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**Liberty's briefing on the powers of the  
Service Complaints Ombudsman in the  
Armed Forces (Service Complaints and  
Financial Assistance) Bill for Report  
Stage in the House of Commons**

**February 2014**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at  
<http://www.liberty-human-rights.org.uk/policy/>

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## Summary

1. Liberty welcomes the opportunity to brief Parliamentarians on the Armed Forces (Service Complaints and Financial Assistance) Bill. The Bill makes provision for the reform of the internal complaints systems of the armed forces and would establish a Service Complaints Ombudsman. It also provides for financial assistance for the benefit of the armed forces community. This briefing focuses on the fundamental issue of the scope of the Ombudsman's role.

2. Liberty launched its Military Justice campaign in July 2013 to protect and uphold the human rights of those serving in our armed forces. We believe that the rights of service men and women are just as deserving of protection as those of civilians and we have been campaigning for changes to the military justice system – including service complaints – to make it fair for all service personnel. Liberty represent the sisters of Anne-Marie Ellement, the families of three of the four soldiers who died at Princess Royal Barracks in Deepcut, Surrey and are regularly approached for advice from many other serving or former members of the services. As part of this campaign, Liberty has called for the creation of an armed forces Ombudsman.

3. We very much welcome the decision of the Government to replace the Service Complaints Commissioner with the office of Service Complaints Ombudsman (the Ombudsman). As introduced, the Bill limited the powers of the Ombudsman to investigate allegations of maladministration in the handling of a complaint, but excluded the Ombudsman from investigating the substance of the complaint itself. This was amended in Committee Stage in the House of Commons and the Bill now contains the power for the Ombudsman to investigate a service complaint, an allegation of maladministration and allegations of delay. The amendment was tabled by Rory Stewart MP, Madeleine Moon MP, Derek Twigg MP, James Gray MP, Dai Havard MP and Julian Lewis MP and reflects recommendations made by the Defence Select Committee in its legislative scrutiny of the Bill.

**Liberty urges MPs to support the text of the Bill as amended in Committee.**

## **The Service Complaints System**

4. Part 14 of the Armed Forces Act 2006 sets out that any person who is subject to service law and who thinks him or herself ‘wronged’ in relation to any aspect of their service life can make a service complaint about it. Each of the three services – the British Army, the British Royal Navy and the British Royal Air Force – has its own internal complaints system, with the Armed Forces Act and regulations setting out the framework for these systems.

5. In civilian workplaces, when an individual thinks they have been treated unfairly – be it holiday allowance, pay, dismissal – it is open to them to make a claim to an employment tribunal, but service men and women are not entitled to access an employment tribunal. This means that it is essential that the service complaints system operates fairly, efficiently and effectively. During Second Reading of the Bill, Rory Stewart MP stated:

*“Military personnel live under completely different conditions from civilian personnel in terms of their housing, health, non-union status, 24/7 jobs, and risk to life and limb, all of which put an incredible onus on the Defence Committee and on the Government to get this kind of Ombudsman right.”<sup>1</sup>*

## **The need for reform**

6. The evidence that the service complaints system is failing many of those who work in our armed forces is overwhelming. The Service Complaints Commissioner was established to report on the operation of the service complaints system following the report into the death of four trainee soldiers at the Deepcut Barracks but has no power to investigate service complaints. In her most recent report, the SCC commented:

*“For the sixth year I am unable to give you and Parliament an assurance that the Service complaints system is working efficiently, effectively or fairly. I am concerned that the goals I set for the end of 2013 have not been achieved, despite additional resources being deployed by the Services. As I have reported previously, the current system is not efficient or sustainable. Nor do I believe that it is working effectively.”<sup>2</sup>*

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<sup>1</sup> Armed Forces (Service Complaints and Financial Assistance) Bill, 2nd Reading, 2 February 2015, Hansard at column 68.

<sup>2</sup> Armed Forces Service Complaints Commissioner, Annual Report 2013, page 4.

