MSU/4/8/2/3/is 3 November 2020

Dear Kevan,

During the Committee Stage debate on the Overseas Operations (Service Personnel and Veterans) Bill, I undertook to write to you to on two issues;

to provide details in relation to our decision to include a five-year timeframe for the statutory presumption in the Bill, as opposed to the ten-year timeframe in the measure in the public consultation document.

and:

on the issue of legal representation provided to families at inquests.

The following data was contained in the MOD's Analysis and Response to the public consultation on legal protections, which was published on 17 September 2020:

* Question 8 - Do you agree that ten years is an appropriate qualifying time?

|  |  |
| --- | --- |
| Number of respondents to question | 1,510 |
| Responded Yes | 911 |
| Responded No | 599 |

* Question 9 - Do you agree that the measure (the statutory presumption) should apply regardless of how long ago the relevant events occurred?

|  |  |
| --- | --- |
| Number of respondents to question | 1,517 |
| Responded Yes | 912 |
| Responded No | 605 |

Question 10 provided respondents with the opportunity to provide any explanatory comments in relation to their responses to Questions 8 and 9; 708 respondents chose to comment. Of these, the following referred specifically to timeframes:

|  |  |  |
| --- | --- | --- |
| a. | Supported a ten-year timeframe | 102 |
| b. | Supported a timeframe, but not ten years | 291 |
| c. | Of (b), supported a five-year timeframe | 109 |
| d. | Of (b), supported other timeframes, including:  (i) three years  (ii) two years  (iii) one year | 14  16  9 |
| e. | Did not agree with the measure or with applying a timeframe | 59 |

Note:

(b) 69 respondents did not specify a timeframe, they simply said "longer" or "shorter" than 10 years.

As we set out in our published response to the consultation, there was support for a 10-year timeframe, but equally there was also support for the presumption to apply without a timeframe (tables at paragraph 2).

As the issue we are seeking to address relates to historical alleged offences, we did not feel able to apply the presumption without a timeframe. We considered the written responses which clearly indicated the concerns that a 10-year timeframe was too long - memories can fade, evidence tends to deteriorate and the context of events change. There were also concerns that 10 years was too long a time to have the threat of prosecution hanging over a Service person's head. There were 78 comments that covered these concerns.

Given the strength of the views expressed, we felt that a timeframe of less than ten years would be more appropriate and, as detailed in the table above, 5 years was the most popular alternative timeframe.

Turning to the issue of legal representation at inquests, you will appreciate that Coronial investigations are completely independent from the MOD. Their purpose is to obtain answers to four statutory questions pertaining to the deceased: who the deceased was, and when, where and how they died. The inquest, which forms part of the Coroner’s investigation, is an inquisitorial process, with the Coroner leading the direction of the hearing and the questioning of witnesses. It is a fact finding exercise and legal representation is not essential. The MOD does not routinely engage legal representation at inquest and will only seek legal representation if the case is particularly complicated or if the deceased’s next of kin have appointed their own legal team. There is no funding mechanism in the MOD to provide legal support to families at an inquest. If families wish to be legally represented at inquest then an applications for Legal Aid can be submitted to the Ministry of Justice’s Legal Aid Agency.

Visiting Officers (VO) are provided by the single services to support the family and are the primary point of contact with the MoD. VOs will support the family to and beyond the inquest, but will make families aware that Defence Inquest Unit (DIU) exists to assist the Coroner with his or her investigation. DIU Case Officers are always on hand to speak to the family about the inquest process and to assist so far as they can.

I am copying this letter to other Members of the Committee and a copy will be placed in the Library of the House.

Yours sincerely,



**JOHNNY MERCER MP**