Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96) **www.cpti.ws**

Bruineveld 11 · B-3010 Leuven · Belgium · Ph.: +32.16.254011 · e-*: cpti@cpti.ws

Belgian account: 000-1709814-92 · IBAN: BE18 0001 7098 1492 · BIC: BPOTBEB1

Representative to the UN Geneva:
Derek Brett
Avenue Adrien-Jeandin 18
1226 Thônex.
Tel./fax: 022 860 24 63
Email: dubrett@talk21.com

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Conscientious Objection to Military Service:
Issues for the Country Report Task Forces
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

SUMMARY:

On the surface, the UK's record with regard to conscientious objection to military service is exemplary. At no stage in the last century has the UK imposed obligatory military service without provisions allowing the exemption of conscientious objectors, and it is today one of the few States to have an established procedure for the honourable early discharge from the armed forces of serving personnel who have developed a conscientious objection.

Inevitably, the detailed picture is not so uniformly positive. Of particular concern at present is the secretive and uneven implementation of the regulations permitting the discharge of in-service conscientious objectors. It is suggested that legislative provision would be more appropriate.

CPTI would also draw the attention of the Committee to a growing movement in the UK of those who wish accommodation of their conscientious objection to the use for military expenditure of the money they have paid in tax.

Background

With the exception of the periods between 1916-1919 and 1939-1960 the UK's armed forces have been manned by voluntary recruitment only, and the legislation which brought in both periods of conscription incorporated provisions permitting the exemption of conscientious objectors. The reference to conscientious objection in the Military Service Act of 1916 was one of the earliest legislative acknowledgments anywhere of this principle.[1] In practice, the treatment of conscientious objectors, particularly during the First World War, was often extremely harsh,[2]

Whereas the First World War conscription was phased out as soon as feasible after the end of hostilities, "national service" persisted for some years after the Second World War; the final conscripts completed their service in May 1963. During the Second World War, the Appellate Tribunal which dealt with cases of conscripts who claimed a conscientious objection was empowered to sit in an "advisory" capacity to hear cases where a serving member of the armed forces claimed to have developed a conscientious objection; in such cases it was referred to as the "Advisory Tribunal".[3]

There was a period of uncertainty following the ending of conscription. Prasad and Smythe[4], writing in 1968, referred to a parliamentary announcement extending the window of time for reconsideration to new recruits from three months to six months, made on 5th February of that year, which described this as a conscientious objection provison, and described the procedures which still apply, although the principle is now firmly established that the possibility of discharge applies to any service personnel, whether full-time, part-time or reservist, "who, during their service, develop a genuine conscientious objection to further military service".[5] Successful application would lead to discharge on compassionate grounds, and accordingly applications would be considered in the first instance by the individual's commanding officer and then passed to a higher authority within the branch of the Services concerned for decision. Rejected applicants would however be able to appeal to the Appellate Tribunal.

In 1970, the Appellate Tribunal was replaced by the Advisory Committee on Conscientious Objection (ACCO). "The ACCO is an independent committee appointed by the Minister for Constitutional Affairs. It consists of a Chairman, a Vice Chairman and 4 lay members. A quorum is the Chairman, Vice Chairman and 2 members. ACCO hearings are held in public but the procedure is relatively informal. The applicant is not informed of the Committee's decision on the day of the hearing as their advice must first be formally accepted by the Secretary of State for Defence's representative. This representative is the Director General Legal Secretariat."[6] An

[1] There had been precedents in non-wartime legislation in some of the then British dominions.

[2] According to the No-Conscription Fellowship, 73 conscientious objectors died as a result of their treatment at the hands of the authorities, including 10 who died in prison. (Goodall, F. A Question of Conscience: Conscientious Objection in the two World Wars, Sutton, Stroud, UK 1999, pps 39 and 53.)

[3] Information supplied by Bill Hetherington of the Peace Pledge Union.

[4] Prasad, D. & Smythe, T., Conscription -a world survey: compulsory military service and resistance to it, War Resisters International, London, 1968, p66.

[5] World Veterans Federation: Evidence dated 12th August 2003, submitted to the OHCHR for its report on "best practices" in the field of conscientious objection to military service, quoting a Ministry of Defence document.

