



House of Commons
Defence Committee

**Drawing a Line:
Protecting Veterans by
a Statute of Limitations:
Government
Response to the
Defence Committee's
Seventeenth Report of
Session 2017–19**

**Second Special Report of Session
2019–21**

*Ordered by the House of Commons
to be printed 28 April 2020*

The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

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Second Special Report

On 22 July 2019, the Defence Committee published its Seventeenth Report of Session 2017–19, [Drawing a line: Protecting veterans by a Statute of Limitations](#) [HC 1224]. The Government’s response was received on 22 April 2020.

The response is appended to this report.

Appendix: Government Response

Our Inquiry

1. At the heart of this inquiry and our Report is a determination to ensure that justice prevails for veterans and Service personnel. This does not mean that those who serve our country are above the law: far from it. We are unequivocal in our belief that wrongdoing must be investigated and punished. However, we also believe that there is something fundamentally wrong when veterans and Service personnel who have been investigated, and exonerated, become subject to what can often seem an unending cycle of investigation and re-investigation. That is neither a just nor a sustainable state of affairs and it risks undermining morale within the Armed Forces and trust in the rule of law. (Paragraph 13)

The Ministry of Defence (MOD) welcomes the Defence Committee’s report. We are grateful for the Committee’s ongoing commitment to protecting Service personnel and veterans from repeated investigations into alleged offences, and the threat of potential prosecution, many years after the events in question.

The Government is strongly opposed to our Service personnel and veterans being subject to repeated investigations in connection with historical events. And we share the Committee’s concerns that repeated investigations, and the threat of potential prosecution, have the potential to impact on the morale of our serving personnel and our ability to recruit future Service personnel. These matters also risk improperly constraining decisions taken on operations to avoid the possibility of legal proceedings many years in the future—the “chilling effect” feared by military commanders.

As announced in the then Defence Secretary’s Written Ministerial Statements of 21 May and 22 July 2019, a 12-week public consultation on proposed legal protections measures for Service personnel and veterans who have served in operations outside the UK was launched on 22 July 2019. The analysis of the responses has helped shape the measures that we have included in the Overseas Operations (Service Personnel and Veterans) Bill—the first step in delivering the Government’s manifesto and election commitments to prevent vexatious claims being brought against Armed Forces veterans.

The Law Governing Armed Conflict

2. The legal frameworks underpinning the role of the Armed Forces in civilian and military operations are becoming increasingly complex and difficult to navigate, particularly in the fog and confusion of operations and conflicts. We share the judgement of our predecessor Committee in its 2014 report that the tensions and

overlap between International Humanitarian Law (the Law of Armed Conflict) and International Human Rights Law have led to a lack of certainty and clarity. The expansionary judgements of the European Court of Human Rights have served to add even further uncertainty to this picture, particularly when their judgements have, in some important instances, had the effect of applying the Convention and its obligations retrospectively. (Paragraph 59)

The MOD agrees that it is essential that all Service personnel, at all levels, fully understand the obligations placed upon them by both UK law and applicable international law. For that reason, every member of our Armed Forces receives training annually, which is also reinforced ahead of their deployment on operations. Civil servants deploying in key roles to operational theatres and in key operational policy roles in the MOD also receive Law of Armed Conflict (LOAC) training. In addition, each commander deployed on a military operation will have a dedicated military lawyer available at all times to give them specific legal advice.

3. This complexity and uncertainty has meant that it is all the more challenging and all the more urgent that commanding officers and Service personnel fully understand the laws governing the conflicts in which they are engaged. The importance of clear and accessible law has become well established in the civilian sphere, not least through the work of the Law Commission, and this principle should be just as, if not more, important when it comes to our Armed Forces. (Paragraph 60)

We reflect our international (and domestic) legal obligations in our policies and permissions including Rules of Engagement, doctrines and operating procedures and will, where appropriate to the demands of the role or operation being undertaken, ensure that these are covered in individual or wider training. This ensures that a complex and difficult legal landscape becomes part of the day-to-day routine, rather than Service personnel having to absorb difficult legal frameworks in abstract training sessions. The quality and relevance of the training is key.

