Written evidence submitted by the Centre for Military Justice.

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Introduction

The Centre for Military Justice (CMJ) is a small, independent legal charity established in 2019 to advise current and former members of the Armed Forces or their bereaved families who have suffered serious bullying, sexual harassment, sexual violence, racism, other abuse or neglect. The CMJ also undertakes educational and outreach work within the armed forces sector, promoting the rule of law, human rights and access to justice. Supporting women that have experienced gender-based violence and other discrimination continues to be a priority area for us. [1]

The CMJ gave written and oral evidence before the original Inquiry. A copy of our original written evidence can be accessed here. On 25 July 2021, the Defence Committee published its final report on 'Women in the Armed Forces: From Recruitment to Civilian Life'.

Call for further evidence

The Defence Committee has now made a further call for evidence with a deadline 24 January 2025 but it has extended the deadline until Easter.

This short submission summarises some of the key issues that are currently arising in our work.

[1] www.centreformilitaryjustice.org.uk

THE LATE GUNNER JAYSLEY BECK

Members of the Committee will be aware of this case. A copy of a letter sent to the Chief of the General Staff on behalf of the family after the inquest has been provided to the Chair of the Committee who we understand has shared it with the other members. For completeness, a further copy of the letter, the Coroner's summing up and the record of inquest is attached to this submission. We have prepared a short summary of the facts and findings below. We think this case gives the Committee a good insight into the reality of life inside the Army for some young women.

Summary

Gnr Beck joined the Army aged 16 and she was 19 when she died. She undertook her initial training at Army Foundation College, Harrogate (AFC(H)). Very shortly after the end of her Phase 1 training, she started a relationship with a man who had been one of her instructors, and she remained in a relationship with him for approximately 2 years. There were rumours that the relationship had started while she was his trainee but he declined to answer questions about this at the inquest (as was his right).

Jaysley joined the Army's Core Engagement Team (CET) in early 2021, whose function was to attend schools and colleges and encourage young people to consider a career in the armed forces. By all accounts she was extremely good at her job and loved it.

In July 2021, at a work social event, the Coroner found that Jaysley had been sexually assaulted by her Battery Sergeant Major (BSM), who was more than twice her age, married and with a family. She was so frightened by this experience that she initially hid in the accommodation toilets then decided to sleep overnight in her locked car, in case he came looking for her. She asked her friend to stay on the phone with her throughout the night as well. The next morning, when she was discovered in her car, one of her colleagues, a Lance Bombardier, insisted on reporting the allegation up to the chain of command (CoC) and persuaded Jaysley to do so. However, the Captain to whom they reported (then Captain now Major Hook) disbelieved Jaysley, stating that he thought she had made-up the allegation in order to get off exercise, and he asked her to think carefully about the impact this allegation would have on the BSM. He also took the opportunity to point out that it would just be her word against the BSM's and he left her to think about what she wanted to do. To her credit, Jaysley persisted and referred the matter up through her own line management. The matter was duly referred up to the Regimental Colonel who, in evidence, stated that she had not appreciated that the incident was as serious as it was and, on the basis of the information she received, decided to deal with it by way of "minor administrative action" (ie informal resolution with a letter of apology from the BSM). This would mean that the BSM would be spoken to and there would be a written record of the minor sanction on the BSM's file but it would be deleted upon his posting. A copy of the record showed that it made no reference to the nature of the allegation anyway, simply that he had engaged in "conduct unbecoming of a warrant officer". There was nothing to indicate that it involved sexually inappropriate behaviour, let alone a sexual assault on a teenager. At that time, and now, the rules were crystal clear that where an allegation of sexual assault is made, the matter must be referred to the military police, at the very least. The Regimental Colonel stated that she was unaware of this, nor does it appear to have occurred to anybody else in the CoC who were all content to deal with the matter by way of informal resolution. In due course, the Coroner was to find that: *'In that the way that Jaysley's complaint was handled combined with other factors, in my judgment played more than a minimal contributory part in her death, I make the following findings of fact: (1) Major Hook did not initiate any investigations into Jaysley's allegation (2) Made assumptions as to Jaysley's veracity without any factual basis for doing so (3) Put pressure on her to drop her allegation (4) Only reported the matter to higher command when it became apparent that Jaysley's line management had been involved in the pursuit of a complaint.'* The Coroner found that the matter should have been reported to the police and that the failure was a breach of Army policy.

In around September of the same year, Jaysley also started to experience difficulties with her immediate line manager, a Bombardier. This individual was responsible for organising the work of the CET, allocating tasks and making arrangements for the numerous trips out. It is clear that what began as a friendly, professional relationship, quickly became, on his part, inappropriately intimate, emotional and

demanding. The complete WhatsApp messages between Jaysley and her line manager (extracted by the family, not the police) were made available to the Coroner and reveal how the line manager became increasingly possessive, obsessive and controlling around Jaysley. He became jealous of her friendships with other colleagues, emotionally manipulative, would threaten suicide to get her attention, expressed overwhelming feelings of love and desire for her and he began to manipulate the rota so that he would always be away with her on their work trips. He would text, call and leave voice notes for her throughout the day and did so more than 4600 times between October and November 2021. It is quite clear that Jaysley was expressing her concerns about the line manager's behaviours to her friends and colleagues, and although several of them recommended that she report him, she lacked faith in the process for doing so and did not think it would make any difference and she did not do so. Fundamental to her developing that opinion was the way in which her CoC had dealt with (or failed to deal with) the earlier allegation of sexual assault by the BSM and the fact that she feared getting a reputation as a *'female trouble-maker'*. This theme – that young female soldiers quickly get bad reputations if they make complaints against males, especially more senior males – was one that two other young female soldiers also spoke to extensively in their evidence.

In the final few weeks of her life, Jaysley also became involved with a married officer in his late 20s. The fact of this relationship was a breach of Army rules and it appears that Jaysley felt considerable pressure from this situation (morally and professionally). It appears that she took her life shortly after spending some time with the married officer on the night in question, following which she was seen upset.

As you can see from the record of inquest, the Coroner found that Jaysley had been under a prolonged period of stress as a result of harassment by her line manager and difficulties with personal relationships and on the night in question she had consumed a large amount of alcohol. He found that the following factors contributed to her death: 1) there was a failure on behalf of the Army to take action in relation to the harassment that she was suffering at the hands of her immediate line manager; and 2) there was a failure on behalf of the Army to take appropriate disciplinary action against a senior officer at whose hands she had suffered a sexual assault.

For full details please read the Coroner's summing up.

Themes/issues arising from this case that may be of relevance to the Defence Committee:

1. **Relationships between male instructors and female trainees**

It is important to note that the former instructor in question declined to answer questions as to whether he had been involved in a relationship with Jaysley while she was his trainee at AFC(H), as was his right. It is clear that the relationship officially started shortly after Jaysley finished her phase one training. He is no longer serving.

In 2024, Cpl Christopher Irwin was dismissed from the Army after being found to have had sex with a child while acting in a position of trust as her instructor at AFC(H). The Committee will be aware of the work of Child Rights International in this area which raises serious concerns as to how meaningful the safeguards are for the protection of children and young people at this important stage of their training. Our own client Kerry-Ann Knight (a Black female instructor who successfully sued the Army at an Employment Tribunal for sexual and racial harassment in summer 2024) who was an instructor at AFC(H) between May 2021 and January 2023 spoke at length to CRIN and among other things described her impression of some of the predatory and inappropriate behaviours of some of the male instructors towards the female trainees.

CMJ is also assisting another former female trainee at AFC(H) who has reported extremely serious sexual offences and other inappropriate behaviours at AFC(H) (albeit not alleged to involve an instructor) but due the fact that this is presently the subject of various ongoing legal processes, we are not able to provide more details. However, this case as well as the incidents described above do not give us confidence that young women/children are safe there.

