



Defence Committee

House of Commons London SW1A 0AA
Tel 020 7219 3280 Fax 020 7219 8952
Email defcom@parliament.uk Website www.parliament.uk/defcom

From the Chair, Rt Hon James Arbuthnot MP

Rt Hon Philip Hammond MP
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
London SW1

Dear Philip,

28th April 2014

A number of concerns have been raised with the Committee by NACRO about the operation of the service justice system. The Committee would be grateful if you could give consideration to the following points that have been raised with us and inform us how you propose to proceed.

1: The inequitable treatment of convictions

NACRO has concerns that in practice whether or not a serviceman or woman is likely to receive a criminal record in civilian life depends solely on the type of disposal he or she received at a summary hearing or court martial. This may have perverse consequences. An individual may receive a more serious military sentence (for example a reduction in rank or forfeiture in seniority) and this will not appear on a criminal record. Conversely, a less serious military sentence, such as a fine, would appear on a criminal record. This may have a very serious impact on an individual's resettlement on return to civilian life, particularly affecting ability to obtain employment.

I set out below a table provided by NACRO showing the rehabilitation period for each military conviction, illustrating that certain minor military convictions are treated more onerously than more serious convictions in terms of how long the offence must be disclosed for.

NACRO has suggested that an expert panel be established to review the service justice system's criminal record regime with a view to making recommendations as to how it can be improved and how anomalies such as those described above can be removed.

2: Failing to provide service personnel with basic key information

Any serviceman facing military disciplinary proceedings should be made fully aware of what the ramifications are of proceeding to court martial or to a summary hearing, in



particular the legal consequences and practical impact that a military conviction (such as a fine or compensation order) received via either route will have on them in civilian life.

Providing service personnel with this basic information will then enable them to make a fully informed decision as to whether or not to elect for trial by court martial (where they would be assured of a fair trial with access to full representation) or by summary hearing (where this is not the case). NACRO have indicated that they have evidence that some service personnel end up receiving a criminal record without having any idea that they have one, and without having received any appropriate legal advice.

NACRO have argued that guidance on the full impact on service personnel of receiving a caution or conviction needs to be made clear, transparent and understandable to all those involved in the military disciplinary process including the defendant, their legal representatives, commanding officers and prosecutors, as well as judges.

3: Failing to record military convictions properly on the Police National Computer

NACRO have indicated that they have experience of cases where servicemen have had military convictions recorded on the Police National Computer when they should not have been – either because of the date that they were uploaded onto the system (certain offences committed before 2009 should not appear) or because of the nature of the offence or disposal. In addition, they have also informed us that they have evidence that some servicemen who have received either a fine or compensation order at summary hearing have not had their convictions disclosed on criminal record checks because the convictions were not placed on the Police National Computer by the administrative department of the armed forces, in some instances due to a lack of proper training.

NACRO have argued that there is a lack of transparency in relation to the recording of military convictions and that it is accordingly difficult to assess exactly how widespread this problem is (although they suggest that it is fairly common). To date neither the Ministry of Justice nor the Ministry of Defence have provided figures to enable a comparison between the number of servicemen convicted as a result of military proceedings and the subsequent recording of these convictions on the Police National Computer.

NACRO have called for a review of the way in which military convictions are recorded and placed on the Police National Computer and for an independent system for the recording of military convictions on the Police National Computer in order to ensure that the process is transparent, fair and consistent.

4: Incorrect handling of the punishment of service detention

The Government has stated that the punishment of service detention is to be treated in the same way as a prison sentence. The Disclosure and Barring Service (DBS) has recently introduced a filtering system (as a result of changes made to the ROA Exceptions Order) which means that for those in civilian life certain cautions and convictions will no longer be disclosed on standard or enhanced criminal record checks after a period of time. However, because the Ministry of Justice has deemed that any sentence of service detention (regardless of the length of the detention or the nature of the actual offence) should be treated as the equivalent of a custodial sentence, this means that it will always be exempt from filtering, meaning that service personnel will always have to declare a military conviction of service detention for the rest of their life. So, as illustrated in the



case studies provided by NACRO outlined below, an individual might receive service detention for a very minor infringement which would then go on to cause substantial and practical problems in their civilian life merely because the conviction can never become eligible for filtering.

NACRO has suggested that the issues noted above arise from the way that the Armed Forces Act 2006 impacts on (1) the Rehabilitation of Offenders Act 1974 and (2) the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975 in relation to the treatment of military convictions. They have argued that the Service justice system was initially designed in a way that focused on creating a system that could deal effectively with issues arising from service personnel across the armed forces; it was not initially designed to connect to the Rehabilitation of Offenders Act or other legislation.

Changes to the Rehabilitation of Offenders Act (Exceptions Order) 1975 in May 2013 and changes to the Rehabilitation of Offenders Act 1974 which were implemented in March 2014 did not address the issues described above.