4. *In light of the increasing complexity of the legal frameworks underpinning military operations, the MoD should ensure that sufficient resources are made available for educating the Armed Forces, on a more regular basis, about their legal obligations.* (Paragraph 61)

The Director of the MOD's Development, Concept and Doctrine Centre is the Training Requirements Authority for the delivery of Law of Armed Conflict training across the Ministry of Defence, and ensures that training is managed, governed and assured in accordance with general MOD policy on the delivery of training. Representatives from the individual Services, MOD Legal Advisers and other key stakeholders sit on a Customer Executive Board tasked with reviewing the relevance and delivery of the mandated training syllabus. An annual report on the delivery of LOAC training is made to the Vice Chief of the Defence Staff.¹

We therefore do not consider it necessary to educate the Armed Forces on a more frequent basis about their legal obligations. We are not aware of any indicators that more regular training is required. However, we can assure the Committee that the training requirement

¹ See also: <https://www.gov.uk/government/publications/implementation-of-international-humanitarian-law-at-domestic-level-voluntary-report>

is kept under constant review and, where there has been scrutiny in the context of post-conflict litigation and public inquiries, any lessons learned are built into these training reviews.

Legacy Investigations – Past and Present

5. We find the idea that a Serviceman could be told that he was under investigation, but not told what for, a disturbing one; equally disturbing is the idea that, on the conclusion of the investigations, he was not told what the findings were. *The MoD should examine Colonel Collins’ testimony and undertake the necessary investigations of its procedures to establish what happened in this case and to ensure that such a scenario can never happen again.* (Paragraph 68)

We have examined Colonel Collins’ testimony as requested by the Committee and have reviewed the Royal Military Police (RMP) record of the investigation. The record of the investigation shows that, as required by the Service Police Codes of Practice, Colonel Collins was informed in person by RMP Special Investigation Branch of the offences under investigation when he was interviewed, in the presence of a legal adviser. The interviews took place in June and July 2003.

Service Policing can differ from Home Office Police Force activity; speculation among Service personnel can lead some people to assume they are a suspect when in fact they may never reach that status. Where possible, and to avoid worrying Service personnel unnecessarily, the Service Police avoid informing them of the existence of an investigation prematurely and contact potential suspects only if there are reasonable grounds to suspect them of committing an offence (usually when seeking to interview them under caution).

Investigative procedures in place at the time, as well as those in place today, ensure that once the Service Police decide to treat an individual as a potential suspect they notify his/her chain of command. Thereafter they provide the chain of command with regular progress reports throughout the investigation. The chain of command also receives a Service Police Case Referral or Service Police Investigation Summary, as appropriate to the case. This process was followed in relation to Colonel Collins’ case.

It is the individual’s Commanding Officer who is responsible for notifying the individual of the outcome of the investigation, taking care not to preclude the possibility of disciplinary action being taken in the future if new evidence comes to light. Colonel Collins was notified of the outcome of the investigation—that no further action was going to be taken—by his Brigade Commander (as was noted in the report of Colonel Collins’ oral evidence, in response to the Committee’s Q57).

6. Overall, there appears to be a good level of legal support available to those under investigation, as Colonel Mendonça attested to during his evidence. We are aware of the concerns expressed by Sir Nick Parker that there could be potential conflicts of interest for the Government as a funder of legal support. We therefore call upon MoD to do all it can to ensure that this risk is minimised. There is also a danger that the current approach to legal provision risks the Service community missing out on the accumulation of collective knowledge and expertise. *We recommend that the MoD must engage with law firms with long experience of, and proven expertise in, providing*

counsel to those under investigation, in order to learn the lessons of these experiences and to ensure a more coherent approach to supporting veterans and Service personnel. (Paragraph 97)

We welcome the Committee's findings that there is a good level of support available to Service personnel subject to investigations. We are alive to the concerns raised by Sir Nick Parker regarding potential conflicts of interest and we ensure that the lawyers advising Service personnel and veterans under investigation, or otherwise involved in legal proceedings, are suitably independent. In line with the Committee's recommendation, we will continue to engage with practitioners on how best to support Service personnel and veterans under investigation.

7. While we are broadly reassured about the provision of legal support to those under investigation, our inquiry has raised concerns about the level of welfare support—particularly about the ability for veterans to access welfare support. There is a real risk that veterans who do not live near regimental associations could slip through the net. (Paragraph 98)

The MOD takes its duty of care to current and former Service personnel who become involved in legacy investigations and other legal processes seriously and recognises that this extends beyond the provision of legal advice and representation. Veterans often look for support from those with whom they share a close Service connection, and Regimental HQs and Associations fulfil an important function in the delivery of pastoral support. Welfare support is also available from a range of providers - both internal, such as the MOD's Veterans Welfare Service (part of Vets UK), and external, including through Service charities and other third sector providers.

