

DEFENCE COMMITTEE INQUIRY

WOMEN IN THE ARMED FORCES - From Recruitment to Civilian Life.

Submission from the Centre for Military Justice (CMJ)

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INTRODUCTION

1. The CMJ is a small, independent legal charity¹ 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.² In its first year of operation, our small charity has prioritised work around gender-based violence and sexual harassment and it is with that experience in mind that we make this submission to the Defence Inquiry on Women in the Armed Forces.
2. The CMJ recognises the vital work and service of all members of the Armed Forces and, in making this submission, positions itself as a critical friend. We acknowledge the need for a service justice system. We recognise that we only tend to see cases where something has gone badly wrong. We do not suggest that the experiences of the people that contact us are necessarily typical of the experiences of all servicewomen. We do not want to undermine the vital position women have built for themselves in the Armed Forces. Without exception, all of the women we have assisted and have met during the course of our work are hugely impressive individuals with a tremendous sense of service, drive and commitment. We also wish to acknowledge the genuine desire to improve existing systems and to set things right within the senior leadership. However, as our submission indicates, the experiences of far too many service women have been completely unacceptable, marked by the most nasty and extreme forms of gender discrimination, and there remain a series of obstacles to reform which must be addressed. The CMJ is concerned that current work on reforms inside the Ministry of Defence (MoD) and Armed Forces is being approached in a half-hearted way, perhaps because of a misguided concern about undermining operational effectiveness. The UK Armed Forces' operational capability is dependent upon attracting and retaining servicewomen of high ability. A failure to address the issues highlighted in this report inevitably leads to high ability women leaving the Armed Forces prematurely, or choosing not to join in the first place.
3. The CMJ will limit its submission to the following subject areas that have been specifically identified in the call for evidence: sexual assaults and service complaints (in particular, bullying, harassment and discrimination complaints). These issues are relevant to all of the substantive questions contained within the Inquiry's terms of reference.³ That is because women are disproportionately affected by sexual assault and/or sexual harassment. To the extent that there may be serious or systemic problems with the way in which the Armed Forces tackles these distressing phenomena, it is overwhelmingly women that bear the brunt of them. Therefore, improving the way in which the Armed Forces deals with and responds to sexual assaults and bullying, harassment and discrimination complaints is a necessary precondition to improving the experiences of service women.

¹ 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.

² www.centreformilitaryjustice.org.uk

³ Terms of reference (main questions underlined): Do female service personnel face unique and/or additional challenges in the armed forces? (What about female BAME personnel? Are the Government and MoD doing enough to address these challenges? What more could be done? How effective are their strategies/initiatives? What effect has the introduction of the Armed Forces (Flexible Working) Act (2010) had? Do female reservists face unique and/or additional challenges in the armed forces? Are they similar to those faced by regular female service personnel?) Why do female service personnel choose to leave the armed forces? Are the reasons different to why men leave the armed forces? How easy is it in practice for female service personnel to complain? What are the issues encouraging or hindering female personnel from complaining? Do female service personnel face unique and/or additional challenges during transition to civilian life? (What can Government, the MoD and industry do to address these?) What are the issues faced by women veterans once they have left the services? Are the needs of female veterans currently met by the available veteran services?

EXECUTIVE SUMMARY

4. There is nothing about sexual assault in the military that requires military expertise to investigate and prosecute it. Indeed, it was always Parliament's intention that such sensitive and serious cases, where they have occurred in the UK, should be treated like any other serious sexual assault allegation – they should be investigated by the civil police, prosecuted by the Crown Prosecution Service (CPS) and heard before the Crown Court.
5. Yet over the years, the service police have opened investigations into an increasing number of sexual assaults involving service personnel in the UK, which are then progressed through the service justice system. There appears to be little knowledge amongst service personnel that they could, if they so wished, have reported their allegations to the civilian police and had them progressed through the civil justice system. The option is not being drawn to their attention and all of the relevant policies and protocols bend in favour of reporting to the service police.
6. This is a problem for three main reasons. First of all, it is a point of principle. Service personnel are citizens of the United Kingdom and have not given up their fundamental legal rights simply by joining the Navy, Army or RAF. In those serious cases, including serious sexual offences, when the civil criminal justice processes are available to them, their cases should be progressed in that forum. It is not for them to explain why their cases should not be dealt with in the service justice system. It is for the service justice system's proponents to explain why they should. Secondly, having the service justice system handle serious criminal cases including sexual offences, which could and should have been handled in the civilian justice system, undermines public confidence. It creates a perception of unfairness and a concern that justice is not being done on the same terms for service personnel. This is bad for victims and bad for the Armed Forces as a whole. Thirdly, there is considerable evidence that victims of sexual assaults suffer poorer outcomes in the service justice system. While it is true to say that the volume of cases being handled by the civilian justice system is far greater than that of the service justice system, meaning that a direct comparison is very difficult to make, outcomes of rape and other sexual assault cases heard at court martial appear to be much lower when compared with the Crown Court. A recent independent review described the outcome in rape cases at court martial as 'astonishingly low'.
7. The Service Justice System Review ('the Lyons Review') was the product of almost 3 years of careful independent study of various aspects of the service system, including its handling of rape, sexual assault and domestic abuse cases. The Lyons Review expressed the view that the service police were not proficient at investigating serious crime and the Service Prosecuting Authority was characterised by similar shortcomings.⁴ The Lyons Review made a series of important recommendations that would restore the position to that which Parliament had intended - removing from the service justice system the offences of murder, manslaughter, rape, sexual assault with penetration, domestic violence and child abuse, where they were alleged to have occurred in the UK. The Lyons Review recommended that legislation be introduced to address these jurisdictional issues. The Government rejected this.
8. All of the women that have contacted the CMJ believe that they were entitled to be treated like any other citizen in the UK reporting a serious sexual assault. Without exception, all of the women that have contacted the CMJ about a sexual offence handled inside the service justice system have reported serious concerns about the service police's ability to investigate their case and/or the quality of Service Prosecuting Authority's (SPA) decision making and performance at court martial and/or other negative experiences at court martial. Their experiences are entirely consistent with the concerns contained within the Lyons Review.

⁴ The Lyons Review, Part 1, Policing Report of Sir Jon Murphy, §71-72: 'The simple truth is that the service police do not investigate enough serious crime to be considered proficient. Whilst some individual investigations have been carried out to a satisfactory standard, a number have not and this needs to be addressed. In his review of the service justice system, HH Shaun Lyons has identified similar shortcomings in experience in the Service Prosecuting Authority and is to recommend that jurisdiction to prosecute the most serious offences should revert to the pre Armed Forces Act (2006) position - the CPS assuming jurisdiction in the UK for their prosecution.'

9. The women that have contacted the CMJ also believe that requiring serious sexual offences committed in the UK to be progressed through the civilian justice system may assist in combating what appears to be a problem of under-reporting of sexual assaults in the Armed Forces generally. We suggest that greater numbers of women (and indeed other minority groups) might be more likely to come forward if they knew that their complaint would be investigated by a police and prosecuting authority that was entirely unconnected to the Armed Forces.
10. Sexual assault and sexual harassment self-evidently has a disproportionate impact on women who are overwhelmingly more likely to be the victims of such offences or incidents. This is true both inside and outside the Armed Forces. Servicewomen are then, in disproportionate numbers, required to go through either the service justice system about which there are serious concerns as identified by the Lyons Review, and/or the service complaints process, which has been repeatedly found by the Service Complaints Ombudsman for the Armed Forces to be neither effective, efficient or fair. Servicewomen are also then forced to endure the consequences of the relatively closed environment in which they function, which is not conducive to providing the necessary support, sensitivity and understanding that is needed in the aftermath of an allegation of sexual assault or following a period of sustained sexual harassment. They cannot just resign and leave that environment.⁵ All of the women that have contacted us report appalling experiences within their units indicating widespread prevalence of rape myths, victim-blaming and a failure to consult or adhere to the correct process for addressing allegations of this nature.
11. We summarise below some of the most recent information about the prevalence of sexual assaults and sexual harassment in the Armed Forces, at §§19-42 and highlighting some of the key outcomes from the Lyons Review at §§43-56.
12. Some anonymised examples of the kinds of experiences described to us are contained in this submission at §§57-82. From those reported experiences, we draw some common themes that the Committee may wish to bear in mind as it considers its evidence, at §83. These include the challenges faced by women reporting sexual assault of having to go through the difficult and slow service complaints process, confidentiality breaches, inappropriate use of disciplinary proceedings against victims and bullying inside units.
13. We then list and summarise some wider systemic issues for the Committee to consider at §§84++: the Lyons Review reform proposals which we wholeheartedly endorse (§85); the Wigston Review recommendations which, concerningly, appear to be being quietly watered down, notwithstanding that the MoD undertook to implement them 'in full' (§88); important proposed additions to the list of criminal offences that a commanding officer should be legally required always to refer to the police (Schedule 2 offences) (§89); the need to address an apparent lacuna in the ability of the services to respond to domestic abuse offences (§92); the important recommendation made year after year by the Service Complaints Ombudsman for the Armed Forces that *independent* research must be conducted on why such disproportionate numbers of female and Black and Ethnic Minority (BAME) service personnel are complaining of bullying harassment and discrimination (§94); and the need for improved data collection, sharing and publication on criminal offending, particularly sexual offending (§97).
14. Finally, at §103, we make ten recommendations that would have the effect of improving the experiences of victims of sexual assault in the Armed Forces, the overwhelming majority of whom are women.

