

Conscientious Objection in the UK Armed Forces

Conscientious objection to military service is a subtle concept. Broadly speaking, it arises when a serving or prospective member of the armed forces finds that their work cannot / could not be done in good conscience. When the claim of conscience is sufficiently powerful for the person to seek to remove themselves from their work, then a conscientious objection can be said to exist. This could arise in relation either to specific orders or military operations, or to military service in all its aspects.

Informed Choice: Armed Forces Recruitment Practice in the UK, 2007

Life in the armed forces can have a significant effect on the outlook and attitudes of those who undertake it. Exposure to warfare can radically alter a person's values and beliefs.

The armed forces recognise the right of serving personnel to be discharged if they develop a conscientious objection. But this right is not set out clearly in legislation, is not mentioned in the terms of service and many, perhaps most, forces personnel are unaware of it. The system for registering a conscientious objection needs to be far easier to access and the different types of conscientious objection need to be fully recognised.

The situation in theory

A member of the forces who has a conscientious objection is generally expected to raise the issue informally with his/her commanding officer. The officer's options include rejecting the objection outright or moving the objector to a different position (such as a non-combatant role).

If the person concerned remains unsatisfied, he/she can make a formal application for discharge due to conscientious objection. After an interview which usually involves a chaplain or other third party, the commanding officer makes a recommendation to the chain of command where the decision for discharge or refusal is made. If turned down at this stage, the applicant can appeal to the Advisory Committee on Conscientious Objectors (ACCO) who hold a hearing and make a recommendation to the Defence Secretary.

Discharges due to conscientious objection are rare, with only six granted between 2001 and 2010¹.

The situation in practice

Conscientious objection is not mentioned in either primary or secondary legislation relating to the armed forces and, of the three services, only the army sets out the procedure for registering a conscientious objection in its Queen's Regulations². Procedure for discharge due to conscientious objection is different for each service and difficult to access³. The regulations governing conscientious objection in the Navy and RAF have only become apparent by using Freedom of

Information requests⁴. Finally, no reference is made to this right in the Enlistment Paper, the contract a person signs on joining the forces.

As a result, it is very likely that many forces personnel are unaware of their right to discharge if they develop a conscientious objection. Furthermore, the phrase 'conscientious objection' is a fairly technical term. It is not one with which everybody is familiar. Research by the Ministry of Defence has found that fifty per cent of people joining the army at non-officer level have a reading age at or below that of an average eleven-year-old⁵. In the context of this level of literacy, familiarity with certain technical terms may well be lower than average.

In 2004, the High Court considered the appeal of Mohisin Khan, an air force reservist who had gone absent without leave rather than fight in Iraq in a war in which he did not believe. He explained that he was unaware of his right to apply for discharge due to conscientious objection. The court upheld his conviction but declared, "It is, however, true that the call-out materials in this case, like the 1997 regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved"⁶.

There is evidence that the small number of cases of conscientious objection recorded by the MoD does not reflect the true number of those who act on their ethical objections. There is anecdotal evidence of personnel with ethical problems being encouraged to suppress their feelings and carry on. The forces helpline At Ease reports that at least some who raise a conscientious objection have been discharged on other grounds such as for "service no longer required" or "unfit for further service"⁷.

More worryingly, there is evidence to suggest that serving personnel are going absent without leave on the basis of ethical issues⁸. In these cases the procedure for registering a conscientious objection is not safeguarding the rights of those in the armed forces and, through lack of awareness, some could end up facing court martial and a criminal conviction.

Treatment during the process

While an application for discharge is being considered, the applicant remains a member of the forces and is subject to military discipline. He/she can therefore be punished for refusing to obey orders for reasons of conscience. This contradicts a recommendation by the Council of Europe Committee of Ministers that personnel applying for discharge due to conscientious objection should be removed to non-combatant duty while the application is considered⁹.

'Political' objections

In December 2010, ACCO met for the first time since 1996¹⁰. They heard an application for discharge from Michael Lyons, a medic in the Royal Navy who was due to be deployed to Afghanistan in 2011.

Lyons had developed an ethical objection to participating in the war in Afghanistan after having been told at a medical briefing not to waste resources by treating civilians and after hearing that the majority of casualties were civilians. Subsequent research into the reasons for going to war and

the number of Afghan civilian casualties had led him to believe the war was wrong. Lyons requested an appeal to be held by ACCO who advised the Defence Secretary to reject Lyons' request to be discharged¹¹. In giving their decision, ACCO stated that they considered Lyons' objection to be "political" rather than "moral".

