

**ARMED FORCES BILL COMMITTEE**

**THE ARMED FORCES BILL 2021**

**Submission from the Centre for Military Justice (CMJ)**

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## **INTRODUCTION**

1. The CMJ is a small, independent legal charity<sup>1</sup> established in 2019 to advise current and former members of the Armed Forces or their bereaved families who have suffered serious bullying, sexual harassment, sexual violence, racism, other abuse or neglect. The CMJ also undertakes educational and outreach work within the Armed Forces sector, promoting the rule of law, human rights and access to justice.<sup>2</sup> This brief submission is limited to issues of service justice and service complaints reform.

## **EXECUTIVE SUMMARY**

### **Service Police Complaints Commissioner**

2. It is very encouraging that the Secretary of State has agreed to the creation of a Service Police Complaints Commissioner, which will enable service personnel to raise complaints about service policing with an independent complaints body. This is a huge step in the right direction and, it is hoped, will lead to improvements in service policing across the board. The new Commissioner will also be able to consider 'super-complaints,' which is very welcome indeed.

### **Jurisdiction for serious criminal offences in the UK, affecting service personnel**

3. The Secretary of State has agreed to place the Prosecutor's Protocol<sup>3</sup> on a statutory footing, recognising its importance and authority.
4. The Protocol already exists as a policy document, but the issue of jurisdiction will now be contained in statute and there will be an opportunity for Parliament to consider what its parameters ought to be. The Protocol will govern and guide decision-making on the correct allocation of criminal cases as between the civil justice system and the service justice system.
5. Very regrettably, the Bill does not give any indication about whether certain types of offences occurring in the UK should be dealt with in one system or another. It is vital that it should. The independent review into the service justice system that was published in February 2020, the [Lyons Review](#), recommended that murder, manslaughter, rape, sexual assault by penetration, domestic abuse and child abuse alleged to have occurred inside the UK involving service personnel should be dealt with by the civil justice system, not the service justice system. These are offences that disproportionately impact women; and the women we represent who have direct experience of them want their cases to be dealt with in a civil court. This clause does not go nearly far enough and MPs are strongly urged to support the Lyons Review recommendations which were the product of two years of careful, independent, evidence-based analysis. HHJ Lyons' recommendations also reflected the clear intention of the Government and Parliament when it passed the law in 2009, which made clear that it was not their intention that offences such as rape, where they occurred in the UK, should be handled in the service justice system other than in exceptional circumstances. We hope that an amendment will be tabled that would create a presumption that certain types of serious offences, where they occur in the UK, should proceed in the civil not the service justice system, returning the system to that which Parliament had originally intended.
6. In relation to the many other recommendations of the Lyons Review that do not require legislative reform, the Armed Forces Bill should be amended to include a clause requiring the Secretary of State for Defence to report to Parliament within a reasonable period of time as to the progress of implementing them.

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<sup>1</sup> The CMJ is staffed by one full-time solicitor, supported by a part-time paralegal, with a non-executive trustee board of 5 and an advisory panel.

<sup>2</sup> [www.centreformilitaryjustice.org.uk](http://www.centreformilitaryjustice.org.uk)

<sup>3</sup> The Prosecutor's Protocol 2016, which is the protocol currently in force, is here: <https://www.cps.gov.uk/sites/default/files/protocol-exercise-criminal-jurisdiction-England-Wales-2016.pdf>

## **Service Complaints Appeals**

7. Like Part Two of the Overseas Operations Bill concerning limitation periods for certain types of legal claims, the Armed Forces Bill significantly reduces the rights of service personnel – this time those that are going through the statutory service complaints process.
8. It does this by reducing the time limit for appealing a service complaint from six weeks, to just two weeks. It does the same for the time limit to appeal to the independent Service Complaints Ombudsman for the Armed Forces (the Ombudsman).
9. This is alarming even on its own terms – most service personnel are not legally represented, work full time, often for extended periods if operational commitments require it, and find the process stressful enough to manage as it is within, a six week time frame, let alone a two week time frame - but it is particularly concerning when one factors in a service person's right to bring a claim in the Employment Tribunal (ET). A service person's right to bring a claim in the ET is already far more limited than a civilian's. They can only do so on certain grounds and, crucially, only where they have also made (and if necessary, appealed) a prior service complaint about the same matter. Anything that makes a service complaint less likely to succeed – such as reducing appeal rights - will necessarily impact on ET rights.
10. The severe problems with delay in the service complaints system are nothing to do with the six-week appeal deadline. Delays occur long before a complaint has got to that point and honing-in on the appellant's appeal rights is not the place to start and risks being seen as an abuse of process designed to protect those being complained about, not the complainant. The Ombudsman has declared, in each of her annual reports, that the service complaints system is neither effective, efficient or fair - and a key factor in her coming to this conclusion is the delay suffered by service personnel at the first stage. Service complaints are routinely taking far longer than the specified 24 weeks to conclude their first stage. The idea that the best way to tackle the delay is to reduce a serviceperson's right of appeal from six to two weeks, is not based on evidence. It also appears that the Decision Body which makes the decision on the service person's complaint is now going to be able to decide the grounds on which their own decision can be appealed. More detail will be needed but that is worrying in principle and is likely to be especially challenging for unrepresented personnel dealing with complex complaints.
11. This development comes on the back of a [quietly-announced report](#) published just before Christmas which appears to show that the Ministry of Defence has already rolled back very significantly on its acceptance of some of the Wigston Review recommendations, in particular the recommendation that serious service complaints involving bullying, harassment or discrimination should be taken outside of the chain of command and the single services and should be handled by a Central Defence Authority for Cultures and Behaviours. The report reveals that this plan appears to have been quietly shelved and that the previously accepted 'Defence Authority' will now be little more than an expanded diversity and inclusion team under the Chief of Defence People with little control over the service complaints themselves which are, crucially, now intended to remain inside the single services. It is a curious outcome given that the MoD, in the full glare of the media when Wigston reported, stated that it would accept his recommendations 'in full'. The spotlight has moved on and so, it seems, has the MoD's commitment to this important reform. The MoD should be invited to explain.