7. The 2013 Armed Forces Attitudinal Survey reported that 10% of service personnel felt that they had been the subject of discrimination, harassment or bullying in the service environment in the previous twelve months. Yet only 8% of the total of those subject to this behaviour made a formal written complaint.<sup>3</sup> In its 2013 report on the work of the Service Complaints Commissioner for the Armed Forces, the Defence Select Committee expressed concern that service personnel do not always have confidence to pursue a complaint through the chain of command. The Committee also noted reports that individuals are deterred from raising complaints due to a fear of redundancy and concerns that complaining will have a detrimental impact on their career.<sup>4</sup>

8. The absence of an independent figure able to investigate service complaints means that all of those failed by the current system – either because they are too scared to come forward or because they do come forward but are not treated in a fair manner - have nowhere else to go to get their problem put right. The lack of transparency has even wider consequences for the armed forces. In 2006, the report into the circumstances surrounding the death of four trainee soldiers at Princess Royal Barracks in Deepcut, Surrey, recommended introduction of an independent element into the service complaints system. Mr Justice Blake remarked:

*“It will be difficult for the Armed Forces to satisfy the public that they have nothing to hide in the running of their discipline and complaints system if there is a perception of unwillingness to accept meaningful independent oversight, which is increasingly seen as a necessary counterweight to the powers and prerogatives of military life.”<sup>5</sup>*

9. The effects of unresolved grievances can also have a negative impact on the morale of whole units. Independent investigation of complaints creates much greater scope to identify and respond to systemic problems and to learn from mistakes that have been made, giving the armed forces vital information about how to improve the way they deal with those under their command.

### **Investigative powers of the Ombudsman**

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<sup>3</sup> 2013 Armed Forces Continuous Attitude Survey, page 4.

<sup>4</sup> House of Commons Defence Committee, The work of the Service Complaints Commissioner for the Armed Forces, Eight Report of Session 2012-13, paragraph 2 and 8.

<sup>5</sup> Nicholas Blake QC, The Deepcut Review, A review of the circumstances surrounding the deaths of four soldiers at the Princess Royal Barracks, Deepcut between 1995 and 2002, paragraph 12.99.

*Amendment made by the Public Bill Committee*

10. The Bill establishes an Armed Forces Ombudsman, nine years after the recommendation to establish an Ombudsman was first made by the Blake Review. Liberty commends the Government for recognising – albeit belatedly – the importance of introducing independent and impartial decision maker into the service complaints system. However, as originally drafted, the Ombudsman would only have had the power to investigate claims of maladministration in handling a complaint. Following a recommendation made by the Defence Select Committee as part of its legislative scrutiny of the Bill, the Public Bill Committee voted on 2 February 2015 to amend the Bill to grant the Ombudsman the power to investigate a service complaint itself, an allegation of maladministration in the handling of a complaint, and allegations of intentional delay.

*Substance of complaint v maladministration*

11. It is crucial that the new Ombudsman has the power to investigate the substance of a complaint in addition to allegations of maladministration in handling complaints. It is entirely conceivable that a complaint may be conducted in a procedurally sound way but that the conclusion of the investigation was perverse. Withholding this power from the Ombudsman serves to make the new scheme look somewhat bureaucratic rather than a genuine attempt by the armed forces to ensure that complaints can be dealt with in a fair and independent manner. Surely it is just as important to establish that a complaint was resolved correctly as it is to establish that an investigation was conducted in a fair manner? If the thrust of this Bill is to make the service complaints system more effective, individuals must have confidence in it. Anything that signals that the government is not committed to resolving complaints fairly will not support this aim.

12. When the Ombudsman model was first adopted in the United Kingdom in the 1960s, ombudsmen did only investigate complaints of maladministration. However, as the model has become more popular and established, the powers of Ombudsman have developed. The Scottish Public Service Ombudsman, the Local Government Ombudsman for England and the Prisons Ombudsman are all empowered by statute to investigate ‘service failure’ in addition to maladministration. In its 2011 report on public service Ombudsman, the Law Commission observed that it could see no reason why the Parliamentary Ombudsman – the first Ombudsman in the UK – should not have its powers increased to investigate service failure too.

### *Role of internal complaints systems*

13. During Committee Stage, the Minister expressed her view that changes made in the Bill to the internal complaints systems of the armed forces will improve the handling of service complaints and stressed the importance of it being up to the services to “*put things right for their people where they have gone wrong.*”<sup>6</sup> Liberty agrees that the relevant service should put things right, but the evidence clearly shows that up to this point that has not happened in a substantial number of cases. Even if the proposed changes do have the desired effect it seems very unlikely that every single case will be decided correctly, and it is far from certain that the changes will have the desired effect in any event. The Ombudsman role should be that of a backstop, but it is nonetheless essential that there is in place a mechanism to deal with those cases that do go wrong. Ultimately, it will be for the relevant service to implement recommendations by the ombudsman and to put an end to the problem, so the role of the armed forces in dealing with even those complaints that do go to the Ombudsman will still be significant.