⁵ The standard rule is that one year's notice is required.

SEXUAL ASSAULTS AND SEXUAL HARASSMENT IN THE ARMED FORCES

15. The problem of sexual assaults and over-representation in the service complaints system has been identified by the Defence Committee as a particular challenge for female serving personnel and veterans.⁶ The Committee wishes to explore whether the Government is doing enough to address these challenges and whether more could be done.
16. Women are already in a stark minority in the Armed Forces, comprising just 11% of the total Armed Forces population; they are over-represented in the complaints system generally; they disclose bullying, sexual harassment, discrimination and sexual violence in disproportionate numbers; are dissatisfied with the outcome where they do complain or report (and many do not); and the measures that have been taken to date to address this inequality appear to have fallen far short of their objectives.
17. To some extent, these reported experiences are a consequence of a wider problematic culture in the Armed Forces. While gender inequality (in particular as is manifest in sexual harassment and gender-based violence) is not a problem that is exclusive to the Armed Forces, there are certain factors, such as the ratio of men to women, that have enabled unacceptable attitudes to perpetuate and become ingrained in the culture. Project 28-40 and Opportunity Now conducted research in 2014 which revealed that in the uniformed and armed services, 23% of women reported that they had been sexually harassed within the last 3 years, as compared to 12% across all sectors.⁷ The Army Sexual Harassment Report 2018, 'Speak Out' explained that the existence of sexual harassment in a workplace often reflects an abuse of power where a person or people have greater power than others.⁸ Sexual harassment is more prevalent in work situations where there is an unequal sex ratio and where there are large differentials between men and women. An authoritarian style of leadership where there is limited consultation with staff is particularly associated with sexual harassment. All of these features apply to the Armed Forces, suggesting it is likely to constitute an environment where sexual harassment is more likely to occur. The Report on Inappropriate Behaviours by Air Marshall Sir Michael Wigston (the Wigston Review) made similar observations.⁹
18. As to the link between sexual harassment and sexual assault, research in the United States indicates that there is likely to be a greater degree of overlap between instances of sexual harassment and sexual assault in the military.¹⁰ That is because a military workplace has broad boundaries, therefore work-space and life-space may merge to a far greater degree than would ever apply in civilian life – on operational deployments, the distinction disappears completely. It is also argued that rank and authority can facilitate coercive behaviour. Factors which are specific to the military, such as lifestyle (high mobility, shared-living accommodation, ritualised drinking of alcohol), culture (attitudes towards women, hyper-masculinity), and structure and policy (gender-typing of military occupations, top-down hierarchical structures) may in part explain the prevalence of sexual harassment and sexual assault in military populations.

⁶ 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.'

⁷ See Project 28-40, Opportunity Now and PWC (2014), K. Nawrockyi et al.

⁸ Army Sexual Harassment Report 2018, 'Speak Out', §§4.15-4.16

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/446224/ADR005000-Sexual_Harassment_Report.pdf

⁹ Report on Inappropriate Behaviours (the Wigston Review), p10: the Wigston Review found that 'victims of offences contrary to the Sexual Offences Act 2003 in 2018 were 82.1% female, almost always Junior Non-Commissioner Officer (JNCO) or below or civilian, and almost always below the age of 30.' The review also found that victim support groups believe the Armed Forces' culture exacerbates the opportunity for inappropriate behaviours to occur and that they consider instances [of inappropriate behaviour] are commonplace, with conscious and sub-conscious behaviour, microaggression, psychological bullying and intimidation, including through social media and on-line behaviours, taking place at all levels, with junior ranks, women and BAME personnel the most likely victims of this behaviour.

¹⁰ Stander & Thomsen (2016), Sexual Harassment and Assault in the US Military: A Review of Policy and Research Trends. *Military Medicine*, 181, 1:20

Prevalence of the problem – sexual assaults

19. One of the biggest challenges is to accurately understand the extent and prevalence of the problem of sexual assaults in the Armed Forces. The information that exists is patchy and incomplete.
20. Since 2015, the MoD has been collating and publishing statistics on all offences arising from the Sexual Offences Act 2003 (SOA 03) and historic sexual offences that are dealt with wholly within the service justice system.¹¹
21. When considering the MoD's own sexual offences bulletins as a barometer of the extent of the problem of sexual offending within the Armed Forces, two important qualifications are needed:
 - a. The statistics do not include offences involving members of the Armed Forces that are dealt with within the *civilian* system at all. The MoD only publishes data from the *service* justice system. This means the scale of sexual offending is likely to be higher than these statistics indicate, because when a service person is accused of a crime in the UK, it can be investigated and prosecuted in either the civilian justice system or the service justice system (because there is a system of concurrent jurisdiction);¹² and
 - b. The figures do not include the large number of sexual offences that are not found in the Sexual Offences Act 2003: such offences would include, for example, the offences of creating or possessing indecent images of children, possession of extreme pornographic images, 'revenge porn' offences, sexual communications with a child and criminal harassment offences.¹³ Criminal 'attempt' offences also do not seem to be included in the statistics. Most people would consider all of these to constitute sexual offences. We suggest that they are more likely to be perpetrated by men against women. Their omission is significant.
22. The MoD's published figures do not, therefore, accurately reflect the true scale of sexual offending in the Armed Forces. However, useful information can be drawn from the available statistics.
 - a. Some matters that start out as an allegation of sexual assault are being reduced to a lesser charge to enable them to be heard summarily by a commanding officer and not at court martial (because an offence under the SOA 03 cannot be dealt with summarily, by a commanding officer). For example, an allegation of sexual assault (which a commanding officer may no longer deal with him/herself as of April 2018)¹⁴ may be

¹¹ These statistics may be located here: <https://www.gov.uk/government/collections/sexual-offences-in-the-service-justice-system>

¹² In an interview with Law In Action on 2 June 2020, the former Director of Service Prosecutions stated that the majority of criminal cases involving service personnel were dealt with in the civilian justice system, but there appears to be little-to-no information about these cases: for example, how many arrests, charges, convictions, sentences and what happens to them post-conviction (in terms of their careers). See the data identified as part of the Lyons Review about the number of sexual offences recorded on COPPERS, the outcome of which appears to be unknown – see below at §§99

¹³ S1 Protection of Children Act 1978 (as amended) (indecent photographs of children); s160 Criminal Justice Act 1988 (possession of indecent photograph of child); s63 Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images); s33 Criminal Justice and Courts Act 2015 (disclosing private sexual photographs and films with intent to cause distress); s67 Serious Crime Act 2015 (sexual communication with a child); ss1 (prohibition of harassment), 2A (stalking), 4 (putting people in fear of violence), 4A (stalking involving fear of violence or serious alarm or distress) Protection from Harassment Act 1997. The CMJ has requested confirmation from the MoD as to whether criminal attempt offences are included in the published statistics.

