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Ms L Mowday
Via whatdotheyknow.com

Our Reference: Army/Sec/03/12

Date: 28 September 2012

Dear Ms Mowday

FOI REQUESTS – VARIOUS

On 9 and 10 September 2012 you raised 20 separate requests for information under the Freedom of Information Act 2000. You then raised an additional 10 questions on 26 September.

Under the Appropriate Limit and Fees Regulations, public authorities are able to aggregate two or more requests if they are received within 60 working days and "relate, to any extent, to the same or similar information". In this case, the requests on the enclosed table (a total of 22) relate to the Armed Forces Act, and related conduct of the Service Justice System and military discipline, and they were all received within a period of sixty working days. These requests have therefore been aggregated.

In line with the regulations, the estimated cost of complying with any of the requests is taken to be the total costs of complying with all of them. I can confirm that we may hold some information on the subjects you have requested. However, it has been assessed that the costs for which we are permitted to charge in providing this information will exceed the appropriate limit. This appropriate limit is specified in regulations and for central government is set at £600. This represents the estimated cost of one person spending three and a half working days in determining whether the Department holds the information, and locating, retrieving and extracting the information. Under the terms of Section 12 of the FOI Act, this means that we are not obliged to comply with your requests.

It may help if I explain that in reaching this assessment we have been required to take into account that you have made a substantial number of individual questions, many of which would exceed the appropriate cost limit in their own right. For example, in a number of the questions you have requested 'all' information held about an issue over a wide timescale. The volume of data involved is immense since many of the issues relate to Defence policies and incidents, would involve Tri-Service as well as Head Office engagement. In addition, there has been substantial reorganisation across the Department since the early 1990s, which will have an effect on the time it will take to locate material. It is estimated that to collect, collate and examine all of these papers, including retrieving boxed material from archives, would be excessive. The MOD may be able to provide information if you reduce or refine your request to bring the cost of compliance under the limit. For example, if you were to ask for the final copies of a specific paper, or for minutes of a type of meeting within a specified timeframe. It may also help you to narrow the timescale of your requests. Unfortunately, depending on your question, I still cannot guarantee that we will be able to positively respond.

In addition, while Section 1 of the Freedom of Information Act gives an applicant the right to access recorded information held by public authorities at the time the request is made, it does not require public authorities to answer questions, provide explanations or give opinions, unless this is recorded information held. Many of your requests fall into this category.

You should also note that, while they have not been engaged, a number of exemptions could have been applied to your individual requests. These include information that could be withheld under Section 42 as it would be legally privileged, Section 35 as it pertains to the development of Government policy and Section 36 (Prejudice to effective conduct of public affairs). In particular, at least two of your requests relate to the Service Complaint process. To be helpful I should explain statistical information relating to the performance of the process is provided in the Service Complaint Commissioner's Annual Reports which are available on her website at: <http://armedforcescomplaints.independent.gov.uk/>. Section 21 (Information accessible to the applicant by other means) would therefore have been applicable for information to 2011; I understand that 2012 data will be published in March, Section 22 (Information intended for future publication) would have applied to this.

You may find it helpful to know that the Information Commissioner's Office (ICO) publishes guidance on how to make requests for information under the Freedom of Information Act in the ICO Charter for Responsible Freedom of Information Requests. This is available on the ICO website at the following address: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/its_public_information_foi%20charter_final.pdf

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Head of Corporate Information, 2nd Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.gov.uk>.

Army Secretariat

Enclosure:

Table of Questions

AGGREGATED QUESTIONS: ARMED FORCES ACT AND THE CONDUCT OF THE SERVICE JUSTICE SYSTEM (MILITARY DISCIPLINE)

Serial	FOI Case Reference	Applicant's Reference	Details
(a)	(b)	(c)	(d)
1	L Mowday 11-09-2012-105551-004	LSM/FOI/120909/12	<p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>During Operation BANNER, the Armed Forces' operation in Northern Ireland from August 1969 to July 2007:</p> <ol style="list-style-type: none"> 1. How many people were killed by members of the Armed Forces, and how many of these were under the age of 18? 2. In how many cases were members of the Armed Forces convicted of manslaughter? 3. In how many cases were members of the Armed Forces convicted of murder? 4. In cases where members of the Armed Forces were convicted of manslaughter, on how many occasions were those personnel permitted to continue serving in the Armed Forces following their release from prison? 5. In cases where members of the Armed Forces were convicted of murder, on how many occasions were those personnel permitted to continue serving in the Armed Forces following their release from prison? 6. In all cases where members of the Armed Forces were convicted of manslaughter or murder following killings in Northern Ireland, and were permitted to continue serving in the Armed Forces following their release from prison, please provide minutes of the Army Board. meetings at which the decision was taken to permit them to rejoin the Army and continue serving.
2	L Mowday 11-09-2012-110118-005	LSM/FOI/120909/13	<p>Please provide all copies of Army Legal Services Journal (produced by Directorate Army Legal Services), from January 2000 to August 2012.</p>
3	L Mowday 11-09-2012-110730-006	LSM/FOI/120909/14	<p>Until the Armed Forces Act 1996, the Army had the power to impose a form of 'house arrest' on military personnel, which effectively imprisoned them on camp. Until the 1950's this was called 'Confined to Barracks', or 'CB' in service jargon. From the 1950's until 1997 this was called Restrictions Of Privileges (ROPs). This punishment was only awarded following a formal judicial process, either a court martial, or summary hearing, a judicial hearing without lawyers, internal to a battalion or regiment. The Armed Forces Act 1996 significantly amended this form of punishment (ROPs), removing that aspect of it which confined personnel to barracks, i.e. the 'house arrest' provision. Modern ROPs require service personnel to undertake specified work, and attend parades at specified times.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <ol style="list-style-type: none"> 1. Please provide all information from the drafting of the Armed Forces Act 1996 regarding the evolution of the punishment of Restriction of Privileges, in to a format whereby it no longer entailed confinement to barracks. 2. During the Football World Cup in South Africa, 11 June to 11 July 2010, Commander 20th Armoured Brigade placed a 'curfew' on soldiers at Paderborn/Sennelager, confining them to camp during certain weekends. Please release all documents held by both HQ 20 Armd Bde and HQ UK Support Command (Germany) regarding both this 'curfew' and any other imposed on personnel in any regiment during the period

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(a)	(b)	(c)	(d)
			2001-2011.
			3. What powers do Army commanders have to impose 'pre-emptive collective punishment', for example, by banning soldiers from leaving barracks in case a small minority misbehave?
			4. Under what powers was the so-called 'curfew' referred to above issued, and enforced?
			5. For each of the years 2001-2011, please provide details of the overall numbers of British Forces based in Germany, and the number of Royal Military Police (RMP) personnel based in Germany. If releasable, for each year, please also indicate the average proportion of the latter deployed on operations. Please release all internal communications held by HQ UK Support Command (Germany), HQ 1st (UK) Armoured Division, Regimental HQ RMP, and the RMP career managers at the Army Personnel Centre, Glasgow, regarding requests for additional RMP manpower in Germany.
4	L Mowday 11-09-2012-113539-009	LSM/FOI/120909/17	<p>In the aftermath of the deaths of four recruits at Princess Royal Barracks, Deepcut, a number of reviews were carried out which severely criticised the British Army concerning its treatment of service personnel. Armed Forces Continuous Attitude Surveys (AFCAS) consistently indicate that actual levels of bullying are higher than reported levels (See for example Hansard, HC (2004-05) 63-II, pages 296-301 and HC (2004-05) 63-I, paras 267-274 for discussion on levels of bullying at training establishments), and that Service personnel do not report complaints because they do not believe they will be resolved: in December the 2004-April 2005 Armed Forces Continuous Attitude Survey, 35% of respondents chose not to complain of unfair treatment, discrimination, harassment or bullying because they 'did not believe anything would be done...'. The same percentage of recipients did not complain because they 'believed such a step would adversely affect... their career' (Select Committee on Armed Forces, First Report, dated 26 Apr 06, Section 6 - Redress of complaints and Service inquiries). The Armed Forces Act 2006 introduced a Service Complaints system. This was considerably weaker than the ombudsman system which Nicholas Blake QC, who investigated the Deepcut deaths, recommended. The current system comprises investigations of the Army, by the Army and for the Army.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>For each of the three services, and for each of the years 2008-2012 (for 2012, please adopt whatever methodology is easiest for the department: i.e. Jan-Jun only, entire year to date, etc), please list:</p> <p>a. The number of service complaints submitted, broken down in to those made under JSP 831 alone, or under JSPs 831 and 736 (i.e. bullying and harassment).</p> <p>b. The number of service complaints resolved, broken down in to those which were upheld and those which were not.</p> <p>c. The number of service complaints escalated to level 2, broken down in to those which were upheld and those which were not.</p>

