

MOD FORMAL RESPONSE

Service Complaints Ombudsman's Annual Report 2016

Ministry of Defence Response to the Report and to the New Recommendations

In your latest Annual Report, you report on the first year of operation of the new service complaints system which was implemented on 1 January 2016, and the work of your office in 2016. You consider that there has not yet been sufficient time to properly assess how the new system is working, and reserve judgement for now as to whether it is fair, efficient and effective.

The report highlights where each of the Services have made improvements and progress in 2016 to the way in which they manage complaints, and those areas where further work is required. The time taken to resolve complaints remains a key area of concern.

You also report that the changes made to the service complaints system in 2016 have the potential to create a process that is fair, efficient and effective, and acknowledge that the Services have dedicated much resource to continue to reduce the number of legacy complaints in the system, mindful however that there is a need to ensure new complaints don't face the same delay.

This year you have made twelve new recommendations. Comments on each are given individually below.

Recommendation 1.1: All three Services should develop/review detailed guidance for Specified Officers on how to make an admissibility decision by end of June 2017. This guidance should include a model decision letter and standard wording that correctly communicates: a) the complainant's statutory right to appeal to the Ombudsman and b) the complainant's right to seek a Judicial Review of the Services' decision, and the correct timelines to do so for each. A common approach across the Services should be adopted where practical.

The role and responsibilities of a Specified Officer (SO) when deciding whether a complaint is admissible as a service complaint are set out in JSP 831, part 2, chapter 3. This includes guidance to the SO, where a complaint is found to be not admissible, to inform the complainant of their right to apply for a review of the decision by the Ombudsman and of the time limits for doing so - this is also included in the template letters at Annexes C and D of the JSP.

Work is in hand with the Services to review the content of the guidance within JSP 831 that relates to the role of the SO. This will ensure it reflects best practice drawn from single-Service evidence-based experience and organisational learning arising from the Ombudsman's review findings on SO decisions; this will include consideration of the commonality of wording across the Services for the points raised by the Ombudsman in her recommendation regarding the complainant's right to

appeal to the Ombudsman and to seek a Judicial Review.

Recommendation 1.2: That all Service complaints policy, including JSP 831 and 763, whether owned by MOD or the individual Services is reviewed by the end of 2017 to ensure that more detail is provided about the role of respondents in the process and when/how Specified Officers, Decision Bodies etc. should be communicating with respondents throughout the life of the Service complaint and their duties/responsibilities towards them.

The MOD is committed to ensuring that all those involved in the service complaints system are treated fairly, and are appropriately assisted and supported throughout the process. The role of a respondent, the support they receive, and the frequency and manner in which they are communicated with should be considered no less than any other party.

The current policy set out in JSP 831 details the responsibilities of the respondent, including their right to have access to an Assisting Officer, and how and when the Specified Officer, Decision Body and Appeal Body should formally communicate with them throughout the life of a complaint. The MOD and the three Services however agree with the Ombudsman that guidance be reviewed to see how we might further improve the respondent's experience of the process. We are now reviewing existing policy, guidance and working practices across MOD and the Services, and will seek input from the Ombudsman on any specific areas where she feels changes are required.

Recommendation 1.3: That the individual Services conduct a review of the procedures that underpin the Service complaints process and make recommendations for change to ensure a targeted and effective use of resources in order to minimise delay in the handling of Service complaints. These recommendations should be made by the end of April 2018.

The three Services continually monitor and review their processes to ensure that they contribute to the timely and effective management of complaints, and all have undertaken work in 2017 to further improve the manner in which they handle complaints and remove undue delay from the system.

This includes work that the Army has carried out to target undue delay in the system with regards to the refocusing of legal advice. The access to and reliance by the Decision Body upon legal advice had been a feature of the complaints process, adding unnecessary delay and taking up valuable resource. The Army now no longer routinely provide legal advice to the Decision Body after the admissibility of a complaint is determined, other than when financial awards are being considered.

