

MOD FORMAL RESPONSE

Service Complaints Ombudsman's Annual Report 2017

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

Thank you for your Annual Report for 2017 on the efficiency, effectiveness and fairness of the Service complaints system which you published on 24 April this year. I would also like to thank you for the important independent oversight that your role as Ombudsman brings to the Service Complaints process and, like you, I remain committed to having a system in which our Service personnel can have confidence.

The complaints process, with your independent oversight, fulfils an important role in ensuring our people have a fair and transparent system for resolving matters which have caused them concern. We do, of course, resolve a number of complaints at a lower level. The Services, through the chain of command, continue to successfully resolve potential issues at the lowest suitable level. The use of informal and formal mediation resolution remains highly effective and individuals also resolve matters through special to type processes.

In your Annual Report for 2016, you considered that there had not yet been sufficient time to properly assess how the new system was working, reserving judgement until your next report as to whether it was fair, efficient and effective. In this report you recognise that clear improvements have again been made by the Services to improve the way in which they manage and handle complaints, with 52% of complaints in 2017 being resolved within 24 weeks (a marked improvement from 39% in 2016).

You have previously recommended that we evaluate the target of 90% to ensure that it is appropriate. We have given much careful thought to this issue, with a view to having performance indicators which will encourage the improvements that we both want to see, in addition to promoting confidence in the system. We look forward to sharing the findings of our work with you shortly.

In your report you have made ten new recommendations. We have considered these very carefully and responses to each are provided below:

Recommendation 2.1: That by December 2018 the Ministry of Defence completes its review of JSP 763 and publishes the updated version that corresponds with the reformed Service complaints process.

We agree that a full review of the Department's main policy and guidance on Bullying and Harassment Complaints Procedures (JSP 763) is required, both in terms of the content and structure of the document. This will require a thorough review involving all those stakeholders, including your office, who are involved or have a vested interest in the process. To ensure that this work is now taken forward in a co-ordinated and timely manner, with clear milestones for the publication of a revised JSP, additional resource is being made available to undertake this important task.

Recommendation 2.2: That by December 2018, JSP 831 is amended to explicitly set down as a required step that upon receipt of:

- a written statement of complaint (whether or not on an Annex F), or
- referral from the Ombudsman

that the Specified Officer speaks to the individual Service person to establish the nature of their complaint. Given the nature of the work of the Armed Forces, this could be done in a face to face meeting, by phone or video conferencing. The guidance should further acknowledge that in some cases there will be legitimate reasons for omitting this step, but that it is expected that such instances will be rare. Furthermore, any such decisions must be properly documented.

Timely and appropriate communication with the complainant is clearly an important feature of any complaints process, and we are not aware of this being an issue amongst complainants. The role of the Specified Officer (SO), as set out in JSP 831, Part 2, Chapter 3, requires that they communicate clearly with the complainant and that communication is an important part of the process. The SO is reminded of the Principles of Fairness at Annex G, which set out the ways in which all those involved in handling a complaint should conduct themselves, including the need to ensure early contact is established with the complainant

The JSP also specifically sets out in Part 2, Chapter 3, paragraph 22 that having checked the complainant's statement of complaint, the SO '*should then arrange to speak to the complainant, or for someone to do that on your behalf, to understand fully the nature of the complaint and the redress being sought*'.

In the light of the existing provisions, there is limited scope for improvement, but we will review the current wording within the JSP to see if the message to have these conversations can be reinforced.

Recommendation 2.3: That by December 2018, all guidance and training provided to Commanding Officers and Specified Officers is reviewed to ensure that it includes specific reference to the extended timeframes to make a Service complaint that concerns a matter that could be taken to an Employment Tribunal. This guidance should include examples of the types of complaints which may give rise to the extended timeframe.

Information about extended timeframes for Service Complaints which could go to an Employment Tribunal can be found in JSP 831, Part 1, Chapter 1, paragraphs 12 to 14. It sets out that the usual time limit for making a Service Complaint of three months is extended to six (discrimination claims) and nine months (equal pay claims). This advice is reinforced in Part 2 of the JSP in the specific chapter for the Specified Officer (SO), and the single Service secretariat teams are able to provide initial advice to any SO who is unsure whether a Service Complaint should be ruled admissible.

With regards to any additional training, we do not believe that it is necessary to include such detail and depth on this subject in Commanding Officer (CO) or SO training. Commanding Officers and SOs are provided with comprehensive advice on

each complaint and that case specific advice is more likely to be effective than generic training.

Recommendation 2.4: That by April 2019 training is available to personnel involved in making decisions as part of the Service complaints process, including Specified Officers, Decision Bodies and Appeal Bodies, on decision writing for complaints handlers. This could be discreet training or part of a wider package on Service complaints as referred to in recommendation 2.7.

Recommendation 2.7: That by April 2019, an online training module on the Service complaints process, including a module on how to handle Service complaints for personnel charged with that process i.e. Commanding Officers, Specified Officers, Decision Bodies and Appeal Bodies, is developed and implemented tri-Service.

