



Annual Report 2010

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Our aim

To ensure all Servicemen and Servicewomen and their families have confidence in the complaints system and are treated properly, by:

- monitoring individual complaints
- holding the Services to account for fairness, effectiveness and efficiency in their operation of the complaints system
- working with the Services and MOD to see that lessons are implemented swiftly and effectively
- accounting publicly to Ministers and Parliament.

Our values

- independence of judgement
- fairness and justice
- integrity
- transparency and accountability
- respect for diversity
- proportionality
- outcome focus
- humanity.

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Message from the Commissioner



Dear Secretary of State,

I am pleased to provide you with my Annual Report for 2010 reporting on my work and assessing the efficiency, effectiveness and fairness of the Service complaints system over the last twelve months and over my first three years as Commissioner.

You have been focussing this past year on the Strategic Defence and Security Review (SDSR) and on strengthening the military covenant. The Service complaints system plays an integral role in ensuring the fair and just treatment of members of the Armed Forces. My aim is that the Service complaints system should promote confidence in the chain of command and support operational effectiveness. Delivering on the values and standards of the Services is as important to the effective delivery of defence as the proper provision of services to those who serve and their families.

The Service Chiefs have recognised the value of the Service Complaints Commissioner (SCC), with the new Chief of the Defence Staff hailing the role as an “*integral part of modern defence*.” I welcomed the statement by the Minister for Defence Personnel Welfare and Veterans accepting all the recommendations in last year’s Annual Report and giving a commitment to continue that work. There have been some important developments in 2010, notably in improved oversight by Services’ secretariats. This has led to some real progress, particularly a faster handling of simpler cases.

Despite these improvements the system is not yet operating as it should. Much still needs to be done before I can say that I am satisfied that the complaints system is working efficiently, effectively and fairly.

Above all else delay remains the key barrier. While there has been some effort to deal with older cases that remain in the system, complaints are still dealt with too slowly and many remain unresolved for more than a year. Delays not only cause anguish for all those involved but also damage confidence in the system as a whole and undermine operational effectiveness. While there are several other problems to be addressed, the issue of timeliness must be the priority.

During the year I have been raising with Service Chiefs and senior officials, the question as to whether the current Service complaints system is over-engineered. My review of cases closed this year, many of which started in 2008 or earlier, suggests that the complexity of process, designed to ensure fairness for all parties, is having the opposite effect. In too many cases I have observed that justice delayed is justice denied.

Following the SDSR and Comprehensive Spending Review settlement, there is no room for wastage of resources. I believe that the current system is still wasting resources, with delay leading to unnecessary escalation or complexity. In a number of cases poor handling of a Service complaint has led to the

unnecessary loss of committed personnel in shortage areas, such as Defence Medical Services. The changes to be put in place over the next few years, as a result of the SDSR, have the potential to put the Service complaints system under real pressure. The Service complaints system should be an effective way to support change and sustain the confidence of those who serve. I do not have confidence that it will.

At the end of my first three years as Commissioner, I have concluded that the system has reached a critical point and needs to be streamlined. A fundamental review now needs to be undertaken, building on the changes made in the Armed Forces Act 2006 and improvements made over the last three years, to develop the Service complaints system as an efficient internal system that can deal effectively and fairly with workplace grievances raised by Service personnel.

The powers of the Service Complaints Commissioner need to be included in that review. The experience of the last three years has shown that, although my office has undoubtedly ensured that a number of simple cases were dealt with well, in too many cases we have been powerless to prevent delay, unnecessary complications or injustice. Far from promoting confidence in the Service complaints system and the chain of command, too many complainants and those complained about have lost confidence, despite the SCC's involvement. I have

concluded that the role should change. Some changes should be made immediately.

Chapter 4 considers a number of options for strengthening the role of the Service Complaints Commissioner and recommends that the time is now right to move to an Armed Forces Ombudsman. Together with my proposed simplification of the Service complaints system, and provisions in the Armed Forces Bill 2010 with regard to independent members of Service Complaints Panels, this should enable the system to work more effectively and fairly and with the most efficient use of resources.

I would like to thank all those who have contacted me with their complaints and concerns. I would also thank all those who have provided feedback on the role of the SCC and suggested improvements for the future. Final thanks go to my small team and all those in the Services and your department who have worked hard towards delivering a Service complaints system that the Armed Forces deserve. The changes I am recommending build on their work. Taken together they are designed to promote fair treatment of Service personnel, improve the efficiency of the system and support operational effectiveness.



Dr Susan Atkins
Service Complaints Commissioner
for the Armed Forces



Executive summary

1. **The Service complaints system plays a central role in ensuring the fair and just treatment of members of the Armed Forces.** Action by the chain of command to resolve workplace grievances as speedily and effectively as they can is an integral part of their duty of care to Servicemen and Servicewomen and thus to the Armed Forces covenant.
2. **The role of the Service Complaints Commissioner (SCC) is an integral part of modern defence.** The Services have confirmed the value of the SCC in enabling them to see the link between complaints and operational effectiveness and in holding them to account for their treatment of Servicemen and Servicewomen who feel they have been wronged.
3. **The SCC role has fulfilled two of the three functions for which it was established in the Armed Forces Act 2006.** Service personnel and their families are contacting the SCC with complaints that they would not have made without the SCC's oversight. These include complaints of bullying and harassment. There is increased awareness of the SCC and more use of her office by Service personnel and their families. Over 900 people have contacted the SCC in the first three years and referrals by the SCC accounted for nearly half of all new Service complaints in 2010. (Pages 15 and 63–64)
4. **The SCC's recommendations in the Annual Report 2009 were all accepted and there have been some important developments in 2010.** The time targets set by the Services for 2010 have led to a faster handling of simpler cases. The establishment of central complaint secretariats in all three Services and the provision of expert advice to Commanding Officers at the outset appear to have plugged the knowledge gap identified in my 2008 Annual Report. These complaint secretariats now have oversight of data and are using this information to identify areas for priority attention. Where simple cases are being decided, the time taken is largely within time targets. The Royal Navy (RN) and Royal Air Force (RAF) have cleared their backlog of pre 2008 cases and the RAF appear to be keeping on top of progress of cases at higher levels. The new JPA module, which should provide reliable comprehensive data to all Services and about every level, came into effect on 1 January 2011. The Services have produced a concise statement of Principles of Fairness and increased their use of mediation and Service Complaint Panels (SCPs). (Pages 31–34, 35–36, 40–41 and 51–52)
5. **Despite these improvements, the Service complaints system is not yet working efficiently, effectively or fairly.** Delay remains the key problem and is endemic. Timeliness targets set by the Services are not being met for complex cases. The Army has a serious problem with backlogs at all levels but especially at Level 3. The RN does not have complete data from Level 1 but they too appear to have problems at Levels 2 and 3 with a build up of undecided cases that are already beyond the time limits. Delay erodes confidence and makes resolution more difficult. In particular it affects escalation rates so that complaints take up more resources than would otherwise be the case. It also leads to injustice. In a number of cases this year the SCC and those deciding complaints have recognised that justice delayed is justice denied. Failure to identify where things have gone wrong reduces ability to take action to address the causes of those wrongs. (Pages 31–35, 53–55 and 76)

6. **Although levels of incidence of poor behaviour appear overall to be still falling, this is not universal.** The trend towards more willingness to try to resolve complaints informally appears also to have stalled. (Pages 44–48)
7. **The lack of availability of experienced and expert investigators continues to be a key cause of delay.** This is especially the case in complex cases and in complaints of bullying and harassment. In early 2010 an MOD review concluded that there were efficiency savings to be had from the introduction of a central cadre of specialist investigators. Although the recommendations of that review have been agreed they have not yet been implemented. They are a first step to address delay and to improving the quality of investigation. However these proposals will not be sufficient to tackle delay. (Pages 34, 56–57 and 59)
8. **Delay is inherent in the design of the current Service complaints system, which is over-engineered.** The complexity of process, designed to ensure fairness for all parties, is having the opposite effect. There is a need for a fundamental review of the Service complaints system with a view to simplifying it along the lines of the workplace grievance system which applies to MOD civil servants. The review should identify ways of strengthening that simplified system in order to ensure it provides the necessary protections for Service personnel, which cannot otherwise be provided through the courts or employment tribunals. (Pages 60–61 and 76)
9. **The powers of the Service Complaints Commissioner need to be included in that review.** The SCC has no powers to ensure that complaints are dealt with properly and without delay. The lack of power to make recommendations in individual cases under the SCC's oversight has led to inefficiencies and injustice in a number of cases. Welfare agencies, others supporting Service personnel, complainants and some Commanding Officers and above, have called for the SCC's powers to be strengthened. Such a move would make the system more efficient. (Pages 49, 63–67 and 76–77)
10. **The time is now right for an Armed Forces Ombudsman.** The SCC has outlined how the Service complaints system should look if it were operating efficiently, effectively and fairly. The changes made within the Services as a result of the SCC's work leave them in a better place to oversee and manage the system to achieve these goals. The relationship between the SCC and the Services can now change. An Ombudsman model would still leave the primary responsibility to resolve workplace grievances from Service personnel with the chain of command. The Services would monitor where the system was not working effectively and make necessary changes. The Ombudsman role would act as a backstop, focussing on individual justice and on holding the Services to account. Because of issues of confidence and the Services' record on delay, the Armed Forces Ombudsman should retain the power to receive complaints and to review complaints, in certain circumstances, even if the internal complaints system has not been exhausted. (Pages 73–78)

11. **Some steps should be taken immediately to strengthen external oversight and other independent elements in the Service complaints system.** Changing the SCC role to that of an Ombudsman will need legislation. In the meantime, the SCC's role should be strengthened by agreement. The value of the independent members on Service Complaints Panels could be enhanced. (Pages 59, 61–62 and 76)
12. **The SCC has set a vision of what the Service Complaints system should look like by the beginning of 2014 – at the end of the current Commissioner's second term.** The vision is for 90 % of all complaints to complete the internal system within 24 weeks, sustained reductions in unacceptable behaviour, complaints within the Armed Forces covenant dealt with speedily and fairly, and the SCC judged to be effective in assuring the proper treatment of Service personnel. Now that the Services have secretariats overseeing and managing the system, it will be for the Services to build on the SCC's recommendations and decide how to best achieve these goals. (Pages 79–80)

Facts and figures

1



As part of the SCC's statutory duty to report on the exercise of her referral function and on the workings of the Service complaint system this chapter includes:

- an overview of the numbers and types of complaints made to the SCC and referred to the Services in 2010; and
- an overview of the numbers and types of Service complaints handled by the Services in 2010.

Complaints to the SCC in 2010

Numbers of people contacting the SCC

The Armed Forces Act 2006 enabled any member of the Armed Forces, or someone on their behalf, to contact the SCC about any matter that could be a Service complaint, if, for any reason, they felt unable to make their Service complaint directly to their chain of command. A Service complaint is a complaint by a person who feels that they have been wronged in their Service life. Former Service personnel can make a complaint if it is about a matter that occurred during their service.

434 people contacted the SCC in 2010, 77 of those about matters that were outside the definition of a Service complaint. These other matters included complaints from members of the public about the behaviour of Service personnel as well as other defence related issues. This is a significant increase on the 29 similar contacts in 2009 which may reflect increasing awareness of the SCC and the ease with which we can be contacted. In most cases the individual concerned was redirected to a more appropriate body.

The 434 contacts represents a 50 % increase on the 289 such contacts in 2009, which was a 50 % increase on the numbers of contacts in 2008.

Statistics used in this report that have not been attributed to another source have been compiled by my office using data provided by the Services at the request of the SCC. Data on contacts received, potential complaints and referrals made by the SCC, have been produced exclusively by the SCC from our own records.

