



**Redress of Individual Grievances:
Service Complaints
Issue 2.2**

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RECORD OF CHANGES

Change No	Authority	Date
1	Joint JSP 831 review working group	Sep 09
2	Consultation with Services and Service Complaints Commissioner	Nov 09
3	CLS	Jan 10
4	Consultation with Services, Service Complaints Commissioner and CLS	Apr 10

CONTENTS

CHAPTER 1 - INTRODUCTION	1
SCOPE	1
LEGAL BASIS	1
TRANSITIONAL ARRANGEMENTS	1
PRINCIPLES	2
Resolution	2
Justice	2
Investigation	2
Information and Disclosure	2
Delay	3
Standard of Proof	3
Malicious or Vexatious Complaints	3
KEY FEATURES OF SERVICE COMPLAINTS PROCESS	3
General	3
Levels	4
Secretariat	4
The Service Complaint Panel (SCP)	4
Independence	4
Service Complaints Commissioner (SCC)	5
Service Complaint Form	6
Joint Personnel Administration (JPA)	6
Reference to the Sovereign	6
CHAPTER 2 - SUBMITTING A SERVICE COMPLAINT	7
GENERAL	7
Informal and Service Complaints	7
Method of Submitting a Service Complaint	7
Time Limits for Stating a Service Complaint	7
Complaints Made Outside the Time Limits	8
Service Personnel Assigned or Attached to another Unit or Service	9
Service Personnel Serving Outside Service Command	9
Complaints Made After Leaving the Armed Forces	9
Employment Tribunals (ET)	9
COMPLETING A COMPLAINT FORM	10
Service Complaint Form	10
Purpose	10
Assistance to Complainant	11
ALLEGATIONS BY THIRD PARTIES	11
BULLYING OR HARASSMENT COMPLAINTS	12
DISCRIMINATION COMPLAINTS	12
MEDICAL COMPLAINTS	12
PAY AND ALLOWANCE COMPLAINTS	13
Pay Complaints Process	13
Pay Complaints Dealt With by a SCP	14
COMPLAINTS ABOUT APPRAISAL REPORTS	14
Process	14
Expunged Comment	14
EXCLUDED COMPLAINTS	14
Categories of Excluded Complaints	14
Redress which cannot be granted	15
CHAPTER 3 - LEVEL 1: THE COMMANDING OFFICER	16
THE COMMANDING OFFICER (CO)	16
Definition	16

Service Complaints in which the CO is Implicated	16
PRE-DECISION PROCEDURES	16
Receiving an Allegation from the SCC	16
Receiving a Service Complaint from a Complainant	17
Additional Matters of Complaint.....	19
Malicious or Vexatious Complaints.....	19
Timeframe for CO's Consideration	19
Investigating the Complaint	20
Disclosure.....	20
DECISION – DECIDING THE COMPLAINT	20
POST-DECISION PROCEDURES.....	21
Notification to Parties.....	21
Response by the Complainant	22
Complaints Papers	22
Actions on JPA	23
Reports to the Service Complaints Commissioner (SCC)	23
CHAPTER 4 - LEVEL 2: THE SUPERIOR OFFICER	24
THE SUPERIOR OFFICER (SO)	24
Definition.....	24
When the SO is Implicated in the Complaint	24
PRE-DECISION PROCEDURES	24
Receiving the Complaint.....	24
Additional Matters of Complaint.....	24
Malicious or Vexatious Complaints.....	24
Timeframe for SO's Consideration	25
Investigating and Referring the Complaint	25
Disclosure.....	25
DECISION – DECIDING THE COMPLAINT	25
POST-DECISION PROCEDURES.....	26
Notification to Parties.....	26
Response by the Complainant	27
Referring the Complaint.....	27
Actions on JPA	27
Reports to the Service Complaints Commissioner	27
CHAPTER 5 – LEVEL 3: THE DEFENCE COUNCIL	29
GENERAL	29
Introduction.....	29
Non Delegation.....	29
SINGLE SERVICE BOARD.....	29
Composition.....	30
Retained Complaints	30
Delegated Complaints	30
THE SERVICE COMPLAINTS PANEL	30
Powers.....	30
Composition of Service Complaints Panel	31
Excluded Members.....	31
Independent Member	31
Selection.....	32
FUNCTION OF A SERVICE COMPLAINT PANEL.....	32
Meeting.....	32
Decisions	32
Legal Advice	32
PRE-DECISION PROCEDURES	33
Receiving the Complaint.....	33
Complaints Papers	33

Investigating the Complaint	33
Disclosure.....	33
Malicious or Vexatious complaints	33
ORAL HEARINGS.....	34
DECISION – DECIDING THE COMPLAINT	34
POST DECISION PROCEDURES.....	34
Notification to Parties.....	34
Timeframe for Defence Council Consideration.....	35
Report by the Service Complaints Panel.....	35
REFERENCE OF COMPLAINT TO THE SOVEREIGN.....	35
Reference	35
REPORTING	35
Actions on JPA	35
Reports to the Service Complaints Commissioner	35
CHAPTER 6 - THE SECRETARIAT.....	37
THE SECRETARIAT	37
CENTRAL SECRETARIAT	37
Tasks.....	37
SINGLE SERVICE SECRETARIAT	38
Tasks.....	38
Independent Members of SCs	39
CONTACT WITH THE SERVICE COMPLAINTS COMMISSIONER.....	39
Point of Contact.....	39
Power to Refer.....	39
RECORDING COMPLAINTS.....	39
Recording Service Complaints on JPA.....	40
CHAPTER 7 - THE SERVICE COMPLAINTS COMMISSIONER (SCC)	41
INTRODUCTION.....	41
Role	41
TERMS OF REFERENCE.....	41
Status	41
Point of Contact.....	41
Statutory Powers	42
Annual Report.....	42
Data Control	42
Submitting Allegations to the SCC	42
SCC REFERRED ALLEGATIONS	43
Receiving an Allegation	43
Notification of Complaints.....	43
Other Allegations	43
ANNEX A.....	
ANNEX B.....	
ANNEX C	
ANNEX D	
ANNEX E.....	
ANNEX F.....	
ANNEX G	
ANNEX H	
ANNEX I.....	
ANNEX J	
ANNEX K.....	

JSP 831 has been equality and diversity impact assessed in accordance with Departmental policy. This resulted in a:

- Part 1 screening only completed (no direct discrimination or adverse impact identified).

This JSP is due for review in June 11.

CHAPTER 1 - INTRODUCTION

SCOPE

1.1 The aim of this JSP is to provide guidance on the procedures to follow in order that statutory complaints (Service complaints) raised by Service personnel and former Service personnel are handled and resolved in accordance with legislation, using a process that is efficient, fair and transparent. This guidance is not legally authoritative and if in doubt legal advice should be sought on the meaning and intent of the relevant legislation.

1.2 The information in this publication is aimed at all those involved in processing or deciding a Service complaint, as well as the individual seeking redress.

1.3 This JSP sets out MOD policy concerning Service complaints seeking redress of individual grievance under sections 334 to 339 of the Armed Forces Act 2006¹ (The Act), the related Statutory Instruments and Defence Council Regulations 2007².

1.4 The process for dealing with Level 1 complaints of bullying and harassment are contained in JSP 763 (The MOD Bullying and Harassment Complaints Procedure), which covers both Service and civilian personnel. Once the JSP 763 process has been completed at Level 1 an individual can choose to refer it to Level 2. Refer back to JSP 831 (Chapter 4) for guidance from this point in the process. Prolonged or frequent discrimination may give rise to allegations of bullying or harassment. JSP 763 should always be followed in the first instance for these types of complaints.

LEGAL BASIS

1.5 The Act gives a person subject to Service law³ who thinks they were wronged in any matter relating to their Service⁴, a statutory right to make a Service complaint. It also gives such a right to a person who is no longer subject to Service law, who thinks that they were wronged in such a matter while they were subject to Service law⁵. Under the Defence Council Regulations, a Service complaint can only be made by an individual; there is no procedure for group complaints⁶.

TRANSITIONAL ARRANGEMENTS

1.6 Transitional Arrangements are contained in [Annex E](#). Where any doubt exists as to how transitional arrangements are to be interpreted the matter should be referred to the single Service or central secretariat (See [Chapter 6](#)).

¹ See Annex A.

² a. The Armed Forces (Redress of Individual Grievances) Regulations 2007 are at Annex B.

b. The Armed Forces (Service Complaints Commissioner) Regulations 2007 are at Annex C.

c. The Armed Forces Redress Of Individual Grievances (Procedures And Time Limits) Regulations 2007 are at Annex D.

³ This includes both regular and reserve service

⁴ Certain types of complaint are excluded. See Excluded Complaints at Chapter 2, paragraphs 2.32 and 2.33.

⁵ The time limits that apply are at Chapter 2, paragraph 2.3.

⁶ For example, change to a pay rate or an allowance could affect a number of Service personnel. If those Service personnel thought themselves wronged by the change and wished to make a Service complaint, each person concerned would need to submit an individual Service complaint – the affected group could not submit a Service complaint under all or some of their names.

PRINCIPLES

1.7 Resolution. The intent is that complaints are dealt with at the lowest level possible and resolution achieved quickly and, where possible, informally. Every effort should be made, where appropriate, to resolve a complaint informally, but the making of a Service complaint in accordance with the legislation is a legal right⁷ and a person who is in the process of seeking an informal resolution should be aware that they have the right to submit a Service complaint at any time within the time limits. The difference between a Service complaint and an informal complaint is explained in [Chapter 2](#). Redress, where justified, should be granted at the lowest possible level, within powers to do so⁸.

1.8 Justice. All those involved in the Service complaints process should act fairly, openly, without bias, in a reasoned manner and avoid unnecessary delay. A person who is the subject⁹ of or implicated in a complaint must have the opportunity to state their case and to correct or contradict any information relevant to their case. An individual who is the subject of a complaint should be given full details of any allegation made against them and a reasonable opportunity to respond. The complainant should be given reasonable opportunity to comment on or correct any information that might be relied on in coming to a decision on a complaint. It is important that a Service person feels free to exercise their right to make a complaint, without fear of victimisation or other inappropriate behaviour.

1.9 Investigation. Each complaint should be investigated to establish the facts as clearly as possible and the details accurately recorded. Posting or discharge is not to be considered as a valid basis for excluding an individual from any inquiries.

1.10 Information and Disclosure. The principle of providing information and disclosure to the complainant and any other person who might be affected by the outcome of the complaint is an important aspect of the complaints process. The Prescribed Officer¹⁰ at Level 1 (normally the Commanding Officer (CO)) will disclose all documentation and information relied on to decide a complaint prior to a decision being made. The same process applies at Level 2 Superior Officer (SO) or at Level 3 Defence Council¹¹, where once again all documentation and information received that may be relevant to a decision will be disclosed before a decision is made on the complaint. The complainant and others who may be affected by the outcome of the complaint are offered the opportunity to see and comment upon the disclosed documents and information. Disclosure is subject to exclusions where appropriate and consistent with Information Rights legislation, i.e. the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Privileged and protected information and advice is not to be disclosed or paraphrased, except when advised to do so by the relevant legal adviser. If doubt exists on any aspect of disclosure, legal and MOD policy advice should be sought from the appropriate Service legal adviser.

⁷ Armed Forces Act 2006 s 334(1).

⁸ Armed Forces Act 2006 s 334 (7) and (8).

⁹ Known in JSP 763 as a Respondent.

¹⁰ Although the Prescribed Officer will normally be the CO, if the CO is implicated in or the subject of the complaint, it should be made to the CO's immediate superior or if that officer is also implicated in or the subject of the complaint, it should be made to an officer appointed by the higher authority of the Service concerned. See Chapter 3, paragraph 3.3.

¹¹ At the Defence Council level a service complaint may be resolved by a single Service Board or a SCP.

1.11 **Delay.** Unreasonable delay is unacceptable. In minimising delay, all those involved in the Service complaints process should ensure that this is not achieved at the expense of justice or appropriate investigation. All those involved in the Service complaints process have a responsibility to be reasonable and to expedite the handling of the complaint by responding to correspondence and requests for information within the timescales specified in Chapters 3, 4 and 5.

1.12 **Standard of Proof.** In assessing a complaint, the decision maker at each level must establish if there are sufficient grounds to uphold the complaint. The basis for the decision is the standard of proof used in employment law – it is enough if the person dealing with the case considers that a wrong probably occurred. In other words, at the very least, there must be evidence to show that it was more likely than not that the wrong alleged by the complainant occurred¹².

1.13 **Malicious or Vexatious Complaints.** Service complaints will be assumed to have been made in good faith¹³ and complainants have a right to be protected against victimisation for making such a complaint, even if it is not upheld. In the event of a complaint being determined to be malicious¹⁴ or vexatious¹⁵, administrative or disciplinary action, as appropriate, should be considered against the complainant. Legal advice should be obtained before determining whether a complaint falls into either of these two categories. If such a determination is made the complaint should be rejected and the complainant informed in writing. If any doubt exists about whether a complaint is malicious or vexatious, it should be treated as valid..

KEY FEATURES OF SERVICE COMPLAINTS PROCESS

1.14 **General.** The key features of the Service complaints process are that:

- a. Complaints are resolved at one of three levels¹⁶.
- b. Complaints may be dealt with by a Service Complaint Panel (SCP)¹⁷.
- c. Certain categories of complaint will have an independent person on the SCP¹⁸.
- d. The Service Complaints Commissioner (the SCC) may receive allegations and refer those of certain types¹⁹ to the chain of command for action as Service complaints, should the Service person alleged to have been wronged wish to make such a complaint. The SCC will report to Parliament

¹² This is "on the balance of probabilities".

¹³ The fact that a complaint is not upheld does not mean that it was made in bad faith. A complaint is made in bad faith where there is evidence that the complainant has been dishonest rather than, for example, that they were confused and upset.

¹⁴ i.e. a complaint motivated by malice, spite or ill-will, which is intended to cause harm to others.

¹⁵ i.e. an unmeritorious and/or recurring complaint which seeks only to annoy or distress others, or cause unnecessary administrative effort.

¹⁶ See paragraph 1.15 below.

¹⁷ See paragraph 1.17 below.

¹⁸ See paragraph 1.18 below.

¹⁹ See Chapter 7.

annually on the efficiency, effectiveness and fairness with which the complaints process has operated.

- e. Service complaints will be submitted on a Service complaint form²⁰.

1.15 Levels. The Service complaints process has 3 levels: Level 1 - Prescribed Officer²¹, usually the CO (roles and responsibilities of the CO are detailed in [Chapter 3](#)); Level 2 - SO (roles and responsibilities at [Chapter 4](#)); Level 3 - Defence Council level (roles and responsibilities at [Chapter 5](#)). The CO should consider carefully whether they can effectively deal with the complaint in reasonable time. Should the CO not be able to do so or lack the authority to grant the desired or any other appropriate redress, they may refer the complaint to the SO after conducting an appropriate investigation. If the SO also does not have the authority to grant the required redress the CO may refer the complaint directly to the Defence Council, having consulted with the SO. On receiving a complaint, the SO should make the same considerations as the CO. At each of the first two levels, if the complainant is not satisfied with the proposed resolution of the complaint or the redress to be granted they may apply to have the complaint referred to the next higher level for consideration.

1.16 Secretariat. The complaints process is supported by a secretariat. The secretariat has 2 main components; a central secretariat and the secretariats of the three single Services. The central secretariat is part of the central staff reporting to D SPPol through Hd SPPol SCW and Asst Hd SPPol SCW. The single Service secretariats are embedded within their single Service chains of command in their separate locations.

1.17 The Service Complaint Panel (SCP). Once a complaint reaches the Defence Council level (Level 3) it will normally be considered by a Single Service Board or a SCP. A SCP will normally consist of 2 serving officers of at least 1* rank²², usually of the same Service as the complainant²³. SCPs will operate with the full delegated powers of the Defence Council appropriate to the case being considered. Guidance as to which types of complaints should be dealt with by a Single Service Board or a SCP is at [Chapter 5](#).

1.18 Independence. Although a SCP will normally consist of 2 serving officers, there will be an additional independent member to consider certain categories of complaint. The independent member must not be a member of the Armed Forces or the Civil Service. A SCP will include one independent member in any delegated case in which the complaint²⁴:

- a. alleges discrimination;
- b. alleges harassment;

²⁰ See Annex F.

²¹ Referred to as the Deciding Officer in JSP 763.

²² See Annex A. Although s 336 of the Act states that a SCP must have at least 2 members, with one of at least 1* rank, the policy is for all panel members to be of at least 1* rank.

²³ Complaints about another Service or a person in a different Service from the complainant is to be, where practically possible considered by an SCP composed of serving officers of the relevant Services and, where appropriate, an independent member.

²⁴ See Annex B. A SCP formed to investigate a complaint may also include an independent member.

- c. alleges bullying;
- d. alleges dishonest, improper, or biased behaviour²⁵;
- e. alleges failure of health-care professionals to provide medical, dental or nursing care where the MOD was responsible for providing the relevant care;
- f. alleges negligence in the provision by MOD health-care professionals of medical, dental or nursing care;
- g. concerns the exercise by a Service policeman of their statutory powers as a Service policeman;
- h. involves a Service complaint about a decision to reject a Service complaint for being out of time, that arose from a referral by the SCC of an allegation, and which related to any of the issues in sub paragraphs a to d above.
- i. Involves a complaint about a decision at Levels 1 or 2 not to allow a complaint to proceed following a referral by the SCC of an allegation of matters covered by sub paragraphs a to d above.

1.19 Service Complaints Commissioner (SCC). The SCC is a statutory appointment made by the Secretary of State for Defence. The SCC has the following roles:

- a. To provide an alternative point of contact for individuals, either Service personnel or third parties, who wish to make an allegation of discrimination, bullying or harassment or similar issues listed in paragraph 1.18 a to d above, about a Service person²⁶.
- b. To decide whether to refer such allegations to the chain of command for action.
- c. To provide the Secretary of State for Defence with an annual report to be laid before Parliament, on the efficiency, effectiveness and fairness of the Service complaints process over the reporting period (1 Jan to 31 Dec).

1.20 The referral by the SCC of an allegation under the statutory provisions about any matter within paragraph 1.18 a to d above, places obligations on the chain of command including a duty to check whether the person alleged to have been wronged wishes to make a Service complaint (see [Chapter 3](#)). The SCC may also receive allegations that a Service person has been wronged in a matter not related to those stated in paragraph 1.18 a to d. If the SCC chooses to refer such allegations to the chain of command, the legal obligations referred to above do not

²⁵ There needs to be intent and/or a deliberate act/omission and the dishonesty, bias etc will need to be alleged on the complaint form. Bias will have the standard legislative interpretation or the ordinary meaning of the word.

²⁶ This may be of particular benefit where the allegation relates to a member of the Services who is reluctant or feels unable to approach the chain of command.

arise and it will be for the chain of command to decide on what action to take²⁷. Existing JSP 831 complaints already being processed by the Services, that fall within the SCC's prescribed categories and are referred by the SCC, should be treated as a referred JSP 831 complaint. Refer to Annex E for additional guidance on Transitional Arrangements. Further details on the roles and responsibilities of the SCC are in [Chapter 7](#).

1.21 Service Complaint Form. A Service complaint can be submitted initially in any written form e.g. a letter or an e-mail. The complaint should subsequently be submitted on the standardised Service complaint form at [Annex F](#), to provide to officers dealing with the complaint clear information about the complaint and the redress sought.

1.22 Joint Personnel Administration (JPA). All complaints (including those submitted by ex-Service personnel) dealt with under this JSP are to be entered onto JPA by the complainant's unit admin staff at the earliest opportunity after submission. This will allow for the progress of a complaint to be monitored and for the SCC to have an overview of the effectiveness of the Service complaints system.

1.23 Reference to the Sovereign. Where a complaint has been decided by a Service Board, an Officer or a person who was an Officer at the time the matter complained of occurred, has the right to require a report on their Service complaint to be referred to the Sovereign in order to receive Her directions on the complaint. See [Chapter 5](#).

1.24 Further Complaints. A complaint that has been through the JSP 831 process and on which a final decision has been made cannot be raised again. A complaint can, however, be raised about the way in which a Service Complaint was dealt with under the JSP 831 process; this will not re-consider the facts or merits of the original complaint or the decision taken; and a further complaint can only be raised if there are allegations of procedural failings.

1.25 Complainant Expectations and Responsibilities. Complaints will be taken seriously and investigated without delay, impartially, thoroughly, sensitively and confidentially. The expectations of complainants and their responsibilities under the complaints procedures are at [Annex G](#).

²⁷ See Chapter 2, paragraphs 2.18-2.21.

CHAPTER 2 - SUBMITTING A SERVICE COMPLAINT

GENERAL

2.1 Informal and Service Complaints. Every complaint must be taken seriously, but many can be swiftly and satisfactorily resolved informally²⁸. Whilst informal resolution should always be attempted where appropriate, the complainant should be aware that a Service complaint²⁹ can be made at any time within the time limits. A complaint only becomes a Service complaint when it is submitted in writing (in any format) to the Prescribed Officer, usually the CO, in accordance with the regulations summarised in paragraphs 2.2 and 2.3 below. Although the Regulations refer to the Prescribed Officer, the term CO is used throughout this publication as a shorthand form. However, although a complainant may always make a Service complaint to the CO, there are occasions when the CO will not be the Prescribed Officer. For example, if the complaint is about or implicates the CO, it should be made to their immediate superior in the chain of command. Service complaints are to be recorded on JPA³⁰. Complainants should not feel discouraged from making a Service complaint for fear of negative consequences, and are to be reassured that they will be protected against victimisation.

