, there might be a conflict—in your rebadging or reconsideration of IHAT with regard to the 60 hard-core cases, is there not an argument for handing that back to the RMP and getting court clearance to do so?

Peter Ryan: No. The court has been very clear that this would not be—

Q595 **Chair:** I think it is quite clear. The RMP are not okay to investigate IHAT, but they are okay to deal with Afghanistan. That is a bit of an oddity to us—why we need to set up a multimillion-pound contract to do Iraq, but in Afghanistan they can just—

Sir Michael Fallon: Because there aren't allegations against the Royal Military Police themselves in Afghanistan; that is the critical difference.

Peter Ryan: We have learned a lot since the dark days of Baha Mousa and have applied that in Afghanistan; and we are very confident that nothing like what happened in Iraq happened in Afghanistan and that that will be able to be proven very quickly because of better record keeping, better procedures, better investigations—the whole lot. We are very confident that the investigations into detention abuse in Afghanistan will be closed down properly but quickly.

Q596 **Mrs Moon:** Mr Ryan, can you explain to us why soldiers' legal aid fees are capped at £54.75 but public interest lawyers' fees are capped at £75 now?

Peter Ryan: No.

Q597 **Mrs Moon:** Then can you look at that and write to us, please?

Peter Ryan: Of course.

Q598 **Mrs Moon:** The Committee heard from Nicholas Mercer, a former senior legal adviser to the Army, that before the Iraq war, soldiers were shown a training video on how to interrogate suspects that included tactics that contravened the Geneva convention. Why?

Air Marshal Sir Stuart Peach: I can't comment on that. What is the allegation?

Q599 **Mrs Moon:** Do you want me to repeat the allegation?

Air Marshal Sir Stuart Peach: It is an allegation.

Q600 **Mrs Moon:** Nicholas Mercer, a former senior legal adviser to the Army, said that before the Iraq war, soldiers were shown a training video on how to interrogate suspects. I assume you heard Mr Mercer's evidence to this Committee. He said that he pointed out the illegality of what personnel were expected to carry out according to the training video—he said that it was in contravention of the Geneva convention—and was told that the instructions came from Main Building and this was the way people were to act. Have you investigated that? Are you aware of those allegations? How many soldiers have been prosecuted because they carried out actions recommended to them in the training video that came out of Main Building? Again, if you can't answer the questions, please investigate and come back to us in writing, but that is a very serious allegation.

Peter Ryan: Well, Mr Mercer is on record as making a whole range of statements, to be honest, over a number of years; I wouldn't comment on the range of them. What is very clear, and has been acknowledged by the Secretary of State's predecessor, Dr Fox, in accepting 72 of the 73 recommendations of the Baha Mousa report by Sir William Gage, is that there were a number of serious defects and deficiencies in the way in which the Ministry of Defence prepared people for the Iraq campaign. That included, frankly, that we had lost the fact that the Prime Minister of the day, Mr Heath, had banned the use of certain techniques. Collectively, Defence seems to have lost that between 1970-something and 2003. So institutionally there were recognised to be failures.

Air Marshal Sir Stuart Peach: What I can say to the Committee is that we have now reviewed all our training, and all our training is absolutely within the boundaries of international humanitarian law.

Q601 **Chair:** Thank you, Sir Stuart. We understand that now it is correct. The point that Mrs Moon is getting at is that the way we trained our men and women to go into Iraq has landed them in this position. That is the allegation that Mr Mercer made, and I understand you are going to write to us about that. Have you looked at the evidence that has come before this inquiry? Have you looked at any of the previous evidence sessions or anything like that?

Sir Michael Fallon: Yes.

Q602 **Mrs Moon:** Mr Ryan, will you look at that training video?

Peter Ryan: We will.

Q603 **Mrs Moon:** Will you then write to tell us whether that allegation is right and whether the training that the Department provided was therefore culpable in leading to soldiers facing prosecution? Can you write to us on that, please?

Peter Ryan: Of course.

Q604 **Mrs Moon:** Finally, CDS, how is morale being affected by the three sets of historical investigations? We have IHAT, Afghanistan and, now, Northern Ireland. Is that making personnel feel nervous about the actions that they can take in conflict?

Air Marshal Sir Stuart Peach: I would not use the word “nervous”. I would accept that there is a concern, which I share, and therefore there is every need for the Chiefs of Staff collectively to take the appropriate steps to reassure our men and women through the chain of command. I absolutely assure the Committee that there are many steps through which that action is being taken, including, with reference to the Army—the majority of claims are being handled through the Army—recently the Chief of the General Staff has written through the chain of command. In addition, we obviously have a number of documents, leaflets and joint service publications, all of which are being updated as a result of lessons from IHAT and are being applied to future support mechanisms, which I touched on in answer to Mr Gray’s question. I can go into detail if you wish.

