Ministry of Defence

MINISTRY OF DEFENCE
FLOOR 5 ZONE B MAIN BUILDING
WHITEHALL LONDON SW1A 2HB

Telephone: 020 7218 9000 (Switchboard)

THE RT HON EARL HOWE PC
MINISTER OF STATE IN THE HOUSE OF LORDS

MSU/4/8/2/3/ap

29th February 2016

Dear Mike,

During the recent Second Reading debate on the Armed Forces Bill you spoke about several issues, one of which was the Service Justice System. I am sorry that I did not have time during the debate to address your remarks on that subject.

You mentioned that there was nothing in the Bill which would provide for the transfer of suitable cases involving Service personnel from the civilian courts to the Court Martial. The proposal that cases involving Service personnel are transferred from the civilian system to the Court Martial at the point of sentencing is subject to consideration within Government, but it raises a number of significant and practical issues which need to be considered fully so that we have a clear policy intent before we take any decisions about the introduction of legislation. You may find it helpful if I give you some examples of the issues we are considering:

- At present there is an established principle that cases in the UK with a service context should be tried by the Court Martial, but cases with a civilian context should be tried before a civilian court; there is a question of whether it is right in principle to refer a case with a civilian victim in the UK to a military court for sentence.

- How we should deal with the presumption that the court which hears the evidence is usually the best court to decide the sentence.

- How appeals are to work, given that the route of appeal would be different depending on whether it was an appeal against conviction or sentence.

- What the powers of the Court Martial should be if the transfer is from a Magistrates court (rather than Crown Court).

- If there are risks of excessive delay, given the need to transfer the case not only between courts, but also between prosecution services.

When the work on this proposal has been concluded, Ministers here and in the Ministry of Justice will be in a better position to make decisions about introducing legislation. Should the government wish to take the proposal forward a suitable legislative

Admiral Lord Boyce
House of Lords
London
SW1A 0PW

opportunity would need to be identified. That opportunity need not be the next Armed Forces Bill, as it is not uncommon for Departments to use other legislation where that is appropriate.

With regard to the system of majority verdicts, the Government has not yet been persuaded that the current system needs to be changed. The Court Martial panel seeks to reach a unanimous verdict, but if members of the court cannot conscientiously do so, a majority verdict (whether for conviction or acquittal) is acceptable. In the case of an equality of votes on the finding, the court must acquit the defendant. The great advantage of reaching a decision by majority is that it avoids a 'hung jury', so there is no need for a retrial in the event of a lack of unanimity or a qualified majority. This is a long-established process: the Service Discipline Acts of the 1950s, which preceded the Armed Forces Act 2006, also provided for majority decisions at Court Martial.

The Government has been successful in establishing, both in the European Court of Human Rights and in the civilian courts, that the Court Martial system is in principle safe, independent and impartial. The current system for majority verdicts has been considered twice by the Court Martial Appeal Court in the last five years and was on both occasions held to be fair and safe.

The Court Martial Appeal Court is made up of the same judges as sit in the civilian Court of Appeal. In the Twaite Case, in December 2010, the Court Martial Appeal Court (in a unanimous decision) held that there was no ground for deciding that a verdict by a simple majority was inherently unsafe or unfair. They noted, among other points, that the overwhelming majority of criminal trials in England and Wales are decided in the Magistrates' Courts and the process of simple majority verdicts is long-established in those courts.

The issue of majority verdicts was also raised by Sgt Blackman in his appeal against conviction in 2014. He argued that it was discriminatory to apply trial by the Court Martial rather than trial by jury in the Crown Court because the Court Martial offered less protection to the accused than jury trial. The Court Martial Appeal Court again held that trial by the Court Martial on a basis of a simple majority was not unsafe or unfair; moreover it was not discriminatory.

A copy of this letter has been placed in the Library of the House.

I hope this is helpful.

Yours ever,

Howie

THE RT HON EARL HOWE PC