2.2 Method of Submitting a Service Complaint. A Service complaint must be submitted in writing, signed and dated by the complainant. Service complaints should be made using the Service complaint form at [Annex F](#), but may be submitted in any written format (for example in a letter or note) in the first instance. The complainant may be assisted in writing down the complaint, so long as the complainant signs and dates it. Provided that the original signed and dated complaint, in any format, is submitted within the time limits detailed at paragraph 3 below, it can be re-written on a Service complaint form even if this is done after the end of the time limit. The purpose of this is to ensure that a Service person who does not have access to the correct form, or who may be unable to complete the form for any reason, is not discouraged from submitting a Service complaint or caused to delay the submission of a complaint thus rendering it out of time. Service complaint flow diagrams are at [Annex H](#).

2.3 Time Limits for Stating a Service Complaint. Service complaints must normally be made within 3 months, beginning with the day the matter complained of occurred. If the matter complained about occurred over a period, the complaint should be submitted within 3 months of the latest incident or end of the period. There is no limit as to how far back a period can extend. An allegation submitted to the SCC, which subsequently results in a Service complaint being made by a Service person, is within the time limit if the Service complaint is received by the CO within 3 months of the date of the matter about which the complaint is being made. A CO may decide to investigate any matter brought to his attention irrespective of whether it results in a Service complaint being made.

²⁸ Mediation can prove to be a powerful tool in seeking informal resolution, but should only be undertaken by appropriately trained mediators.

²⁹ Referred to as "formal complaints" in JSP 763.

³⁰ See JSP 763, Chapter 8 for reporting arrangements for bullying and harassment cases.

2.4 The time limit for making a Service complaint will also be affected by any internal, special to type procedures that exist for the resolution of certain types of complaint³¹. Examples of these are: complaints about Service medical care for which the Services operate distinct informal procedures; housing complaints for which the review panel has been established by Defence Estates and housing contractors; pay and allowances complaints for which the Pay and Allowances Casework and Complaints Cell (PACCC) has been established within the Joint Personnel Administration Centre; and financial compensation claims which should be addressed to the Directorate of Safety and Claims.

2.5 A Service person wishing to make a Service complaint about such matters should first pursue their complaint through the appropriate 'special to type' internal system. If the complainant remains dissatisfied after exhausting that process, a Service complaint may be made. Indeed, a Service complaint may be made at any time within the time limits and before the appropriate internal process has run its course, but it will not be considered until the result of the special to type process has been received³².

2.6 **Complaints Referred to Appeal Bodies.** Complaints referred to internal appeal panels or other Service bodies tasked with resolving complaints of a specific nature (such as medical, pay or housing matters) are considered in time provided they are submitted within 3 months of that panel or body's decision. Furthermore, complaints about medical care can be raised up to 3 years from when an alleged harm would reasonably have been identified or 3 years from the age of 18 (this time is allowed for the effects of the medical failure to become apparent). In such cases the 3 month period would begin with the day of completion of that 3 year period. In cases relating to the Equal Pay Act 1970, a complaint may be made at any time on or before the qualifying date provided for in that Act. Such complaints are distinct from those complaints that are excluded from redress in paragraph 2.32.

2.7 **Complaints Made Outside the Time Limits.** Service complaints received by the CO more than 3 months after the matter complained of occurred will generally be ruled out of time. However, in certain circumstances, the normal time limit will be extended if the decision maker considers that in all the circumstances it would be "just and equitable" to do so. The complainant will be expected to say why the complaint could not reasonably have been submitted in time. There is a range of factors that might, for example, have delayed the making of the complaint; the complainant may have been hospitalised or deployed on operations and therefore unable to access the people, information or IT necessary to make the complaint. The CO will therefore have to decide if, given the prevailing circumstances, it would be "just and equitable" (fair and reasonable) to allow the complaint to proceed.

2.8 **Just and Equitable Test.** There is no legal definition of the term "just and equitable" so the ordinary meaning must be relied upon. Examples where fairness might demand the complaint be accepted out of time might include: operational commitments; where the complainant had been working for the (potential) subject of the complaint - the complainant might not bring the complaint until either one has

³¹ Other types of complaint are excluded from the Service complaint system – see paragraphs 2.32 and 2.33.

³² The timelines for the complaint raised under JSP 831 will not be started until the result of the special to type process has been received.

been posted, for fear of making a bad situation worse; if the complainant had been ill and could not reasonably have had access to the resources or people required to assist in the making of a complaint. The CO should take legal advice before ruling in or out of time a complaint made after the 3 month time limit, before communicating their decision to the complainant.

2.9 In the case of an allegation referred by the SCC, if a decision is made not to allow a complaint to proceed (most obviously where the decision is that the complaint is submitted outside the 3-month time limit and it is not just and equitable to allow an extension) and a complaint is brought for an alleged wrong in making that decision, a SCP considering the complaint will require the inclusion of an independent member.

2.10 Service Personnel Assigned or Attached to another Unit or Service.

Where a Service person is assigned or attached to serve at another unit or under the command of one of the other two Services, a Service complaint should be made to the CO of the unit to which the individual is assigned or attached. In such circumstances, should a complaint be subsequently referred to a SO or the Defence Council level, it will normally follow the chain of command of that CO. Exceptionally, where a complainant is attached or assigned to a Service other than their own and the complaint concerns an issue unique or particular to the individual's own Service, the complaint should still be submitted to the CO of the unit to which the individual is assigned or attached, but if the CO refers it to a SO, the SO will be of the complainant's own Service. Secretariat and legal functions will be provided by the lead Service. If there is any doubt about an individual's chain of command, initial advice should be requested from Navy Command, Land Forces or Air Command Headquarters as appropriate.

2.11 **Service Personnel Serving Outside Service Command.** Service personnel serving outside the usual Service command, for example with a contractor, a foreign government, NATO or in a predominantly civilian-staffed agency, will normally have an appointed CO within the employing organisation to whom Service complaints should be made. In the absence of such an appointment, a CO for the purposes of dealing with Service complaints should be nominated by the lead headquarters or the headquarters of the individual's own Service.

2.12 **Complaints Made After Leaving the Armed Forces.** Former members of the Armed Forces may submit Service complaints, provided that the wrong about which they are complaining relates to their Service, the wrong occurred while they were subject to Service law and the complaint is submitted within the time limits stated in paragraph 2.3. Such complaints will be referred to an appropriate officer nominated by the Service to fulfil the role of CO for former serving personnel, or in the absence of such an appointment, to that person's last CO³³.

2.13 **Employment Tribunals (ET).** Applications to an ET by Service personnel alleging unlawful discrimination³⁴ must be made within 6 months of the incident or the latest in a series of incidents giving rise to the application (rather than 3 months

³³ Service personnel will be notified on discharge of the appropriate Officer for these purposes.

³⁴ That is discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief, sexual orientation or status as a part time employee.

for civilians). In cases relating to the Equal Pay Act 1970, an application may be made at any time on or before the qualifying date provided for in that Act. Cases under the Working Time Regulations 1998 must be brought within the time specified in these Regulations. Applications to an ET can only be made after a Service complaint has been submitted to the chain of command (and not withdrawn)³⁵.

COMPLETING A COMPLAINT FORM

2.14 Service Complaint Form. Although a Service complaint may initially be submitted in any written format, the complainant will be expected to complete and submit a Service complaint form (see [Annex F](#)). Regulations³⁶ require that the following information is provided:

- a. The date of the matter complained of or of the end of a period over which the matter occurred. If unable to recollect the date, this should be stated.
- b. The nature of complaint.
- c. The redress sought.
- d. Whether the complaint relates to a matter described at [Chapter 1](#), paragraph 1.18³⁷ and if so, why the complaint fits into that category.
- e. If the complaint is made outside the time limits, an explanation as to why.
- f. If the complaint is about or implicates the CO or Prescribed Officer, this must be stated and the officer named.
- g. The statement of complaint must be signed and dated by the complainant.

2.15 Purpose. The Service complaint form is designed to assist in ensuring that all the required information is obtained from the complainant when the complaint is made, that the complaint is clearly defined and that the desired remedy can be identified. This is to enable the complaint to be dealt with as quickly as possible and assists in identifying those complaints which require an independent member on a SCP, should the complaint progress beyond CO/SO level. This is also to help reduce the instances in which additional allegations are added to a complaint by the complainant during the consideration of that complaint. The complainant may attach any relevant evidence to the form, including copies of references detailed in the complaint wherever possible, if it helps present the case. The complainant is advised to keep copies of all submitted information. If the complainant submits in

³⁵ In a discrimination claim a tribunal will normally go through two stages. The first is to ensure that the claimant has established facts from which, in the absence of an adequate explanation it can be concluded that unlawful discrimination for which the respondent is responsible has taken place. If the claimant achieves that in the second stage the burden of proof then shifts to the employer to demonstrate, if they can, on the balance of probabilities that there was an adequate non discrimination explanation for what occurred. If they fail to do this the tribunal is required to assume that unlawful discrimination had taken place.

³⁶ Annex D, Armed Forces Redress of Individual Grievance (Procedures and Time Limits) Regulations 2007.

³⁷ Annex D, Regulation 9.

writing further information purporting to relate to their Service complaint and the officer dealing with the complaint considers that this further information includes or relates solely to a new matter of complaint, the complainant should be informed that a separate Service complaint should be made³⁸.

2.16 Assistance to Complainant. To ensure the complaint is investigated and resolved as quickly as possible a potential complainant should be advised to use an Assisting Officer (AO). Should the complainant not choose an AO, the CO should offer to appoint one to help prepare the case and to ensure the complaint is clear, concise and unambiguous. This should help clarify the issues at the root of the complaint, the precise nature of the redress sought and assist in a speedy resolution. The CO should ensure that a suitable officer, warrant officer, SNCO or civil servant performs the duties of the AO. Guidance on the appointing of AO's and their role and responsibilities is detailed at [Annex I](#).

2.17 External Legal Advice. Complainants may seek legal advice from a civilian solicitor but in all cases this would be at their own expense.

ALLEGATIONS BY THIRD PARTIES

2.18 Allegations may be submitted by a third party, such as a family member, guardian, or friend, about the treatment of a Service person or former member of the Armed Forces, because for example that person may be reluctant to make a complaint themselves. If making a verbal allegation, third parties should be encouraged to state the allegation in writing. Such allegations may be made in a number of ways, including:

- a. to the Service person's CO or unit;
- b. to the Service Chiefs (1SL, CGS or CAS) or the Service person's Principal Personnel Officer (PPO) (2SL, AG or AMP);
- c. to Defence Ministers, the local MP or an interested Peer;
- d. to the SCC³⁹.

2.19 Third party allegations are not Service complaints.

2.20 Written third party allegations addressed to Service Chiefs or PPOs, Ministers or Peers, or referred by the SCC will be dealt with through the appropriate secretariat staffs⁴⁰. Written correspondence received by the CO directly from Ministers, Peers or the SCC should be forwarded to the appropriate single Service secretariat. In addition to informing third parties that allegations received by these routes will be considered by the chain of command, the single Service secretariat is also responsible for advising third party correspondents of the outcome. Written third party allegations addressed directly to the CO of a Service person or to a member of the CO's staff should be dealt with by the CO, who may wish to seek single Service

³⁸ Annex D, Regulation 18.

³⁹ In this context, allegations will be other than those covered by the Commissioner's statutory powers.

⁴⁰ Secretariat functions are detailed in Chapter 6.

secretariat advice on doing so. On receipt of such allegations, the CO of the Service person involved should ascertain whether that Service person is aware of the allegation and what action they may wish to be taken. In this instance, the CO is responsible for notifying the third party direct of progress and outcome. Every effort should be made to resolve such matters informally. However, the Service person should be advised of their right to submit a Service complaint at any time within the time limits, in accordance with this JSP or JSP 763, as appropriate. A record is to be kept if the Service individual in question decides not to pursue an allegation made by a third party.

2.21 The disclosure of any information to a third party will require the consent of the person(s) in question. Advice on Information Rights legislation should be sought from legal branches prior to the release of any information to the third party (see [Chapter 1](#), paragraph 1.10).

BULLYING OR HARASSMENT COMPLAINTS

2.22 If a Service complaint involves bullying or harassment the complainant must give details in the statement of complaint using Annex F as to why they believe that the complaint falls into these categories⁴¹. The investigative procedures which the CO undertakes will follow those in JSP 763, are likely to include the appointment of a Harassment Investigation Officer (HIO) and may involve the Equality and Diversity Adviser (EDA). If after investigation, the complainant is dissatisfied with the decision of the CO (who is referred to as the Deciding Officer (DO) in JSP 763), the complainant can then ask for the complaint to be considered by the SO and will follow the complaints procedure in this JSP, with reference to the JSP 763 procedures as appropriate. If the complaint reaches the Defence Council level it will normally be considered by a SCP, which will include an independent member (see [Chapter 5](#), paragraphs 5.12-5.13). For those complaints referred by the SCC, reporting requirements in [Chapter 3](#), paragraph 3.22 apply.

DISCRIMINATION COMPLAINTS

2.23 JSP 831 procedures apply to complaints alleging discrimination. However prolonged or frequent discrimination may amount to bullying or harassment and JSP 763 should be followed in the first instance for these types of complaints. Direct discrimination is discrimination against a person on the grounds of a particular reason which has been prohibited by statute. Indirect discrimination is when a seemingly neutral criterion, regulation or practice puts a person of a particular race, ethnic or national origin, religion or belief, sexual orientation, age, gender re-assignment, sex or disability at a disadvantage compared with a person from a different race, ethnic or national origin, religion or belief, sexual orientation, age, gender re-assignment, sex or disability and where the requirement cannot be reasonably justified.

MEDICAL COMPLAINTS

⁴¹ Annex F to JSP 763 should be used.

2.24 The Services have procedures⁴² for dealing with a complaint about patient care in the primary healthcare systems (at a medical centre or doctor's surgery). This does not, however, prevent Service personnel from making a Service complaint under the redress provisions if they are not satisfied with the outcome of the medical complaint system (see paragraph 4 above on time limits). The Services' medical services seek to ensure that guidance issued by such bodies as the NHS, GMC and NCAA⁴³ is also followed⁴⁴.

2.25 The handling of complaints about medical care under MOD secondary care arrangements (at a hospital either as an in or out patient) can be complex because of the services provided by NHS Trusts (or by private medical providers where treatment may be fast-tracked) under contract with MOD. If care is provided by the Services, complaints should be handled using internal procedures (medical complaints system and Service complaints). If care is provided by the NHS/private medical provider, complaints normally follow the provider's procedures. It will be necessary to establish where responsibility for the cause of the complaint lies (between the Services and another provider) before any complaint can be progressed.

2.26 The right to make a Service complaint applies equally to treatment provided by the Services medical services or under Defence arrangements by any other provider. A Service person is entitled to make a complaint either using the provider's (NHS Trusts or private provider) complaint process or by making a Service complaint. If a medical complaint reaches Defence Council level, a SCP dealing with that complaint will include an independent member. The start date for the 3-month time limit for such a Service complaint will be the date of the medical complaint process decision.

2.27 Any claim for compensation as a result of medical negligence resulting in illness or personal injury of a Service person, dependant or other entitled patient will be dealt with by the Chief Claims Officer on behalf of the Secretary of State for Defence. This does not prevent Service personnel or former members of the Armed Forces from submitting a Service complaint seeking redress of individual grievance.

PAY AND ALLOWANCE COMPLAINTS

2.28 **Pay Complaints Process.** Complainants should in the first instance make an initial pay query and subsequent pay appeal through their unit pay staff that will be considered by the PACCC. Should the PACCC be unable to settle the query or subsequent pay appeal it will be adjudicated by the Chief Executive Service Personnel and Veterans Agency (CE SPVA). Should a Service complaint be raised without the pay appeal process being exhausted, the CO should delay considering the Service complaint until a decision has been received from the PACCC or CE

⁴² RAF AP 1269, Leaflets 4-02 Complaints Procedure, Leaflet 4-03 Medical Indemnity; QR 1624 – 1626. Army DGAMS Policy Letter 58/02 (Revised Nov 05). Naval Service BR 1991; Your Guide to the NHS 2001. DSCA Complaints Procedure – SG Policy Letter 07/98.

⁴³ National Health Service, General Medical Council and National Clinical Assessment Authority.

⁴⁴ Medical complaints can be raised up to 3 years from when an alleged harm would reasonably have been identified or 3 years from the age of 18. This factor should be borne in mind when considering time limits for medical complaints and medico-legal advice sought.

SPVA. The start date for the 3-month time limit for such a Service complaint will be the date of the PACCC or CE SPVA decision.

2.29 Pay Complaints Dealt With by a SCP. A SCP dealing with complaints about pay and allowances should seek the advice of SP Pol (Pay & Allowances) before making a decision.

COMPLAINTS ABOUT APPRAISAL REPORTS

2.30 Process. JSP 757⁴⁵ contains the general instructions on appraisal reports. The subject of a report has the opportunity to comment on the first reporting officer's assessment, but comments do not carry any formal requirement for the second or third reporting officers to give a direct reply. However, the second reporting officer will take any comments into consideration when making their assessment and career managers and selection board members will also see comments. These procedures do not affect the Service person's right to make a Service complaint at any time within the time limits.

2.31 Expunged Comment. The CO/SO/Defence Council dealing with a Service complaint may direct that any comment, grade or recommendation, made by a subordinate that it finds to be untrue, should be expunged. However, reporting officers are permitted to make subjective assessments, based on both fact and opinion. The Level 3 (see [Chapter 5](#)) and appropriately authorised Level 2 Service complaint decision makers may direct that an entire report be expunged and that the report be rewritten or the relevant period remain unreported.

EXCLUDED COMPLAINTS

2.32 Categories of Excluded Complaints. The Act and regulations under it⁴⁶ state that a Service complaint cannot be made about certain subjects, even though they relate to a Service person's service. These are listed below in outline, but reference to the Schedule at [Annex B](#) and legal advice will be required if a complaint is likely to relate to any of these categories:

- a. Pensions⁴⁷.
- b. Discretionary awards.
- c. Discipline.
 - (1) A decision, finding or sentence occasioned by summary hearing or court-martial proceedings.
 - (2) A decision in relation to a prosecution by the Director Service Prosecutions (DSP).

⁴⁵JSP 757 contains appraisal guidance for officers as well as non-commissioned ranks.

⁴⁶ Annex B, the Armed Forces (Redress of Individual Grievance) Regulations 2007.

⁴⁷ The pension Internal Dispute Resolution Procedure (IDRP) covers maladministration. The rules and regulations of the scheme are not covered by the IDRP and remedy in these areas should be sought through the Service complaints system.

- (3) A decision by the Court Administration Officer (CAO) in relation to a trial before a Service Court.
 - (4) A decision by a Judge Advocate (JA) under the single Service Discipline Acts (SDAs) or the Act for example in relation to custody or arrest of a person during Court Martial proceedings.
 - (5) A decision by a CO or the Service police in investigating and charging an offence under the SDAs or the Act.
- d. Compensation and criminal injuries compensation.
 - e. Decisions concerning applications from exemption from call-out or calculation of loss of earnings made under the Reserve Forces Act 1996.
 - f. A decision of the Security Vetting Appeals Panel (SVAP) or other matters that could be appealed to the SVAP.

2.33 Redress which cannot be granted. There are some redresses which cannot be granted by any authority in the chain of command. For example, a complainant who feels that he has been wronged in a criminal matter may ask that disciplinary action be taken against another person. However, the chain of command does not have the power to order disciplinary action under the redress system because this is a legal process. On the other hand some redresses, such as an apology from an individual who has wronged a complainant, may be reasonably sought but cannot be ordered by the chain of command. The complainant should be advised if they have asked for a redress that cannot be granted, but that fact in itself should not prevent the Service complaint being investigated and another appropriate redress granted.

CHAPTER 3 - LEVEL 1: THE COMMANDING OFFICER

THE COMMANDING OFFICER (CO)

3.1 **Definition.** Normally, the CO is the officer who has been appointed by the appropriate authority to be CO of a ship, unit or establishment while able effectively to exercise their powers as such⁴⁸. Where no such appointment has been made or the CO is unable to act, the CO is the officer who has been authorised to act in that capacity. However, this will not always be the case and the appropriate command headquarters should be consulted whenever it is necessary to ascertain who is a person's CO.

3.2 Complainants should not feel discouraged from making a Service complaint for fear of negative consequences and should be reassured that they will be protected against victimisation. CO's should be aware that having a complaint made within their command is not a sign of failure; the failure is not taking timely and appropriate action.

