

PE1603/BB

Conor McAllister Letter of 16 January 2017

1 Introduction

My investigation looks into the some of the legal aspects of the armed forces policy within schools, the rights of the child and their wellbeing. Comments have been sought from members of civil society, veterans, legal professionals and public bodies.

This investigation is ongoing with pending enquiries to be returned.

2 Child rights in Scotland

The Legal Capacity (Scotland) Act 1991 was drafted before the Scottish Parliament was established giving full legal capacity once a child has attained the of age of 16, the Act replacing Age of Majority (Scotland) Act 1969 which hitherto set the age of majority at 21.

The current age is the lowest age of capacity in Scotland for many centuries, The Tutors Act 1474 which in dealing with succession set the nearest agnate over 25.

UK ratified the International convention on the rights of the child on 16 December 1991 by anyone standards it is the most wide ranging convention and most widely ratified. The CRC has been cited many times in Scottish Court, one such application for judicial review of an Age Assessment [2011] ScotCS 98 the decision:

“In this context "children" are defined as persons under the age of eighteen years.”

Domestically The Children and Young People Act 2014 stipulates eight wellbeing indicators two have been selected to be elaborated on; nurtured and responsible the terms are defined using Scottish Government website on the Act.

CRWIA is used to look at policies to establish whether a piece of legislation or policy is in compliance with CRC from a Childs perspective. And in turn Investigating the current policy at hand that of armed forces activities and the effect on the rights and wellbeing of the child.

The Children(Scotland) Act 1995 has provisions so that a child views are taken into account in legal matters, that have a casual relationship. At the age of 12 a child can instruct a solicitor, this right is based upon agency and the knowledge that with full facts and information a child is able to make informed decision, the caveat emptor being full facts and information. This report contends that the policy at hand does not meet the provisions.

The duty of care, right to information and opportunities to voice opinions are all expressed in our domestic and international legislation.

3 The Current Policy

Ten years have passed since Army's head of recruitment strategy Colonel David Allfrey said;

“Our new model [of Army recruitment] is about raising awareness, and that takes ten- span]. It starts with a seven-year-old boy seeing a parachutist at an air show and think, “that looks great”. From then the Army is trying to build interest by drip, drip, drip.

This policy is being carried throughout Scotland, as was disclosed by FOI from Skills Development Scotland to me asking them to specify the range of participants at events SDS:

“Generally the recommended group for attending careers events with exhibitors is senior has pupils, though there is no technical minimum age. This decision is the prerogative of individual schools”.

In this response, SDS have confirmed that a child could be attending an armed forces career event in violation of the CRC and International standards

Whether or not the term career means recruitment is up to interpretation and the MoD do not accept that any pupil is recruited in school, yet made clear in the House of Commons Defence Select Committees 2008 report on 'Recruitment and Retention':

“is the military refer to personnel going into schools as 'recruiters'.

The MoD have defined 'recruiting' as:

“the process through which recruiting and selection staffs enable a member of the public to progress from an initial enquiry to enlistment as member of the armed forces’.

In December I visited the recruitment centre in Glasgow, asking for an application form to research the terms of service but was informed that all recruitment is done online. As the move away from paper based applications to electronic forms, so does the promotion and advertising. In this is currently being outsourced to private companies, one such company Capita are using technology based algorithms to reached volunteers. Capita state

“that the target audience is that of 18- 24 year olds.”

although in practise its without validity as many young people in able to assess social media claim to be older than they are. This opens up the possibilities of a child within a few clicks of a mouse or smart phone enlisting to the armed forces without any parental oversight till the form/letter arrives.

Without knowledge of how the algorithms are coded we are unable to disregard this possibility. Latest statistics show 37% of UK 11-16 year olds use Twitter, estimated 2.5 million 13-17 year olds are on Facebook. This however when viewed against a

statement from John Bourton the former head of Army Youth Team whose statement for this report said the mission statement was

“To assist young people in the pursuit of adventurous activities and by doing so encourage those of the right caller to join the army’

and that ‘the target age group was 12-16 year olds”

Even as recently as today at the time of writing, the Telegraph reports that General Sir Nick Carter said:

‘Self-interested’ internet generation need persuasion to become military reservists.”

However unrelated this is to the armed forces in schools, the point seeks to show how now all aspects of recruitment are focused online. The new form of recruitment in this field allows for little scrutiny or transparency of advertisements, due to the targeted nature of online marketing.

4 Boys time

The heading of this chapter is not to cause controversy nor does it mean to lack politically correctness as the MoD promote equality and diversity at all levels. The chapter heading Boys time is in reference to a slang term within the Royal Navy. What is meant is that the two years’ service is not included into general service, so that a 16-year-old may have to wait five years before allowed to submit a termination of service request, opposed to those over the age of 18 who can process the right after three years. Sometimes referred to as the 6-year trap, a modern day pressgang a young person can use the divisional process. If dispensations from the commanding officer, if authorised.

Beyond the legal technicalities such as differences in time allowed out of military establishments, including usual civilian rights over purchasing alcohol. Young service personnel are expected to carry out the same duties.in some cases where statutory rights can be overridden by the waiver system, during this investigation a veteran wishing to remain anonymous disclosed such a process was used due to manning shortages and subsequently at the age of 17 the individual was on operational deployment in the Middle East carrying out the same duties without the same rights, this is inherently unfair.

Many under-18s in general service suffer from emotional and mental health issues a recent report found that:

“younger soldiers in combat are seven times more likely to develop PTSD.”

Furthermore, a recent BBC 3 video which stated:

“that young army recruits are 68% more likely to take their own life than civilians of the same age.”