2. The day-to-day experiences of young female soldiers in parts of the Army.

Two of Jaysley's friends and colleagues, both young women, gave evidence at the inquest, Kirsty Young and Tamzin Hort. Both described '*vile'* and '*degrading'* behaviours by many of the men with whom they were expected to live and work. The latter had experienced continued and sustained sexual harassment with unpleasant misogynistic name calling if sexual advances were rejected and multiple, repeated incidences of being sexually propositioned, including finding a sergeant outside her room bearing a condom one evening. She had to endure repeated comments about her weight and appearance and in the end decided to leave the Army, even though in many ways she loved her job. The unacceptable behaviours were not confined to the other ranks but included officers. She had no faith in the complaints process. Kirsty Davis stated that she could well understand why Jaysley may not have wanted to press the point further about the BSM because it would have resulted in her being vilified and blamed, which was Kirsty's experience of what happened when a female soldier made a complaint against a male soldier. She will soon be leaving the Army too.

These day-to-day lived experiences of women in the Army are not uncommon in the accounts we receive from women that contact us for advice on specific, usually more serious incidents. Many will describe having experienced this kind of day-to-day indignity without complaint for a long period of time, before a more serious event occurs following which some of them finally seek outside help.

3. None of them complained using the formal Service Complaints process.

Neither Jaysley, Tamzin nor Kirsty complained. This is entirely consistent with everything we know about unacceptable behaviours in the armed forces. The last continuous attitudes survey, as have all the previous ones, showed that 87% of service personnel who described having experienced unacceptable behaviours in the preceding 12 months, did not make a formal complaint about it. Women experience hugely disproportionate levels of bullying, harassment and discrimination. People do not complain because they fear the impact on their career and they fear that nothing will be done. There is still a huge lack of faith in the Service Complaints process. We believe, and more importantly, Jaysley's family believes, that the time has come for meaningful independence to be brought to bear in the handling of the most serious kinds of Service Complaint. As the committee will be aware, this recommendation was made in 2019 in the Wigston Review and again in 2021, by the Defence Committee itself. We say more about this issue below at p8.

4. It was crystal clear in 2021 that any allegation of sexual assault needed to be referred to the service police yet this did not happen.

It is also crystal clear today that any allegation of sexual assault needs to be referred to the service police. It remains unclear how or why anyone in the CoC can have ever thought it appropriate in 2021 not to refer the matter to the police when Jaysley reported a sexual assault from her BSM. The answer that 'policy is clearer now' is not an adequate response when it was clear then (further details can be supplied if helpful). The true explanation, in our view, is that there were important people in the CoC that just did not believe Jaysley and/or did not think it was a particularly serious matter and/or were more concerned with the impact on the BSM. The CMJ believes that these prejudicial attitudes continue to present a real challenge to the armed forces today.

5. None of Jaysley's friends reported their concerns about the possessive line manager.

Many of Jaysley's friends and colleagues became aware of the extent of the line managers possessive behaviours and they were urging Jaysley to report the matter or to make a formal complaint about it. However, while it was open to any of them to make a report themselves, even if Jaysley had not wanted them to, none of them actually did.

6. **When she first reported the sexual assault, she was disbelieved and discouraged from formalising her report.**

The male captain to whom Jaysley initially reported the sexual assault appeared to be of the view that young women make up allegations of sexual assault to get off work or exercise. This is the kind of old school rape myth that we fear flourishes in the very masculine environment of the British Army and we fear there may be insufficient efforts being made to address this kind of thinking.

7. **There is a lack of career consequences for the culpable.**

The BSM was promoted after the July 2021 minor administrative action. He promoted from Warrant Officer Class 2 to Warrant Officer Class 1 and was given a soldier-facing role as a Regimental Sergeant Major (RSM). After Jaysley died, someone decided that might not be a good idea so it was suggested that he should not take up that role. But if Jaysley had not died, the fact that the BSM had done what he had done to a teenager would not have prevented him from taking up an RSM role. He remains a WO1 today and has not been reduced in rank. He announced at the inquest that he will be leaving the Army of his own volition, presumably with all attendant benefits.

Then Captain now Maj Hook has not, as far as we are aware, been disciplined or been made to undergo training to address the serious deficiencies in his handling of Jaysley's sexual assault allegation. In his evidence he alluded to having dealt with other cases in his career and we remain concerned that this may not have been the first time he disbelieved and discouraged a complainant.

The Regimental Colonel has not, as far as we are aware, been disciplined for persuading Jaysley to accept informal resolution and for failing to refer her report to the military police.

In its response to the original Defence Committee report in 2021, the MoD assured the Committee that there would be career consequences for those that mishandle complaints. We say more about this below at p13. This has not happened.

8. **Service Inquiry failings. The SI partly blamed the family for Jaysley's death; and they took evidence from young women/soldiers while in the company of their immediate superiors, thereby compromising the quality of the evidence.**

'**Family issues':** The family was deeply hurt by the conclusion of the Army's internal Service Inquiry (SI) that the death of Jaysley's uncle '*and other family issues'* was a causal factor in her death. The main source for this unforgiveable misinformation was the line manager, Ryan Mason. The SI panel knew very well the extent of the line manager's mendacity by this point and should have treated his reference to 'family issues' with extreme caution. He had a clear motivation to blame the family for Jaysley's distress in order to draw attention away from himself. The conclusions of the SI that '*family issues'* had been a causal factor in Jaysley's death caused them enormous distress. It had the effect of distracting the family at a time when they should have been free to focus upon their loss of Jaysley and the wider issues arising in relation to her service in the Army. Instead they had to grapple with the suggestion that they were somehow responsible for her death. The Coroner said: *'What I can be confident of is that family troubles were not a factor. That possibility had been raised in the Bombardier's statement to the Service Inquiry. I am satisfied that what he said was knowingly false and an attempt to deflect responsibility for Jaysley's death from himself.'*

The SI should have come to the same conclusion. It should have been far more mindful of the source of this misinformation and given it due weight. The strong impression received is that the SI wished to dilute the responsibility of the Army for Jaysley's death by suggesting that family issues, in addition to the actions of Mason, were in part responsible.

The family has asked the SI report to be corrected by way of an addendum to reflect the Coroner's findings and for this to be published alongside the original SI report.

Witness pressure/intimidation: One witness, Tamzin Hort described to the Coroner that she had not been able to give truthful evidence to the SI because she had been attended at all times by her Battery Sergeant Major. The author is familiar with this issue arising in other cases and recalls a SI from a few years ago when the immediate supervisor of a witness had to be removed from the SI room because it became apparent to the panel that the witness' evidence was being affected. This is an obvious and predictable risk. There can be no good reason for anybody to be in attendance in the room, other than the panel and the witness in question, and although this issue does not directly bear upon the experiences of 'women in the armed forces' per se, it does affect the quality of evidence a SI may be able to obtain, and the institution's ability to learn effectively from serious incidents, and so we raise it for the Committee's consideration.

9. Inappropriate pressure brought to bear to sanitise accounts.

The inquest heard evidence from Regimental Colonel Samantha Shepherd that she had included in her text for the draft Learning Account (an initial report to capture learning and evidence following a serious incident), a reference to the allegation made by Jaysley against the BSM which included a description of some form of physical touching. Col Shepherd said that she was '*open and transparent'* in her account, but that '*APSG came down and advised (me) … to be more vague - to talk more generally. I felt uncomfortable about this but that was my advice from 4* HQ. So I did what I was advised to do and I made the language vaguer … (I think I was told) that the language didn't need to be so prescriptive….In the LA review they tried to say that I had covered up a sexual assault…'.* In her evidence to the SI, Col Shepherd also referred to having been contacted by *'an SO1 Legal who came to my office to suggest that I might like to change the language'.*

The family are very concerned that inappropriate pressure appears to have been brought to bear with the objective of effectively sanitising Jaysley's account to mask the fact that what she had been describing was self-evidently a sexual assault. That this pressure may have come from APSG and/or Army Legal Services is extremely concerning.