8. We recommend that the Government should adopt a more proactive approach to assessing, and providing, the welfare support that veterans and Service personnel facing legacy investigations may require. The Veterans Gateway needs to be fully utilised as a means of directing veterans towards available help and the MOD should undertake a campaign to make contact with those veterans who may not be in close range of regimental headquarters or well equipped to use online resources. (Paragraph 99)

Whilst the MOD seeks to ensure that all of those who are engaged with legacy legal processes are made aware of the full range of support that is available to them, we acknowledge that this message is easiest to deliver to those most immediately and directly touched by specific investigations. Currently serving personnel can receive support directly via the chain of command; however, veterans—especially those who receive an initial contact via an external agency rather than the MOD itself—may be less sure how to access the help that is available.

The MOD agrees it is therefore important to widely signpost the availability of welfare support services to the veterans' community through multiple channels. In addition to enhanced communications with key stakeholder groups through Vets UK, the MOD agrees that a wide range of communications, including digital platforms such as the Veterans Gateway need to be utilised to signpost veterans towards available help. This will include the veterans' portal on GOV.UK, which the Government has committed to developing as part its Consultation Response to the Strategy for our Veterans, where veterans will be able to access information and services, including the types of support available to an individual subject to legacy legal processes and how and where this can be accessed.

Reforming the system

9. We welcome the announcement by the Defence Secretary that she will bring forward proposals on protecting Service personnel and veterans from prosecution. We hope that these proposals will indeed include a bar on new investigations for events that took place more than a decade ago unless there is compelling new evidence. A presumption against prosecution and protection from a fresh cycle of investigations, in cases which have previously been investigated and where there is no compelling new evidence, would be a sensible package of reforms. It would also be in keeping with the recommendation our predecessor Committee made, in relation to Northern Ireland legacy investigations, in 2017. (Paragraph 105)

We welcome the Committee's support for the proposals for legal protections measures, including the public consultation on legal protections for Armed Forces personnel and veterans on operations outside the UK which was launched 22 July 2019.² The analysis of the responses to the consultation has helped shape the measures that we have included in the Overseas Operations (Service Personnel and Veterans) Bill, which was introduced into Parliament on 18 March. The Bill includes a new 'triple lock' in order to give Service personnel and veterans greater certainty that the unique pressures placed on them during overseas operations will be taken into account when deciding whether to prosecute for alleged historical offences. This 'triple lock' consists of:

- A presumption that once five years have elapsed from the date of an incident, it is to be exceptional for a prosecutor to determine that a Service person or veteran should be prosecuted for alleged offences on operations outside the UK;
- a requirement that when making a decision, a prosecutor must give particular weight to certain matters, including the public interest in finality where there has been a previous investigation and no compelling new evidence has become available; and,
- where a prosecutor determines that a case should proceed to trial, notwithstanding the presumption and the circumstances of the case, then consent must be obtained before a prosecution can proceed. In England and Wales, for example, this will be from the Attorney General. In these cases, the Attorney General will be acting independently of Government, as guardian of the public interest.

The Bill also includes measures to:

- Assist with operational effectiveness, a requirement for the Secretary of State to consider, in the case of significant military operations, whether it is appropriate to derogate from certain rights in the ECHR in light of the situation at the time;
- introduce an absolute 6-year limitation longstop for personal injury and death claims in respect of overseas military operations, and a restriction on the court's discretion to extend the normal time limit for bringing such claims in relation to operations outside the UK. This will impact future claims by setting out additional factors for consideration by the court when deciding whether to

2 <https://www.gov.uk/government/consultations/legal-protections-for-armed-forces-personnel-and-veterans-serving-in-operations-outside-the-united-kingdom>

extend the primary limitation period of 3 years. This should ensure that claims are brought promptly, enabling them to be assessed in a fair and proportionate manner, and ensuring lessons are learned and applied; and,

- introduce an absolute 6-year limitation longstop for claims under the HRA in respect of overseas military operations, and a restriction on the court's discretion to extend the normal time limit for bringing HRA claims in relation to operations outside the UK. This will impact future claims by setting out factors for consideration by the court when deciding whether to extend the primary limitation period of 1 year. Again, this should ensure that claims are brought promptly, enabling them to be assessed in a fair and proportionate manner, and ensuring lessons are learned and applied.

10. However, we are extremely concerned that these proposals will not cover soldiers who served in Northern Ireland during The Troubles. We appreciate that legacy investigations in Northern Ireland are the subject of a cross-party process and form an important strand of the talks aimed at restoring devolution. Nonetheless, the treatment of UK Armed Forces should not be inferior in Northern Ireland to that which applies to legacy issues from conflicts overseas. Indeed, the protection of Service personnel and veterans everywhere should be a subject of the utmost importance to the UK Parliament and Her Majesty's Government. (Paragraph 106)

The Northern Ireland Assembly has now been successfully restored and the Government has committed in 'New Decade, New Approach', to publishing and introducing legislation in Parliament to implement the Stormont House Agreement to address Northern Ireland legacy issues.