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(a)	(b)	(c)	(d)
			<p>d. The number of service complaints escalated to a service complaintsâ€™™ panel, broken down in to those which were upheld and those which were not.</p> <p>e. The average time taken from submission of a complaint until it is decided.</p> <p>f. All information not already encompassed by (a)-(e) held by MOD, Army HQ, Navy Command, and HQ Air regarding the time taken for individual complaints to be resolved.</p>
5	L Mowday 11-09-2012-112441-007	LSM/FOI/120909/15	<p>Background. Article 9 of the European Convention on Human Rights provides a right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>a. What rules are there in Queen's Regulations regarding religion, and are these compatible with Article 9 of the ECHR?</p> <p>b. Do service personnel have the right to freedom of thought, conscience and religion?</p> <p>c. Are Commanding Officers permitted to order subordinates to attend church services?</p> <p>d. Are Commanding Officers permitted to order subordinates to attend church services, under the expedient of designating such an attendance 'parade'?</p> <p>e. If 'no' to (c) or (d), would the use of military command authority (i.e. issuing orders) to order personnel to attend church be a breach of the service personnel's Article 9 rights?</p> <p>f. If 'no' to (c) or (d), would the use of military command authority (i.e. issuing orders) to order personnel to attend church lead to action being against the commander issuing the improper order(s)?</p>
6	L Mowday 11-09-2012-113055-008	LSM/FOI/120909/16	<p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide copies of all training material relating to Human Rights, including but not exclusive to 'The right to a fair trial', 'the right to a private life', and 'the right to freedom of association', delivered to Army Commanding Officers (COs) on the Commanding Officers' (Designate) course, which COs undertake prior to assuming command of their units.</p> <p>Please ask HQ Air and HQ Navy Command to provide the equivalent information, mutatis mutandis (e.g. from whatever training courses their station/ship/unit commanders receive prior to assuming command) of their units.</p>
7	L Mowday 11-09-2012-114015-010	LSM/FOI/120909/18	<p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide all policy documentation or guidelines for commanders held by MOD, and Army HQ in Andover, regarding the application and impact of Article 8 - the right to a private life - on the MOD and service personnel.</p>

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			Please ensure that you release all appropriate material, including policy analyses, from MOD Main Building, Army HQ, PS2(A), the Army' disciplinary branch, HQ Navy Command, Office of the Naval Secretary, and HQ Air, Air Personnel Casework, the RAF's equivalent.
8	L Mowday 11-09-2012-114320-011	LSM/FOI/120909/19	<p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide all information held by the MOD, regarding the application and impact of Article 6 – a 'fair trial'– on the MOD and service personnel. Please provide all information held by the MOD, including Army HQ, HQ Navy Command and HQ Air regarding the application and impact of Article 6 - fair trial - on the MOD and service personnel.</p> <p>Please ensure that you release all appropriate material, including policy analyses, from MOD Main Building, Army HQ, PS2(A), the Army's disciplinary branch, HQ Navy Command, Office of the Naval Secretary, and HQ Air, Air Personnel Casework, the RAF's equivalent.</p>
9	(L Mowday 11-09-2012-115243-012	LSM/FOI/120909/20	<p>The Advisory branch of Army Legal Services is usually the sole source of legal advice to the Army's chain of command, when dealing with service personnel issues such as bullying, victimisation, harassment, sexual harassment and assault. In-house legal practice presents special challenges with regard to professionalism. Every lawyer owes his clients the sometimes-conflicting duties of loyalty and professional independence, but that conflict is exacerbated in the in-house context, where exercising independent judgment and maintaining objectivity are more difficult, and even greater loyalty is demanded by the employer. The lawyer's economic well-being depends on continued good relations with a single employer. In the military, in-house lawyers may be torn by the potential for conflicts between the interests of the military chain of command and the interests of service personnel. In other words, maintaining high professional standards can conflict with career objectives. A number of attributes of the job potentially foster neglect, or even disregard, of professional obligations. This is particularly true in the Armed Forces where, for example, Army Legal Services have in the past told their officers that they are 'Army Officers first; lawyers second'. This is particularly the case when performance reviews and appraisal reports are written by non-lawyers, who may not recognize, understand or share the lawyer's ethical obligations. For example, Army Legal Services officers' appraisal reports are routinely written by their superiors in the mainstream Army. These appraisal reports are the means by which officers' careers, assignments, promotions, and 'contract extensions' are determined. For example, as Channel 4 News reported in Oct 11:</p> <p>'Top army lawyer slams MoD over human rights abuses. The army's top lawyer during the Iraq war tells Channel 4 News his superiors blocked him when he tried to make British forces treat prisoners in a lawful way... [report includes distressing video of abuse of Iraqi civilians by British troops – initially covered up by the British Army] Shami Chakrabarti of Liberty describes him as "a human rights hero and a military hero as well. A man of principle and a credit to both the legal profession and the corps of officers in the British Army." One imagines that Lt Col Nicholas Mercer's former superiors in the Ministry of Defence might choose different words. Lt Col Mercer was the commander legal of the British land forces that invaded Iraq at the start of the</p>

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			<p>war in 2003. He was, in other words, the army's top lawyer in Iraq. A successful and well-regarded career officer, it was his job to make sure British troops stayed within the law. But Lt Col Mercer's efforts to do that job were to cost him his dear. And in an exclusive interview with Channel 4 News he describes how he was blocked, harassed and mocked by his superiors in the MoD as he tried to make sure British forces treated prisoners in a lawful and humane way had the procedures he proposed been implemented, it is likely that innocent Iraqi hotel worker Baha Mousa - who died after 36 hours of abuse and beating at the hands of British soldiers - would still be alive. Had he been listened to, Britain would have saved tens of millions of pounds paid out in compensation and legal fees. And - many argue - had his professional advice been taken, Britain's reputation would not have been tarnished by the allegations of torture and mistreatment which continue to surround operations in Iraq and have tarnished the UK's reputation around the world. So why did this happen? Mercer argues that the root cause is what he calls an attitude of "moral ambivalence" about Britain's human rights obligations which goes right to the top of the MoD.'</p> <p>Source: http://www.channel4.com/news/top-army-lawyer-slams-mod-over-human-rights-abuses</p> <p>Finally, the risk of sanction, disciplinary action or malpractice liability is comparatively low for lawyers working for the military as opposed to their privately-employed counterparts who are more closely scrutinised by the Solicitor's Regulatory Authority and Bar Standards Board.</p> <p>Army Legal Services officers' responsibilities are primarily towards their single employer, the British Army. Not only, as the unfortunate Lt Col Mercer found out, does that expose honest personnel to their employer's wrath, it can inculcate a sense of impunity where personnel are accused of, for example, negligence or assault, may be treated with undue leniency, at the expense of victims. For example, Dr Freddy Patel was employed by the Metropolitan Police for many years until the death of Ian Tomlinson brought to light his incompetence (Source: http://www.dailymail.co.uk/news/article-2191525/Ian-Tomlinson-Dishonest-G20-pathologist-struck-botched-post-mortem-contained-68-errors.html).</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>a. Please provide a copy of the 2006 Army Legal Service Study, ['The Mason Report'], dated November 2006.</p> <p>b. Please provide all documentation regarding possible options for greater Army Legal Services independence from the Army chain of command, including but not exclusive to analyses conducted in the aftermath of the deaths of young recruits at Deepcut, the killings by Parachute Regiment personnel of joyriders in Kosovo, and the killing of Baha Mousa and allegations regarding the killing of multiple Iraqi prisoners in the aftermath of the so-called "Danny Boy incident", and alternative models for provision of legal advice to the Army, such as a lawyers being seconded from the Government Legal Service.</p> <p>Please include, where held, any comparative examples of military legal provision in other countries.</p>