It is not at all clear that objections can easily be split into these categories. In the case of Michael Lyons, why has an objection based on medical ethics and to the killing of civilians case been dismissed as 'political' rather than as a matter of conscience? How does a deeply held 'political' conviction differ from one based on morals or religion?

A study presented to the Council of Europe as long ago as 1967 stated that "in principle all grounds of conscience resulting in refusal to do military service are respected [in the UK]". It noted that "In the UK objections to military service in specific circumstances – so called political objections – have been allowed regularly since 1941"¹². This assertion appears never to have been disputed by any UK government.

The study quotes a staff member of the Central Board for Conscientious Objectors, that political objectors were recognised as "the objection was so deeply held that it became a matter of inner conviction as to right and wrong and not merely an opinion."

ACCO's have clearly failed to apply the test of "inner conviction as to right and wrong". This suggests confusion on the part of the authorities about the legal situation regarding conscientious objection.

Recommendations

The Armed Forces Bill 2011 is an important opportunity to address the above concerns by introducing legislation that fully upholds the right to conscientious objection and makes its procedures accessible and transparent.

ForcesWatch suggests that the following measures would contribute significantly to this aim:

- The right to conscientious objection, and the basic procedures for applying for discharge, should be unified across the three forces and set down clearly in primary legislation (the Armed Forces Bill).
- The Enlistment Paper, which all recruits sign on joining the armed forces, should state clearly that there is a right to discharge due to conscientious objection.
- Information on conscientious objection should be freely available to all members of the armed forces. It should be mentioned in appropriate literature.
- Ethical concerns should be formally treated as conscientious objection, and recorded as such, whether or not the term "conscientious objection" is used by the person concerned.
- People registering conscientious objection should be suspended from duty while the application is considered.
- Objections, where seen to be based on political reasons, should be viewed as a matter of inner conviction as to right or wrong, rather than merely as an opinion.

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1. *This information was supplied by the Ministry of Defence under the Freedom of Information Act - <http://www.mod.uk/DefenceInternet/FreedomOfInformation/ConscientiousObjectors20012010.htm>*
2. The Armed Forces Act 2006 has no mention of conscientious objection. Terms of Service Regulations for the Royal Navy, Royal Marines, Army and Royal Air Forces, (Statutory Instruments) do not mention conscientious objection. The Queen's Regulations for the Royal Navy has no mention of conscientious objection; details can only be found in administrative guidelines. The Queen's Regulations for the Army sets out the procedure for conscientious objection in full. The Queen's Regulations for the RAF references an administrative leaflet about conscientious objection but mentions no further detail.
3. Further details of the documentation and procedures for each service can be found at <http://wri-irg.org/news/2007/uk2007-unreport-en.htm>
4. See <http://wri-irg.org/news/2007/uk2007-unreport-en.htm>
5. *Analysis of socio-economic and educational background of non-officer recruits*, submitted as written evidence to House of Commons Defence Committee *Duty of Care*, 2004-05, Volume II, Ev255
6. For details of the case see <http://www.bailii.org/ew/cases/EWHC/Admin/2004/2230.html>
7. See David Gee, *Informed Choice: Armed Forces Recruitment Practice in the UK* (2007) <http://www.informedchoice.org.uk>
8. "At least 1,000 UK soldiers desert", *BBC News online*, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>
9. Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, February 2010 <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1590149&Site=CM>.
10. For details of the Advisory Committee on Conscientious Objectors see <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/AnnualReports/AnnualReportsAgenciesNDPBs/AdvisoryCommitteeOnConscientiousObjectorsAnnualReport200708.htm>
11. "Navy medic loses appeal over objections to Afghan duty", *Daily Telegraph*, 17 December 2010 (<http://www.telegraph.co.uk/news/newstopics/politics/defence/8209595/Navy-medic-loses-appeal-over-objections-to-Afghan-duty.html>).
12. *Study on the Legal Position of Conscientious Objectors in the Member States of the Council of Europe*, presented by the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, to the Consultative Assembly of the Council Europe, 23 January 1967 (Doc 2170, Appendix)