On the same day that the Overseas Operations (Service Personnel and Veterans) Bill was introduced by the Ministry of Defence, the Secretary of State for Northern Ireland laid a Written Ministerial Statement. This statement set out how the Government proposes to address the legacy of the past in Northern Ireland in a way that focuses on reconciliation, delivers for victims, and ends the cycle of reinvestigations into the Troubles in Northern Ireland that has failed victims and veterans alike—ensuring that the treatment of Northern Ireland veterans is equal to those who served overseas.

11. The lives of those who served in defence of the United Kingdom deserve an equal protection from 'lawfare' and vexatious claims, regardless of where they served or Drawing a line: Protecting veterans by a Statute of Limitations 41 where they now live, as the Defence Secretary herself acknowledged in her Written Statement on 21 May. We intend to do all we can to secure this self-evident outcome. (Paragraph 107)

We welcome the Committee's intention to continue to engage on, and contribute to, this important work. We agree that all who served deserve equal treatment. As set out in the Secretary of State for Northern Ireland's Written Ministerial Statement, proposals to address legacy issues in Northern Ireland aim to ensure equal treatment of Northern Ireland veterans and those who served overseas.

12. We remind the Government that, in the context of Northern Ireland, our predecessor Committee expressly recommended not only a Qualified Statute of Limitations for Service personnel and veterans, but one which was coupled with a truth

recovery mechanism aimed at providing the families of victims that best possible hope of uncovering the truth. We continue to believe that this offers the best route forward. (Paragraph 108)

The Written Ministerial Statement from the Secretary of State for Northern Ireland contains details on the proposed way forward to address the issue of legacy including equal treatment for Northern Ireland veterans. The proposals also suggest that information recovery and reconciliation should be at the heart of a revised legacy system that puts victims first. The Northern Ireland Secretary will continue to work closely with the Northern Ireland parties, Ministerial colleagues—particularly in the MOD and Office for Veterans Affairs, Parliamentarians, and key stakeholders to find a way forward which is effective, legally robust and commands consensus.

13. We understand that the Government’s proposals will be put out to consultation and we recommend that this process should include the publication of any bill in draft form. Such a draft bill should be made available for pre-legislative scrutiny by this Committee and, after it secures its Second Reading when introduced formally before the House, it should be remitted to an ad-hoc Select Committee for its Committee Stage, as is customary for Armed Forces Bills. (Paragraph 109)

The MOD’s 12-week public consultation on proposed legal protections measures for Armed Forces personnel and veterans who have served in operations outside the UK was published on 22 July 2019. The consultation set out three main proposals, which we considered to be capable of being taken forward in legislation and which would be beneficial to Armed Forces personnel and veterans (and in the case of the civil litigation measure, also beneficial to wider Government):

- a) A statutory presumption against prosecution of current or former Armed Forces personnel for alleged offences committed in the course of duty outside the UK more than 10 years ago. The measure would effectively raise the threshold to be applied by prosecutors when considering whether a prosecution is genuinely in the public interest. Two options have been provided for how the measure could be enacted.
- b) A proposal to ensure that going forward, the law reflects the unique pressures faced by Armed Forces personnel while deployed on operations outside the UK, through the creation of a new partial defence to murder. This would be available to current and former Armed Forces personnel who caused a death in the course of duty outside the UK through using more force than strictly necessary for the purposes of self-defence, providing that the initial decision to use force was justified. The defence would reduce a conviction for murder to manslaughter.
- c) A proposal to restrict the Court’s discretion to extend the normal time limit for bringing civil claims for personal injury and/or death in relation to historical events outside of the UK.

Given the publication date of the consultation (which coincided with that of the Committee’s report), it was not possible to take account of the Committee’s recommendation to include any draft legislative provisions in the consultation. We have analysed the over 4200 responses to the consultation, the outcome of which has helped to shape the measures in the Overseas Operations (Service Personnel and Veterans) Bill which was introduced

in the House on 18 March 2020. This Bill is the first step in delivering the Government's manifesto and election commitments to prevent vexatious claims against the Armed Forces.

Given the Government's commitment to legislate in the first 100 days, it has not been possible to make a draft Bill available for pre-legislative scrutiny. However, we are intending to engage with the HCDC prior to Second Reading.

