

Written Evidence submitted by Bolt Burdon Kemp

Women in the armed forces: from recruitment to civilian life

Who we are

Bolt Burdon Kemp is a firm of solicitors that specialise in acting for those who have suffered serious injury as a result of negligence and abuse. Our Military Group acts exclusively for members of the British Armed Forces, veterans and their families. The firm is based in London, but represents clients nationwide. We are recognised as leading specialists in this field of law. The writer, Ahmed Al-Nahhas is the head of the firm's Military Group and an experienced Solicitor Advocate, who has previously given evidence to Parliament as a subject-matter expert.

Terms of reference

With reference to the remit of this Inquiry, we hope to assist by addressing the following issues:

- *Incidences where female serving personnel are the victims of sexual offences.*
- *Overrepresentation in the complaints system.*
- *Female personnel are more likely to make bullying and harassment complaints.*

In short, our evidence should provide the Committee with an indication of both the scale and nature of the bullying, harassment and discrimination that occurs against women in our armed forces.

Our evidence: our clients

Every year our firm receives hundreds of enquiries from service personnel and veterans in respect of incidents that have occurred during their service. These cases vary from negligent acts during training, deployment and/or in the workplace, others relate to issues of clinical negligence in the military sphere. A significant and consistent proportion of these enquiries relate to claims for bullying, harassment and discrimination brought by servicewomen.

Worryingly, enquiries of this nature have been on the increase for a number of years and the Committee will be well aware of:

- (i) the overrepresentation of women in the Service complaints process;¹
- (ii) the increased likelihood that such complaints relate to bullying, harassment and/or discrimination;²
- (iii) the significant proportion of servicewomen who have reported experiences of unwanted sexual behaviour during their service;³
- (iv) the reluctance of service personnel to come forward and make these complaints,⁴ because either they do not believe anything would be done,⁵ or because they are afraid it would adversely affect their career;⁶
- (v) of those who do raise a Service complaint, well over half are disappointed in either the time it takes, being kept informed of progress and/or the outcome;⁷ and
- (vi) the fact that this state of affairs has largely remained consistent for several years, at the very least.

Any one of these observations is enough to cause concern, the combination should cause alarm.

We canvassed a number of our clients and asked them if they would be willing to share their stories. A few were willing to come forward. The following case studies are all taken from either current or former clients. Their names and ranks have all been changed to protect their identities:

1. Vicky, Able Seaman, Royal Navy

¹ Servicewomen make up 12% of personnel but 23% of admissible complaints, SCOAF Annual Report 2019.

² 39% of Service complaints raised by servicewomen related to bullying, harassment or discrimination SCOAF Annual Report 2019.

³ 20% of servicewomen reported bullying, harassment or discrimination in the last twelve months, AFCAS 2020, see also the Army specific Sexual Harassment Report 2018 "Speak Out".

⁴ 90% of those who have suffered bullying, harassment or discrimination do not make a Service Complaint, AFCAS 2020

⁵ 60% of those canvassed in the AFCAS 2020

⁶ 52% of those canvassed in the AFCAS 2020

⁷ AFCAS 2020

Vicky was sexually harassed by several male colleagues during her training. The harassment began with inappropriate sexist remarks and culminated in a physical assault. To make matters worse, having raised complaints with her chain of command on several occasions, no steps were taken to protect her from harm or support her. As a result of the prolonged harassment and lack of support, she suffered psychiatric injury and was forced to raise a formal Service complaint. Her Service complaint was ultimately successful, but protracted. Unfortunately, by that stage, the damage had been done and she had developed Post-Traumatic Stress Disorder. This led to her medical discharge from the Royal Navy. Her condition remains complex and debilitating. Her anxieties are likely to take considerable time to resolve and she has lost a promising career. The Ministry of Defence never wrote to her to formally report on the steps that were taken to discipline her harassers. Her trust and faith in the Royal Navy was left in tatters, as well as her hopes for serving a lengthy career.