14. The existence of an Ombudsman who can deal with the substance of a complaint will also play a very important role in encouraging members of the armed forces to have confidence in coming forward, as they know that if anything goes wrong they will be able to get an external view. Failure to grant the Ombudsman this power seems likely to lead to fewer complaints being made in the first place, meaning that any improvements in the internal complaints systems will not have the opportunity to be realised. Improvements to the internal complaints systems and granting the Ombudsman strong investigative powers should be seen as complementary rather than mutually exclusive.

### *Challenge to the chain of command?*

15. The Defence Select Committee concluded that the Ombudsman should be able to investigate the substance of a complaint, noting that it saw “*no reasons to believe that this would undermine the chain of command.*”<sup>7</sup> No evidence has been presented by the Government to suggest that introducing independent elements into the military justice system will undermine the chain of command. In the civilian world, independent systems are seen as essential in order to generate confidence. For

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<sup>6</sup> Armed Forces (Service Complaints and Financial Assistance) Bill, Committee Stage, 10 February 2015, Hansard per Anna Soubry MP, Minister of State for Defence, at column 46.

<sup>7</sup> Defence Select Committee, Report on the Armed Forces (Service Complaints and Financial Assistance Bill), Fifth report of session 2014-15, para 42.

example, the independence of the police is necessary so that individuals trust them to prevent and investigate crime. Individuals must be confident that the police are neutral and unbiased to allow for policing by consent. But the independence of the police does not just lead to confidence in the police, it leads to a wider confidence in the state and democracy too. It is unclear why this should be different in the military. Surely a willingness to place faith in an open and obviously unbiased system should reinforce confidence in the chain of command and the military, signalling that the armed forces take the wellbeing of troops seriously. Instead, resistance to independence in the military justice systems sends the wrong message, both to those in the services and to the public at large. It suggests that the military is scared of transparency and accountability. It suggests that the military will close ranks to put its own reputation ahead of the interests of those who are willing to give their lives to serve in it.

16. In addition, if the armed forces are going to take the Ombudsman seriously and accept her views on maladministration, will it really make a difference to perception of the authority of the chain of command whether they also accept external views on the substance of a complaint? Surely once the armed forces admit the need for external investigation of complaint-handling, the details of the process don't really impact on this perception?

#### *Efficiency in resolving complaints*

17. Arguments of efficiency also weigh in favour of allowing the Ombudsman to consider the underlying complaint as well as any claims of maladministration. If the Ombudsman can take a view on the initial complaint and also makes a finding of maladministration, the service concerned will not need to go back to reinvestigate the initial complaint. This will result in a faster outcome for an individual who will already have been through the internal complaint tiers and the Ombudsman process.

#### *Thematic investigations*

18. It is important to note that a power for the Ombudsman to undertake "thematic" investigations – while welcome – would not be a substitute for a direct entitlement for individuals to ask the Ombudsman to look at the substance of a complaint. It is important that individuals can have complaints resolved in as timely a manner as possible. Making a complaint the subject of a much wider investigation would inevitably slow down the process. It is equally important that each complaint is valued and considered on its own merits. It would be unfair to make investigation of a

complaint reliant on the Ombudsman considering that there is a broader issue at play. In addition, it is unclear that a wider investigation would provide the opportunity for the Ombudsman to recommend a remedy in individual cases, instead focussing on generic recommendations for systemic improvement.

#### *Cumulative impact of Bill*

19. It is also useful to consider the cumulative impact of the proposals. The Government has, so far, resisted calls to amend the Bill to require the relevant service to implement the recommendations of the Ombudsman. Given this significant limitation on the role of the Ombudsman, it seems particularly excessive to also deny the Ombudsman the opportunity to look at the substance of a complaint.

#### **Conclusion**

20. For at least the past decade, the Ministry of Defence has resisted the calls of Parliament, independent public inquiries into the deaths of young soldiers and the SCC to create an Ombudsman, claiming that to do so would undermine the chain of command and promising there were better ways to improve the handling of complaints. The Ministry of Defence has been consistently proven wrong on these matters and has been forced to make piecemeal changes to the system in the face of continued complaints, fresh tragedies and reports that confidence in the chain of command is decreasing rather than being reinforced. The most recent concession, the creation of this Ombudsman, came only weeks after the damning verdict of the Coroner in the inquest into the suicide of Corporal Anne-Marie Ellement in March 2014. Further mistakes, delays and tragedies must be avoided. It is imperative that this opportunity to create an effective Ombudsman and to restore faith in the service complaints system is not lost.

**Sara Ogilvie**