3.3 **Service Complaints in which the CO is Implicated.** If:

- a. The CO is the subject of the Service complaint or is implicated in any way in the matter complained of, the complaint should be made to the CO's immediate superior in the chain of command and should still be treated as a Level 1 complaint. If that Officer is also implicated in or the subject of the complaint, an Officer of the same or equivalent rank to the CO's immediate superior in the chain of command must be nominated by the Defence Council (i.e. the appropriate Service Board).
- b. The Service complaint is about a decision of the CO to reject a Service complaint made following a referral by the SCC⁴⁹ within statutory functions, for example for being outside the time limits, the CO is to pass the second Service complaint and the original Service complaint to the SO.

PRE-DECISION PROCEDURES

3.4 **Receiving an Allegation from the SCC.** If an allegation from a member of the public or a Service person is referred to the chain of command by the SCC within statutory functions⁵⁰, the CO or other officer receiving the allegation must:

- a. Inform the Service person alleged to have been wronged that the allegation has been referred.

⁴⁸ Where the CO is a 1* officer, he may delegate to officers serving under command of colonel rank or equivalent, the function in respect of service complaints.

⁴⁹ Annex B. The Armed Forces (Redress of Individual Grievances) Regulations, regulation 9(2) relates to Service complaints about decisions of the relevant officer not to allow a Service complaint to proceed following referral by the SCC.

⁵⁰ Chapter 1, paragraph 1.19.

- b. Ensure that the Service person alleged to have been wronged is aware of the procedures for making a Service complaint, the time limits that apply and the types of complaint that are excluded.
- c. Make the Service person alleged to have been wronged aware that, should they make a Service complaint and it is considered by a SCP, an independent person may sit on the panel in certain circumstances⁵¹.
- d. The CO or other officer receiving the allegation is obliged to interview the Service person to check whether he/she wishes to make a Service complaint.
- e. If the Service person decides to make a Service complaint, deal with the complaint as instructed in the remainder of this Chapter.
- f. Within 10 working days of receipt, inform the SCC that they have completed the appropriate actions at sub paragraphs a to e above. Additionally, inform the SCC within 10 working days of a decision and reasons by the complainant to withdraw the complaint or of a decision by the CO that the complaint is well founded, to refer the complaint or of any action in relation to redress. This notification will be through the central secretariat, copied to the appropriate single Service secretariat. The notification should make reference to the name, rank/rate, number and unit of the complainant and to any previous correspondence on the matter.

3.5 Receiving a Service Complaint from a Complainant. On receiving the complaint the CO should carry out an initial investigation in order to:

- a. Ensure the complaint is clearly laid out using the Service complaint form at [Annex F](#) and that the exact nature of the complaint and the redress sought are clearly specified.
- b. Confirm that the complainant has been offered the services of an Assisting Officer (AO). Refer to [Annex I](#) for further guidance.
- c. Check to see whether they are the subject of or implicated in the complaint. If so, they should refer the matter to their immediate superior in the chain of command or if that Officer is implicated in or the subject of the complaint, an Officer of the same or equivalent rank to the CO's immediate superior in the chain of command must be nominated by the Defence Council (i.e. the appropriate Service Board). (as in paragraph 3.3a above).
- d. Determine (in consultation with legal and the single Service secretariat if appropriate) category type:

1. Type A:

⁵¹ Chapter 1, paragraph 18.

- (i) Complaints that can be determined within the Level 1 responsibility and that can be fully investigated at Level 1;
- (ii) Complaints that cross Level 1 command boundaries;
- (iii) Complaints that require a Level 1 commander to seek external advice before determination (pay, legal etc);
- (iv) Complaints that cross Service boundaries.

2. Type B:

- (i) Complaints that require investigation by a specialist agency (e.g. SPVA, Harassment Investigating Officers (HIO)).
- (ii) Complaints that involve a non-UK based complainant, respondent or witness (as an example, witness may be deployed).
- (iii) Complaints that involve parallel legal proceedings.
- (iv) Complaints that involve multiple heads of complaint.

3.6 The CO then has two options: to refer the complaint, having commissioned an appropriate investigation, or to decide the complaint, having had it investigated appropriately. Should the CO decide to refer the complaint, they cannot make any decisions on the complaint⁵² as this will normally have the effect of binding decision makers at levels 2 and 3. The CO may come to conclusions about the complaint and pass those opinions with the referred complaint; they may also make recommendations based on their opinions. In such circumstances the CO should not disclose their opinions and recommendations. Should the CO opt to decide the complaint, they should:

- a. Consider whether the complaint is in time in accordance with [Chapter 2](#), paragraphs 2.3 to 2.8 and [Annex C](#) using if appropriate the just and equitable test.
- b. Consider whether the complaint contains matters that are excluded under [Chapter 2](#), paragraph 2.32; inform the complainant in writing of the reasons for this decision, and treat the remaining particulars as a Service complaint.
- c. Judge whether they have the power to grant the redress sought or another appropriate redress (see Chapter 3 paragraph 3.17).
- d. Assess whether the complaint is capable of redress.

⁵² Under the Act, if the CO has decided the complaint, it is for the complainant to determine whether to take the complaint to a higher level.

- e. Give to a person who is the subject of or implicated in the complaint full details of any allegations against them.
- f. Refer to JSP 763 and an EDA if the complaint alleges bullying or harassment (see [Chapter 2](#) paragraph 2.22).
- g. Decide whether it would be sensible to separate the complainant and the person who is the subject of the complaint pending the outcome of any investigation. Such a decision may depend on the seriousness of the allegation(s), or incident(s); the risk of the incident(s) being repeated; the risk of interference with, or compromise of, the investigation or witnesses, or of anyone else being victimised. Every effort must be made to ensure that any separation is implemented fairly taking into account individual and environmental circumstances. COs should always consult with the single Service secretariat⁵³ before taking such action and should consider whether legal advice should be obtained before reaching their decision.
- h. Ensure that the details of the complaint are entered into JPA in accordance with the [Business Process Guide](#). Contact the **JPAC Enquiry Centre** or telephone 94560 3600 in the first instance for any queries about inputting Service complaints into JPA.

3.7 No further action is taken on the Service complaint if it is out of time or excluded and the complainant is to be informed of that fact. In relation to a SCC referred allegation, the SCC is to be informed in writing through the central secretariat. Notwithstanding the Service complaint being excluded or out of time, if a CO becomes aware of matters which they consider require action to maintain duty of care, good discipline and administration in their unit, they should not feel constrained from taking such action.

3.8 **Additional Matters of Complaint.** A complainant may provide written information additional to the original Service complaint (see [Chapter 2](#), paragraph 2.15). The complainant should also be encouraged to submit all necessary relevant supporting documentation at the same time as submitting their Service complaint form. If the complainant submits in writing further information purporting to relate to the Service complaint and the officer dealing with the complaint considers that this further information includes or relates solely to a new matter of complaint, the complainant should be informed that a separate Service complaint should be made.

3.9 **Malicious or Vexatious Complaints.** Refer to [Chapter 1](#), paragraph 1.13.

3.10 **Timeframe for CO's Consideration.** The CO's target should be to consider the complaint and make a decision as quickly as is reasonably possible and this target should be 60 working days or less for Type A complaints and 120 working days or less for Type B complaints (paragraph 3.5 above). If the redress sought is for the reversal of a decision to order the termination of an Officer's commission, or the discharge of a Service person on administrative grounds, the target time is reduced to 20 working days. The CO should write to the complainant (and

⁵³ For RAF cases – consult with Casework (APC). For RN/RM cases – consult with the appropriate Level 1 Advice Cell/Service Legal Advisor. For Army cases – consult with PS2(A).

respondent(s)) every 30 working days with an update on progress. If the CO is unable to reach a decision within these times they should continue to write to the complainant explaining the delay every 30 working days thereafter until there is a decision. Unreasonable delay may, in itself, give rise to further complaint. For SCC referred complaints, the CO should also keep the SCC informed of progress every 30 working days until a decision is reached (and should advise of key decisions/events that occur during criminal or other investigations as part of this 30 working day update). This also applies when an EOIT⁵⁴ investigation is being conducted in complex cases⁵⁵ (refer to paragraph 3.11).

3.11 Investigating the Complaint. Where the CO determines that an investigation of the complaint is required they should decide the best method of achieving this. If the CO has any suspicion that a Service offence may have been committed they should consider when or whether they should inform the Service police and whether to postpone consideration of the complaint pending the outcome of any police investigation. If the complaint involves bullying or harassment the CO should follow the procedures laid down in JSP 763. If bullying or harassment or a Service offence is not alleged the CO may decide to investigate the matter personally, or consider appointing an Investigating Officer (IO). The IO may be an Officer, Warrant Officer, senior non-commissioned Officer or Civil Servant of appropriate grade considered by the CO to be suitable for the duty. The IO is to be given TORs and should also be given guidance on how to conduct their investigation. Guidance is in [Annex J](#).

3.12 The CO should conduct any investigation of the complaint as quickly and fully as possible. The investigation will require all relevant paperwork to be made available to the IO and should include consultation with the relevant subject matter experts where that is likely to be helpful. Should the CO, or IO interview the complainant or other witnesses, a written record of the interview should be kept.

3.13 If the CO decides that, during the course of or at the conclusion of their investigation, the complaint does not amount to a wrong in relation to the complainant's service, or is otherwise excluded from the Service complaints system, the complaint should be rejected at the earliest opportunity.

3.14 Disclosure. The complainant, the subject of the complaint and any person implicated in the complaint should be given reasonable opportunity to comment in writing on the papers (this should not take longer than 30 working days⁵⁶) and be informed that any comment will be put before the CO. Refer also to [Chapter 1](#), paragraph 1.10.

DECISION – DECIDING THE COMPLAINT

3.15 In deciding on a complaint, the CO must, in broad terms, decide whether the matters complained of probably occurred. If the CO decides that there are sufficient grounds to uphold the complaint, a decision must also be made on what redress to

⁵⁴ Titled 'Service Complaints Investigation Team' in the Army and 'Equality and Diversity Investigation Team' in the Navy.

⁵⁵ For example, complaints consisting of complex or multiple allegations; complaints against or implicating the complainant's CO, or complaints involving personnel who are geographically dispersed.

⁵⁶ Or, exceptionally, any longer period that the complainant may reasonably request. The 30-day target time for complaint resolution is paused during this disclosure process.

grant within the CO's authority. This redress may be different from that sought by the complainant.

3.16 Having considered all the relevant information the CO may decide to:

- a. **Uphold the complaint.** Either partially or in full. If the complaint is well founded and the wrong is proven, the CO should grant any redress which is appropriate and within the CO's authority.
- b. **Reject the complaint.** If the complaint is not well founded or the wrong is not proven, it should be rejected, even if the redress sought by the complainant is beyond the CO's authority to grant.
- c. **Refer the complaint.** If the CO believes that the complaint is well founded but lacks the authority to grant the redress sought or any other appropriate redress, it should be referred to the SO. Exceptionally, having consulted with the SO, the CO may refer the complaint to the Defence Council level⁵⁷. In these circumstances the CO must not formally uphold the complaint, but may make recommendations as to whether the complaint is well founded and as to redress. A decision in these circumstances is for the SO or Defence Council level to make. These recommendations should not be disclosed.

3.17 If it becomes apparent to the CO before or during investigation that the nature of the complaint (if true) is such that the required redress is beyond the CO's authority to grant, the complaint should normally be referred. However, even if it is clear that the CO does not have the authority to grant the redress sought, the CO should continue to investigate the complaint as to merit, facts and alternative remedy. This investigation will assist Higher Authority, by adding value to the process and ensuring that it is in possession of sufficient information to reach a decision on the matter, in doing so complying with the timelines for the complaint handling process.

POST-DECISION PROCEDURES

3.18 **Notification to Parties.** After reaching a decision, the CO should inform in writing⁵⁸ the complainant, the subject of the complaint, anyone implicated in the complaint (e.g. the Respondent(s)), the SCC if the complaint was a referred complaint and any other person whom the CO believes should be informed. The level of detail contained in the CO's written notification will vary according to the importance or complexity of the complaint. Generally, the CO's letter should contain the following information:

- a. A summary of the elements of the complaint.
- b. An explanation of the inquiry undertaken (how and by whom).

⁵⁷ This will occur when the CO believes that because of the nature of the complaint or the redress sought the SO cannot add value to the complaint. The CO will consult the SO before making such a decision.

⁵⁸ Additionally, the CO may also choose to notify the decision at interview.

- c. An explanation of whether each element of the complaint was upheld, rejected or could not be determined and why.
- d. If the complaint is totally or partially upheld, a clear indication of the CO's intention with regard to taking administrative or disciplinary action against the Respondent(s).
- e. An explanation on each element of redress requested, as to whether it is granted or not and why.
- f. The next steps available to the complainant. If the complainant wishes their complaint to be considered by a higher authority (the SO), they should respond to the CO to apply for referral within 30 working days⁵⁹ after receiving notification of the CO's decision or 3 months after the date on which the matter complained of occurred, whichever is the later.
- g. That if the complainant has made no response within the time limits the complaint will be considered to have been resolved and closed.

3.19 Response by the Complainant. If the complainant is not satisfied with the CO's decision they may apply in writing to the CO for the complaint to be referred to a higher authority (the SO) - see paragraph 3.18f above for time limits. In their response the complainant should state the grounds for seeking referral of the complaint. The CO should decide whether the request for referral of the complaint has been made within the time limits and if so, refer it to the SO or if they think it appropriate, to the Defence Council level (see paragraph 3.16c above) and inform the complainant accordingly. Should a complaint be referred at the request of the complainant, the SO or Defence Council will not be bound by any decision of the CO. The complaint will be considered resolved and the complaint closed if no response is received from the complainant within the time limits.

3.20 Complaints Papers. The CO is to ensure that the following information is forwarded to the SO or Defence Council, as appropriate:

- a. The original Service complaint form.
- b. Any additional papers relating to the CO's investigation.
- c. The complainant's written application, if applicable, seeking referral of the case to higher authority (the SO).
- d. The CO's decision letter(s).
- e. When the complaint involves a referral by the SCC the original referral letter, any follow up correspondence from the SCC and the latest update.
- f. The legal advice to date.

⁵⁹ Equivalent to 6 weeks as stated in the Armed Forces Redress of Individual Grievance (Procedures and Time Limits) Regulations 2007, Regulation 21 - Annex D. An application may be made outside the specified period if the CO decides that it was not reasonably practical for the application to have been made at an earlier date. See Annex D – regulation 23.

3.21 Actions on JPA. The unit staff⁶⁰ is to ensure when the Service complaint is first received on the Service complaint form that it is entered on JPA as a Case Report and that every 30 working days, and in the event of a decision, the Case Report is updated. Should the complaint cover two or more categories of complaint and one of those categories is as listed at [Chapter 1](#), paragraph 1.18, the complaint should be logged under that category and any other category included in the case report notes⁶¹.

3.22 Reports to the Service Complaints Commissioner (SCC). Where a Service complaint has been considered as the result of a referral by the SCC, the CO must notify the SCC as described in paragraphs 3.4f, 3.7, 3.10 and 3.18 above. The notification to the SCC should include the decision letter which outlines the redress sought/offered, whether to uphold, refer or reject the complaint, and if the complainant withdrew the complaint. The SCC should also be notified if a complainant requests that their complaint be referred to a higher authority. Refer to [Chapter 7](#) for the role of the SCC and [Annex H](#) for the reporting flow diagrams.

⁶⁰ EDA for Equality & Diversity complaints.

⁶¹ For example, a Service complaint about discrimination and an annual report would be entered on JPA under the discrimination category and the annual report element included in the case report notes.

CHAPTER 4 - LEVEL 2: THE SUPERIOR OFFICER

THE SUPERIOR OFFICER (SO)

4.1 **Definition.** The SO must be at least one rank above the CO considering the complaint. They must be an Officer:

a. of or above the rank of Rear Admiral, Major-General or Air Vice-Marshal,

or

b. of or above the rank of RN Captain, Colonel or Group Captain who has been authorised by an Officer within paragraph 1a above to carry out the function of SO.

4.2 Complainants should not feel discouraged from making a Service complaint for fear of negative consequences and should be reassured that they will be protected against victimisation. SO's should be aware that having a complaint made within their command is not a sign of failure; the failure is not taking timely and appropriate action.

4.3 **When the SO is Implicated in the Complaint.** If the Officer who would be the SO is the subject of the complaint or otherwise implicated in the matter complained of, the single Service secretariat will ask the lead Headquarters of that Service (or the Headquarters of the Service acting as the Higher Authority) to nominate another officer to be the SO for the case.

PRE-DECISION PROCEDURES

4.4 **Receiving the Complaint.** The SO may receive a complaint in the following circumstances:

a. Referred from the CO.

b. Referred from the CO because the complainant was not satisfied by the decision or redress offered by the CO.

4.5 When referred by the CO, the CO is to provide to the SO the complaint papers listed at [Chapter 3](#), paragraph 3.20. Any additional papers relating to the CO's investigation and their decision should also be forwarded with any comments by the complainant (see paragraph 4.10 below on disclosure).

4.6 **Additional Matters of Complaint.** Refer to [Chapter 2](#), paragraph 1.15.

4.7 **Malicious or Vexatious Complaints.** Refer to [Chapter 1](#), paragraph 1.13.

4.8 Timeframe for SO's Consideration. The SO's target should be to consider the complaint and make a decision as quickly as is reasonably possible and this target should be 30 working days or less for Type A complaints or 60 working days or less for Type B complaints ([Chapter 3](#), paragraph 3.5). If the redress sought is for the reversal of a decision to order the termination of an officer's commission, or the discharge of a Service person on administrative grounds, the target time is reduced to 20 working days. The SO should write to the complainant providing an update on progress every 30 working days. If the SO is unable to reach a decision within these times they should continue to write to the complainant explaining the delay and 30 working days thereafter until there is a decision. Unreasonable delay may, in itself, give rise to further complaint. For SCC referred complaints, the SO should also keep the SCC informed of progress every 30 working days until a decision is reached.

4.9 Investigating and Referring the Complaint. Refer to [Chapter 3](#), paragraphs 3.11 to 3.14. The SO may refer to any investigation that has already been undertaken by the CO and take into account any recommendations that might have been made by the CO. The SO may refer the complaint to the Defence Council without further investigation where they decide that they do not have the authority to grant the redress sought or any other appropriate redress, and that their investigation of the complaint would not add value to the process and cause delay in dealing with the complaint.

4.10 Disclosure. The complainant, the subject of the complaint and any person implicated in the complaint should be given reasonable opportunity to comment in writing on the papers (this should not take longer than 30 working days⁶²) and be informed that any comment will be put before the SO. Refer also to [Chapter 1](#), paragraph 1.10.

DECISION – DECIDING THE COMPLAINT

4.11 In deciding on a complaint, the SO must, in broad terms, decide whether the matters complained of probably occurred. If the SO decides that there are sufficient grounds to uphold the complaint, a decision must also be made on what redress to grant within the SO's authority. This redress may be different from that sought by the complainant. The SO is not bound by any lower level decisions or recommendations, but should take account of such decisions and the reasons for them. The SO must establish whether the complaint is well founded.

4.12 Having considered all the relevant information the SO may decide to:

- a. **Uphold the complaint.** Either partially or in full. If the complaint is well founded and the wrong is proven, the SO should grant any redress which is appropriate and within the SO's authority.
- b. **Reject the complaint.** If the complaint is not well founded or the wrong is not proven, it should be rejected, even if the redress sought by the complainant is beyond the SO's authority to grant.

⁶² Or, exceptionally, any longer period that the complainant may reasonably request. The 30-day target time for complaint resolution is paused during this disclosure process.

c. **Refer the complaint.** If the SO believes that the complaint is well founded but lacks the authority to grant the redress sought or any other appropriate redress, it should be referred to the Defence Council level, through the appropriate secretariat. The SO may make recommendations as to whether the complaint is well founded and as to redress. A decision in these circumstances is for the Defence Council level to make. These recommendations should not be disclosed.

4.13 If it becomes apparent to the SO before or during investigation that the nature of the complaint (if true) is such that the required redress is beyond the SO's authority to grant, in such cases the complaint should normally be referred. However, even if it is clear that the SO does not have the authority to grant the redress sought, the SO may continue to investigate the complaint as to merit, facts and alternative remedy. This investigation will assist Higher Authority, by adding value to the process and ensuring that it is possession of sufficient information to reach a decision on the matter, in doing so complying with the timelines for the complaint handling process.

POST-DECISION PROCEDURES

4.14 **Notification to Parties.** After reaching a decision, the SO should inform in writing⁶³ the complainant, the subject of the complaint, anyone implicated in the complaint (e.g. the Respondent(s)), the SCC if the complaint was a referred complaint and any other person whom the SO believes should be informed. The level of detail contained in the SO's written notification will vary according to the importance or complexity of the complaint. Generally, the SO's letter should contain the following information:

- a. A summary of the elements of the complaint.
- b. An explanation of the inquiry undertaken (how and by whom).
- c. An explanation of whether each element was upheld, rejected or could not be determined and why.
- d. If the complaint is totally or partially upheld, a clear indication of the SO's intention with regard to taking administrative or disciplinary action against the Respondent(s).
- e. An explanation on each element of redress requested, whether it is granted or not and why.
- f. The next steps available to the complainant and that if the complainant wishes their complaint to be considered by the Defence Council level (Level 3), they should respond to the SO to apply for referral within 30 working

⁶³ Additionally, the SO may also choose to notify the decision at interview.

days⁶⁴ after receiving notification of the SO's decision or within 3 months after the date on which the matter complained of occurred, whichever is the later.

g. That if the complainant has made no response within the time limits the complaint will be considered to have been resolved.