¹⁴ The CMJ notes that there was real resistance to this reform from the MoD, the need for which was first brought to the attention of the Secretary of State for Defence in 2014 by Liberty following the tragic case of Cpl Anne-Marie Ellement who committed suicide in 2011 after alleging rape and bullying in the Army. The matter was then raised again by the James family during the Inquest Touching the Death of Pte Cheryl James (Deepcut) in 2016 and the family was informed by a senior Army witness that the law did not need to be changed. Thereafter, a rape-survivor in the Armed Forces threatened judicial review of the failure to change the law, which was eventually amended by statutory

reduced to a 'battery' (which a commanding officer may deal with). This appears to be happening, because the MoD bulletins that contain the sexual offences statistics consistently advise that investigations that were reported to the service police as sexual offences but then reclassified to a non-sexual offence are not included in the published data. Presumably if this was not happening, there would be no need for this caveat.¹⁵ The practice of downgrading may also explain the discrepancy between the number of sexual offences recorded on service police data systems and the number of service police investigations into sexual offences actually conducted, to which we refer below at §99.

- b. The overwhelming majority of victims are female. The overwhelming majority of suspects of sexual offences are male. For example, in 2019, the data shows that all personnel suspected of a sexual offence were either male (178 cases) or their gender was unknown (10 cases). No women were recorded as having been suspected of a sexual offence at all. In the same year, there were 164 female victims of a sexual offence, 29 were males and 19 were unknown.¹⁶
- c. The vast majority of sexual offences that are investigated by the service police, are offences alleged to have occurred *in the UK*, not overseas, and these numbers are increasing, year on year. In 2017, 73 sexual offences were investigated by a service police force in the UK, in 2018, the number rose to 94 and in 2019 to 120 (out of a total of 178 service police sexual offence investigations conducted that year). This is important because the strongest argument to retain a service police capability for the Armed Forces is to provide an investigative capability in support of deployments outside the criminal jurisdiction of England and Wales. But this evidence shows that the majority of sexual offence investigations concern allegations in the UK, not overseas. It is not at all clear why this is happening and is directly contrary to Parliament's intention. We say more about this below at §48+.
- d. Conviction rates for rape at court martial – where the overwhelming majority of victims are female and of whom all perpetrators are men – are very low. Of the 48 rape cases tried at court martial in 2017, just 2 resulted in conviction: a conviction rate of 4%. In 2018, the number of rape cases tried at court martial fell dramatically, to ten, resulting in just three convictions. In 2019, the number of rape cases tried at court martial was 15, resulting in three convictions. In total, of the 129 rape cases tried at court martial over the five year period for which the MoD has been publishing this data, there were 13 convictions (10%). The 'contested' conviction rate in the civilian justice system, itself subject to scrutiny and criticism at present (and the subject of litigation brought by the End Violence Against Women campaign), is nonetheless significantly higher than the service justice system, at around 50% for the period 2017-2019. The MoD accepts that the contested conviction rate at court martial is significantly lower than in the Crown Court. The MoD suggests that because the numbers involved in the service justice system are relatively so much smaller, the comparison is of little value, which we do not accept. In any event, taken as a whole across all offences, the contested conviction rate at court martial is reportedly broadly similar to that of the Crown Court,¹⁷

instrument in 2018. Until 2018 therefore, it had been lawful for a commanding officer to decline to refer an allegation of sexual assault to the service police. We say more about the need for a further amendment to this law below at §89

¹⁵ For example, see footnote 3 in the most recent MoD published sexual offences bulletin 'Sexual Offences in the Service Justice System 2019': 'Investigations that were reported as sexual offences but then reclassified to a non-sexual offence have not been included'. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876385/20200326-DCL-DCD-version_Sexual_Offences_statistics_2019_report-SO2SvcPol-FINAL-v1.1-O_1.pdf

¹⁶ See the Sexual Offences Statistics Data Table for 2019: <https://www.gov.uk/government/statistics/sexual-offences-in-the-service-justice-system-2019>

¹⁷ 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%.'

begging the question why rape cases should be so different. See more on this point below under 'Service Justice System Review'.

23. In addition to the (limited) MoD published data, there are other potential sources of information that help understand the prevalence of the problem of sexual assault in the Armed Forces, though all are incomplete.

Army Sexual Harassment Survey 2018: 'Speak Out'¹⁸

24. Between 2001 and the end of 2002 the then Equal Opportunities Commission (EOC) held meetings with the MoD and the Armed Forces at intervals of more or less six months. Those meetings discussed issues of concern to the EOC relating to retention and promotion of women in the Armed Forces, focussing in particular on the issues of combat effectiveness, flexible working, harassment and poor complaints handling. More informal contact at staff level continued after 2002, usually relating to specific issues such as the impact of sex discrimination law on fitness tests.¹⁹
25. However, increasing concern about the number of servicewomen that were contacting the EOC for advice and assistance about sexual harassment resulted in the EOC in June 2005 launching - and immediately suspending - a Formal Investigation into Sexual Harassment of Servicewomen in the Armed Forces. The suspension was on terms set out in a three-year agreement between the EOC and the MoD. Part of that agreement was that there would be research into sexual harassment in the Armed Forces. That work continued and in 2014, the Army committed to better understanding sexual harassment by conducting regular systematic research every three years.
26. The Army Sexual Harassment Survey 2018 research report followed on from a similar survey in 2015. The 2018 is the most recent available detailed survey of sexual harassment in the Army. It was completed by a total of 4713 Army personnel and was based upon their experiences of the preceding 12 months. 2591 of respondents to the survey were women.²⁰
27. The 2018 survey indicated that both generalised sexualised behaviours – those relating to the culture and working environment – and sexualised behaviour targeted at a specific person had reduced slightly since 2015 which was good news. However, there was an increase in women reporting upsetting experiences as a consequence of targeted sexualised behaviour. Reports of 'particularly upsetting experiences' had increased, with the proportion of service women reporting a particularly upsetting experience having increased from 13% to 15% since the previous survey. The survey also revealed a significant number of sexual offences including assaults and rape.
28. What is particularly helpful is that the data contained in the survey is stated to be representative for 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)."²¹ Therefore, if we know how many women were serving at the relevant time, we can estimate the numbers that will have had a similar experience to those that responded to the survey.

¹⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736177/20180821_Sexual_harassment_report_2018_OS.PDF

¹⁹<https://publications.parliament.uk/pa/cm200708/cmselect/cmdfence/424/424we10.htm#note18>

²⁰ §8.1 and tables 4 and 5, p17.

²¹ 'Speak Out' §10.2: <https://www.gov.uk/government/publications/army-sexual-harassment-report-and-action-plan-2018>

29. As at 1 April 2018, there were 111,020 service personnel in the Army, comprising 81,120 regulars and 29,900 reserves (excluding Gurkhas and 'other personnel').²² Of these, 11,610 were women.²³
30. Among other things, the respondents to the survey were asked if they had experienced targeted sexualised behaviours (from a set list of such behaviours) 'sometimes' or 'a lot' in the previous year. 2% of service men and 15% of service women reported that they had had a 'particularly upsetting experience' of a targeted sexualised behaviour in the preceding 12 months.²⁴
31. Some of the 'targeted sexualised behaviours' described in the list would amount to a criminal offence within the meaning of the Sexual Offences Act 2003 (SOA), in particular: 'intentional touching in a sexual way without consent' (which would potentially amount to an offence under s3 SOA); 'attempted sexual assault' (which would amount to an offence under the Criminal Attempts Act 1981, (i.e. an attempt to commit a s3 SOA 03 offence)); 'serious sexual assault' (s3 or s2 SOA); and 'rape' (s1 SOA). The percentage of respondents describing having suffered those incidents in the previous 12 month period was recorded and can be extrapolated.
32. According to the survey, as regards the 2591 women who responded:²⁵
- a. 7% (i.e. 181 women) that responded to the survey, described having been sexually touched intentionally without consent. Extrapolated out to the entire female population of Regulars and Reserves in the Army, that figure would come to 813 (i.e. 7% of 11,610).
 - b. 2% (i.e. 52 women) described having been subjected to an 'attempted sexual assault'. Extrapolated out to the entire female population of the Regulars and Reserves in the Army, that figure would come to 232 (i.e. 2% of 11,610).
 - c. 2% (i.e. 52 women) described that someone had 'made a serious sexual assault' on them. Extrapolated out to the entire female population of the Regulars and Reserves in the Army, that figure would come to 232 (i.e. 2% of 11,610).
 - d. 1% (i.e. 26 women), described having been raped. Extrapolated out to the entire female population of the Regulars and Reserves in the Army, that figure would come to 116 (i.e. 1% of 11,610).
33. We can assume that most of these incidents will have been serviceperson-on-serviceperson. Although the question, 'was the alleged perpetrator a fellow serviceperson?' was not specifically asked, the data strongly suggests that was the case. That is because the majority of incidents (57%) were described as having taken place in the workplace or in the training unit or in the service person's military home base; and because in the majority of cases the person responsible was stated to have been a male JNCO, a work colleague, a line manager or 'other senior person'.²⁶ That means that, if the incident had been reported as a criminal offence at all,