The current head of APSG, Brig Emmett, said in response to the family's questions on this issue at the inquest that she would be investigating further. The family has made clear that they do not think it appropriate that the current head of APSG should be leading on an investigation into her own office (albeit into allegations concerning her predecessor - there is no suggestion that Brig Emmett, the current head of APSG, was involved at the time of the Beck learning account) and have asked that this investigation be led by another team, or the RMP.

SERVICE COMPLAINTS – A LACK OF INDEPENDENCE

The Defence Committee in its 2021 report recommended that the MoD should establish a 'central Defence Authority', to provide a reporting and investigation system for bullying, harassment and discrimination, outside the Chain of Command and outside the single Services.

This recommendation was not accepted by the MoD.

As the Committee will recall, the Wigston Review into Inappropriate Behaviours in 2019 was convened following a series of incidents that had been reported in the press (which included allegations of sexual assault). The Wigston Review made a series of recommendations which the MoD stated it accepted 'in full'. One of the principle recommendation that was widely lauded when the Review was published, was the creation of a new 'central Defence Authority for Culture and Behaviours'. This new Defence Authority, that would be separate from the single Services, would have responsibility for the investigation of the most serious complaints, injecting a much-needed degree of independence and expertise to the system.

In the report of Danuta Gray, published in December 2020, designed to review the progress of implementing Wigston, it was revealed that this key recommendation had not in fact been accepted after all, nor did the MoD intend to implement it. Instead (without any process of public or service consultation), the MoD had decided that the recommendation was now going to be met by the creation of an expanded 'diversity and inclusion' team within the Chief of Defence People's office. **However, the handling of the most complex bullying, harassment and discrimination complaints would remain with the single Services themselves.** It is fair to make the observation that the MoD's response to this part of the Wigston Review was at best, opaque, and at worst, misleading.

The Defence Committee in its July 2021 report impressed upon the MoD the importance of now accepting this particular recommendation of the Wigston Review which would lend a degree of relative independence and expertise to the reporting and investigation handling of the most complex bullying, harassment and discrimination complaints, (which are disproportionately made by women and Black and Minority Ethnic personnel), taking them outside of the single Service branches concerned.

For the second time, the MoD rejected it.

In defence of its position, the MoD relies upon the fact that it had instead (our responses in italics):

1. Created a Diversity & Inclusion (D&I) Directorate that was independent of the chain of command.

   It is important to note that there already was a D&I team in existence before the Wigston Review, which was expanded following Wigston. It is also important to make the point that this D&I Directorate is now responsible for Service Complaints reform and Service Justice reform as well as unacceptable behaviours and D&I work, a huge brief requiring expertise across a very wide range of disciplines. We have found it hard to engage with them.

2. Updated its Service Complaints policy.

   We say more about this below, but we suggest that the principle changes have made things considerably harder for service personnel suffering bullying, harassment or discrimination, not easier, particularly the very significant erosion of rights of appeal in the handling of Service Complaints.

3. Appointed independent members to Appeal Body boards for Service Complaints.

The services have for a long time been able to appoint independent members to Appeal Body boards for Service Complaints where they involve an allegation of discrimination. This is not new and it was disingenuous of the MoD to suggest otherwise. (And now hardly any cases get to appeal stage anyway, see below).

4. Created a 'Central Admissions Team' (CAT) for admissibility decisions on Service Complaints, removing decisions on whether a complaint could proceed, from the chain of command itself. That has now been rolled out.

   It has long been possible to request the Service Complaints Ombudsman for the Armed Forces (SCOAF) to make a referral (notifying the service of an intention to make a Service Complaint) outside of the chain of command; and a Commanding Officer has for a long time not been permitted to make an admissibility or substantive decision on a Service Complaint if they are implicated in it.

   The main issue is that the CATs remain firmly embedded within the respective single Services and are not independent of them. Concerningly, evidence given at the inquest into the death of Gnr Jaysley Beck indicates that the MoD is already considering rolling back the CAT's new role in handling all SC admissibility decisions, explaining that they are now intending to adjust the process again so that some complaints can be referred back to the Commanding Officer after all, 'where it is safe and appropriate' to do so. How a matter will be adjudged 'safe and appropriate' was not explained.[2] The obvious point to make is that Jaysley Beck's CoC clearly considered it 'safe and appropriate' for her report of sexual assault to be handled locally and informally so this remains a concern.

5. Engaged an 'Outsourced Investigations Service' to investigate Service Complaints.

   The OIS is a private company retained to assist in carrying out an investigation for the Decision Body (the Decision Body (DB) is the panel appointed to consider a Service Complaint at first stage). The company/OIS has no role in the setting of terms of reference for complaints investigations and has no role in actual decision-making on a complaint. They act under the direction and control of the DB, and pass their file back to the DB for all decisions to be made by the DB.

The Wigston/Defence Committee's recommendation remains important and outstanding and the MoD should be urged to accept it. The quality of the existing Service Complaints teams and their ability to deal with complex cases of bullying, harassment and/or discrimination, is decidedly mixed, with some decisions being extremely low in quality, revealing a very poor understanding of such concepts such as discrimination and unconscious bias. That continues to be our experience and should be no surprise – we do not understand why anyone should expect a former CO or other officer sitting as a Decision Body on a SC to have a good knowledge of the Equality Act, including principles of discrimination (direct and indirect), harassment and victimisation. When such cases are considered by the county courts, specialist advisors called 'assessors' are brought in to help the judge. But we expect people who have for the most part had their careers in a non-legal setting in the forces to be able to do this without the right experience or expertise.

Many people within the services recognise the value of the Wigston proposal. Anecdotally, we can report that many individuals have expressed, in private conversations with the CMJ, the view that complex bullying, harassment or discrimination complaints would be better handled away from the services themselves. With the new Armed Forces Commissioner coming into force, who will take over among other things the role of SCOAF, this presents an opportunity to look again at this issue and it seems

[2] The statement of Brig Melissa Emmett dated 05/02/25 to the inquest touching the death of Jaysley Beck, para 204.

reasonable to suggest that an independent team in the AFC's office might be able to meet the objectives of the Wigston recommendation.

Service complaint examples

Some recent examples from our Service Complaints casework, since the Defence Committee reported in July 2021:

- In a striking decision of a Decision Body from the summer of 2022 in a case supported by the CMJ concerning a complaint of a lack of welfare and other support following a report of rape in the Army, the DB itself took the opportunity to say: *"This is a specialist area requiring an understanding of law, policy and processes. Neither the Decision Body nor the investigating officer had any experience in dealing with victims of sexual assault, the law relating to it or the MoD policy. Whilst every effort has been taken to ensure all areas have been properly and diligently covered, and that you have been treated with sensitivity and compassion, the conduct of this process would have benefited from an expert in this area."* That observation would remain true today.
- In another example, in an RAF Service Complaint, the DB insisted (as the RAF do in all SCs now) in holding what it calls an oral 'case hearing' which the complainant and respondent were expected to attend. The complainant is expected to be present to answer any questions from the DB about her complaint of, in this case, alleged sexual assault, in front of the alleged perpetrator. Though being supported by one of our lawyers in relation to the complaint generally, that lawyer was informed that external legal advisors were only permitted to attend these hearings in the 'most exceptional circumstances'. It was made clear to the complainant that the attendance of her lawyer would be considered disruptive to the SC process. However, we were told that the legal adviser for the RAF may be present (though apparently in an impartial capacity). In that case, as in all SCs, a large disclosure file of around 500 pages evidence was provided to the complainant and her comments on it required. The RAF generally gives just 5 days for these comments to be provided (even though the policy JSP 831 expressly states that complainants should be given at least ten days). The full ten days were only given after a specific application was made by the complainant's lawyer. The DB postponed the case hearing date a number of times. Despite this, the DB refused to allow any additional time for the complainant to provide her written submissions before the case hearing. The tone of the correspondence between the DB and the complainant was insensitive. This complainant has PTSD (due to the sexual assault).
- A similar situation involving the RAF arose earlier in 2023 with almost identical issues, with very limited time to make comments on the extensive disclosure, and a requirement to attend a case hearing in the presence of the Respondent, who was accused of sexually harassing and bullying the complainant. In that case our legal adviser was permitted to attend after lengthy correspondence about that issue (but it was made clear that she was not to speak or take part in any other way).
- In a case from 2022, an oral hearing was convened to hear a complaint alleging serious sexual harassment and bullying against a female WO2. The complainant was required to choose between either having someone with her during the hearing for personal support, or a legal representative. She could not have both. This was notwithstanding that she had a diagnosis of PTSD and depression and both her psychiatrist and medical officer supported her request. Arrangements that we had been assured would be in place to ensure the complainant did not have to come face to face with the respondents did not work on the day.
- In Kerry-Ann Knight's SC, in which she alleged multiple acts of racism and sexism perpetrated against her by her colleagues and superiors at AFC(H) between 2021-2023, her SC was overwhelmingly rejected in 2024, save for on those limited occasions where she had been able to secretly record the offensive behaviours on her phone. In those respects, the DB had no alternative but to find those parts of her complaint upheld. But in *all* other respects, the DB preferred the accounts of the white males who denied the conduct, over the Black female who was trying to complain about it. The DB even took the opportunity in its decision letter to invite Kerry-Ann to '*take the opportunity for some personal reflection in light of the 'criticism of (her)*