NACRO have informed us of the impact of some of the issues noted above on individuals. They have provided a number of case studies which I list below to illustrate their points and to highlight problems including difficulties obtaining insurance, housing and citizenship, as well as securing further education or employment.

I would be grateful if you could give these points your consideration and reply to the Committee by 1 July.

Yours ever
James

CHAIR



Appendix 1: Rehabilitation periods for military convictions

Imprisonment	Same as civilian custodial sentence
Removal from Her Majesty's Service (which includes cashiering, discharge with ignominy, dismissal with disgrace or simple dismissal)	12 months from the date of conviction (the date on which the sentence is imposed)*
Service detention	12 months from the date which sentence is completed*
Service supervision and punishment order	No rehabilitation period
Forfeiture of seniority	No rehabilitation period
Reduction in rank or disrating	No rehabilitation period
Fine	12 months from the date of conviction
Severe reprimand	No rehabilitation period
Reprimand	No rehabilitation period
Service compensation order	Once paid in full
Stoppage of leave	No rehabilitation period
Restriction of privileges	No rehabilitation period
Admonition	No rehabilitation period

*The rehabilitation periods are halved if the person is under 18 at the time of conviction or the date the sentence is imposed.



Appendix 2: case studies

The following case studies illustrate some of the major issues that men and women serving in the armed forces face due to the current problems with the Service justice system.

Case study 1

A serving Foreign and Commonwealth Officer was refused citizenship to the UK as a result of swearing at an NCO. The offence resulted in the officer being confined to barracks for five days. The officer attended a summary hearing and received a sentence of service detention, which was recorded on the Police National Computer. At the time that the officer applied for UK citizenship, the UKBA was able to refuse citizenship to anyone who had an unspent conviction – but in this case, the officer's conviction was already spent. However, changes to the UKBA policy exempting applications for citizenship from the Rehabilitation of Offenders Act also meant the UKBA now had the right to always take a conviction into account, whether it was spent or not. Consequently as a result of the fact that the officer's swearing was recorded as service detention and the possibility of not declaring a conviction after a certain period of time once it became spent had been removed by the change in UKBA policy, the officer was denied citizenship to the UK.

As a result of the large cuts to the armed forces, the officer, now faced with redundancy, is keen to secure employment in the security industry. However, since the offence of service detention is treated as the equivalent of a prison sentence (as covered in more detail earlier) the officer's application for a licence from the SIA is likely to be refused.

Case study 2

A serving Foreign and Commonwealth Officer was given a small fine some years ago for a non-custodial offence. He thought once the fine had been paid, that would be the end of the issue but it was not. When applying for indefinite leave to remain in the UK, the Home Office wrote him a letter telling him his conviction would prevent him from being accepted as a British citizen. If deported he will face prison, as in his country of origin he would be identified as a mercenary for having served in the UK armed forces. As a result this man has no choice but to stay in the armed forces for the rest of his life – he fears that if he ever leaves he will be deported. In effect, this small fine has removed this individual's choice as to how he lives his life and what he does for a career.

Case study 3

A former serviceman, ██████████, received at summary hearing in 2007 a punishment of stoppage of pay for a total amount of £40 due to scraping a door with a vacuum cleaner. This incident was wrongly placed on the Police National Computer as a conviction, given that the requirement to place convictions as a result of summary hearing on the Police National Computer did not come into force until 2009 (the changes were part of the Armed Forces Act 2006 but the legislation did not come into effect until 2009).

Case study 4

A serving Foreign and Commonwealth Officer received a fine in a summary hearing from his commanding officer for punching another soldier. The serviceman's account was that the other individual was being racist. The serviceman had initially opted for redundancy but when the ██████████ case came into the public domain his commanding officer advised him to sign back on as the commanding officer knew that the conviction would have a



seriously detrimental impact on the officer's life (in the same way as it had done with Isimeli Baleiwai) if he were to leave the armed forces.

Case study 5

A former Foreign and Commonwealth Officer was charged with assault by civilian police and received an admonishment (Scottish equivalent of an absolute discharge). The individual was charged with bringing the regiment into disrepute. He was fined and demoted as a result of a summary hearing. At a later date the individual was denied citizenship. The UBKA letter stated that because he did not declare his conviction (even though it was actually spent under the Rehabilitation of Offenders Act in England and Wales) he could not reapply for another 10 years. After representations were made, the UKBA acknowledged their lack of understanding in relation to the rehabilitation period for admonishment, as it had been interpreted wrongly that the individual had received an admonition in military proceedings (see Nacro's briefing for more on this). The individual presented a clear basic criminal record check as evidence and has now received voluntary redundancy and secured his citizenship. He has a British wife and child.

Case study 6

Former serviceman [REDACTED] was in Canada on exercise when he received a speeding fine. As he did not pay it on time, the fixed penalty notice became a criminal conviction by default and was issued as a court order, which he paid on his return from exercise. This conviction led to his request for indefinite leave to remain being refused and he was subsequently unable to work. The case was recently resolved in his favour at the High Court.