²² Table 1, p4, UK Armed Forces Quarterly Service Personnel Statistics
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707538/20180401-SPS.pdf

²³ See figure 3, p5, UK Armed Forces Biannual Diversity Statistics, 1 April 2018:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712124/Biannual_Diversity_Statistics_Apr18.pdf

9.3% of the Army regular forces (81,120) were women (which is 7544.16); 13.4% of the Army reserve (29,900) were women (which is 4066.4).

²⁴ That would amount to 1742 servicewomen having a 'particularly upsetting experience in the 12 months preceding.

²⁵ See Table 10, p23, 'Speak Out'. It is not clear if one respondent may have been reporting the same incident under multiple headings (for example, an attempted rape might have been recorded as sexual touching without consent, attempted sexual assault, actual sexual assault and rape. Even if that were so, the figures indicate a clear mismatch between described experiences of sexual assaults and reports to the service police.

²⁶p34 and p29, 'Speak Out'.

applying the existing MoD policies, custom and practice, the presumption would be that the service police would investigate it, not the civilian police.²⁷

34. For the year 2017, which would broadly cover the survey period, we know that the Royal Military Police (RMP) conducted a total of 93 investigations into any allegation of an offence contrary to the Sexual Offences Act. (Across all three branches of the service police, a total of 135 sexual offence investigations were conducted).
35. Either very large numbers were being reported to the civilian police, which seems unlikely and would be contrary to the protocol and what appears to be usual practice; or there appears to be very significant under-reporting to the service police of sexual offending in the Armed Forces. If significant numbers of these reported experiences have in fact been handled by the civilian justice system, then serious questions arise about how that information (and the outcome of those cases) is being tracked, to ensure the future safety of other service personnel.
36. For those who formally complained about any matter and across both genders, the survey revealed poor outcomes. Very high rates of dissatisfaction were recorded in terms of: how well a complaint outcome was communicated to the victim; whether follow up action taken against the person responsible; and the amount of time taken to resolve the complaint.²⁸
37. 75% of those who made a formal complaint of any type said that they had suffered negative consequences as a result.²⁹ Nine out of ten had thought about leaving the Army altogether.

Armed Forces Continuous Attitude Survey – sexual harassment

38. Though not specifically directed to the question of sexual assaults, the Army's Continuous Attitude Survey (AFCAS) published on 21 May 2020 revealed important information about the context in which these offences take place and reveal a workplace that is disproportionately hostile to women. It also reveals important information about sexual harassment.
39. The 2020 AFCAS showed that 12% of personnel reported that they had been subject to bullying, discrimination or harassment in the previous 12 months. This was an increase of a percentage point since the previous year.
40. The figures were not broken down by gender in the summary report, however the underlying data tables (at page 798) revealed that for female respondents the figure was 20%.³⁰ It is concerning that this figure did not appear in the summary report and not understood why that would be the case. The same is the case for figures pertaining to BAME personnel which can only be found in the underlying data tables, at page 793.
41. The majority of personnel who had been subject to bullying, discrimination or harassment did not make a complaint (90%). The top reasons why personnel did not make a formal written complaint were: not believing anything would be done if a complaint was made (60%, an

²⁷ The Prosecutor's Protocol 2016 states, at § 2.2b, that that 'offences alleged only against persons subject to Service law which do not affect the person or property of civilians should normally be dealt with in service proceedings and not by a civilian court'. Protocol on the Exercise of Criminal Jurisdiction, 2016: <https://www.cps.gov.uk/sites/default/files/protocol-exercise-criminal-jurisdiction-England-Wales-2016.pdf>

²⁸ Table 58, p58, 'Speak Out'.

²⁹ Three-quarters (75%) of those who made a formal complaint said that they had suffered negative consequences as a result. Just over nine in ten (93%) Service personnel thought about leaving the Army, lost respect for the people involved (92%) and felt humiliated (91%) (Speak Out p53).

³⁰ See pg 798 of the summary data tables, Annex B to AFCAS main report: 'Do you believe that you have been the subject of bullying, discrimination or harassment in the last 12 months?' 20% female respondents across the tri services stated that they had, compared with 11% of males. Broken down by ethnicity, the same question elicited a similarly disproportionate response as between BAME service personnel (19%) and white personnel (11%): tables p793.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885863/Annex_B_to_AFCAS_Main_Report_2020_Reference_Tables_PDF.pdf

increase of 3% since the previous year); and a belief that it might adversely affect their career (52%, an increase of 2% since the previous year).

42. Of those who made formal complaint about bullying, discrimination and/or harassment, over half were dissatisfied with the outcome of the complaint process.³¹

The Service Justice System Review ('the Lyons Review')

43. 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).³²

44. The Lyons Review reports that the civilian figures for rape conviction rates based upon Ministry of Justice figures for the 'recent years' are in the 'mid 30%' range; and based upon CPS figures, are in the mid to high 50% range.³³

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

§100. '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*. This is a matter that HHJ Lyons is examining and will be explored during the independent audit. The word apparent is used to due to uncertainty of the figures, this reflects a broader problem that needs addressing - the type of data and its quality. [emphasis added].'³⁴

46. 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% in 2015, 60% in 2016 and 49% in 2017.³⁵ Better than the statistics for rape, but still significantly lower than the statistics from the civilian justice system.

47. Following their comprehensive review of the workings of the service police, SPA and court martial, HHJ Lyons made a series of very important recommendations, the most striking of which were that, where they are alleged to have occurred in the UK, offences of rape, sexual

³¹ <https://www.gov.uk/government/statistics/armed-forces-continuous-attitude-survey-2020>

³² The Lyons Review Part Two §131

³³ The Lyons Review Part Two, §128.

³⁴ The Lyons Review, Policing Report, §100

³⁵ The Lyons Review, Part Two, §§ 129 and 132.

assault by penetration, domestic abuse and child abuse, these should be investigated by civilian police, prosecuted by the CPS and heard at Crown Court.

48. In support of his recommendations, HHJ Lyons pointed out that the court martial had not had jurisdiction to hear UK rape (and other very serious) offences until the Armed Forces Act 2006, when the law had been changed to enable it to do so. Hansard transcripts confirmed that the reason the law had been changed was simply to enable a defendant to be tried where they had been accused of serious crimes overseas, or 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).

49. As HHJ Lyons writes (our emphasis):³⁶

“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.*³⁷

50. 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....

³⁶ The Lyons Review Part 1, pg 38-39.

³⁷ 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.

51. Following the passing of the legislation, protocols were introduced that would enable decisions to be made as to which jurisdiction should apply on a case by case basis. However, the Prosecutor's Protocol stipulates 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.³⁸ Given the Minister's statements, this seems to have been an oversight. However, it means that serviceperson-on-serviceperson sexual assaults including rape would now inevitably fall to be investigated by the service police and thereby progressed through the service justice system. The relevant policing protocol, governing which police force (service police or civilian police) should investigate an offence on military property does stipulate that 'very serious crimes' should always be referred to the civilian police to lead the investigation, but 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'.³⁹
52. The failure of the protocols 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 civilian 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.'⁴⁰
53. 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.