within several statements'. Those criticisms of course had come from the very men she was accusing of sexism and racism, but the DB was keen to give particularly strong weight to them. The tone of the DB letter was extremely grudging even though it had to concede that at times she had experienced racial and sexual harassment. The SC decision was a disgrace. The Committee will be aware that the Employment Tribunal claim brought by Ms Knight later settled on the basis of an apology and very significant damages. We have no faith that any action (whether by informal words or otherwise) will have been taken against the DB that so mishandled the SC.

- In a number of different SCs from service women in the Royal Navy, we have observed an extremely poor quality of investigations of allegations of sexual assaults. In at least two cases, the DB has declined to obtain readily-available evidence following the request of the complainants. Both of these women were made to feel as though the onus was on them to search for and provide material to the DB, despite the fact that an 'independent' investigator had been appointed. We say more about the Outsourced Investigations Service above.
- A concurrent Employment Tribunal (ET) claim revealed further shortcomings of the SC disclosure process in one complainant's SC. Important, relevant evidence was only revealed to the complainant through the ET disclosure process at a later stage, long after the conclusion of the SC. The complainant in that case believes that the Royal Navy deliberately withheld that information during the SC investigation. CMJ has had other SC cases where highly relevant material appears to have been withheld from the complainant during the SC disclosure stage and which was only located with legal assistance afterwards.
- In another case, the DB chose to inform the complainant in a rape complaint that her complaints had had a negative impact on the respondent (who she had accused of bullying her in the aftermath of her alleged rape). This had the effect of making the complainant feel as though she should not have raised her complaint in the first place. Complainants being informed of the negative impact of their allegations on respondents in Service Complaints is very common.
- In all three services, we have repeatedly seen the DB inappropriately applying its own (mis)understanding of the law. In one case the DB applied the criminal, legal definition of harassment when purportedly assessing a complaint made about workplace harassment under the Equality Act 2010. In another case, the DB found that the respondent to a complaint of a rape was 'credible' (and so, the implication was, his account should be preferred) because he had admitted to having sex with the complainant, incorrectly citing and applying a criminal law principle in relation to this point.
- As if further evidence were needed, as we have outlined above, the case of Gnr Jaysley Beck shows the need for a genuinely independent process in which service women and men can have faith. Jaysley did not report the harassment from her line manager to anyone nor did she raise a complaint about it. Jaysley's family wonders, if there had been an independent body to whom she could have reported the behaviours, this might have made a difference in her case. It is striking that neither Jaysley nor any of the other female witnesses who gave evidence to the SI that they too had been subjected to 'vile' and 'degrading' behaviours from men at Larkhill Garrison reported the incidents or made complaints about them. Jaysley's family wrote to the Defence Secretary about this issue. At her daughter's inquest, the Head of Army Personal Services Group Brig Emmett confirmed that, having considered the request, the MoD had rejected the proposal again.

These are the kinds of cases we suggest would have been better and more competently handled by a central Defence Authority.

Having a central Defence Authority or the AFC have conduct of these cases would:

1. Inject greater independence and (with appropriate resourcing and commitment) expertise into the complaints system;
2. Provide a central, independent method of cascading best practice and learning across the three services, so the services are always learning from the worst cases;
3. Save enormous amounts of time and resources for the single Services themselves;

4. Protect the single Services from the obvious criticism that they are marking their own homework; and
5. Engender confidence, which would mean more people would complain, which, while undoubtedly an uncomfortable process, would mean poor behaviour would be more effectively addressed, leading to an overall improvement in culture and behaviours. This in turn will improve trust and faith in the institution, and hopefully recruitment.

SERVICE COMPLAINTS – HANDLING OF COMPLAINTS

The link between a Service Complaint and service women's right of access to a court

Clients continue to report intense frustration and dissatisfaction with the SC process, even if they ultimately result in a positive or partially positive outcome in that there may be an admission of some sort of wrong, an apology and/or an offer of a small 'consolatory payment'. The process is routinely experienced in very negative ways. The SCOAF continues to report that the SC process is neither 'effective, efficient nor fair'.

For service personnel who wish to exercise their right to apply to an Employment Tribunal (ET), they have no choice but to use the SC process – the law requires it.[3] If they have not made a SC in relation to the same matters (or even if they have made a SC but then fail to appeal it if it is dismissed), the ET immediately loses jurisdiction and their claim cannot proceed. In this way, the rights of service personnel are very heavily restrained and differ markedly from the rights of civilians.

In addition, a service person cannot claim constructive or unfair dismissal – they can only bring a claim before the ET where they allege discrimination on the basis of a protected characteristic within the meaning of the Equality Act 2010 (ie – on the grounds of sex, maternity, race, sexual orientation, gender reassignment, marriage/civil partnership, religion or belief, but not, notably, disability or age). In the CMJ's experience, lawyers acting for the MoD expend considerable time and energy seeking indefinite delays to the progress of ET claims to allow SCs to be concluded[4], and trawling SCs to try and make the point that a claim has not been adequately covered by an SC and so the ET lacks jurisdiction and the claim or parts of it must be struck out.

Service personnel are sometimes encouraged to refer their complaint for informal resolution in highly inappropriate circumstances. In one recent case, we saw the Central Admissibility Team refer a complaint of discrimination for informal resolution, rather than make an admissibility decision. This would mean that it would not be admitted as a SC and therefore the Tribunal's jurisdiction would be lost.

Because service personnel are so poorly advised as to their legal rights and often fall foul of these rules without even knowing of them, the CMJ has prepared a Know Your Rights Guide to Employment Law for Service Personnel which can be accessed via our website.

The CMJ is calling for the statutory requirement that a service person must 'make and not withdraw' a SC, as stipulated within s121 of the Equality Acy 2010, to be repealed – there is no good reason for it and it effectively means a service person has to litigate the same issues, twice, frequently being trapped within an SC process that has been described every year by the SCOAF as neither 'effective, efficient or fair', which is not independent and in which service personnel have no trust.

The rationale for the mandatory requirement to make and not withdraw an SC in order to bring an ET claim appears to be that the services should wish to try and resolve matters themselves with a service person without resorting to litigation – however, time limits being what they are, ET discrimination claims have to be issued within 6 months in any event (which is the same time limit for a discrimination SC), so those claims will still need to be issued anyway. There should be nothing to stop an SP using the SC process if that is what they wish to do, at the same time as bringing their ET claim, as this may well provide an opportunity for the services to address the underlying issues and for both parties to avoid litigation. The important point is that the ET's jurisdiction should not *depend* upon their having done so. The system presently gives the Respondent (MoD) in all claims the power to act as gatekeeper to the

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[3] S121 Equality Act 2010 excludes service personnel entirely from the jurisdiction of the Employment Tribunal unless they have 'made and not withdrawn' a SC.

