



Armed Forces (Service Complaints and Financial Assistance) Bill (HL): Progress of the Bill

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Section International Affairs and Defence section

The Armed Forces (Service Complaints and Financial Assistance) Bill (HL) 2013-14 had its Second Reading in the House of Commons on 2 February 2015. The Bill completed its House of Lords stages on 20 October 2014. Library Research Paper [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) provides background on the proposals in the Bill.

The intention of the Bill is to reform the Service Complaints System, streamline the internal appeals process and strengthen independent oversight by converting the role of the current Service Complaints Commissioner into a Service Complaints Ombudsman. The Bill amends the *Armed Forces Act 2006*, the primary Act dealing with complaints within the Armed Forces.

The Bill also includes a power to make payments to charities, benevolent organisations and others for the benefit of the armed forces community.

Committee stage in the Commons took place on 10 February 2015.

The Government was defeated in two votes on amendments tabled on behalf of the Defence Committee in Committee Stage. The amendments will significantly widen the investigative scope of the Ombudsman and will enable the Ombudsman to investigate a service complaint, any maladministration in the handling of a service complaint, and an allegation of inappropriate delay. The amendments amend clause 2. The Government introduced amendments at Report Stage to reflect the changes agreed in Committee. These were agreed without division.

New technical Government amendments concerning transitional arrangements and amendments to Northern Ireland legislation clarifying how the new service complaints provisions will interact with certain complaints to an industrial tribunal in Northern Ireland were accepted at Committee Stage.

The Bill completed its stages in the House of Commons on 9 March 2015. The Bill is scheduled to go to the House of Lords for consideration on 16 March 2015.

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1 Introduction

The *Armed Forces (Service Complaints and Financial Assistance) Bill (HL)* (Bill 174 of session 2014-15) will reform the internal Service complaints system and also strengthen independent oversight by converting the role of the current Service Complaints Commissioner into a Service Complaints Ombudsman. It sets out the framework for the redress of service complaints and introduces a streamlined appeals process. It amends the *Armed Forces Act 2006*, which is the primary Act dealing with complaints within the Armed Forces. The Bill also includes a power to make payments to charities, benevolent organisations and others for the benefit of the armed forces community.

The Bill was introduced into the House of Lords on 5 June 2014, where it received Second Reading on 23 June. No amendments were made to the Bill in the House of Lords. It completed its parliamentary stages in the upper house on 20 October and was passed to the Commons, where it received First Reading on 21 October. Draft regulations were published on 29 December 2014. Second Reading in the Commons was on 2 February 2015. Committee stage was held over two sittings on 10 February 2015. Report Stage and Third Reading took place on 9 March 2015. The Bill, with its explanatory notes, is published on [the Bill's page on the Parliament site](#). Background material on the Bill, including the draft regulations, is [collated on Gov.uk](#).

Debate on the Bill in both Houses has centred on the office and the powers of the Ombudsman rather than the reforms to the internal service complaints system or the financial assistance section of the Bill. Debates were informed by reports by the Defence Committee and briefings prepared by Liberty.¹

The remit of the Ombudsman was significantly altered at Committee stage. Amendments tabled on behalf of the Defence Committee and supported by the Opposition will expand the scope of the Ombudsman's investigations. The amendments mean the Ombudsman will now be able to investigate a service complaint and clarifies that he/she can investigate any maladministration in the handling of a complaint rather than just the allegation of maladministration made in a complaint. Currently, service complaints are investigated by the chain of command and the service complaints Commissioner has no powers to investigate a service complaint. The Government amended the Bill at Report Stage to accommodate the changes agreed in Committee.

Amendments defeated on division at Committee Stage concerned the independence of the office of the Ombudsman; the powers of the Ombudsman; whether a complaint should end if the complainant dies before a conclusion has been reached and whether the Defence Council should be bound by the Ombudsman's findings *and* recommendations.

A new Service Complaints Commissioner has been appointed since the Bill was introduced. Nicola Williams took office in early February and submitted written evidence to the Bill Committee.

The Bill is scheduled to be considered in the House of Lords on 16 March 2015.

Background and a detailed examination of the Bill can be found in Library Research Paper *Armed Forces (Service Complaints and Financial Assistance) Bill (HL)*, RP 15/05.

¹ Liberty is a human rights organisation.

2 Second Reading debate

The Bill received Second Reading on 2 February 2015. The Minister of State, Anna Soubry introduced the Bill, noting that while many complaints are dealt with promptly and successfully, the Government accepted performance is not good enough and can be significantly improved.

Much of the debate at Second Reading echoed the concerns raised by members of the House of Lords during their examination of the Bill and by the Defence Committee in its report on the Bill. These predominantly concerned the powers of the Ombudsman rather than the changes to the internal complaints system.

Broadly, these concerns are:

- why the Ombudsman will not be able to investigate the substance of a complaint
- why she will not be able to initiate an investigation into thematic issues
- whether the Defence Council should be bound by the Ombudsman's findings *and* recommendations
- if a complaint should end if the complainant dies before a conclusion has been reached
- the terms of office of the Ombudsman.

