

## Chapter 24

### Redress of individual grievance: Service complaints

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## Chapter 24

### Redress of individual grievance: Service complaints

#### Introduction

1. This chapter provides an overview of the procedures to follow in order that Service complaints raised by Service personnel and former Service personnel are handled and resolved using a process that is efficient, fair and transparent.
2. Detailed guidance on Service complaints is contained in JSP 831 (Redress of Individual Grievance: Service Complaints), which deals with the redress process under sections 334 to 339 of the Armed Forces Act 2006 (the Act), the related Statutory Instruments and The Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007<sup>1</sup>. The system came into effect on 1 Jan 08. Arrangements for dealing with complaints of discrimination, harassment and bullying are also contained in JSP 763 (The MOD Harassment Complaints Procedure), which covers both Service and civilian personnel.

#### Legal basis

3. The Act gives a person subject to Service law<sup>2</sup> who thinks he has been wronged in any matter relating to his Service<sup>3</sup>, the 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 he was wronged in a matter relating to his service while he was subject to Service law. Under Defence Council Regulations, a complaint can only be made by an individual; there is no process for group complaints.

#### Transitional arrangements

4. The new Service complaints process does not apply in relation to any complaint that was brought before 1 Jan 08. Therefore, any Service complaint submitted after 1 Jan 08 will be dealt with under the system described in JSP 831 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.
5. 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 1 Jan 08. A Service complaint submitted within the time limits after 1 Jan 08, but referring to a previously un-excluded matter that occurred or started before that date will be dealt with, but under the new system.
6. Advice should be sought from the appropriate staff legal adviser if in doubt about how transitional arrangements might affect a Service complaint.

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<sup>1</sup> a. The Armed Forces (Redress of Individual Grievances) Regulations 2007 are at JSP 831, Annex B.  
b. The Armed Forces (Service Complaints Commissioner) Regulations 2007 are at JSP 831, Annex C.  
c. The Armed Forces Redress of Individual Grievances (Procedures and Time Limits) Regulations 2007 are at JSP 831, Annex D.

<sup>2</sup> This includes both regular and reserve service.

<sup>3</sup> Certain types of complaint are excluded. See JSP 831, Chapter 2.

## Principles

7. **Resolution.** The intent is that complaints are dealt with at the lowest possible level and resolution achieved quickly and where possible, informally. Every effort should be made to resolve a complaint informally, but the making of a Service complaint in accordance with the legislation is a legal right and a person who is in the process of seeking 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 and an informal complaint is explained in JSP 831, Chapter 2. Redress, where justified, should be granted at the lowest possible level, within powers to do so.

8. **Justice.** All those involved in the Service complaints process should act fairly, openly, without bias, in a reasoned manner and avoiding unnecessary delay. If a complaint is made about an identified person, that person should be given reasonable opportunity to state their case and to correct or contradict any evidence relevant to them. They should be given full details of any allegation made against them and a reasonable opportunity to respond. The complainant should also be given a reasonable opportunity to comment on or correct any information which the person deciding the complaint may wish to rely on.

9. **Investigation.** It is essential that the facts of each complaint are established as clearly as possible. Posting or discharge is not to be considered as a valid basis for excluding an individual from the inquiry.

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 redress process. The CO will provide with his decision any information relied on to make a decision, so that all those who might be affected by a complaint understand the basis of the decision. Subsequently, if the complaint is to be considered at other levels by the superior officer (SO) or at the Defence Council level<sup>4</sup>, 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 Environment Information Regulations. 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, staff legal advice should be sought.

11. **Delay.** Unreasonable delay is unacceptable. In minimising delay, all those involved in the Service complaints process must 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 JSP 831, Chapters 3, 4 and 5.

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 (balance of

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<sup>4</sup> At the Defence Council level a Service complaint may be resolved by a single Service Board or a SCP.

probabilities). 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 occurred.

