



Ministry  
of Defence

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

MSU/4/8/2/3/is

15<sup>th</sup> March 2016

Dear Judith,

Thank you for your contribution to what was a very well-informed and constructive debate on 11 February regarding the Armed Forces Bill. I know how seriously you take the issue of support to our Armed Forces community, and I am grateful for the opportunity to set out the Government position on the questions you raised.

I would first like to address your points concerning Gulf War illness. The Government greatly values the service all 1990-91 Gulf veterans have given to our country, particularly in this the 25<sup>th</sup> anniversary year of operations. We have long accepted that the ill health of some veterans of the 1990/1991 Gulf conflict is related to their Gulf service and in such cases compensation is available in the form of a war pension and appropriate medical care is provided by the NHS across the UK.

As you might be aware the Medical Research Council review of research into UK Gulf veterans' illnesses published in 2003 strongly advised against any further pursuit of the causes of the symptoms and illness of UK Gulf veterans and that research aimed at improving the long term health of Gulf veterans should take priority. This was because of the considerable body of international research on the issues which had been published by that date and the fact that for all nations involved, full and accurate documentation of possible toxic exposures etc, was simply not available. The Ministry of Defence (MOD), working with an Oversight group including The Royal British Legion and Professor Sir Simon Wessely from Kings College, funded the first stage of a trial to develop a treatment programme for ill Gulf veterans at Cardiff University but unfortunately there were difficulties with recruitment of subjects and MOD decided not to proceed with the second phase of the trial. With the aim of progressing the study further, MOD facilitated discussions between Cardiff University and the voluntary and charitable sector but the work was not progressed primarily due to lack of interest. I can confirm that there are no plans to fund any further research on Gulf illnesses; neither does the Department have any plans to publicise the findings of other mainstream research on the 1990/91 Gulf Conflict from UK or overseas. This research is already publicly available.

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Turning to the issue of the Armed Forces Compensation Scheme Triple Lock, compensation payments are uprated annually in line with the Consumer Price Index (CPI) figure. This is the same measure the Department for Work and Pensions uses for uprating social security benefits and is in keeping with other public service schemes. Our approach ensures consistency with the measure of inflation used by the Bank of England. I can confirm that there are no plans to change this. The triple lock applies only to the State Pension. Members of the Armed Forces will therefore benefit from the triple lock once they reach State Pension age.

On the subject of compensation for veterans diagnosed with mesothelioma which is a devastating disease, I can confirm that an announcement on the issue of whether a lump sum option will be extended to existing War Pension Scheme recipients and those who have yet to have a claim accepted was made on 29 February 2016.

On the subject of investigations and handling of serious crimes, at present a range of allegations covering serious offences (including murder and the most serious sexual offences) must be reported to the Service Police by the Commanding Officer (CO); this is set out in the Armed Forces Act (2006) (AFA06) and there is no discretion. As you said in the Debate, the CO does have some discretion to investigate cases of sexual assault, voyeurism, and sexual activity in a lavatory. I should point out, however, that if a CO becomes aware of an allegation or evidence which would indicate to a reasonable person that a Service offence may have been committed by someone under his command, he must ensure that it is investigated 'appropriately'. The CO must therefore refer the matter to the Service Police if this would be appropriate; this is a specific duty under AFA 06.

There is also a specific requirement in the Manual of Service Law that a CO is to take legal advice where sexual assault, voyeurism or sexual activity in a lavatory have been alleged. The Manual has also been amended to make specific mention of these offences in the section on 'deciding how to investigate'. The Manual also states that there is to be a presumption that the CO should normally ensure that the Service Police are aware of an allegation of such an offence.

The CO cannot deal summarily with cases of sexual assault, voyeurism and sexual activity in a lavatory. Whilst the CO could investigate the allegations, he would have to refer the case to the Service Prosecuting Authority (SPA) for a decision on charging. Even if the Service Police (SP) have investigated these offences, they must currently be referred back to the CO (although he cannot hear them). We are changing this in the Bill. Where the SP have investigated an allegation of sexual offence and there is sufficient evidence to charge, the SP will be required to refer the case direct to the SPA. This is provided for in clause 3 of the Bill, under which all cases of offences which the CO cannot deal with will have to be referred to the SPA. I should also mention here for completeness that the EU Directive for Victims came into force on 16 November 2015 and provides victims of all crimes with the right to seek a review of any decision not to charge a suspect with an offence.

During the debate you also said that the SP lack the necessary independence to deal with cases of serious sexual assault and rape, given that they may know the people involved. I am afraid I do not agree with this. The Service Justice System has been scrutinised by the UK courts (and by Strasbourg) and has been held to be compliant with the European Convention on Human Rights, both for investigations and prosecutions within the UK and abroad (where the civilian police do not have jurisdiction). The SP have been held by the courts to be structurally, and in practice, independent from the chain of command.

With regards to the capability of the SP, I should point out that they are trained and able to carry out investigations into the most serious offences at home and abroad. All prospective members of the Special Investigation Branch, which investigates serious crimes, must pass the Serious Crime Investigation Course before being selected for that unit. Officers receive specialist training on the handling of sexual offences; investigative techniques; forensic awareness; dealing with witnesses and suspects; the preservation of evidence; and interaction with victims. In addition, selected members of the SP attend a range of specialist and advanced detective training either at the Defence College of Policing and Guarding, or externally with the College of Policing or training providers accredited by the College. At the SPA, prosecutors are trained to effectively prosecute serious cases. For example, prosecution of serious sexual offences requires attendance on the CPS Rape and Serious Sexual Offences specialist training course, and the SPA ensures that decisions on charging in such cases are only taken by prosecutors who have completed that training.

I should also mention the Prosecutors Protocol of 2011. This protocol between the Director of Public Prosecutions, the Director of Service Prosecutions and the Defence Secretary, recognises that any offence can be dealt with by the Service authorities. The main principle in deciding who acts is whether the offence has any civilian context (especially a civilian victim). The protocol provides so that cases with a civilian context are dealt with by the civilian criminal justice system.

You also raised the issue of independent oversight of complaints made against the SP, and I would like to assure you that the Government is actively looking at how best to deliver this. Until recently, we had been working with the Home Office and Independent Police Complaints Commission (IPCC) over the last few months to explore the possibility of the IPCC adopting the Service Police into their oversight framework. The possibility was considered at the highest level within the IPCC, but the Commission has very recently concluded that, given their own significant reform programme, and the differences between the remit and jurisdiction of the SP compared to the Home Office police forces, the IPCC is not best-placed to take on that additional role. Achieving independent oversight is important to the SP and we will now need to consider potential ways of achieving that in light of the IPCC's response.

It may be helpful if I mention briefly the current process for investigating complaints about the SP. When a complaint is received from a member of Service personnel about the conduct of a member of the SP whilst he or she was exercising their powers, the respective Professional Standards Department for each force investigates. If the allegation is sensitive or serious - based on a threshold, or decided subjectively by the Provost Marshal - there is a Tri-Service Investigation Policy in existence that can be activated to request another SP force to investigate, ensuring independence from the originating force.

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

I hope this information is helpful.

Yours sincerely,

Freddie

**THE RT HON EARL HOWE PC**