4.15 Response by the Complainant. If the complainant is not satisfied with the SO's decision they may apply in writing for the complaint to be referred to the Defence Council. The complainant should do so within 30 working days⁶⁵ after receiving notification of the SO's decision or within 3 months after the date on which the matter complained of occurred whichever is the later. In their response the complainant should state the grounds for seeking referral of the complaint. The SO should decide whether the request for referral of the complaint has been made within the time limits and if so, refer it to the Defence Council (Level 3), through the appropriate secretariat and inform the complainant accordingly. The complaint will be considered resolved and the complaint closed if no response is received from the complainant within the time limits.

4.16 Referring the Complaint. The SO is to ensure that the following information is forwarded to the single Service secretariat:

- a. The original Service complaint form.
- b. Any additional papers relating to the CO's and SO's investigation.
- c. The complainant's written application(s), if applicable, seeking referral of the case to the Defence Council.
- d. The SO's and CO's decision letters.
- e. When the complaint involves a referral by the SCC the original referral letter, any follow up correspondence from the SCC and the latest update.
- f. The legal advice to date.

4.17 Actions on JPA. The headquarters staff are to record the receipt of the complaint and the decision of the SO in accordance with the JPA [Business Process Guide](#). Any delay in excess of 30 working days for Type A complaints or 60 working days for Type B complaints should also be recorded.

4.18 Reports to the Service Complaints Commissioner. Where a Service complaint has been considered as the result of a referral by the SCC, the SO must notify the SCC as described in [Chapter 3](#) paragraph 3.4f and keep the SCC informed as described in [Chapter 3](#), paragraphs 3.7, 3.10 and 3.18. The notification to the SCC should include any decision on the redress sought/offered, whether to uphold, refer or reject the complaint, and if the complainant withdrew the complaint. The

⁶⁴ Equivalent to 6 weeks as stated in the Armed Forces Redress of Individual Grievance (Procedures and Time Limits) Regulations 2007, Regulation 21 – Annex D. The complainant may be granted any longer period that might reasonably be requested.

⁶⁵ See footnote 60.

SCC should also be notified if a complainant requests that their complaint be referred. Refer to [Chapter 7](#) for the role of the SCC and [Annex H](#) for the reporting flow diagrams.

CHAPTER 5 – LEVEL 3: THE DEFENCE COUNCIL

GENERAL

5.1 **Introduction.** Complaints that are referred to the Defence Council level⁶⁶ are received by single Service secretariats for preparation of submission minutes/briefs. The secretariat should seek to ensure that at the Defence Council level complaints are considered and decided within a reasonable period that should not exceed 70⁶⁷ working days from receipt of the complaint by the deciding body. Complaints at this level may be dealt with in the following ways:

- a. The Defence Council may consider and make a decision on the complaint. In practice, the single Service Boards will deal with the complaint.
- b. The Defence Council may delegate the function of considering and deciding complaints to a Service Complaint Panel (SCP).
- c. The Defence Council may refer a complaint to a SCP for consideration and a recommendation, but will take the decision on the complaint itself.
- d. The Defence Council may require a SCP to assist, and authorise investigation of the complaint by a SCP or other person.

5.2 Service complaints will normally be dealt with in accordance with either sub paragraph 5.1a or 5.1b above (see paragraph 5.6 below). Single Service Boards and SCPs will act with the full delegated powers of the Defence Council appropriate to the complaint being considered and will be subject to Treasury Guidelines and Government Accounting Regulations. Delegations, where appropriate, will also be made by Fin Pol to SCPs where financial redress is sought. A single Service Board or SCP considering a complaint where a financial redress is sought or appropriate should follow the direction of 2nd PUS⁶⁸, especially with regard to the “pause” required to seek advice on the ability to award financial redress for a particular circumstance and/or on the amount of the financial redress.

5.3 **Non Delegation.** Whilst the Defence Council will normally delegate its powers to a SCP to deal with complaints, there are some complaints that will always be considered by the Defence Council (see paragraph 5.5 below). However, there may be circumstances where complaints that would normally be delegated to a SCP will be retained by the Defence Council (see paragraph 5.6 below).

SINGLE SERVICE BOARD

⁶⁶ In this Chapter the term Defence Council is used to include single Service Board or SCP except where one of these bodies is specifically referred to the exclusion of the others.

⁶⁷ The 70-day target time is paused during this disclosure process and while awaiting the formation of a Service Complaint Panel or Service Board

⁶⁸ D/VCDS&2nd PUS/1/9/6/2 dated 31 May 07.

5.4 **Composition.** In considering complaints, the single Service Board will comprise at least 2 members. They may consider the complaint papers separately before meeting together to decide the case. The meeting may be through a VTC link. It is for the single Service Board to decide on whether to meet to decide a case and the Board members should seek secretariat and legal advice in doing so.

5.5 **Retained Complaints.** The following categories of complaint will be dealt with by the Defence Council:

- a. Complaints about a decision made by a Single Service Board or a member of such a Board acting in that capacity.
- b. Complaints about a decision or action of an officer or civil servant of 3* or 4* rank.
- c. Complaints about the suspension⁶⁹ of security vetting clearances.
- d. Complaints about appeals against major administrative action where the sanction involved the termination of an officer's service.
- e. Complaints which have been considered by a 2 person SCP which could not agree, subject to paragraph 5.17 below.

It will be the responsibility of the secretariat to alert the Defence Council to cases that it might wish to hear.

5.6 **Delegated Complaints.** The Defence Council has the decision-making power on when to delegate cases to a SCP. Apart from the cases listed at paragraph 5.5 above (those that will always be retained by the Defence Council), the Defence Council will normally delegate to a SCP, except where it considers that the nature of the issues raised in the case mean that it should not be delegated. Such a case may be one that has implications for the whole of the Service(s) concerned rather than just the individual. In making decisions to retain cases that would otherwise normally be delegated, the Defence Council level will endeavour to ensure that the system's speed and efficiency are not compromised.

THE SERVICE COMPLAINTS PANEL

5.7 **Powers.** The policy is that, under the delegations to them, SCPs will have the full delegated powers of the Defence Council appropriate to the complaint being considered, subject to the procedural controls in relation to financial recompense and must act within these powers as well as Treasury Guidelines and Government Accounting Regulations. SCPs will also have delegated powers to award financial compensation. A SCP considering a complaint where a financial redress is sought or appropriate must follow the direction of 2nd PUS⁷⁰, especially with regard to the "pause" required to seek advice on the ability to award financial redress for a particular circumstance and/or on the amount of the financial redress.

⁶⁹ See JSP 440, Part 6, Section 2, Chapter 6. Withholding or withdrawing of security clearance is an excluded matter.

⁷⁰ D/VCD&S 2nd PUS/1/9/6/2 dated 31 May 07.

5.8 Composition of Service Complaints Panel. The Defence Council authority to appoint members of the SCPs is delegated to D SP Pol and Hd SP Pol SCW. A SCP will normally consist of 2 serving officers of at least 1* rank⁷¹, usually of the same Service as the complainant. There may be certain circumstances when it may be appropriate for the other member to be a Service person of a different Service to the complainant, or a civil servant, for example, if specific specialist knowledge is required relevant to the complaint or if the complaint has arisen in a joint Service environment. Single Service secretariats are responsible for nominating SCP members, except that independent members are nominated by the central secretariat.

5.9 When an independent member is required as a member of a SCP, that SCP will consist of 3 members. One member will be an officer of at least 1* rank of the same Service as the complainant, one member will be an independent person, and the third member will normally also be a Service officer of at least 1* rank of the same Service as the complainant. However, similarly to a two-member SCP, the third member may be a senior officer of any Service or a civil servant in certain circumstances.

5.10 If a Service complaint is made by an officer of 2* rank or above or is about a decision or the conduct of such an officer and any function of the Defence Council in relation to that complaint is delegated to a SCP, at least one member of the SCP must be an officer of the same or higher rank.

5.11 Excluded Members. The following officers cannot be appointed to a SCP:

- a. Members of the Defence Council and single Service Boards.
- b. Officers⁷² of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.
- c. An officer who acted as the CO or SO in relation to the complaint.
- d. An officer who is or was the CO of the complainant when the complaint was made.
- e. An officer who was in any way involved in the investigation or consideration of the complaint.
- f. An officer who was the subject of or implicated in the complaint.

5.12 Independent Member. An independent member can be any person appointed by the Secretary of State who is neither:

- a. A member of the regular or reserve forces or,
- b. a person employed in the Civil Service.

⁷¹ See Annex A. Although s 336 of the Act states that a SCP must have at least 2 members, with one of at least 1* rank, the policy is for all panel members to be of at least 1* rank.

⁷² Including Officiating Chaplains

5.13. An independent member is required for complaints relating to allegations of:

- a. discrimination;
- b. harassment;
- c. bullying;
- d. dishonest, improper or biased behaviour;
- e. failure of the MOD to provide medical, dental or nursing care where the MOD was responsible for providing that care;
- f. negligence in the provision by MOD health-care professionals of medical, dental or nursing care; or
- g. concerning the exercise by a Service policeman of their statutory powers as a Service policeman/woman.

5.14 A SCP must also include one independent member in the case of any Service complaint about a decision by the CO or SO not to allow a Service complaint to proceed, where the complaint was made following a referral of an allegation by the SCC under the statutory powers.

5.15 **Selection.** The selection of independent members to sit on SCPs as required shall be proposed by the central secretariat and approved by D SP Pol or Hd SP Pol SCW.

FUNCTION OF A SERVICE COMPLAINT PANEL

5.16 **Meeting.** SCPs should meet (a VTC meeting may be used) to consider a complaint. SCP members will be provided with written evidence assembled by the secretariat. In addition, they may choose to hear oral evidence (see paragraph 5.25 below).

5.17 **Decisions.** Decisions by SCPs shall be by unanimity or by simple majority if there are more than 2 members on the SCP. Decisions of SCPs are final with regard to those matters that have been delegated to them by the Defence Council for a decision. If a SCP of 2 members is unable to agree, the complaint will revert to the Defence Council who will either take the decision on the complaint itself, or appoint a new SCP, with different members, to consider and take a decision on the complaint. Such provisions will need to be covered in the terms of the necessary delegation to the SCP. Decisions by SCPs, exercising powers on behalf of the Defence Council, are binding.

5.18 **Legal Advice.** Legal advice to SCPs will be provided by the legal service of the Service dealing with the complaint or the legal service of the Service to which the complainant belongs, as appropriate. SCPs may wish to seek legal advice on a complaint from another legal service on such matters as pay and pensions,

addressability, quantum and liability. In such instances the single Service legal staffs should seek that advice from CLS or from an appropriate specialist legal adviser. Although each case must be judged on its own merits, it is important that every attempt is made to ensure consistency across the Services.

PRE-DECISION PROCEDURES

5.19 Receiving the Complaint. Complaints will be received at the Defence Council level, through the secretariat, from a CO (see [Chapter 3](#), paragraphs 3.18 to 3.20) or from a SO (see [Chapter 4](#), paragraphs 4.9, 4.15 and 4.16).

5.20 Complaints Papers. The Secretariat is to ensure that the Defence Council is given:

- a. The original Service complaint form.
- b. Any additional papers relating to the CO's and SO's investigation.
- c. A written note from the complainant, if applicable on why the complainant seeks referral of the case to the Defence Council.
- d. The CO's and SO's Decision letters.
- e. When the complaint involves a referral by the SCC the original referral letter, any follow up correspondence from the SCC and the latest update.
- f. The legal advice to date.

5.21 Investigating the Complaint. On receiving a complaint, the Defence Council may investigate the complaint using a SCP or other person(s) and may choose to hear information and/or evidence orally (see paragraph 5.26 below).

5.22 Disclosure. The complainant, the subject of the complaint and any person implicated in the complaint should be given reasonable opportunity to comment in writing on the papers (this should not take longer than 30 working days⁷³) and informed that any comment will be put before the Defence Council. See [Chapter 1](#), paragraph 1.10.

5.25 Malicious or Vexatious complaints. Refer to [Chapter 1](#), paragraph 1.13.

⁷³ Or, exceptionally, any longer period that the complainant may reasonably request. The 70-day target time is paused during this disclosure process and while awaiting the formation of a Service Complaint Panel or Service Board.

ORAL HEARINGS

5.26 There is no obligation to hold an oral hearing in any case. It is for the Level 3 body dealing with the complaint (Defence Council, single Service Board or SCP) to decide whether an oral hearing is appropriate or necessary in order for the matter to be fully and fairly investigated. A complainant may request an oral hearing but the final decision lies with the Level 3 body dealing with the complaint. Guidance on oral hearings is at [Annex K](#).

DECISION – DECIDING THE COMPLAINT

5.27 In deciding on a complaint, the Defence Council must, in broad terms, decide whether the matters complained of probably occurred. If the Defence Council decides that there are sufficient grounds to uphold the complaint, a decision must also be made on what redress to grant within the Defence Council's authority. This redress may be different from that sought by the complainant.

5.28 After having considered all the relevant information the Defence Council may:

- a. **Uphold the complaint.** Either partially or in full. If they find that the complaint is well-founded, that is that the wrong is proven on the balance of probabilities, it should be upheld and redress granted that is appropriate and within its authority.
- b. **Reject the complaint.** If they find that the complaint is not well-founded, that is that the wrong is not proven on the balance of probabilities, it should be rejected.

5.29 It may become apparent to the Defence Council before or during consideration that the nature of the complaint (if true) is such that the required redress is beyond the Defence Council's authority to grant. Even if this is clear, the Defence Council may continue to investigate the complaint as to merit and facts. In such circumstances, the Defence Council may decide to uphold the complaint and to make recommendations to the appropriate authority as to remedy (for example on pay or pensions policy).

POST DECISION PROCEDURES

5.30 **Notification to Parties.** After reaching its decision, the Defence Council should inform in writing⁷⁴ the complainant, the subject of the complaint, anyone implicated in the complaint, the SCC if the complaint was a referred complaint and any other person whom the Defence Council believes should be informed. The level of detail contained in the written notification will vary according to the importance or complexity of the complaint. Generally, the letter should contain the following information:

- a. A summary of the elements of the complaint.

⁷⁴ Additionally, the Defence Council may also choose to notify the decision at interview.

- b. An explanation of any inquiry undertaken.
- c. An explanation of whether each element was upheld, rejected or could not be determined and why.
- d. If the complaint is totally or partially upheld, a clear indication of the Defence Council's intention with regard to taking administrative or disciplinary action against the Respondent(s).
- e. An explanation on each element of redress requested, whether it is granted or not and why.
- f. The next steps available to the complainant and that if the complainant remains dissatisfied, where to get assistance.

5.31 Timeframe for Defence Council Consideration. The Defence Council should aim to deal with the complaint within a reasonable period (this should not normally be more than 70 working days). The secretariat should write to the complainant every 30 working days until a decision has been reached. For SCC referred complaints, the secretariat should also keep the SCC informed of progress every 30 working days until a decision is reached.

5.32 Report by the Service Complaints Panel. When a SCP has discharged its function or concluded its investigation, a written report to the appropriate single Service Board, with any recommendations, should be provided – see [Chapter 6](#), paragraph 6.3b.

REFERENCE OF COMPLAINT TO THE SOVEREIGN

5.33 Reference. Where a complaint has been considered by the Defence Council, with the exception of those decided on by a Service Complaint Panel, an Officer, or a person who was an Officer at the time the matter complained of occurred, has the right to require a report on the complaint to be made to Her Majesty in order to receive Her directions on the complaint. The complainant must make an application to the Defence Council stating why redress should be granted, or why different or additional redress should be given. It is important that cases referred to Her Majesty should be staffed without delay. Complainants should refer to their respective Service secretariats for advice regarding the procedure.

REPORTING

5.34 Actions on JPA. The Secretariat is to inform the complainant's current unit of the Defence Council level decision (and if appropriate the result of a report to The Sovereign). The secretariat is to record the decision(s) in accordance with the JPA [Business Process Guide](#). Delays over 70 working days are also to be recorded.

5.35 Reports to the Service Complaints Commissioner. Where a Service complaint has been considered as the result of a referral by the SCC, the secretariat must notify the SCC as described in [Chapter 3](#) paragraph 3.4f and keep the SCC informed as described in [Chapter 3](#), paragraphs 3.7, 3.10 and 3.18. The notification

to the SCC should include any decision on the redress sought/offered, whether to uphold, refer or reject the complaint, and if the complainant withdrew the complaint. Refer to [Chapter 7](#) for the role of the SCC and [Annex H](#) for the reporting flow diagrams.

CHAPTER 6 - THE SECRETARIAT

THE SECRETARIAT

6.1 In addition to single Service casework staffs, the complaints process is supported by a secretariat. The secretariat has two main components: a central secretariat and the secretariats of the three single Services. The central secretariat is part of the central staff reporting to D SP Pol through Hd SP Pol SCW and Asst Hd SP Pol SCW. The single Service secretariats are embedded within their single Service chain of command in their separate locations. Working closely together, the central secretariat and the single Service secretariats form a key element in the support structure for the Service complaints process.

CENTRAL SECRETARIAT

6.2 **Tasks.** The central secretariat will:

- a. Provide a point of contact for the office of the Service Complaints Commissioner (SCC) and provide policy advice and administrative and budgetary support.
- b. Record and monitor progress and outcome of all allegations that are referred for action by the SCC, whether or not they become a Service complaint.
- c. Ensure that records of all Service complaints are kept up to date, using the facilities in JPA⁷⁵.
- d. Undertake the necessary concomitant administrative tasks in relation to the independent members of the SCP, including recruitment, maintenance of a list/database of members, record of dates and hours worked and payment.
- e. Provide recommendations on the appointment of members (including independent members) to SCPs for endorsement by D SP Pol or Hd SP Pol SC&W as required.
- f. Provide an annual report to the Secretary of State on the work of the SCPs, the number and nature of all Service complaints, and on the number, nature and outcome of Service complaints referred for action by the SCC.
- g. Provide draft answers to Parliamentary Questions, Ministerial Correspondence and Treat Official Correspondence, and provide draft lines to take for the Press Office, in relation to the overall Service complaints process, consulting the single Service secretariats, other departments and the SCC where appropriate.
- h. Provide briefing for Ministers and senior officials as required on the

⁷⁵ The protection of sensitive data will be assured through restricted access to JPA records.

Service complaints process.

- i. Collate data and information as requested by the SCC to inform the Commissioner's Annual Report.

SINGLE SERVICE SECRETARIAT

RN – Navy Command, DCS Law L&C

Army – DOSC(A), PS2(A)

RAF - HQ Air Command, RAF Personnel Secretariat

6.3 Tasks. The single Service secretariat will:

- a. When necessary, provide the Service Boards with a recommendation on whether a complaint should be considered by the relevant Service Board instead of by a SCP and inform the central secretariat of that recommendation, noting that the Service Board will always deal with complaints detailed in Chapter 5, paragraph 5.
- b. Provide lead secretariat and administrative support to the single Service Boards⁷⁶ and to SCPs as necessary, including those SCPs consisting of members from more than one Service and independent members. This function includes providing a recommendation on the membership of SCPs; the assembly of papers; the preparation of briefing material; the taking of notes; and the drafting of the notification of the outcome to the complainant once it has been determined by the Service Board or SCP.
- c. Liaise with other single Service secretariats as required to determine lead Service and SCP membership in cases where a complaint involves more than one Service.
- d. Liaise with the central secretariat regarding the appointment of members to SCPs.
- e. Ensure that records of all Service complaints are kept up to date, using the facilities in JPA⁷⁷ for level 3 complaints.
- f. Provide draft answers to Parliamentary Questions, Ministerial Correspondence and Treat Official Correspondence⁷⁸, and provide lines to take for the Press Office, in relation to complaints for which they have lead support, consulting the central secretariat as appropriate.
- g. For SCC referred complaints that reach Level 3, notify the SCC that the complaint has reached Level 3 and provide updates every 30 working days thereafter until a decision is reached, at which point the SCC will be informed of the outcome.

⁷⁶ Support to Navy Board members will continue to be provided by EAs.

⁷⁷ The protection of sensitive data will be assured through restricted access to JPA records. Units and the single Services are responsible for data input on all complaints at Levels 1, 2 & 3.

⁷⁸ Correspondence where the Department or Minister is the original addressee.

h. Provide data and information pertaining to Service complaints at the mid and end year points to the central secretariat (until 100% confidence in electronically recorded complaints is achieved).

6.4 Independent Members of SCPs. Regulations require that if certain types of complaint⁷⁹ are dealt with by a SCP, that SCP will require the inclusion of an independent member. The single Service secretariat will liaise with D SP Pol or Hd SP Pol SC&W (through the central secretariat) when an independent member is required.