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(a)	(b)	(c)	(d)
10	L Mowday 10-09-2012-153429-016	NIL	<p>Under the Armed Forces Acts 2006 and 2011, Commanding Officers can conduct 'summary hearings' to decide on criminal charges against their subordinates. Subordinates have the right to elect for court martial, but most appear not to do so. Subordinates may be geographically isolated and unable to see a solicitor, let alone pay for legal advice. The only source of advice provided to subordinates is an Assisting Officer who usually works for the Commanding Officer (who is in effect both the prosecutor and the judge). A conviction by a Commanding Officer is identical in its effects to that of conviction by a normal criminal court: fines, imprisonment, and a criminal record which may, for example, block soldiers from receiving British citizenship. For example, as Channel 4 News reported on, inter alia, 26 Jul12, 'Under current rules Foreign and Commonwealth troops can claim British citizenship after four years of military service. But a new law, which appears to be increasingly used against foreign soldiers who have been disciplined at commanding officer level, is leaving them without basic rights or status. Foreign and Commonwealth soldiers who are dealt with summarily for minor charges while serving are finding that when they leave the Armed Forces those misdemeanours are being treated as civil crimes. Having a criminal record then precludes them from getting citizenship or legal right to remain in the UK. Once identified as "illegals" they become subject to deportation.' As one soldier in that report stated, "They sent me back while my scars were still open. I was in the Army you know, so whatever they say, you will follow. I don't really complain a lot. I just do it." Private Epeli 'Pex' Uluilakeba' (Source: http://www.channel4.com/news/disciplined-fc-soldiers-should-have-british-citizenship)</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>a. What legal advice is provided at public cost to subordinates being charged with an offence under the summary hearing system?</p> <p>b. What mandatory training is provided to Assisting Officers, recognising that they are usually the sole source of advice provided by the Army for subordinates being charged with an offence under the summary hearing system?</p> <p>c. What guarantees are Assisting Officers given that they will not be penalised for acting in accordance with the law, and in the interests of justice and their consciences, even if so doing inconveniences the chain of command, and that their actions and decisions when acting as Assisting Officers will not be used in appraisal reports and promotion recommendations? (In other words, similar to the so-called "Morris direction" given to board members in courts martial - following Morris v UK [2002] ECHR 162 (26 Feb 02)).</p> <p>d. How many summary hearings (at all levels: sub-unit, unit and formation) were conducted in each of the years 2000-2011? For each year, please break down the number of hearings by service, and rank range (Army ranks listed for ease): Junior Non-Commissioned Officers (Pte-Cpl), Senior Non-Commissioned Officers (Sgt-WO1), Junior Officers (2Lt-Capt), Field Officers (defined for these purposes as Maj-Col), and General Officers (defined for these purposes as Brig-Gen).</p>

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(a)	(b)	(c)	(d)
			<p>1) For each year, and in each rank range, how many defendants pled 'Not Guilty', and how many pled 'Guilty'?</p> <p>2) For each year, and in each rank range, of those defendants who pled 'Not Guilty', how many were convicted?</p> <p>3) For each year, and in each rank range, of those defendants who pled 'Not Guilty', and were convicted, how many subsequently appealed to the Summary Appeals Court?</p> <p>4) For each year, and in each rank range, of those defendants who pled 'Not Guilty', were convicted, and subsequently appealed to the Summary Appeals Court, how many were acquitted, or had their sentence reduced (please articulate each category separately)?</p>
11	L Mowday 10-09-2012-155550-021	LSM/FOI/120909/06	<p>During the development of the Armed Forces Act 2006, the MOD apparently considered removing the powers of legally-untrained and legally-unqualified military Commanding Officers to conduct criminal judicial proceedings and to imprison (or acquit) their subordinates, in lieu of moving all judicial powers to legally-qualified, independent and impartial judges, such as judge advocates who preside over courts martial. Instead, a decision was made to retain these powers, but unify and equalise the powers of RN, Army and RAF commanders.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide copies of all MOD documentation which analyses or otherwise refers to the possibility of moving away from the summary hearing system, for example to a system of legally-qualified 'military magistrates', or any other system removing judicial powers from the mainstream Army. This includes, but is not exclusive to, all policy analyses conducted by, and alternative models considered by, the Armed Forces Bill teams who drafted the Armed Forces Acts 2006 and 2011</p>
12	L Mowday 10-09-2012-153846-017	LSM/FOI/120909/05	<p>Modern courts martial provide an independent and impartial tribunal the same as civilian criminal courts - a "fair trial" in plain English. The MOD was forced to radically revise its procedures consequent to losing many court attempts, at taxpayers expense, to preserve its previous system (for example, Findlay v UK (1996) 21 E.H.R.R. CD7 (25 February 1997), Coyne v UK [1997] ECHR 73 (25 September 1997), Smith and Ford v The UK [1999] ECHR 79 (29 Sep 1999), Hood v UK (2000) 29 E.H.R.R. 365 (18 February 1999), Cable v UK (2000) 30 E.H.R.R. 1032 (18 February 1999), Moore v UK (2000) 29 E.H.R.R. 728 (29 September 1999), Morris v UK [2002] ECHR 162 (26 February 2002), Grieves v UK [2003] ECHR 683 (16 December 2003), Thompson v UK (2005) 40 E.H.R.R. 11 (15 June 2004), Martin v UK (2007) 44 E.H.R.R. 31 (24 October 2006).) Further to s1(1) of the Freedom of Information Act 2000:</p> <p>a. What legal advice is provided at public cost to subordinates being charged with an offence under the courts martial system?</p>

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(a)	(b)	(c)	(d)
			<p>b. How many courts martial were conducted in each of the years 2000-2011? For each year, please break down the number of hearings by service, and rank range (Army ranks listed for ease): Junior Non-Commissioned Officers (Pte-Cpl), Senior Non-Commissioned Officers (Sgt-WO1), Junior Officers (2Lt-Capt), Field Officers (Maj-Col), and General Officers (defined for these purposes as Brig-Gen).</p> <p>(1) For each year, and in each rank range, how many defendants pled 'Not Guilty', and how many pled 'Guilty'?</p> <p>(2) For each year, and in each rank range, of those defendants who pled 'Not Guilty', how many were convicted?</p> <p>(3) For each year, and in each rank range, of those defendants who pled 'Not Guilty', and were convicted, how many subsequently appealed to the Court Martial Appeal Court - i.e. the Court of Appeal (Criminal Division)?</p> <p>(4) For each year, and in each rank range, of those defendants who pled 'Not Guilty', were convicted, and subsequently appealed to the Court Martial Appeal Court - i.e. the Court of Appeal (Criminal Division), how many were acquitted, or had their sentence reduced (please articulate each category separately, and provide the case name and neutral citation references)?</p>
13	L Mowday 10-09-2012-152355-014	NIL	<p>There is no organisation with independent and impartial oversight of the Royal Military Police (RMP), empowered to investigate individual cases of alleged misconduct (RAF Police and RN Police also come under MOD control). For Home Office police forces this function is provided by the Independent Police Complaints Commission (IPCC). This lack of oversight is despite criticisms of: resourcing, influence by the mainstream Army, and integrity of senior officers (the high court warning of the colonel who was second-in-command RMP in 2010, that "It is our view that any court seized of those proceedings should approach his evidence with the greatest caution.") These issues have been questioned following incidents such as the deaths of young recruits at Deepcut, the killings by Parachute Regiment personnel of joyriders in Kosovo, the killing of Baha Mousa in Iraq, and allegations regarding the killing of multiple Iraqi prisoners in the aftermath of the so-called "Danny Boy incident".</p> <p>Further to s1(1) of the Freedom of Information Act 2000: Please provide all documentation regarding consideration of independent and impartial oversight of the RMP, including but not exclusive to analyses conducted in the aftermath of the above incidents, and as part of the drafting of the Armed Forces Acts 2006 and 2011.</p>
14	L Mowday 10-09-2012-153009-015	LSM/FOI/120909/03	<p>Her Majesty's Inspectors of Constabulary ("HMIC") are appointed under section 54 of the Police Act. Under that section HMIC have statutory functions of inspecting, and reporting to the Secretary of State on, Home Office police forces. The purpose of section 4 of the Armed Forces Act 2011 is to provide a similar requirement in relation to the service police forces, but focussed on the independence and effectiveness of investigations by those forces. This provides that HMIC are to inspect, and report to the Secretary of State on, the independence and effectiveness of investigations carried out by each service police force. It should be noted that this will not provide an avenue of redress for individual complainants akin to the IPCC, rather it provides quality assurance</p>