## What is missing from the Bill

### **Additional offences affecting women must be made subject to mandatory referral to the police.**

12. Certain criminal offences which directly and disproportionately affect women remain excluded from the list of criminal offences listed in Schedule 2 offences to the Armed Forces Act 2006. This means that, as a matter of law, a commanding officer is not obliged to refer them to the service police at all. While it may be said that the majority of commanding officers would as a matter of course refer such offences to the service police, regardless of whether they were mandated to do by law, sadly not all can be relied upon to do so. Commanding officers are not specially trained or expert to handle sensitive material concerning the experiences of victims of rape and/or sexual or domestic abuse. If the Lyons Review's recommendations were accepted, domestic abuse offences would be mandated to be referred to civilian police. However, as long as the Government declines to accept the Lyons recommendations on jurisdiction, at the very least, this amendment should be made.

### **Justice for our LGBT+ veterans**

13. After decades of lobbying and following litigation, great strides have finally been made to restore medals to LGBT+ veterans that were the victim of the MoD's historic discrimination.<sup>4</sup> However, this does not address the continuing suffering and loss experienced by this lost generation of veterans. The position is inconsistent with our obligations to them under the Armed Forces Covenant.
14. The Bill should include a clause addressing provision for our LGBT+ service personnel veterans that suffered decades of discrimination and who continue to be affected today by their past experiences. The charity [Fighting With Pride](#) is leading on this important issue and will propose an amendment to the Bill that would require the Secretary of State to report to Parliament on progress made towards assessing the particular needs of this vulnerable group of veterans, which should include financial provision.

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<sup>4</sup> <https://www.bbc.co.uk/news/uk-england-hampshire-51203327>

## **CONCURRENT JURISDICTION**

15. Clause 7 of the Bill amends the Armed Forces Act 2006 to place a duty on the Director of Service Prosecutions (DSP, the head of the Service Prosecuting Authority) and each of the heads of the civilian prosecution services including the Director of Public Prosecutions (DPP) to agree protocols on the handling of cases where there is concurrent jurisdiction.
16. Concurrent jurisdiction arises where either the service justice system or the civilian justice system has jurisdiction to try criminal offences committed by service personnel in the UK.
17. The Clause places a duty on the DSP and the DPP to agree a protocol. The protocol must give guidance to relevant prosecutors to assist in the decision as to where a case should be prosecuted. It may also give guidance as to the process to be followed in making such decisions. In particular, the guidance may provide for the circumstances in which consultation may be needed between prosecutors in the service justice system and civilian justice system.
18. Where prosecutors are unable to resolve a disagreement as to the appropriate jurisdiction for a case, the DPP will make the final decision. The DSP and DPP may revise the protocol from time to time but are required to consult the people listed in the Bill (the Secretary of State for Defence, the Attorney General, the National Police Chief's Council, and 'any other person' the Directors think appropriate) before agreeing the protocol or any revision.
19. The Clause is silent as to what kinds of cases might be more suitable for one jurisdiction over another.

### **The current position**

20. The current position is that there is already a Prosecutor's Protocol in place which requires prosecutors to engage with each other on a case by case basis, giving final say to the civilian DPP in the event that there is any disagreement over which jurisdiction should apply. The current Protocol also gives general guidance as to how cases should be handled, stipulating that 'offences alleged only against persons subject to service law which do not affect the personal property of civilians should normally be dealt with in service proceedings and not by a civilian court' and makes no exception for the serious offences of rape and serious sexual assault.<sup>5</sup>
21. There is also a Policing Protocol, governing which police force (service police or civilian police) should investigate an offence on military property. This stipulates that 'very serious crimes' should always be referred to the civilian police to lead the investigation. However, the definition of 'very serious crimes' does not include rape or serious sexual assault, and is restricted to 'any incident involving death or serious injury likely to lead to death or the investigation of terrorism, murder or manslaughter in the UK'.<sup>6</sup>
22. The content of the Prosecutor's Protocol and the omission of rape from the definition of 'very serious offences' in the Policing Protocol has produced a situation where increasing numbers of UK-based military serious sexual assaults are handled in the service justice system, not the civilian justice system.<sup>7</sup>

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<sup>5</sup> Prosecutors Protocol 2016, §2.2(b)

<sup>6</sup> MoU between ACPO (<https://www.gov.uk/government/publications/mou-between-aaib-and-acpo>) and MoD and Service Police 028/2008 (<https://library.college.police.uk/docs/hocirc/ho-circ-2008-028.htm>)

<sup>7</sup> <https://www.gov.uk/government/statistics/sexual-offences-in-the-service-justice-system-2019>

### What was the original intention of Parliament?

23. Current policy and practice is contrary to the intention of the Parliament when it passed the earlier legislation.
24. The then Head of the Army Prosecuting Authority, the Armed Forces Bill Committee and, most importantly, the Government itself made very clear that it was not intended that very serious offences alleged to have taken place in the UK, such as murder, manslaughter or rape, should be handled in the service justice system. The law was changed to enable a defendant to be tried at court martial where they had been accused of serious crimes overseas, where there was a pattern of offences committed both at home and overseas, or where the trying of an offence required particular military expertise (for example, where there had been a serious training incident).
25. HHJ Lyons in the Service Justice System Review explained:<sup>8</sup>

“it appears that this change was passed into legislation on the grounds that giving the court martial system the jurisdiction to conduct these trials would, *in very rare circumstances*, assist the administration of justice. It apparently was not envisaged that the existing practice of the Crown Court being the normal forum for these trials would change. See the Armed Forces Select Committee – First Report (April 2006):

‘Jurisdiction of courts martial:

93. The Bill extends the jurisdiction of courts martial in the United Kingdom to include serious offences that previously could be considered only in civilian courts, or courts martial sitting overseas. Major General Howell, head of the Army Prosecution Authority, explained that *the power to try those more serious cases in courts martial in the United Kingdom would be used rarely, but would be useful if a service man or woman committed related offences abroad*. He told us that: “I can see a situation where if you had a soldier committing murders in a lot of different countries, one of which is the UK, it may be easiest for a court martial to try the case because the court martial can move around countries and listen to witnesses locally and that has other advantage(s). *I do think it is something that is going to be very rare, to be frank, but I can imagine the situation might exist.*”

94. *We accept the arguments for extending the jurisdiction of courts martial so that they may consider those serious cases. However, we note that, unless there is a specific need to try such cases by court martial, public confidence may be better served by their being tried, as now, in the civilian system.*<sup>9</sup> (Our emphasis).