CONTACT WITH THE SERVICE COMPLAINTS COMMISSIONER

6.5 Point of Contact. The central secretariat will act as the MOD's primary point of contact for the SCC, and will on receipt of an allegation referred for action by the SCC, record that allegation and pass it to the relevant single Service secretariat for onward transmission to the appropriate person in the Service chain of command for action. The progress and outcome of those complaints will be reported to the SCC by the CO/SO or single Service secretariat through the central secretariat. The central secretariat can be contacted as follows:

Internal: DCDS PERS-SCW-SERV COMPL C1
DCDS PERS-SCW-SERV COMPL D

External: DCDSPERS-SCW-SERVCOMPLC1@mod.uk
DCDSPERS-SCW-SERVCOMPLD@mod.uk

6.6 Power to Refer. The SCC has the power to refer to the chain of command for action allegations of:

- a. discrimination including victimisation;
- b. harassment;
- c. bullying;
- d. dishonest, improper, or biased behaviour.

6.7 There is nothing to prevent the SCC referring other types of allegations to the central secretariat for onward transmission to the chain of command. The chain of command is not obliged to report receipt and progress of these allegations, but it may do so through the central secretariat.

RECORDING COMPLAINTS

⁷⁹ Annex B. Regulation 9(1)(d) (Redress of Individual Grievances) Regulations 2007.

6.8 Recording Service Complaints on JPA. JPA will provide the means through which a central record of all Service complaints will be maintained. This will provide the data on which annual reports to Ministers will be based. Allegations forwarded by the SCC or any other third party are not to be created as a case by the single Service Secretariat but by the unit when the CO has confirmed that the complainant wishes to make a Service complaint. All Service complaints are to be recorded on JPA and maintained throughout the life of a case.

CHAPTER 7 - THE SERVICE COMPLAINTS COMMISSIONER (SCC)

INTRODUCTION

7.1 **Role.** The SCC has the following roles:

- a. To provide an alternative point of contact for individuals, either Service personnel or third parties, who wish to make an allegation of discrimination, harassment, bullying or similar issues listed in paragraph 7.3 below, about a Service person⁸⁰.
- b. To decide whether to refer such allegations to the chain of command for action and receive updates about the handling of such complaints.
- c. To provide the Secretary of State for Defence with an annual report to be laid before Parliament, on the efficiency, effectiveness and fairness of the Service complaints process over the reporting period.

TERMS OF REFERENCE

7.2 **Status.** The post of the SCC is a statutory appointment made by the Secretary of State for Defence.

7.3 **Point of Contact.** The SCC provides an alternative point of contact for individuals (either Service personnel or a third party who wishes to make an allegation on behalf of a Service person) who feel unable to approach the chain of command to make an allegation that a Service person has been wronged in relation to:

- a. **Discrimination** or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation; and less favourable treatment as a part time employee.
- b. **Harassment** which for the purposes of the anti-discrimination legislation is unwanted conduct on one or more prohibited grounds which has the purpose or effect of violating the recipient's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the recipient.
- c. **Bullying** which in general may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

⁸⁰ This may be of particular benefit where the allegation relates to a member of the Services who is reluctant or feels unable to approach the chain of command.

d. **Dishonest, improper or biased behaviour** which for these purposes is given its ordinary meaning with the proviso that in order to qualify as such, the behaviour must be the deliberate action of an individual or individuals acting together.

7.4 **Statutory Powers.** The SCC has a statutory power to refer allegations of the above nature to the chain of command for action – normally to the CO of the Service person who is alleged to have been wronged. Arrangements have been made for the SCC to do so through the central secretariat. The SCC is to be kept informed of progress in the handling of complaints arising from allegations referred by that office to the chain of command. If a complaint is referred by the CO to the SO and/or Defence Council, the SCC is to be informed, by the officer dealing, within certain time frames throughout the life of the complaint, through the central secretariat, of the decisions made with regard to those complaints (the outcome).

7.5 The referral by the SCC of an allegation under the statutory provisions at paragraph 3 a to d above places obligations on the chain of command including a duty to check whether the person alleged to have been wronged wishes to make a Service complaint (see [Chapter 3](#)). The SCC may also receive allegations that a Service person has been wronged in a matter not related to those in paragraph 3 a to d. If the SCC chooses to refer such allegations to the chain of command, the legal obligations referred to above do not arise and it will be for the chain of command to decide on what reporting action to take⁸¹.

7.6 **Annual Report.** The SCC will provide the Secretary of State for Defence with an annual report on: the efficiency, effectiveness and fairness with which the Service complaints process has operated over the reporting period; the exercise by the SCC during the period of their function of referring allegations; and other factors that the SCC considers appropriate or that the Secretary of State for Defence directs. The Secretary of State may exclude from the report any material whose publication would be against the interests of national security or might jeopardise the safety of any person. This report will be laid before Parliament. The SCC will have no statutory power to intervene in the handling of a complaint or the investigation of or response to a complaint. Therefore, whilst the SCC may make recommendations in the report to the Secretary of State on improvements to the process where necessary, the SCC will not have the power to intervene in or reopen cases and should not include in the report material that would be against the interests of national security or might jeopardise the safety of any person.

7.7 **Data Control.** The SCC is registered with the Information Commissioner as a Data Controller.⁸²

7.8 **Submitting Allegations to the SCC.** The SCC can be contacted:

- a. By Post: SCC, PO Box 61755, London SW1A 2WA.
- b. By E Mail: scc@armedforcescomplaints.independent.gov.uk

⁸¹ See Chapter 2, paragraphs 2.18-2.21.

⁸² As defined by s1 Data Protection Act 1998

- c. Website: <http://armedforcescomplaints.independent.gov.uk>

SCC REFERRED ALLEGATIONS

7.9 Receiving an Allegation. The SCC will refer an allegation to the person considered appropriate to receive it. Normally, this will be the CO of the Service person who is alleged to have been wronged. However, the SCC may refer to another officer if, for example, the CO is the subject of or implicated in the complaint. In practice the SCC will refer all allegations through the central secretariat who will then pass the complaint on to the single Service secretariats for onward transmission to the appropriate officer in the chain of command for action.

7.10 Notification of Complaints. The SCC is to be kept informed every 30 working days of progress and the outcome in the handling of allegations that have been referred to the chain of command. This will be monitored by the central secretariat. The single Service secretariats will receive information on the progress of the complaint on JPA.

7.11 Other Allegations. Only Service complaints are recorded on JPA. The central secretariat will be responsible for tracking the progress of allegations to the SCC which do not result in a Service complaint and informing the SCC of their progress.

SECTIONS 334 TO 339 OF THE ARMED FORCES ACT 2006

334 Redress of Individual Grievances: Service Complaints

1. If –
 - a. a person subject to service law thinks himself wronged in any matter relating to his service, or
 - b. a person who has ceased to be subject to service law thinks himself wronged in any such matter which occurred while he was so subject, he may make a complaint about the matter under this section (a “service complaint”).
2. But a person may not make a Service complaint about a matter of a description specified in regulations made by the Secretary of State.
3. The Defence Council must by regulations make provision with respect to the procedure for making and dealing with service complaints.
4. The regulations must in particular make provision requiring -
 - a. a service complaint to be made to an officer of a prescribed description;
 - b. the officer to whom a service complaint is made to decide whether to consider the complaint himself or to refer it to a superior officer of a prescribed description or to the Defence Council;
 - c. a service complaint considered by the officer to whom the complaint is made to be referred, on the application of the complainant, to a superior officer of a prescribed description or (if the officer considers it appropriate) to the Defence Council;
 - d. a superior officer to whom a service complaint is referred by virtue of paragraph b. or c. to decide whether to consider the complaint himself or to refer it to the Defence Council;
 - e. a service complaint considered by a superior officer to whom the complaint is referred by virtue of paragraph b. or c. to be referred, on the application of the complainant, to the Defence Council.
5. Without prejudice to the generality of subsections 3 and 4, the regulations may also make provision -
 - a. as to the way in which a service complaint is to be made (including provision as to the information to be provided by the complainant);

- b. that a service complaint, or an application of a kind mentioned in subsection 4.c or e, may not be made, except in prescribed circumstances, after the end of a prescribed period.
- 6. A period prescribed under subsection 5.b must not be less than three months beginning with the day on which the matter complained of occurred.
- 7. If, under provision made by virtue of subsections 3 and 4 -
 - a. an officer decides to consider a service complaint himself, or
 - b. a service complaint is referred to the Defence Council, the officer or the Defence Council (“the appropriate person”) must decide whether the complaint is well-founded.
- 8. If the appropriate person decides that the complaint is well-founded, he must -
 - a. decide what redress (if any), within his authority, would be appropriate; and
 - b. grant any such redress.
- 9. In this section “prescribed” means prescribed by regulations made by the Defence Council.

335 Service Complaints: Role of Defence Council and Service Complaint Panels

- 1. The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a panel of persons (a “Service Complaint Panel”) all or any of the functions conferred on the Defence Council by or under section 334.
- 2. The delegation under subsection 1 of a function may relate to -
 - a. a particular service complaint; or
 - b. any service complaint of a description determined by the Defence Council.
- 3. The members of a Service Complaint Panel, other than any member appointed by virtue of section 336.6.a, are to be appointed by the Defence Council (see further section 336).
- 4. The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a person employed in the civil service of the State or an officer -

- a. their function of deciding whether, and if so to what extent and subject to what conditions, they should delegate any of their functions to a Service Complaint Panel under subsection 1;
 - b. their function of appointing members of Service Complaint Panels under subsection 3.
5. The delegation under subsection 4 of a function may relate to -
- a. a particular service complaint;
 - b. any service complaint of a description determined by the Defence Council; or
 - c. all service complaints.
6. The Defence Council may require a Service Complaint Panel to assist them in carrying out any of the functions conferred on them by or under section 334.
7. The Defence Council may authorise a person (whether or not a Service Complaint Panel or a member of such a panel) to investigate on their behalf -
- a. a particular service complaint; or
 - b. any service complaint of a description determined by them.
8. In this section “service complaint” has the same meaning as in section 334.
9. Nothing in this section affects the application of section 1 (5) or (7) of the Defence (Transfer of Functions) Act 1964 (c. 15) (discharge by Service Boards of Defence Council’s functions under any enactment etc) to the functions of the Defence Council (in particular, the functions conferred on them by or under section 334 and this section).

336 Composition and Procedure of Service Complaint Panels

1. A person may not be a member of a Service Complaint Panel unless he is -
- a. a senior officer (see subsection 4); or
 - b. a person employed in the civil service of the State;

but this is subject to any regulations made by virtue of subsection 6.a. (appointment of independent members).

2. A Service Complaint Panel must consist of at least two members.
3. At least one member of a Service Complaint Panel must be a senior officer.
4. In this section “senior officer” means an officer who is -

- a. subject to service law; and
 - b. of or above the rank of commodore, brigadier or air commodore.
5. The Secretary of State may by regulations -
- a. make further provision with respect to the composition of Service Complaint Panels;
 - b. make provision as to the procedure of Service Complaint Panels (either generally or in prescribed circumstances).
6. The regulations may in particular -
- a. require, in the case of any service complaint of a prescribed description, a Service Complaint Panel to include one independent member;
 - b. impose, in the case of all service complaints or any service complaint of a prescribed description, any requirement in addition to those imposed by subsections 1 to 4;
 - c. impose, in the case of any service complaint of a prescribed description, a greater requirement than that imposed by any provision of those subsections (for example, requiring an officer to be of or above a higher rank than those specified in subsection 4 in order to be a senior officer for the purposes of this section).
7. In this section - “independent member” means a person appointed by the Secretary of State who is not -
- a. a member of the regular or reserve forces; or
 - b. a person employed in the civil service of the State;

“prescribed” means prescribed by regulations under this section;
“service complaint” has the same meaning as in section 334;
“Service Complaint Panel” has the same meaning as in section 335.

337 Reference of Individual Grievance to Her Majesty

1. This section applies if conditions A to C are met.
2. Condition A is that a service complaint is made about a matter by -
 - a. an officer; or
 - b. a person who was an officer at the time the matter occurred.
3. Condition B is that -

- a. a decision on the complaint is taken by the Defence Council under section 334; and
 - b. the Defence Council's function of taking that decision is not delegated to a Service Complaint Panel to any extent.
4. Condition C is that the complainant makes an application to the Defence Council stating why, in his view -
 - a. he should be given redress; or
 - b. he should be given different or additional redress.
5. The Defence Council must make a report on the complaint to Her Majesty, in order to receive the directions of Her Majesty on the complaint.
6. In this section -

"service complaint" has the same meaning as in section 334;
"Service Complaint Panel" has the same meaning as in section 335.

Role of Service Complaints Commissioner

338 Referral by Service Complaints Commissioner of Certain Allegations

1. This section applies where the Service Complaints Commissioner ("the Commissioner") considers that any communication made to him contains an allegation that a person named in such a communication -
 - a. is subject to service law and has been wronged in a prescribed way; or
 - b. was wronged in such a way while he was so subject.
2. The Commissioner may refer the allegation to the officer whom he considers to be the relevant officer.
3. If the allegation is referred under subsection 2, the officer to whom it is referred must as soon as is reasonably practicable -
 - a. inform the person that the allegation has been so referred;
 - b. ensure that the person is aware of -
 - (i) the procedure for making a service complaint; and
 - (ii) the effect on the making of service complaints of any regulations made by virtue of section 334 5.b. (time limits for service complaints); and

- c. ascertain whether he wishes to make a service complaint in respect of the alleged wrong.
4. Regulations made by the Secretary of State must provide that where the allegation is referred under subsection 2, the prescribed person must within the prescribed period notify the Commissioner of prescribed matters.
5. In this section -
“prescribed” means prescribed by regulations made by the Secretary of State;

“relevant officer” means the officer to whom a service complaint made by the person in respect of the alleged wrong is (under regulations made under section 334) to be made;

“service complaint” has the same meaning as in that section.

339 Reports by Commissioner on System for Dealing with Service Complaints etc

1. The Service Complaints Commissioner (“the Commissioner”) must prepare and give to the Secretary of State, as soon as practicable after the end of each relevant period, a report as to –
 - a. the efficiency, effectiveness and fairness with which the system under this Part for dealing with service complaints has operated during that period;
 - b. the exercise by the Commissioner during that period of his function under section 338 of referring allegations; and
 - c. such other aspects of the system mentioned in paragraph (a), and such matters relating to the function mentioned in paragraph (b), as the Commissioner considers appropriate or the Secretary of State may direct.
2. The Secretary of State must lay before Parliament each report under subsection 1 received by him.
3. The Secretary of State may exclude from any report laid under subsection 2 any material whose publication he considers -
 - a. would be against the interests of national security; or
 - b. might jeopardise the safety of any person.
4. The Secretary of State may require the Commissioner to prepare and give to him a report on -
 - a. any aspect of the system mentioned in subsection 1.a;
 - b. any matter relating to the function mentioned in subsection 1.b.

5. In this section -

“relevant period” means a period of one year beginning with -

- a. the date this section comes into force; or
- b. an anniversary of that date;

“service complaint” has the same meaning as in section 334.

SECTIONS 334 TO 339 OF THE ARMED FORCES ACT 2006 – EXPLANATORY NOTES

Section 334: Redress of Individual Grievances: Service Complaints

12. This section allows a person who is, or who has previously been, subject to service law to make a complaint if he thinks himself wronged in any matter relating to his service.

13. Subsection 2 enables the Secretary of State to make regulations about the kind of matter that cannot be the subject of a complaint. It is envisaged that regulations will be made to exclude complaints about Service disciplinary proceedings (where other appeal procedures exist) and about matters involving pensions and reserve forces (where alternative dispute resolution and appeals procedures also exist).

14. Subsection 3 requires the procedure for making and dealing with complaints to be laid down in Defence Council regulations. Under subsection 4 the regulations must make provision for the kind of officer to whom a complaint is to be submitted. They must also provide so that: the officer is able to refer the matter to a prescribed superior officer or to the Defence Council; the complainant is able to require the matter to be referred to a prescribed superior officer; and both the superior officer and the complainant are able to require the matter to be referred on to the Defence Council.

15. Defence Council regulations may also provide for the manner in which a complaint is to be handled and timescales for making a complaint and for a complainant to apply for his complaint to be referred to a superior officer or to the Defence Council (subsections 5 and 6).

16. Any person considering a complaint must decide if the complaint is well-founded and if it is he must grant such redress which is within his authority to give and which he considers would be appropriate (subsections 7 and 8).

Section 335: Service Complaints: Role of Defence Council and Service Complaint Panels

17. This section permits the Defence Council to delegate all or some of its responsibilities under section 334 to a panel, referred to in the Act as a "Service Complaint Panel". Members of a Service Complaint Panel are appointed by the

Defence Council (except independent members appointed by the Secretary of State where required by regulations under section 336.7).

18. Subsection 4 permits the Defence Council (in relation to all or any complaints) to delegate to a civil servant or officer the decision on which of its functions are to be delegated to a Service Complaint Panel, and the Council's function of appointing the panel members.

19. Subsections 6 and 7 enable the Defence Council to obtain assistance in other ways. Under subsection 6 the Defence Council may require a panel to assist them and (under subsection 7) may appoint a person (including a panel or panel member) to investigate a complaint.

Section 336: Composition and Procedure of Service Complaint Panels

20. This section sets out the eligibility criteria for membership of a Service Complaint Panel. Generally a member must be a serving officer of at least the rank of brigadier (or equivalent in the other services) or a civil servant. Panels must have at least two members, and at least one member must be a serving officer of such a rank. The section also empowers the Secretary of State to make further provision in regulations about its composition and procedure, including: provision for additional or stricter eligibility requirements; and provision requiring a panel to include one member who is neither a member of the armed forces nor a civil servant.

Section 337: Reference of Individual Grievance to Her Majesty

21. Officers have traditionally had the right to have their complaint referred to the Sovereign for Her Majesty to decide whether to give the Defence Council any directions about the complaint. This section lays down certain conditions that must be satisfied for an officer to have his complaint referred to Her Majesty. One condition is that the complaint must have previously been decided by the Defence Council, i.e. by a Service Board, and that its function has not been delegated to a service complaints panel to any extent. So the matters about which an officer will be entitled to complain to Her Majesty will be limited to those matters that the Defence Council decides not to delegate decisions on to Service Complaint Panels.

Section 338: Referral by Service Complaints Commissioner of Certain Allegations

22. Under this section the Service Complaints Commissioner (who is to be appointed under section 366) will be able to receive from any person allegations that a member of the Armed Forces has been the victim of certain types of wrong in relation to his service, or that a former member was the victim of such a wrong while in the Armed Forces. The wrongs in question will be prescribed in regulations made by the Secretary of State. It is intended that they will include bullying, harassment and other misconduct. The Commissioner will have power to refer those allegations to an officer, who will have to check whether the alleged victim wishes to bring a complaint about the alleged wrong.

Section 339: Reports by Commissioner on System for Dealing with Service Complaints etc

23. Under this section the Commissioner must provide the Secretary of State with an annual report on the efficiency, effectiveness and fairness of the redress system, the exercise by him of his own function under section 338 of referring allegations and any related matters that he consider appropriate or the Secretary of State directs. The reports must be laid before Parliament by the Secretary of State. The Secretary of State is also empowered to require the Commissioner to provide him with other reports on aspects of the redress system or on matters relating to the Commissioner's function of referring allegations.

2007 No.

DEFENCE

The Armed Forces (Redress of Individual Grievances) Regulations 2007

Made

Coming into force

1st January 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 334(2), 336(5)(a) and 336(6) of the Armed Forces Act 2006^[1]:

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Armed Forces (Redress of Individual Grievances) Regulations 2007 and shall come into force on 1st January 2008.

Interpretation

2. In these Regulations—

"independent member" has the same meaning as in section 336 of the Act;

"relevant officer" has the same meaning as in section 338 of the Act;

"service complaint" has the same meaning as in section 334 of the Act;

"Service Complaint Panel" has the same meaning as in section 335 of the Act;

"the Act" means the Armed Forces Act 2006;

"the Discretionary Awards Panel" means the body which, under authority delegated by the Secretary of State for Defence in relation to Royal Navy cases and under authority delegated by the Defence Council in relation to Army and Royal Air Force cases, exercises certain powers relating to the award of discretionary pension benefits;

"the Discretionary Awards Appeals Panel" means the body which decides appeals against decisions of the Discretionary Awards Panel;

Excluded complaints

3. A person may not make a service complaint about a matter within Schedule 1.

4. A person may not make a service complaint about a decision of the Defence Council under section 334(7) or (8) of the Act, whether or not the Defence Council delegated that decision to a Service Complaint Panel.

Composition of Service Complaint Panels

5. If a service complaint is made by an officer of or above the rank of rear admiral, major-general or air vice-marshal and any function of the Defence Council in relation to the service complaint is delegated to a Service Complaint Panel, at least one officer appointed to the

panel shall be of at least the same rank as, or of equal rank to, the complainant.

6. If—

(1) in the opinion of the Defence Council, its decision under section 334(7) or (8) of the Act in relation to a service complaint may involve consideration of a decision by, or other conduct of, an officer of or above the rank of rear admiral, major-general or air vice-marshal, and

(2) any function of the Defence Council in relation to the service complaint is delegated to a Service Complaint Panel,

at least one officer appointed to the panel shall be of at least the same rank as, or of equal rank to, the officer whose decision or other conduct may fall to be considered.

