

Factsheet: The Armed Forces and Human Rights Law

Cheryl James, Sean Benton, James Collinson, Geoff Gray

1. Between 1995 and 2001 four young trainee recruits to the British Army were undergoing their initial training at the Princess Royal Barracks in Deepcut, Surrey. They all died of gunshot wounds. Cheryl was 18 and undergoing initial army training when she was found dead of a gunshot wound. She had apparently been posted alone and armed with an SA80 rifle to guard a gate. Within a matter of hours, the Army's Royal Military Police took over the investigation into her death and the local civilian force, Surrey Police, played no further part until 2002. The Army assumed the death was suicide. The Royal Military Police investigation, and the inquest that followed, were rushed and inadequate. Key witnesses were not called, medical records were not inspected and important evidence overlooked. The inquest took one hour. In 2002, Surrey Police "reopened" investigations into Cheryl's death, and those of the three other young recruits – but they did not give that evidence to the families. Even after Nicholas Blake QC recommended they do so in his 2006 review, the force continued to refuse. It was only in 2011 when threatened with action under the HRA that Surrey Police agreed to hand over what the James family had every right to see – more than 90 files of statements, photographs, notes and forensic evidence. Thanks to those disclosures a fresh inquest was ordered and is currently underway at Woking Coroner's Court. The families of the other three young soldiers are also seeking new inquests.

Anne Marie Ellement

2. In 2009, Royal Military Police officer Anne-Marie alleged that she had been raped by two colleagues, also Royal Military Police officers. An investigation was conducted by the Royal Military Police themselves, following which a decision was made that no charges should be brought. She committed suicide in October 2011. A very brief inquest was held which did not examine any of the matters in any depth. Following a judicial review we brought acting for Anne-Marie's sisters, a fresh inquest was ordered under the Human

Rights Act and took place in February 2014. This HRA- compliant inquest found that the lingering effects of an act of alleged rape, work related despair and bullying (including rape-related bullying) contributed to Anne Marie's death.

3. The first rape investigation had been severely lacking in many ways. Important forensic tests had not been conducted, medical evidence overlooked and there was an alarming lack of expertise. Most fundamentally of all, the investigation was not independent – it was the RMP investigating the RMP. Article 3 of the Human Rights Act (no inhuman or degrading treatment) required a competent and independent investigation. The investigation fell very far short of those standards. Following threat of judicial review, the MoD agreed to refer the matter to the RAF Police who initiated a fresh investigation into the allegation of rape. They worked alongside civilian police from Bedfordshire Police in what has been described as the first joint criminal investigation of its kind. In October 2015, the Director of Service Prosecutions announced that following the fresh investigation two men have been formally charged with the rape of Anne-Marie.

Philip Hewett and Lee Ellis

4. Private Philip Hewett and Private Lee Ellis died when the Snatch Land Rovers they were travelling in – sometimes referred to as mobile coffins by those in the armed forces – exploded following detonation of an IED. The men's families wanted to challenge the Government for alleged failures in the provision of technology and equipment – decisions that took place away from hostilities in Iraq. The bases of their legal claims included, but were not limited to, the HRA. The Ministry of Defence asked the court to strike out the claims arguing, among other things, that the protections of the HRA could not apply to soldiers stationed outside the UK and that it did have any obligations to protect the soldiers under article 2 of the Human Rights Act.

5. The court decided that British service men and women outside the UK are still under the complete control of the UK authorities, having relinquished almost total control over their lives to the state. As the court highlighted, certainly no other state was claiming jurisdiction over the soldiers. It is therefore possible for the HRA to apply. It also found that the families of the men who died could *argue* that the Government had an obligation to take steps to protect the soldiers, but that the facts would be central and it was by no means clear that this obligation would be established.

6. However court was absolutely clear that the simple fact of sending soldiers into battle with the risk that they might lose their lives did not itself contravene the right to life. It also explained : *“the court must avoid imposing positive obligations on the state in connection with the planning for and conduct of military operations in situations of armed conflict which are unrealistic or disproportionate.... The trial judge will be expected to follow the guidance set out in this judgment as to the very wide measure of discretion which must be accorded to those who were responsible on the ground for the planning and conduct of the operations during which these soldiers lost their lives and also to the way issues as to procurement too should be approached. It is far from clear that they will be able to show that the implied positive obligation under article 2(1) of the Convention to take preventative operational measures was breached in either case.”*

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1 March 2016