26. The CMJ has reviewed the entire Hansard script for the debate. Lord Drayson for the Government explained why an expansion of the court martial jurisdiction was necessary to facilitate the administration of justice for troops deployed overseas, to deal with situations such as when a ‘death occurs in military training in the UK’, and to enable the ‘joint trial of matters which should be charged together’, such as where an incident may be dealt with by a combination of both criminal and service disciplinary offences; or ‘where a series of offences has been committed in the UK and overseas’. The Minister expressly said:

*‘I have already told the house that we do not propose that, under the bill, murder, rape or treason alleged to have been committed by a service man in the United Kingdom will normally be investigated and tried within the service system...’*

<sup>8</sup> The Lyons Review Part 1, pg 38-39.

<sup>9</sup> We have not been able to locate online a copy of the Armed Forces Select Committee – First Report (April 2006) and this extract is taken directly from the Lyons Review.

27. However, for some reason, the relevant protocols then failed to reflect that clear intention. That failure to reflect the stated intention of Parliament has undoubtedly led to the current situation. Each year more and more UK-based sexual assaults involving service personnel are being dealt with in the service justice system, not the civil justice system, contrary to the intention of Parliament. As HHJ Lyons said:

‘It is not for this review to suggest that this Protocol, approved as it is by the Attorney General, does not give effect to Government intentions as expressed by the Minister in debate. However ... it is a little difficult to square the examples given and language used with the actual effect of the protocol principle, which is operated, so that a certain type of rape (service person on service person) is now normally tried by court martial ... The trying of these offences in the service justice system cannot be said to be for the protection of the individual nor yet for operational effectiveness. Service personnel remain citizens and in these serious cases when the civil courts are available to them they should be tried in that forum. It is clear that the Select Committee had concerns over public confidence. These concerns are shared. Trying these high profile matters under service law has not been helpful to the services and has led to criticism of the service justice system. It is a matter of concern that current practise may not be what Parliament intended.’<sup>10</sup>

28. The Lyons Review made numerous observations and recommendations for reform of the handling of service police investigations and SPA cases including sexual offences. The key recommendations on jurisdiction were:

- a. Recommendation 1: The court martial jurisdiction should no longer include murder, manslaughter and rape where these offences are committed in the UK, except when the consent of the Attorney General is given.
- b. Recommendation 2: Consideration to be given to including either s2 offences (sexual assault with penetration) or both s2 and s3 (sexual assault without penetration) offences in the category of cases that should be proceeded with under the civil jurisdiction when the offences are committed in the UK and placing guidance in the Prosecutors Protocol and other relevant protocols as to the allocation of these cases.
- c. Recommendation 3: Domestic violence and child abuse offences committed in the UK should always be dealt with in the civil system and the Prosecutors Protocol should be amended to reflect this by containing specific guidance.

29. The MoD rejected the recommendations relating to jurisdiction on the day the Lyons Review was published, without explanation, and the Armed Forces Bill now contains nothing that would address them.

### **Why is this a problem?**

#### **Sudden deaths are not explicitly included in the Bill**

30. The Policing Protocol referred to above makes clear that murder and manslaughter and terrorism offences in the UK on military property are to be investigated by the civilian police. As far as we are aware, this policy is correctly followed in practice, although it was not always the case. An earlier version of this policy was in place at the time of the deaths at Deepcut barracks in Surrey and this kind of arrangement did not prevent the military police from taking the lead in those investigations, from which the local civilian police, Surrey Police were largely absent for several years. The consequence of the failure to apply the policy was catastrophic for the families and extremely damaging to the reputation of the Army.

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<sup>10</sup> The Lyons Review Part 1, §§7.2-7.3



31. The reason why sudden deaths on military property should be investigated by civilian, not military police is obvious and we understand the Government to be taking no issue with it: to ensure rigorous independence of investigations and for the purposes of public confidence.
32. If there is going to be a statutory arrangement governing the matter of jurisdiction, it should specify that, in cases of sudden death on military property, the civilian police ought to take the lead.
33. The CMJ advises three of the families that lost their children at Deepcut barracks and they have expressed their concern to us at the fact that the Clause is silent on the issue of sudden deaths on military property.

#### **Rape and serious sexual assault cases are not included in the Bill**

34. The same analysis applies for serious sexual offences alleged to have been committed by one service person against another.
35. The problem of sexual assaults and female over-representation in the service complaints system is currently being investigated by the Defence Committee that has launched an Inquiry into Women in the Armed Forces.<sup>11</sup> We refer to the CMJ's detailed submission to the Inquiry [here](#). In summary, our submission to the Inquiry:
  - a. Highlights the prevalence of sexual assaults in the Armed Forces generally;
  - b. Points to evidence that suggests sexual offences may be being downgraded to non-sexual offences;
  - c. Highlights the enormous gender imbalance in the experience of sexual offending as a victim;
  - d. Demonstrates that the vast majority of sexual offences that are investigated by the service police, are offences alleged to have occurred in the UK, not overseas;
  - e. Shows that the number of those cases being handled by the service justice system is increasing, year on year;
  - f. Demonstrates that conviction rates for rape at court martial are very low. Of all the rape cases tried at court martial over the five year period for which the MoD has been publishing this data, 2015-2019, there were 13 convictions, which is a 'contested conviction rate' of 10%. The contested conviction rate for rape in the civilian justice system, itself subject to scrutiny and criticism at present, is nonetheless significantly higher than the service justice system. The MoD states that it is at around 50% for the period 2017-2019 according to CPS reporting methods and 32% using Ministry of Justice reporting methods. The MoD suggests that because the numbers involved in the service justice system are relatively so much smaller, the comparison is of little or no value, which we do not accept. Taken as a whole across all offences, the contested conviction rate at court martial is reportedly broadly similar to that of the Crown Court,<sup>12</sup> begging the question why rape cases should be so different;
  - g. Highlights the findings of the Army Sexual Harassment Survey 2018: 'Speak Out'<sup>13</sup>, which found that the proportion of service women reporting a particularly upsetting experience had increased from 13% to 15% since the previous survey in 2015. The survey also revealed a significant number of sexual offences including assaults and rape, revealing that 7% of women that responded had experienced an incident in the previous 12 months that would, if reported to the police, have been recorded as a sexual offence. The data contained in the survey was stated to be representative for

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<sup>11</sup> Sarah Atherton MP, Chair of the Sub-Committee on Women in the Armed Forces: 'Women make a vital and valued contribution to our Armed Forces and to our country. However, serious challenges remain. Female personnel are more likely to make complaints, more likely to report mental health difficulties and more likely to be subject to sexual assaults. We need to understand the scale, nature and root of the challenges that female personnel face.'