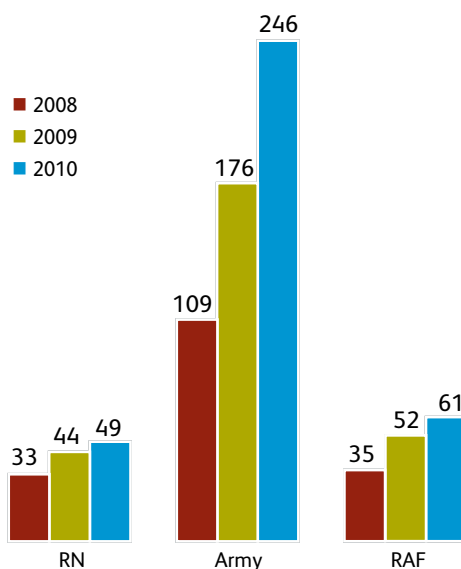
Numbers of potential Service complaints

357 of the 434 contacts received (82 %) were about matters that were within the definition of a Service complaint and are referred to in this report as a potential Service complaint. As in previous years the increase in potential complaints was slightly lower than the contacts received by the SCC. One contact however covered potential complaints from 38 personnel to the SCC which would have made the rate of increase nearer last year's rate.

Figure 1 shows the numbers of potential Service complaints received by Service over the last three years. The majority of such complaints (69 %) were from personnel in the Army. Complaints from Army personnel were disproportionately higher than those from the Royal Navy (RN) and Royal Air Force (RAF) given the respective force strengths. Figure 1 also shows the differential rate of increase in potential complaints to the SCC by Service over the first three years with the highest rate of increase from those in the Army. The lowest numbers of complaints to the SCC and lowest rate of increase came from RN personnel. The differences between the Services may be related to publicity about the SCC's role as much as the prevalence of causes of complaint. In the second half of 2010 the RN started a new round of publicity across the Service and will be continuing into 2011, particularly in the Royal Marines, who have the lowest levels of awareness of the Service complaints system and SCC role. An advert about the SCC on BFBS appears to be particularly effective in reaching personnel

overseas, most of whom are in the Army. Although the numbers contacting the SCC from operations remain small, this advert is used to raise awareness of the SCC for those deployed on operations.

Figure 1: The rate of increase in potential complaints to the SCC by Service over the first three years



Patterns of potential Service complaints by rank and Service

As in previous years the largest proportion of complaints came from Warrant Officers (WOs) and Non-Commissioned Officers (NCOs), constituting 51 % of potential Service complaints received (Figure 2). There was a continuing increase in the numbers of complaints from privates and equivalent ranks, making up 31 % of the total. The proportion of complaints from officers fell in 2010 to 17 % of the total. The rank of the complainant is not known for the remaining 1 %.

It appears that in 2010 there was less difference between the three Services as to patterns based on rank of those contacting the SCC with potential Service complaints. Figure 3 shows a similar pattern for the RN and Army,

with most complaints from WO and NCOs and fewest from Officers. In the RAF, where there are proportionately more Officers than in the other two Services, complaints from Officers were second to complaints from WO and NCOs.

Figure 2: Percentage of potential complaints to the SCC by rank and showing changes in pattern since 2009

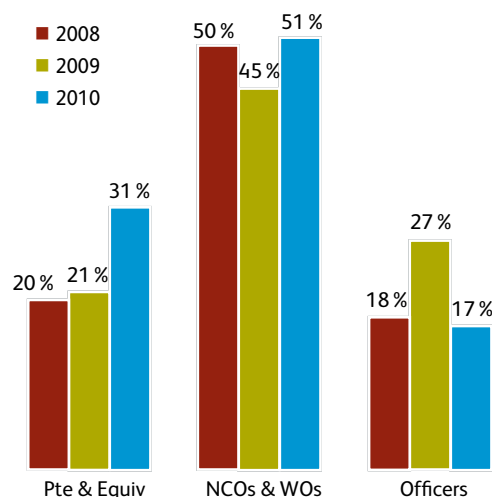
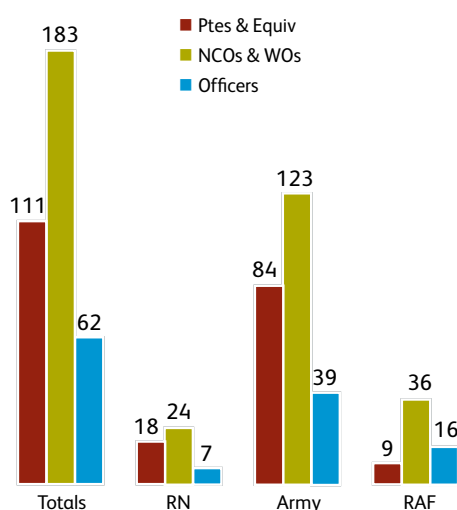


Figure 3: Number of potential complaints to the SCC in 2010 by rank and Service



Referrals – potential complaints referred by type and Service

The Armed Forces Act 2006 provides that the SCC may not investigate any complaint made to her but can refer such a complaint to the relevant chain of command. Where she considers that complaints made to her contain allegations of certain types of behaviour, and she decides to refer the complaint, her referral places a duty on the chain of command to inform her of the action it takes and keep her informed regularly on progress and on any decision. The categories of behaviour can be prescribed by regulations and are therefore referred to as prescribed behaviour complaints. Currently prescribed behaviour includes bullying, harassment, discrimination, bias, dishonesty, victimisation, and other improper behaviour.

Complaints about any other type of wrong are referred to here as non-prescribed behaviour complaints. These include a wide range of matters including pay, appraisals, promotion, discharge and medical treatment.

Of the 357¹ potential Service complaints received in 2010, the SCC referred 257 complaints about prescribed and non-prescribed behaviour to the Services. Referrals by the SCC made up nearly half of all new Service complaints in the system.

Prescribed behaviour complaints comprised the majority of all potential Service complaints referred to the Services. In all three Services, prescribed behaviour complaints made up a higher percentage of complaints sent to the chain of command. A higher proportion of complaints from RN personnel were about poor administration of personnel processes than from the other two Services.

Figure 4 shows the distribution of types of complaint across the Services. Although the Army comprised 69 % of complaints of

prescribed behaviour, they made up only 66 % of non-prescribed behaviour complaints. The Army and the RAF have a higher proportion of prescribed behaviour complaints than the RN. The RN have a higher percentage of non-prescribed behaviour complaints than the RAF, given their respective size. These patterns of complaint are consistent with the patterns of incidents of bullying, harassment and discrimination reported anonymously in the annual Armed Forces Continuous Attitude Survey (AFCAS).

Figure 4: Total SCC referrals (prescribed and non-prescribed behaviour complaints)

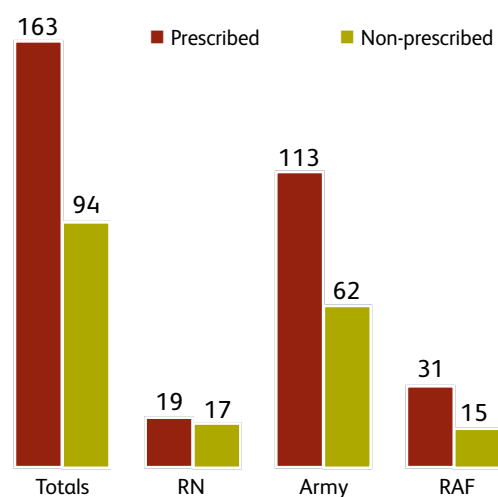
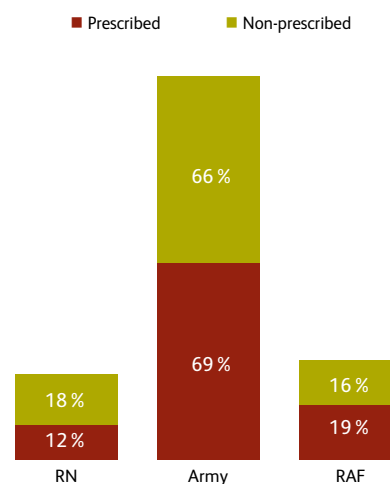


Figure 5: The distribution of types of complaint across the Services



¹ For one potential Service complaint the rank and Service of the complainant is not known.

Of the 193 potential complaints of prescribed behaviour, the SCC has referred 163 (84 %), a greater proportion than in previous years (up from 65 % in 2009).² This amounts to a 49 % increase in referred prescribed behaviour cases compared to 2009.³ The decision to refer a complaint to the Services does not mean that a judgement has been made on its validity. However, in deciding whether to refer a case, the SCC considers whether there is sufficient information to form a view on which prescribed behaviour(s) are alleged. The higher rate of referral reflects the SCC view that those who contact the SCC do so with complaints that appear to be genuine and have information to indicate some substance behind the allegation.

As with previous years the Services record in keeping the SCC informed in ongoing prescribed behaviour cases was patchy. In 2010, to ease the burden on the Services, we did not routinely ask to be kept informed about progress on non-prescribed behaviour cases but only whether a complaint had been accepted and the eventual outcome. We advised potential complainants to let us know if at any time they had concerns about how their complaint was being handled. Updates from the Services to the SCC in such cases were particularly sporadic and recommendations about these cases are made in Chapter 4.



The SCC talks to personnel on board HMS Dauntless, October 2010

Potential Service complaints of prescribed behaviour

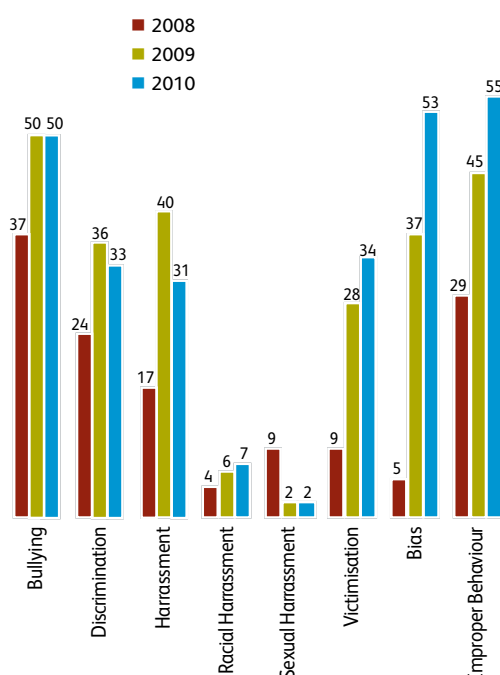
Potential Service complaints about prescribed behaviour remained at the same level (54 %) as last year. Bullying and bias and other improper behaviour were the most common alleged prescribed behaviours. Although the numbers of complaints to the SCC were relatively low in comparison to the total numbers of Service personnel in the Armed Forces, the patterns of types of prescribed behaviour correlated with the patterns of responses in AFCAS. The reports of the AFCAS surveys are published the year after the survey has taken place. AFCAS 2009, reported in summer 2010, showed that the experience of discrimination, for any reason other than one of the unlawful grounds (which the SCC categorise as bias), had increased across all the Services. This is especially the case in the RN⁴ and the RAF. Tri-Service figures for unlawful discrimination of any type (categorised by the SCC as discrimination) had fallen, although this would appear to have been influenced by significant reductions in the Army. AFCAS reports on bullying overall remained the same (similar to the SCC patterns). AFCAS reports a reduction in harassment although there was a slight increase (1 %) in reports of racial harassment, when reports for all the Services were combined. This again parallels the SCC complaint trend. This suggests that complaints to the SCC can be taken as an indicator of potential trends, despite the relatively low numbers.

² At the end of the year my office was still awaiting information to assist me to decide whether a further 9 prescribed behaviour cases should be referred.

³ In 2009 there were 168 prescribed behaviour cases of which 109 were referred.

⁴ AFCAS provides separate reports for the Royal Navy and Royal Marines.

Figure 6: Complaints to the SCC by types of prescribed behaviour⁵



The increase in the number of complaints about victimisation is worrying. Where someone has said they are being victimised without reference to a complaint about poor treatment (formal or informal), the SCC will usually categorise the allegation as one of bias or harassment, depending on the facts. The increase in victimisation therefore represents those people who feel they are being treated wrongly because they have tried to speak out. Some allege they have been criticised or put under pressure because they have gone to the SCC. AFCAS reports significant increases in the numbers of individuals giving the following reasons for not making a formal complaint:

- that it would cause problems in the workplace (up 13 %)
- that such a step would adversely affect my career (up 14 %)
- that I was discouraged from doing so (up 7 %).

Encouragingly the largest increase in the reasons given in AFCAS for not making a complaint was that the incident was too minor for a formal complaint to be made. This may be linked to the increase in offers made by the Services of mediation and informal case resolution. I have asked that the offer of mediation be added explicitly to the next AFCAS Survey. Nevertheless I shall be monitoring the issue of victimisation carefully.