[4] In every single ET claim on which we have advised, the first thing the MoD does post issue is apply for a stay of the proceedings pending the outcome of the SC. Sometimes the Claimant is perfectly happy to agree with an application for a stay – usually it is opposed on the grounds that there has already been inordinate delay and the Claimant does not want an indefinite stay behind a process that is accepted by the MoD as neither 'effective, efficient or fair'. The point is – the Claimant's right to bring her claim should not depend upon her having made or maintained a SC in order for an independent Tribunal to have jurisdiction. The tribunal's jurisdiction should not be fettered in this way.

independent ET – that is highly unfair and reflected in no other jurisdiction scheme. It has the effect of tipping the scales very firmly in favour of the MoD which is always the respondent party to such claims.

The Committee recommended that Defence should adapt performance assessment systems to prevent the progression of Service personnel, particularly leaders, who have acted unacceptably.

Part of the MoD's responses to this recommendation was that Commanding Officers deemed by SCOAF to have fallen short in their handling of Service Complaints would now have consequences that will appear on employment records. We explained in our submission dated 17 October 2022 why we did not think this was a meaningful concession and it did not address the shortcomings identified.

In October 2023, CMJ asked SCOAF and the MoD via FOIA the following question:

> *'In its response to the Defence Committee Inquiry into Women in the Armed Forces, on 2 December 2021, the Ministry of Defence stated that 'Defence will work with the single Services to develop new measures to ensure Commanding Officers who, when found by the Service Complaints Ombudsman to have fallen short of expected standards in handling Service Complaints and receive appropriate, consistent and robust consequences, that appear on their employment records.' (See pp 14, 30 and Recommendations 8 and 29, here: https://committees.parliament.uk/publications/8059/documents/82951/default/)*
>
> *Since 2 December 2021:*
>
> > *1. on how many occasions has SCOAF found a CO to have fallen short of expected standards in handling a Service Complaint; and*
> > *2. on how many of those occasions has that been recorded on the CO's employment record?'*

SCOAF replied to state that they did not hold this information.

We asked a supplementary question:

> '*As a matter of logic, the MoD would need to be formally notified when a Commanding Officer had been found by the Service Complaints Ombudsman to have fallen short of expected standards in the handling of a Service Complaint, in order to consider whether to amend the CO's employment record (as per their assurance to the Defence Committee). If SCOAF does not have a record of the occasions this has happened, how can the MoD amend any employment records?'*

SCOAF replied:

> *'The only additional information that our managers are able to add is that the MOD have not had any formal engagement with SCOAF about this issue. In the absence of this, SCOAF's current reporting procedures do not capture such information.'*

Separately, the MoD FOIA team declined to respond to the same request on the basis that the request for information would cost too much money to process. This indicates to us that the information is not being captured at all (because if it was, it would be cheap and easy to provide).

In light of the responses from the MoD and SCOAF, the CMJ is reasonably confident that no CO will to date have had their employment record amended due to the poor handling of a SC. This is a shocking omission given the assurances provided by MoD and the evidence from SCOAF that 75% of maladministration complaints brought to her attention are upheld. And we would add that if the MoD is concerned at the poor handling of complex SCs generally (as they should be), then the better response would be to act on the Wigston/Defence Committee recommendations and send them out to a central

Defence Agency or the AFC in any event, not waste time pretending to commit to amending CO's (who are sitting as DBs) employment records.

We have written to the Chief of the General Staff about this issue, on behalf of the Beck family, because, as Jaysley's case has shown, the issue was not whether her CO mishandled her complaint. It was that her Captain disbelieved her and asked her to think about the impact of her allegation on the BSM; and her Regimental Colonel persuaded her that she should accept an informal resolution. The matter did not get to the stage of a SC being mishandled by her CO – because it was brushed under the carpet long before then.

The Defence Committee recommended that the Armed Forces Bill 2021 should be amended to retain the 6-week time limit for complaint appeals.

Time limit for an appeal

We explained in our 2022 submission why it was so important that this recommendation from the Defence Committee should have been accepted. In answer to the concerns that were raised by the Defence Committee, the then Chief of Defence People gave the Committee an assurance that:

> *'the Armed Forces Bill presently before Parliament does not itself set a minimum time limit of two weeks for Service Persons to submit an appeal, it provides Defence with the ability to set out in regulations a time period for appeals that must be at least two weeks, but which can be longer and can set out the circumstances where different time limits will apply.*'

Sure enough, in June 2022, the limit was then set by policy to just two weeks, which was entirely contrary to the spirit of the assurance given above.

It has consequently been an aspect of our work that we have had to support service personnel making panicked and rushed applications to appeal.

As was explained in the original submissions to the Defence Committee by numerous sources, including the former SCOAF, Nicola Williams, the time period for lodging an appeal was not the cause of any significant delay in the SC system. The CMJ is very clear in our view that this measure was introduced with the primary objective of ensuring that fewer appeals went forward, which has happened (see below).

We anticipate that with so few appeals now being permitted to proceed (either on the basis that they are too late or on that they do not fall within the prescribed grounds, see below), the overall time taken to process SCs overall will soon be said to have improved. We hope the SCOAF will not use that as a basis to find in future years that the system is now 'effective, efficient and/or fair'. Where efficiencies are introduced at the expense of fairness, that is not a meaningful improvement at all.

Grounds for appealing a SC

We also explained in the 2022 submission that new prescribed grounds of appeal were being introduced for an appeal (as of June 2022). In our experience those prescribed grounds are being applied rigidly and are having the effect of disposing of meritorious complaints that need to be appealed (and prior to June 2022 would have been appealed). In her evidence to the Defence Committee, the SCOAF said the same:

> *The other key change in the reform was the restriction on the grounds of appeal that can be brought. That has resulted in far fewer cases being eligible to have their appeal heard. That has improved timeliness, because appeals take the longest out of any part of the service complaint process. If we are not hearing the appeals, they are not taking that long in the system. That is one of the key drivers behind why timeliness has improved, but I have real concerns that those changes are restricting the fairness of the system.*[5]

[5] https://committees.parliament.uk/oralevidence/13720/html/ Q13

The result of this, according to SCOAF, is that the admissibility process may prevent a Service Person from pursuing a second-level decision within the service in respect of a DB decision which is wrong or flawed[6]. In her 2022 annual report, the SCOAF recommended that the grounds of appeal should be amended to include a material error of reasoning[7].

In addition, we are seeing complaints that are made up of a number of different parts that are all related (eg. multiple acts of alleged discrimination) being broken up so that only one or two parts of the appeal are permitted to go forward, usually on quite technical grounds, leaving the rest of the complained-about conduct invisible to an AB. When looking at patterns of discrimination, it is important to look at the alleged conduct in the round and it makes no sense to break things up in this way. This has the effect of making it less likely that an AB will find in favour of the complainant because they are only sighted of a partial account of the complained-of behaviour (see more on this below).

In September 2023, we requested of the MoD the figures for the number of DB decisions appealed prior to the changes of June 2022 and the figures for the year afterwards.

In the 12 months *before* the reforms there were:

- 771 Decision Body decisions were made across the tri-services.
- 200 DB decisions were appealed in the same period (when appeals were allowed as of right). That is around 25% of decisions allowed to go to appeal.

In the 12 months *after* the reforms were introduced:

- 966 Decision Body decisions were made across the tri-services.
- 61 DB decisions were allowed through on appeal. That is around 6% of decisions allowed to go to appeal (in that they were allowed through fully or partially).

Based on this snapshot, it seems that appeal rights have been decimated, which we believe was the objective.