<sup>12</sup> According to Part 2 of the Lyons Review, at §133, 'the overall conviction rate for all cases in the Crown Court over the past three years is some 78% to 80% and the Court Martial is 74% to 78%.'

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/736177/20180821\\_Sexual\\_harassment\\_report\\_2018\\_OS.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736177/20180821_Sexual_harassment_report_2018_OS.PDF)

certain categories, including 'servicemen' and 'servicewomen'. What that means is, as the authors put it, they can be "95% confident that if we surveyed the entire population, as opposed to just a sample, the findings would be the same (within a standard margin of error, known as a confidence interval)."<sup>14</sup> As a general observation, this reported experience seems to be significantly higher than the general female population;<sup>15</sup>

- h. For the same year as the survey, we can see that most these experiences do not appear to have led to formal reports and/or service police investigations being opened/conducted.

### **What the Service Justice System Review ('the Lyons Review') said about the investigation and prosecution of sexual offending in the armed forces**

36. The most recent independent analysis of the handling of (among other things) sexual crimes in the Armed Forces was conducted by HHJ Shaun Lyons and Sir Jon Murphy (with Mark Guinness) in the Lyons Review, published on 27 February 2020. The Lyons Review reported that 'rape conviction rates at court martial' seem to be 'significantly lower' than in the civilian justice system. For the three years they examined as part of their review, the conviction figures at court martial were as follows:

- a. 2015: 9.4% (by offence); 17% (by defendant);
- b. 2016: 8.6% (by offence); 7% (by defendant);
- c. 2017: 4% (by offence); 9% (by defendant).<sup>16</sup>

37. The Lyons Review warned that care should be taken in making a direct comparison with the civilian justice system's figures because of the difference in the volume of cases, but did observe that the civilian figures for rape conviction rates based upon Ministry of Justice figures for the 'recent years' were in the 'mid 30%' range; and based upon CPS figures, were in the mid to high 50% range.<sup>17</sup>

38. Sir Jon Murphy also expressed concerns about the number of rape offences and the conviction rate:

'Attention should also be drawn to the apparent disproportionate levels of rape offences charged in the service for the size of population (although caution must be advised given the relatively small numbers involved). In addition, the conversion rate to conviction is *astonishingly low*'. (Emphasis added).<sup>18</sup>

39. Conviction rates for sexual assaults other than rape are also lower in the service justice system than in the civilian justice system. According to the Lyons Review, civilian justice system figures for this category of offences indicate that the conviction rate in the civilian justice system increased from 2016 to 2017 from 79.5% to 80.4%. The Lyons Review observes that historically, the conviction rate for sexual offending other than rape in the civilian justice system 'has been in the very high 70% range'. The Lyons Review went on to list the statistics for conviction rates for sexual assaults other than rape in the service justice system as 54% in 2015, 67% in 2016 and 50% in 2017. Tracked by defendant, the results appeared to be even lower, and were 51%

<sup>14</sup> 'Speak Out' §10.2: <https://www.gov.uk/government/publications/army-sexual-harassment-report-and-action-plan-2018>

<sup>15</sup> In wider society the Office for National Statistics reports that for roughly the same period, 3.1% of women (510,000) and 0.8% of men (138,000) aged 16 to 59 experienced sexual assault in the preceding 12 months. 'An estimated 3.1% of women (510,000) and 0.8% of men (138,000) aged 16 to 59 experienced sexual assault in the last year, according to the year ending March 2017 CSEW; no significant change from the previous year's survey.' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

<sup>16</sup> The Lyons Review Part Two §131

<sup>17</sup> The Lyons Review Part Two, §128.

<sup>18</sup> The Lyons Review, Policing Report, §100

in 2015, 60% in 2016 and 49% in 2017.<sup>19</sup> Better than the statistics for rape, but still significantly lower than the statistics from the civilian justice system.

40. The Lyons Review identified problems with both the SPA and the service police.

41. On the SPA and the service police, HHJ Lyons writes:

The SPA has 28 full time lawyers and three who are either part time or on contract or a reservist.... It appears, however, many of the lawyers at the SPA are in their first service appointment and will not have prosecuted before. Over the past three years, the percentage of all service lawyers posted to the SPA and who arrived without prosecuting experience varied between 33% and 50%; indeed for two of these years it was 50%. The turnover of service prosecutors is quite high; particularly in the more junior ranks whose average length of tour is under two years ... (CPS prosecutors) are more experienced - they are career prosecutors - and have a greater degree of staff stability; they are more familiar with the work and are able both as individuals and as an organisation to achieve faster throughputs. The Service Justice System is manned by lawyers who will often be unfamiliar with the task they have been posted to conduct, particularly at the beginning of their careers and will need time and experience to operate effectively...

In like manner the Service Police, conducting many other tasks and only operating exclusively as investigatory police when with the Special Investigation Branch, lack the expertise and experience in that role of their Home Office police colleagues who constantly conduct what Sir Jon Murphy describes as the "daily grind". Such familiarity breeds experience and expertise and through them, efficiency and speed.<sup>20</sup>

42. On the service police, Sir Jon Murphy made the following observations:

(In answer to the question, "is the working ethos of the service police different from that of the civilian police?"):

34. 'This question has been posed in the context of unacceptable delays in investigation, in file building and the conduct of the prosecution case. All of these factors (whilst not solely attributable to the Service Police) contributes to delay in the system and inevitably impact on the delivery of swift justice. The question also goes to the heart of the service police function and reflects a concern that I share with HHJ Shaun Lyons that *vulnerability and the rights of victims are not always at the forefront of service police thinking*.

35. It is fair to say that the question elicited a mixed response from the Service Police along with some acknowledged confusion and mixed views as to what they themselves considered to be their primary function. *Whilst they are all understandably proud of their policing role, the overriding culture is one of soldier, sailor, airman (woman) first and police officer second*.

36. This is perhaps understandable, rooted in history and to some degree necessary. Such a mindset however whilst ensuring operational efficiency has the potential to impact on the care and support provided to victims of crimes perpetrated by service personnel and undermine policing credibility.

37. There needs to be more understanding that a victim in a service environment - or an operational one - may have very different needs to that of a victim who is subject to

<sup>19</sup> The Lyons Review, Part Two, §§ 129 and 132.

<sup>20</sup> SJSR Part 1, p36-37, §6.16

the civilian justice system. For example, the Service Prosecuting Authority service interest test, when read in conjunction with this CPS test for prosecution, does not explicitly consider the possibility that the interests arising from a victim in a service environment might be different from those of a civilian victim....<sup>21</sup>

(In answer to the question, “Do these skills and experience of the service police match the nature and scale of the cases they are required to deal with?”)