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			<p>of overall military police integrity/competence. This section of the Armed Forces Act 2011 has not yet been brought in to effect, and no date articulated as to when it will be brought in to force. Further to s1(1) of the Freedom of Information Act 2000:</p> <p>a. Why has section 4 of the Armed Forces Act 2011 not been brought in to force?</p> <p>b. When will it be brought in to force?</p> <p>c. Please provide all documentation held by MOD and Army HQ regarding both the rationale behind section 4, and the delays in bringing it in to force.</p> <p>d. Please, in particular, provide all copies of discussions regarding the costs of bringing this measure in to force, and all discussion documents and email trails between MOD and the Army/RMP regarding funding to enable this measure.</p>
15	L Mowday 10-09-2012-163637-028	LSM/FOI/120909/02	<p>Royal Military Police (RMP) soldiers' and officers' appraisal reports are routinely written by their superiors in the mainstream Army, despite the fact that the RMP may be investigating colleagues of senior officers in that mainstream Army. These appraisal reports are the means by which soldiers' and officers' careers, assignments, promotions, and 'contract extensions' are determined. Furthermore, under section 3 of the Armed Forces Act 2011, the head of the Royal Military Police (the 'Provost Marshall) is responsible to the Defence Council, which includes the chiefs of the Armed Forces. In the event of alleged serious misconduct, the chiefs of the Armed Forces are concerned, inter alia, with maintaining military morale and minimising damage to the Armed Forces's reputation</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide all documentation regarding possible options for greater RMP independence from the Army chain of command, including but not exclusive to analyses conducted in the aftermath of the deaths of young recruits at Deepcut, the killings by Parachute Regiment personnel of joyriders in Kosovo, and the killing of Baha Mousa and allegations regarding the killing of multiple Iraqi prisoners in the aftermath of the so-called "Danny Boy incident", and alternative models for military policing such as a fully-independent police force outwith the MOD's control.</p> <p>Please include, where held, any comparative examples of military policing in other countries.</p>

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(a)	(b)	(c)	(d)
16	L Mowday 10-09-2012-155102-020	LSM/FOI/120909/10	<p>During the 2012 Olympic Games the Armed Forces successfully provided security, in conjunction with Home Office (i.e. civilian) police forces. Under the 'Army 2020' plan to redesign the British Army, announced in July 2012, the Army's role will expand to conduct 'UK engagement and military aid to homeland resilience as a UK-based Army' and 'regional responsibilities in order to deliver military support to homeland resilience and engagement with UK society'. If a police officer behaves unprofessionally towards a member of the public, the latter may complain to the Independent Police Complaints Commission (IPCC), an independent and impartial organisation with powers to both investigate and recommend sanction. This is part of a system of checks and balances to ensure democratic control of national institutions.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>1. If a member of the military behaved unprofessionally towards a member of the public, to what independent and impartial organisation with powers to both investigate and recommend sanction, could that person complain?</p> <p>2. Would the MOD support the extension of the current Service Complaints Commissioner's jurisdiction to include complaints by members of the public against the military, as is done in other countries with their military ombudsman? If not, why not?</p>
17	L Mowday 25-09-2012-153645-015	LSM/FOI/120924/27	<p>A Channel 4 News investigation in 2010 discovered that the conviction rate for rape investigations in the military justice system is less than half that of the civilian system – which itself, has a deplorable record. During the investigation Channel 4 News tried repeatedly to elicit from the Ministry of Defence basic but critical information about its track record on investigating rape. The answers Channel 4 News eventually received raise serious questions about the military's ability to effectively deal with allegations of rape. Channel 4 News asked the MoD how many allegations of rape had been made to the military police. After a two month delay - which the MoD said was due to a re-organisation of how offences were recorded - Channel 4 News was told that between 2007 and 2009, 76 allegations of rape were investigated by the Armed Forces. But just two cases ended in conviction. A rate of 2.6 per cent. By comparison, the conviction rate when civilian police investigate is around 6 per cent. (Source: http://www.channel4.com/news/military-investigations-fail-rape-victims)</p> <p>Rape victims in the Armed Forces have numerous additional hurdles in attempting to seek justice, compared to their civilian counterparts:</p> <p>1. Royal Military Police (RMP) independence, resourcing and training and attitudes. Questions over RMP independence have been raised extensively by organisations such as Public Interest Lawyers. Of equal, if not greater concern, is that RMP resources are controlled by the Army. The dangers inherent in the organisation whose personnel are being investigated controlling the budget and staffing levels of the organisation responsible for said investigations should be obvious. (An analogy to demonstrate this would be if News International controlled the Leveson Inquiry's or Metropolitan Police budget and staffing levels.) Finally, RMP personnel are 'soldiers first, police officers second' – the effect of this mindset on attitudes towards rape</p>

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			<p>victims can neither be quantified, nor monitored, as the RMP are not subject to oversight by the Independent Police Complaints Commission. Police training, and attitudes to rape, are crucial, as was first demonstrated in the BBC documentary series Police in 1982, in episode three of which, 'A Complaint of Rape', a woman with a history of psychiatric treatment claims she has been raped by three strangers and is, in turn, bullied and cajoled by three male officers who dismiss her story out of hand. "This is the biggest bollocks I've ever heard," erupts one officer. The woman remains unseen as the camera assumes her point-of-view, trapped in the claustrophobic confines of the interrogation room. As she is subjected to the most hostile questioning, the accusing officers fill the frame in penetrating close-ups and the viewer gains some sense of her double violation. Transmitted soon after an infamous court decision (in which a judge had accused a hitchhiker of "contributory negligence" in her own rape), 'A Complaint of Rape' caused a public outcry and led to a change in the way police forces handled rape cases. Within months, a new rape squad of five female officers was formed in Reading. "The most we can hope is that people will rethink their assumptions - including policemen," said the producer. (Source: http://www.screenonline.org.uk/tv/id/464502/index.html). Questions about RMP independence were, for example, highlighted by Law in Action on 4 Nov 10: http://www.bbc.co.uk/programmes/b00vkxh9</p> <p>2. Army Legal Services training and experience. Army Legal Services (ALS) prosecutors are notoriously inexperienced, and civilian barristers routinely run rings around them. This is a problem admitted to off-the-record by senior ALS officers, and even Bruce Houlder QC, the Director of Service Prosecutions warned Law In Action in 2010 that the quality of his prosecutors was insufficient: 'Joshua Rozenburg: Bruce Houlder QC is the first civilian to head service prosecutions. Bruce Houlder revealed that the new Armed Forces Bill would give him power to recruit civilian prosecutors, and it's a power he says he won't hesitate to use if he doesn't get the support he needs. Houlder: "I have no intention here to civilianise this organisation. I know there is a provision to be taken in the next bill that would allow me, if it became necessary, to appoint a civilian as a prosecutor. In taking that provision I have made clear that I have no intention of doing that, so long as the services are able to continue to furnish me with sufficiently and appropriately skilled prosecutors. You asked me if I want some changes: yes, I do. I want properly-trained prosecutors. The trouble is at the moment they don't come here fully-trained. They come here as very clever, bright, and independent-minded lawyers but some of them have no experience in the criminal law and the training starts when they come here. Now that really is not satisfactory. I'm not a training organisation, I'm a prosecuting authority. I have no control over who comes here, how long they stay here, and where they go afterwards. But there we are, that's the world I operate in, I'm prepared to do my best with what I've got, but ask me if I'd like some changes, yes I would. I would like this organisation, and the work we do, to be more respected, as the specialist which it undoubtedly is.' (From BBC Radio 4, Law in Action on 4 Nov 10, at 17 mins 10 secs onwards: http://www.bbc.co.uk/programmes/b00vkxh9) The statute permitting recruitment of civilian prosecutors is Section 21 of the Armed Forces Act 2011, see http://www.legislation.gov.uk/ukpga/2011/18/section/21 and http://www.legislation.gov.uk/ukpga/2011/18/notes/division/5/21.</p>