³⁸ Prosecutors Protocol 2016, §2.2(b)

³⁹ 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>)

⁴⁰ The Lyons Review Part 1, §§7.2-7.3

- 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.
54. The MoD rejected the recommendations as to jurisdiction on the day the Lyons Review was published.
55. The decision to reject the recommendations was the subject of litigation brought by three servicewomen rape survivors who were all assaulted in the UK by a fellow service person. In light of the litigation, the Secretary of State said that he would give 'fresh consideration' to the matter, but he has since confirmed that the position on jurisdiction will remain unchanged. However he has agreed to conduct a review of all existing guidance and protocols on the issue, to enable there to be public and Parliamentary involvement in the same, and to place the prosecutorial protocol on a statutory footing. At the time of writing, it remains to be seen what the content of the new guidance and draft legislation will be.
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.

SOME ANONYMISED EXAMPLES FROM THE CMJ's CASES

57. In this section, we provide below some anonymised examples of the kinds of experiences being described to us. All of the events described have taken place in recent years. All involved an alleged assailant who was also serving.

A:

58. This case is presently the subject of litigation so it would not be appropriate to provide detailed information. However we can say that the complainant reported being the victim of a serious sexual assault overseas, expressed serious concerns about the quality of the service police investigation and formally complained about a serious lack of care in her unit and within her chain of command, including serious breaches of policy. There have been admitted very serious delays in the handling of her service complaint. She has left or is in the process of being medically discharged. She had had no prior medical problems.

B:

59. This case is presently the subject of litigation so it would not be appropriate to provide detailed information. However we can say that B reported being the victim of domestic abuse and sexual assault including rape by a man who was also serving. A decision was taken by the SPA that charges would not be brought. B alleges serious bullying and ostracisation within her unit and a serious failure on the part of her unit to ensure that there was a central point of trained, (domestic abuse) specialist support to ensure that care and support was co-ordinated and appropriate. B has been diagnosed with PTSD and an adjustment disorder. B has left or is in the process of leaving. She had had no prior medical problems.

C:

60. C was accused of having fraternised with junior staff during a night of heavy drinking. A witness reported seeing one of the junior staff having sex with her, which C could not recall. Bruises and other evidence of trauma on the part of C were noticed by staff the following day. Despite the circumstances, C was disciplined for fraternising with the junior staff and the matter was not referred for investigation to the service police at all. C was diagnosed with PTSD and left the services. She had had no prior medical problems.

D:

61. D was the victim of a sexual assault in the UK. She reported the matter to her chain of command who contacted the service police. At no point were the civilian police contacted as far as D is aware nor was she informed that she could contact them. Her assailant was charged but the matter collapsed at trial, following various errors by the SPA which have been the subject of separate litigation (since settled and covered by the BBC, [here](https://www.bbc.co.uk/news/uk-54614232)).⁴¹ In summary, D claimed that the SPA had failed to supervise a military prosecutor who had made very serious errors in another very high profile case some years previously and who, the victim's family in that case had been assured, would be closely supervised in the future. The prosecutor went on to make serious errors in D's case, which included not informing her that she could give evidence via video link, which caused her to state that she would not be able to proceed with the trial, for fear of having to be in the same room as the accused. She later changed her mind but that statement, which had been made on the basis of incorrect information from the prosecutor, was later used by the defence to argue that there was an abuse of process and the trial collapsed.

⁴¹ <https://www.bbc.co.uk/news/uk-54614232>

62. There were also reported failures on the part of the service police and chain of command in that case which had been the subject of a formal complaint by D. D's complaints included (this is not a complete list):
- a. During the course of a 6 hour service police interview, D was not interviewed in a comfortable environment and was offered no refreshments.
 - b. Her statement was taken in writing and not by video, which should have been the normal course for a traumatised victim in her situation.
 - c. D states that the service police told her that if she gave a video statement, that video statement would be all that could be shown to the court and there would be no opportunity to question her on anything that had been said in her statement which, they said, might harm her case. This was wrong.
 - d. As explained, the SPA prosecutor then told D that because she had not given a video statement, she would have to give her evidence in court in person. D was not advised that she could ask to give her evidence by video-link.
 - e. There were multiple changes of staff in the service police handling of her case, causing extreme distress to D and despite her repeated and specific requests that changes of staff be kept to a minimum.
 - f. D had to make her own enquiries as to what arrangements were being made for her accommodation during the trial, to ensure that she was not accommodated at the same location as her assailant. There was a lack of witness/victim care.
 - g. D also highlighted in her complaint that she had witnessed sustained bullying and ostracisation of a fellow service woman on her unit who had also reported rape and how that woman had been failed by her colleagues and her chain of command.
63. D's complaint was lodged in summer 2017 and she did not receive her final response until autumn 2019. D was devastated at the content and tone of the response to her complaint, which was insulting. In part of the response to her complaint, a person in her chain of command had referred to D as 'patronising' and having a 'superiority complex'.
64. The consequences of the service police failures, the SPA failures, failures in the unit and chain of command and the manner in which her complaint was treated had a devastating effect on D. D was diagnosed with complex PTSD and has been or is in the process of being discharged from the services. She had had no prior medical problems.

E:

65. E was the victim of a sexual assault by penetration in the UK. The assailant was charged but acquitted at court martial. E had a number of concerns about the service police's handling of her case which included:
- a. She reported the matter to her chain of command initially which called the service police, not the civilian police. E had been entirely unaware of her right to report the matter to the civilian police.
 - b. Her first substantive statement was not taken by a sexual offences investigations officer (SOIT) trained service police officer.
 - c. Her statement was taken in writing and not by way of video interview.
 - d. There was a failure to take a statement from the person to whom E had first disclosed the assault.
 - e. There was a failure to take a statement from a witness to the prior sexual harassment of E by her assailant. E had described extreme sexual harassment by her alleged assailant in the period prior to the assault including repeated unwanted and explicit sexual overtures.
 - f. At one point while pending court martial, E described being locked into an office when it was discovered that her alleged assailant would be visiting the same block she was working in.

66. E was diagnosed with PTSD. She had had no prior medical problems.

F:

67. F reported sexual harassment and sexual touching by two senior individuals. One of the accused individuals was the person on the unit that would be responsible for dealing with that kind of behaviour. F lodged two service complaints, one of which was largely upheld. The other took over 2 years to conclude, and was not upheld. F left the services (pursuant to a medical discharge in significant part on account of the bullying she had suffered and harassment she described) but maintained her outstanding service complaint and police report of sexual touching.

68. The SPA declined to prosecute the alleged sexual touching offence. The letter informing F that no charges would be brought was addressed to her (now) civil home address. The letter from the SPA was sent to a Victim Liaison Officer (VLO) to be sent on to F, but the VLO sent the letter in error to the alleged assailant, thus revealing F's home address to the alleged assailant.

69. F raised her concerns with the SPA directly, however the SPA simply referred F back to the VLO – however F had never been made aware that she had even been allocated a VLO, had never met this person and noted that the VLO appeared to be based within the alleged perpetrator's unit, appointed by the perpetrator's Commanding Officer.⁴²

G:

70. G was the victim of alleged rape in the UK. She reported the matter to the service police. At no point were the civilian police contacted nor was G aware of her right to contact them. G's medical records were not obtained by the service police in circumstances when G believes that medical evidence would have been relevant to the case.

71. The SPA declined to prosecute. G complained to the SPA about apparent failures of reasoning in their decision letter to her.

72. The alleged response of G's unit and her chain of command is presently the subject of litigation so it would not be appropriate to provide detailed information. However we can say that G described being bullied, ostracised and punished by her chain of command following her report of rape.

73. G has been diagnosed with PTSD and has been or is in the process of being medically discharged. She had had no prior medical problems.

H:

74. H was in the mess when she was grabbed hard from behind by the vagina by a more junior member of staff. This happened in the UK. At no point were the civilian police contacted as far as H is aware nor was she aware of her right to contact them. The service police conducted an investigation and the assailant was charged with sexual assault. H was contacted by text message by the service police to enquire if she would agree to the down-grading of the charge, given the assailant's admission of a common assault (when he maintained his denial of sexual assault). H declined. At the court martial, her assailant was acquitted. H described the judge advocate's shock and frustration that key witness statements did not appear to have been taken. The court martial transcript refers to the Judge Advocate's remarks about the 'quite appallingly

⁴² This practice of the victim's VLO being appointed by the accused's commanding officer is confirmed in the Lyons Review (Lyons Review, Part 1, Annex B, p94). The risk that the VLO will have an existing relationship with the accused is obvious - a risk elaborated on in the Lyons Review, Policing Report, §7-10.

bad police investigation how stupid was it not to interview the people that were at the scene ?... it is just an unbelievably casual way of dealing with a serious investigation....'

