THE FOG OF LAW
Fog of Law

Lawyers on the battlefield!
Combat immunity.
Rules of engagement.
Geneva convention – Crafted to balance the human rights concerns against brutalities of war.
Human Rights Legislation – goes too far, shooting someone in war could end in a law suit prosecution.
What Next?

- Individual prosecutions of serving personnel and those who have left regarding historic incident sometimes decades ago of which they have already been cleared.

- The Historic Iraqi Investigation Team (IHAT) and now Afghanistan in play as well.

- Why is it happening, why is nothing been done?
Hilary Meredith Solicitors Ltd

- Specialist Military legal unit
- Offices in Wilmslow Cheshire and Inner Temple, London
- Chair of the Royal British Legion Solicitors Group
- Chair of Headley Court Solicitors Group
- Steering Committee Member Chester University Westminster Centre for Veteran Affairs.
- Assisting members of the Armed Forces and their family's for over 27 years.
What happened 27 years ago?

Certain members of the then government felt that the law should change. There was reasoning behind this.

It was noted there was a disparity between civilians and military working along side each other in her Majesty’s dock yards refitting ships.
Green v MOD
Combat Immunity
Combat Immunity

- Mulcahey V MOD
- Iraq and Afghanistan
- Training issues, - US Air strike
- Lack of or incorrect equipment (Procurement issues) Snatch and Vector cases
- NIHL
The Aitken Report

An Investigation into Cases of Deliberate Abuse and Unlawful Killing in Iraq in 2003 and 2004

25 January 2008
Aitken Report

- Considered the Military's investigations into alleged abuse and unlawful killing of Iraqi civilians by the British Military between 2003 and 2004.

- 120,000 served in Iraq, 229 cases of alleged criminal activity investigated by RMP, 20 dealt with by Court Martial or Chain of Command.

- 6 cases were found not to have been committed “in the heat of battle” or whilst under threat to safety.
Aitken Report

- Also highlighted problems;
- We were under resourced and thinly spread on the ground.
- We had underestimated the lack of infrastructure;
- No police force
- No judicial system
- No prisons
- No law and order.
- The result –
- We had to detain large numbers of suspected criminal - arrest, detain and investigate.
Aitken Report

- Five Techniques’:
  - Wall standing;
  - Hooding;
  - Subjection to noise;
  - Sleep deprivation;
  - Deprivation of food and drink.
Aitken Report

- As a clear statement of Government intent;

- In 1972 the then Prime Minister, Mr Heath, said in the House of Commons that “…the Government...have decided that the techniques...will not be used in future as an aid to interrogation... The statement that I have made covers all future circumstances.”

Five Techniques

- Joint Intelligence Committee –

- By 2003, (Iraq,) the five techniques had been written out of all military directives which only required prisoners to be treated in line with international law.

- “Determining exactly how and when specific direction in 1972 came to be lost in 2003 would have to be a matter for separate investigation.”

- Systematic and procedural failings at a corporate level?
The CO of the Queen's Lancashire Brigade told the inquiry he did not consider hooding inhumane.
• Serdar Mohammad v MOD
• Terrorist and bomb maker - convicted for 10 years by Afghan judiciary
• Suing MOD for wrongful detention
• Detention when at War
• Detention when Peace making
• ISAF operating standards - 96 days
• Nov 2009 - adopted as national policy 110 days
• Breach of Human rights
• Smith v MOD
• HRA Claim against MOD on foreign soil - not British, outside of Europe (Camp Bastion?)
• Al Skeini v MOD decided 2011 appealed upheld by CoA 2015
Brecon Beacons Case
Corporate responsibility for systematic and procedural failings??
Corporate Responsibility

- BEYOND ENDURANCE – Select Defence Committee
- CORPORATE HOMECIDE ACT - recommendation
- IHAT – Baha Musa case – arrest, detention and interrogation?
IHAT

- Set up by the MOD – using military police and private organisation recruited by “Red Snapper” to investigate allegations.
- Of the original 3368 victim complaints 1,700 have so far been rejected.
- Many cases passed by 2 law firms representing Iraqi civilians in compensation claims.
- The right to a framework of support
- Afghanistan - what the Government does now will affect all future operations
The MOD funds the IHAT, consistent with its obligations to ensure that allegations are investigated in compliance with the European Convention of Human Rights (ECHR).

IHAT is independent of the military chain of command for the purposes of its Investigations which are due to be complete by the end of 2019.
The right to a framework of help and support for serving and ex-military personnel

- To include;
- Chain of Command, welfare and medical support.
- The right to independent legal advice
- The right for funding for such advice
- The rights to a fair trial
- Time limits be imposed on these cases
- The rights to a private life
- The rights promised to military personnel under the military covenant be upheld.
The Government Response -

- Plan for UK military to opt out of European Convention on Human Rights

- Human Rights on the battlefield – derogation of Art2 (Life) and 5 (liberty)
Prince Harry 'launches furious attack on 'joke' investigation team hounding British soldiers over war crimes'

Prince said to be 'deeply concerned' about accused soldiers' ordeals

He 'views investigation into war crimes in Iraq and Afghanistan as a joke'

Harry served two tours of duty in Afghanistan in 2008 and 2012

He wants a Department of Veterans Affairs set up to help soldiers' cases'
Prince Harry
Government Response

- PM and defence secretary will announce idea for future conflicts to curb an ‘industry of vexatious claims’ against PIL – Legal Aid contract has been withdrawn amid allegations of breaches in the contract.

- The firm went out of business at the end of August, SRA investigation held in private.

- Still no framework of support for those facing Judicial Process – watch this space?!
Legal challenge for IHAT Iraq abuse troops “hung out to dry”
Brit troops accused of war crimes 'not entitled to legal aid'

SOLDIERS accused of war crimes during the Iraq War will have to foot the cost of their legal bills, reports claim.

A total of 250 soldiers have been accused of 1,500 incidents of abuse, murder and torture in a massive £57 million probe by the Iraq Historic Allegations Team (IHAT).

The Ministry of Defence is footing the multi-million pound bill for legal fees of Iraqi and Afghan accusers, but it is not offering funds to British soldiers, says the Telegraph.

Politicians accused of war crimes get legal aid from the Government to cover their defence bills but troops will have to cover their own costs.
“The Government is quite happy to send troops overseas to war, but then quite happy to prosecute the troops who are just doing their jobs”

Soldiers who have disposable income of more than £124,753-a-year will have to pay part of their legal bills themselves.

And troops who have a disposable income of more than £37,500 will have to pay their legal bills in full.

Nigel Ketebull, who runs the UK Veterans One Voice campaign group, said: “The Government is quite happy to send troops overseas to war, but then quite happy to prosecute the troops who are just doing their jobs.

“Legal costs should be paid by the Ministry of Defence. It is outrageous and penny-pinching that they don’t.”

The news comes a day after it was made public that 200 soldiers have hired a law firm to sue the MoD because they don’t feel they have been supported during the Iraq war investigation.
Sort it out! May calls in top brass to tell them hounding of our troops must end as Iraq hero Colonel Tim Collins warns our boys will need a union to fight human rights lawyers

- May met Air Force, Navy, and Army heads in Ministry of Defence summit
- She demanded an end to human rights lawyers hounding British troops
- Colonel Tim Collins said situation is so bad soldiers may need trade union
- Comes as it emerged more than 1,000 cases to be dismissed after the collapse of a single law firm

By JASON GROVES DEPUTY POLITICAL EDITOR FOR THE DAILY MAIL

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Hopefully Justice?

- Notice of Proceeding's served on the Secretary of State for Defence that we will Judicial Review the MOD to put in place a framework of support.