



Ministry  
of Defence

MINISTRY OF DEFENCE  
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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 Tunncliffe,

During the Committee Stage debate of the Overseas Operations (Service Personnel and Veterans) Bill on 11 March, and at the meeting on 19 March, you expressed concerns regarding Legal Aid support for Service personnel and veterans.

I would confirm that we take extremely seriously our duty of care to our personnel and veterans, including when they are affected by criminal legal proceedings.

The Ministry of Defence (MOD) has a longstanding policy that where a Service person or veteran faces criminal allegations in relation to incidents arising from his or her duty on operations, the MOD may fund their legal support and provide pastoral and welfare support for as long as necessary.

The legal aid provided by the Armed Forces Legal Aid Scheme (the Scheme) which provides publicly funded financial assistance in respect of some, or all, of the costs of legal representation for defendants and appellants who:

- a. Appeal against findings and/or a punishment following summary hearings at unit level, including applications for extensions of the appeal period by the Summary Appeal Court, for leave to appeal out of time; or
- b. Have a case referred to the Director of Service Prosecutions, for a decision on whether the charges will result in a prosecution; this includes offences under Schedule 2 of the Armed Forces Act 2006 which are referred directly to the Director of Service Prosecutions by the Service police, as well as matters referred to the DSP by the Commanding Officer; or
- c. Are to be tried in the Court Martial or the Service Civilian Court; or
- d. Wish to appeal in the Court Martial, against the finding and/or sentence after trial in the Service Civilian Court; or
- e. Are to be tried in a criminal court outside the UK.

The Lord Tunncliffe CBE  
House of Lords  
London  
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Although the Scheme is non-statutory, MOD's commitment to provide this support is enshrined in policy through JSP 838: The Armed Forces Legal Aid Scheme. The Scheme applies regardless of seniority and applies equally to all members of the Armed Forces, including the Reserve Forces when they are subject to Service law, as well as to civilians who are or were subject to Service discipline at the time of an alleged incident.

There is parity between Service and Civilian provision for legal aid, with both schemes being means tested (except for criminal cases arising from Iraq or Afghanistan operations heard in the Service Court, where means testing has been waived). The means tests are used to assess the applicant's ability to contribute towards their legal aid costs, after taking account of their personal and financial circumstances at the time of application. The MOD promulgates threshold levels, based upon those used in the civilian system for the Crown Courts in England and Wales, which determine the points above which a contribution is required. We cannot categorically say that Service personnel will receive legal aid if they exceed the financial eligibility threshold.

In addition to the means tested legal aid provision described above, the MOD will, in certain circumstances, consider paying for the representation of an individual in legal proceedings if this relates to an allegation arising from an act committed in the course of the individual's employment or duties. Each case is considered on its own merits and careful consideration is given to all the available evidence, as to whether the individual was acting within the scope of their duty. If approved, funding for legal representation will be provided from within the chain of command/Top Level Budget and the Armed Forces Criminal Legal Aid Authority (AFCLAA) will help with sourcing legal representation and assuring and scrutinising costs. If, however, the available evidence suggests the individual was acting outside their scope of duty, this funding mechanism would not be appropriate.

You asked specifically about cuts to legal aid funding. Because the legal aid provided by the AFCLAA for Service personnel mirrors the national legal aid system, the cuts that were made to the legal aid rates payable to civilian legal representatives for criminal matters apply equally to the Armed Forces Legal Aid Scheme. The AFCLAA adhere to the legal aid fees as laid down in the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended), and the Crown Court Fee Guidance in accordance with the Legal Aid Agency.

I hope that you will therefore agree with me that we already ensure that Service personnel and veterans are properly supported through the provision of legal aid when they are affected by criminal legal proceedings.

I am copying this letter to Lord Falconer, and I am placing a copy of this letter in the Library of the House.

*Yours sincerely,  
Annabel Su Hooie*

**BARONESS GOLDIE DL**