[6] Procedure for dealing with conscientious objectors within the Royal Air Force, AP3392, Volume 5, Leaflet 113, September 2004 (obtained by War Resisters International under the Freedom of Information Act, 17th September 2007), at paragraph 12.

earlier source[7] indicates that as initially set up, the ACCO was appointed by the Lord Chancellor with slightly different membership and quorum rules, and expands slightly on the procedure: "There is no swearing-in of witnesses, and, although the witnesses and the appellant may be questioned, there is no cross-examination." The applicant may opt to be represented before the Committee and to be accompanied by a witness.

Despite the formality of the advisory process, it is claimed that "A successful appeal to the Advisory Committee is invariably accepted by the Department as decisive on the question of conscience and the applicant will immediately be granted a release from military service."[8] Moreover, at least in the Army, the files of those who are granted such release, with or without the involvement of the ACCO, are to be marked "Conscientious objector - NOT TO BE RECALLED"[9]

On the other hand, "If the ACCO reject an appeal for discharge on the grounds of conscientious objection, the appellant is interviewed by their Commanding Officer and informed of the ACCO's decision. The appellant is also informed that he or she must continue their military service under the same conditions that applied to them before the ACCO heard their plea, until such time as they retire or are allowed to resign, if an officer, or are discharged on completion of their engagement or allowed to purchase their discharge, if a Serviceman or woman. The appellant is advised that they continue to be subject to Service discipline. However, they are not prevented from resubmitting their case, provided that there is additional and relevant evidence to be heard. In such cases the whole appeals procedure is repeated."[10]

Within this broad framework, detailed rules are drawn up by the individual branch of the armed services concerned, and are not made public. Copies of the relevant documents have now been obtained by War Resisters International (WRI) by a request under the Freedom of Information Act, and more details are given in the separate submission made by that NGO.

Problems with the current system

It must be stated at the outset that the existence, independence, and detailed procedures of the ACCO are an excellent model. Very few of the world's States allow for the possibility that a conscientious objection may develop during military service and that non-punitive procedures to allow the release from service of those affected are essential to prevent an interference with the right to change one's religion or belief.

There are three major areas of concern.

1) Until such time as rejected and made the subject of an appeal to ACCO, applications for release on the grounds of conscientious objection are handled neither independently or publicly.

[7] World Veterans Federation: evidence submitted to the OHCHR, 2003, op. cit. (It is to be assumed that with the latest Government reorganisation responsibility has now passed to the new Ministry of Justice)
[8] Ibid. The words "decisive on the question of conscience" had been used by the Secretary of State for Defence, in Hansard, 5th February 1968, as quoted by Prasad and Smythe, op. cit.
[9] AGAIs Vol 5, Instruction 6 "Retirement or discharge on grounds of conscience", paras 7 and 13.
[10] Ibid.

2) Such applications do not have a suspensory effect.
3) Information about the possibility of release has not been readily available to those affected. As noted above, the documents outlining the procedures to be followed have been treated as confidential.

Lack of independent and public process in the first instance

Between its foundation in 1970 and 2001 ACCO handled only 36 appeals, 11 of which it upheld.[11] Since 2001, not a single case has been referred to it.[12] There is too little information to give a clear picture of the number of cases which do not reach the stage of being appealed to this independent tribunal.

Any release of a conscientious objector by the individual services is recorded simply in the figures giving the number of releases on compassionate grounds. We are aware of the results of two independent requests under the Freedom of Information Act for more detailed figures, including unsuccessful applications. In March 2007, the Ministry of Defence reported that no records were maintained of unsuccessful applications, but that in the period April 2001 to March 2006 there had been four successful applications, all from Air Force personnel;[13] in September 2007 that there had "since 2000" been three applications from the Navy and three from the Air Force, and that one of the Navy applications had been unsuccessful.[14] In neither instance were any applications from the Army reported. There are obvious inconsistencies between the two replies, but it seems clear that no systematic records are kept of the number of applications which are initiated but subsequently withdrawn, resolved to the satisfaction of both parties by release not recorded as being on grounds of conscientious objection (or by redeployment), or overtaken by other events or processes, such as disciplinary discharges, let alone of the number of instances in which the would-be conscientous objector is dissuaded from registering a formal application.