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			<p>3. Judge Advocate training and experience. The role of the judge advocate (the term used for the equivalent of crown court judge in courts martial) is vital. At present, many judge advocates lack both the training and experience of their civilian counterparts, with predictable consequences in terms of their ability to control robust defence counsel. As one news report highlights, trials themselves force rape victims to relive the experience, and their treatment is in the hands of the judge: 'Would you have expected the judge to intervene at the point where the defence tried to claim that he hadn't penetrated her and that it wasn't rape? "I really wish," she says, "and most officers would, that judges would intervene more. But they don't, unfortunately." "...it is tough that the victim becomes a victim twice. When a large proportion of women who have been through that procedure say that the court experience was worse than the rape itself, there is something wrong. Something needs to be addressed..." Source: http://www.guardian.co.uk/world/2003/aug/07/gender.uk. Anecdotal evidence from one female officer who sat on a court-martial board ('jury') was that the court martial was stacked against the victim, and that the judge advocate permitted intrusive questioning in to the victim's sexual history which poisoned the minds of the (otherwise entirely male board/jury) against the victim. The female officer's description of defence counsel conduct implied that both the judge advocate and the Army Legal Services prosecutor neither understood nor enforced the relevant provisions of the Criminal Justice Act 2003 designed to protect victims from brutal cross-examination designed to undermine them in the jury's eyes. (See http://www.cps.gov.uk/legal/a_to_c/bad_character_evidence/#character).</p> <p>Attempts to mitigate this problem have been enacted in Schedule 2 of the Armed Forces Act 2011, which permits Judge Advocates to sit in civilian courts so as to gain further experience – this will provide no comfort to victims in the immediate future, however. Schedule 2 AFA11: http://www.legislation.gov.uk/ukpga/2011/18/schedule/2 and http://www.legislation.gov.uk/ukpga/2011/18/notes/division/6/2.</p> <p>4. Proportion of female board ('jury') members in courts martial. Male board members are – arguably, and certainly in the perception of rape complainants – more likely to a) identify with the defendant rather than the victim, b) to evince 'traditional attitudes' towards victim's so-called responsibility for being raped, and c) be unable to appreciate the trauma of rape. The Armed Forces are overwhelmingly male, and thus the pool from which courts martial boards are selected reflects this.</p> <p>5. Rank of female board ('jury') members in courts martial. Even if there is a minimum number of female(s) on a court martial board, due to the military's demographic imbalance, and relative inability to retain female service personnel beyond their early years of service, female personnel on a court martial board are likely to be the most junior, and therefore their ability to contribute to the discussions of the board are constrained by the military reflecting a cultural element articulated by Professor, and TA brigadier, Richard Holmes (1995) that "the value of the opinion expressed in the British Army is directly related to the rank of the person expressing it". Source: Kirke, C. M. S. 'Military Law, Justice, and Culture in the British Army', 2008 (2) Law, Social Justice & Global Development Journal (LGD).</p>

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			<p data-bbox="768 263 1563 288">http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2008_2/kirke/kirke.pdf</p> <p data-bbox="768 325 2078 504">6. Military attitudes towards 'complaining', and belief in misogynistic stereotypes. The overarching climate towards complainants in the Armed Forces is reflected by reports of the Service Complaints Commissioner. Her, extremely-limited, remit encompasses non-criminal actions of – in relative terms – far less contentious nature than possible rape charges. It is reasonable to infer that the procrastination, victimisation and inaction experienced by complainants in these comparatively minor, but at least reported, complaints, is a microcosm of that experienced by rape victims.</p> <p data-bbox="768 541 2069 659">7. Inability of any external organisation to review Royal Military Police or Army Legal Services decisions. There are ongoing concerns over possible misuse of military judicial powers to cover-up criminal conduct. These were first highlighted in the Deepcut Review, in which Sir Nicholas Blake QC, explaining what powers an Armed Forces Ombudsman needed, recommended (p403 para 12.101(iii)) that:</p> <p data-bbox="768 695 2056 842">Where appropriate, the Commissioner should be consulted on decisions as to whether to bring disciplinary action...including where it is intended that no such action is to be taken. ...In an important case, the Commissioner should be able to institute legal proceedings to set aside legally flawed decisions not to prosecute.' (Source: Sir Nicholas Blake QC, The Deepcut Review, A review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002, p403.</p> <p data-bbox="768 847 1671 873">http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.pdf</p> <p data-bbox="768 909 1361 935">The MOD rejected this out-of-hand, asserting that:</p> <p data-bbox="768 971 2051 1118">'The proposal that a commissioner might have the right to be consulted in disciplinary matters, or have the ability to intervene to institute legal proceedings against decisions not to prosecute, would undermine the role and independence of the prosecuting authorities. There is no precedent in the civilian criminal justice system for such intervention. The independent prosecuting authorities make their decisions on the basis of evidential tests and public or Service interest tests, under the general superintendence of the Attorney General.'</p> <p data-bbox="768 1123 2018 1182">(Government's response to the Deepcut Review, 29 Sep 06, http://www.mod.uk/NR/rdonlyres/25DDEF96-F9E8-4C70-8B63-8EE8B3CD5496/0/GovtResponsetotheDeepcutReview.pdf)</p> <p data-bbox="768 1219 2078 1275">The Roman poet Juvenal cautioned, 'Quis custodiet ipsos custodes?', literally translated as "Who will guard the guards themselves?". In the Army's case, that question is met with a deathly silence.</p> <p data-bbox="768 1342 1357 1367">Further to s1(1) of the Freedom of Information Act</p> <p data-bbox="768 1372 2018 1428">1. How many board ('jury') members must sit on a court martial board where the defendant is charged with rape?</p>