Gender differences

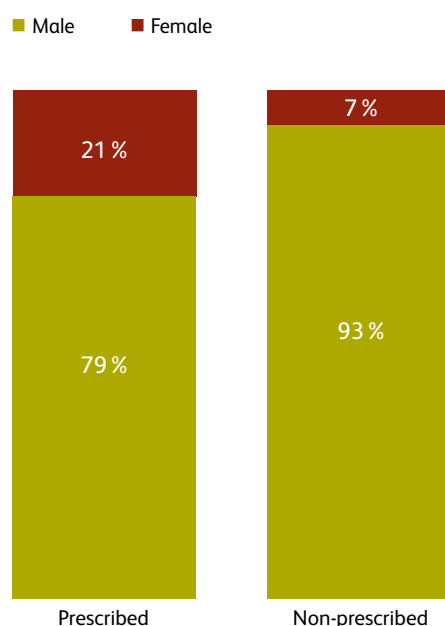
The differences between complaints to the SCC from Servicemen and Servicewomen in previous Annual Reports remain this year. As Table 1 shows, men make up the majority of those approaching the SCC about a potential Service complaint.

However the percentage of women who approached the SCC was higher than their representation in the Services. In 2009 contacts from women in the RN were higher than from other Services. In 2010 that difference was even greater. Contacts to the SCC from women in the RN were nearly three times their representation in the Service itself and from women in the Army nearly double. Contacts from women in the RAF were higher than contacts from women in the Army but only slightly higher than their representation in that Service.⁶

These disparities are even more marked in the gender differences in relation to referrals. Figure 7 shows that complaints by Servicewomen accounted for 21 % of all referrals of prescribed behaviour but only 7 % of other types of complaints. This follows the same pattern as in previous years. It appears that whilst Servicemen contact the SCC about a range of alleged wrongs, Servicewomen do so mainly where they have been the subject of bullying, harassment, discrimination or other type of improper behaviour.

⁵ A complaint to the SCC may contain one or more allegations. The SCC record a maximum of two allegations per complaint.

⁶ A table of the distribution of Servicemen and Servicewomen in the Regular Forces between 2008–10 can be found in Appendix 4.

Figure 7: SCC referrals by gender

The gender differences are most marked in the RN, as shown in Figure 8a. In the RN women accounted for 42 % of referrals by the SCC about prescribed behaviour compared to 17 % in the Army and 26 % in the RAF. The rate for the RN is four times their rate of representation in that Service; that of the Army and of the RAF is double that of women's representation in those Services.

It is unclear the extent to which the level of complaints to the SCC may have been caused by an increase in improper treatment, by more dissatisfaction with the way such incidents are being handled in these Services or by heightened awareness in both Services following work by the RN and RAF with the Equality and Human Rights Commission (ECHR) in 2009. AFCAS 2009 reports significant increases in experiences of sexual discrimination, sexual harassment and ill-treatment based on sexual orientation in the RN, as well as in discrimination on the grounds of race, class, and bias. There was a significant decrease in reports of bullying in the RN. AFCAS shows significant increases in the RAF of reports of sex discrimination only. AFCAS 2009 reports that sex discrimination and sexual harassment are lowest in the Army.

**Table 1:** Percentage of potential complaints by Service and gender 2008–2010

Service	2008	2009	2010
RN			
Male	82 %	82 %	71 %
Female	15 %	18 %	29 %
Army			
Male	85 %	92 %	86 %
Female	15 %	8 %	14 %
RAF			
Male	83 %	88 %	82 %
Female	17 %	12 %	18 %

Figure 8a:
SCC referrals by gender and Service – RN

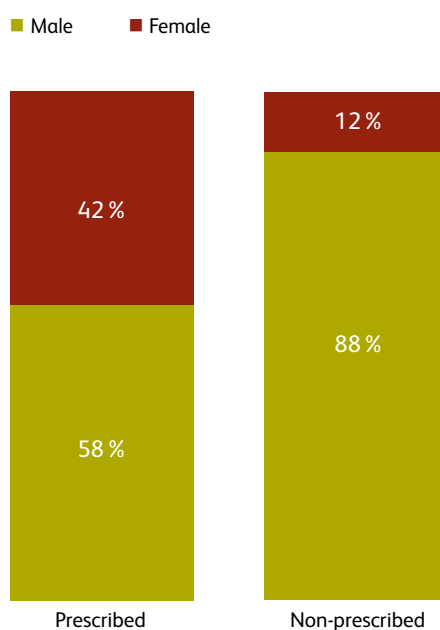


Figure 8b:
SCC referrals by gender and Service – Army

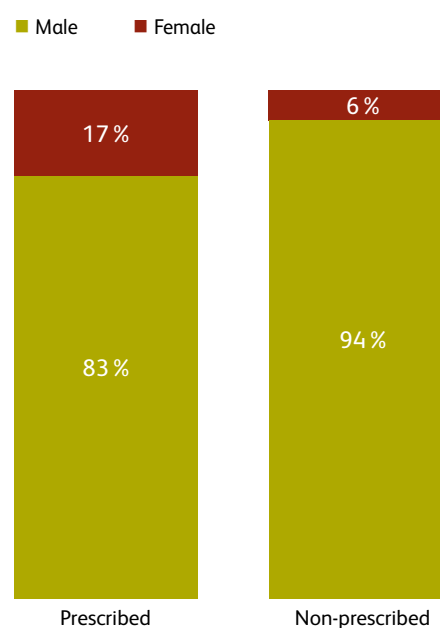
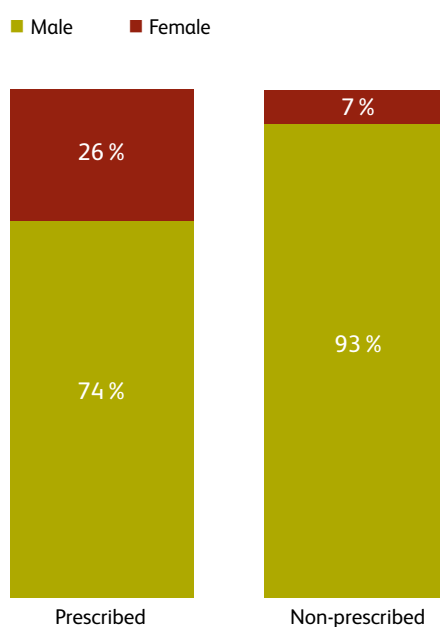


Figure 8c:
SCC referrals by gender and Service – RAF



It would appear therefore that patterns of complaints to the SCC are consistent with other reports and that in all Services, but particularly the RN, gender is a factor that needs attention. The annual Armed Forces Manning Statistics⁷ show that both the RN and the RAF lost a higher percentage of female officers over the 12 months to April 2010 than in previous years and that in the RN, this was higher than their representation in the Service. The link between good complaint handling and operational effectiveness is obvious.

Closure rates and continuing cases

The closure of a case by the Services does not automatically result in the closure of a case by the SCC. Further enquiries are undertaken with the complainant, to confirm whether our understanding matches theirs. We also want to know if they are content to close the case or if there is any follow up action they wish to take, for example asking for a review by a higher authority. If the Deciding Officer, SCP or Service Board has identified lessons to be

⁷ Table 2.22 of the 2010 UK Defence Statistics.

learned in their decision, the SCC will follow up to check what action has been taken. Cases of particular concern and a sample of other cases are audited by the SCC's Guardianship and Audit Manager and the SCC may follow up on any concerns or points of good practice with the Service.

16 of the complaints of prescribed behaviour I referred to the chain of command in 2010 had been closed by the end of the year. Of these, 3 were rejected as out of time, and 13 were withdrawn by the complainant. Reasons for withdrawal are not always given, although in some cases this is the result of informal resolution. 16 of the 92 non-prescribed complaints I asked to be kept informed about had also been closed. Of these, 2 were rejected as out of time, 2 were not upheld and 12 were withdrawn by the complainant.

Update on 2008 and 2009 cases

16 of the prescribed behaviour cases I referred in 2009 were closed by my office in 2010 (1 was ruled out of time, 4 were not upheld and 11 were withdrawn by the complainant). 10 of the non-prescribed cases from 2009 were also closed (1 was upheld, 1 was not upheld and 8 were withdrawn).

8 prescribed behaviour cases I referred in 2008 were closed in 2010 (1 was upheld, 3 were not upheld and 4 were withdrawn). 2 of the non-prescribed cases from 2008 were also closed (1 upheld and 1 withdrawn).

Complaints to the Services in 2010

The data on Service complaints for the three Services are shown in Tables 2a–c. Data is drawn from the recording systems each Service has in place. For next year's report, data should be available from the Joint Personnel Administration (JPA) system using the JPA module introduced on 1 January 2011.⁸

All three Services believe that there has been an increase in complaints in 2010.⁹ In the RAF the increase has been just under 50 %. In the Army the increase is 150 %, 302 new complaints in 2010 compared with 123 new complaints at Level 1 in 2009. The significant increase in Army figures may at least in part be a reflection of more accurate recording practices rather than an increase in the number of complaints. The new SCW has required all Commanding Officers to inform them when a Service complaint is made and to seek advice.¹⁰

It is not possible to calculate the total rate of increase for new complaints as the RN only reported on equality and diversity complaints last year and this year have incomplete statistics.

Tables 2a–c provide an overview of the cases worked on at each level during the year and provide the foundation for the discussion on timeliness and effectiveness below.

⁸ Until this is available the RN has not been able to provide full returns from its units. This analysis therefore focuses on the Army and the RAF in relation to Level 1 cases.

⁹ See table B.10.2, B10.10 and B10.38 in AFCAS 2009.

¹⁰ Established in December 2009 it took oversight of all Divisions incrementally, the last Division coming under its oversight in July 2010. Army statistics for 2010 therefore include complaints under SCW supervision, complaints being supervised at Divisional level and complaints at Level 3 being administered by the Army Appeals Wing, (AAW). SCW will assume responsibility for AAW cases in August 2011.

It would appear that in 2010 the SCC played a significant role as gatekeeper to the Service complaints system. In contrast to 2009, where a large percentage of SCC referrals appeared to be about complaints that were already in the system, in 2010 less than 10 % of referrals were about existing complaints and over half (Army) and a third (RAF) of new complaints were made following an SCC referral.¹¹

Types of Service complaints 2010

For all three of the Services, complaints about the terms and conditions of service make up the largest single category of complaints.¹² Complaints in this category appear to have doubled from 2009 in the Army and RAF.¹³ Complaints about pay and allowances and about medical treatment have also increased significantly. The largest increases however occurred in relation to bullying complaints (83 new complaints in the Army in 2010 compared to 13 in 2009 and 25 compared to 11 in the RAF); in complaints of discrimination, sexual and racial discrimination in the Army and complaints of harassment, improper behaviour and victimisation in the RAF. Complaints of sexual harassment in the RAF have decreased.¹⁴

It is difficult to judge whether the increases are real or a reflection, at least in part, of the new reporting requirements. For 2011, data taken from JPA should prove more reliable, with all Services requiring command units to report new complaints. However this does not prevent a comparison now between the patterns of distribution of Service complaints made to the chain of command by category, compared to the pattern of complaints to the SCC. The proportion of complaints made to the chain of command about prescribed matters to non-prescribed matters, 44 % and 56 %, the opposite of those to the SCC. This suggests that the role of the SCC is working as

intended; non-prescribed matters are more often being made to the chain of command directly and complaints about bullying and other types of improper behaviour more often being made through the SCC.

Assisting Officers

In my first Annual Report for 2008 I flagged the need for improved communication between the chain of command and those complained about. Assisting Officers (AOs) can play an important part in maintaining communication and confidence in the handling of the complaint.

Data provided in the 2009 Annual Report showed that AOs were appointed in the majority of RAF complaint cases but the picture in the other two Services was less consistent. In the Army and the RN, there were significant numbers of cases where it was not known whether an AO had been appointed (between 28 % and 95 % depending on Service and level). Table 3 shows that the Services now have a much greater awareness of the appointment of AOs. Interestingly whilst the percentage of cases in which an AO has been appointed in the Army has not changed very much the figures from the RAF show a marked reduction.

The key point is that Services are now recording cases where an AO has not been offered and now (with the exception of the RN at Level 1) have the data from which to ask questions.