61. ‘...It is evident that in steady state conditions, the Service Police will focus much of their effort and resources on dealing with “volume crime” with a limited requirement to deal with more serious offences. Clearly this means that the Service Police as a whole have limited experience in the investigation of serious offences.

62. My experience working with the RMP and in my interactions with all three service police during the course of this review, that each benefit from having highly motivated staff that have a refreshing openness to learning and development. It is apparent also - and a fact that all three Service Police will acknowledge, the exist some gaps in capability and experience, although those gaps may vary from service to service.

63. In recent years these gaps have manifested themselves in a number of adverse judicial findings where investigators have been found seriously wanting and victims of crimes perpetrated by service personnel have not been well served. These cases have led to adverse media reporting and a negative impact on the reputation of the service justice system and the wider service....<sup>22</sup>

68. ‘The investigators of the special investigation branches have had the benefit of civil police detective training. *Through no fault of their own they have not had the experience of their civilian counterparts in having to operate in the perpetual “daily grind” of a local CID office. The reality is that in all three Service Police the individual workloads of investigators is a fraction of that in a Home Office police force and consequently investigators are denied the opportunity to put some of their skills into practice - this leaves the individual investigator, the service police and the service justice system exposed....*<sup>23</sup>

71. ‘...*The simple truth is that these service police do not investigate enough serious crime to be considered proficient. While some individual investigations have been carried out to a satisfactory standard, a number have not and this needs to be addressed.*

72. In his review of the service justice system, HHJ Shaun Lyons has identified similar shortcomings in the experience in the SPA and is to recommend that jurisdiction to prosecute the most serious offences should revert to the pre AFA 06 position – the CPS assuming jurisdiction in the UK for their prosecution.<sup>24</sup> (Our emphasis).

43. Sir Jon Murphy then went on to make a series of recommendations that would enable the service police and in particular the Special Investigations Branch to obtain the training and practice they require in order to perform their tasks. However, it is important to note that this was all subject to the recommendation that jurisdiction to prosecute the most serious offences should be returned to the civilian justice system and that the service police would only be required to develop and maintain these skills in order to conduct investigations in those cases where the civil jurisdiction was not appropriate or did not apply. Sir Jon Murphy’s recommendation was not that, with the appropriate training and skills development that he

<sup>21</sup> The Lyons Review, Policing Report, §34 - 37

<sup>22</sup> Ibid, §61 - 63

<sup>23</sup> Ibid, §68

<sup>24</sup> Ibid, §71 - 72

identified, the service police should be allowed to retain conduct of these cases inside the UK. Yet this is the preferred approach of the MoD.

44. Both Sir John Murphy and HHJ Lyons were clear that retaining jurisdiction to handle these cases in the UK in order for service police and prosecutors to ‘practice’ on, so that they could deal with overseas cases, was not acceptable.<sup>25</sup>

#### **Centre for Military Justice litigation on this issue**

45. These findings all reflect the experiences of clients of the CMJ. Anonymous summaries of some of the experiences of our clients as well as common themes that we have drawn from our clients reported experiences can be found in our [submission](#) to the Defence Inquiry on Women.
46. The decision to reject the recommendations was the subject of [litigation brought](#), in April 2020, by three servicewomen rape survivors had all alleged rape in the UK by a fellow service person. In light of the judicial review, the Secretary of State said in June 2020 that he would give ‘[fresh consideration](#)’ to the matter.
47. Following that re-consideration, which took place over the summer and autumn of 2020, the Secretary of State determined that the matter of jurisdiction should now be placed on a statutory footing and would now be included within the Armed Forces Bill. He also agreed to review all of the internal policies and protocols governing the handling of sexual offences. The litigants insisted that a fresh Defence Instruction Notice (DIN) should be issued that would require all service personnel to be informed of their right to report any matter to the civilian police. This was refused by the Secretary of State, however upon the litigants’ refusal to agree a consent order in the case, the Secretary of State agreed to issue a new DIN.
48. Despite this progress, the litigants are disappointed that the Bill’s clause on jurisdiction does not specifically include a presumption that certain types of offences, namely murder, manslaughter and rape, should be presumed to be handled in the civilian justice system. The litigants have been further concerned at what they see as the Minister’s mischaracterisation of the Lyons recommendations and they asked him to correct the Parliamentary record, which he declined to do.<sup>26</sup>
49. The judicial review has now been settled on the basis that the Secretary of State has agreed to place the matter before Parliament, to consult with the public and to review all the internal policies on the handling of sexual offences. However, it remains the firm view of the CMJ and the women we act for that the law must go further and make clear that murder, manslaughter and rape cases should go to the civilian justice system except in exceptional circumstances and we urge MPs to amend the Bill accordingly.

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<sup>25</sup> Prof Sir Jon Murphy, to the Armed Forces Committee on 11 March 2021: ‘I can give you an example of what I am talking about. At one point I had a conversation with the senior investigating officer—the most important investigator—on a homicide investigation. I was discussing the merits of a particular tactic that he was adopting and questioning it. I asked him, when he had done that, “How many homicides have you investigated previously?” His answer was, “None, but I’ve done the course.” Accepting that we all have to start somewhere, that gives no confidence or comfort to the family of victims that they are going to get justice.’

<sup>26</sup> When it published its response to the Lyons Review, the MoD stated, ‘the MOD does not accept the review’s recommendations on legislative changes to the jurisdiction for the offences of Murder, Manslaughter and Rape, and also for Section 2 (sexual assault with penetration) Sexual Offences Act 2003 offences when committed in the UK’. During second reading, the Shadow Defence Secretary’s referred to the fact that ‘Lyons recommended that those cases (murder, manslaughter and rape) should be dealt with by the civilian justice system’. Surprisingly, the Minister Johnny Mercer MP said, ‘we cannot reject a recommendation that did not exist, that was not a recommendation of the Lyons Review.’ Our clients do not accept the Minister’s characterisation of the Lyons recommendations as accurate or fair and asked him to correct the record in the House, which he declined to do. <https://www.theguardian.com/society/2021/feb/18/women-fear-minister-jeopardised-stop-military-trying-uk-rape-cases-johnny-merc>