A career in the armed forces is not the same as other employers, why would the MoD pay for recruitment ads saying be the best if it was, it isn't and as such the risks and vulnerabilities are not unique to children from socially disadvantaged

backgrounds, although such children can face them disproportionately. What can be done is the introduction of appropriate adults into the recruitment process, detailed enquiry into an applicant's educational psychologist reports and risk assessments. And such reports of psychological impacts are not new many service leavers complain of alienation, lack of mental health provisions and when we explore the job prospects of early service leavers:

"new early service leavers especially are twice as likely to be unemployed than civilians"

according the British Legion

More should be done to fully explain that as opposed to public law the MoD operates standards based upon Queens regulations, within this the divisional system. Owing a duty of care to all service personnel but the lack of awareness of the waiver system which as stated previously is entirely discretionary.

Armed forces careers activities accounted for 35% of the 1783 visits in 2010-12. Information provided from FOI request from a school in the Scottish Borders said that

'The armed forces are not allowed to talk to pupils about recruitment and only used to provide activities which cannot be covered in the school such as first aid training and physical activities using specialist equipment'.

One would expect some lessons on Queens regulations at least

Finishing this chapter and returning to the theme that of boys' time, it is an established developmental fact that for many people the brain does not finish maturing till 25 the risks to young people far exceed those of only a few years older. In the Medact report it states:

"there is evidence that significant changes occur between the ages of 16 and 18 years, and that further change continues for several years beyond the age of 18 years in many individuals"

Many of these boy and girls operate some of the most expensive and complex weapons systems in the world, in a fast and demanding environment. The report sums up:

"adolescent decision-making is more likely to be influenced by emotional and social drivers and rewards than that of adults"

5 International Human Rights Day

At the JUSTICE Human Rights Day Lecture given by W. James Wolffe QC, Lord Advocate on fundamental rights and the prosecution of crime the Lord Advocate explained the current lay of the land in regards to Human Rights:

'...for since the promulgation of the Universal Declaration of Human Rights, 66 years ago tomorrow, the international community has developed a significant body of international human rights law-The United Kingdom is party to most of the key

international treaties, and is accordingly, bound by those international human right norms.'

Following the lecture the opportunity to question the Lord Advocate publicly was sadly cancelled because of a protestor at the start of the event, that being said I did have the chance to ask the Lord Advocate for his opinion on the outstanding recommendations from the committee of the rights of the child:

"that military recruiters assess to schools be strictly limited"

and the comments from the Children and Young Peoples Commissioner for Scotland saying:

'violates child rights laid out in the convention'

The Lord Advocate said:

"no comment".

Outside Laigh Hall the opportunity arose to briefly ask the Dean of the Faculty of Advocates if he had heard of the convention, replying that he had used it in a case.

Upon further investigation the UNCRC has indeed been cited in upwards of twelve times in criminal cases Scotland. And as the Lord Advocates said the UK and therefore Scotland is bound to abide by these treaties, we should do so with pleasure and in doing so, we shall join the vast majority of countries the International community and leave in our wake the human right abusers.

Otherwise what right does the Scottish Parliament have to speak of human right violations abroad when they happen so frequently at home.

6 The issue of military activities in schools

During this investigation i have found no other institution, public body, company, political party or historical event that is given the same promotion as the armed forces without scrutiny or debate however important the armed forces are, only will they be the best when they are held to high standards.

If we do not criticise, challenge claims no one can expect informed citizen and school pupils should be encouraged to explore the ethical or emotional issues that a career in the armed forces brings. As explained previously we cannot expect the armed forces to do this, not only are they not able but morally the step would be too far.

We cannot expect service personnel to provide balance as Catherine Spencer former Chief Executive of the Army Families Federation in the Telegraph speaking regarding cuts to service personnel:

'Finally, soldiers are denied the right to voice any of these concerns themselves, thanks to increasingly draconian regulations regarding participation in protestor speaking out about the Army"

Those conducting the visits therefore aren't allowed, go give a balanced opinion to say action can mean killing, it can mean watching civilians die it can mean seeing your comrades suffering or being killed. This is a job like no other yet it is placed above criticism, this one sided view the view of travelling the world, of night clubs and adventure training is no longer fit for purpose. Many of the veteran who contributed to this investigation spoke of the last resort what sort of society allows for a child to feel that they do not belong and as they don't feel that way the military is sometimes presented as the only option.

If we explore the *in loco parentis* a Latin term used to mean in place of the parent or guardian, such as a teacher. How can a teacher say that the child under their care is nurtured by a careers presentation and who then is responsible as the 'military ethos' program has received no public consultation, EIS have expressed concerns on this point.

However, what of the parent or guardian, should they not be aware of this information their child has been given or in fact should consent be sought. Children have agency and should be respected therefore providing a balanced representation is the very least, the committee should suggest following the public consultation.

Many other opportunities are available to young people but no other public services or business employers visit schools to the same extent as the armed forces and then again if instead we were speaking of a fast food franchise visiting schools this often, it would be quickly stopped. We should ensure that apprenticeship information is distributed well throughout schools in Scotland and not only military apprenticeships.

The data in establishing what happens at career events, when and how many has been difficult to source and little wonder then reading the freedom of information request I received from Skills Development Scotland they said:

"As individual SDS regions do not keep a record of what organisations participate at career events we do not have a central record of how often the armed forces have been present at events"

Thus head teachers as organisers have a responsibility to provide the information as in many instances they are authorising the career events and picking the pupils who should attend.

The Ministry of Defence have not yet acknowledged my freedom information request based on Skills Development Scotland disclosure. As such the information in this report regarding the MoD was sourced via already published online PDFs

Evaluation

The evaluation will be handed into the Legal Services department at City of Glasgow college in February, if the committee has any question regarding this or any other information this investigation contains, I am available for questioning.