14. We share the scepticism about Hilary Meredith's scheme for MoD corporate responsibility for alleged military crimes, and are concerned about the message that it would send. Service personnel who are promptly and properly investigated, and found guilty of criminal offences, should face the consequences themselves rather than being shielded by the MoD taking corporate responsibility. (Paragraph 112)

We note and concur with the Committee's statement. Armed Forces personnel are not above the law and should be held to account when there is sufficient evidence of wrongdoing.

15. We agree with Professor Ekins that the ECtHR has gone beyond the original understanding of the Convention and that its rulings have stretched the temporal and territorial scope of the HRA beyond Parliament's original intentions in 1999. (Paragraph 128)

16. We understand the Government's concern about the potential consequences of reforming the HRA and the implications for the UK's continued membership of the ECHR. However, it is also clear that the ECtHR's expansionism is one of the main drivers of the relentless cycle of legacy investigations. If the Government's proposals for implementing a presumption against prosecution are to succeed in stopping the injustice of repeated, and vexatious, investigations, then it needs seriously to consider whether the Human Rights Act also needs to be amended to counter the expansionist rulings of the European Court of Human Rights. (Paragraph 129)

17. Despite the concerns expressed by the MoD in its written evidence to our inquiry, we are strongly attracted to Professor Ekins's proposals as a basis for further work. Of his two proposals, the second option appears to pose the lesser legal risk and, due to the importance of the jurisprudence of the European Court of Human Rights in sustaining legacy investigations, this option should be properly and carefully considered and should, therefore, be included in the Government's consultation alongside its preferred proposal. (Paragraph 130)

Now that we have introduced the Overseas Operations Bill and the Northern Ireland Office are preparing legislative measures to address the legacy of The Troubles, we are working closely with the Ministry of Justice on additional measures to tackle the inappropriate application of the HRA to events which occur outside the territory of the UK and to issues that occurred before it came into force.

18. We are disappointed, but not surprised, that critics of our predecessor Committee's proposal for a Statute of Limitations have failed to acknowledge that the Committee has made clear that it is not proposing, and does not endorse, a blanket Statute of Limitations nor one that does not provide scope for re-investigation where compelling new evidence emerges (Paragraph 145)

As set out in our written evidence dated 1 August 2018 and 17 April 2019, we consider that a statute of limitations covering all military operations would be very challenging. This is not least because, in relation to offences alleged to have been committed during military operations overseas, there is a substantial risk that the absence of a domestic system of prosecution would lead to the International Criminal Court asserting its jurisdiction.

We believe the measures contained in the Overseas Operations (Service Personnel and Veterans) Bill are a proportionate solution to the problem and strike an appropriate balance between victims' rights and access to justice on the one hand, and fairness to those who defend this country on the other.

19. We are firm in our belief that the proposals represent a Qualified Statute of Limitations that recognises both the importance of investigation of serious offences and the possibility of compelling new evidence emerging. Such a Statute of Limitations would in no way constitute an ‘amnesty’, rather it would require Service personnel and/or veterans to have already been investigated and exonerated of the offences in question. (Paragraph 146)

20. We are therefore pleased that it appears that the proposals, outlined by the Defence Secretary, amount to a ten-year Statute of Limitations, qualified by an exception where compelling new evidence has been discovered. (Paragraph 147)

We would like to take this opportunity to clarify that the Government's proposal to which the Committee refers does not in fact amount to “a ten-year Statute of Limitations, qualified by an exception where compelling new evidence has been discovered”. The Government's proposal in the consultation was for a statutory presumption against prosecution of current or former Service personnel for alleged offences committed in the course of duty outside the UK more than 10 years ago.

The statutory presumption measure in the Bill, which will apply to alleged offences overseas more than five years ago, will in effect raise the threshold to be applied by prosecutors when considering whether to prosecute in such cases. Neither the presumption against prosecution, nor the matters to which prosecutors must give particular weight, interfere with the prosecutor's independence in making a decision whether to prosecute. The measures are also compliant with our European Convention on Human Rights and other international obligations.

21. We look forward to scrutinising the Government's proposals in detail when they emerge, but we remind the Government that if the ECtHR seeks to overrule these plans, the option will remain of changing the UK's stance in relation to the ECHR on the lines recommended by Professor Richard Ekins. This problem can be solved—but only by a resolute Government with the determination to do so. (Paragraph 148)

This Government is resolute in its determination to give our Armed Forces the protections necessary to enable them to operate effectively, and we welcome the Committee's continuing engagement on this hugely important issue.