

THE RT HON BARONESS GOLDIE DL
MINISTER OF STATE IN THE HOUSE OF LORDS

MSU/4/8/2/3/ap

25 March 2021

Dear Lord Burnett,

During the Second Reading of the Overseas Operations (Service Personnel and Veterans) Bill on 20 January and Day two of Committee Stages on 11 March, you expressed concern about court martials in the Armed Forces.

Following the recommendations of the Service Justice System Review, a measure in the Armed Forces Bill has been introduced to allow more senior non-commissioned officers to sit as lay members; change the number of lay members to six or three and to introduce qualified majority voting. These changes will align the Court Martial system more closely with a civilian jury.

Currently only officers and warrant officers can be lay members of a Court Martial, but this measure will allow OR 7 ranks to be lay members, that is Chief Petty Officers, Colour Sergeants, Staff Sergeants and Flight Sergeants. This broadens the pool from which Court Martial lay members can be drawn, while still preserving the seniority of lay members to fulfil the disciplinary role needed by the Court Martial.

Increasing the range of ranks who can sit on a board will increase diversity of experience and also the numbers of personnel eligible to sit. However, unlike the Crown Court, the court martial board does not only determine guilt or innocence, it deliberates with the Judge on the sentence to be awarded. The Judge is therefore relying on the collective service experience of those board members to assist in deciding the appropriate sentence. The sentence fulfils a number of purposes, including punishment, maintenance of discipline, and deterrence. It must also take into account what is in the best interests of the Service and the maintenance of operational effectiveness.

An appreciation of these factors comes with experience and, to a certain extent, with rank and the exercise of command over others. We therefore believe that those at the rank of OF7 and above are most likely to have this experience.

The Lord Burnett
House of Lords
London
SW1A 0PW

In relation to verdicts, currently there can be anywhere between three to seven lay members sitting on a Court Martial to decide on the verdict, and then, if appropriate, decide on sentence with the Judge Advocate. The measure in the Bill will fix the numbers at either six or three lay members sitting on a Court Martial board. The intention is that serious cases will be dealt with by boards of six lay members; which is half the usual number of a civilian jury.

The measure will also introduce qualified majority voting on verdicts where there is a board of six lay members. At least five lay members must agree if there are six lay members (or four if the board reduces to five due to illness or other reason). These numbers are roughly in proportion to the way qualified majority verdicts work in the civilian jury system but with 6 lay members rather than 12 jurors.

I do hope this letter is helpful, and I am placing a copy of this letter in the Library of the House.

*Yours sincerely,
Annabel Su Goldie*

BARONESS GOLDIE DL