The process of appealing an SC

The new process of appealing a SC is highly confusing and very messy. We have no idea how anyone with a complex, sensitive SC raising issues of sex or race discrimination is supposed to navigate the process without help – even with help it can be a minefield.

In 2023, it became apparent that there was a significant disagreement between the SCOAF, MoD and between the services as to how SC appeals should be processed. This disagreement caused two of our SCs to be paused for more than a year while agreement was reached on how they were going to deal with partially admissible appeals. Both involved extremely vulnerable younger (now ex) soldiers.

After June 2022, the process for appealing a DB decision is now as follows:

1. SP receives their DB decision letter.
2. If the SP is not '*aware of any grounds of appeal'*, at this stage they can refer their complaint to SCOAF to investigate substantively, on maladministration grounds, or both.
3. If they *are* aware of any grounds of appeal, the SP has to use the appeal process, and has two weeks (reduced from six, see above) to appeal the decision. The policy JSP 831 states that the period begins with the day on which the Complainant is deemed to have received the decision; however the regulations stipulate two weeks from receipt – this is an important distinction

[6] Defence Committee Oral Evidence: Work of the Service Complaints Ombudsman HC 1865, 24 October 2023 (https://committees.parliament.uk/oralevidence/13720/html/)

[7] Service Complaints Ombudsman for the Armed Forces, Annual Report 2022 (SCOAF Annual Report 2022)

especially with such a mobile population that often experiences delays in receiving communications and it should be made clear that it is two weeks from receipt).

4. The appeal can now only be made on the grounds of 1) material procedural error that would have been relevant to the outcome 2) material error as to the facts that would have been relevant to the outcome 3) new evidence that was not in fact available to the Complainant at the time that they first made their SC (not merely presented at the time), and that which would likely have made a difference to the outcome. In our experience, lay people really struggle to apply these categories to their cases and most do not seek or get legal help. As can also be seen, on average only around 6% of cases were allowed through on appeal in the year after the reforms.
5. The service itself then makes a decision on whether the appeal has been made 1) in time and 2) in accordance with the prescribed grounds of appeal.
6. If it is rejected on time grounds, there is a right of appeal to SCOAF.
7. If it is rejected on the basis that it does not fit within the prescribed grounds, and almost all of the complaints we have attempted to appeal since June 2022 have been completely or largely rejected, the complainant can ask SCOAF to review that decision.
8. If the appeal admissibility decision is overturned by SCOAF, depending on the service, either part of or the entire SC will go forward to be considered by an AB.
9. If only parts have been allowed as an appeal, the rest can in due course be referred to SCOAF – but not until the appeal of the allowed-parts are concluded by the AB so those parts are effectively stayed.
10. The AB makes its decision.
11. Once the AB concludes its work, the service person can refer their substantive SC to SCOAF for a substantive, maladministration or undue delay investigation. That invariably takes place, if at all, years after the events in issue.

The process is impenetrable, bureaucratic and impossible for most people with complex complaints to navigate without help. However, legal advisers like us are excluded from the process continually in lots of ways and treated with considerable suspicion.

POLICING/PROSECUTIONS

Downgrading sexual or domestic abuse offences

The CMJ has, since the Defence Committee's original inquiry report, advised women in the following situations (this is not exhaustive):

- A case was originally charged and prosecuted as a sexual assault but on the day of the trial and contrary to the wishes of the victim, the SPA determined that the case should be resolved as a 'misconduct through alcohol' service offence, to which the assailant was prepared to admit (even though the complainant had not made any complaint that the defendant had been under the influence of alcohol). The sexual assault prosecution was dropped on the day of trial.

- A case against a senior officer who had been accused of a number of sexual offences and domestic abuse against a more junior female with whom he was in a relationship was originally arrested and interviewed in connection with offences of rape and controlling and coercive behaviour (CCB)[8]. The CCB element was then downgraded and referred to the SPA as a charge of 'conduct prejudicial to good order and discipline' contrary to s19 of the Armed Forces Act instead.

- A case against a service man who exposed himself in a bar to the sole woman present was reported as an indecent exposure but later downgraded to a mere 'misconduct through alcohol', despite the fact that he had initially admitted (to the service police) to exposing himself. The victim in the case was not informed of the decision to downgrade the offence and only discovered this through making her own enquiries via her legal representative long after the matter had been disposed of.

- A case originally charged as assault/battery (it constituted domestic abuse within an intimate relationship and in our view ought to have been charged as Assault Occasioning Actual Bodily Harm) was downgraded to 'ill-treatment of a subordinate'.

Given the CPS/SPA prosecutor's protocol that was published in October 2023, we are surprised that cases like these above are being taken forward by the military justice system in any event, as they would for the most part appear to be exactly the kinds of cases that the protocol indicates might favour the civilian jurisdiction.

Clare's Law disclosures

The power of a police force to disclose information in certain circumstances for the purposes of preventing domestic abuse (Clare's Law) is found in s77 Domestic Abuse Act 2021. On the face of it, it does not give the power to the military police to do the same.

We have been informed that the way the military police get around this is by providing relevant information to the civilian police who can include that information when deciding whether to make a Clare's Law disclosure.

We have recently had an enquiry from a woman who received a Clare's Law disclosure but she tells us it contained no information from the perpetrator's time in the Army where, she has been informed from

[8] The Serious Crime Act 2015 (s76), as amended by s68 Domestic Abuse Act (s68). For sake of clarity many of the alleged events of control and coercion took place after 5 April 2023, when the cohabitation requirement was removed from the offence of CCB. The alleged sexual offences took place in 2022, but it is argued that an offence of CCB would still form part of the same factual matrix and provides important context to the sexual offences because of the nature of that relationship as a whole. Behaviour that occurred before the removal of the cohabitation requirement can still be cited as evidence and passed to the SPA (Controlling or Coercive behaviour Statutory Guidance Framework, page 35, para 92)

an internal Army source, he has multiple records for (non-criminal) inappropriate conduct towards women but also an allegation of serious sexual assault. According to this person, this information was not included as part of the Clare's Law disclosure. This is anecdotal and we are not on the record as acting for this person. We have made enquiries of the relevant office in the MoD and are awaiting a response.

In any event, we are concerned that if a matter starts off as a domestic abuse case but is downgraded to a mere service offence, this information may not be being accurately recorded or shared with civilian police systems in order to assess the person's risk to women. We are making enquiries about this.

Defence Serious Crime Unit

The Special Investigations Branches (SIBs) of the single service policing branches, were combined into a single tri-service Defence Serious Crime Unit (DSCU) in early 2023. It is too soon to say what impact this is having on outcomes for serious sexual offences overall.

We continue to receive reports from clients that include the following concerns:

Delays in progressing investigations. Much is increasingly made of the fact that cases will 'get on' before the Court Martial quicker than if they went to Crown Court – but some of our clients report very long delays in getting their cases to a charging decision. It will be important for the Committee to ask about pre-charge periods of time in police investigations. In one case, our client reported her rape in 2015 and it was only sent to the Attorney General for consent to charge in November 2022 and her assailant was charged in January 2023 (and acquitted in October 2023).

In another case, the offence was reported in 2022 and the assailant was only charged two years later.

Investigative failures: That case also raises extremely serious issues concerning communications with the complainant and what appear to be serious failings in the initial steps taken to preserve evidence with the complainant being assured that they could go to the toilet and wash their hands before forensic evidence was taken. This case is ongoing and it would not be appropriate to provide further detail.

In another ongoing case, a victim reported the sexual assault to the service police immediately, and arrangements were made for the DSCU to attend the next day. She was given no advice or instructions on preserving evidence, as a result learned that the way her clothing had been kept overnight meant it was now contaminated and the evidence could not be used.

In another case, the complainant has been informed that the phones of her alleged two assailants in a sexual assault case were not interrogated before a decision was made not to charge them with her sexual assault.

After reporting rape, a complainant has become aware that her own emails were searched by the DSCU, without her consent and without notice to her. Other very serious concerns arise about that matter too but as the case is ongoing it would not be appropriate to provide further detail.