7. The following persons shall not be appointed to a Service Complaint Panel:

(1) a member of the Defence Council, the Admiralty Board, the Army Board or the Air Force Board; and

(2) an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.

8. A Service Complaint Panel considering a service complaint shall not include a person who—

(1) acted in relation to the complaint as an officer of a prescribed description under section 334(4)(a) of the Act;

(2) acted in relation to the complaint as a superior officer of a prescribed description under section 334(4)(b) of the Act;

(3) has otherwise been involved in the investigation or consideration of the complaint;

(4) is, or was when the complaint was made, the commanding officer of the complainant;
or

(5) is the subject of the complaint or is, in the statement of complaint made in accordance with regulations made under section 334(3) of the Act, alleged to be implicated in any way in the matter complained of.

9. —(1) A Service Complaint Panel shall include one independent member in any case in which the service complaint:

(a) alleges discrimination;

(b) alleges harassment;

(c) alleges bullying;

(d) alleges dishonest, improper or biased behaviour;

(e) alleges a failure of the Ministry of Defence to provide medical, dental or nursing care and that the Ministry of Defence was responsible for providing that care;

(f) alleges negligence in the provision by the Ministry of Defence of medical, dental or nursing care; or

(g) concerns the exercise by a service policeman of his statutory powers as a service policeman.

(2) A Service Complaint Panel shall include one independent member in the case of a service complaint about a decision of an officer referred to in regulation 8(1) or (2) that a service complaint, made in response to action under section 338(3)(c) of the Act by the relevant officer, shall not be allowed to proceed.

(3) In this regulation, "discrimination" means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of part-time employees.

10. If a Service Complaint Panel includes an independent member, the panel shall be composed of three members.

Application

11. —(1) Nothing in regulation 3 and Schedule 1, or in paragraph (3) and Schedule 2, shall have effect in relation to a matter of complaint that occurred before 1st January 2008, or which began before, and continues to occur after, that date.

(2) Nothing in regulations 4 to 10 shall have effect in relation to a complaint that was made before 1st January 2008.

(3) Schedule 2 shall have effect.

Name

Parliamentary Under Secretary of State Ministry of Defence

Date

SCHEDULE 1

Regulation 3

1. Subject to paragraph 2, a matter is within this Schedule if it—

(a) is or was capable of being the subject of a complaint under the internal disputes resolution procedures established for the armed forces in accordance with section 50 of the Pensions Act 1995^[2];

(b) is or was capable of being the subject of an appeal to the Discretionary Awards Panel;

(c) is or was capable of being the subject of an appeal to the Discretionary Awards Appeals Panel;

(d) is or was capable of being the subject of a review under rule D8 of the scheme set out in the Armed Forces Pension Scheme Order 2005^[3];

(e) is or was capable of being the subject of an appeal to a service appeals panel under paragraph 56 of the Criminal Injuries Compensation (Overseas) Scheme 2003^[4];

(f) is about any decision made under the scheme set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005^[5];

(g) is about any decision made under the scheme set out in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006^[6];

(h) is or was capable of being the subject of an appeal under section 141 of the Act;

(i) is or was capable of being the subject of an appeal under the Courts-Martial (Appeals) Act 1968^[7];

(j) is a decision of a judge advocate under any provision in or made by virtue of the Act;

(k) is a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under any provision in or made by virtue of the Act;

(l) is a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act;

(m) is a decision of a service policeman under any provision in or made by virtue of Chapter 1 of Part 5 of the Act;

(n) is a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act;

(o) is a decision under—

- (i) section 152 of the Act (review of summary findings and punishments);
- (ii) section 177 of the Act (review of service compensation orders);
- (iii) section 251(3) or (4) of the Act (time for payment of, or directing payment by instalments of, a fine or service compensation order);
- (iv) section 267 of the Act (power of court to remit fine); or
- (v) section 276 of the Act (compensation for miscarriages of justice);
- (p) is or was capable of being the subject of an appeal to a reserve forces appeal tribunal under section 81(4), 83(4) or 84(3) of the Reserve Forces Act 1996^[8];
- (q) is a decision of the Security Vetting Appeals Panel in relation to the complainant; or
- (r) is or was capable of being the subject of an appeal by the complainant to the Security Vetting Appeals Panel.

2. Nothing in paragraph 1 shall prevent a person making a service complaint about any thing referred to in regulation 9(1)(a) to (d) which he alleges has occurred in connection with a matter specified in paragraph 1.

SCHEDULE 2

Regulation 11(3)

Transitory Provisions

1. In Schedule 1—

(a) the reference in its paragraph 1(h) to appeal under section 141 of the Act shall be construed as including a reference to appeal under section 83ZE of either of the 1955 Acts and to appeal under section 52FK of the 1957 Act;

(b) the reference in its paragraph 1(j) to a decision of a judge advocate under any provision in or made by virtue of the Act shall be construed as including a reference to a decision of a judicial officer or judge advocate under either of the 1955 Acts or under the 1957 Act;

(c) the reference in its paragraph 1(k) to a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under a provision in or made by virtue of the Act shall be construed as including a reference to a decision of the Naval Prosecuting Authority, the Army Prosecuting Authority or the Royal Air Force Prosecuting Authority or of any officer on behalf of any such authority under a provision in or made by virtue of either of the 1955 Acts or the 1957 Act;

(d) the reference in its paragraph 1(l) to a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act shall be construed as including a decision of a court administration officer made in exercise of a function of his under a provision in or made by virtue of either of the 1955 Acts or the 1957 Act;

(e) the reference in its paragraph 1(n) to a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act shall be construed as including a reference to a decision of a commanding officer or of higher authority made under section 76 or 76A of either of the 1955 Acts or under section 52B or 52C of the 1957 Act;

(f) the reference in its paragraph 1(o)(i) to a decision under section 152 of the Act shall be construed as including a reference to a decision under section 115 of either of the 1955 Acts or under section 71B of the 1957 Act; and

(g) the reference in its paragraph 1(o)(v) to a decision under section 276 of the Act shall be construed as including a reference to a decision under section 10 of the Armed Forces Act 1991^[9].

2. In this Schedule—

"the 1955 Acts" means the Army Act 1955^[10] and the Air Force Act 1955^[11]; and
"the 1957 Act" means the Naval Discipline Act 1957^[12].

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 334 of the Armed Forces Act 2006 ("the 2006 Act") a person subject to service law, or who has ceased to be subject to service law, who thinks himself wronged in any matter relating to his service, may make a service complaint about the matter. Regulations 3 and 4 of, and Schedule 1 to, these Regulations prescribe the matters about which such a person may not make a service complaint.

The Act provides for service complaints to be referred in certain cases to a Service Complaint Panel. Regulations 5 and 6 make further provision about the membership of the panel in particular cases.

Regulation 7 excludes members of the Defence Council or of any of the service Boards (which operate on behalf of the Defence Council) and service chaplains from membership of a Service Complaint Panel. Regulation 8 makes further provision as to eligibility for membership and excludes from membership, among others, any person who has been involved in investigating or considering the service complaint.

Regulation 9 prescribes the service complaints for which a Service Complaint Panel must include an independent member.

Regulation 10 requires Service Complaint Panels with an independent member to have three members.

Regulation 11(1) and (2) make provision as to the application of these Regulations. Regulation 11(3) and Schedule 2 make transitory provision for references in the Regulations appropriate to the provisions of the 2006 Act to include references appropriate to provisions of certain other Acts relating to the Armed Forces. The 2006 Act provides so that the provisions of those other Acts may be repealed as the provisions of the 2006 Act are brought into effect.

Notes:

[1] 2006 c.52.[back](#)

[2] 1995 c.26.[back](#)

[3] S.I. 2005/438, amended by S.I. 2007/717[back](#)

[4] The Criminal Injuries Compensation (Overseas) Scheme 2003 is a non-statutory, Ministry of Defence scheme under which lump sum payments may be made to members of the armed forces and their eligible dependants who in certain circumstances are killed or injured overseas as a result of a crime of violence.[back](#)

[5] S.I. 2005/439, amended by S.I. 2006/1438.[back](#)

[6] S.I. 2006/606, to which there are amendments not relevant to these regulations.[back](#)

[7] 1968 c.20.[back](#)

[8] 1996 c.14.[back](#)

[9] 1991 c.62.[back](#)

[10] 1955 c.18[back](#)

[11] 1955 c.19.[back](#)

[12] 1957 c.53.[back](#)

EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (REDRESS OF INDIVIDUAL GRIEVANCES)
REGULATIONS 2007
THE ARMED FORCES (SERVICE COMPLAINTS COMMISSIONER)
REGULATIONS 2007

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 Members of the armed forces have no contract of employment and no system of collective bargaining. Disobedience to lawful commands are offences under the Service Discipline Acts, pay and other benefits are determined and altered unilaterally and historically, the rights of service personnel to bring legal claims against the Crown are also limited. It has therefore long been recognised that members of the armed forces should have some other effective way of obtaining redress for grievances. These instruments, which form part of a package of two Statutory Instruments and one set of Defence Council Regulations, therefore implement a new service complaints system for the armed forces, being made to implement sections 334 to 339 of the Armed Forces Act 2006.

2.2 A member or former member of the armed forces has the right to complain if he thinks himself wronged in a matter relating to his service, including bullying, harassment, discrimination, and biased, improper or dishonest behaviour. The Defence Council regulations provide for the officer to whom complaint is to be made and provide for the referral of complaints to a more senior officer or the Defence Council in stated circumstances. Under the Armed Forces (Redress of Individual Grievances) Regulations (the "Grievances Regulations") matters for which an alternative and more appropriate mechanism exists to resolve disputes cannot be made the subject of a service complaint under the 2006 Act.

2.3 The Grievances Regulations also provide for membership of Service Complaint Panels (Under the 2006 Act the Defence Council may delegate to such panels its powers of decision in relation to service complaints). This includes provision as to when the panels must include an independent member. To provide further independence, the 2006 Act provides for the appointment of a Service Complaints Commissioner. The Armed Forces (Service Complaints Commissioner) Regulations specify the type of allegations which, if referred by the Commissioner to the relevant officer, give rise to a duty to check whether the person alleged to have been wronged wishes to make a complaint. The relevant officer is usually the commanding officer of the person alleged to have been wronged. The regulations also

require that the Service Complaints Commissioner reports annually to Parliament on the fairness, effectiveness and efficiency of the system.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 These statutory instruments enable the introduction with effect from 1 January 2008 of a new system to deal with complaints by members of the armed forces. Section 334 of the Armed Forces Act 2006 permits service persons and ex-service persons to complain about wrong against them relating to their service and provides for regulations with respect to the procedure for making and dealing with service complaints. Section 334(2) provides, however, that a service complaint may not be made about matters prescribed in regulations.

4.2 Section 335 of the Act provides for the delegation by the Defence Council to a Service Complaint Panel of some or all of its powers in relation to a service complaint, including the power to decide whether a service complaint is well-founded and to decide the redress that should be granted.

4.3 Section 336 of the Act provides for the composition and procedure of the panels. Section 337 of the Act requires the Defence Council (at the complainant's request) to report to Her Majesty on a service complaint by an officer in order to receive Her directions on it. Section 338 of the Act provides for the referral by the Service Complaints Commissioner of prescribed allegations to the relevant officer (usually the commanding officer of the person alleged to have been wronged) and for the commanding officer to establish whether that person wishes to make a service complaint. Under section 339 of the Act, the Commissioner must make an annual report to Parliament as to the efficiency, effectiveness and fairness with which the service complaints system has operated, on the exercise of his functions within the system and on related matters as he sees fit.

5. Extent

5.1 These instruments apply to all of the United Kingdom. The Armed Forces Act 2006 applies to those subject to Service law, wherever they are in the world; and to Service courts, whether or not they are held in the United Kingdom.

6. European Convention on Human Rights

6.1 The Under Secretary of State for Defence has made the following statement regarding Human Rights:

In my view the provisions of the Armed Forces (Redress of Individual Grievances) Regulations 2007 and of the Armed Forces (Service Complaints Commissioner) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Armed Forces Act 2006 represents the first complete overhaul of the Service justice system in over fifty years, it harmonises practice and procedures across the armed forces, providing a single system of military law: soldiers, sailors and airmen will continue to be dealt with fairly and impartially but most significantly, by the same system of law, regardless of their Service. The Act makes significant changes and replaces the existing separate single-Service Acts with a single system in one Act.

7.2 Procedural improvements have been made to the redress of individual grievance system, to improve the speed of resolution, to provide transparency throughout the process and to increase consistency of dealing across the Services. The Act also 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. The Act provides that Service personnel have access to a system of redress in respect of a broad range of complaints, but excludes generalised complaints. The system is intended to deal with wrongs done against individuals. Moreover the Grievances Regulations exclude certain types of complaints, in particular where another system is either available or compulsory. For example, there is an internal disputes resolution procedure for dealing with a wide range of complaints relating to pension rights.

7.3 The regulations introduce into the redress system for some cases, an element which is independent of the chain of command. The Defence Council will delegate cases to be heard by Service Complaint Panels. Under the Grievances Regulations an independent member, who will be neither a member of the regular or reserve Armed Forces nor a civil servant, must be appointed to Service Complaint Panels for complaints about broadly: discrimination on racial grounds or on the grounds of sex, religion or belief, or sexual orientation; harassment, bullying; dishonesty and other improper or biased behaviour. Such behaviour might, for example include taking steps to prevent unauthorised activity coming to light or a decision that is purportedly made for a particular reason when the actual reason would be unsustainable in the circumstances. The regulations also require an independent member for complaints alleging failure in clinical care at either primary or secondary care levels and allegations made against a service police person of misuse of their police powers.

7.4 Further independence and public scrutiny of the system will be provided by the appointment of a Service Complaints Commissioner, who must not be a member of the regular or reserve Armed Forces or civil servant.

7.5 The Armed Forces (Service Complaints Commissioner) Regulations specify the types of allegation which, if referred by the Commissioner to the relevant officer, give rise to a duty to check whether the person alleged to have been wronged wishes to make a complaint. He will also remain under a duty to inform the Commissioner of key events in the progress of any complaint made by the person alleged to have been wronged in response to the Commissioner's reference to the relevant officer. The relevant officer is usually the commanding officer of the person alleged to have been wronged. The types of allegation which give rise to the relevant officer's duties are ones of discrimination, harassment, bullying and any other dishonest, improper or biased behaviour.

7.6 The Commissioner will provide the Secretary of State with an annual report as to: the efficiency, effectiveness and fairness with which the complaints process has operated during that period; the exercise by the Commissioner during that period of his or her function of referring allegations; and other factors that the Commissioner considers appropriate or that the Secretary of State directs. The Secretary of State will lay each such report before Parliament.

7.7 The regulations, their applications and effects have been developed in full consultation with the armed forces. The Service Personnel Executive Group have agreed the principles of the new service complaints process and the single service staffs with responsibility for the implementation and management of the system have been instrumental in the detailed development of the policy instructions necessary for the drafting of these regulations.

7.8 A Joint Service Publication will be issued to explain the new arrangements and to provide supplementary guidance to complainants and to those responsible for handling service complaints.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

9. Contact

Mrs S McIntosh , Ministry of Defence, 0207 218 0564, email sue.mcintosh641@mod.uk or Mr H Morrison (0207 218 8291) at the Ministry of Defence are the points of contact regarding these instruments.

2007 No.

DEFENCE

The Armed Forces (Service Complaints Commissioner) Regulations 2007

Made

Coming into force

1st January 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 338(1), (4) and (5) of the Armed Forces Act 2006^[1]:

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

Citation, commencement, application and interpretation

1. —(1) These Regulations may be cited as the Armed Forces (Service Complaints Commissioner) Regulations 2007 and shall come into force on 1st January 2008.

(2) In these Regulations—

"the Act" means the Armed Forces Act 2006;

"relevant officer" has the same meaning as in section 338 of the Act; and

"service complaint" has the same meaning as in section 334 of the Act.

Prescribed behaviour

2. —(1) For the purposes of section 338(1) of the Act, a person has been wronged in a prescribed way if he has been the subject of:

(a) discrimination;

(b) harassment;

(c) bullying;

(d) dishonest, improper or biased behaviour.

(2) In this regulation "discrimination" means—

(a) discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation; and

(b) less favourable treatment as a part-time employee.

Notifications to the Service Complaints Commissioner

3. Where, in accordance with section 338(2) of the Act, the Service Complaints Commissioner refers an allegation that a person has been wronged, the relevant officer shall within 21 days notify the Service Complaints Commissioner of the occurrence of any of the following events—

- (a) that he has informed the person that the allegation has been referred;
- (b) that the person has been made aware of the matters referred to in section 338(3)(b) of the Act;
- (c) of the decision of the person whether he wishes to make a service complaint in respect of the alleged wrong;
- (d) that a service complaint which the person wishes to make in respect of the alleged wrong may not be made because of the expiry of a period prescribed under section 334(5) of the Act^[2], and that the person has been informed of this;
- (e) that a service complaint which the person wishes to make in respect of the alleged wrong may not be made because it is about a matter of a description prescribed by regulations made under section 334(2) of the Act, and that the person has been informed of this;
- (f) of the withdrawal of a service complaint made in respect of the alleged wrong;
- (g) of a referral of a service complaint in respect of the alleged wrong to a superior officer or to the Defence Council pursuant to regulations made under section 334(4) of the Act;
- (h) of a decision under section 334(7) of the Act whether the service complaint is well-founded; and
- (i) of a decision under section 334(8) of the Act in relation to redress.

Name

Parliamentary Under Secretary of State Ministry of Defence

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 366 of the Armed Forces Act 2006 provides for the appointment of a Service Complaints Commissioner. Section 338 of that Act provides for the referral to the relevant officer by the Service Complaints Commissioner of allegations made to him that a person subject to service law has been wronged in a prescribed way. Regulation 2 sets out the prescribed ways.

Regulation 3 prescribes matters of which the relevant officer must notify the Service Complaints Commissioner. It also provides that he must do so within 21 days of the matter occurring.

Notes:

[1] 2006 c.52.[back](#)

[2] The relevant time limits are prescribed in Defence Council Regulations which are not made by statutory instrument.[back](#)

**THE ARMED FORCES REDRESS OF INDIVIDUAL GRIEVANCES
(PROCEDURES AND TIME LIMITS) REGULATIONS 2007**

The Defence Council make the following regulations in exercise of the powers conferred on them by section 334(3), (4) and (5) of the Armed Forces Act 2006:

Citation, commencement and application

1. (a) These regulations may be cited as the Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007 and shall come into force on 1st January 2008.

(b) Nothing in these Regulations shall have effect in relation to a complaint made before 1st January 2008.

Interpretation

2. (a) In these regulations:-

“prescribed officer” means, in relation to a service complaint, the officer determined in relation to that complaint in accordance with regulations 3 to 5;

“service complaint” has the same meaning as in section 334 of the Act;

“statement of complaint” means the statement referred to in regulation 6; and

“the Act” means the Armed Forces Act 2006.

(b) For the purposes of section 334(4) of the Act, the superior officer shall be an officer:

(i) of or above the rank of rear admiral, major-general or air vice-marshal,
or

(ii) of or above the rank of naval captain, colonel or group captain who has been authorised by an officer within sub-paragraph (i) to carry out the function of superior officer.

(c) In relation to a matter occurring over a period, the references in regulations 15, 22(a) and 26(a) to the date on which the matter occurred shall be treated as references to the end of that period.

(d) Any expression that is used in these regulations and which is the subject of a definition of general application to the Act as a whole shall have the same meaning for the purposes of these regulations.

The prescribed officer

3. Subject to regulations 4 and 5, the prescribed officer shall be the complainant's commanding officer, unless the complainant has ceased to be subject to service law. In that case, the prescribed officer shall be:

(a) the person who was the complainant's last commanding officer or that officer's successor in post; or

(b) such other officer as may instead be appointed as the prescribed officer by the Admiralty Board, the Army Board or the Air Force Board.

4. Subject to regulation 5, if the officer who would be the prescribed officer in accordance with regulation 3 (apart from this regulation) is the subject of the service complaint or is alleged in the statement of complaint to be implicated in any way in the matter complained of, the prescribed officer shall be his immediate superior in the chain of command.

5. If the officer who would be the prescribed officer in accordance with regulation 4 (apart from this regulation) is also the subject of the service complaint or is so alleged to be implicated as stated in that regulation, the prescribed officer shall be an officer appointed by the Defence Council who:

(a) is of the same rank as, or of equal rank to, that officer, and

(b) is not so subject or alleged to be implicated.

Procedure for making a service complaint

6. A person wishing to make a service complaint shall do so by delivering a written, signed and dated statement of the complaint and of the redress which he seeks:

(a) to the prescribed officer,

(b) to his commanding officer, whether or not that person is the prescribed officer,
or

(c) if the complainant has ceased to be subject to service law, to the person subject to service law who was his last commanding officer or that officer's successor in post.

7. A statement of complaint and of the redress sought may only be made by one person.

8. If the complainant wishes to make an allegation that a person who would be the prescribed officer under regulation 3 or 4 is implicated in the matter complained of:

(a) he shall state that in the statement of complaint, and

(b) he shall identify in the statement of complaint the person against whom he is making the allegation.

