



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

MSU/4/8/2/3/ap

18^v March 2016

Dear Markin,

During the recent Second Reading debate on the Armed Forces Bill you spoke about some aspects of the Service Justice System, and I am sorry that I did not have time during the debate to address them.

An early point you raised during your speech was that the Court-Martial system does not enjoy public confidence, but I am afraid I have seen no substantive evidence of that. The Armed Forces Continuous Attitude Survey for 2015 shows that 67% of the Armed Forces think that the Service Discipline system is fair and this compares well with the figure in the most recent Crime Survey for England and Wales where 64% of the general population have confidence in the fairness of the civilian criminal justice system.

You then went on to discuss aspects of the Court Martial system, including the composition of the panel. The composition of the panel is determined by the Court Administration Officer (CAO), who is appointed by the Defence Council, and a Service defendant will ordinarily be tried by lay members wholly of his own service. The CAO will draw names at random from a pool of potential members and, having checked they are eligible for membership of the particular board, will specify who the lay members should be. The constitution of each court is dealt with on a case-by-case basis and the overriding principle is that the constitution of the court should be fair, with lay members drawn at random from the widest pool of potential members.

The 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': 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.

As I am sure you will know, 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 Rt Hon Lord Thomas of Gresford OBE QC
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The Court Martial Appeal Court is made up of the same judges as 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, and that it was not discriminatory.

Toward the end of your speech you suggested that serious offences might best be tried in the civilian court rather than the Court Martial. As you may be aware, decisions about whether a case should be heard before a civilian court or a Court Martial are covered by a protocol of 2011 between the Director of Service Prosecutions, the Director of Public Prosecutions and the Defence Secretary. The principles of the protocol were approved by the Attorney General for England and Wales, and by the Ministry of Justice. This government continues to believe that the Service Justice System can deal competently with the most serious cases, whether these occur in the UK or overseas. The Service Police are trained and able to carry out investigations into the most serious offences, with members of the Special Investigation Branch having to pass the Serious Crime Investigation Course before being selected for that unit. In addition, selected members of the Service Police 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 Service Prosecuting Authority, 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 taken only by prosecutors who have completed that training.

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

I hope this is helpful.

Yours sincerely,

Frankie

THE RT HON EARL HOWE PC