The Services need to consider the potential correlation between the presence of an AO and the progress of a complaint through the complaints system. Information was provided in AFCAS 2009 for the first time about the availability of and satisfaction with AOs for those who made a complaint of bullying or

11 See appendix 5 to view the number of SCC referrals and new Service Complaints for all three Services.

12 See appendix 6 for a breakdown of new Service complaints made to the Services in 2010.

13 It is to be noted that the new reporting arrangements now record each head of complaint rather than just one per complainant.

14 Comparisons are made between cases at Level 1 i.e. new complaints, as any differences at the higher levels are likely to be due to a range of factors including dissatisfaction with outcome.

other improper behaviour. AFCAS returns indicated that over two thirds (68 %) were offered an AO and over half (56 %) were satisfied with the support provided. Nearly a quarter (23 %) were not. Concern has been raised with me by complainants, and by some

external advice and welfare agencies, about the impartiality, interest and lack of training of AOs. They have made suggestions for there to be training for AOs and a list of trained AOs available in every unit.

Case study A¹⁵

The SCC was contacted in late spring 2010 by a Serviceman's wife, partly on the recommendation of a very senior officer. Her husband had made a Service complaint 6 months earlier which had been dismissed at Level 1 and appeared to be stuck at Level 2.

At the same time as she contacted the SCC, her husband's Assisting Officer wrote formally to the Service, pointing out the woeful way the complaint had been handled to date and the impact of delay.

When one of the two parts of the complaint was finally upheld, 6 months later, the Deciding Officer apologised for the delay and recognised that justice delayed can be justice denied. The

Serviceman's wife felt that, despite the outcome and assurance that the processes which gave rise to the complaint were being changed, the only positive aspect of the whole case had been the Assisting Officer. She said that he had acted throughout in an honest, clear and realistic way. It had helped that he was an officer of some seniority and had specialist knowledge in the matters under complaint. She commented on how daunting it was to challenge the poor handling of a Service complaint, even as a confident and articulate person. She rued the fact that now the complaint had been decided, the Assisting Officer's involvement had finished and she and her husband were left to pick up the pieces.

Progress and outcome of cases during 2010

Table 4 below shows the rate of cases upheld or partially upheld by the Services in 2010. It suggests that around half of all Service complaints decided during the year at Level 1 were upheld or partially upheld. This may be a reflection of the type of complaints decided. Tables 2a–c show the numbers of complaints awaiting decision at the end of the year, which are likely to be the more complex cases because of the time these cases are taking.

Tables 2a–c show that there are differences between the Services in the numbers of complaints sent for review. It shows that 60 cases were decided at Level 1 in the RAF and 29 were sent for review at Level 2; and 34

decided at Level 2 with 18 sent for review at Level 3. In the Army the equivalent figures were 102 decisions at Level 1 and 40 sent for review; 22 decided at Level 2 and 13 sent for review at Level 3. From our experience those who seek a review are those whose case is partially upheld as well as those whose complaint is rejected. The rate of escalation appears therefore to be high. The RN appear to have the lowest rates of escalation from Level 2 to Level 3.

Table 4 suggests that there are differences too between the Services in the percentages of cases that are upheld or partially upheld on review. The Army Level 3 appears to uphold or partially uphold the most. The Army does use oral hearings at Level 3. Neither of the other Services have done so to date. It is unclear as

¹⁵ As in previous years, all case studies are anonymised and have been included with the consent of the complainants and relevant others.

to whether there is a link between types of hearing and outcome or whether more Army cases have been poorly handled in the past. (The Army Board is still dealing largely with pre-2008 cases.) It does suggest that the RN and RAF should consider very carefully in each individual case whether it is necessary to hold an oral hearing.

Tables 2a–c also suggest that Service Boards and SCPs sitting with an independent member

appear to make a broader range of decision than Service members SCPs, who are most likely to reject complaints on appeal. Given that the rank of Service personnel at an SCP can be the same as who determined the case at Level 2, it makes it even more important that there should be no dilution of the rank of members of SCPs. It also makes it important that care should be taken to use the right people with the necessary experience and ability to make a fair, objective decision.

Table 2a: Service complaints and claims to Employment Tribunals 2010 – RN

Royal Navy	New Complaints 2010	Numbers worked on in year	Awaiting decision	Withdrawn before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1 ¹⁶	N/S	N/S	N/S	N/S	N/S	N/S	N/S	N/S
Level 2		85	28	6	13	5	33	12
Level 3 Total		37	24	8	0	1	4	0
Of which Service Board							1	
Of which SCP with Independent Member						1		
Of which SCP							3	
Claims to ET	7							

Table 2b: Service complaints and claims to Employment Tribunals 2010 – Army

Army	New Complaints 2010	Numbers worked on in year	Awaiting decision	Withdrawn before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1	302	347	257	23	36	7	59	40
Level 2		48	26	0	5	3	14	13
Level 3 Total		87	54		11	3	19	
Of which Service Board					10	2	18	
Of which SCP with Independent Member					1	1	1	
Of which SCP					0	0	0	
Claims to ET	39							

16 The RN do not have complete data for the full year for Level 1 so this data has not been included.

Table 2c: Service complaints and claims to Employment Tribunals 2010 – RAF

RAF	New Complaints 2010	Numbers worked on in year	Awaiting decision	Withdrawn before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1	132	164	70	21	12	14	34	29
Level 2	5 ¹⁷	48	18	2	5	6	23	18
Level 3 Total		40	4		7	2	26	
Of which Service Board					3	1	7	
Of which SCP with Independent Member					2	1	6	
Of which SCP					2	0	13	
Claims to ET	6							

Table 3: Appointment of Assisting Officers by Service

	RN ¹⁸	Army	RAF
AO appointed	N/S	64 %	51 %
AO not appointed	N/S	27 %	42 %
Of which AO not offered	N/S	10 %	1 %
Of which AO declined	N/S	90 %	99 %
New case (less than 10 days old)	N/S	2 %	1 %
Not known	N/S	7 %	6 %

Table 4: Rate of cases upheld or partially upheld by Service and level

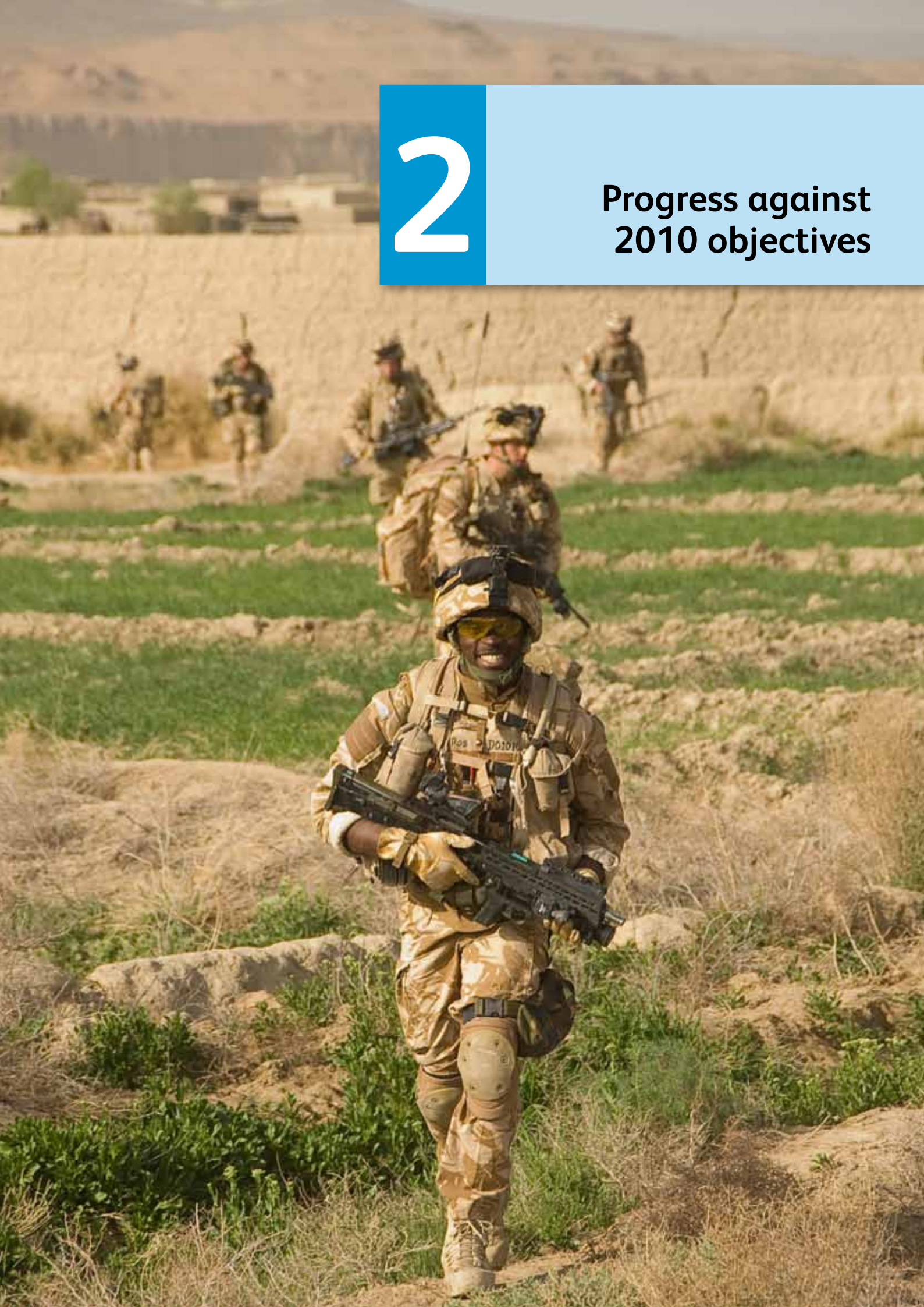
	RN	Army	RAF
Level 1	N/S ¹⁸	42 %	47 %
Level 2	35 %	36 %	32 %
Level 3	20 %	42 %	26 %

17 These 5 cases were started in 2010 at Level 2, not having been considered at Level 1.

18 The RN do not have complete data for the full year for Level 1 so this data has not been included.

2

Progress against 2010 objectives



This chapter outlines:

- the performance of the office of the SCC; and
- the performance of the Services against the objectives set by the SCC in the 2009 Annual Report.

These objectives were set with the aim of assisting the SCC and Services achieve the 3 year goals discussed in Chapter 3. The MOD and Services have also taken action on the recommendations made in the SCC's two previous Annual Reports. An assessment of progress on implementation of these recommendations is included in Appendix 3.

SCC progress against objectives for 2010

Table 5 lists the objectives set for my office for 2010. These were the same as the objectives for 2009 with the addition of objective 7 to review confidence in the SCC and the sufficiency of the SCC's powers. Progress against each has been measured and colour coded to indicate whether they have been met: a green box represents an objective that has been fully met; amber represents where progress has been made but the objective has not been met and; a red box where the objective has not been met. This system has been used to illustrate progress throughout this report.

These objectives will continue to apply in 2011 with the following refinements.

Objective 4 will cover a review of the implementation of the JPA complaints module, informed by a further DIA audit of the system in autumn 2011. Objective 7 will be a review of the sufficiency of the SCC's powers in light of the MOD's response to the recommendations in this report, and objective 8 will reflect the timely delivery of the 2011 Annual Report.

Table 5: SCC 2010 Objectives

	SCC 2010 Objectives	Delivery
1	Improve customer Service and develop feedback and measurement systems	
2	Continue to develop case management and knowledge management system	
3	Continue to develop communications to increase percentage of Service personnel aware of the SCC	
4	Monitor implementation of DIA recommendations on JPA system and measure improvements in Services	
5	Undertake an audit of Service complaint cases	
6	Maintain profile and contacts to influence system improvements	
7	Review sufficiency of SCC's powers and confidence in the SCC role	
8	Deliver 2010 Annual Report on time	

Objective 1: Improve customer service and develop feedback and measurement systems

Partially met

The expansion of my office and recruitment of two extra caseworkers in 2010 has allowed a significant improvement in the standard of service that my office provides to complainants, especially in limiting any delay caused when processing potential Service complaints. However, with over 400 new cases this year and over 200 cases still open from 2008 and 2009, each of my three caseworkers has worked on over 200 cases; more than three times the average load carried by caseworkers in similar organisations. Furthermore my staff has had to manage the frustrations of those who have contacted my office about the lack of urgency in resolving their cases.