9. The complainant shall either include the following information in the statement of complaint:

(a) one of the following:

(i) the date on which, to the best of his recollection, the matter complained of occurred or probably occurred;

(ii) if the matter occurred over a period, the date on which, to the best of his recollection, that period ended or probably ended;

(iii) if he is unable to recollect the date in accordance with (i) or (ii), that he cannot recollect the date;

(b) whether he considers that the complaint is of a description prescribed under section 336(6)(a) of the Act;

(c) in a case within paragraph (b), the reasons why the complainant considers that the complaint is of a description prescribed under section 336(6)(a) of the Act giving details of the relevant conduct; and

(d) in a case to which regulation 18(b) applies, the reason why the service complaint was not made within the period referred to in regulation 14,

or shall provide the prescribed officer with this information as soon as practicable after making the complaint.

Action on receipt of statement of complaint

10. (a) The prescribed officer shall decide whether regulations made under section 334(2) of the Act apply to the matters complained of in the statement of complaint.

(b) If the prescribed officer decides that regulations made under section 334(2) of the Act apply to all of the matters complained of in the statement of complaint, he shall inform the complainant that they are matters about which a service complaint may not be made and shall give the complainant written reasons for the decision.

(c) If the prescribed officer decides that regulations made under section 334(2) of the Act apply to some but not all of the matters complained of in a statement of complaint, he shall:

(i) treat the remaining particulars as a service complaint,

(ii) inform the complainant in writing that the other matters are ones about which a service complaint may not be made, and

(iii) give the complainant written reasons for the decision.

11. (a) The prescribed officer shall decide whether the complainant has delivered his statement of complaint within the period provided for in regulations 15 to 17.

(b) Subject to regulation 18, if the prescribed officer decides that the complainant has made his complaint outside the periods provided for in regulations 15 to 17, he shall not consider the service complaint.

12. (a) As soon as reasonably practicable after receiving a service complaint, the prescribed officer shall decide whether to consider the service complaint himself or to refer it to the superior officer or to the Defence Council.

(b) If he is not satisfied that he will have the authority to grant appropriate redress were he to find the service complaint to be well-founded, he shall refer the service complaint to the superior officer or to the Defence Council but shall refer it to the Defence Council if the superior officer is the subject of the service complaint or is alleged in the statement of complaint to be implicated in any way in the matter complained of.

(c) If he does not refer the service complaint to the superior officer or to the Defence Council, the prescribed officer shall consider the service complaint.

(d) If the prescribed officer decides to consider the service complaint, he may subsequently decide to refer it to the superior officer or to the Defence Council.

13. (a) As soon as reasonably practicable after receiving a service complaint referred to him under regulation 12 or 21(c), the superior officer shall decide whether to consider the service complaint himself or to refer it to the Defence Council.

(b) If the superior officer is not satisfied that he will have the authority to grant appropriate redress were he to find the service complaint to be well-founded, he shall refer the service complaint to the Defence Council.

(c) If he does not refer the service complaint to the Defence Council, the superior officer shall consider the service complaint.

(d) If the superior officer decides to consider the service complaint, he may subsequently decide to refer it to the Defence Council.

Period for making a service complaint

14. Subject to regulations 17 and 18, a person shall not make a service complaint after the end of the period provided in whichever of regulations 15 and 16 applies to his complaint.

15. Except in the case of a complaint to which regulation 16 applies, the period referred to in regulation 14 shall be 3 months from the date on which the matter complained of occurred.

16. (a) This regulation applies where it appears to the prescribed officer that the complainant was expected or required to comply with another formal system for the consideration of the matter about which he wishes to complain before a service complaint about the matter would be considered.

(b) Where this regulation applies, the period referred to in regulation 14 shall be 3 months from the date on which it appears to the prescribed officer that the complainant exhausted the process provided for under that formal system.

17. If a matter is or has been capable of being pursued as a claim under the Equal Pay Act 1970, a service complaint about that matter may be made at any time on or before the qualifying date for a claim under that Act. The qualifying date shall be determined in accordance with section 2ZA of that Act.

18. (a) This regulation does not apply to a service complaint within regulation 17.

(b) A service complaint may be made on a date after the end of the period provided in whichever of regulations 15 and 16 applies to the complaint if the prescribed officer considers in all the circumstances of the case that it is just and equitable to do so.

Application of the regulations where further communications amount to a new service complaint

19. (a) Where after the making of a service complaint the prescribed officer, or a superior officer to whom the service complaint has been referred, receives a communication in writing from the complainant which purports to relate to the complaint:

(i) if, at the date of receipt of the communication, the service complaint has not been referred to a superior officer, the prescribed officer, or

(ii) if at that date the service complaint has been referred to the superior officer, the superior officer

shall consider whether the communication includes or relates solely to a new matter of complaint.

(b) In so far as the prescribed officer or superior officer, as the case may be, considers that the communication includes or relates to a new matter of complaint, these regulations shall apply to it as a new service complaint.

Notification of decision and application for referral

20. The prescribed officer who considers a service complaint shall notify the complainant in writing of his decision, stating the redress, if any, that he has decided to grant, giving the reasons for his decision and notifying the complainant of his right to make an application under regulation 21.

21. (a) Upon notification by the prescribed officer of the decisions referred to in regulation 20, the complainant may apply to the prescribed officer in writing for the service complaint to be referred by the prescribed officer to a superior authority.

(b) In his application, the complainant shall state his grounds for applying for referral of the service complaint, and the application shall be signed and dated by the complainant.

(c) If the application is made in accordance with these regulations, the prescribed officer shall refer the complaint to the superior officer or, if the prescribed officer thinks it appropriate, to the Defence Council.

22. Unless regulation 23 applies, an application under regulation 21 may not be made after the later of:

- (a) three months after the date on which the matter complained of occurred, and
- (b) six weeks after the complainant receives the notification under regulation 20.

23. An application under regulation 21 may be made on a date after the end of the period provided for in regulation 22, if the prescribed officer decides that it was not reasonably practicable for the application to have been made at an earlier date.

24. The superior officer who considers a service complaint under regulation 13 shall notify the complainant in writing of his decision, stating the redress, if any, that he has decided to grant, giving the reasons for his decision and notifying the complainant of his right to make an application under regulation 25.

25. (a) Upon notification by the superior officer in accordance with regulation 24, the complainant may apply to the superior officer in writing for the service complaint to be referred by the superior officer to the Defence Council.

(b) In his application, the complainant shall state his grounds for seeking referral of the service complaint, and the application shall be signed and dated by the complainant.

(c) If the application is made in accordance with these regulations, the superior officer shall refer the complaint to the Defence Council.

26. Unless regulation 27 applies, an application under regulation 25 may not be made after the later of:

- (a) three months after the date on which the matter complained of occurred, and
- (b) six weeks after the complainant receives notification in accordance with regulation 24.

27. An application under regulation 25 may be made on a date after the end of the period provided for in regulation 26, if the prescribed officer decides that it was not reasonably practicable for the application to have been made at an earlier date.

Transitory provision

28. For such period as any provision of, or made under, any of section 180 of the Army Act 1955, section 180 of the Air Force Act 1955 and section 130 of the Naval Discipline Act 1957 remains in force, in these regulations:

(a) a reference to a person being subject to service law shall include a reference to a person subject to military law (within the meaning of the Army Act 1955), a person

subject to air force law (within the meaning of the Air Force Act 1955) and a person subject to the Naval Discipline Act 1957 (within the meaning of that Act); and

(b) “commanding officer” means the commanding officer determined by or under section 82 of the Army Act 1955, section 82 of the Air Force Act 1955 or section 52E of the Naval Discipline Act 1957.

TRANSITIONAL ARRANGEMENTS

1. The new arrangements in this publication do not apply in relation to any complaint that was brought before 1st January 2008.
2. Therefore, any Service complaint submitted after 1st January 2008 will be dealt with under the system described in this JSP and Service complaints submitted before this date will be dealt with under the previous system. It is the date that the complaint is submitted rather than the date of the matter complained of that dictates the system under which it is considered.
3. However, the new rules under the Armed Forces (Redress of Individual Grievance) Regulations 2007 about which matters are excluded from the redress system apply only to matters arising after 1st January 2008. A Service complaint submitted within the time limits after 1st January 2008, but referring to a previously un-excluded matter that occurred or started before that date will be dealt with, but under the new system.
4. Advice should be sought from the appropriate single Service legal staffs if in doubt about how transitional arrangements might affect a Service complaint.
5. Existing JSP 831 complaints already being processed by the Services, that fall within the SCC's prescribed categories and are referred by the SCC, should be treated as a referred JSP 831 complaint.

How to fill in an Annex F to raise a Service Complaint

1. Before submitting a Service complaint or at the earliest opportunity, seek the advice of your Assisting Officer (AO) if appropriate. This may be an Officer, Warrant Officer, SNCO or Civil Servant of equivalent grade, the AO will be appointed by the CO but every effort is made to assign an AO requested by the complainant. Further details on the role and responsibilities of the AO can be found in JSP 831, Annex I.
2. If the complaints contains allegations of bullying and harassment read the guidance in JSP 763, Chapter 4 (bullying and harassment cases) and seek advice from the unit Equality and Diversity Advisor (EDA) (for bullying and harassment complaints).
3. If the complaint involves a number of similar, related incidents involving the same subject of the complaint, you should submit a single Service Complaint Form. Otherwise, each complaint should be made using a separate form.
4. In setting out how you allege that you have been wronged, provide the facts as clearly as you can. In particular, give as much detail as you can about:
 - a. date(s), time(s) and location(s). If you cannot remember the date(s) of the incident complained of, you should say so;
 - b. the incident itself or, if there was more than one, each of them. If the incident(s) occurred over a period you should say when the period ended or when the latest incident occurred;
 - c. details of anyone who witnessed the incident(s);
 - d. the effect that the incident(s) had on you; and
 - e. any attempt you have made to resolve the matter.
5. In addition to the information on the incident, if your complaint involves allegations of bullying and harassment, it is important to include details of who you believe is bullying and harassing⁸³ you, any witnesses to the incidents and what effect this had on you. This can be found in part 4 of the form.
6. Make clear what redress (outcome) you seek from this complaint. That is, the action you expect the officer dealing with the complaint and/or subject of the complaint to take.

⁸³ Refer to JSP 763 for definitions of bullying and harassment.

SERVICE COMPLAINT FORM

To:

Prescribed
Officer (normally the
Commanding Officer)

1. In accordance with Section 334 of the Armed Forces Act 2006, I:

(Service Number, Rank/Rate and Name)

Currently serving at (* assigned/attached to:

or * discharged on:

(Date)

Of current address:

claim:

a. that I have been wronged as set out in
paragraph 2 below; and

b. that I seek the redress specified in paragraph 5 below.

(* Delete as appropriate)

2. I believe that I have been wronged in the following manner:

(Include Date(s) and Times, Location and Nature of incident(s) as appropriate)

(Continue on separate sheet if required)

3. Does your complaint include allegations of bullying and / or harassment?

Yes

No

Please tick appropriate

If ticked Yes, complete section 4 a – c. (Also complete sections 5 and 6.)

If ticked No, continue straight to section 5 - 6.

4a. Identify the person(s) you believe is bullying and/ or harassing you.

Name
Rank/Grade
Unit, phone, e-mail details

4b. Details of any witnesses:

Name
Rank/Grade
Unit, phone, e-mail details

4c. State why you believe your complaint falls into the bullying and harassment category and what effect did the incident(s) have on you?

<p>(Continue on separate sheet if required)</p>

5. What outcome or redress do you seek from this complaint?

--

6. Complaints submitted under the Armed Forces (Redress of individual Grievance) Regulations 2007 must normally be submitted within 3 months of the date that the matter complained of occurred or of the latest in a connected series of incidents. Provide an explanation if you think that this complaint is made outside this time limit and say why it should be considered outside the time limit.

Date:

Signature of Complainant:

Note: Relevant supporting documents that you consider would be helpful to the investigation of your complaint should be enclosed and recorded on a separate sheet.

COMPLAINANTS – EXPECTATIONS AND RESPONSIBILITIES

Introduction

1. This Annex describes what complainants may expect from the Service complaints process and what their responsibilities are.

Expectations

2. Complainants may expect from the complaints process:
 - a. To be protected from victimisation caused by making the complaint.
 - b. To have access to advice and support from various sources.
 - c. To have an Assisting Officer appointed to help with procedural matters throughout the process and access to an EDA if their complaint includes allegations of bullying/harassment.
 - d. If possible and appropriate, to have an opportunity to try to resolve the matter informally in the first instance.
 - e. To have the right to make a Service complaint, normally within 3 months of the incident or of the latest incident complained about⁸⁴.
 - f. To have the complaint taken seriously and investigated impartially, thoroughly, sensitively and confidentially.
 - g. To be kept regularly informed of the progress of the investigation.
 - h. To be informed promptly of the decision/outcome.
 - i. If dissatisfied with the outcome, to have the right to refer it to the Higher Authority ([Chapter 1](#), paragraphs 1.15, 1.24).
3. A complainant's responsibilities are:
 - a. Where an attempt is made to resolve the matter informally, to do all they can to make the attempt succeed.
 - b. To state clearly what redress or outcome they are seeking and to ensure that such redress is reasonable and practicable.
 - c. Document the Service complaint accurately and in sufficient detail.
 - d. To cooperate fully, and in good faith, with any investigation of the

⁸⁴ Refer to Chapter 2.

complaint.

e. To help maintain the confidentiality of all aspects of the investigation process and its outcome.

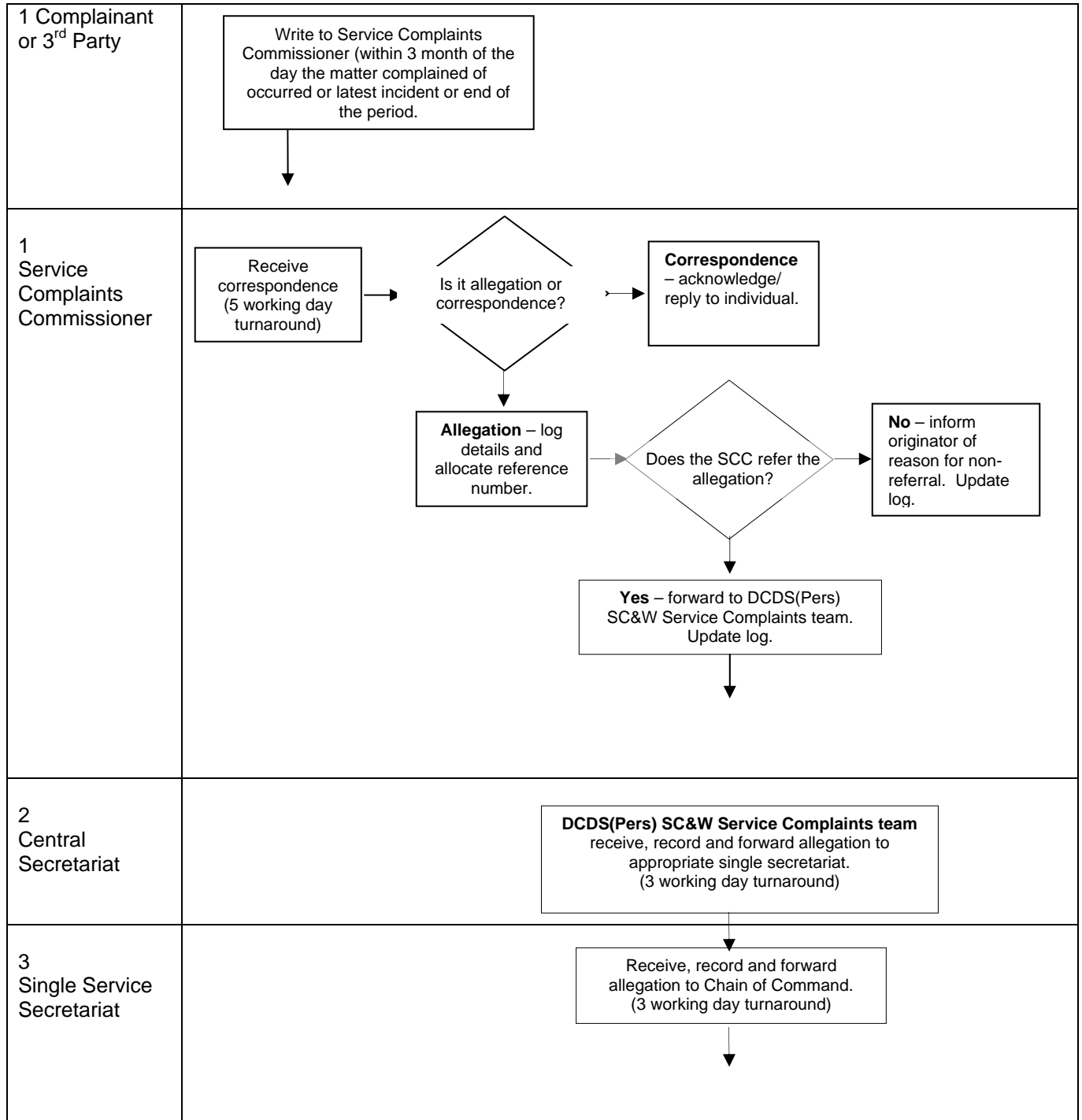
f. Not to victimise or retaliate against others.

g. Not to make abusive, offensive or threatening comments to individuals handling the complaint or other individuals concerned.

h. Not to make excessive demands on the time and resources of staff while the complaint is being progressed.

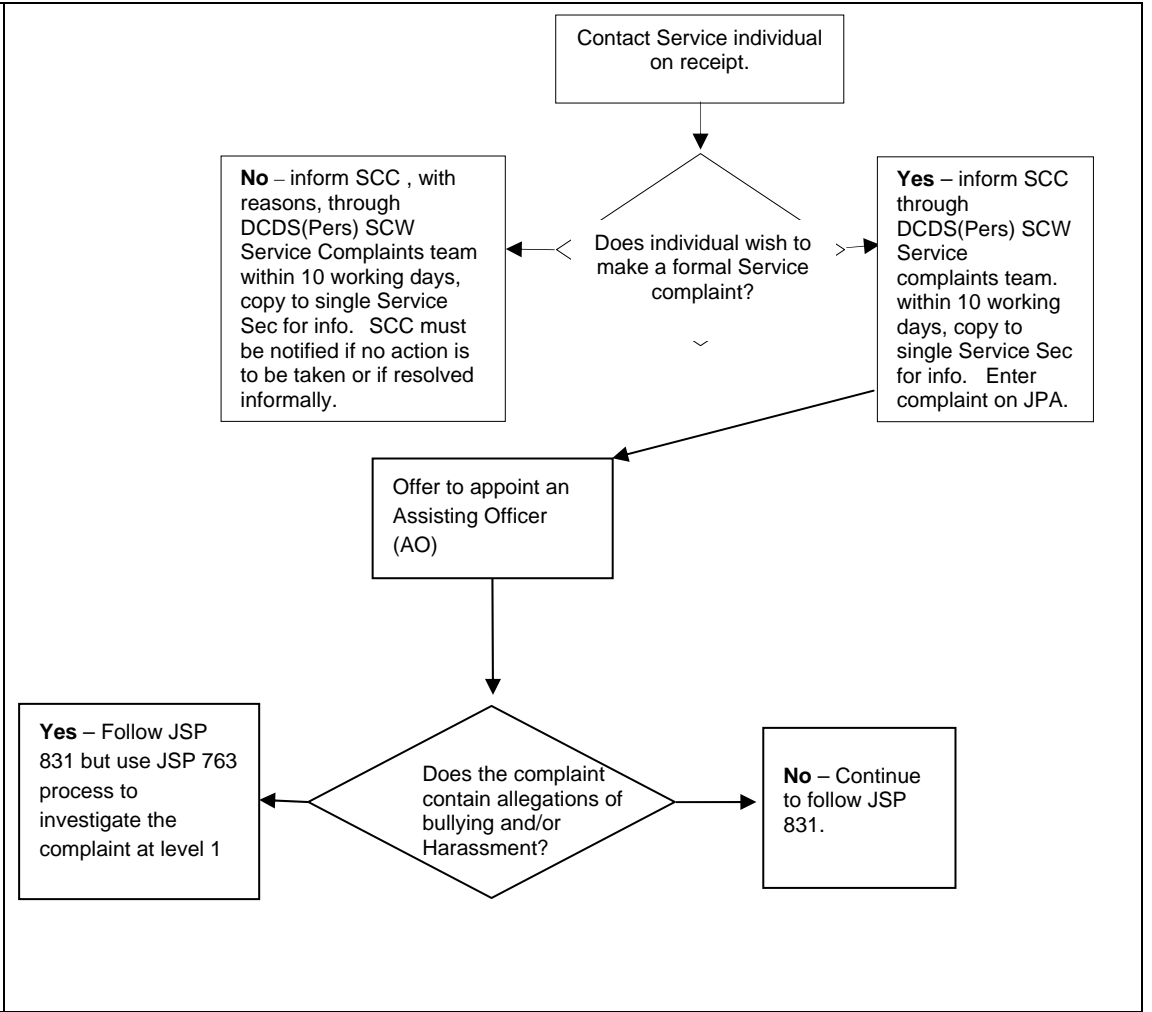
FLOW DIAGRAMS FOR THE SERVICE COMPLAINTS PROCESS⁸⁵