2. Caroline, Lieutenant, Royal Navy

Caroline was sexually harassed by her male superior over the course of two years, which culminated in her being physically assaulted. The situation was compounded by the fact that our client's husband was dying of cancer at the time, a fact that her superior was aware of, yet this did little to deter him from his campaign of harassment. Our client raised a Service complaint, which took two years to conclude, in her favour. The Service complaint was disproportionately lengthy and she received an apology from the Deciding Officer for the unnecessary delay, which had caused her further stress and exacerbated her condition. Despite the Service complaint determining that she had been harassed and ordering her superior to apologise in writing, he did not apologise. She was informed that the Admiralty had written a 'letter of displeasure' to her harasser. Unfortunately, as a result of the harassment and the protracted Service complaint, our client suffered serious psychiatric injury, which prematurely ended her military career.

3. Clara, Private, British Army

Clara has been medically discharged with Post Traumatic Stress Disorder. This was the result of an 18 month campaign of sexual harassment by her male superior, which culminating in a sexual assault. The assault resulted in a criminal conviction. The harassment involved inappropriate comments and texts and being sent or shown explicit photographs and videos. She felt let down by her chain of command during the police

investigation and through the court martial process, namely by being placed in situations where she came into contact with the individual concerned, which could easily have been avoided, and by a general lack of support and/or understanding about what she had been through. She is in the process of undergoing rehabilitation and receiving intensive therapy. She has been unable to return to any sort of employment.

4. Rebecca, Corporal, British Army

Rebecca was manipulated and harassed by her male military psychiatric nurse (CPN). The CPN failed to address her mental health issues and, instead, encouraged and took advantage of an inappropriate sexual relationship with her. This was not only totally unacceptable in the context of a clinician and vulnerable patient, but amounted to emotional abuse and harassment. She developed Post-Traumatic Stress Disorder, anxiety and depression, which resulted in the end of her military career. She is still being treated and undergoing rehabilitation, several years after the harassment ceased. In the meantime, she has lost a promising military career and is unable to find work as a civilian, because of her mental health conditions.

5. Zoe, Leading Hand, Royal Navy

Zoe suffered bullying, harassment and sexual discrimination from her male line manager. Examples of these incidents included inappropriate comments made regarding our client's mental state and her sex, undermining her confidence, micro-managing her, and frequently reprimanding and shouting at her. Her line manager treated servicemen much more favourably. This led to a deterioration in Zoe's mental health, which culminated in her medical discharge. She submitted a Service complaint, only to be met with a counter-complaint made against her by her line manager. Her harasser also initiated a complaint to the Service Police, making numerous and spurious allegations against our client, which worsened her condition further. It took over three years for our client's Service complaint to be determined, primarily in her favour, and her harasser's allegations have been dismissed out of hand. Even then, key evidence was ignored and no real attention was given to the devastating effect that the harassment has had on our client's health and career. As a result, the Service complaint decision failed to provide her with proper redress. Throughout the process she has felt unsupported and isolated. Our client has totally lost her faith and trust in the Royal Navy. She remains unemployed and is going through the process of rehabilitation.

6. Aaliyah, Sergeant, British Army

Aaliyah had a promising career in Military Intelligence. She raised a Service complaint about being bullied and harassed by a male superior, and was subsequently sexually assaulted by another male superior. Worryingly, having raised concerns with her chain of command about the harassment, she was misinformed about her rights and the deadlines to complain; she may have been out of time to bring complaints if she had relied on that advice instead of taking independent advice from solicitors. As a result of what she went through, she lost her faith and confidence in the British Army and decided to terminate her service. She has suffered psychiatrically and has ongoing issues with anxiety. She is still coming to terms with the early end to her military career.

7. Terri, Flight-Lieutenant, RAF Reserves

Terri was bullied and sexually harassed by a male colleague over several months. After making an informal complaint about his actions to her chain of command, she was then victimised for having made the complaint. She was encouraged to engage in mediation by her chain of command, but was forced to abandon these efforts after her harasser made several accusations against her, which were later found to have been fabricated. She then raised a formal Service complaint, as a means of seeking redress and to ensure other servicewomen were not on the receiving end of similar treatment from this individual in the future. The stress of what she went through took its toll and she was diagnosed with depression and Post-Traumatic Stress Disorder. She was unable to return to work and eventually medically discharged. A protracted Service complaint investigation followed by an appeal only made her mental health worse. She is still recovering and unable to work. She had served her country for 25 years, including in Iraq, Bosnia and Kosovo.