Chair: That is fine.

Q605 **Mrs Moon:** Can we have some assurance that this is not affecting your capacity to recruit people into the Armed Forces?

Air Marshal Sir Stuart Peach: I can give you that assurance. Can I give you an absolute assurance that no one is affected? No, I cannot. But I can give you an assurance that we are confident in following the chain of command in all three services and showing that we are both compliant with international humanitarian law and following the national law. We abide by the law of armed conflict. We apply rules of engagement. We train our people properly for conflict, and, as we said earlier in answer to Mr Gray, that includes a commitment to ensure that we can operate in the future effectively.

Q606 **Chair:** Lovely, thanks. We are going to start wrapping up now, but can you explain why we need to arrest people in this process?

Peter Ryan: It is an operational decision, but my understanding is that in certain very, very exceptional circumstances arrest is something that police forces would—

Q607 **Chair:** I am sorry. I am talking specifically about IHAT. Why do we need to arrest people? If you are going to deprive someone of their liberty, that is quite a serious thing. You would do that because they were going to burn evidence or abscond the country, but none of these guys are going to do that. So why are we arresting people?

Peter Ryan: I think there are a range of reasons. One of which, for example, might be a suspicion that people might collude. My understanding—I am not a policeman—is that in certain, very limited circumstances, co-ordinated action might be necessary to stop people colluding, but I am speculating. There have been seven arrests so far and I do not anticipate there being very many more. The interviews have been conducted after caution, rather than people being arrested, so let us see how things work out over the next year or so. The IHAT are acutely aware of the sensitivities of this.

Q608 **Chair:** Well, I agree with you. I think they are now, but they weren’t until this year. Look at some of the practices that have gone on. I know that Min(AF) has been very keen to praise them and so on, but surely

you have seen the evidence that has come out now. They have and they have acted accordingly, which is great. I want to ask about the scenario of suspects or witnesses being approached by some random civilian who works for Red Snapper and being asked about events that happened 10 or 15 years ago. Is that fair, Sir Stuart, on serving men and women?

Air Marshal Sir Stuart Peach: As Mr Ryan indicated earlier, the circumstances around the use of Red Snapper and IHAT are peculiar and limited to the Iraq campaign. As to whether it is fair or not, you would have to offer an allegation, and I would comment on it.

Q609 **Chair:** Okay. I will offer you one: it was in the base that an individual found out that he was being charged through his ex-girlfriend, who was contacted by Red Snapper. Another one found out on social media. When I asked the Minister for the Armed Forces whether anyone ever been contacted by IHAT without being led through the process by the MoD, she said: no, never. And in the evidence given to us this week it turns out that between 300 and 350 had been approached directly by IHAT.

Peter Ryan: I think the quote was about the approach to investigations more generally—

Chair: Sorry, could you repeat that?

Peter Ryan: She made a point about a general approach to investigations rather than giving an assurance.

Q610 **Chair:** She very clearly said to me that nobody is approached by IHAT first.

Peter Ryan: I have not seen that.

Air Marshal Sir Stuart Peach: I certainly am not prepared to comment on individual cases.

Q611 **Chair:** We will begin to bring it to a close there. Have I got the wrong end of the stick here? This appears to be something that is wildly out of control because I have asked you about things like legal fees, and you say that you have seen no evidence of an individual struggling for legal fees. I have the evidence here. Troops coming before Committee—they have come before Committee and the evidence is here. You have said that complaints were only in 2016, but I have one here from 2015. I wrote to you about investigators using personal email addresses. You couldn't find any evidence of that. I have one here. What am I missing? You seem quite perplexed that the Committee is relatively frustrated that this seems to have got completely out of control.

Peter Ryan: The Secretary of State has made it very plain that the number of complaints of which we are aware is very small indeed for something that has been running on such a large scale for so long. I know the people—the military personnel and the civil servants—involved in running the IHAT. I know of their professionalism and dedication. When there are mistakes, they are mortified about them and they want to ensure that they do not recur. I personally believe that the expression “out of control” is completely wrong. As the Secretary of State has made plain,

this investigation has had to proceed under the most extraordinarily close supervision. When it is brought to a conclusion, which I think it will be by 2019, it will have indicated—

Q612 **Chair:** What do we do about this evidence that gives us indications of the IHAT that are clearly different from yours? Are they making it up?