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			<p>2. In the case of, for example, a Junior NCO, being charged with rape: what ranks would the court martial board comprise?</p> <p>3. What rules, if any, are there mandating the minimum number of females on a court martial board in a rape case?</p> <p>4. What rules, if any, are there mandating the minimum rank of females on a court martial board in a rape case, compared to other board members?</p> <p>5. How many rape cases were reported to Royal Military Police in each of the years 2002-2012?</p> <p>6. How many rape cases proceeded to courts martial in each of the years 2002-2012?</p> <p>7. In how many rape cases in each of the years 2002-2012 did the Service Prosecuting Authority, or its pre-Armed Forces Act 2006 antecedents, secure a conviction?</p>
18	L Mowday 25-09-2012-161158-018	LSM/FOI/120924/29	<p>"The imperatives of military discipline are clearly of the essence of any effective national defence force, but the entitlement to due process of those subject to military law and discipline is not only a fundamental right but is also in itself a basic component of service morale." Professor Hilaire McCoubrey, Due Process and British Courts Martial: A Commentary upon the Findlay Case, Journal of Armed Conflict Law 83 (1997), p89.</p> <p>The military is unique, and it can be difficult to transfer military qualifications to civilian life. Discharged service personnel are deprived of the opportunity to exercise the sole profession for which they have a calling, for which they have been trained and in which they have acquired skills and experience. Under the Army's internal sanctions regime, the chain of command's personal whims are imposed upon subordinates through the exercise of arbitrary discretion.</p> <p>Army General and Administrative Instructions, Chapter 67, known as 'AGAI 67' is the Army's internal sanctions regime. AGAI 67 allows the Army to take action against personnel if, in the opinion of the deciding officer, they have breached the Service Test: 'Have the actions or behaviour of an individual adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Service?', for the purposes of which operational effectiveness is defined as 'the ability of a unit or formation to function as a cohesive force to perform the operations, missions or actions for which it is organised or designed'. In plain English, the Service Test merely says 'Is this bad for the Army?' – a very wide margin for personal opinions and morals. The dangers inherent in this approach are obvious: it confers upon the deciding officer almost complete discretion. Senior Army Legal Services (ALS) officers have noted the dangers of the chain of command's personal morality being imposed upon subordinates through the exercise of arbitrary discretion; Colonel Nigel Jones, both then and now the senior ALS officer at HQ Army, wrote in Army Legal Services Journal 2007:</p> <p>'Boards of Inquiry came and went, and 'sex, lies and videotape' continued to preoccupy the wider army in its endless quest for ever tighter Values and Standards, of which we receive daily reminders and about which people continue to go into endless huddles with as many views emerging as hot risottos cooked by Jamie Oliver. The law was never meant to be about morals – or so Public Law at the University of Newcastle upon</p>

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			<p>Tyne had it, albeit many moons ago when that University's Law Faculty was 'affiliated' to the infinitely more prestigious Faculty of Law at Durham. All this goes out of the window at Land Command (now HQ Army) where the message is heavily garnished with moral rectitude and its ever resilient modern military embodiment, AGAI 67. Nodding jostles with 'real law' are comparatively few but nevertheless greatly appreciated when they come'.</p> <p>As Colonel Jones highlights, interpreting AGAI 67 generates, 'as many views as hot risottos'. As a foreseeable consequence, the law (AGAI 67) is neither intelligible, clear, nor predictable. Therefore, decisions such as whether service personnel lose their livelihood, are resolved not by the application of law, but by the exercise of individual discretion – that of potentially biased and partisan deciding officers, and/or the 'endless huddles' of which Colonel Jones warns.</p> <p>Furthermore, AGAI 67 confers absolute power on the chain of command in decisions such as whether to permit service personnel to challenge the evidence against them in an oral hearing, power over the minutiae of those proceedings, the decision to admit and exclude evidence at will, deny legal representation, refuse witnesses, protect favoured colleagues, senior or otherwise, and comprehensively stack the deck in the chain of command's favour. In plain English AGAI 67 proceedings are 'kangaroo courts' controlled by a small clique of individuals. AGAI 67 can, and has been used to punish junior personnel for making criminal allegations against senior officers, even if those the criminal allegations were supported by evidence collected by the military police – who, under the Army's rules, subsequently had to hand it over to the mainstream Army for them to do as they wished with. It is, in sum, a "bullies' charter", and has been used vigorously by the Army in cases documented by the Employment Appeals Tribunal to harass service personnel for having the temerity to complain about being abused by the chain of command, for example in the case of LBdr Kelly Fletcher: http://j.mp/fletcherEAT</p> <p>The right to remain in a particular employment sector is a civil right within article 6(1) of the European Convention. Lady Hale:</p> <p>'Are we here concerned with a civil right at all? This is uncontroversial... the scope of the concept of civil rights has been greatly expanded from the sorts of dispute which the original framers of the Convention had in mind. But since 1981 it has been held to include the right to practise one's profession... The right to remain in the employment one currently holds must be a civil right.'</p> <p>Essentially, in ordinary disciplinary proceedings, where all that could be at stake was the loss of a specific job, article 6 of the European Convention on Human Rights will not be engaged. However, where the effect of the proceedings could be to deprive an employee of the right to practise his or her profession, the article would be engaged. This decision affects any public sector employer that enjoys an effective monopoly in the employment market within a particular profession. In, for example, Kulkarni the public sector employer in question was the NHS. The British Army is very clearly even more of a 'monopoly employer' in its respective</p>

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			<p>field, than the NHS is in medicine. The applicability of Article 6 must be determined on the basis of the jurisdiction and powers of the tribunal rather than its ultimate decision. The applicable test is whether administrative or disciplinary proceedings 'would directly determine or exert a substantial influence over' the decision to terminate someone's career. Since AGAI 67 includes the power to dismiss someone from the military, or impose sanctions which could lead to that effect, and it lacks any appeal mechanism, it can clearly directly determine or exert a substantial influence over someone's ability to continue their military career.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Does Article 6 of the European Convention of Human Rights (the right to a 'fair trial') apply to proceedings taken by the Army against service personnel under AGAI 67 Major Administrative Action?</p>
19	L Mowday 25-09-2012-145438-008	LSM/FOI/120924/28	<p>"The imperatives of military discipline are clearly of the essence of any effective national defence force, but the entitlement to due process of those subject to military law and discipline is not only a fundamental right but is also in itself a basic component of service morale." Professor Hilaire McCoubrey, Due Process and British Courts Martial: A Commentary upon the Findlay Case, Journal of Armed Conflict Law 83 (1997), p89.</p> <p>Army General and Administrative Instructions, Chapter 67, known as 'AGAI 67' is the Army's internal sanctions regime. AGAI 67 allows the Army to take action against personnel if, in the opinion of the deciding officer, they have breached the Service Test: 'Have the actions or behaviour of an individual adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Service?', for the purposes of which operational effectiveness is defined as 'the ability of a unit or formation to function as a cohesive force to perform the operations, missions or actions for which it is organised or designed'. In plain English, the Service Test merely says 'Is this bad for the Army?' – a very wide margin for personal opinions and morals. The dangers inherent in this approach are obvious: it confers upon the deciding officer almost complete discretion.</p> <p>Senior Army Legal Services (ALS) officers have noted the dangers of the chain of command's personal morality being imposed upon subordinates through the exercise of arbitrary discretion; Colonel Nigel Jones, both then and now the senior ALS officer at HQ Army, wrote in Army Legal Services Journal 2007:</p> <p>'Boards of Inquiry came and went, and 'sex, lies and videotape' continued to preoccupy the wider army in its endless quest for ever tighter Values and Standards, of which we receive daily reminders and about which people continue to go into endless huddles with as many views emerging as hot risottos cooked by Jamie Oliver. The law was never meant to be about morals – or so Public Law at the University of Newcastle upon Tyne had it, albeit many moons ago when that University's Law Faculty was 'affiliated' to the infinitely more prestigious Faculty of Law at Durham. All this goes out of the window at Land Command (now HQ Army) where the message is heavily garnished with moral rectitude and its ever resilient modern military embodiment, AGAI 67. Nodding jostles with 'real law' are comparatively few but nevertheless greatly appreciated when they</p>