In the absence of an automated case management system we have not had the resources to collect information upon which to measure timeliness of case completion. We have made some progress this year on the procurement of such a system and I am hopeful that that system will be in place in 2011. However we are once again at breaking point.

The level of resources agreed for the SCC's office was based on an assumption of a 40% increase in new cases and a significant improvement by 2011 in the time taken by Services to decide complaints, including the most complex complaints. The rate of increase to the SCC's office has been higher than this each year and the rate of closure of complaints by the Services has not kept pace. Without additional resources and changes to the Service's performance on timeliness, the likely continued increase in complaints to the SCC will threaten the levels of service that we can provide in the future.

Objective 2: Continue to develop case management and knowledge management system

Partially met

During the year we reviewed our case management processes and made improvements to the system we put in place at set-up to manage our cases. Although the processes in place enable us to work effectively, increasing levels of casework have pushed that initial system to the limit. Undoubtedly a fully automated case management system and management information system would enable us to be more efficient. In the meantime my office has continued to refine our recording system.

Improvements have been made. Pre-closure case review by the Audit Manager has enabled us to identify good and bad practice, to log any lessons to be learned and to follow up with the chain of command and Services. We have begun to identify 'hotspot' areas where there are repeated allegations of prescribed behaviour or the mishandling of complaints.

Developing this capability is a task that both the House of Commons Defence Committee and the Service Chiefs have repeatedly indicated would be of great value. The introduction of the new module on JPA from January 2011 should provide more reliable quantitative information across the Services. The SCC's office should have unlimited read-only access to the JPA complaints module and all associated complaints files, which should support a more efficient way of working.

Recommendation 10.1

The SCC's office should have unlimited read-only access to the JPA complaints module, and all associated complaints files.

Objective 3: Continue to develop communications to increase the percentage of Service personnel aware of the SCC

Met

Increasing awareness of my office among Service personnel was a crucial objective introduced to encourage use of the system. I set a target for 2010 to increase awareness amongst Service personnel of the SCC by 5%. AFCAS 2009 reported that awareness of the SCC has increased by 8% in the last year. 73% of officers and 51% of other ranks across the Services were 'aware' of the SCC; and 45% (a 5% increase) of officers felt that they 'fully understood' the role of the office. 50% of officers and 59% of other ranks felt that they knew 'to some extent' the role of the office.¹⁹

2010 has marked a positive change in our communications strategy. The dissemination of leaflets and posters has been supplemented by more targeted work. The SCC speaks on the Commanding Officers Designate courses for all three Services and the Advanced Command and Staff Course at the Defence College Shrivenham. Complainants tell us that they heard about the SCC on the British Forces Broadcasting Company (BFBS). The RN have included information about the SCC in their new briefing on Service complaints being rolled out across the Naval Services.

I have also continued to visit bases and units in the UK and overseas meeting a wide range of Service personnel and organisations that provide welfare support to them and their families.

Objective 4: Monitor implementation of DIA recommendations on JPA system and measure improvements in Services

Partially met

During 2010 work continued on the development, testing and piloting of a new Service complaints model for the automated JPA system. The new module, originally planned for October 2010, became available for use on 1 January 2011. My staff was involved in monitoring the development and piloting work.

In the absence of JPA data, we have not been able to measure changes in the Service complaints system as well as would have been possible otherwise. The Services provided half yearly data on all Service complaints. At a meeting with the central and Service complaint secretariats we discussed the half yearly reports and explored with secretariats staff the reasons for improvements and the challenges they faced. The Army in particular made significant improvement in timeliness of case handling in the second half of the year. As a result Service secretariats are beginning to fulfil the function I recommended they should have in relation to strategic oversight of the complaint system in their Service.



¹⁹ See table B.10.10 in AFCAS 2009.

Objective 5: Undertake an audit of Service complaint cases

Partially met

Work towards this objective is still very much a work in progress. Since we recruited a Guardianship & Audit Manager (GAM) in October 2009 my office has completed an audit of all SCC complaints which were sent or referred to the Services during 2008 and 2009. The purpose of the audit was to identify the state of play in all cases, to identify good and bad practice and to begin to detect 'hotspots' and areas for improvement. The information gained from the audit has been invaluable in deepening our understanding of how the complaints system is working.

However, due to our limited resources and an increasing workload, the GAM has not yet undertaken an audit of complaints that have been handled by the chain of command outside the SCC's oversight. She has made the necessary arrangements to do so including developing an audit methodology with the assistance of Defence Internal Audit (DIA). She has also shadowed a DITC team on their inspection of a training establishment. The implementation of JPA in 2011 should assist in the tracking and identification of cases for external audit. Her role however needs additional resources to be fully effective.



The SCC at the Defence College of Policing and Guarding, September 2010

Objective 6: Maintain profile and contacts to influence system improvements

Met

In 2010 the SCC held a number of meetings with those in Parliament and with organisations concerned with the welfare of Service Personnel, to explain our role, outline some of our key findings and gain advice from them about how to develop our work going forward. These have included Professor Hew Strachan, tasked by the Prime Minister to revitalise the Armed Forces covenant, the Royal British Legion, Combat Stress, National Offender Management Service and Royal Mail, as well as former and current heads of the Armed Forces. The SCC was unable to attend the annual meeting of international Defence Ombudsmen and Commissioners but intends to do so in 2011.

The SCC has participated in a number of Service conferences and events and has met with the Service Chiefs on a quarterly basis where they have consulted her about improvements to the system. This has influenced improvements.

Objective 7: Review sufficiency of SCC's powers and confidence in the SCC role

Met

The review of the powers of the SCC, confidence in the SCC role and recommendations for the future direction of the office is included in Chapter 3.

Objective 8: Deliver the Annual Report on time

Met

This report fulfils this objective.

MOD/Services progress against objectives for 2010

The section below measures the progress made by the MOD and Services during the last year. Table 6 below sets out the SCC's assessment of progress made against the objectives she set for the Services for 2010. Objectives 1–6 were the same as those set by the SCC for the Services for 2009. Objectives 7 and 8 were new for 2010. This assessment takes into consideration progress against the SCC's 26 recommendations for the MOD/Services which are reported in full in Appendix 3. This is the last year in which progress will be reported against these recommendations in this way.

Objective 1: Implement DIA recommendations and deliver an improved JPA module within the year

Met

The Service complaints module on JPA was delivered on 30 December 2010 and was available for use on 1 January 2011.

Objective 2: Set targets for increased awareness, confidence and for reducing the gap between reported levels of bullying, harassment and discrimination and levels of complaints

Not met

The MOD and Services have taken no action to set targets for increasing awareness of the Service complaints system. AFCAS 2009 shows an increase in awareness of the Service complaints system, with significant increases in awareness in the Army and RAF. Awareness is lowest in the Royal Marines with only 52 % of all Marines knowing where to find information on how to make a complaint and 39 % being aware of the SCC. As a result of the SCC's Annual Reports and meetings at a senior level in the RN and Royal Marines, the RN is undertaking a new round of education about the Service complaints system and the SCC.

Table 6: Progress against objectives for the MOD and Services 2010

	Objectives for the MOD/Services in 2010	Delivery
1	Implement DIA recommendations and deliver an improved JPA module within the year	
2	Set targets for increased awareness, confidence and for reducing the gap between reported levels of bullying, harassment and discrimination and levels of complaints	
3	Provide statistics on timeliness and result of handling of complaints at all levels	
4	Ensure the interim targets for completion of complaints are met and that these targets are reviewed and tightened for 2011	
5	Improve the timely handling of bullying, harassment and discrimination cases and ensure that all appropriate cases complete the internal processes within 6 months and before deliberation by an Employment Tribunal ²⁰	
6	Monitor the implementation of Service Complaints System by chain of command and feed findings into the Reviews of JSP 831 and 763 and into other Service personnel policy improvements	
7	Further develop the lessons learned and implementation monitoring system	
8	Start to consider, in consultation with the Service Complaints Commissioner, how best to measure impact	

²⁰ Service personnel have access to an Employment Tribunal only in respect of claims of unlawful discrimination and equal pay.

Objective 3: Provide statistics on timeliness and result of handling of complaints at all levels

Partially met

The Army and RAF have provided statistics on timeliness and the outcome of complaints at all levels. The RN have done so for Levels 2 and 3. Data on Service complaints is shown in Chapter 1 and information about timeliness is shown in this chapter. The RN do not have complete data for the full year for Level 1 but do have manual returns from all units on formal and informal complaints about bullying, harassment and discrimination. They expect to have full returns from JPA in 2011.

Objective 4: Ensure the interim targets for completion of complaints are met and that these targets are reviewed and tightened for 2011

Partially met

My Annual Reports for 2008 and 2009 identified how delays in the system had a detrimental impact on the efficiency and effectiveness of the complaints system. The Services set targets for the timely completion of complaints with effect from 1 January 2010:

- Level one: 80 % of non-complex cases to be completed within 60 days; 80 % complex or multiple complaints to be completed within 120 days.
- Level two: 80 % of non-complex cases to be completed within 30 days; 80 % complex or multiple complaints to be completed within 60 days.
- Level three: 70 % of all types of cases to be completed within 70 working days.

My review of the performance against 2010 targets has found that performance against these targets has generally been poor.

Tables 7a–d show there has been some improvement in the Services in handling simple complaints in a timely manner but not on complex cases.²¹ Although the Army has not quite met the target of 80 % of simple cases decided within 60 working days the figures suggest an improving situation. The RAF has met the target.

Problems remain for all Services in meeting the target of 80 % of complex cases dealt with within 120 working days. The RAF met the target in 41 % of the cases. The Army appear to have met the target for cases decided but overall at Level 1 decided cases represented only 30 % of cases. The need for more and better trained investigators is clear.

None of the Services are meeting the targets at Levels 2 and 3. The RN gets nearest to meeting the target times at Level 2, doing so in 40 % of simple, and two thirds of complex cases. The Army met the target times in less than a fifth of cases. It should be noted that the RN and RAF made decisions in around two thirds of cases.

The RAF also appear to have made significant improvements in the timeliness of their handling at Level 3. Although they did not meet the target of 70 % of cases decided within 70 working days, they did so in 64 % of cases and had decided 90 % of the cases at Level 3 during the year. The RN met the target in only 20 % of decided cases and made decisions in only a third of cases dealt with during the year. The Army did not meet the target in any of its decided cases.

Each of the Services gave an indication of the numbers of cases that were still awaiting a decision at the end of the year that were already outside the targets.

Table 7d shows that the RAF had the fewest cases awaiting a decision that had already passed the time targets at all levels. Over half of the RN's cases awaiting decision at Level 2 and over 80 % at Level 3 were outside the

²¹ The Army figures include all Service complaints and not just those under the supervision of the Service Complaints Wing. (There were 160 Army Level 1 cases in 2010 being dealt with by command units outside SCW's supervision).

time targets. In the Army, at every level, the majority of cases awaiting decision were already outside the time targets. There were 205 such cases at Level 1, which includes complaints under the SCW supervision.

At the end of 2010 the Army had 95 cases awaiting decision at Level 3, 66 of them Service complaints made after 1 January 2008 and which therefore are able to be dealt with by an SCP. The Army used an SCP for the first time in 2010. The remaining 29 cases must be dealt with by the Army Board. Table 8 shows how long these cases have been in the system.

Table 9 shows the number of cases in all three Services that have been at the same level for over a year. Although the Army has the worst record, the RAF and RN appear to have some

problem at Level 1 and Level 3 respectively. The RN is reviewing resources required at this level. I would hope there would be no or minimal numbers in this table next year.²²



The SCC at the Maritime Warfare School, September 2010

Table 7a: Level 1 Timeliness

	RN ²³	Army	RAF
Simple cases (Target – 60 working days from receipt of complaints to complainant notified of decisions)			
Numbers of cases where target met	N/S	57	32
Numbers of cases where target not met	N/S	16	6
Simple cases (Percentage of cases on which there has been a decision which have met the target)			
% of cases where target met	N/S	78%	84%
% of cases where target not met	N/S	22%	16%
Complex cases (Target – 120 working days from receipt of complaints to complainant notified of decisions)			
Numbers of cases where target met	N/S	24	9
Numbers of cases where target not met	N/S	5	13
Complex cases (Percentage of cases on which there has been a decision which have met the target)			
% of cases where target met	N/S	83%	41%
% of cases where target not met	N/S	17%	59%
Cases still awaiting decision at the end of the year			
Numbers awaiting decision	N/S	257	70
Cases still awaiting decisions as a % of all cases handled in year	N/S	72%	54%

²² There may be cases on which action is suspended, for example due to illness, but this should be exceptional.