Both the Armed Forces and genuine conscientious objectors have a legitimate interest "to avoid abuse by those who simply wish to circumvent the normal PVR (premature voluntary retirement) procedures".[15] Over and above this, however, it is no reflection on the will of the armed forces to come to a satisfactory resolution of a crisis of conscience faced by any of their personnel that they are acutely aware that "objections to military service on grounds of conscience can often attract disproportionate Parliamentary and public interest".[16] It is therefore to be expected that there is a strong perceived interest in resolving such cases by other means. The individual conscientious objector, too, has more interest in achieving a favourable outcome than in following a process, however correct, where the request may be opposed more vigorously, but is the weaker party in such negotiations. At the very least, by consenting to release on other grounds, he or she loses the full protection against subsequent recall, eg in time of emergency, which, as described above is granted to those who have been released on explicit grounds of conscientious objection.

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[11] Stolwijk, M., The Right to Conscientious Objection in Europe, Quaker Council on European Affairs, Brussels, 2005, also at www.wri-irg.org/co/rtba/unitedkingdom.htm

[12] Gee, D., Informed choice? A study of armed forces recruitment practice in the United Kingdom , report forthcoming November 2007. (Information obtained by a request under the Freedom of Information Act, March 2007.)

[13] Ibid

[14] Information obtained by War Resisters International by a request under the Freedom of Information Act, September 2007.

[15] Procedure for dealing with conscientious objectors within the Royal Air Force, op. cit., at para 6.

[16] Procedure for dealing with conscientious objectors within the Royal Air Force, op. cit., at para 1.

Even if a formal application is lodged, the naval and air force rules refer explicitly to the possibility of persuading the applicant to reconsider:

"The applicant is to be interviewed by OC PMS and, having considered the individual's personal circumstances, counselled on the possible implications of such action. It may be necessary to obtain guidance from respective policy areas within the RAF PMA before advising on the financial implications of premature exit on pensions or incentive bonuses etc. It may also be appropriate to suggest that the individual should defer proceeding with the application for a short period in which to reflect. This period should not, however, exceed 10 working days."[17]

"It may be appropriate in certain cases to suggest that an applicant should defer his or her request for a week or two and give the matter further thought. Such a delay must however be of only short duration. Deferments of, for example, six months are not acceptable."[18]

These examples illustrate that the existence of separate regulations will inevitably lead to systematic inconsistencies between the different branches of the armed forces. Beyond that, the handling of any individual application will vary with the individual commanding officer who receives it. In practice, there must always be a fear that many conscientious objectors will find themselves in a very hostile environment and under strong institutional and peer pressure to reconsider.

Lack of suspensory effect

An application for discharge as a conscientious objector has no suspensory effect. There is no protection whatsoever against the possibility that the conscientious objector may, after lodging the application, be given a specific order which is directly contradictory to the nature of the objection.

"the applicant remains subject to Air Force Law and is required to respond appropriately to lawful commands. The applicant also remains liable to normal disciplinary action regardless of whether the commission of any offence is related to the plea of conscience."[19] This means that in the most extreme case a dismissal on disciplinary grounds may not be unrelated to the conscientious objection.

[17] Procedure for dealing with conscientious objectors within the Royal Air Force, op. cit., at para 5.
[18] PLAGO (Personnel, Legal, Administrative and General Orders) , Section 8, "Application for discharege on grounds of conscientious objection", at para 2.
[19] Procedure for dealing with conscientious objectors within the Royal Air Force, op. cit., at para 6.

Lack of information

Information about the possibility of applying for a discharge on the grounds of conscientious objection is not included in any information routinely given to new Army recruits.[20] This means that even where a conscientious objection could be clearly articulated, the correct procedures will not always be followed. A typical error is to absent oneself before revealing one's conscientious objections.[21]

Underlying the specific concerns about unsatisfactory aspects of the current system, general aspects of recruitment into the UK armed forces make it likely that there is an unusually high latent demand for in-service conscientious objection. The UK is unique among European states in the high proportion of recruits into the armed forces who are aged under 18 - 34% overall in 2005-2006, rising to 40% in the army. Even more unusual is the systematic recruitment into the army of 16-year-olds. In the same year, approximately 2,400 army recruits were aged sixteen at their last birthday, as compared with approximately 2,500 aged seventeen, 1,700 aged eighteen and progressively fewer at higher ages.[22] This implies that sixteen-year-olds represented very nearly 20% of all recruits. The presence of minors in the ranks, particularly in such large numbers, poses a number of problems which were highlighted by the House of Commons Defence Committee in its "Duty of Care" report[23], but also raises specific issues with regard to conscientious objection. It is reasonable to assume that those who enlist at such a young age are more likely than others to find their outlook subsequently changing as they mature; in some cases this will result in the development of a conscientious objection.