To assess how the reformed service complaints system has bedded in since it was implemented on 1 Jan 16, and to identify any opportunities for further reducing the time taken in handing service complaints, the Royal Navy conducted a Mini Continuous Improvement Event in June 2017. The outputs of the review identified a number of actions to further re-enforce the requirement for timely handling of complaints, and included work to deliver Captain Naval Legal Services (CNLS) direction that, from 1 Sept 17, admissibility legal advice to SOs will come under

Deputy Assistant Chief of Staff (DACOS) Casework, ensuring a consistency in admissibility decision letters and the provision of timely legal advice.

The RAF have also conducted a number of studies within the last year to look at their working practices. This work has included reviewing areas of the complaints process with regards to investigations, mediation, respondents and Assisting Officers. They are now taking forward the outcomes and recommendations of this work.

Recommendation 1.4: That the Ministry of Defence reviews the current level of HIOs and IMs by end April 2018 to ensure that the Service complaints system is adequately resourced in those areas. As part of this process the Ministry of Defence is invited to carefully consider the diversity of the pool of IMs going forward.

The MOD recognises that the work undertaken by Harassment Investigation Officers (HIOs) and Independent Members (IMs) as part of the service complaints process is vital in ensuring that we have a system that is fair, effective and efficient.

Defence Business Services (DBS) provide a service to deliver the investigation of both Service Complaints and MOD Civilian complaints of bullying and harassment. They are currently in the process of reviewing levels of investigators and how they are engaged to maximise their effectiveness in conducting investigations in a timely manner. The MOD is also undertaking work to review and consider how the investigation of bullying and harassment complaints might be carried out in the future.

An analysis of the current strength of the pool of IMs against demand from the Services has recently been carried out, and approval has been given to recruit an additional seven IMs to increase the size of the existing pool from five to twelve.

Recommendation 1.5: That the Ministry of Defence instigate a review of JSP 831 and 763 to ensure that the language is accessible to all Service personnel by end December 2017, using “plain language” standards and make the necessary changes by end June 2018.

It is important that the language used in policy documents such as JSP 763 and JSP 831 is clear, concise and accessible for all.

A review of JSP 831 and JSP 763 are due to commence later in the year. As part of this work we will apply a check against the “plain language” standards and make any required changes.

Recommendation 1.6: That the Ministry of Defence reviews the training provided to FEHIOs by end April 2018 to ensure it is adequate and that this training and the procedures used to monitor and manage the performance of FEHIOs is enhanced as required.

As set out in the response to recommendation 1.4, Defence Business Services (DBS) currently provide a service to deliver the investigation of both Service and MOD civilian complaints of bullying and harassment. DBS are responsible for the

overall management of the cadre of Fee Earning Harassment Investigation Officers (FEHIOs), including their performance and the provision of training to enable them to carry out the functions of their role.

We are currently reviewing the performance of the service provided by DBS, both in terms of timeliness and the quality of investigations. This will enable us to see if the current arrangements are still viable or if an alternative delivery model might be more suitable. The provision of training for investigators will form part of the future requirement.

Recommendation 1.7: That the Ministry of Defence develops or procures specialised training for those complaint handlers and assisting officer who are appointed to deal with sensitive matters, including those of a sexual nature and that the single Service secretariats embed a mechanism within their processes to ensure that sensitive complaints are assigned to those individuals who have completed this training. This should be rolled out by the end of June 2018.

The Navy's Complaints and Mediation Team and Army's Service Complaints Investigation Team are already trained for handling such complaints, however all three Services agree that the provision of training for Assisting Officers (AO) in these circumstances is appropriate. Further discussion between the Services is required with regards to taking forward this recommendation.

Recommendation 1.8: That the Ministry of Defence develops a general training programme for all Assisting Officers and that a record of their completion of that training is held centrally to ensure that suitably qualified AOs can be identified with greater ease. This should be rolled out by the end of April 2018.

We recognise the important role that an effective Assisting Officer (AO) can play in achieving the fair and timely resolution of a complaint.