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			<p>come'.</p> <p>As Colonel Jones highlights, interpreting AGAI 67 generates, 'as many views as hot risottos'. As a foreseeable consequence, the law (AGAI 67) is neither intelligible, clear, nor predictable. Therefore, decisions such as whether service personnel lose their livelihood, are resolved not by the application of law, but by the exercise of individual discretion – that of potentially biased and partisan deciding officers, and/or the 'endless huddles' of which Colonel Jones warns.</p> <p>Furthermore, AGAI 67 confers absolute power on the chain of command in decisions such as whether to permit service personnel to challenge the evidence against them in an oral hearing, power over the minutiae of those proceedings, the decision to admit and exclude evidence at will, deny legal representation, refuse witnesses, protect favoured colleagues, senior or otherwise, and comprehensively stack the deck in the chain of command's favour. In plain English AGAI 67 proceedings are 'kangaroo courts' controlled by a small clique of individuals. AGAI 67 can, and has been used to punish junior personnel for making criminal allegations against senior officers, even if those criminal allegations were supported by evidence collected by the military police – who, under the Army's rules, subsequently had to hand it over to the mainstream Army for them to do with as they wished. It is, in sum, a "bullies' charter", and has been used vigorously by the Army in cases documented by the Employment Appeals Tribunal to harass service personnel for having the temerity to complain about being abused by the chain of command, for example in the case of LBdr Kelly Fletcher: http://j.mp/fletcherEAT</p> <p>AGAI 67 has also been used against junior personnel for reporting senior officers to military police for criminal offences, with the latter using the sanctions regime to punish a female victim who had reported an assault, with the Lt Col's AGAI 67 complaint statement asserting: 'I wish this to be my formal statement of complaint [for] her subsequent decision to falsely claim that I had assaulted her, in order to protect herself, causing me to be suspended, and to suffer reputational damage, embarrassment and stress.' A chilling effect is the term used to describe the inhibition or discouragement of the legitimate exercise of a statutory right – in that case, submission of a police report to the Royal Military Police – by the threat of punitive sanctions. It refers to actions that would cause people to hesitate to exercise their rights for fear of the consequences. Predictably, such cases have had just such a chilling effect. The Army should encourage genuine reporting, and be very careful of taking action against even people who have made misconceived complaints. I would argue that it is contrary to the public interest to act against an accuser who made a report in good faith. AGAI 67 has no safeguards, and is a punishment regime which can be used liberally to penalise service personnel who are – initially at least – too naïve to realise their impotence in the face of untrammelled power.</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p>

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			<p>For each of the years 2000-2012:</p> <ol style="list-style-type: none"> 1. Please list how many cases were initiated under AGAI 67 Major Administrative Action (MAA). 2. Please list in how many of these the service person pled 'not guilty', in other words denied the allegations. 3. Please list in how many cases the allegations against the service person were deemed to have been proven by the chain of command – i.e. the accused was 'convicted'. 4. Please list, in categories, the sanctions imposed on service personnel following AGAI 67 MAA proceedings. Suggested categories are those contained in AGAI 67: dismissal, reduction in rank, rebuke, et cetera, but I am prepared to be flexible in order to minimise OSC(A)/PS2(A) staff work. 5. Please list in how many cases following a 'guilty' finding, the service person requested a "review" of the first-instance decision, noting that under AGAI 67 the Army denies service personnel the right to a de novo appeal, in favour of a documentary review by the first-instance decision-maker's immediate superior. 6. Of the cases in which service personnel requested a 'review', please document in how many they were successful in i) reversing the finding of guilt, or ii) reducing the sanction imposed. 7. Please provide full copies of the RN's and RAF's equivalent of AGAI 67 – i.e. the procedures under which they take action against their personnel for non-criminal/non-AFA 06 offences. 8. Please release the same information documented at (1)-(6) for both the RN's and RAF's equivalents of AGAI 67 MAA.
20	L Mowday 25-09-2012-150723-010	LSM/FOI/120924/30	<p>"The privilege of command is a fleeting sensation. Those who are commanded are the beneficiaries of the system, as their lives—their very existences—are placed uniquely in the care of the commanding officer. They have a right to expect that their leader will be held to exacting standards of professionalism and personal accountability. Their parents, husbands, wives, children, and friends should also expect this to be so, as the commander is entrusted with the treasured life of their loved-ones." Command Responsibility and Accountability, Lt Col J Doty PhD US Army and Capt C Doty US Navy, Military Review, Feb 12.</p> <p>The Armed Forces (Pensions and Compensation) Act 2004 gives the Secretary of State for Defence the power to establish schemes in respect of a person's service in the armed forces and to make provision for benefits payable on retirement. Such schemes are made by Order, specifically in this case, The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) Order 2010, which established the Armed Forces Redundancy Scheme 2010, the Armed Forces Gratuity Earnings Scheme 2010, the Armed Forces Resettlement Commutation Scheme 2010 and the Armed Forces Resettlement Grants Scheme 2010. (See http://www.legislation.gov.uk/uksi/2010/345/contents/made and http://www.legislation.gov.uk/uksi/2010/345/pdfs/uksiem_20100345_en.pdf)</p> <p>Compared to any public or private schemes of similar scale, these are extremely generous packages which are</p>

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			<p>designed to compensate Service Personnel who, through no fault of their own, are being made redundant: "Those personnel who will be returning to civilian life through redundancy will receive full support from their chain of command along with a comprehensive resettlement package to aid their transition." Source: Service personnel selected for Tranche 2 Redundancy Programme, MOD, 12 Jun 12,</p> <p>http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/ServicePersonnelSelectedForTranche2RedundancyProgramme.htm</p> <p>Following the deaths of Army personnel at the Princess Royal Barracks in Deepcut during the period 1995-2002, four enquiries took place, leading to reports by: the House of Commons Defence Select Committee, the Adult Learning Inspectorate, the Directorate of Operational Capability, and Sir Nicholas Blake QC. The last of these reports specifically examined the deaths of Sean Benton, Cheryl James, Geoff Gray, and James Collinson. Those reports were the catalyst for the Service Complaints process, the purpose of which is: "[The Armed Forces Act 2006] introduces an independent element into the process, to give Service personnel greater confidence in the system and in recognition of the recommendations of both the House of Commons Defence Committee (in its third report of session 2004-05, published on 14 March 2005) and Mr Nicholas Blake QC in his Deepcut Review report (printed by Order of The House of Commons on 29 March 2006, reference HC 795) which placed firmly in the public eye the importance of demonstrating that bullying, harassment and other forms of inappropriate behaviour have no place in the armed forces and are effectively and openly dealt with."</p> <p>Source: Explanatory memorandum to the Armed Forces (Redress of Individual Grievances) Regulations 2007 and the Armed Forces (Service Complaints Commissioner) Regulations 2007. See http://www.legislation.gov.uk/ukpga/2006/52/part/14/crossheading/redress-of-individual-grievances, http://www.legislation.gov.uk/ukpga/2006/52/notes/division/6/1/2, http://www.legislation.gov.uk/uksi/2007/3353/contents/made, and http://www.legislation.gov.uk/uksi/2007/3353/pdfs/uksiem_20073353_en.pdf</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>1. Please release any MOD PR briefing material issued in the period 2002-2007 (i.e. in the aftermath of the Deepcut deaths, and the four inquiries which followed), which claims that "bullying, harassment and other forms of inappropriate behaviour have no place in the armed forces and are effectively and openly dealt with" – or assertions to that effect.</p> <p>2. Please release within the period 1 Jan 10 to 24 Sep 12, all policy documentation, internal communications, and minutes of meetings, within Army HQ, PS2(A), MOD DCDS(Pers), and the offices of SofS, MinAF and Min(DPWW), concerning the granting of redundancy packages to Senior Army Officers (defined for these purposes as Field and General officers, i.e. Major-General) accused of misconduct and/or criminal offences, or</p>