Allegations Received Through the Service Complaints Commissioner:

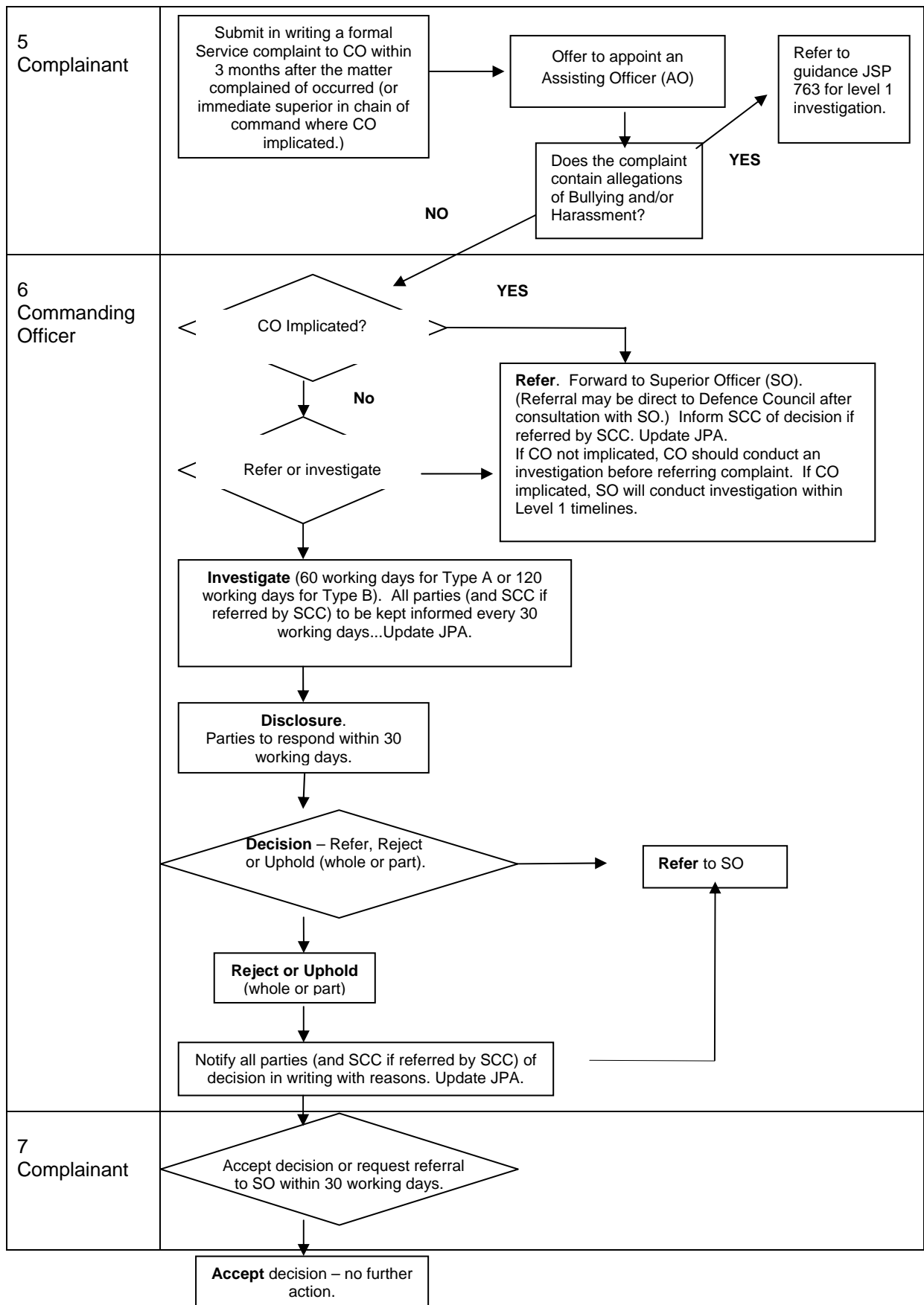


⁸⁵ This assumes no complicating factors.

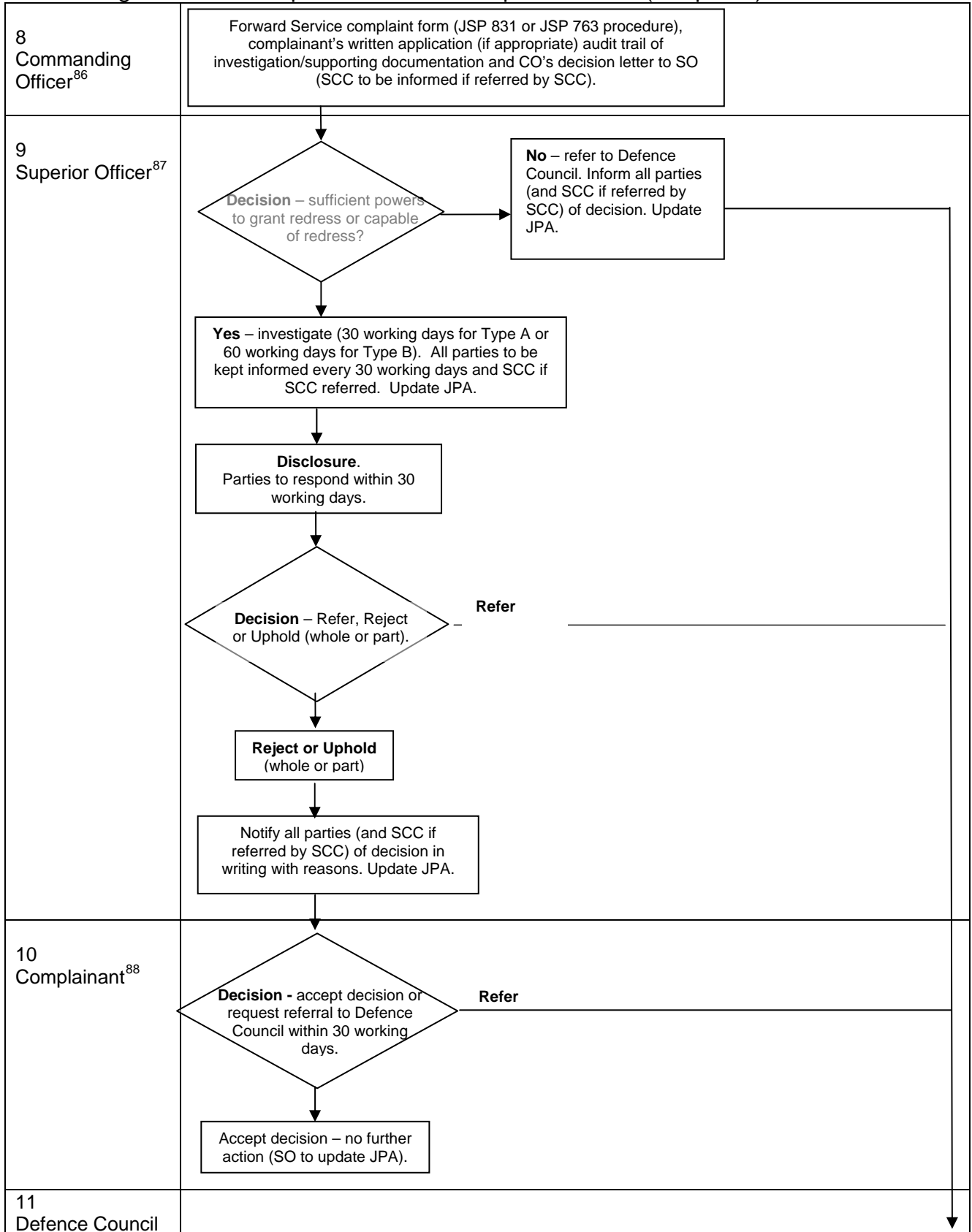
4
Chain of
Command



Submitting a Service Complaint – Level 1 – Commanding Officer (CO) (Chapter 3)



Processing a Service Complaint – Level 2 – Superior Officer (Chapter 4)

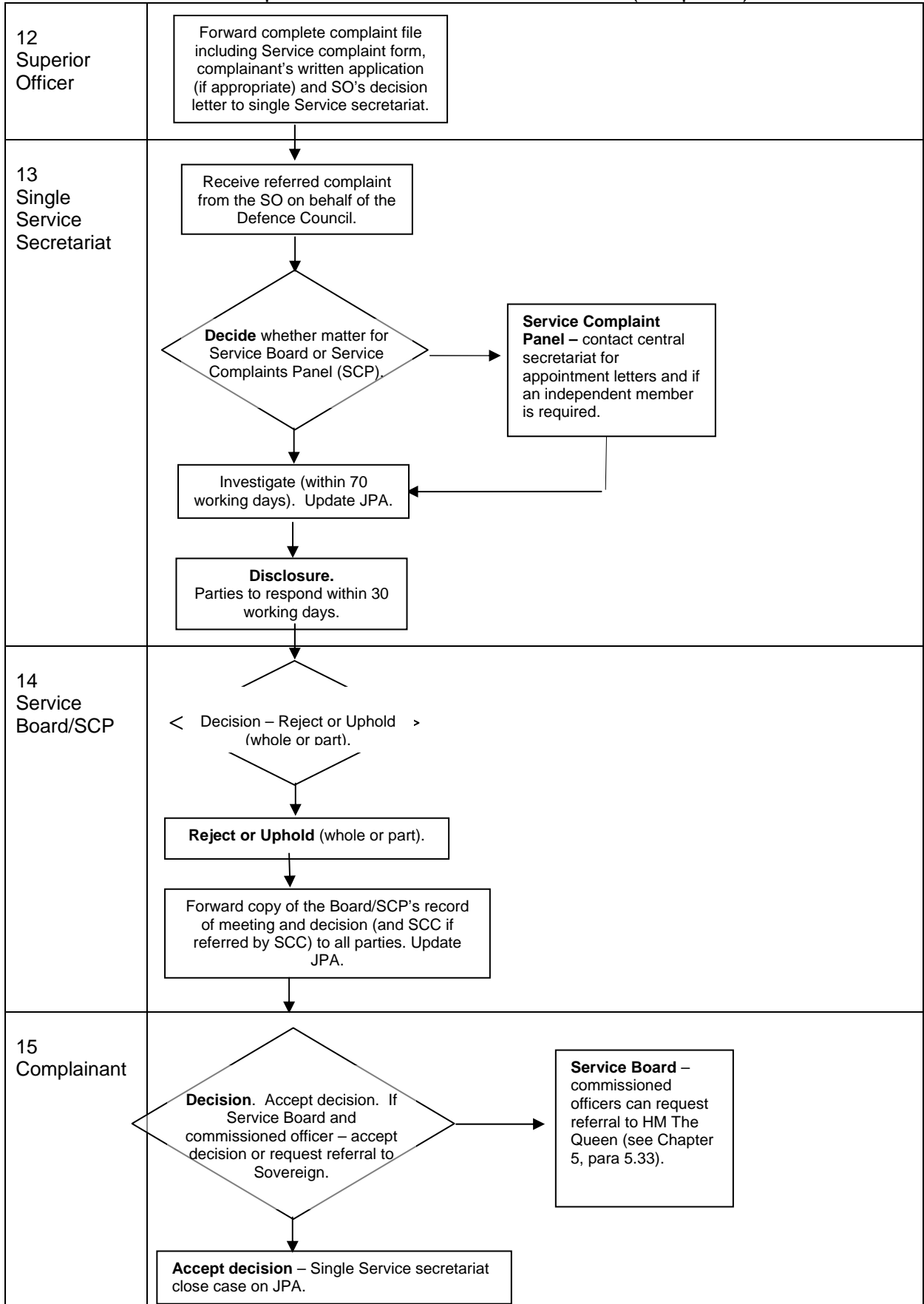


⁸⁶ This documentation should be forwarded through the Service secretariat RAF complaints.

⁸⁷ Superior Officer notification process is done by the Service secretariat for RAF complaints.

⁸⁸ See Chapter 4, para 4.15 for complainant response time limits.

Process a Service complaint – Level 3 – Defence Council (Chapter 5)



ASSISTING OFFICER (AO): APPOINTMENT OF AND ROLES AND RESPONSIBILITIES

1. The complainant, and in some cases the subject of the complaint⁸⁹, including those who have left the Service, is to be offered the services of an AO. The following criteria apply:

- a. The AO may be an Officer⁹⁰, WO, SNCO or civil servant of equivalent grade.
- b. The AO is not to be an Officer involved in the processing or deciding the complaint.
- c. In major headquarters or the MOD, the AO is not to be directly in the employment chain of the complainant except in unavoidable and exceptional circumstances.
- d. The AO is assigned by the CO but every effort is to be made to assign an AO requested by the complainant.
- e. If the complainant declines the services of an AO the CO is to make a record of that fact.
- f. An AO should not be assigned if they have had even the slightest involvement in the complaint, have a personal interest in the outcome or if there is any likelihood that they may be involved in any subsequent or related investigation.

2. On appointment the AO should be reminded by the Prescribed Officer of their duties and at appropriate times during the process and the obligation to comply with the regulations.

3. All correspondence and discussion between the individual and the AO must be treated as confidential and should not be disclosed to the chain of command, unless agreed by the complainant. The appointment of an AO does not at any stage prevent the complainant from seeking legal advice from a civilian solicitor, but in all cases this would be at his own expense.

ROLE AND RESPONSIBILITIES

4. The Officer appointed to act as the AO has a key role in helping to achieve a fair resolution of the complaint, subject to paragraph 4 below, with the minimum of

⁸⁹ For example where, were the complaint to be well founded, a named individual would be likely to face disciplinary or administrative action. In JSP 763 this is termed 'respondents', those personnel against whom allegations of bullying or harassment have been made.

⁹⁰ In the RN the AO will normally be the Divisional Officer.

delay. Consequently AOs should be selected with care to ensure that they have the appropriate knowledge and experience to gain the trust and respect of complainants. The AO has the following important duties:

- a. Ensure that the complainant understands what the formal complaints process required of them.
- b. Help a complainant prepare the Service complaint form in a clear, concise and unambiguous manner. This will require detailed preparation and thorough scrutiny.
- c. Help clarify the issues at the root of the complaint and to carry out the duties assigned to him.
- d. Provide continuity by acting as a point of contact, whenever possible, throughout the progression of the complaint.
- e. Ensure that the complainant is aware of the welfare support available to him and assist him in accessing it if required.
- f. Advise and assist one party only in a dispute, encouraging them to achieve an early resolution, through Informal means if possible and appropriate, while not making decisions on that party's behalf;
- g. The AO may treat anything said to him by the complainant in confidence but he must be aware himself and make the complainant aware that he is obliged to report certain matters to the CO. They are:
 - (1) Any offence.
 - (2) Any breach of security.
- h. For allegations of bullying and harassment, the AO should also read JSP 763 The MOD Bullying and Harassment Complaints Procedures and contact the unit EDA for further advice.
- i. Notify the CO and the complainant immediately if, for any reason they can no longer act as an AO.

5. **Assignment.** If the complainant is assigned to a new unit whilst the complaint procedure is ongoing then the AO should continue to help the Complainant, unless the complainant requests a new AO to be appointed by his new unit or further assistance from the existing AO is impracticable, in which case a new AO should be appointed. This premise applies equally if the AO is re-assigned.

GUIDANCE FOR INVESTIGATING OFFICERS

Interview Technique

1. As far as possible, identify in advance those whom you may wish to interview, although other individuals may emerge during the course of the investigation. The complainant and any person affected by the complaint should be invited to nominate interviewees.
2. The interviewee may be accompanied, if they so wish, by a third party; if they ask for legal representation it should be made clear to the interviewee that this will be at their own expense and that a lawyer may only act in the same capacity as a friend or colleague.
3. It is important that interviews are conducted in a quiet, relaxed and relatively informal atmosphere. A courteous, but authoritative style should be adopted. Conflicts of evidence should be probed and not simply accepted. It should be made clear that statements relevant to the investigation may be disclosed to any person who may be affected by the complaint.
4. Each interview will develop in different ways and you should be guided by the following:
 - a. The interviewer should at all times remain impartial.
 - b. Ensure that the interviewee does most of the talking.
 - c. Focus on facts.
 - d. Do not feel pressured into filling gaps in the conversation. Short periods of silence, used carefully, can be useful to encourage the interviewee to speak.
 - e. To help elicit information use 'open' questions; e.g. how, what, why, which, when and who?
 - f. Avoid putting words into the interviewee's mouth or drawing inappropriate inferences from responses.
 - g. Do paraphrase the interviewee's statements as you go along to confirm understanding.
 - h. Do not allow the interviewee to stray from the issue.
 - i. If the interviewee gives the impression of being evasive in answering a question, rephrase it or return to the point later.

5. At the end of each interview, summarise the interview in a statement to be signed by the interviewee. The statement should be written and signed on each page at the time of the interview.

Interviewing the Complainant

6. The complainant should normally be interviewed first. You should:
 - a. Outline the reason for the interview.
 - b. Explain the role of an investigator.
 - c. Advise the complainant that the aim will be for maximum confidentiality within the rules of disclosure.
 - d. Explain that notes will be taken to assist compilation of the final report.
7. Issues to be covered include:
 - a. The nature of the complaint.
 - b. The chronology of events.
 - c. Witnesses.

Interviewing the Person(s) Implicated in the Complaint

8. The next stage is to interview any person(s) who may be affected by the complaint. The name of the complainant should be given and the interviewer should summarise the complaint. The rules of disclosure and confidentiality should be explained.
9. The format described above for interviewing the complainant should be adopted.
 - a. The interviewee should be asked to describe the events that the complainant alleges.
 - b. Establish the facts according to the interviewee: what happened, when, where, who might have witnessed the alleged events.
 - c. Note areas of agreement and disagreement with the complainant and seek to clarify.

Interviewing Witnesses

10. The same process as above should be carried out with any witnesses.
 - a. All should be interviewed.

- b. They should be interviewed separately.
- c. If there are no corroborating witnesses or blanket denial of the alleged events, consideration should be given to another interview with the complainant.

Conclusion of Interviews

11. At the conclusion of the interview, explain that, depending on what may emerge from the investigation, individuals might need to be re-interviewed. Remind the interviewees that relevant extracts of the record of the interviews will be disclosed to the complainant, any person(s) affected by the complaint and Deciding Officer. Although absolute confidentiality cannot be guaranteed, reassure the interviewee that the Service will strive to achieve the maximum possible and that the interviewee should refrain from discussing the matter with others to limit the possibility of accusations or influencing other witnesses.

Conclusion of Investigation

12. At the conclusion of the investigation, review the evidence gathered and identify any conflicts or contradictions. You may decide to clarify any disputed issues before presenting the findings.

ORAL HEARINGS AT LEVEL 3

General

1. The following advice may be used should the Officer(s) considering a Service complaint decide that an oral hearing would be helpful in deciding the complaint. The decision on whether to hold an oral hearing rests with the Officer(s) considering the Service complaint. The complexity of the complaint and its potential effect on the Service(s) may be considerations to be included in coming to a decision on holding an oral hearing. Similarly, an oral hearing may be no more than asking the complainant to state the complaint in person, but might involve others concerned. Straightforward cases involving no substantial conflicts of evidence on any material issue or difficult points of law may be less likely to require an oral hearing.
2. An oral hearing may also be held on the application of the complainant. The final decision on whether to allow such a request from the complainant rests with the Officer(s) dealing with the complaint.

Legal Advice

3. The Officer(s) considering a complaint may conduct oral hearings with or without the presence of a legal adviser, who will normally be of the Service of the Board or panel considering the complaint or of the complainant if a mixed panel. The legal adviser will be able to give advice on questions of law and procedure, advise on and if necessary draft the determinations and assist with the questioning of witnesses.

Attendance

4. If an oral hearing is held, the complainant should always attend and may be accompanied by an AO and at the discretion of the Board or panel, by a legal or other representative. A member of the secretariat, other administrative staff and a verbatim recorder may also be present.

Preliminary Matters

5. Before proceeding with an oral hearing, all relevant documents should have been disclosed to the complainant and any others who might be affected by the outcome of the complaint. The complainant and those who might be affected by the outcome of the complaint should also have had sufficient preparation time prior to the hearing and in particular, the opportunity to produce evidence and obtain witnesses.

Procedural Matters

6. The complainant and others attending should be told of the purpose of the hearing, including a brief description of the complaint. They should also be made aware of the functions of the Board or panel and the procedures that will be followed.

7. Any relevant documents will be considered as well as oral evidence. Evidence is not taken on oath and witnesses may be questioned by the officer(s) considering the complaint and by the complainant or his representative. The hearing should be investigative rather than adversarial in nature. The complainant or his representative may address the Board, may submit documentary evidence, including witness statements and may produce witnesses to give oral evidence.

Decision

8. The decision or determination will be based on the facts. It may be given verbally and will always be confirmed in writing.

Record of Proceedings

9. The proceedings may be recorded and if necessary, later transcribed. The transcript will be made available to the complainant on request, electronically, in hard copy or both.