²³ The RN do not have complete data for the full year for Level 1 so this data has not been included.

Table 7b: Level 2 Timeliness

	RN	Army	RAF
Simple cases (Target – 30 working days from receipt of complaints to complainant notified of decisions)			
Numbers of cases where target met	17 ²⁴	0	4
Numbers of cases where target not met	25 ²⁵	6	10
Simple cases (Percentage of cases on which there has been a decision which have met the target)			
% of cases where target met	40%	0%	29%
% of cases where target not met	60%	100%	71%
Complex cases (Target – 60 working days from receipt of complaints to complainant notified of decisions)			
Numbers of cases where target met	6 ²⁶	3	10
Numbers of cases where target not met	3 ²⁷	13	10
Complex cases (Percentage of cases on which there has been a decision which have met the target)			
% of cases where target met	67%	19%	50%
% of cases where target not met	33%	81%	50%
Cases still awaiting decision at the end of the year			
Numbers awaiting decision	28	26	18
Cases still awaiting decisions as a % of all cases handled in year	33%	54%	38%

Table 7c: Level 3 Timeliness

	RN	Army	RAF
Simple and Complex cases (Target – 70 working days from receipt of complaints to complainant notified of decisions)			
Numbers of cases where target met	1	0	16
Numbers of cases where target not met	4	33	9
Simple and Complex cases (Percentage of cases on which there has been a decision which have met the target)			
% of cases where target met	20%	0%	64%
% of cases where target not met	80%	100%	36%
Cases still awaiting decision at the end of the year			
Numbers awaiting decision	24	54	4
Cases still awaiting decisions as a % of all cases handled in year	65%	62%	10%

24 Five of the cases reported as having met the target were started at Level 2, not having been considered at Level 1.

25 Five of the cases reported as not having met the target were started at Level 2, not having been considered at Level 1.

26 Two of the cases reported as having met the target were started at Level 2, not having been considered at Level 1.

27 Two of the cases reported as not having met the target were started at Level 2, not having been considered at Level 1.

Table 7d: Percentage of complaint cases awaiting decision at the end of 2010 which were outside timeliness targets

	RN	Army	RAF
Level 1	N/S ²⁸	80 %	14 %
Level 2	57 %	62 %	33 %
Level 3	83 %	76 %	25 %

Objective 5: Improve the timely handling of bullying, harassment and discrimination cases and ensure that all appropriate cases complete the internal processes within 6 months and before deliberation by an Employment Tribunal

Not met

Tables 7a–c illustrate that there has been little improvement in the handling of complaints about bullying, harassment and discrimination. Delay can increase the complexity, tractability and often the number of complaints, all of which can increase costs. Delay also increases the likelihood and cost of Employment Tribunal (ET) claims. Some work was undertaken in 2010 by the MOD on the cost of delay and a proposal for the establishment of a central cadre of Harassment Investigation Officers (HIOs) was accepted on that basis. These proposals should be implemented without further delay.

Recommendation 10.2

The proposal for the establishment of a cadre of HIOs should be implemented without further delay.

The Army has made changes to their team of specialist investigators which are discussed in Chapter 4. The RAF considered the lessons from the Army at their continuous improvement event and is currently considering changes. My recommendations about the staffing and training of these investigators have not been implemented and therefore still stand.

The MOD response suggested that they may have misunderstood my recommendation that every effort should be made to complete within 6 months any complaint that could go to an ET. While it is accepted that it is for the ET to decide on a date for the hearing, it is for the Services to ensure that the complaint is dealt with internally as expeditiously as possible.

A failure to do so can impact on a complainant's decision to make a claim in the ET. Many complainants tell the SCC that they wanted their complaint to be decided internally but felt forced by delay to issue proceedings in the ET. Tables 2a–c in Chapter 1 highlight that 52 ET claims were lodged in 2010 of which 39 were from Army personnel.

I set an objective for the timely handling of these cases, because of the risk of unfairness once an ET claim has been lodged. The focus of the Service shifts from determining the facts and seeking resolution of a grievance to defending the Service against litigation. There are strong efficiency reasons, as well as reasons of fairness and effectiveness, for completing these complaints within the 6 month target.

²⁸ The RN do not have complete data for the full year for Level 1 so this data has not been included.

Table 8: Army complaints at Level 3 by date when complaint first made

Year	Number
2010	15
2009	30
2008	21
2007	19
2006	4
2005	3
2002	2
2001 or earlier	1

**Table 9:** Service complaints which are at least 1 year old by the end of 2010

Service complaints submitted before 1 January 2010 and still awaiting decision at 31 December 2010	RN	Army	RAF
Level 1	N/S ²⁹	51	14
Level 2	0	13	1
Level 3	9	33	0

Objective 6: Monitor the implementation of Service Complaints System by chain of command and feed findings into the Reviews of JSP 831 and 763 and into other Service personnel policy improvements³⁰

Partially met

The management of Service complaints has improved across all three Services with the:

- creation of the Army Service Complaints Wing (July 2010)
- introduction of Level 1 Service complaints management procedure (Royal Navy)
- introduction of Complaint Monitoring Cell (Royal Navy)

- roll-out of the Service complaints update template following consultation with the Services & SCC – September 10 (although further work is required)

Across the three Services the chain of command is required to notify the central complaint secretariats when they receive a Service complaint. The complaint secretariats can ensure that the chain of command has access to specialist knowledge, scopes the terms of reference for the investigation properly and has advice before making a decision. The complaint secretariats also compile data on Service complaints including on performance against time targets.

²⁹ The RN do not have complete data for the full year for Level 1 so this data has not been included.

³⁰ A Joint Service Publication (JSP) is tri-service publication that provides policy and guidance on a particular subject.

The establishment of the complaint secretariats and the availability of data will allow the Services to focus on areas of concern and begin to take action to address them. By focussing on data and analysis they have identified the problematic areas in the process. The RAF and the RN are focussing on Level 2. The Army has set up a pilot unit to try to ensure that complaints of bullying, harassment and discrimination are dealt with properly. The Services are increasingly sharing good practice and learning from each other. The RAF has proposed an annual tri-Service conference with the SCC's office as part of this effort.

The Services meet every two months with the MOD personnel policy secretariat to review performance and to inform policy development. The SCC's office attends for part of these meetings. The MOD undertakes an annual review of existing guidance on all Service complaints (JSP 831) and on bullying and harassment (JSP 763) and in 2010 made changes to better align the two documents.

Objective 7: Further develop the lessons learned and implementation monitoring system

Partially met

Responding to SCC recommendations the MOD confirmed that it was open to the Services to log lessons learned on the Defence Lessons and Identified Management System (DLIMS). It does not appear that the Services are yet doing so.

However the RN invited the SCC to its two day Continuous Improvement Event in July 2010 at which they developed a system for logging any lessons learned on the RN equivalent system and then on the DLIMS system. The Army has said that its SCW are logging lessons learned on the Army system and the RAF central complaint secretariat also is identifying lessons learned.

Nevertheless the MOD and Services are a long way from the rigorous monitoring system put in place following the Deepcut Review and the House of Commons Defence Committee report into the Duty of Care in the Armed Forces, and which appears to have been effective in improving treatment of trainees. This is the next step for the Services to make the complaints system effective.

Objective 8: Start to consider, in consultation with the Service Complaints Commissioner, how best to measure impact

Not met

After one initial meeting with the SCC in 2009, no action has been taken on this objective.



3

Progress against
three year goals



This chapter:

- assesses the progress of the SCC; and
- the Services in achieving the goals set by the SCC in 2008 which describe what an efficient, effective and fair system would look like by the end of 2010.

SCC and Services progress against goals 2008–2010

In 2008 I set out 7 goals which described what an efficient, effective and fair system would look like at the end of the first three years. The table below sets out my assessment of how the system is working against these goals. This analysis sets the scene for the assessment of future direction in Chapter 4.

Table 10: Three year goals

	Three year goals	Delivery
1	Complaint recording system used by all correctly and consistently with statistics that can be relied upon	
2	90% of complaints completed within JSP deadlines	
3	Complainants, their representatives where appropriate and those complained of kept informed and provided with full reasons for decisions	
4	Complainants dealt with correctly first time, quickly and effectively at the appropriate level to provide redress	
5	Substantial and significant evidence of improvement in individual confidence in the system and of lessons implemented	
6	Closing the gap between reported levels of unacceptable behaviour and recorded complaints	
7	Service Complaints Commissioner judged by Services, Ministers and Parliament to be playing an effective part in assuring the proper treatment of Service personnel	

Goal 1: Complaint recording system used by all correctly and consistently with statistics that can be relied upon

Not met

The internal audit requested by the SCC in 2008 found difficulties in recording Service complaints that were partly technical and partly due to working practices. The Army and Royal Air Force (RAF) were able to develop alternative systems for capturing Service complaint data. The Royal Navy (RN), for reasons that were particular to their Service, have needed to await the introduction of the new JPA module for full and reliable data at Level 1. This lack of information has had an impact across all of the Services, particularly on their ability to benchmark their performance against each other, except at higher levels.

The purpose of this three year goal was to encourage the use of data analysis of reliable statistics as a measure to drive improvements to the system. Despite the delay in implementing the new JPA module, it does appear that the establishment of the central Service complaints units and the requirement to provide the SCC with statistics has engendered an appetite for using data analysis as a management tool in this way.

At the end of 2010, the three year goal has not been met. I anticipate, however, for the reasons given above, that this will be assessed to have been met at the end of 2011.



The SCC on board HMS Dauntless, October 2010

Goal 2: 90% of complaints completed within JSP deadlines

Not met

MOD surveys prior to 2008 had shown that a lack of timeliness was one of the reasons for lack of confidence in the redress of complaints.

In 2010 for the first time the Services set targets for completing cases based on their own assessment of what was achievable given their performance to that date. At Level 1 these targets were twice (for simple cases) and four times (for complex cases) the JSP 831 deadlines. The targets were the same as the JSP deadlines at Level 2 and two weeks longer at Level 3. Chapter 2 set out the Services' performance against these targets.

Table 11 shows the Services' performance against the original JSP831 deadlines. On the figures provided it would seem that the RAF is achieving the 30 working day target in just under a third of all complaint cases at Level 1 and the RN are doing so in over half of all cases at Level 2. They should be encouraged to identify factors for success with a view to increasing their own performance in this respect. They should also share their experience with the Army.

Although the numbers involved are very small, AFCAS 2009 indicates that under half (48 %) of those who made complaints of bullying and other improper behaviour were satisfied with the time taken with almost as many (42 %) dissatisfied. This is encouraging but shows there is still much room for improvement.³¹

³¹ See table B10.32 in AFCAS 2009.

Table 11: Service performance against SCC's 3 year goal on timeliness

	RN ³²	Army	RAF
Simple and Complex cases – Numbers of cases which met the goal of 30 working days from receipt of complaints to complainant notified of decisions			
Level 1	N/S	0	18
Level 2	24	0	2
Percentage of all complaints decided which were decided within 30 working days			
Level 1	N/S	0%	30%
Level 2	59%	0%	6%

Goal 3: Complainants, their representatives where appropriate and those complained of kept informed and provided with full reason for decision

Partially met

We have noticed in the cases handled by my office that there has been a marked improvement in the numbers of complainants being kept regularly informed about their case developments. This is by no means universal and many complainants still say that they are only informed about the progress of their case by the SCC's office.

Effective communication still remains a key challenge for the Services. In AFCAS 2009 only 30 % who had made a formal complaint about bullying or other improper behaviour within the previous year were satisfied as to how well they were kept informed about the progress of their case and nearly half (43 %) were dissatisfied.³³

JSP 831 was amended in June 2010 to instruct COs and SOs to communicate regularly and provide updates on progress to both complainants and those complained about every 30 days. As in previous years, I have seen numerous examples where good communication has resolved a complaint and restored confidence in the chain of command.

