

## **Press Release: Academics respond to the MoD's consultation on introducing an Enhanced Armed Forces Compensation Scheme and legislating for Combat Immunity**

**24 February 2017**

The authors welcome an Enhanced Armed Forces Compensation Scheme, but strongly oppose the MOD's proposal to legislate for Combat Immunity.

The MOD's proposals are aimed at restricting available judicial mechanisms that ensure independent judicial scrutiny and legal accountability of MOD failings in the planning, preparation of, and conduct during, combat. The proposals are not motivated by the need to ensure fairness and justice in the process of awarding compensation for injured or killed Service and ex-Service personnel.

This is evidenced by the MOD's long-standing resistance to claims for compensation made against it, from injured civilians, injured Service or ex-Service personnel. This is also in the context of the Government's woeful failure to uphold basic promises to Service and ex-Service personnel by failing to meet standards contained in the Armed Forces Covenant.

Excluding complete liability and legislating combat immunity would prevent judicial oversight of MOD actions (many of which are non-justiciable). This would not only exclude legitimate claims, but would nurture a no-accountability military structure to allow military restrictions and thresholds to be ignored, in fact amplifying military ineffectiveness and violations of both human rights and humanitarian law principles.

The authors are sceptical of the MOD's promise to administer fair and generous compensation awards, without a Court Order or the threat of litigation forcing it to. The Enhanced Compensation Scheme, coupled with the combat immunity legislation, will ensure that the only option victims and their families have available is a MOD created scheme which is guarded, controlled and adjudicated by the MOD. This, for one, contravenes the core foundations of the British Constitution, built upon the rule of law.

The combat immunity envisaged by the MOD will act as a complete barrier to anyone hurt or killed as a result of MOD negligence, including civilians in the UK and abroad. Victims should be able to bring legitimate and credible claims against the MOD for injuries or death caused by its own negligence. The threat of litigation acts as an important deterrent and motivation for improvements which protects lives. Judicial scrutiny is also not solely in place for the purposes of compensation. Bringing a case before the courts can help victims with rehabilitation, truth-seeking and obtaining guarantees of non-repetition.

Far from being unrelated to the proposal for an Enhanced Armed Forces Compensation Scheme, numerous other measures proposed by the Government (including derogation from the ECHR, changes to legal aid funding and Conditional Fee Agreements) seem to be part of a comprehensive package designed to stifle human rights and personal injury litigation against the MOD and thus limit accountability.

The intention to legislate combat immunity is misguided, as the principle exists in the common law, and parliament has the power to revive section 10 of the Crown Proceedings Act 1947, which creates a crown immunity, in the event of actual or impending hostilities or at a time of national emergency.

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