Kevan Jones, Shadow Defence Minister, expressed support for the Bill and welcomed the introduction of the Service Complaints Ombudsman, noting that the Labour Government established the Service Complaints Commissioner in the *Armed Forces Act 2006*. However, he indicated he would press for some specific amendments “to try to improve and empower the role of the service complaints ombudsman.”² These would include enabling the Ombudsman to investigate the substance of a complaint, and whether any maladministration occurred in the handling of the complaint rather just the allegation of maladministration made by the complainant.³ Kevan Jones argued in favour of the Ombudsman having the power to undertake thematic inquiries on their own initiative.⁴ He questioned whether there should be greater flexibility in the way that complaints are brought forward. Kevan Jones argued that complaints brought by individuals who subsequently died should continue and not die with them.⁵ He also expressed reluctance for the Ombudsman to have a service background.

The Minister explained the Ombudsman's job “is to make sure that we have a good, efficient and fair complaints system” and the Ombudsman is appointed specifically to look at maladministration in the handling of service complaints. Anna Soubry said there is a “profound difference between the service complaints ombudsman that the Government want and an armed forces ombudsman who might or not might consider the broader matters.”⁶ She also resisted amending the Bill to make it “overly prescriptive”, preferring instead the detail of the Ombudsman's powers and the reformed complaints system to be laid out in

² HC Deb 2 February 2015 c58

³ Ibid c54

⁴ Ibid c54

⁵ Ibid c56

⁶ HC Deb 2 February 2015 c73

Regulations rather than in the Bill. She cautioned “if we legislate for things and want to change them, it is difficult to get another Bill in Parliament to do so.”⁷

Sir Nick Harvey, former Minister of Defence, welcomed the Bill but said that as it stands, it “does not go as far as it might.”⁸

Madeleine Moon described the introduction of the Ombudsman as a “landmark reform” and one that is “most welcome.” However the Bill “could go further.” She referenced the Defence Committee’s call for the Bill to be amended to make it explicit that the Ombudsman could investigate and report on *any* maladministration in the handling of a service complaint rather than just *the* maladministration cited by a complainant.⁹ Ms Moon echoed the suggestions made by Kevan Jones. She also cited the case of Lance Corporal Neathway to illustrate how the complaints system can fail an individual.¹⁰

The Chairman of the Defence Committee, Rory Stewart, summarised the Committee’s concerns about the Bill, namely independence, flexibility, the scope of the ombudsman, the power of the ombudsman and the transparency of the ombudsman’s findings. He expressed unhappiness that the Government had not sought to accept any of the Committee’s eight recommendations.

James Arbuthnot spoke of the Defence Committee’s long interest in this subject under his chairmanship. He agreed with many of the amendments suggested in the Committee’s report on the Bill (under its new chairman). However he disagreed with the Committee on its call that the Defence Council should be bound by the Ombudsman’s recommendations.

The Minister made a significant announcement during Second Reading. She said that the Ministry of Defence will write to the approximately 1,500¹¹ individuals affected by an error made by the Army and the Department. This concerned individuals who, between November 2008 and September 2011, were erroneously disciplined for police cautions which, because of a November 2008 change to the *Rehabilitation of Offenders Act 1974*, should have been considered spent. The Minister said the Department would write to all those affected to make them aware of the position and of the service complaints process which is available to them.¹² This was discussed further in Committee.

3 Committee stage

There were two sittings at Commons committee stage, on 10 February 2015.

Amendments were made to clauses 2, 6 and 7 and the Schedule. Amendments to clause 2 were agreed at Division in opposition to the Government. The amendments to clauses 6 and 7 and the Schedule were all technical amendments tabled by the Government and agreed without division, including a new clause concerning transitional arrangements. Clause 1, concerning the office of the Ombudsman, was unchanged.

⁷ HC Deb 2 February 2015 c50

⁸ Ibid c71

⁹ Ibid c65

¹⁰ Lance Corporal Neathway was severely injured in Afghanistan. His complaint to seek redress against bullying took three years to resolve.

¹¹ The Minister has since revised this figure to approximately 1,200, of whom 1,000 are Army, in response to Defence questions on 23 February 2015 c15.

¹² HC Deb 2 February 2015 c64

3.1 Summary

The Government lost two votes at Committee stage. Altogether there were 19 divisions on amendments tabled on behalf of the Defence Committee or the Opposition, of which 17 were defeated. The Government tabled technical amendments that were agreed without division.

Clause 1 was agreed to. Amendments tabled to define the duration of the term of office for the Ombudsman, to prevent former service personnel from being appointed Ombudsman and to prevent those who had served in the regular or reserve forces in the past five years from being appointed Ombudsman were defeated on division.

Clause 2 was agreed to with the amendments agreed by the Committee and opposed by the Government. These significantly widen the investigate scope of the Ombudsman and will enable the Ombudsman to investigate a service complaint, any maladministration in the handling of a service complaint, and an allegation of inappropriate delay. The amendments reflect the stance of the Defence Committee, Liberty, some Members of the House of Lords and to an extent the new Service Complaints Commissioner. The amendments alter **clause 340(H)** in clause 2.