## The evidence sessions before the Armed Forces Bill Committee, March 2021

50. During the course of some of the evidence sessions before the Armed Forces Bill Committee, evidence has been heard about the low level of prosecutions generally within the civilian justice system - it is suggested that it will not be in the interests of service personnel to have their rape cases transferred into that jurisdiction.
51. It is correct to say that the civilian justice system is experiencing enormous challenges generally in relation to the investigation and prosecution of rape. Sending military rape cases there is not a panacea. It is correct that service police do appear to be more likely to refer a matter to a prosecutor for a decision on charge than the civilian police, as recently highlighted by the former Judge Advocate General.<sup>27</sup> But this difference does not answer the very serious concerns about the quality of those prior service police investigations, nor does it address what appeared to be a lower rate of charging by prosecutors in the service justice system, as compared to the civilian justice system.<sup>28</sup> Nor does it mitigate the extremely low outcomes at court martial (with just 10% of rape cases heard at court martial between 2015-2019 resulting in conviction).
52. The handling of rape cases in the civilian justice system is currently, rightly, receiving a huge amount of attention. Sir John Gillen, the former Lord Chief Justice in Northern Ireland conducted a wide ranging consultation and reported in 2018 on measures that could be taken to improve the handling of rape cases, which has implications for both NI and England and Wales.<sup>29</sup> A cross-party review group chaired by one of Scotland's most senior judges, Lady Dorrian, has recommended specialist rape courts and other reforms in Scotland.<sup>30</sup> The End Violence Against Women campaign, Centre for Women's Justice and Rape Crisis produced a comprehensive report in 2020 identifying various measures that could be taken to improve rape investigations and prosecutions;<sup>31</sup> the Victims Commissioner has conducted a comprehensive survey and report addressing the same issue;<sup>32</sup> and, very importantly, the Government is currently conducting an 'end to end review' of rape. Enormous efforts are being made within the civilian justice system to improve the rate of prosecution and, critically, all of these efforts and proposals are informed by extensive consultation not only with judges, lawyers and police but with victim-survivors. We are aware of no such process taking place in the service justice system. Service personnel want to benefit from the civil justice system's hoped-for improvements, not be kept separate and apart from them.
53. Certain remarks made by the current Judge Advocate General (JAG) HHJ Alan Large during the course of the Committee's evidence session about the difficulty of prosecuting rape cases have drawn concern. While it is important to place those remarks in context, the CMJ agrees that they were harmful and revealing.<sup>33</sup> The former JAG, HHJ Jeff Blackett suggests that the problem is not with the service justice system per se, it is with the law of rape. To his credit, he prefaces his remarks by saying that he believed most of the victims that gave evidence in his court over the years. However, he goes on to propose how the law of rape might be changed, by charging rape suspects with lesser offences and by not requiring in all cases a convicted person to sign the sex offender's register.

<sup>27</sup> This may be because the service police are required to apply a slightly different test to the civilian police. The civilian police are required to apply the Full Code Test themselves before they pass a case to a prosecutor for a charging decision. The service police are required to apply the test at s116 Armed Forces Act 2006 which is referred to as the evidential sufficiency test. This appears to mirror the first part of the Full Code Test but does not include the second part, which is whether the prosecution is in the public or service interest.

<sup>28</sup> The MoD states that the CPS charged in 47% of rape cases between 2017 and 2019, and the SPA in 35% of rape cases for the same period.

<sup>29</sup> [https://www.lawsoc-ni.org/DatabaseDocs/new\\_8655264\\_\\_gillen-review-report-into-the-law-and-procedures-in-serious-sexual-offences-in-.pdf](https://www.lawsoc-ni.org/DatabaseDocs/new_8655264__gillen-review-report-into-the-law-and-procedures-in-serious-sexual-offences-in-.pdf)

<sup>30</sup> <https://www.theguardian.com/uk-news/2021/mar/18/scotland-should-have-specialist-court-review-recommends>

<sup>31</sup> <https://www.endviolenceagainstawomen.org.uk/wp-content/uploads/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>

<sup>32</sup> <https://victimcommissioner.org.uk/published-reviews/rape-survivors-and-the-criminal-justice-system/>

<sup>33</sup> Judge Alan Large: 'our servicepeople are thoroughly good people, but they drink too much, something goes wrong and they end up in court'. <https://committees.parliament.uk/oralevidence/1848/pdf/>



54. In the CMJ's view, this is not the solution. While wider problems with the investigation and prosecution of rape undoubtedly explains the low conviction rate (relative to other offences) in both jurisdictions, problems with 'the law of rape' cannot explain the marked difference in outcome for rape cases at court martial. Nor can that difference be explained by general observations about the age of the average defendant in the service justice system, by the fact that they tend to be of prior 'good character', or that the events tend to be 'acquaintance rape' cases. Deflecting criticisms of the service justice system by pivoting to controversial proposed reforms to the law of rape risks masking the serious problems within the service justice system that have been identified by HHJ Lyons, directly experienced by our clients and which demand a far more robust response.<sup>34</sup>
55. In any case, beyond arguments about what the data shows, there are other reasons why it would be better for serious sexual offences to be handled by the civilian justice system.
- a. First of all, as stated, Parliament never intended that rape in the UK should be handled in the service justice system other than in exceptional circumstances. Parliament's intention must be respected;
  - b. As HHJ Lyons said in his review, service personnel are citizens of the UK. They have not given up their rights by joining the Armed Forces. In circumstances where an offence is alleged to have occurred in the UK, they are entitled to have that case dealt with in the most effective tribunal and one in which the victim is at the heart - a civil court;<sup>35</sup>
  - c. The current position undermines public confidence and creates an impression that service personnel do not have the same access to justice as civilians. That is harmful to recruitment and retention of service personnel and harmful for the wider reputation of the Armed Forces;
  - d. If they knew that they could report their sexual assaults to a police force that was entirely unconnected to the military, it is our contention that greater numbers of service personnel that have suffered serious sexual offences might come forward and report, which in the long-term would improve the culture of the Armed Forces and improve operational effectiveness;
  - e. While transferring such cases out would not immediately resolve all of the problems victims report inside their military units, after they have reported a sexual offence, it would improve the position in relation to some of those problems.
    - i. For example, a commanding officer is able to get access to service police witness statements that have been created during the course of the service police investigation in order to consider whether further action is required, including against the victim. The harm caused to the victim at the prospect of the commanding officer having access to such sensitive material, particularly in the context of a rape or serious sexual assault matter, is impossible to overstate. If civilian police were handling the matter, that material would be very unlikely to be shared and the victim would certainly be consulted before doing so;