The development of a tri-Service training product, most probably e-learning, is considered in principle by the Services to be a good idea and something they would like to discuss further with the Ombudsman to capture her thoughts and expectations in terms of content. The development and delivery of any such training will bring with it a cost which will need to be considered in line with normal budgetary procedures.

Recommendation 1.9: That training/education on the Service complaints system, including the role of the OSCO, is provided to all Service personnel, including new recruits and reservists. The OSCO should be invited to contribute to the development of those portions of the training that concern the role of the Ombudsman to ensure that the independent and impartial message of the office is shared with personnel. The Ministry of Defence should report to the Ombudsman on the progress made by end December 2017.

The Services already deliver both new entry and, at appropriate points, through-career training to personnel on the service complaints system and the role and powers of the Service Complaints Ombudsman. They also communicate the role of

the service complaints process and the Ombudsman through advice and guidance that they publish on the Defence Intranet.

It is recognised by the Services that there is a need to continue to engage with the Ombudsman and her office to ensure that the elements of training that relate to her role deliver the right messages. An example of this is the Army's Military Annual Training Test 6 Values and Standards which is mandatory for all Army personnel to undertake annually. While this training already provides some information on the Service Complaints Ombudsman, the Ombudsman has agreed to provide new information for inclusion in future training.

Recommendation 1.10: That the Ministry of Defence commissions a study by the end April 2018 to determine the root causes of the overrepresentation of female and BAME personnel in the Service complaints system and that appropriate action is taken to try and redress this by the end of December 2018, including putting the appropriate support mechanisms in place.

The Services have conducted or are concluding work to establish the representation of female and BAME personnel in the service complaints system within their respective Service. Once this work is complete we will review the outcome with the Services to determine what, and if further action is required, informing and engaging with the Ombudsman's office as appropriate.

Recommendation 1.11: That the Ministry of Defence identifies an appropriate working group by end April 2017 to evaluate the current target for resolving 90% of Service complaints within 24 weeks to ensure that it is appropriate, including the method for calculating when the 24 weeks begins. A representative from the OSCO should be involved in this review.

The MOD agrees with the Ombudsman that to properly understand how long complaints are actually taking to close; the reasons why delay exists; and whether or not the current target of closing 90% of service complaints in 24 weeks is appropriate, that a thorough evidence based review and analysis is required.

The Service Complaints Working Group (SCWG), whose role is to regularly review and actively monitor how the new service complaints system is working and delivering against the benefits expected from the reformed process, is leading on this work stream. The Service Complaints Statistics Working Group (SCSWG) will assist in this work, primarily to interrogate, produce and analyse data as requested by the SCWG. Meetings and discussions have already taken place between MOD and the Services, and the SCWG is currently in the process of finalising a draft paper which will set out the direction of travel for the review. The MOD will continue to keep the Ombudsman updated on progress through her SCSWG member.

Recommendation 1.12: That the Ministry of Defence facilitates a review of the internal processes developed by the single Service secretariats by the end of June 2018 to ensure that they use a common approach where appropriate and that best practice is shared. This includes, but is not limited to, the standardisation of template letters and reports.

Since the introduction of the previous service complaints system in 2008 and subsequently the implementation of the new complaints system in January 2016, the Services have shared best practice and lessons learnt as part of normal business, through the Service Complaints Working Group (SCWG), the Service Complaints Statistics Working Group (SCSWG), and more recently through the quarterly reviews that the Ombudsman's office has introduced with the Services.

These forums provide the opportunity for all parties to discuss and capture areas where a common approach might be beneficial. Work is already in hand with regards to looking at the guidance for Specified Officers and the commonality of wording for admissibility decision letters (see recommendation 1.1), and the consideration of tri-Service training for Assisting Officers (recommendation 1.8). The SCSWG since its introduction has also enabled the three Services to work closely together to standardise JPA reporting. Through these forums we will continue to look at our internal processes to see if a common approach is required in any other areas. We will also engage with the Ombudsman's office to see if there are any specific processes that they have identified that they consider require review.