The Committee discussed whether a complaint should continue in the event of the death of the complainant; whether the Defence Council should be bound by the recommendations of the Ombudsman; and if the Ombudsman should have the power to investigate thematic issues on her own volition. All the amendments pushed to division were defeated.

Clauses 3, 4 and 5 were agreed. Technical amendments tabled by the Government, including a new clause on transitional arrangements, were made to clause 6 and clause 7, without division. The Schedule was amended by the Government with new technical sections amending Northern Ireland legislation. These amendments clarify how the new service complaints provisions will interact with certain complaints to an industrial tribunal in Northern Ireland.

Madeleine Moon introduced amendments tabled on behalf of the Defence Committee. Kevan Jones spoke of amendments tabled by the Opposition. Kevan Jones supported the amendments tabled by the Defence Committee. Anna Soubry represented the Ministry of Defence.

This section looks at the amendments agreed and the more contentious amendments tabled but negated on division. They are grouped by clause. It does not discuss all 17 amendments disagreed on division. The Committee stage proceedings and tabled amendments can be accessed at: [Armed Forces \(Service Complaints and Financial Assistance\) Bill \(HL\) 2014-15](#)

3.2 Debate on clause one: the office of the Service Complaints Ombudsman

Clause one of the Bill replaces the existing Service Complaints Commissioner with the new office of the Service Complaints Ombudsman. Clause **365B** of the Bill states a person may not be appointed as the Ombudsman if the person is a member of the regular or reserve forces or a civil servant. The terms of office are not explicitly set out in the Bill.

Members were concerned that the Bill only prevents a serving member of the Armed Forces from being appointed as Ombudsman. Madeleine Moon and Kevan Jones worried that appointing an individual who might have recently left the services could affect serving personnel's confidence in the independence of the Ombudsman office.

Mrs Moon introduced amendments tabled on behalf of the Defence Committee.¹³ These amendments would prevent an individual being appointed as Ombudsman if they had served in the Armed Forces (regular or reserve) in the previous five years. She argued serving personnel must have confidence in the independence of the Ombudsman's office and such independence must be clarified and be in the Bill.

Mr Jones tabled an amendment which would prevent anyone who has served in the forces from being appointed. Mr Jones was concerned that through associations resulting from training or career paths, an Ombudsman who had served in the military might know individuals who were in a position to influence events:

At the root of the matter is the question whether someone who has taken forward a complaint can have confidence that the individual who looks at it will not be influenced by the current chain of command or by previous associations.¹⁴

The Minister disagreed: "the five year period would run the risk of excluding people who might make a wonderful appointment. That is the danger of over-prescription."¹⁵

The amendments were rejected on division by 10 votes to 7.¹⁶

Mrs Moon also moved an amendment limiting the term of office to a non-renewable five to seven year period. Mrs Moon argued this would increase trust and confidence in the Ombudsman. The Minister disagreed, saying it was too prescriptive and inflexible, and would require the Government to pass fresh legislation if they decided a four or eight year term was required. The amendment was rejected on division by 10 votes to 7.¹⁷

The Committee agreed that clause 1 should form part of the Bill.¹⁸

3.3 Clause 2: amendments agreed on Ombudsman's scope for investigations

Clause 2 reforms the current service complaints system and outlines the powers of the Ombudsman. As in the House of Lords, debate focused on the powers of the Ombudsman rather than the changes to the internal service complaints system proposed in the Bill.

The Government lost two votes at Committee stage. The amendments, tabled in the name of the Defence Committee, significantly widen the investigative scope of the Ombudsman.

An individual who is unhappy with the way his or her complaint was handled by the internal service complaints system can make an allegation of maladministration in connection with the handling of the complaint to the Ombudsman. The Ombudsman would investigate the allegations and decide whether there had been maladministration and whether that had caused injustice.

The Committee agreed amendments to the Bill to **Clause 340(H)** which gives the Ombudsman the power to not just investigate the allegation of maladministration identified by a complainant but also any maladministration the Ombudsman might identify in the course of her investigation. Significantly, the amendment enables the Ombudsman to investigate the

¹³ Defence Committee, *Armed Forces (Service Complaints and Financial Assistance) Bill*, 23 October 2014, HC 508 2014-15, Amendments A and B

¹⁴ PBC Deb 10 February 2014 c8

¹⁵ Ibid c11

¹⁶ Ibid c11

¹⁷ Ibid c15

¹⁸ Ibid c15

substance of a complaint, which the Government has strongly resisted. The amendment also allows the Ombudsman to investigate an allegation of inappropriate delay prior to a person making a formal complaint or an allegation relating to the staying of a complaint.

These are significant changes that were discussed when the Bill was in the House of Lords and at Second Reading in the House of Commons, and reflect what shadow Defence Minister Kevan Jones described as a “fundamental disagreement between the Defence Committee and Opposition Members and the Government on what the ombudsman’s role should be.”¹⁹

Members of the House of Lords, the former and current Service Complaints Commissioner, the Defence Committee and Liberty all expressed concern about the limitations to the Ombudsman’s investigative powers. These are briefly summarised below before the summary of the Public Bill Committee debate and votes.