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<sup>34</sup> The former JAG HHJ Jeff Blackett suggests in his article in the Daily Telegraph that the law of rape should be changed in certain cases to enable a suspect to be charged with a lesser offence than rape, and/or to change the position whereby he would have to sign the sex offender's register, if convicted. The former JAG believes that this would lead to more convictions. This is a dangerous argument. Absent the numerous reforms that have been proposed by Gillen, Dorrian, EVAW et al, it seems to us that there are numerous other options to attempt before taking such a serious step that would change the law in such a fundamental way and that would wholly fail to recognise the life-changing harm caused by rape. <https://www.telegraph.co.uk/politics/2021/03/13/former-court-martial-judge-says-believed-female-rape-complainants/>

<sup>35</sup> Prof Sir Jon Murphy, to the Armed Forces Bill Committee on 11 March 2021: 'In my opinion, in the UK, the best service can be achieved by the civilian police supported by the SIB. Civilian police have specialised homicide investigation teams and sex offence units dedicated to just that. The officers are dealing with just those offences on a daily basis. They have specialist forensic officers and forensic medical examiners, with dedicated facilities. They have dedicated witness and victim support units. They have specialist CPS prosecutors and they are not diverted from investigations to perform other functions or complete training, causing unnecessary delay and not best serving the victims with justice. None of those things exist in the service police.'

- ii. The current practice of a victim liaison officer being appointed for the victim by the suspect's commanding officer – with all the problems that entails - would cease because that person would now be appointed by the civil police; and
  - iii. The victim would have access to a wider range of victims services which are founded upon decades of expertise and run and staffed by real experts who do nothing but deal with sexual offending. If it is suggested that those civilian services will not be tailored to the needs of military victims, then the answer is to fund such specialist services to be delivered through expert civilian organisations.<sup>36</sup>
56. The fundamental guiding principle must be, in our submission, to restore the position to that which Parliament had intended and ensure that serious sexual offences handled in the UK are referred to the civilian police for investigation. No sustainable reason has yet been provided as to why this should not happen.

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<sup>36</sup> By way of example, the domestic abuse charity Aurora New Dawn is an independent civilian charity with a member of staff dedicated to working with military victims. <https://www.aurorand.org.uk/>



## SERVICE COMPLAINTS APPEALS

57. Clause 10 amends the Armed Forces Act 2006 and is stated to be ‘part of wider reforms to increase efficiency and speed up the process within the statutory service complaints system’. The amendments reduce the minimum time which can be set out in regulations for complainants to lodge appeals from six weeks to two weeks and permits the possibility of restricting the grounds upon which an appeal can be brought.
58. Anything that will reduce a service person’s right to appeal must be given the most careful scrutiny and the reasons given closely examined. Central to this proposal is the imperative of increasing efficiency and speed. That suggests that one of the blocks in the service complaints system is the six-week appeal stage. As far as we are aware, this is not the case. The bulk of the delay lies at stage one of the complaint, before a first stage decision is made, and is outwith the control of the complainant.
59. The matter is particularly important because a service person’s right of access to the court, the Employment Tribunal (ET), depends on their having made and, if necessary appealed, a service complaint.<sup>37</sup> If they fail to appeal a service complaint, it is deemed withdrawn and they lose their right to bring an ET claim.
60. A typical service complaint of the kind that the CMJ progresses as follows:
- a. The person usually tries to make the service complaint themselves initially and without professional or other support. They may be doing it at a time when they are extremely upset and sometimes in the aftermath of a sexual offence;
  - b. The complaint is lodged either directly via the chain of command or via the Ombudsman;
  - c. Once lodged, an admissibility decision needs to be made. This part of the process is supposed to take two weeks. Sometimes, it can months or even longer. The CMJ is currently assisting a woman who made a service complaint that did not get an admissibility decision for a year and two months;
  - d. If found to be admissible, the service complaint will then have to go through various stages including:
    - i. appointing a ‘Deciding Body’ to oversee the complaint;
    - ii. (in appropriate cases) appointing a harassment investigations officer to support the investigation;
    - iii. appointing an Assisting Officer to support the complainant;
    - iv. interviewing the complainant;
    - v. identifying the respondents and potential witnesses;
    - vi. interviewing and taking witness statements from respondents and witnesses;
    - vii. considering evidence from the respondents and witnesses;
    - viii. pulling together an investigation report and file;
    - ix. disclosing that to the complainant and considering their comments;
    - x. and then having the Deciding Body make a determination.
61. The above is supposed to happen within 24 weeks but frequently does not. The complainant then has up to six weeks to lodge an appeal if they wish to do so. (At this point, we should say that we have had people be told that they have to lodge their appeal within 10 days and the complaints team has had to be reminded that the complainant has six weeks).
62. If they want to get outside help at this point, now a decision has been made, they have to find a legal advisor or independent person willing to get their head around a very complex matter – usually there is a large file of papers to review - in a relatively short period of time and help

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<sup>37</sup> See s121 Equality Act 2010

them draft a response. It is already extremely difficult to find someone at all, let alone someone who can help in time for the six week deadline.

63. During all this time, the service person will be still working full-time, which may include long hours and being away from home if deployed on training commitments or operations, and finding the process incredibly stressful. Alternatively they may be signed off sick through stress. They may be suffering mental health problems. They may be being ostracised and very unhappy inside their unit. In any case, six weeks is already a tight deadline in the circumstances. The proposal to address the widely recognised problems of excessive delay in the service complaints process by reducing an already very short window is impossible to understand. It is disingenuous to suggest that this is about streamlining and improving the service complaints process. The impression given is that it appears to be about trying to constrain the ability of a complaint to make an appeal – but the right of appeal is an inherent part of a fair and effective complaints process.
64. If there is real desire to improve the service complaint system, the following would be a better approach:
- a. People should be supported to access independent legal advice at the earliest possible stage so that they can prepare brief, well drafted service complaints, which benefits all parties;
  - b. Ensure that individuals seeking legal help are not dissuaded from doing so. In two recent cases, CMJ clients have been told that they may not share their service complaints papers with us, even though we are advising on the service complaint and the Employment Tribunal proceedings that depend upon that service complaint;
  - c. More female harassment investigations officers will be recruited and properly trained and skilled to do the job;
  - d. Specific training will be provided for assisting officers (AO) to support service complainants involved in particularly difficult cases and efforts made to find more female AOs;
  - e. ACM Sir Michael Wigston's recommendation about the creation of a Central Defence Authority, will be accepted, see below;
  - f. The Ombudsman will be given an independent power of investigation; and
  - g. Consideration should be given to removing a service person's right of access to the ET being dependent upon their having lodged a prior service complaint.

