



**JUDGE ADVOCATE GENERAL  
HHJ ALAN LARGE**

24<sup>th</sup> March 2021

James Sunderland MP  
Chair  
Select Committee on the Armed Forces Bill  
House of Commons  
London SW1A 00A

Dear Mr Sunderland,

Following my appearance at the AFB Committee on 11 March, I have been following the subsequent Committee sessions with interest. I have also been following the Sub-Committee on Women in the Armed Forces: From Recruitment to Civilian Life, since much of the evidence given there has a direct relevance to the Service Justice System. I was surprised and concerned to read the following references before the fourth evidence session of the Committee on 17<sup>th</sup> March and before the Sub-Committee on 18 March to part of my evidence to the AFB Committee:

*“Q188 Tonia Antoniazzi: This is for Tony for the sake of time and being brief, but anybody can answer it. Tony, everything you have said, particularly around this being difficult subject matter, is so true. Last week in Committee, one statement really stood out to me, and I asked Priti Patel about it this week. The statement was: “our servicepeople are thoroughly good people, but they drink too much, something goes wrong and they end up in court.” I am very concerned that these attitudes are being reflected at the highest level. Is this something that you are seeing? Do you think it is a problem?”*

*Q74 Martin Docherty-Hughes: Yes, I found some of the evidence traumatic myself. Chair, I hope you will indulge me for one final point. In the last couple of weeks, in the Select Committee on the Armed Forces Bill, we even had senior judges, I suppose, ridiculing aspects of judgments such as sexual assault and rape, which many of us on the Bill Committee were quite shocked by—for example, excusing sexual assault and rape because people were drunk, and so on. Did it shock you at all, in any sense, or any shape or form, that that type of notion about sexual assault and the experience of, predominantly, women in the forces should be treated that way by senior members of the military judiciary?”*

The comments I made were as follows and I think it is important to quote them in full rather than only part of the last sentence:

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

In making these comments I was not seeking in any way to excuse, or minimise, sexual assault and rape because people were drunk. I was seeking to explain why the conviction rate in all criminal courts for sexual offences between two individuals, of good character, often in drink, behind closed doors, is low. Juries in the Crown Court and Boards in the Court Martial can find it difficult to convict in these circumstances. In pointing this out, I am not seeking to suggest that alcohol is any sort of excuse, or mitigation for criminal behaviour but I am seeking to highlight that alcohol can make securing the high standard of proof required for convictions more challenging.

It is important to remember that the law on rape and sexual assault in the Court Martial is the same as that in the Crown Court. I see the force of the criticisms made of the investigation of these offences in the Service Justice System and I am a supporter of the Lyons Review recommendation for a Defence Serious Crime Unit to enhance the experience and expertise of the Service Police in handling the investigation of serious offences. I am also in favour of a number of other reforms, including applying section 28 of the Youth Justice and Criminal Evidence Act 1999 to the Court Martial, so that complainants in rape and sexual assault cases can give pre-recorded cross examination evidence, which I know is a proposal also supported by The Victims Commissioner Dame Vera Baird QC.

I am dismayed that anyone could have interpreted my words as in any way seeking to excuse sexual assault and rape because people were drunk. I would like to take this opportunity to emphasise and clarify that is not my view. All allegations of sexual offences are serious, must be properly investigated and, where appropriate evidential tests are met, prosecuted in court. I have spent much of my professional life prosecuting sexual offences at the Bar, and sentencing offenders as a judge in both the Crown Court and Court Martial. In so doing, I have sought to secure justice for victims and to punish those who are found guilty of these grave offences according to the law. That is the position I have always held and which I continue to hold as Judge Advocate General. I hope this makes the position clear.

Lastly, may I add this? In my evidence before the Committee, I invited its members to attend and observe a case so that they may see for themselves the issues, particularly the evidential issues, involved in trying allegations of rape and sexual assault. I would like to repeat this offer and to extend an open invitation to all members of the Committee, so they can assess for themselves how justice is being administered in the Court Martial in these serious and difficult cases.

I would be grateful if you could place this letter together with the other written evidence received by the Committee on the appropriate section of your webpages.

I have copied this letter to Sarah Atherton MP as Chair of the Sub-Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan Large', written in a cursive style.

HHJ Alan Large  
Judge Advocate General