The Services provide a wide range of training to equip and inform individuals about their various roles in the complaints process, ensuring that they understand what is required of them and the support that is available to them when carrying out their duties. We recognise that this needs to be kept under review and have established a new working group – under the Service Complaints Working Group – to examine current provision, to make sure it is correctly targeted, and that best practice is shared.

We have given careful thought to the possibility of an on-line training module for the Service complaints process. However, it is not immediately clear how this would represent an improvement on what is currently provided by the Services in small, interactive training programmes, which can quickly reflect new developments and precedents. But this is something on which we will reflect further.

Recommendation 2.5: That by December 2018, the Ministry of Defence develops guidelines on the handling of informal complaints that can be included as an Annex to JSP 831. This guidance must provide, as a minimum, information on when it is and is not appropriate to follow informal processes and the steps to be taken in recording the informal process. The guidelines must also state that a complainant cannot be forced or unduly pressured/encouraged to submit to informal resolution.

The current JSP 831 advises that the intent of the system is that Service Complaints are dealt with at the lowest appropriate level and that resolution, where possible, is achieved informally. It also informs Service personnel in the process of seeking informal resolution of their right at any time to submit a Service complaint within the specified time limits. Each of the single Services also reiterate this message in their own Service Complaint guidance documents.

The Ombudsman's recommendation to further develop the guidance currently provided in JSP 831 would be beneficial to the wider complaints process, and we will engage further with the Ombudsman's office to explore the scope of those matters which are – and are not - appropriate for informal resolution. We will include this as part of the next review of JSP 831.

Recommendation 2.6: That by October 2018 the method for approval and payment of compensatory sums of £500 or less is standardised across the single Services. The Ombudsman recommends that the Naval Service and RAF follow the lead of the Army and seek delegated authority from Her Majesty's Treasury to make such payments in order to avoid further delays.

We can confirm that this recommendation has been implemented, with both the Naval Service and RAF having received delegated authority from Her Majesty's Treasury.

Recommendation 2.8: That by April 2019, the Ministry of Defence reviews the existing primary and secondary legislation and determines how amendments can be made to provide a mechanism for respondents to a Service complaint to ask the Ombudsman to investigate alleged undue delay in the handling of that complaint. This mechanism should be available to all respondents, regardless of whether they are currently serving.

We recognise that delay, for all those involved in the complaints process, is frustrating and can have an impact on personal and professional life. This recommendation, if accepted, would represent a significant change to the current complaints process and needs careful consideration so that all outcomes and consequences, including additional resources, can be considered. We are not yet in a position to make a decision on this matter, although it is to be noted that, if this were to be adopted, the earliest legislative opportunity for change is likely to be the next Armed Forces Bill in 2020.

Recommendation 2.9: That by December 2018, in time for the 2019 survey, a section is added to the Reserves Continuous Attitudes Survey that mirrors that in the Armed Forces Continuous Attitudes Survey looking at fairness at work, the Service complaints process and knowledge of the Service Complaints Ombudsman.

We support the Ombudsman's recommendation regarding this matter, and a request to replicate the same questions that exist in AFCAS in the Reserves Continuous Attitudes Survey (ResCAS) has been submitted to the relevant team within MOD who have ownership of the surveys.

Recommendation 2.10: That by December 2018 the Ministry of Defence amends JSP 831 to stipulate that the single Service secretariats are responsible for challenging withdrawals where the complainant, or potential complainant, has indicated they have been discouraged from making a complaint, or had undue pressure placed on them to withdraw their complaint. This must be accompanied by clear processes to be followed in such instances. Such processes can be developed at the local level so long as there is a consistency in approach across the single Services.

No-one should be discouraged from making a valid service complaint, or face pressure to withdraw one already made. We are not aware of this being an issue amongst complainants, but to be clear it is MOD policy, and communicated throughout JSP 831 and in single Service guidance, that all complaints must be

taken seriously by all concerned. It is emphasised to the complainant that during the Service complaints process they should expect to have their complaint taken seriously and investigated impartially, and they can expect to be protected from victimisation.

It would make no sense for there to be no provision for complaints to be withdrawn and the Services have, or are in the process of putting in place procedures to allow for that. For example, the RAF request written reasons from individuals when a complaint is withdrawn, these are recorded on JPA and reviewed by their Secretariat team prior to the case being closed – if it was considered that a Service complaint was being withdrawn due to an individual being discouraged or undue pressure being placed on them, the complaint would not proceed to closure. The Naval Service previously had no formal process for monitoring withdrawals, although the Specified Officer and Deciding Body take each Service Complaint seriously and frequently seek advice from the Secretariat where an individual wishes to withdraw all or part of an admitted complaint - they will however amend their current single Service policy in line with the RAF approach at the next opportunity. In the meantime, legal advice provided for every complaint will require Deciding Bodies to engage with the Secretariat prior to allowing a complaint to be withdrawn, to ensure the reasons are understood and to establish whether the complainant believed they had experienced any undue pressure. Likewise, the Army are amending their procedures to ensure a consistency in approach across the Services.