75. The complaint against the service police was upheld but no action taken against those involved.
76. H has been diagnosed with PTSD. She had had no prior medical problems. She has stated that most of her servicewomen colleagues have described some sort of upsetting sexual incident during their careers.

J:

77. J was sexually harassed and alleged that she was raped by someone senior to her in her chain of command. The alleged rape occurred in the UK. J telephoned her father after the rape. The matter was reported by J's father to the civilian police before the service police could be informed. The matter proceeded to trial and the alleged assailant was acquitted. J lodged a service complaint about matters surrounding the alleged assault including her assailant's pursuit and sexual harassment of her; and her treatment in the aftermath of her reporting the rape which included transferring her (not the alleged assailant) far away from her unit and far from her friends and family (while leaving the alleged assailant in situ); sending her on an outdoors adventure training with an all-male group (at which misogynistic comments were made to her about menstruation, sex and using sexually explicit violent language); and inviting her to speak at a promotional event on 'life as a woman' in that branch of the services. The service complaint took 4 years to resolve. At the first stage, the service complaint was not upheld and the tone and quality of the decision was deeply harmful to J and, she felt, victim blaming. At appeal, the service complaint resulted in a formal apology and an admission that the alleged assailant's actions had cost J her promising career, paid compensation and there was a recommendation that disciplinary action be taken against the alleged assailant. J was discharged from the services pursuant to a medical board. She had had no prior medical problems.

K:

78. K reported a rape that had taken place in the context of a social event on her base. Her assailant was charged. She described being ostracised and bullied within her unit following her formal report. Her chain of command made her the subject of an individual order restricting her ability to socialise with males (as far as she knows, no similar orders were made against males in her unit). She was in due course severely punished for a brief breach of the order.

L:

79. This case is presently the subject of litigation so it would not be appropriate to provide detailed information. However we can say that L reported what she considered to be inappropriate sexual harassment directed by an officer in her unit towards younger females in her unit. She believes as a consequence that she has suffered severe professional and health consequences for doing so. She has been diagnosed with a mental health disorder having had no such diagnosis before these events. Her career has suffered very badly.

Victims of Domestic Abuse

80. There is a lack of sufficient support for victims of domestic abuse that are serving or connected to Armed Forces personnel. The Lyons Review (in particular the Policing Report of Sir Jon Murphy) expressed his 'concern about the potential risk each of the service police is carrying as a consequence of fragmented processes in their response to domestic abuse.'⁴³ We note

⁴³ The Lyons Review, Policing Report, §18.

the clear recommendation of the Lyons Review that such cases should always be handled by civilian police and make some short observations about this, below.

81. The charity Aurora New Dawn is undertaking very important work in this field and we recommend that the Committee seek evidence directly from them, including oral evidence.

Female Veterans

82. We have not included the many examples we have received from female veterans that have contacted us to describe the life-long impacts of their experiences of sexual assault. We particularly recommend the charity Forward Assist and its sister charity Salute Her, for the work they are doing to draw attention to the needs of this veteran group and the specialist services they are able to offer. Oral evidence should be sought from them if possible.

COMMON THEMES FROM WOMEN THAT HAVE CONTACTED THE CMJ

83. Common problems described by many of our clients include the following:

- a. Hardly any of the clients who have contacted us about a sexual assault in the UK were aware that they could have reported the assault to the civilian police, had they wished to do so. All of the relevant policy and guidance governing the handling of sexual assaults and rapes and domestic violence directs the reader to the service police and only fleetingly, if at all, refers to the civilian police. There appears to be widespread ignorance of the fact that they could approach civilian police if they wished to do so. Following our clients' judicial review, the Government has announced that there will be a review of all relevant policies and protocols governing the handling of sexual offences in the Armed Forces, but there is a concern amongst our client group that the MoD may use this as an opportunity to consolidate its preferred position, which is that such cases should be retained within the service justice system as far as possible, rather than to ensure service personnel are made aware of and regularly reminded of their rights.
- b. Not a single individual who has contacted us for advice about a service complaint that was connected to their treatment in the aftermath of their reporting a sexual assault or sexual harassment, has reported a satisfactory process or outcome. While on the face of it, problems with the service complaints process are not exclusive to servicewomen, it is a problem that has a greater impact upon them because of their disproportionate presence amongst those making bullying, harassment and discrimination complaints. With that in mind, the Wigston Review's recommendation on how to better deal with these complex and sensitive cases was welcome – and the apparent roll-back by the MoD on that recommendation is of enormous concern (see below at §88).
- c. Every single service complaint that we are assisting with is characterised by very serious delay. In one of our cases, the complainant had to wait a year and two months simply for an admissibility decision, which is a decision that is supposed to be taken within two weeks. Where we are communicating directly with the commanding officers that are investigating a service complaint (known as the 'Deciding Body' (DB)), they are all reporting serious problems in securing timely access to suitably qualified harassment investigations officers with the necessary experience and expertise. There appears to be a lack of female harassment investigations officers which means women are having to discuss extremely intimate and distressing matters with male DBs and male harassment investigation officers. Delays in these investigations officers being able to take statements from all potential witnesses invariably has a detrimental effect on the integrity of the investigation, even with the best will in the world.⁴⁴
- d. The quality of the investigations officers is variable with some demonstrating a good understanding of the law and practice of discrimination and the importance of their task, with others missing obvious lines of inquiry and failing to spot obvious inconsistencies in evidence, or not viewing alleged behaviour as part of a pattern. One investigations officer struggled to understand why our client would wish to continue with her service complaint at all (which arose from a serious sexual harassment situation), given that she had now been moved out of the unit where it had taken place.
- e. There is a lack of practical assistance for individuals contemplating making a service complaint; the system would be better served if service personnel were able to receive some independent advice and support at the outset. Time is wasted in requiring

⁴⁴ The problem of delay is one that has been raised by the Service Complaints Ombudsman for the Armed Forces for the last 5 years, and her predecessor the Service Complaints Commissioner for the 5 years before that.

complainants to go over and clarify parts of their service complaint in circumstances when, had they been properly advised and assisted at the outset, the complaint might have been more concisely put and more clearly evidenced. The CMJ understands that consideration is being given to allocating Assisting Officers to support service personnel prior to the submission of a service complaint, which is sensible, however it will also be important to remind service personnel that they are able to obtain external support to help them with their service complaints. Presently, service personnel are simply reminded that obtaining legal advice may be expensive and is not a cost that can be repaid by the services, which is off-putting. Free help may be available. Early access to good and sensible advice is likely to lead to a better outcome for both the complainant and the services as a whole.

- f. This is particularly important, because service personnel are unique in that their entitlement to apply to the Employment Tribunal depends entirely upon their having made and maintained a service complaint relating to bullying, harassment or discrimination. If a service complaint is not made, is made but later withdrawn, or made, rejected and not appealed, then the Employment Tribunal loses jurisdiction. This requirement creates an enormous additional hurdle for service personnel seeking to vindicate their rights in law as they have to undergo two separate and very demanding processes, each one requiring them to give detailed evidence of what have been extremely distressing events. The necessity of the requirement to make and maintain a service complaint simply in order to access the Employment Tribunal is probably outside of the terms of reference of this inquiry, however it is something that the CMJ would wish to draw to the Committee's attention, because in relation to bullying, harassment, discrimination, sexual assault and sexual harassment claims, the burden is disproportionately borne by women and BAME personnel. Their legal rights are being restrained - and additional hurdles created for them - for no apparent operational purpose.
- g. All of our clients report some form of re-traumatisation as a consequence of the service complaints process. That may be simply because they are required to describe, often on multiple occasions, their experiences; but may also be due to the clumsy handling of these services complaints and its most-likely unsatisfactory outcome. Even with the best will in the world, commanding officers are not trained to handle serious sexual harassment complaints or the needs of victims of a sexual assault. Their approaches are not trauma informed and there is little to no understanding of the impact on the victim. For example, even receiving an unprompted email or telephone call from a male DB, seeking to discuss an aspect of a service complaint when it pertains to sexual violence or domestic abuse, can be re-traumatising.
- h. There appears to be a variable approach on the part of those handling the service complaint to communicating via a legal representative or enabling the legal representative to have access to relevant papers. For example, on two recent occasions, CMJ clients have been informed that they may not share their service complaints papers with their solicitor, even in circumstances when the service complaint is linked to the ongoing employment tribunal proceedings. We have been able to address these issues directly and resolve them, however we are concerned that service personnel who are not currently legally represented, but who probably should be, may be being told that they cannot share their papers with a solicitor in order to receive legal advice.
- i. All CMJ clients who have reported being the victim of a sexual or domestic abuse offence have discovered what appears to be systemic ignorance within their chain of

command of the relevant Defence Instruction Notice (DIN),⁴⁵ which was introduced in the aftermath of the case of the late Cpl Anne-Marie Ellement (who died after reporting rape and who had been ostracised and bullied by her unit) and which is designed to ensure that a commanding officer ensures the provision of appropriate care and support to the victim. It is a DIN that appears to be honoured more in the breach than in the observance. It also needs updating.