Debate in the Lords

Lord Thomas of Gresford described the confinement of the Ombudsman’s investigations into an allegation of maladministration rather than the substance of the initial incident as “the most significant limitation of the Bill.” He argued that if the procedure was correctly followed, the Ombudsman would have no power to put right a decision on the merits of the complaint “no matter how perverse it appears to him to be.” He asked: “is it not as vital to ensure that the right decision was taken on a complaint as that it was simply procedurally correct?”²⁰

Lord Astor of Hever, representing the Government, said the Service Chiefs have made it clear they believe it should “be the chain of command that investigates complaints and works with complainants to find a solution that they are satisfied with.”²¹

The Defence Committee²²

The Defence committee believes the Ombudsman should be able to investigate the substance of the original complaint once the Service’s internal process has been completed. In its report on the Bill, the Committee said it sees “no reason to believe that this would undermine the chain of command.” The Committee similarly favoured allowing the Ombudsman to investigate and report on *any* maladministration that might have taken place during the handling of a Service complaint, not just that alleged in the application to the Ombudsman.²³

The Government said in its response to the Defence Committee that they had “given very careful thought to this and are satisfied” that what is provided in the reformed system is appropriate for the Ombudsman. The Government emphasised its belief in the chain of

¹⁹ Ibid c53

²⁰ HL Deb 23 June 2014 c1039

²¹ HL Deb 9 July 2014 c242

²² The Defence Committee has reported several times on the Service Complaints System and Service Complaints Commissioner in: *Duty of Care*, 14 March 2005, HC 63-1 2004-05; *Armed Forces Bill: proposal for a Service Complaints Commissioner*, 8 November 2006, HC 1711 2005-06; *The work of the Service Complaints Commissioner for the Armed Forces*, HC 720 2012-13, 26 February 2013; *Armed Forces (Services Complaints and Financial Assistance) Bill*, 23 October 2014, HC 508 2014-15; *Pre-appointment hearing for the Service Complaints Commissioner*, 28 November 2014, HC 832 2014-15

²³ Defence Committee, *Armed Services (Service Complaints and Financial Assistance) Bill*, 23 October 2014, HC 508 2013-14 para 41-42

command being responsible for the welfare of members of the armed forces. It also noted Dr Atkins, the then Service Complaints Commissioner, had not called for this power.²⁴

The new Service Complaints Commissioner

Nicola Williams took up her post as Service Complaints Commissioner in early February 2015. She provided written evidence to the Public Bill Committee commenting on the amendments suggested by the Defence Committee.

She disagreed with the Committee's recommendation to give the Ombudsman the power to investigate the substance of a complaint. She said doing so would risk overwhelming the Ombudsman, who would need additional resources than presently planned. She acknowledged it would be useful for the Secretary of State to have the power to ask the Ombudsman to review the substance of a complaint in very exceptional cases and suggested such an amendment would be a "very sensible measure." She explained her argument as follows:

The employment relationship is at the heart of the Service complaints process. It is particularly important that the system is designed to make the employer, the chain of command, deal with complaints promptly and effectively and hold them publically to account for doing so, rather than give them an 'opt out' on the basis that someone else can investigate it for them. The quickest way to resolve a complaint will be by a suitably empowered person, within the relevant Service, accepting it is a priority amongst their other responsibilities to investigate and put right.

She noted the legislation is currently not clear that the Ombudsman can investigate and report on "any maladministration" rather than just "the alleged" maladministration and suggested clause 340H(4)(a) and 340L(2) be amended for clarity.²⁵

Liberty

Liberty supported the Defence Committee's tabled amendments in its written evidence to the Public Bill Committee. Liberty describes the inability of the Ombudsman to investigate the substance of the initial complaint as a "fundamental omission from the proposed system." Liberty suggests "it is entirely conceivable that a complaint may be conducted in a procedurally sound way but that the conclusion of the investigation was perverse." Liberty says "is it unclear why the Government has accepted the need to introduce an external element to the complaints process, but does not wish them to have powers to investigate the substance of initial complaints." Liberty argues that giving the Ombudsman such a power need not delay a complaint, because if the Ombudsman can take a view on the initial complaint and also makes a finding of maladministration, the Service concerned will not need to go back to reinvestigate the initial complaint. Liberty also points to other Ombudsmen who are all empowered by statute to investigate 'service failure' in addition to maladministration – the Scottish Public Service Ombudsman, the Local Government Ombudsman for England and the Prisons Ombudsman.²⁶

²⁴ Defence Committee, *Armed Services (Service Complaints and Financial Assistance) Bill: Government Response to the Committee's Fifth Report of Session 2014-15*, 19 December 2014, HC 900 2013-14

²⁵ Written evidence: [Service Complaints Commissioner \(AF01\)](#) to Public Bill Committee, 10 February 2015

²⁶ Written evidence: [Liberty \(AF02\)](#) to Public Bill Committee, 10 February 2015; See also "[Liberty's briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Committee Stage in the House of Lords](#)", *Liberty*, July 2014

Public Bill Committee debate

The amendments agreed at Committee were tabled by Madeleine Moon in the name of the Defence Committee.²⁷ These were amendments 6 and consequential amendments 7, 8, 9 and 10. They were supported by the Opposition, represented by Kevan Jones.