8. Sarah, Lance Corporal, British Army

Sarah lost her military career as a result of a sustained campaign of bullying and harassment by a male Officer in her chain of command. There was an internal investigation followed by a three-year Service complaint process, culminating in a further complaint to the Service Complaints Ombudsman for the Armed Forces. The Ombudsman

found failings in the Service complaint investigation process, for which our client received a formal apology from the British Army. The harassment and protracted Service complaint investigation took its toll on our client. Despite seeking help at an early stage for her mental health, she was unable to return to work and was eventually medically discharged due to depression and anxiety.

We welcome the Committee's determination in bringing evidence to light about these issues and its assurances to witnesses by offering complete confidentiality. However, it is informative that despite these assurances several of our clients were unwilling to put forward their evidence and none were willing to provide their stories in full. Many have told us that they associate the Committee with the Ministry of Defence and, as can be demonstrated above, have lost their faith and trust in that organisation. For some, they remain afraid of being identified and harassed further; the military is a small and close-knit community, and rumours spread fast. For others, they are on the road to recovery and want only to look forwards, which is understandable.

We wish to express our thanks to our clients, for sharing their stories and coming forward.

As an aside, and whilst it may sound trite, we should also point out that sexual harassment in the military is not exclusive to women and there are a number of enquiries we have dealt with involving male victims. Such cases are less common, in our experience, but no less disturbing.

Trends

All the cases we deal with come with different facts and chronologies, but we have noticed a number of worrying trends and features, common to many of these cases, and which may have real implications for the issues that the Committee is investigating:

1. A fear of coming forward

As set out above, there is a distinct lack of trust that complaints would be upheld or taken seriously. If the system works, then servicewomen should not be afraid to come forward.

2. A lack of support by the chain of command

In many instances the chain of command has deliberately sought to belittle complaints and/or encouraged complainants to resolve issues informally, even where the issues complained of might amount to a Service and/or criminal offence and should rightly be investigated. In more serious cases, our clients have complained that their chain of command actively sought to undermine their complaints by cajoling witnesses and/or suppressing evidence.

3. A lack of understanding and empathy

Many complain that their chain of command, Assisting Officers and even Harassment Investigating Officers were simply not prepared to deal with the sensitive issues surrounding their complaints and their needs as victims. The quality of questioning by Harassment Investigating officers also varied greatly. Some had clear experience and sensitivity, whilst others lacked patience and/or focused on issues that were irrelevant.

4. Stigma

The vast majority of our clients have complained that, once they raised a complaint, they were treated differently and often less favourably by their colleagues. The culture is geared towards treating complainants as pariahs and whilst this may be understandable in a military context, for example when on deployment and there is a mission to accomplish, such treatment is utterly unnecessary and harmful in the context of sexual harassment.

5. Counter-complaints

It is a common tactic for a harasser, who may be the respondent of a Service complaint, to raise a Service complaint against the complainant and adduce all manner of either fabricated or irrelevant evidence. We have seen numerous counter-complaints which reference the victims' abilities and aptitude as a serviceperson. These counter-complaints are a form of victimisation and are often irrelevant to the issues, but are allowed to

progress regardless, giving room for harassers to muddy the waters, delay and pressurise complainants to withdraw their complaints, all the while causing further stress to them.

6. *Delays, delays, delays*

We will not reiterate here the statistics which are already available to the Committee from the Office of the SCOAF in respect of disproportionate delays in the Service complaints process, save to say that by any standard such delays are inexcusable. In the civilian context, a grievance involving issues of sexual harassment and/or discrimination would be given priority, investigated and concluded within a matter of months. Yet we still see Service complaints taking years to conclude. It is entirely unacceptable. Complainants are often suffering psychiatrically and these delays exacerbate their conditions significantly.

7. *Excuses*

Deciding Officers seem obsessed with finding ‘motive’ and ‘intention’ when determining whether bullying has taken place, when no such requirement in law exists, and for good reason. Evidence is also skewed towards explaining away sexist behaviour, most often as “*office banter*”. Too often we see inexcusable behaviour couched in excuses. This is in direct contrast to guidance provided by the SCOAF to Deciding Officers.