- j. In at least three cases, victims were informed that they would be the subject of disciplinary action in some form. In one case, she was told that action would be taken to investigate her conduct on the night in question (this being the night she had reported being raped) because, she was told, her Commanding Officer had to investigate whether the so-called 'service test' had been breached;⁴⁶ in another case, the action arose because the woman had been made the subject of an individual order to keep herself apart from males, following her report of rape, which she had breached, resulting in what appears to have been grossly disproportionate punishment; and in the third the woman was severely disciplined because she had been said to be fraternising with junior staff (that had, in fact, sexually assaulted her).
- k. In all cases, our clients have reported feeling as though, by reporting the incidents, *they* were the problem. At best, this was because those to whom they reported genuinely felt out of their depth and did not know how to handle the issue; at worst it was a consequence of out-dated discriminatory attitudes towards women in a hyper-masculine environment. One of our clients was criticised by her commanding officer for not showing 'genuine remorse' after an extremely distressing incident. This was reminiscent of comments made by a senior member of the late Cpl Anne-Marie Ellement's chain of command who, it had been revealed at her inquest in 2014, had told Cpl Ellement that she had to 'accept responsibility' for what had happened to her.⁴⁷ These discriminatory attitudes were not solely displayed by men. Senior women have displayed them too.
- l. All clients have reported feeling disbelieved.
- m. Several clients reported serious issues in having to receive further support including therapeutic support from the very institution they believe has failed to protect and support them. Receiving therapy from someone in uniform can be particularly problematic for some. Even returning to a military base for medical or other help can be harmful and re-traumatising.
- n. Some clients have reported that their chain of command has been hostile towards efforts by them to access external (civilian) support and help, including expert help to deal with sexual violence or domestic abuse. Clients have reported the strong sense that such help is not welcome and is seen as interfering or ill-informed.
- o. All clients that reported sexual assaults have reported perceived deficiencies on the part of the service police, and recognised the problems identified in the Lyons Review with service police proficiency and expertise.

⁴⁵ DIN 2014DIN01-090, contained in JSP 839 (Victims Services) at Annex B (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/488634/20151116-JSP839.pdf); updated by 2020DIN01 (not publicly available).

⁴⁶ The service test: 'Have the actions or behaviour of an individual adversely affected impacted or are they likely to impact on the efficiency or operational effectiveness of the services?'

⁴⁷ Cpl Anne-Marie Ellement took her own life in 2011 after reporting rape by two fellow RMP corporals. A Coroner ruled in 2014 that the act of alleged rape, bullying, work-related despair and the breakdown of a brief relationship had caused her death by suicide. In 2016 two former soldiers were charged and acquitted of her rape at court martial.

- p. Clients whose cases have been referred to the SPA have identified concerns about the handling of their cases at the SPA, also recognised in the Lyons Review. One client in particular described the tone and quality of the decision letter received from the SPA informing her that her alleged rapists would not be prosecuted as extremely hurtful and painful to receive. The CMJ has seen this letter and agrees entirely with her assessment of it as appallingly insensitive.
- q. It can be extremely difficult to maintain confidentiality and privacy in the Armed Forces, following a report of sexual harassment or assault. Reported breaches of confidentiality are common. Usually, the women's colleagues know both the complainant and the accused and there is a tendency to gossip and take sides. The Armed Forces is an extremely unusual working environment and the close ties that can provide much needed support and solidarity in 'normal' times, can operate to the detriment of the victim in a situation where a criminal report has been made.
- r. Two clients have reported that they were sent to a PTSD recovery group and were, in both cases, the only females in the group, sitting alongside males that had suffered severe physical injuries. The male members of the group were understandably not able to provide appropriate support to these women, and the experiences only aggravated the women's conditions.
- s. A common theme is the relatively young age of the women concerned. The annual published statistics from the MoD on sexual assaults show that it is women under 30 that are bearing the brunt. The Armed Forces will always contain a relatively large proportion of women within a certain, younger age range. Younger women can be more vulnerable to sexual assaults and abuse of power by men in more senior roles and/or may be less likely to be able to protect themselves in a highly hierarchical, male-dominated environment.
- t. A common theme is the fact that many of the women that have contacted us were destined for very high achievement – some were officers, or had been marked for commission and were on that track. Others had been able to show very considerable achievements in their careers and their annual reports demonstrate how highly they were regarded – all but a very few have had to leave service because of the assaults they suffered and the failure on the part of the very institution they had pledged to serve, to protect and support them in the aftermath.

WIDER SYSTEMIC ISSUES

84. The CMJ further raises the following issues as matters that the Defence Committee may wish to consider as it considers its evidence.

The Lyons Review recommendations

85. The Lyons Review made 3 substantive recommendations, which have been rejected by the MoD:
- a. the court martial jurisdiction should no longer include murder, manslaughter and rape when these offences are committed in the UK, except with the consent of the Attorney General;
 - b. consideration should be given to including either s2 (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; and
 - c. domestic violence and child abuse offences committed in the UK should always be dealt with in the civil system and the Prosecutor's Protocol should be amended to reflect this by containing specific guidance.
86. The Committee should give serious consideration to these recommendations and consider carefully the reasons why HHJ Lyons thought it appropriate to make them, bearing in mind in particular the original intentions of Parliament in passing AFA 06 which now seem to be being subverted. We would suggest that the Committee should endorse the first three substantive recommendations of the Lyons Review.
87. In any event and quite apart from the first three substantive recommendations, the Lyons Review also made a very large number of other recommendations which can be found in Parts One and Two of the Review. These were made *in addition* to the three recommendations above, not in lieu of them. Some of these recommendations would require legislative changes to be made, others would not. Some appear to be being taken forward in different ways and fora by the MoD, but there is a lack of clarity as to which recommendations are being acted upon, and which are not. It is to be hoped that the Committee will be able to hold the MoD to account on what reforms, exactly, are accepted, how they are to be implemented and the time-scale for doing so.

Follow on from the Wigston Review

88. The same point applies to the Wigston Review. As the Committee is aware, the Wigston Review made a series of recommendations which the MoD stated it had accepted 'in full'. However, it now seems that there has been a very significant roll-back in the MoD's acceptance of the principle recommendation that was widely lauded when the Review was published, which was the creation of a new Defence Authority for Culture and Behaviours. 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, and instead appears to have been replaced by an expanded 'diversity and inclusion' team within the Chief of Defence People's office. It seems as though the actual handling of the most complex bullying, harassment and discrimination complaints themselves will remain with the single services themselves. 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.

Schedule 2 offences

89. 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. 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.
90. Regardless of the final position on the Lyons Review jurisdiction recommendations, these offences need to be added to Sch 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).
91. It may be that a criminal law expert specialising in gender-based violence work could identify other offences that ought to be added to Sch 2 and the Committee may wish to seek some advice from a civilian criminal lawyer.