Police complaints. We now have a new Service Police Complaints Commissioner who can oversee the handling of service police complaints for the first time. However she can only consider complaints arising after June 2023. It appears that no transitional arrangements were made for handling service police complaints prior to June 2023. We have a case where a number of serious concerns arise regarding the handling of a DSCU investigation into alleged rape. We were originally informed that the Service Police Complaints Commissioner could investigate the case but, after several months, she informed us that in fact she lacked jurisdiction because most of the events in question took place before her office came into existence (June 2023). The complainant was referred back to the Defence Serious Crime Command (that oversees the work of the DSCU and is led by the same person) to handle her complaint. She requested that another branch of the military police, with civilian police input, should conduct the investigation, to ensure some degree of independence, and was informed that this was not

possible. She has been told that it will have to be Defence Serious Crime Command that will have to investigate. This raises very serious concerns about independence both presentationally and in practice.

We take this opportunity to remind the Committee of some of the observations and recommendations about the prospective DSCU that were made by one of the independent civilian judges responsible for recommending its establishment (our response in italics):

1. The DSCU must have a civilian deputy Provost Marshal – *we understand that this has not happened.*

2. Civilian police detectives could be employed to work full time at the DSCU – *this was not accepted.*

3. The Provost Marshal (PM) must have sufficient seniority as compared with the other Provost Marshals - w*e note that the current PM of the DSCU is a Colonel where the PM of the RMP is a Brigadier, a superior rank. However the PM of the DCSU is responsible for more serious crimes. This seems illogical to us.*

4. The 'unified career model' whereby service police and prosecutors are usually only in post for a couple of years before having to move on, should be reviewed for them – *this is hugely important. The constant churn of staff handling investigations and prosecutions is deeply problematic for both the handling of the case and the victim's experience. We do not know what if any arrangements have been made to address this point.*

5. DSCU staff must not fall under the chain of command of the single services for reporting or disciplinary purposes – *we do not know the outcome of this recommendation.*

6. The DSCU must have a significant focus on victim care and support – *CMJ is aware of the Victim & Witness Care Unit now providing help and support to victims of crime. Staff appear to be highly engaged, pro-active and experienced in the occasions we have come across them. They appear to be doing a very good job.*

Adding offences to Schedule 2 Armed Forces Act 2006

There is no legal requirement on a Commanding Officer to refer the offences listed below to the service police (pursuant to s113 of the Armed Forces Act 2006). They are not listed in Schedule 2 to the Armed Forces Act and so are not required to be referred (to the service police) by law:

a. Common assault where there is a domestic abuse context (and this may still be dealt with summarily by a CO on the basis that a CO can deal with a common assault/battery).
b. Actual Bodily Harm where there is a domestic abuse context (ditto, albeit permission is required before a CO can deal with this offence summarily, though it remains within their powers).
c. Disclosing private sexual photographs and films with intent to cause distress ('revenge porn') (s. 33 Criminal Justice and Courts Act 2015).
d. Possession of extreme pornographic images (s.63 Criminal Justice and Immigration Act 2008).
e. Controlling or coercive behaviour in an intimate or family relationship (s.76 Serious Crime Act 2015); and
f. Voyeurism: additional offences ('up skirting') (s.67(A) Sexual Offences Act 2003).

Not requiring Commanding Officers to refer such matters to the service police seems entirely at odds with the current measures to require the services to deal appropriately with these kinds of offences that disproportionately affect women. The Defence Committee should urge the MoD to amend the law to add those offences to Schedule 2.

The new Prosecutors Protocol appears to suggest that most domestic abuse offences to be handled by civilian authorities (though we have experience of that not happening). If that were to happen, that may be said to address points a) and b) above. However, there is a potential loophole if that is proposed, which is that as long as COs are not required to refer such allegations to the service police in the first place, a case may never reach the stage where a prosecutor has to consider it at all. Put simply, there is still nothing to stop a CO from treating a battery or ABH as matter that he/she may deal with summarily, as long as it is not included in Sch 2. This is a point CMJ has been raising for years and needs to be addressed.

COURT MARTIAL

Court Martial rules need amending

One of our clients received psychological therapy. Her therapist was served with a production order ordering her to produce notes of her sessions with the client to the service police. The client was given no notice of this. This meant that - potentially – her entire therapy record could be disclosed not only to the prosecution but also of course to the defence. That caused considerable distress - clearly having her alleged assailant trawling through her most intimate and sensitive therapy notes would amount to a further and very serious violation.

There is important case law (reliant on the Human Rights Act)[9] that affords protection to victims in such circumstances which has been used to good effect in the civilian system but which does not seem to have found its way into the military system yet.

The (civil) Criminal Procedure Rules, Rule 17, addresses this situation and in light of the case footnoted below, requires a production order to be served not only on the person doing the producing (the therapist or doctor), but also the subject of the material (the victim), where the court so directs. The general position is that the complainant herself should be notified. They are to be given notice and then permitted 10 days to notify the court if there is any objection.

An equivalent provision in the Armed Forces (Powers of Stop, Search, Seizure & Retention) Order 2009 (Sch 1) does not contain such a requirement. Thankfully in the above case we were able to assist the therapist to obtain her own legal advice and to support the client to make a decision on what she could agree to disclose (and what she objected to disclose) ensuring a more proportionate disclosure. CMJ has raised this issue with the Judge Advocate General directly on multiple occasions.

[9] https://www.mentalhealthlaw.co.uk/R_(TB)_v_The_Combined_Court_at_Stafford_(2006)_EWHC_1645_(Admin)

SURVEYS

The Defence Committee recommended that MoD commit to tri-service sexual harassment surveys annually.

The 2021 Defence Committee Report recommended '*The 2023 Sexual Harassment Survey must proceed without disruption. Henceforth, the MOD should commit to holding in depth surveys of this kind* ***every year****, to get a handle on whether this specific form of unacceptable behaviour is reducing and whether its initiatives are having the desired effect. It is necessary to involve independent experts in the design of these surveys to reduce the risk of under-counting. The surveys should be designed so as to capture the specific problem of sexual harassment affecting minors (under-18s).'*

In its response, MoD said:

'In July 2021, the Department agreed to managing all future surveys centrally. Defence is partnering with academia to build on and enhance the current survey, undertaking a pilot in 2022, ***with a view to delivering enhanced annual surveys from 2023 onwards*** *[p14 Govt response] …. Defence will also assess the findings of the Services' sexual harassment surveys to plan interventions'*. [p41 Govt response]

This was reiterated in the summary of accepted recommendations at the back of the MoD response: 'agreement of centralisation of future SH Surveys - launching 2023.'

CMJ cannot see that any surveys have been published since the 2021 sexual harassment surveys available here. This does not give us any faith that the issue is being given the urgent attention it requires.

JURISDICTIONAL ISSUES

THE LYONS REVIEW RECOMMENDATIONS CONCERNING THE HANDLING OF SERIOUS SEXUAL OFFENCES

In 2018, an independent review of the Service Justice System (SJS) recommended that the most serious criminal offences (including rape) should be sent to the civil Crown Court and the Court Martial jurisdiction should no longer be permitted to try them.

That review followed years of concerns expressed at the poor treatment of victims of serious crime generally within the SJS, especially women and men that had suffered rape or sexual assault. It may have also been particularly influenced by shocking statistics published the year before that showed that, of the 49 rape verdicts delivered by the Court Martial in 2017, just two had resulted in a conviction.

The second part of the independent review was concluded in 2020 and both parts published that year.[10] The recommendation was maintained. On the same day that the then Secretary of State for Defence Ben Wallace MP published the reports however, he rejected the recommendations as to jurisdiction, stating that he '*believed'* the SJS capable of delivering justice to victims.