**ACM Wigston's Recommendation about a Central Authority for Cultures and Behaviours to handle serious service complaints**

65. As the Committee will be aware, the Wigston Review made a series of recommendations which the MoD stated it had accepted 'in full'.
66. However, it now seems that there has been a very significant roll-back in the MoD's acceptance of the principal recommendation that was widely lauded when the Review was published, which was the creation of a new Defence Authority for Culture and Behaviours that would have responsibility for the most serious bullying harassment and discrimination complaints, taking them outside of the chain of command and the single services. This would lend independence, expertise and would free up a lot of time from hard-pressed commanding officers.
67. In the report of Danuta Gray, published in December 2020, designed to review the progress of implementing Wigston, it was explained that this key recommendation had not been implemented after all, with no credible explanation, and instead appears to have been replaced

by an expanded 'diversity and inclusion' team within the Chief of Defence People's office.<sup>38</sup> It seems as though the actual handling of the most complex bullying, harassment and discrimination complaints themselves will remain with the single services themselves.

68. We would urge the Committee to urgently impress upon the MoD the importance of accepting this particular recommendation which would lend a degree of relative independence and expertise to the handling of the most complex bullying, harassment and discrimination complaints, (which are disproportionately made by women and BAME personnel), taking them outside of the individual service branches concerned.
69. Certainly it is not acceptable for the Government to say that it accepts the recommendations in full and then not act upon them without any process of public consultation or explanation.
70. If the Government is serious about improving service complaints, this is the place to start.

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<sup>38</sup> Danuta Gray. Unacceptable Behaviours: Progress Review 2020. 8 December 2020. (<https://www.gov.uk/government/publications/unacceptable-behaviours-progress-review/unacceptable-behaviours-progress-review-2020-accessible-version>)

## **OTHER ISSUES THAT COULD BE ADDRESSED IN THE ARMED FORCES BILL**

### **Schedule 2 offences**

71. Certain criminal offences which directly and disproportionately affect women remain excluded from the list of criminal offences listed in Schedule 2 offences to the Armed Forces Act 2006. This means that, as a matter of law, a commanding officer is not obliged to refer them to the service police at all. While it may be said that the majority of commanding officers would as a matter of course refer such offences to the service police, regardless of whether they were mandated to do by law, sadly not all can be relied upon to do so. Commanding officers are not specially trained or expert to handle sensitive material concerning the experiences of victims of rape, sexual or domestic abuse. HHJ Lyons revealed that his team had discovered a number of individuals that had been charged with lesser offences (such as disgraceful conduct) when they ought to have been charged with assault/ABH or sexual assault offences. As a consequence, various safeguards and protective mechanisms could not be activated.
72. Regardless of the final position on the Lyons Review jurisdiction recommendations, these offences need to be added to Schedule 2 as a matter of priority to ensure that in *all* cases, whether at home or overseas, these offences are always referred to a police force of some description. Those offences are:
  - a. Common assault where there is a domestic abuse context;
  - b. ABH where there is a domestic abuse context;
  - c. Disclosing private sexual photographs and films with intent to cause distress ('revenge porn') (s. 33(1) Criminal Justice and Courts Act 2015);
  - d. Possession of extreme pornographic images (s.63(1) Criminal Justice and Immigration Act 2008);
  - e. Controlling or coercive behaviour in an intimate or family relationship (s.76 Serious Crime Act 2015); and
  - f. Voyeurism: additional offences ('up skirting') (s.67(A) Sexual Offences Act 2003).

### **LGBT+ veterans**

73. On 16 July 2020, the Minister for Veterans said to the House of Commons, 'It is clear to me that in this place, we are good at saying, "Aren't our veterans brilliant? Don't we owe them a huge debt?", but when it comes to doing something about it—something a bit difficult and challenging—everybody runs for the hills. Well, this Government are not going to do that.'
74. At the time of writing, nothing has been proposed that would compensate this veteran group for the discrimination and harm it has suffered. Our client's call for an *ex gratia* compensation scheme to which LGBT+ veterans could apply has been rejected.<sup>39</sup>
75. We refer the Committee to the work of the charity Fighting With Pride on the important issue of reparations for this lost generation of veterans and their proposal of an amendment to the Bill that would require the Secretary of State to report to Parliament on steps taken and progress made on this issue.

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<sup>39</sup> <https://centreformilitaryjustice.org.uk/some-important-progress-for-our-lgbt-veterans-but-there-is-so-much-more-to-do/>

76. **CMJ RECOMMENDATIONS:**

1. Amend Clause 7 so that there is a presumption in law that Murder, Manslaughter, Rape and Sexual Assault by Penetration (s2 Sexual Offences Act 2003) cases, domestic and child abuse cases, where alleged to have occurred in the UK, will be referred to civilian police, prosecuted where the evidence supports it by the CPS and heard at Crown Court.
2. Add a clause to the Bill that will require the Secretary of State for Defence to report to Parliament within 12 months of the date of the coming into force of the Act, on the fulfilment of all the other recommendations of the Lyons Review, as set out in Parts 1 and 2 of the Lyons Review.
3. Remove Clause 10 in its entirety. There is no need to reduce the time limit for appealing a service complaint. The other proposals for reform of the service complaints process that have been proposed (including the Wigston recommendation for a Central Defence Authority), save for the Ombudsman's powers, below, do not require legislative changes.
4. Add a clause to the Bill that would grant the Service Complaints Ombudsman for the Armed Forces an independent power of investigation into certain categories of service complaints.
5. To add to the list of criminal offences contained at Schedule 2 to the Armed Forces Act, the following offences:
  - a. Common assault where there is a domestic abuse context
  - b. Actual Bodily Harm where there is a domestic abuse context
  - c. Disclosing private sexual photographs and films with intent to cause distress ('revenge porn') (s. 33 Criminal Justice and Courts Act 2015)
  - d. Possession of extreme pornographic images (s.63 Criminal Justice and Immigration Act 2008)
  - e. Controlling or coercive behaviour in an intimate or family relationship (s.76 Serious Crime Act 2015); and
  - f. Voyeurism: additional offences ('up skirting') (s.67(A) Sexual Offences Act 2003).
6. Add a clause to the Bill that would address the need for reparations for our LGBT+ veterans.

20 March 2021