

MoD compensation plans shutting armed forces personnel and their families out of the Justice System



Ashwati Menon

As it stands combat immunity safeguards against battlefield negligence claims going to court - that is when decisions made on the battlefield result in unnecessary injury or death, the case is settled as a compensation settlement in private.

However, the MoD now proposes to expand this principle beyond the battlefield. The MoD has proposed that in cases of death or injury, instead of those involved having the option to pursue a civil case against the MoD decisions, the amount of compensation given should be made behind closed doors by ministry-appointed officials.

The proposals come as result of soldiers facing lengthy and complex legal court battles to gain compensation such as the families of the deceased soldier's killed in lightly armoured 'snatch' vehicles in Iraq, which took close to a decade to resolve. This case came to define the laws surrounding government obligations to soldiers wounded or killed in active service abroad. Defence Secretary, Sir Michael Fallon has commented that the new proposals would "remove the stress of lengthy legal action" and ensure more money for compensation thus being a "welcome relief for families".

Lawyers across the UK have criticised the proposals arguing that broadening the scope of combat immunity will only narrow legal redress for military personnel and their families.

Delivering a fast and one-off compensation payment isn't fair to the military personnel that suffer lifelong consequences due to negligence. The MoD becomes both the judge and the jury. Opponents of this move condemn

the MoD for having a closed attitude to admitting mistakes - they are now avoiding scrutiny of any type including inspection of equipment failure related injuries and deaths.

Soldiers' families have openly criticized the new proposals as being "appalling" and "cowardly". The grandfather of a soldier killed in Iraq stated that the proposal is disgusting and removed any protection for troops.

Law Society president, Robert Bourns, stated "the Ministry of Defence wants to make it impossible for soldiers and their families to bring claims against it to court when these relate to actions in combat". It is inevitable that cases of this kind will be complex, needing a variety of experts to analyse the case to decipher what went wrong and where responsibility lies. It is important that a number of independent actors are involved in order to ensure that a fair conclusion is reached. Clients will often be traumatised and vulnerable, expecting them to navigate the process without legal representation leaves them open to mistreatment and an unfair outcome.

Soldiers should not be excluded from bringing claims against the MoD as this will remove the level of independent scrutiny which ensures the MoD are accountable when mistakes are made that result in injury or death. Instead, they should be given a choice of how they want to proceed; either compensation provided by this new scheme or pursuing a civil case against the MoD represented by a specialist independent legal team.

Author, Ashwati Menon is a Caseworker in Duncan Lewis' Clinical Negligence Department. She is experienced in assisting on numerous clinical negligence claims, including, but not limited to orthopaedic claims, gastroenterology and cardiac related injuries.



Legal 500
Family Law
Ranked 2022



Over
700 staff
in hand



Offices
all across
London



Duncan Lewis
Solicitors

Legal Aid Available

Nationwide Number: 0333 772 0609, www.duncanlewis.com,
contact@duncanlewis.com. Please visit our website for the
full details of our offices across the UK.