Following a public outcry and a legal challenge by three rape survivors, Wallace agreed to review all the armed forces policies on the handling of sexual assault, to ensure that all service personnel were reminded of their right to report serious crimes to the civilian police if they wished to do so, and to offer Parliamentarians the opportunity to have a full debate on the issue – which then took place during the passage of the last Armed Force Bill. During the passage of the Bill, and in light of the shocking evidence that had in the meantime been given to Parliament via the Defence Committee Inquiry into Women in the Armed Forces, lots of MPs expressed their concerns at the way in which sexual offences were being handled in the military but ultimately, the then Government comfortably saw off the opposition and maintained the current position – so it remains the case that an allegation of rape or sexual assault, where alleged to have occurred in the UK, can be taken forward in either jurisdiction – military or civilian – and where both protagonists are serving, there is a presumption in favour of the SJS.

Notwithstanding this, the Government promised to introduce improvements to the system of justice for service personnel. And there have been some significant changes. The separate elements of the three service police's 'special investigations branches' that used to investigate serious (including sexual) crime were amalgamated into a single Defence Serious Crime Unit. A new prosecutors protocol is designed to lend clarity to the factors to be borne in mind when considering which jurisdiction should apply. The pool of military members eligible to sit on military boards (the Court Martial's version of a jury, drawn from the officer ranks and always senior to the accused) was slightly expanded, made 'tri-service' and greater efforts would be made to ensure that more women were called. The Service Prosecuting Authority (SPA, the military's version of the CPS) brought in a senior civil prosecutor to oversee their rape/sexual assault work and it was recently given a positive review of its work by Her Majesty's Chief Inspector of CPS (HMCPSI) (though please note the comments in the footnote).[11] A specialist victims support unit would be set up.

These are important changes and it is important to recognise them. In particular, the difference between the time it takes a rape case to get to trial in Court Martial as compared to Crown Court is something that the SJS's champions can rightly point to as a key and important difference (though note some of our client's experiences of pre-charge delays in military police investigations). The Judge Advocate General (the most senior judge in the CJS) aims to direct that from the date of first appearance at Court

[10] https://www.gov.uk/government/publications/service-justice-system-review

[11] Unlike the CPS and the civil police forces, it is important to note that the SPA and military police are not subject to unannounced inspections by HMCPSI – they get to invite the inspectors in to review their work when it suits them. The 2024 SPA inspection was the first one in 14 years. Also, the previous Chief Inspector of the CPS was the former head of the SPA. [Note by the Committee: Written evidence in response to this from HM Chief Inspector can be found at: https://committees.parliament.uk/writtenevidence/139511/pdf/]

Martial, he wants rape cases done within 6 months. In the civil system, rape victims are looking at around a year or, as recent reports would indicate, significantly longer.[12]

In any event, the delay point only takes you so far. The answer is not to accept that delay as inevitable and immutable in the CJS, but to improve and better resource the CJS to prosecute sexual crime and deliver a better service to all victims, as the End to End Review of Rape and other recent proposals aim to do. There is a huge amount of work going on inside the CJS at present and enormous pressure to improve services to victims of rape and sexual crime across the board.

But where things still come badly unstuck in the military justice system is on what happens when the Court Martial gets a rape case, or a sexual assault case before it. The conviction rate for rape cases that get to trial at Court Martial pales when compared to the conviction rate for rape cases that get to trial at Crown Court.

In 2023, UCL published research which showed that once a rape case reaches Crown Court, juries are much more likely to convict than acquit a defendant, and this has been the case for at least 15 years. This analysis showed that in 2021, the most recent year with full data, the jury conviction rate for all rape charges was 75%, up from 55% in 2007. The jury conviction rate for all sexual offences had also increased over the last 15 years, steadily rising from 58% in 2007 to 75% in 2021.[13]

Now consider the same data for the court martial. For sexual assaults as a whole, since 2015, the Court Martial conviction rate for completed sexual assault cases hovers at around 40% (including for the last published year) - contrast that with the 75% figure for sexual assaults cited by UCL in the Crown Court.

And for rape the figures are even worse – since 2015, the conviction rate for rape cases that reach Court Martial hovers at around 20% - with the lowest year ever being 2017 when the conviction rate was 4%, running to a high of 35% in 2022. It has never been higher than 35%.

Critics of these observations like to say it is not fair to compare the two systems – but when it suits them (eg in relation to delay), we note that they are very happy to compare the two. The more time that passes, the more data we have, and the more apparent it seems to be that military boards in Court Martials do not convict in most rape cases, unlike Crown Court juries where the opposite is true.

We do not know why this is. But what is absolutely clear is that careful in-depth research is needed, along the lines of the UCL research. As long as jurisdiction remains with the SJS, we need to understand what is happening inside Court Martials and – insofar as we can – inside military boards, that makes convictions in rape cases so hard to achieve. Is it still an issue with the military police and the way they are investigating sexual crime that was so heavily criticised in the 2018 independent review? At the CMJ we continue to see shocking behaviours by some military police in the way they investigate sexual crime – but we acknowledge that our friends and colleagues working in the civil system would say they see the same in the civil police and we acknowledge we only see cases that have gone wrong. We remain concerned that Operation Soteria - rolled out now across all 43 civil police forces and which is slowly changing the way the police investigate sexual crime - has not been (as far as we can tell) fully embedded into the work of the military police in the same way. [14]

Some have speculated in private conversations with the CMJ that perhaps rape cases are less likely to result in a conviction in the military context because they are, coming from the military, more likely to be cases involving people that already know each other, where the act of sex is not denied, the issue instead being whether consent was given and whose word is to be believed. Such cases are hard to

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[12] CJS delivery data: time between arrival (entering Crown Court) and completion was 384 days in 2023 https://criminal-justice-delivery-data-dashboards.justice.gov.uk/improving-timeliness/courts?offence=Adult%20rape&area=National&time=Rolling%20annual&custody=both#time_to_completion-national--table

[13] https://www.ucl.ac.uk/news/2023/feb/juries-convict-defendants-rape-more-often-acquit

[14] https://news.npcc.police.uk/releases/victims-rights-and-needs-at-centre-of-transformative-new-approach-to-rape-investigations-and-prosecutions

prosecute. But the CPS has published data which shows that in 90% of the rape and sexual assault cases it handles in the civilian system, the complainant and the suspect are acquainted with each other – these are more likely to be exactly the same kinds of cases - so that distinction and potential explanation does not appear to apply. [15]

The anecdotal experiences as reported by our clients has been more along the lines of, and to put it very simply, 'that military board of uniformed officers was never going to convict that uniformed man of rape'. It is hard to know how you get past that issue, other than by stopping military boards of uniformed officers deciding these kinds of cases at all. In relation to our wider experience of supporting women in the military experiencing a whole range of problems we continue to see appalling misogyny and ignorant attitudes displayed towards women and it comes as no surprise to us that those attitudes may be coming out in the quiet and privacy of the military board room and manifesting in these poor outcomes for complainants. Putting more women on court martial boards will also not necessarily improve things – regrettably our research indicates that women in the military can be as affected by misogynistic rape myths as men.

The Labour Party said in opposition that it was going to accept the recommendations of the Lyons review and reverse the previous Government's position on jurisdiction. It can expect a lot of push back from inside Defence when it does, and there is a sense at the moment of the MoD's defenders getting ready for a fight to keep these cases in the SJS. Given some of the improvements in recent years – and the commitment of lots of good people inside Defence to try and improve things for victims of crime – it will be important to consider all the arguments.

But at the CMJ, we simply do not see how anyone can accept conviction rates which show that, if a rape or sexual assault victim is fortunate enough to get their case to Court Martial, they are more likely than not (and by a considerable margin in the case of rape) to see their assailant walk free. The fact that the acquittal can be achieved in the SJS within a few months does not seem to us to be a reason for the SJS to keep these cases.

6th March 2025

[15] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cps.gov.uk/sites/default/files/documents/publications/Key-facts-about-how-the-CPS-prosecutes-allegations-of-rape.pdf