8. *Losing their legal rights*

Many complainants are advised badly by their chain of command, or not advised at all. Complainants are not told that they have a right to bring a civil claim and, whilst on the one-hand it might be understandable that the Ministry of Defence would not wish to actively encourage civil claims, we suggest that it is only fair and necessary to encourage complainants of sexual harassment and/or discrimination to take independent legal advice. This is because, in many instances, a complainant who waits for the Service complaint process to conclude can run the risk of exhausting the time limits for all other legal options.⁸ This does not accord with the principles of the Armed Forces Covenant: the rights of service personnel should be respected and protected.

⁸ For example, a claim for discrimination in the employment tribunal must normally be issued within three months of the last event of discrimination.

9. Inadequate redress

The Service complaints process exists to ensure that service personnel have a redress to wrongs they may have suffered, but even successful complainants that we speak to are left wanting. Regulatory restrictions will mean that they are often never told of the outcome of any administrative or disciplinary action against respondents, even when successful. In respect of financial awards at Service complaint level, these rarely represent their true losses, particularly where a complainant has lost their military career as a result of medical discharge. Often these awards would not even cover the cost of treatment.

10. No award under the Armed Forces Compensation Scheme

Complainants may not be eligible for an award under the AFCS for any psychiatric injury they may have suffered because, more often than not, incidents of bullying and/or harassment will not be deemed “service related” a pre-requisite for eligibility under the scheme.

11. Dissatisfaction and loss of talent

All of our clients mentioned above had their military careers cut short as a result of the harassment they suffered. They are all bright, able, and talented individuals, who chose to serve their country. They all feel let down. The Ministry of Defence should be ashamed of how their careers have ended. It is also a huge waste of public investment. For an organisation that has faced a recruitment crisis, as well as concerns over a lack of diversity, dealing with harassment and discrimination of servicewomen should be a priority.

12. No difference across the Services or ranks

The cases we have seen involve members from all three Services, whether Regular or Reserves, and at all ranks. We do notice greater numbers of complaints generally from

members of the British Army, and we are not sure whether this may relate to the fact that it has the most personnel, or for other reasons. However, our experience does not accord with the findings of the Wigston report,⁹ which intimates that this type of “inappropriate behaviour” is to be found only in a few pockets within the military.

Recommendations

Before we can assess the true nature and extent of sexual harassment and discrimination in our armed forces, we must first have a Service complaints system which is “*efficient, effective and fair*”. Ours is not. This is according to the former SCOAF, who reported as much to Parliament *every year* over the course of her tenure, and made some 35 recommendations.¹⁰ Some of her recommendations are only now starting to be implemented, whilst others have been ignored. We are not aware of any clear commitment given to implement them all, and there is no reason not to.

Our solution is simple: in addition to the recommendations made in the Wigston report, the Ministry of Defence *must* commit to implement the recommendations by the former SCOAF, with a clear timeline to implementation. If it does not, then the new SCOAF must be empowered to make the necessary changes herself, so that servicewomen are protected and provided with a Service complaints system that is worthy of them.

Summary

There is a problem of sexual harassment against women in our armed forces. In our capacity as solicitors, we have dealt with many such cases and continue to do so at a steady rate. We have included some case studies above, which speak volumes. A lot of these cases share trends and features that should cause this Inquiry and the armed forces community great concern.

Until relatively recently, the problem of sexual harassment has not been fully recognised by the Ministry of Defence. It does now acknowledge the problem more readily, and the steps it is taking to implement the recommendations of the Wigston report should be welcomed.¹¹

⁹ The Wigston Review into inappropriate behaviours, published 15 July 2019.

¹⁰ SCOAF Annual Reports 2016 – 2019.

However, the pace of change has been too slow, and the writing has been on the wall for years. If the Ministry of Defence were a private organisation, say a limited or public company, this situation would be scandalous. Shareholders would balk. Directors would be fired. Heads would roll. It cannot hide behind its size as an employer or the complexity of its operations. It is an organisation that is eager to stress that its greatest recourse is its personnel, so it must make this a priority. In fact, all three Services hold themselves to particular standards, enshrined in their ethos, training and way of life. They all share the standard that everyone should be treated fairly and with respect, regardless of their sex. This standard is not being met.

Servicewomen deserve better.

30 January 2021

¹¹ Unacceptable behaviours: progress review 2020, Ministry of Defence, published December 2020.