Moreover, the low recruitment age is set in order to attract those who leave formal education at the first legal oportunity. The Army's own research indicates that approximately half of all recruits have literacy and numeracy skills equivalent to those of an average 11-year-old.[24] This implies that a large proportion of army recruits would not be able to articulate a claim of conscientious objection in those terms, no matter how genuine the objection. Information on the possibilities is the very least that could be done to mitigate this. As it stands at the moment, the fact that there have been no recent successful applications in the most numerous, but least skilled, of the three services strongly suggest that the current procedures place a strong premium on articulacy.

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[20] Gee, D., op.cit.

[21] Eg. the case of Leading Aircraftsman Mohsin Khan, cited in the submission by War Resisters International. Media reports have suggested that less publicised instances have occurred in the case of members of the Territorial Army (reserves) who once notified of mobilisation are subject to the same conscientious objection provisions as regular membes of the armed forces.

[22] Gee, D., op. cit. (The source of the statistics is Defence Analytical Services Agency (www.dasa.mod.uk), TSP19 - Intake to and Outflow from UK Regular Forces)

[23] House of Commons Defence Committee, Duty of Care, HMSO, London, 2005.

[24] Ibid., Vol 2, Ev.256.

Conscientious objection to taxation for military purposes

No UK citizen who is now below the age of 65 has been faced with a call-up to perform military service. Despite this, the UK has remained a major military power. British troops have been prominently engaged in diverse, sometimes highly controversial, campaigns in many parts of the world. Technological sophistication and professionalism have taken the place of mass recruitment. The UK has maintained a nuclear deterrent, which is the supreme example of capital expenditure taking the place of manpower in terms of military readiness.

It is not necessary to elaborate these arguments in detail to explain why the belief has been widespread among UK citizens that they no less effectively conscripted into contributing to the military activities of the State through the payment of tax as in other circumstances they might have been through personally bearing arms. Over the years, many have accordingly claimed a conscientious objection to paying towards these activities. Many have attempted, pending assurances that it will be diverted to other areas of public spending, to withhold the proportion of their tax assessment which they calculate goes towards military expenditure. The website of Conscience - The Peace Tax Campaign[25] lists four cases between 1986 and 1995 where objectors were even imprisoned for a continued conscientious refusal to pay. A very much larger number have ultimately paid under protest, or have had no choice in the matter because of the deduction at source of tax on earned income.

The Human Rights Committee, although not directly involved, should be aware that in January 2006 an application was lodged at the European Court of Human Rights by seven UK citizens who had unsuccessfully brought a joint action in the British courts for judicial review of their individual cases against the tax authorities, claiming a violation of Articles 9 (Freedom of thought, conscience and religion) and 14 (Non-discrimination) in conjunction with 9 of the European Convention on Human Rights. Further details, including the full text of the submission to the European Court of Human Rights, can be read on the group's website: www.peacetaxseven.com .CPTI is actively working with and supporting the "peace tax seven".

[25] www.conscienceonline.org.uk

Suggestions for the list of issues:

CPTI suggests that the UK might in the list of issues be invited to consider improvements to the existing arrangements concerning service personnel who develop a conscientious objection to further service, for instance:

a) enshrining in law (eg in the periodic Armed Forces Acts) the procedures for dealing with applications for release.
b) that all applications be referred in the first instance to an independent tribunal
c) that a mention of release on grounds of conscientious objection be included in the information supplied to all recruits, together with an indication of where to obtain further guidance.

and that furthermore consideration be given to what measures might be feasible in order to minimise the risk that a serviceman or -woman who has applied for release on grounds of conscientious objection might unnecessarily be faced with subsequent orders blatantly contrary to the nature of the objection.

21st September 2007.