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			<p>who were Respondents ('Defendants') in Service Complaints.</p>
			<p>3. Please clarify:</p> <p>a. Would Senior Army Officers under investigation for alleged criminal conduct offences (per Section 42 of the Armed Forces Act 2006) committed during their service remain under the jurisdiction of the Service Prosecuting Authority when then are discharged from the Army?</p> <p>b. Would Senior Army Officers under investigation as a result of Service Complaints being filed against them (per ss334-339 Armed Forces Act 2006) remain under the jurisdiction of the Army Board or Service Complaints Panel (i.e. the Level 3 Decision-makers under the relevant legislation) when then are discharged from the Army?</p>
			<p>4. In the period 2009-2012, how many Service Complaints have been made against officers of the rank of brigadier or above? Please break down the complaints by year, and detail both the resolution and time taken to reach resolution.</p>
			<p>5. Please release all policy documentation, internal communications, and minutes of meetings, which concern the circumstances in which the MOD would be prepared to grant redundancy – and concomitant financial remuneration packages – to service personnel outside of the normal boarding and selection processes conducted by the Army Personnel Centre.</p>
			<p>6. In how many cases has the MOD granted actually redundancy – and concomitant financial remuneration packages – to service personnel outside of the normal boarding and selection processes conducted by the Army Personnel Centre?</p>
			<p>7. Where the MOD did indeed grant redundancy – and concomitant financial remuneration packages – to service personnel outside of the normal boarding and selection processes conducted by the Army Personnel Centre, in how many cases were the recipients "respondents" (i.e. Defendants) in Service Complaints?</p>
			<p>8. Where the MOD did indeed grant redundancy – and concomitant financial remuneration packages – to service personnel outside of the normal boarding and selection processes conducted by the Army Personnel Centre, in cases where the recipients were "respondents" (i.e. Defendants) in Service Complaints, which ministers were informed?</p>
			<p>9. Please release the minutes of the Army Board meeting at which it was decided to a) 'pay off' a brigadier who was the subject of a Service Complaint by granting him redundancy – and concomitant financial remuneration package – rather than b) investigating the complaint, making a decision and punishing the alleged offender – one of their peers – if found guilty, in accordance with the Service Complaints legalisation detailed in 'Background', above.</p>
			<p>(Further, personalised, details of this may be provided if the MOD insists, however, my focus is on the policy issues this exposes: I have no desire to expose the individuals involved unless MOD intransigence compels such a course of action.)</p>

Serial	FOI Case Reference	Applicant's Reference	Details
(a)	(b)	(c)	(d)
			<p>10. How compatible was a) the Army Board's decision to apparently shield a brigadier from the consequences of his alleged actions with b) MOD claims that "bullying, harassment and other forms of inappropriate behaviour have no place in the armed forces and are effectively and openly dealt with"?</p> <p>11. Please supply all documentation concerning consideration of the issue of the use of statutory powers by the Army Board to 'pay off' senior officers accused of misconduct. Please include all documentation which considered the extent to which the above action denied victims justice, covered-up misconduct, defrauded the taxpayer, and suborned parliamentary intent per ss334-339 Armed Forces Act 2006, and rendered the Service Complaints framework meaningless.</p> <p>12. Please clarify how parliament can trust the thousands of Junior Officers and Field Officers to exercise their immense powers over their subordinates lawfully, and to diligently and conscientiously discharge their responsibilities towards vulnerable service personnel under Service Complaints legislation, if General Officers on the Army Board, the very pinnacle of the British Army's 'leadership', consciously and wilfully suborn said responsibilities and legislation.</p> <p>13. Did the actions of the Army Board in this case constitute malfeasance in public office?</p>
21	L Mowday 25-09-2012-154347-016	LSM/FOI/120924/23	<p>Background. In the 1990's, following widespread revelations and world-wide coverage such as 'British Army Stung by Tales of Brutality in Ranks' in the New York Times [1] there were widespread concerns expressed, including by parliament [2]. As the Times reported, 'the Government [resisted] demands that an independent inquiry be undertaken or that an ombudsman be appointed'. In addition to this, racism and sexism were rife, including serious physical assaults. Recognising that – by mandating that service personnel were barred from anything except closed, internal proceedings which were used by the Army to cover-up racial and sexual harassment, and protect the perpetrators, organisations such as the Equal Opportunities Commission and Commission for Racial Equality, fought to permit victims of such treatment to seek access to independent, impartial tribunals. That battle was eventually won, and service personnel alleging discrimination (but not just bullying or harassment) – at least those with sufficient resilience to endure months or years of Army abuse – can now access Employment Tribunals. For example, see the experience of LBdr Kerry Fletcher 2009, documented in distressing detail here: http://j.mp/fletcherEAT</p> <p>In 1993, as part of the Army's [failed] attempts to prevent future victims such as LBdr Fletcher having access to Employment Tribunals, the Army attempted to articulate reasons why it should not be subject to the normal law of the land. These included a number of internal papers, one of which is the subject of this question.</p> <p>Sir Nicholas Blake QC's report in to the Deepcut killings also, along with a number of other authorities, recommended the creation of an Armed Forces ombudsman. The MOD, determined to resist the threat that transparency posed to senior officers' untrammelled power, regardless of the benefits to victims of abuses of power, refused those recommendations.</p> <p>Sources:</p>

Serial	FOI Case Reference	Applicant's Reference	Details
(a)	(b)	(c)	(d)
			<p>[1] http://www.nytimes.com/1987/11/06/world/british-army-stung-by-tales-of-brutality-in-ranks.html?pagewanted=all&src=pm</p> <p>[2] Selected examples: http://hansard.millbanksystems.com/written_answers/1987/mar/23/bullying-army http://hansard.millbanksystems.com/written_answers/1987/jul/10/army-bullying http://hansard.millbanksystems.com/written_answers/1987/nov/06/army-personnel-bullying http://hansard.millbanksystems.com/written_answers/1988/feb/22/bullying http://hansard.millbanksystems.com/commons/1988/jun/28/bullying http://hansard.millbanksystems.com/written_answers/1988/nov/29/bullying</p> <p>1988: Mr Jack Ashley MP 'Fearful young soldiers—and nobody knows how many there are—need an impartial, independent person such as an ombudsman to whom they can turn. The Ministry of Defence apparently believes that this would have an adverse effect on the Army's own efforts to look after its soldiers. I disagree. The good COs, whose immediate responsibility this is, will continue as they do now. The less effective ones, who are oblivious of what is going on or condone mistreatment, could be jolted into early preventive action. I propose an ombudsman not as a panacea—there is none available—but as the best and most important step that can be taken in the present circumstances.' http://hansard.millbanksystems.com/commons/1988/jan/26/the-army#S6CV0126P0_19880126_HOC_239</p> <p>2002: Lord Ashley of Stoke 'We have a fine army, and we need tough, well trained soldiers. However, is my noble friend aware that the announcement made in 1988 was designed to eradicate bullying from the Army? Recent events, including suicides at Deep Cut barracks, indicate that the policy is not working.' http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo021121/text/21121-02.htm</p> <p>2006: The Deepcut deaths were too high profile for the MOD to ignore them or suppress demands for an inquiry. In The Deepcut Review - A review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002, one of Nicholas Blake QC's key recommendations was the establishment of an Armed Forces Ombudsman: 'the establishment of the office of a 'Commissioner of Military Complaints' (or Armed Forces Ombudsman) is now an essential step in improving confidence, transparency and justice... The Review considers that at least four functions need to be assigned to the Commissioner...' http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.asp</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p>

Serial	FOI Case Reference	Applicant's Reference	Details
(a)	(b)	(c)	(d)
			<p>1. Please release the 'Standards and Discipline Paper', subtitled 'The Military Ethos (The Maintenance of Standards)', produced in 1993.</p> <p>2. Please release all MOD documents during the period 2002-2012 discussing the creation of an ombudsman. This specifically includes minutes of Army Board and Defence Council meetings, and briefing notes written for ministers in answer to parliamentary questions. I am specifically seeking all documents which provide evidence for the MOD's refusal to appoint an ombudsman.</p>
22	L Mowday 25-09-2012-111312-001	LSM/FOI/120924/21	<p>Background. The Royal Military Police (RMP) Journal, which is published three times each year (April, August and December), is the house Journal of the RMP. It includes articles of a historical or technical (Police) nature. **The Journal has a major role to play in recording events and views for future historians and in that respect has a valuable function to discharge hence it is essential that moments of historical research significance are properly recorded and presented for publication.** The Journal is distributed to all regular Officers and NCOs in the RMP, to TA Provost Units and to subscribers. A number of each print run are used for RMP Public Relations purposes and as such are sent to each Chief Officer of Police of all UK Home Office and specialised Police Forces as well as some foreign and Commonwealth Military Police Corps and their Associations. (my emphasis)</p> <p>Source: Selected extracts from Army website, http://www.army.mod.uk/agc/provost/6060.aspx (Accessed 23 Sep 12)</p> <p>Further to s1(1) of the Freedom of Information Act 2000:</p> <p>Please provide all copies of RMP Journal from January 2000 to the most recent issue.</p>