13. **Dishonest or unfounded complaints.** Service complaints will be assumed to have been made in good faith<sup>5</sup> and complainants have a right to be protected against victimisation for making such a complaint, even if it is not upheld. Complainants must be satisfied that their complaint is based on objective fact. Complaints should be made honestly and there should be no intent or deliberate act or omission to cause harm, distress or nuisance. Dishonest or unfounded complaints, that show intent or deliberate acts or omissions to cause harm, distress or nuisance may in themselves constitute harassment and if found to be groundless, could result in administrative or disciplinary action being taken against the complainant. Staff legal advice should be sought in deciding if a complaint is dishonest, in which case the complaint should be rejected and the complainant informed in writing. If any doubt exists about whether a complaint is dishonest or groundless, it should be treated as a valid complaint.

### **Key features of service complaints process**

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

- a. Complaints are resolved at one of three levels.
- b. Complaints may be dealt with by a Service Complaint Panel (SCP).
- c. Certain categories of complaint will have an independent person on the SCP.
- d. The Service Complaints Commissioner (the Commissioner) may receive allegations and refer those of certain types 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. Referrals by the Commissioner carry additional reporting requirements; full details are in JSP 831, Chapters 3, 5 and 7. The Commissioner will report to Parliament on the efficiency, effectiveness and fairness with which the complaints process has operated.
- e. Service complaints will be submitted on a single form.

15. **Levels.** The Service complaints process has a maximum of 3 levels: the prescribed officer, usually the CO (roles and responsibilities of the CO are detailed in JSP 831, Chapter 3); the superior officer (SO) (roles and responsibilities of the SO are in JSP 831, Chapter 4); and the Defence Council level (roles and responsibilities in JSP 831, Chapter 5). The CO should consider carefully whether he 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 redress sought or another appropriate redress, he may refer the complaint to the SO or may refer it directly to the Defence Council level. The same considerations apply to a SO who receives a case. 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, he may require that the complaint is referred to the next higher level for consideration.

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<sup>5</sup> 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.

16. **Secretariat.** The complaints process is supported by secretariats. The secretariats have 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 DG SP Pol through D SP Pol SC and DD SP Pol SC. The single-Service secretariats are embedded within their single-Service chain of command in their separate locations.

17. **The Service Complaint Panel.** 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 officers of at least 1\* rank, usually of the same Service as the complainant. 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 in JSP 831, Chapter 5.

18. **Independence.** Although a SCP will normally consist of two serving officers, there will be an additional independent member to hear 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 case delegated to a SCP in which the complaint:

- a. Alleges discrimination.
- b. Alleges harassment.
- c. Alleges bullying.
- d. Alleges dishonest, improper, or biased behaviour.
- e. Alleges failure of health care professionals to provide medical, dental or nursing care where the Ministry of Defence was responsible for providing the relevant care.
- f. Alleges negligence in the provision by Ministry of Defence health care professionals of medical, dental or nursing care.
- g. Concerns the exercise by a Service policeman of his statutory powers as a Service policeman.
- h. Involves a Service complaint about a decision to reject a Service complaint that arose from a referral by the Commissioner 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 the first or second level not to allow a complaint to proceed, following a referral by the Commissioner of an allegation of matters covered by sub paragraphs a to d above.

19. **Service Complaints Commissioner.** The Commissioner is a statutory appointment made by the Secretary of State. The Commissioner 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 bullying,

harassment and related issues listed in paragraphs 18 a - d above, about a Service person.

- b. 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.

The Commissioner may also receive allegations that a Service person has been wronged in a matter not related to those on paragraphs 18 a - d. The Commissioner does not have a statutory power to refer these types of allegations to the chain of command for action, but he or she may choose to do so. Further details on the roles and responsibilities of the Commissioner are in JSP 831, Chapter 7.

20. **Service complaints form.** Although a Service complaint can be submitted initially in any written format, the complaint should subsequently be submitted on a standardised Service complaint form (JSP 831, Annex F) to provide to officers dealing with the complaint clear information about the complaint and the redress sought.

21. **Reference to the Sovereign.** An officer may request that his Service complaint be referred to the Sovereign, if the Defence Council or Single-Service Board made the final decision on a complaint. An officer may not request that his Service complaint be referred to the Sovereign if the final decision on any aspect of a Service complaint was made by a SCP, see JSP 831, Chapter 5.