Madeleine Moon described the amendments as “perhaps the most important changes to the Bill” and Kevan Jones similarly said “this group of amendments goes to the nub of the Bill.”²⁸

She said of the amendments:

They go to the heart of the ombudsman’s powers and responsibility, and they relate to the issues considered by the Defence Committee concerning the ombudsman’s scope. We believe that the ombudsman should be able to investigate the substance of the original complaint once the service’s internal processes have been completed. We see no reason to believe that would undermine the chain of command.²⁹

Madeleine Moon explained the amendments in detail:

Amendments 6, 7, 8 and 9 relate to the ombudsman having the power to investigate a service complaint, an “allegation of maladministration” in the handling of the complaint—that includes an allegation that the complaint was inappropriately delayed—as well as the power to investigate an allegation of “inappropriate delay” prior to the making of a formal complaint or an allegation relating to the “staying” of a complaint.

Amendment 10 inserts a new requirement that a service complaint where injustice could have resulted, rather than just maladministration, must be “well founded”.³⁰

Madeleine Moon cited the evidence of the then Service Complaints Commissioner, Dr Susan Atkins, to the Defence Committee, in support of the amendment to make it explicit that the Ombudsman can investigate and report on any maladministration in the handling of a service complaint rather than just the allegation of maladministration made by a complainant.

Kevan Jones argued the Deepcut review highlights the need for the Ombudsman to be able to investigate the substance of a complaint and, in the process, perhaps identify wider trends. Mr Jones acknowledged the Ombudsman can identify such trends in the annual report, but said “we want to put it in the Bill, that there is an onus on the ombudsman to look at broader issues.”³¹

Martin Horwood noted that this question had come up at almost every stage of the Bill, concluding “the consensus seems to be that it is justified” to extend the remit of the Ombudsman to enable him to investigate the substance of the complaint as opposed to simple maladministration. He dismissed the Government’s citation of the powers of other Ombudsmen, arguing that it is for Parliament to decide whether to extend the remit of a particular Ombudsman.

The Minister responded by reiterating the powers of the Ombudsman. When asked by Derek Twigg why the amendments would cause a problem if they go into the Bill, she replied:

²⁷ The others were Rory Stewart, Dereck Twigg, James Gray, Dai Havard and Dr Julian Lewis

²⁸ PBC 10 February 2015 c34 and c39

²⁹ PBC 10 February 2015 c34

³⁰ PBC 10 February 2015 c34

³¹ Ibid c42

It is because the amendments will extend the scope of the ombudsman's role to look at the merit and substance of complaints. We do not believe that this is what the role should be.³²

Kevan Jones asked "if the ombudsman cannot look at the substantial issues around the original complaint, how will the ombudsman be able to make changes?" Anna Soubry replied:

The ombudsman's role in investigating maladministration under the Bill is not to conduct a general review of the handling of the case. It is intentionally focused on specific allegations of maladministration made by the complainant who is dissatisfied with the way their complaint has been handled.³³

Regarding the power to investigate *any* rather than *the* maladministration alleged by a complainant, Mrs Soubry argued:

Placing a statutory duty on the ombudsman to investigate whether any maladministration has occurred in every case may amount to a positive obligation on her to search for all possible maladministration, whether or not the complainant is concerned with it. That, in the Government's view, is undesirable and may add considerably to the time it takes each case to be concluded.³⁴

Madeleine Moon cited two examples of cases in which complaints had been delayed until they were out of time to support the argument for the Ombudsman to be able to investigate an allegation of inappropriate delay in relation to a person prior to that person making a formal complaint, or an allegation relating to the staying of a complaint (**340(H)(c)**). The cited cases were Lance Corporal Neathway and separately the 1,500 individuals who were wrongly disciplined for having received police cautions between 2008 and September 2011.³⁵ In both cases she said the Army attempted to cover up or sought to delay complaints to make them out of time. She concluded:

We need an ombudsman who can ensure that service personnel who want to make a complaint do not face bullying, harassment, threats of disciplinary action, posts at short notice, sanctions by the annual report and damaged reputations and careers. The service complaints ombudsman should be empowered to investigate where such things happen. It is for Parliament, following our examination of the numerous cases that come our way, to decide what safeguards are required.³⁶

She explained further "where an individual is unaware that they have been the subject of an injustice because that injustice has been deliberately withheld from them, they should be able to make a complaint—it would not be stayed, if that makes sense."³⁷

The Minister acknowledged in her response that the Government is aware of cases where people have had totally justified and often serious complaints: "the Government take that very seriously, which is why we introduced the Bill."³⁸ To concerns that the 1,500 people affected by the situation outlined above might flood the Ombudsman with complaints, the