Goal 4: Complainants dealt with correctly first time, quickly and effectively at the appropriate level to provide redress

Partially met

As indicated in previous chapters, too many complaints do not appear to be dealt with correctly, quickly or effectively at the appropriate level to provide redress.

However that overview masks some improvements. The establishment of central complaints secretariats has enabled Services to provide the chain of command with guidance as to whether they can deal with a complaint, whether it should be referred to the next level or whether it might be suitable for informal resolution. These units can also refer back to Level 1 any complaint which could have been dealt with at that level or where there is a need for investigation at that level.

Oversight by the central complaints secretariats also enables them to spot where a complaint is about policy and to refer a case from Level 1 to Level 3 directly. The Army in particular has done this. Unfortunately this has not improved the timely handling of the complaint because of the size of the backlog at Level 3.

In September 2010 the Services and MOD agreed a statement of Principles of Fairness, which provides summary guidance to all those dealing with Service complaints. It is now being used by the Services and SCC in promulgating best practice. If followed, these principles should ensure that this goal is met more often in future.

³² The RN do not have complete data for the full year for Level 1 so this data has not been included.

³³ See table B10.33 in AFCAS 2009.

Principles of Fairness for Complaints Handling

Lay Solid Foundations

- Follow the Service complaints policy and any single Service guidance
- Seek advice early
- Attempt to seek resolution of a Service complaint at the lowest appropriate level. Can the complaint be resolved informally?
- Ensure early contact is established with the complainant
- Make an early assessment. Is it a Service complaint and in time? Are you able/the right person to deal with the complaint? Can you resolve the complaint alone or do you require specialist advice? How should you investigate it?
- Remember: a complaint on your watch is not a failure – not dealing with it is. Prompt, sound handling will reap benefits downstream for all involved

Act Fairly and Promptly

- Treat the complainant, and all others who are involved, impartially and consistently
- Ensure that all parties to a Service complaint are appropriately assisted and supported throughout
- Make no assumptions until the facts are established
- Ensure that investigations are prompt, thorough and establish the facts
- Make prompt, fair and informed decisions within the published timescales

Be Open and Transparent

- Keep all appropriate parties updated regularly on progress
- Disclose all relevant information to the appropriate parties in accordance with existing policy and guidance
- Allow the complainant and any other party involved the opportunity to explain their position through appropriate means before a decision is made
- Communicate your decision promptly, in writing and give reasons

Be Flexible and Proactive

- Consider what remedy is appropriate to achieve resolution: this may not necessarily be the remedy sought by the complainant
- Consider alternative approaches to resolution such as mediation
- Should you elevate the Service complaint?
- Monitor and respond promptly to inaction, as well as to positive developments
- Consider if the complaint raises management issues which need to be addressed, regardless of whether a complaint is pursued.

Case study B

Sgt B wrote to me to tell me that he had expected to be notified on a particular day whether he was to be promoted to replace a SSgt who was coming up to retirement. He did not hear on the given day but three days later as he reported for work when one of his subordinates told him that another Sgt had been awarded a local promotion into the position. Sgt B considered that his seniority in the rank and his performance had placed him in a good position for the promotion, so he was very disappointed. Furthermore, because of the lack of communication prior to the appointment, he believed that the promotion of the other individual was unfair and had been as a result of some sort of bias. His CO interviewed him and explained the rationale for the promotion of the other individual, discussed Sgt B's SJARs and promotion process with him and also listened to his concerns of bad behaviour which he had previously experienced in his workplace. The CO agreed with Sgt B that the manner in which he had found out that he had not been awarded the promotion was unacceptable and he wrote to him formally apologising for this. He also thanked Sgt B for his complaint as it had identified a learning opportunity – communication in the workplace. As a result of the open, honest discussion with his CO, Sgt B was satisfied that his concerns had been investigated in full and chose not to take his complaint forward as a formal Service complaint.

Goal 5: Substantial and significant evidence of improvement in individual confidence in the system and of lessons implemented

Partially met

The evidence as to whether this goal has been met is unclear. Increasing case numbers would suggest that confidence in the system is growing. This may also reflect a growing awareness of the Service complaints system and the role of the SCC. AFCAS 2009 suggests an increase in awareness of both, particularly among the junior ranks.³⁴

However AFCAS 2009 highlighted that although overall the numbers who say they have experienced discrimination, harassment or bullying is falling, so too are the numbers willing to make a formal complaint. Only 6 % of those who said they had experienced this treatment made a complaint, a drop of 8 % since 2008. The 11 % reduction in the Army was particularly marked with only 7 % of personnel making a complaint. AFCAS 2008 had seen a significant rise in Service personnel making complaints from 5 % to 13 % overall. I have recommended to the MOD that a question be included in future AFCAS surveys about whether they had had their concerns resolved informally.

The 2009 AFCAS survey indicates that more than half of Service men and women who had suffered ill-treatment had not made a complaint because they did not believe anything would be done about it. More than half of these respondents believed that making a complaint would cause problems in the workplace and affect their career. 40 % of respondents believed that their complaint would not be taken seriously. All of these categories were cited more frequently than in the previous years.

³⁴ AFCAS 2009 showed that overall there was a significant increase of 5 % since 2007 of those who knew where to get information about the Service complaints procedure with higher increases in the RAF and junior ranks in the Army. 71 % of Service personnel (85 % officer and 68 % other ranks) said they knew how to do so. There had been an 8 % increase in awareness of the SCC since 2008 with 55 % of personnel aware of the SCC, 73 % officers and 51 % other ranks. Awareness was highest in the Army and lowest in the Royal Marines.

Swings in the numbers of personnel willing to make a complaint are also apparent in the Recruit Trainee Surveys (RTS).³⁵ Between 2007 and 2008 there was a fall in the percentages of Phase 1 and Phase 2 trainees who made a complaint when they felt they had been treated badly or unfairly. The RTS for 2009, published in 2010, showed a significant rise in those who had made a complaint. 21 % of Phase 1 and 37 % of Phase 2 who believed they had been treated badly had made a complaint in 2009, compared to 9 % and 8 % the year before. There were also more trainees willing to answer the questions about what action they had taken when they believed they had been treated badly.³⁶ The RTS suggests that willingness to complain can be influenced by action taken by the chain of command.

Whereas in RTS 2008 there had been more allegations of bad and unfair treatment by staff, particularly in Phase 1 and in Army establishments, in RTS 2009 the balance between alleged bad or unfair treatment by staff and by peers was reversed. The action taken by the Services, to tackle the previous increases in reports of poor treatment by staff, appears to have contributed to a significant rise in confidence in the complaints system.

The AFCAS 2010 survey (due spring 2011) will be important to see if a similar pattern occurs across the Services or whether after an initial increase due to the introduction of the SCC in 2008 there has subsequently been a loss of confidence in the system.

The lessons identified here have implications that go wider than the immediate units involved. Chains of command have expressed interest in the issues raised and considered how to apply them to their own responsibilities. Developments recommended in the previous chapter designed to embed this approach should lead to progress during the next year.

Case study C

Flight Sergeant C wrote to me to complain that his last tour of duty was in a unit away from his Command structure and he had received no exit interview. The result was that he felt disappointed that he had “drifted away” after 26 years’ service without his long and distinguished service being officially recognised by a senior officer, as is normal practice on RAF stations. In addition he had not received his valedictory letter or an appraisal report for the previous year. His disappointment was compounded by the fact that an exit interview would have been the ideal forum for him to express his concerns regarding the management and administration of personnel who were posted away from their parent stations. The RAF agreed that FS C had been wronged, apologised to him and forwarded his Valedictory letter. They also undertook a thorough review of parenting procedure, which identified several anomalies. The lessons were passed to HQ Air Command, for wider dissemination. More locally, the Air Station now runs a monthly termination forecast which identifies staff who are within three years of retirement. The Station Commander recognised the value of complaints in identifying and correcting systemic weaknesses.

³⁵ See paragraph 123–216 (Phase One) and paragraph 382–474 (Phase Two), 2009 RTS.

³⁶ Only 30 % refused to answer the question compared to 46 % the previous year.

Goal 6: Closing the gap between reported levels of unacceptable behaviour and recorded complaints

Partially met

AFCAS 2009

The AFCAS 2009 survey shows that there has been a drop in Service personnel experiencing bullying, harassment and discrimination and reporting it since 2008.

In 2009 5 % of officers and 7 % of other ranks reported experiencing bullying over the previous 12 months. This compares to 6 % of officers and 7 % of other ranks in 2008. In 2009 4 % of officers and 6 % of other ranks reported harassment, compared to 4 % of officers and 7 % of other ranks in 2008; and 8 % of officers and 13 % of other ranks reported experiencing discrimination compared to 10 % and 15 % in 2008. There were significant³⁷ reductions in the RN in relation to bullying, in all Services in relation to harassment, and in the RN and the Army in relation to discrimination.³⁸



This overall downward trend however disguises some significant increases particularly in relation to gender discrimination in the RN and RAF (increases of 3 and 4 % respectively since 2008). There have also been lesser, but still significant, increases in reports of discrimination on the grounds of race across all Services (1 %) and (2 %) in the RN. The disaggregated statistics appear to show differences (as in the RTS) between the experience of women and men in relation to harassment and discrimination on the grounds of both sex and ethnicity. The small numbers of Servicewomen and Service personnel from minority ethnic backgrounds who say they have suffered from this type of treatment each year, even given the higher levels of reported bad treatment, makes it difficult to give significance to these statistics. However the trend over the longer term appears to be fairly consistent.

Service returns on bullying, harassment and discrimination complaints

Since October 2006 the Services have been making 6 monthly returns from all command units on both formal and informal complaints of bullying and all types of harassment and discrimination. In 2009 the Services, at the SCC's request, changed the reporting cycle to correspond with the calendar year, which forms the basis of the SCC's Annual Reports on the Service complaints system. 2010 is the first year for which there is uninterrupted data on these returns.

Unlike the AFCAS Survey, which provides a picture of the experience of Service personnel in 2009, these returns cover complaints made in 2010. It is therefore not possible to draw a

³⁷ Significant in the context of AFCAS means changes which are reported by DASA to be statistically significant.

³⁸ AFCAS asks about experience of discrimination and harassment both in terms of where they have or have not experienced such treatment and there are slight differences in significance between the increase in those who say they have not experienced such treatment and the reduction in the numbers of those who say they have. The overall story however shows a downward trend. The story from responses on different types of harassment and discrimination is more mixed.

direct correlation between data on anonymous reports of Service personnel's experience of bullying, harassment and discrimination and the complaints they make about such treatment. For the purposes of measuring progress against goal 6, it is necessary to look at trends.

Information on trends in formal and informal complaints over time is given in Table 12. It should be noted that the MOD believe that the levels of complaints being reported in these returns falls below what the Equality and Human Rights Commission (EHRC) suggest would be expected from an organisation of similar size to the Armed Forces.

The figures show that most complaints are made about bullying and harassment with fewer complaints about sexual harassment and racial harassment. These form the four most numerous categories of complaint.

Since 2006, overall levels of complaints about bullying have remained fairly steady but Service personnel are increasingly making them formally. There were more complaints in 2010 about sexual orientation harassment and religious discrimination and the trend is increasing, although in both cases the numbers are small. There appear to be fewer complaints about sexual harassment.

Formal complaints about sexual harassment, racial harassment and racial discrimination, seem to be going down. The trend in the other categories seems to hold fairly steady. Informal complaints about sexual harassment also seem to be decreasing, which may suggest a real change in incidence in such behaviour in the Services.

Figure 9 shows formal complaints by category over time and figure 10 informal complaints by category over time.

There is a less consistent pattern in 2010 between the Services in the use of formal and informal complaints. Until this time last year, it appeared that Service personnel were increasingly seeking to resolve any concerns about such treatment informally rather than formally. With the exception of formal Army complaints, which are increasing (and which may be a result of new arrangements for reporting Service complaints) and a slight increase in informal complaints in the joint (or purple) environments, the numbers of all types of complaints is dropping.

It is difficult to compare 2009 AFCAS figures directly with the information from the Services about 2010 complaints. However looking at the trends in the data it would appear that overall the levels of unacceptable behaviour in the Armed Forces is falling and so is the level of complaints.