Peter Ryan: In some cases—I wouldn't like to speculate about it. I would suggest that with any evidence you have, find a way, if you can—

Chair: It has been sent in.

Q613 **Mrs Moon:** I am a little bit confused about this. As somebody who used to inspect and be responsible for investigating allegations of abuse, I would have expected more complaints if I had found that, as we have, IHAT had been behaving the way it has and that PIL had been behaving the way that it has. All of that is now in the public domain. We know that PIL has been making spurious allegations. We know that people were paid to make allegations. We know all of that. Should you not be worried that you haven't received more complaints and be looking at why people have not been coming to you to complain, but have been coming to us to complain? We are picking up complaints, but they don't seem to feel that the structure within the armed forces is one where they can make those complaints.

Q614 **Chair:** I can expand on that. One complaint went directly to the Minister for the Armed Forces, who was told to have a chat with IHAT and to contact the Veterans Welfare Service. Is there a feeling that we have been passed evidence that is not the case? Do you think we have been led down the garden path at all? Is that experience vastly different from yours?

Sir Michael Fallon: We can only go on the statistics we have. There have been seven complaints to IHAT after 3,000 different complaints or investigations that have been under way. There have only been two complaints to my Ministry. If you have more complaints that we have not seen, we would be happy to—

Q615 **Chair:** I have the evidence here and I will send it over to you. Those complaints, it very clearly says in your submission, were in 2016. I have one here in 2014 and in 2015. What we are getting at is that there is a problem in recording this evidence. I think we will leave it there.

Secretary of State, I know that you have personally worked really hard to close this down, but it is very hard for us to accept that we can come to this House and talk about hand-wringing and about lawyers, and so on, and that we have been part of this process. I understand that this process has been exploited, but the Government have paid into this process. That was a decision first made in 2011. It was not a court order. That was a decision by IHAT that we could not do this without Public Interest Lawyers, so we have paid them all this money and then slammed them in public. To servicemen and women, it comes across that your priority is to the ICC, whereas really our priority is to these guys who have served. Their experiences have been horrific. For me, it genuinely feels that that has not really registered yet.

Sir Michael Fallon: As I said right at the very beginning, we need to be clear that where there are allegations of criminal behaviour by members of the armed forces, Parliament has decreed that they should be properly investigated by the service justice system. Not the Government, not the Minister, but Parliament—you—decided that in the Armed Forces Act 2006. We need to be very clear with our service personnel about what was driving this process at the very beginning. That was, of course, complicated by the extension of the ECJ's—

Peter Ryan: The European Court.

Sir Michael Fallon: The European Court's jurisdiction over matters like detention. It has been abused by the industrial scale of the number of clearly base allegations that have been brought forward. All of that is very frustrating. It is not something that any of us in this room would want to see repeated. I am determined, by the way, to make sure it is not repeated when we come to Northern Ireland.

Q616 **Chair:** You couldn't say if Northmoor is going to turn into a witch hunt. Can you commit to this Committee that you will personally grip that process to make sure it doesn't happen like this?

Sir Michael Fallon: Absolutely.

Q617 **Chair:** Have you got people in the Ministry working on it and coming up with policies to deal with it as a priority?

Sir Michael Fallon: I am not going to see Northmoor develop into a witch hunt. Obviously, the investigation has to be done at arm's length from the Ministry—you understand that. It is being done by the Royal Military Police, and that is the correct way to do it. I am not going to let it descend into a witch hunt, and I am certainly not going to let the Northern Ireland process descend into a witch hunt.

Q618 **Chair:** Finally, Sir Stuart—we are at time now—what would you say to an individual who has been through this process three times already? Their career is ruined, their marriage is ruined, they have spent time in a mental hospital, and they are going through it again, but never have they been convicted of a single offence. What would you say to them about the family values that we espouse within the military and how we look after people? What would you say to that individual?

Air Marshal Sir Stuart Peach: If the accusation is against an individual, and if you are suggesting that the chain of command is not supporting individuals, that's wrong. The chain of command does work. The chain of command cares about the individuals under its command and control, whether they are in the Army, the Navy or the Air Force. The chiefs of staff care deeply about this process.

At the same time, the Committee needs to be clear that we operate within the law. We are not here to discuss individual cases. It would be quite wrong if the Committee felt that the Chief of the Defence Staff and the chiefs of staff—the heads of the Army, the Navy and the Air Force—do not care. That would be quite wrong. We care deeply. We listen carefully to

legal advice, but at the end of the day we also understand our duties as commanders.

Chair: Okay. Thank you very much.