³² PBC 10 February 2015 c46

³³ Ibid c45

³⁴ PBC 10 February 2015 c48

³⁵ See PBC 10 February 2015 c36-37

³⁶ Ibid c38

³⁷ Ibid c38

³⁸ Ibid c43

Minister said there is no debate about the fact they will have a grievance and she is confident that redress will be sorted out.³⁹

The Minister expressed her disappointment with the amendment after it was agreed, saying the Committee had “effectively created another level of appeal.”⁴⁰ However Kevan Jones argued that amendment six “fundamentally changes the Bill for the better by giving the ombudsman a wider brief.” He added “amendment six is important, because it broadens the ombudsman’s remit substantially and gives them the role that the Defence Committee and outside organisations feel they need.”⁴¹

Amendment 6 was agreed at Division by 10 to 9. Amendments 7, 8, 9 and 10 were agreed as a group at Division by 10 to 8.⁴² The two Liberal Democrat members of the Committee, Stephen Gilbert and Martin Horwood, voted with the Labour and DUP members in favour of these amendments. Mr Gilbert and Mr Horwood voted with the Government on all other divisions.

An Opposition amendment explicitly allowing the Ombudsman to investigate “the substance of the original complaint” was disagreed on division by 10 votes to 8.⁴³

3.4 Clause 2: amendments defeated on division

Madeleine Moon and Kevan Jones pushed a number of other amendments to a vote, all of which were defeated on division. These amendments reflected concerns raised in the House of Lords and by the Defence Committee and Liberty and are briefly laid out below.⁴⁴

In the event of the death of the complainant, can his complaint continue?

Kevan Jones tabled an amendment that would allow a complaint to be made or maintained by an individual’s next of kin or personal representative in the event of his or her death. Mr Jones said “currently, if the complainant dies the complaint will die with them, which will prevent the individual who has passed away to get any justice.”⁴⁵ He argued the amendment would provide clarity for a complainant to know that their complaint would be taken seriously in the event of a death.

The amendment prompted a debate between the Minister and Committee members about the purpose of the Ombudsman. Anna Soubry suggested Kevan Jones “misses entirely the point of the complaints procedure” to which he responded: “this is where the Minister fundamentally misunderstands the role of the ombudsman.”⁴⁶

In discussing what would happen in the event of an unexpected, unexplained death, the Minister pointed out this would fall under the remit of a coroner’s inquest. This led to a debate about the coronial system.

In arguing against the amendment, Anna Soubry argued the Bill currently provides some flexibility by allowing some complaints to continue, for example if an investigation is nearly

³⁹ Ibid c68

⁴⁰ Ibid c54

⁴¹ Ibid c55

⁴² PBC 10 February 2015 c51 and 56

⁴³ Ibid c63

⁴⁴ See Library Paper *Armed Forces (Service Complaints and Financial Assistance) Bill (HL) 15/05*; and also written evidence by Liberty to the Public Bill Committee (AF02).

⁴⁵ PBC 10 February 2015 c16

⁴⁶ Ibid c16

complete and requires only documentary evidence. She warned that allowing a complaint to continue, in the case of someone alleging bullying, might cause the person who is the subject of the complaint to suffer an injustice if the complainant dies before their allegation can be fully tested.⁴⁷

The amendment was defeated on division by 10 votes to 7.⁴⁸

Should the Defence Council be bound by the recommendations of the Ombudsman?

Upon completion of an investigation, the Ombudsman must produce a report for the complainant and Defence Council setting out his findings and, if he finds there was maladministration, his recommendations. The Defence Council is responsible for considering the Ombudsman's findings and recommendations and what action to take (Clause **340L** and **340M**).

The debate in the Lords and evidence to the Defence Committee exposed confusion as to whether Ombudsman's findings *and* recommendations are binding on the Defence Council.⁴⁹

Madeleine Moon tabled an amendment in the name of the Defence Committee for the Defence Council to accept the findings and recommendations of the Ombudsman. The Opposition tabled a similar amendment calling for the Defence Council to accept the findings of the Ombudsman.

The Minister explained the Government intended the Ombudsman's *findings* to be binding on the Defence Council and had made that clear in the House of Lords, but "we simply do not regard it as necessary to specify the legal effect of findings in the Bill."

Anna Soubry explained why the Government was reluctant to make the Defence Council bound by the Ombudsman's *recommendations*:

The Defence Council would not be free simply to reject the recommendations because they disagreed with them; they would need good, cogent written responses and reasons to do so, such as that the full implementation of the recommendations was unworkable, or that there might be significant resource implications. The Defence Council should be able to reach the final decision on matters covered in any recommendations by the ombudsman.⁵⁰

Martin Horwood agreed with the Government. He thought making the recommendations binding "steps over an important and major line." He suggested requiring the Defence Council to be bound by the recommendations of an unelected official would give the Ombudsman the power, in effect, to direct the resources of a Government department.⁵¹

Madeleine Moon's amendment was disagreed on division by 10 votes to 8.⁵² The Opposition's amendment was not called.

Can the Ombudsman investigate thematic issues on her own volition?