Police powers and domestic abuse

92. The service police do not have the same powers to deal with domestic abuse as the civil police. For example, they cannot issue a Domestic Violence Protection Notice, Domestic Violence Protection Order, Stalking Protection Order or make disclosures under Clare's Law. If the third recommendation of the Lyons Review were to be accepted, (that all domestic abuse cases should be sent to the civil police not the service police), then specific concerns no longer arise because the civil police have all of these powers.
93. However, as long as that is not the case, there is a potential gap. Not having the necessary powers to make an application themselves, the system would appear to be that the service police should bring any concerns of domestic abuse that might require a notice or order of the type referred to above, to the attention of the suspect's Commanding Officer who will address the situation using their own powers. In many cases, a Commanding Officer will respond to a domestic abuse situation swiftly, flexibly and entirely appropriately. However, the system depends upon that person being sufficiently trained, informed and cognisant of the very particular risks of domestic abuse and the potential seriousness of it. With that in mind, it is concerning to see in the Lyons Review, reference to domestic abuse cases which were not treated as such when they should have been. The Lyons Review identified domestic abuse cases that had been dealt with by commanding officers as 'disgraceful conduct' or 'ill-treatment' and not treated as criminal assaults in a domestic context. We urge the Committee to consider carefully the Lyons Review's recommendations in relation to the handling of domestic abuse,

in particular, the need to ensure that these cases are always sent to the civilian justice system so that all available powers may be deployed as necessary, that assault cases in a domestic abuse context are always flagged on service and commanding officer's data systems and that information-sharing between the service justice system and the civilian justice system is overhauled so that the best possible safeguarding decisions and risk assessments can be made.

Service Complaints Ombudsman's recommendations for independent research

94. The Committee will be aware that the Service Complaints Ombudsman for the Armed Forces (the Ombudsman) has repeatedly expressed concern at the over-representation of female and BAME service personnel in the Armed Forces in the complaints system and what may underly it.⁴⁸ In her first annual report of 2016, she said:

The Ombudsman is concerned about the continued overrepresentation of both female and Black, Asian and Minority Ethnic (BAME) Service personnel in the Service complaints system Tri-Service. The disproportionate representation of female and BAME personnel as complainants (21% and 10%) compared to representation in the Armed Forces (11% and 7%) not only continued for the third consecutive year, but actually increased for female personnel. Bullying, discrimination and harassment were more commonly the cause of complaints for these groups.⁴⁹

95. She recommended that the MoD commission an *independent* study by the end of April 2018 to determine the root causes of the overrepresentation of female personnel in the service complaints system and that appropriate action be taken to try and redress the situation by the end of December 2018, including putting the appropriate support mechanisms in place. This was not done and the Ombudsman's recommendation was repeated in every annual report after that, resulting in her parting annual report this year, where she acknowledged the fact that *internally*-prepared reports had finally been provided to her on this issue, but concluding, 'nothing contained in the reports has changed her view that an independent review is required.'⁵⁰
96. If an independent study has indeed since been commissioned and prepared, the Committee is urged to ask the MoD to share a copy of it with them.

Arrest, investigation and conviction data

97. Finally, the position with regards to the recording of relevant arrest, investigation and conviction data by the service justice system is patchy, confused and creates a risk that victims may not be properly protected. Both the Lyons Review and the Wigston Review have highlighted this as a major problem.
98. In summary, the different branches of the service police primarily share information with each other via the software programmes 'COPPERS' (the service police incident and occurrence system) and 'REDCAP' (the service police investigation management and recording system). The Lyons Review states that these systems have multiple failings and recommended that they are reviewed and even replaced with a more efficient and effective system.⁵¹
99. A compelling example of inability of the present system to accurately record the response to allegations of sexual offending is seen in the Lyons Review's point that, between 1 January

⁴⁸ And BAME people

⁴⁹ Annual Report of the Service Complaints Ombudsman for the Armed Forces of 2016, p18: <https://www.scoaf.org.uk/document-library/>

⁵⁰ Annual Report of the Service Complaints Ombudsman for the Armed Forces of 2019, p19: <https://www.scoaf.org.uk/annual-reports/>

⁵¹ SJSR Part 1 Annex H Guinness Report p.136 – 138

2015 and 1 January 2018, 1287 sexual offences were recorded on COPPERS.⁵² However separate data from the MoD confirms that over that same period just 342 sexual offences were actually *investigated* by the service police. What happened to the remaining 945 cases of sexual assault recorded on COPPERS? The Lyons Review notes that for this period, ‘most’ *domestic* abuse cases were handed over to the local civilian police. But there is no information about what happened to those *sexual* offences. It may be that they involved civilians and/or were for another reason handed over to the civilian police, however recent FOIA enquiries made by the CMJ indicate that the number of sexual offences on military property that are notified by the service police to the civilian police every year is low;⁵³ and in any case, if the offences were serviceperson-on-serviceperson, handing those cases over would not be in accordance with the Prosecutor’s Protocol. In any event, if they have been handed over to the civilian police those cases should be tracked and their outcomes known. It may be that those offences were ‘down-graded’ to non-sexual offences, as anticipated in the MoD sexual offences bulletins. There may be good explanation for the discrepancy and the Committee is urged to explore this.

100. In relation to REDCAP, the Lyons Review identified a series of problems with it, including that it does not confirm to National Crime Recording Standards, does not easily flag domestic abuse cases and has no interface with other intelligence and incident management systems.
101. Whatever new system is designed, it will be important to ensure that it mirrors the system of data collection that is used in the civilian justice system, so that data can be more reliably and usefully compared.
102. The current situation means that the true level of offending of service personnel cannot be accurately known, and creates a situation where the true level of risk that an individual poses may not be properly understood.

⁵² The Lyons Review, Part 1, Annex H, Guinness Report, §49 and §54

⁵³ The RMP confirmed (in response to FOIA requests made by the CMJ) that it notified 32 sexual offence cases to the local civilian police in 2019; the RNP confirmed it notified 3 cases to the local civilian police in 2019; and the RAFP confirmed it notified no cases to the civilian police in 2019. MoD data confirms that in 2019 the service police as a whole conducted 120 investigations in the UK, involving sexual assault.

103. **CMJ RECOMMENDATIONS:**

1. That Recommendation 1 of the Lyons Review be accepted and implemented (that 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). At the very least, the offence of rape must be added to the category of 'very serious crimes' that are to be referred for investigation by the civil police, not the service police.
2. That Recommendation 2 of the Lyons Review be accepted and implemented (that sexual assault with penetration) 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. The CMJ would support sexual assault without penetration also being so referred.
3. That Recommendation 3 of the Lyons Review be accepted and implemented (that 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).
4. That the new Defence Authority for Cultures and Behaviours that was recommended to be created by ACM Sir Michael Wigston should be created as envisaged by him and, in particular, that it should be assigned responsibility for the handling of serious bullying, harassment and discrimination service complaints, taking them outside of the single services.
5. That the data recording within the service justice system be upgraded in accordance with the Lyons Review recommendations, and that sharing arrangements between these civil police and the service police be reviewed and consolidated and the necessary legislative changes be introduced to enable this to happen, as recommended in the Wigston Review.
6. To increase the range of sexual offences that will fall to be collated and published every year by the MoD in its sexual offences bulletins, to include the following: s1 Protection of Children Act 1978 (taking etc. indecent photographs of children); s160 Criminal Justice Act 1988 (possession of indecent photograph of a child); s63 Criminal Justice and Immigration Act 2008 (possession of an extreme pornographic image); s33 Criminal Justice and Courts Act 2015 (disclosing private photographs and films); s67 Serious Crime Act 2015 (sexual communications with a child); ss1, 2A, 4, 4A Protection from Harassment Act 1997 (harassment and stalking offences); and sexual assault criminal attempt offences.
7. 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).
8. To add to the Armed Forces Continuous Attitude's survey a specific question about whether the perpetrator of the sexual harassment or sexual assault was a service person. To ensure that

data about the specific responses of women and BAME service personnel is included in the AFCAS published report.

9. To ensure that all members of the Armed Forces are aware of their right to report any criminal offence to the civilian police, should they wish to do so, as long as such cases are not automatically referred to the civil justice system.
10. To include in the annual Ministry of Defence sexual offences bulletins, data about the number of reports of sexual assaults received, which were subsequently 'down-graded' to a non-sexual assault.