



Baroness Bennett of Manor Castle
House of Lords
London
SW1A 0PW

MoJ ref: ADR85448

15 February 2021

Dear Baroness Bennett,

DOMESTIC ABUSE BILL – DEFENCE FOR VICTIMS OF DOMESTIC ABUSE WHO COMMIT CRIME

I agreed to write to you regarding the point you raised during the Committee stage of the Domestic Abuse Bill on 3 February, as to why the Government remains unpersuaded of the necessity of a statutory defence for victims of domestic abuse who commit crime, noting the protections created in other legislation for Covert Human Intelligence Sources (CHIS) and members of the armed forces.

As I stated during the debate, the answer to the question is that these are very different situations. The use of Covert Human Intelligence Sources is a vital tool used by operational partners to prevent terrorism and serious crime. There may be occasions where, in order to appear credible or gain the trust of those under criminal investigation, a CHIS, in carefully managed circumstances, may need to participate in criminality themselves. Participation in criminality by CHIS and undercover officers has been accepted in the UK (and around the world) for many years. Without this tactic, operational partners would not have access to the same intelligence.

The Covert Human Intelligence Sources (Criminal Conduct) Bill provides an express power to authorise a CHIS to participate in conduct which would otherwise constitute a criminal offence. The effect of an authorisation is to render the authorised conduct lawful. This model is consistent with the approach we have taken for other investigatory powers. We think it is right and fair that where the State is authorising a person to participate in criminality, the State cannot then prosecute them for that same conduct.

However, this does not mean that a CHIS is being provided with authority to commit any and all crime. All authorisations must be necessary and proportionate to the criminality they are seeking to prevent and compliant with the Human Rights Act. In addition, the Authorising Officer must ensure that the level of criminality authorised must be at the lowest level of intrusion possible to achieve the aims of the operation and an authorisation cannot be granted retrospectively. Authorisations will be tightly bound and prosecutors are able to consider a prosecution in the normal way for any activity outside of the specific authorisation.

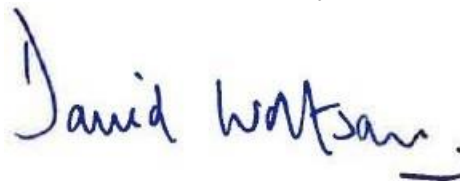
In terms of the armed forces, the Overseas Operations (Service Personnel and Veterans) Bill seeks to create a statutory presumption against the prosecution of current or former service personnel for alleged offences committed overseas where a prosecution has not been brought within a specific timeframe.

Service personnel, deployed on overseas operations, can often be exposed to unknown, difficult conditions and exceptional demands, relying on instinct to survive which can often place them under a significant degree of stress. It is those factors that a prosecution will give weight to – the adverse impact of the particular conditions that they are exposed to (including their ability to make sound judgements and their mental health) and, in cases where there have been previous investigations and no compelling new evidence, whether it is in the public interest to bring finality to such proceedings. The presumption applies to all offences save sexual offences. However, this does not mean that a member of the armed forces will not be prosecuted. Where a prosecutor determines that, notwithstanding the presumption, it is appropriate for a prosecution to be brought, consent of the Attorney General will be sought for the prosecution to proceed.

I hope my explanation above shows that both these defences are entirely different to that being sought for victims of domestic abuse who commit crime.

I am placing a copy of this letter in the Library of the House as well as copying to those peers who participated in the debate on this matter.

Yours sincerely,

A handwritten signature in blue ink that reads "David Wolfson". The signature is written in a cursive style with a small flourish at the end.

**LORD (DAVID) WOLFSON
OF TREDEGAR, QC**