Clause **340O(6)** of the Bill provides for the Secretary of State to prepare a report on any aspect of the Service complaints system or any matter relating to any of the Ombudsman's

⁴⁷ Ibid c15

⁴⁸ Ibid c23

⁴⁹ See section 5.5 of Library Paper *Armed Forces (Service Complaints and Financial Assistance) Bill (HL) 15/05*

⁵⁰ PBC Deb 10 February 2015 c59

⁵¹ PBC Deb 10 February 2015 c62

⁵² Ibid c63

functions. Clause **3400(2)** requires the Ombudsman to report annually on the efficiency, effectiveness and fairness of the complaints system or any matters relating to the functions of the Ombudsman as he considers appropriate or as the Secretary of State may direct.

Members of the Lords were concerned that the Bill limits the Ombudsman's ability to investigate and report on thematic or systemic abuse he/she might identify if the course of his or work. The only amendment moved to division in the House of Lords was on this issue and was rejected by 209 votes to 172.⁵³

The Opposition tabled amendments that would allow the Ombudsman to investigate any matter deemed to be in the public interest on the efficiency, effectiveness and fairness of the service complaints system or any matter relating to the Ombudsman's functions, and to prepare a report at any point in time if it appears to her to be in the public interest.

Kevan Jones asked: "do we want someone who will look just at individual complaints, or will they be able to look at other issues in the public interest that have come forward."⁵⁴

He noted that the amendments highlighted what "comes down to a fundamental disagreement between the Defence Committee and Opposition Members and the Government on what the ombudsman's role should be."⁵⁵ He said:

These proposals are of fundamental importance. They would allow issues that are in the public interest and that are of grave concern to the public to be investigated. As I said, this is not about the ombudsman going off at free will; it is the ombudsman informing the Secretary of State. If that is done properly and sensitively, it could improve not only the administration of justice, but what is going on at certain establishments in the armed forces.⁵⁶

Brian Binley expressed concern that the Opposition was mixing the role of ombudsman with that of a regulator: "it seems to me that an ombudsman acts on complaints, whereas a regulator in parliamentary parlance acts on his own behalf on issues he feels are important enough in his area of competence."⁵⁷

The Minister agreed, pointing out there are many different models for ombudsmen with oversight of armed forces matters, but that this ombudsman is concerned purely with the complaints system:

We do not want or need the ombudsman to have the power to investigate any matter other than allegations of maladministration in how complaints have been handled.

If matters are raised that need investigation, a decision will need to be made about who is best equipped and best placed to carry that out. In many cases, the ombudsman is unlikely to be that person, although they will, of course, contribute their expertise and knowledge about complaints matters to the process.⁵⁸

The Minister also made it clear the Ministry of Defence is happy for the Ombudsman to raise any issue directly with the Secretary of State or Ministers or Service chiefs or talk directly to

⁵³ See section 5.1 of Library Paper *Armed Forces (Service Complaints and Financial Assistance) Bill (HL) 15/05*

⁵⁴ Ibid c52

⁵⁵ Ibid c53

⁵⁶ Ibid c53

⁵⁷ PBC 10 February 2015 c54

⁵⁸ Ibid c55

service personnel: “there is no bar in the Bill to the ombudsman raising matters that concern them with anyone and whenever they wish.”⁵⁹

The amendments were pushed to division and disagreed by 10 votes 8.⁶⁰

Clause 2 was agreed as amended.

3.5 Clause 4 debate

Clause four concerns financial assistance for the benefit of the armed forces community and is not contentious. The only amendment tabled was a probing amendment and was withdrawn after a short debate. Kevan Jones called on the Secretary of State to publish an annual report on the financial assistance given under this clause. The Minister explained this is provided for in the annual report on the Armed Forces Covenant the Secretary of State is required to produce for Parliament.

3.6 Government amendments agreed without division

The Government tabled several technical amendments that were agreed without division.

The Government tabled a new clause enabling the Secretary of State to make regulations containing transitional, transitory or saving provision in connection with the coming into force of clauses 1 to 3 and the schedule. This is **new clause 6**. It was read the First and Second time and added to the Bill.

Amendments to Northern Ireland legislation were made to the Schedule without Division. These amendments clarify how the new service complaints provisions will interact with certain complaints to an industrial tribunal in Northern Ireland.

4 Report Stage and Third Reading

Report stage and Third Reading took place on 9 March 2015.

4.1 Report Stage

The Government and members of the Defence Committee tabled 36 amendments to the Bill for Report Stage. All relate to clause 2 of the Bill. The Government’s amendments were accepted without division. All other amendments were withdrawn.

The Government’s amendments were primarily a response to the amendments to section 340H agreed at Committee stage, regarding Ombudsman’s investigations. Anna Soubry, introducing the amendments for the Government, said:

The amendments make the changes to the Bill agreed in Committee and ensure that they work correctly from a drafting point of view [...] I also want to make it clear that the Government accept the changes made in Committee and that nothing in these amendments seeks to row back on what the Committee agreed.⁶¹

The Government amended **section 340H** and also **section 340I**. The changes will:

⁵⁹ Ibid c55

⁶⁰ Ibid c55 and 58

⁶¹ HC Deb 9 March 2015 c40

- Prevent the Ombudsman from investigating a service complaint or an allegation of maladministration in the handling of a service complaint unless satisfied that the service complaint (to which the allegation relates) has been finally determined. Section **340H(3)** is amended to include a definition of finally determined.
- Change ‘inappropriate delay’ in section **340H(1)(c)** to ‘undue delay’.
- Allows the Ombudsman to investigate an allegation of undue delay in the handling of a service complaint or a relevant service matter which has not been finally determined.
- Require the complainant to specify in his/her application to the Ombudsman the kind or kinds of investigation which the complainant wishes to the Ombudsman to carry out (a service complaint; allegation of maladministration; or an allegation of undue delay).
- Prevent the Ombudsman from repeating an investigation into a service complaint that he/she has already investigated.
- Allow the Ombudsman to investigate a service complaint, or an allegation, in whole or in part.

The Government also amended **section 340L(2)** to provide for the recommendations which the Ombudsman can make as a result of findings on an investigation.

Kevan Jones, shadow defence minister, welcomed the amendments and expressed his party’s support for them. He said “I support the amendments to ensure that we have a system that will not only address the issue of undue delays, but, as we have hoped for a number of years, provide an ombudsman whose remit is wider than just maladministration.”⁶²

All Government amendments were accepted without division.

Rory Stewart introduced the amendments tabled on behalf of the Defence Committee which he said would not be pressed to a vote. He briefly summarised the amendments which focused on four things: the independence, freedom, power and scope of the ombudsman. Broadly, the amendments would:

- Prevent the Ombudsman having served in the regular or reserve forces in the previous five years.
- Define the terms of office has between one term of five and seven years.
- Require the Defence Council to consult the Ombudsman before making regulations about the procedure for making a complaint.
- Remove **section 340I(2)** which allows the Secretary of State to make regulations about the procedure to be followed in an investigation.

Rory Stewart said the committee would not press the amendments to a vote “because the Government have so far addressed them in a constructive fashion.” He welcomed the Government’s acceptance of the Committee’s amendment to allow the ombudsman to look not simply at maladministration but at the substance of cases. He also noted the appointment

⁶² HC Deb 9 March 2015 c46

of Nicola Williams as the new Service Complaints Commissioner has taken into account many of the recommendations made by the Committee. In particular, that she has never served in the armed forces and her appointment will be non-renewable. However he added the Committee will reserve the right to reintroduce the amendments, particularly in the Armed Forces Bill to be introduced in the next Parliament “if we believe the Government have reneged on what at the moment appears to be a commitment made in good faith, to ensure that the ombudsman’s principles are upheld.”⁶³

Madeleine Moon tabled an amendment which would have required any person, or at least one of the panel members, involved in dealing with Service complaints involving allegations of discrimination or harassment to have “a proven understanding of discrimination and harassment.” She did not push the amendment to a vote but said she hoped issue will be dealt with in regulation.⁶⁴ Anna Soubry, in outlining the Government’s opposition to the amendment, explained that “no record is or could reasonably be kept of those who may have an understanding of such matters so that they could be called upon when required.”

Madeleine Moon also tabled an amendment, not pressed to a vote, which would define ‘undue delay’. In withdrawing the amendment, she accepted that such a definition does not necessarily need to be in the Bill, or even in regulations. Kevan Jones, speaking for the Opposition, said while he had sympathy for the amendment, he would prefer the matter to be left to the Ombudsman. Anna Soubry resisted the amendment, saying it is for the Ombudsman to define undue delay depending on the circumstances. The Minister expressed concern that a strict definition of undue delay “might deter worthy cases from being raised or constrain the ombudsman’s discretion as to what is in scope.”⁶⁵

4.2 Third Reading

Anna Soubry noted the changes made to the Bill during its passage through the Commons:

The amendments will mean that the proposed service complaints ombudsman will have a wider role than first envisaged. He or she will be able to look at the substance of complaints and at any maladministration in the way it has been handled, not just that alleged by the complainant. The ombudsman will also be able to investigate allegations of undue delay at earlier stages in the process, whether or not a complaint has been made, and that is a good thing.

I will not pretend that this is what the Government initially wanted, but we have listened to arguments from all sides and we have accepted them. I emphasise that on balance I believe that the changes have left us with a stronger and more robust system of oversight with more protections for the individual. The Bill now delivers the right complaints system for our servicemen and women.⁶⁶

Kevan Jones, speaking for the Opposition, similarly endorsed the Bill, noting that it “brings into being an armed forces ombudsman, something that is long overdue.”⁶⁷

The Bill completed its passage in the House of Commons on 9 March 2015. The House of Lords is scheduled to consider the Commons amendments on 16 March 2015.

⁶³ HC Deb 9 March 2015 c27

⁶⁴ Ibid c31

⁶⁵ Ibid c47

⁶⁶ Ibid c52

⁶⁷ Ibid c54