There are exceptions. The picture in AFCAS 2009 in relation to the Army was that the levels of bullying in the Army appear to be approximately the same but there was an 11 % drop in those who said they had made a formal complaint. The Army 2010 Equality and Diversity statistics however indicated a doubling of both formal and informal complaints.³⁹ I will be monitoring the impact of the Army's new Bullying and Harassment complaints line, which opened in December 2010.

AFCAS 2009 reported a significant decrease in bullying in the RN but significant increases in harassment on the grounds of sex and class and discrimination on the grounds of sex, race, class, sexual orientation and bias. AFCAS 2009 reported an 8 % fall in those who made a complaint. The RN's returns on equality and diversity complaints show a fall in both formal and informal complaints.⁴⁰ The level of increase in complaints to the SCC from the RN

³⁹ Army figures have increased but this may be a measure of recording practices. In 2007/8 and 2008/9 the Army figures were 50 formal/105 informal and 89 formal/102 informal. In 2010 the figures were 151 formal/191 informal.

⁴⁰ Compared to the twelve month figures 2 and 3 years ago there is a greater decrease in formal complaints than informal. In 2007/8 and 2008/9 the figures were 53 formal/221 informal and 64 formal/221 informal. In 2010 the figures were 31 formal/164 informal.

was also the lowest of all three Services, although the increase in complaints from Servicewomen was higher. This drop in complaints may reflect a drop in the experience of unacceptable behaviour in the RN generally, although for the reasons given earlier this may not be the case for Servicewomen. If the AFCAS 2010 shows no reductions in the reported experience of unacceptable behaviour the RN should consider what more they need to do to give confidence to their personnel to use the

complaints system. From their equality and diversity returns the numbers of complaints both formal and informal in the RAF appears to have fallen significantly in 2010.⁴¹ These figures can only give a quantitative picture. The RAF believes that qualitatively their use of mediators continues to make a significant difference.

For these reasons I have assessed this goal as partially met.

Table 12: Numbers of formal and informal complaints by Service and type 2010

	RN		Army		RAF		Purple TLBs ⁴²		Totals	
	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal
Bullying	8	48	47	56	28	36	12	8	95	148
Harassment	15	68	44	56	9	33	4	6	72	163
Sexual harassment	2	13	14	17	1	9	1	3	18	42
Sexual discrimination	1	4	6	5	0	2	0	0	7	11
Sex harassment	0	1	1	2	0	0	0	0	1	3
Racial harassment	3	7	10	11	2	5	0	1	15	24
Racial discrimination	1	4	2	9	1	1	0	1	4	15
Sexual orientation harassment	1	5	4	5	1	5	0	0	6	15
Sexual orientation discrimination	0	4	0	1	0	0	0	1	1	6
Religious harassment	0	1	1	4	0	1	0	0	1	6
Religious discrimination	0	2	6	2	0	0	0	1	6	5
Other	0	7	16	23	13	17	3	4	32	51
Totals	31	164	151	191	55	109	20	25	257	489

⁴¹ In the RAF the trend appears to be downward. In 2007/8 and 2008/9 the figures were 77 formal/131 informal and 98 formal/160 informal. In 2010 the figures are 55 formal/109 informal.

⁴² Tri-Service Top Level Budget holders.

Figure 9: Formal complaint trends by category 2006–2010

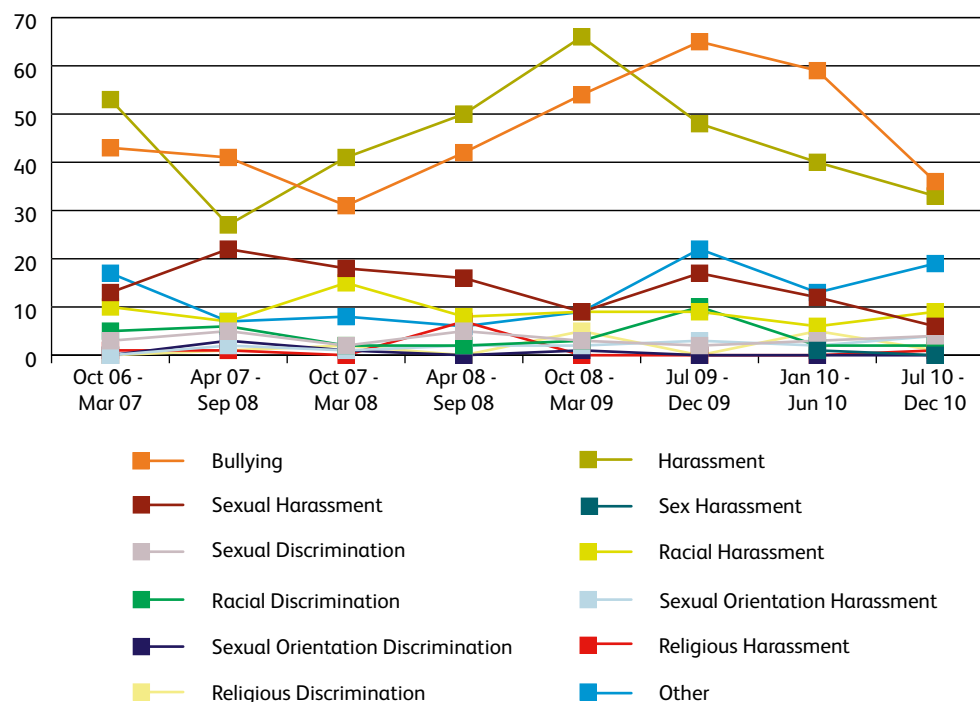


Figure 10: Informal complaint trends by category 2006–2010

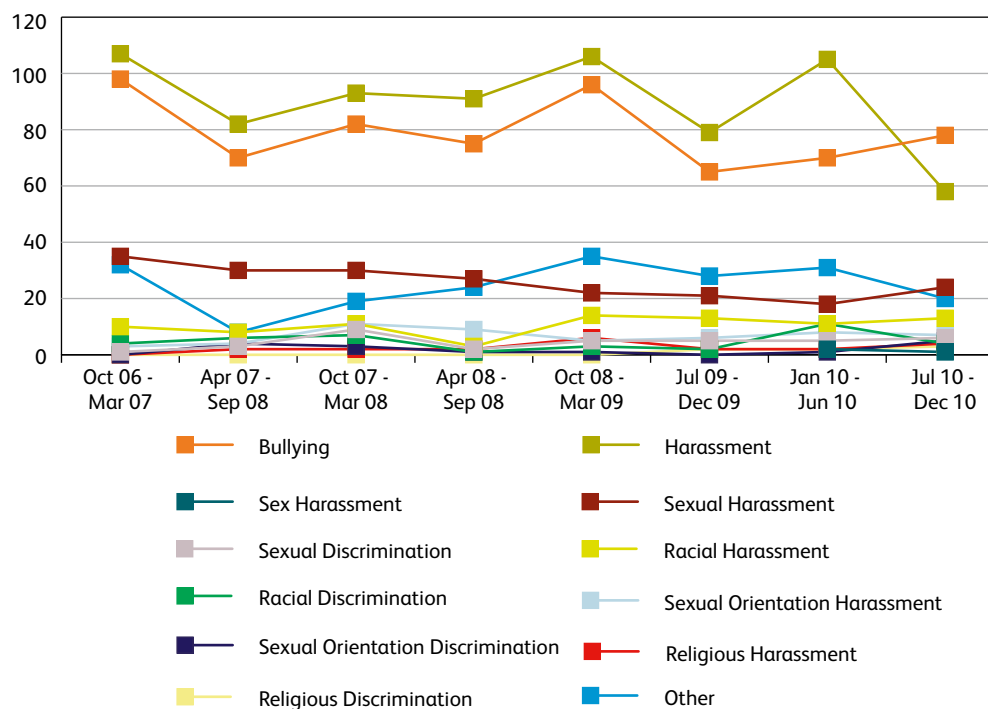
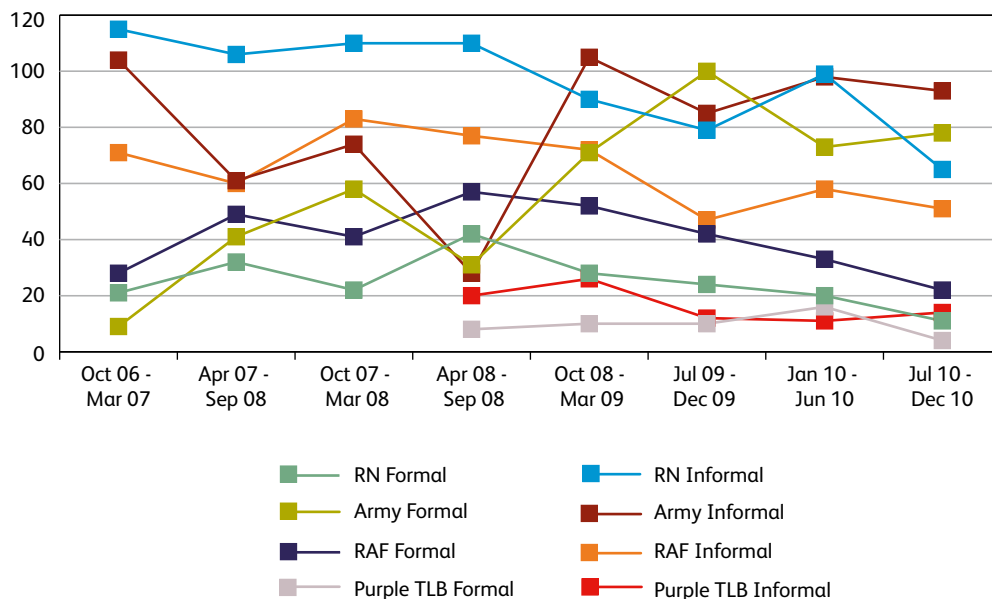


Figure 11: Formal and informal complaints by Service 2006–2010

Goal 7: Service Complaints
Commissioner judged by Services, Ministers and Parliament to be playing an effective part in assuring the proper treatment of Service personnel

Partially met

To evaluate the perceived value of the SCC office among the Services, Ministers and Parliament my office planned to commission an independent evaluation survey. Unfortunately due to spending constraints I had to find an alternative way to get feedback. I wrote to the Minister for Defence Personnel, Welfare and Veterans, and to the Chief of the Defence Staff and to a range of welfare associations and individuals who support and advise Service personnel. I have also taken into consideration feedback given by Service personnel and those who have represented them in connection with individual complaints to my office. I have made a judgement on whether this objective has been met based on the feedback available to me.

Regular meetings with senior officers in the three Services and the MOD, including Service chiefs, and with Ministers have produced very positive feedback about the role of the SCC and the progress the office has made over the past three years. My office has been described by the current Chief of the Defence Staff as an “*integral part of modern defence*” and feedback from Commanding Officers that I have met on my visits has again been very positive. I have also received very supportive letters from the Royal Navy Legal Services and the Army Quality Assurance Team. Furthermore, and perhaps most reflective of support for my office, my appointment as Commissioner has now been extended for a second term to the end of March 2014.

The feedback from welfare agencies, from individuals advising and supporting Servicemen and Servicewomen and from complainants is more mixed. There is certainly a belief that having the SCC oversee a case can mean that it is treated differently than it would be, were the SCC not to be involved.

The WRVS, who have 91 staff in 61 locations which involve 65,000 personnel in all said:

“We note that in the last 3 to 5 years the military environment has changed and there is a more proactive role taken by the chain of command than ever before. Welfare is clearly high on the agenda within the military for Service personnel and their families, with a true desire from the top down to demonstrate how valued they are and to ensure they are fully aware of their rights. While it is not possible to draw a direct ‘cause and effect’ line between this improvement and the operation of SCC, it is our belief that this link is clear.”

WRVS

Feedback from those advising and supporting Service personnel, especially officers, questions the sufficiency of my powers. Some have expressed scepticism as to whether the SCC is anything but “*window dressing*” and have proactively raised their preference for the SCC to independently investigate complaints.

The consensus from this feedback is that whilst the SCC’s office has made a difference, particularly to the Service complaints system and on occasion in the handling of individual cases, many believe that the SCC cannot ensure that Service personnel are treated fairly and that the SCC’s powers should be strengthened. This is discussed in Chapter 4.

However it is clear that this is only a start.

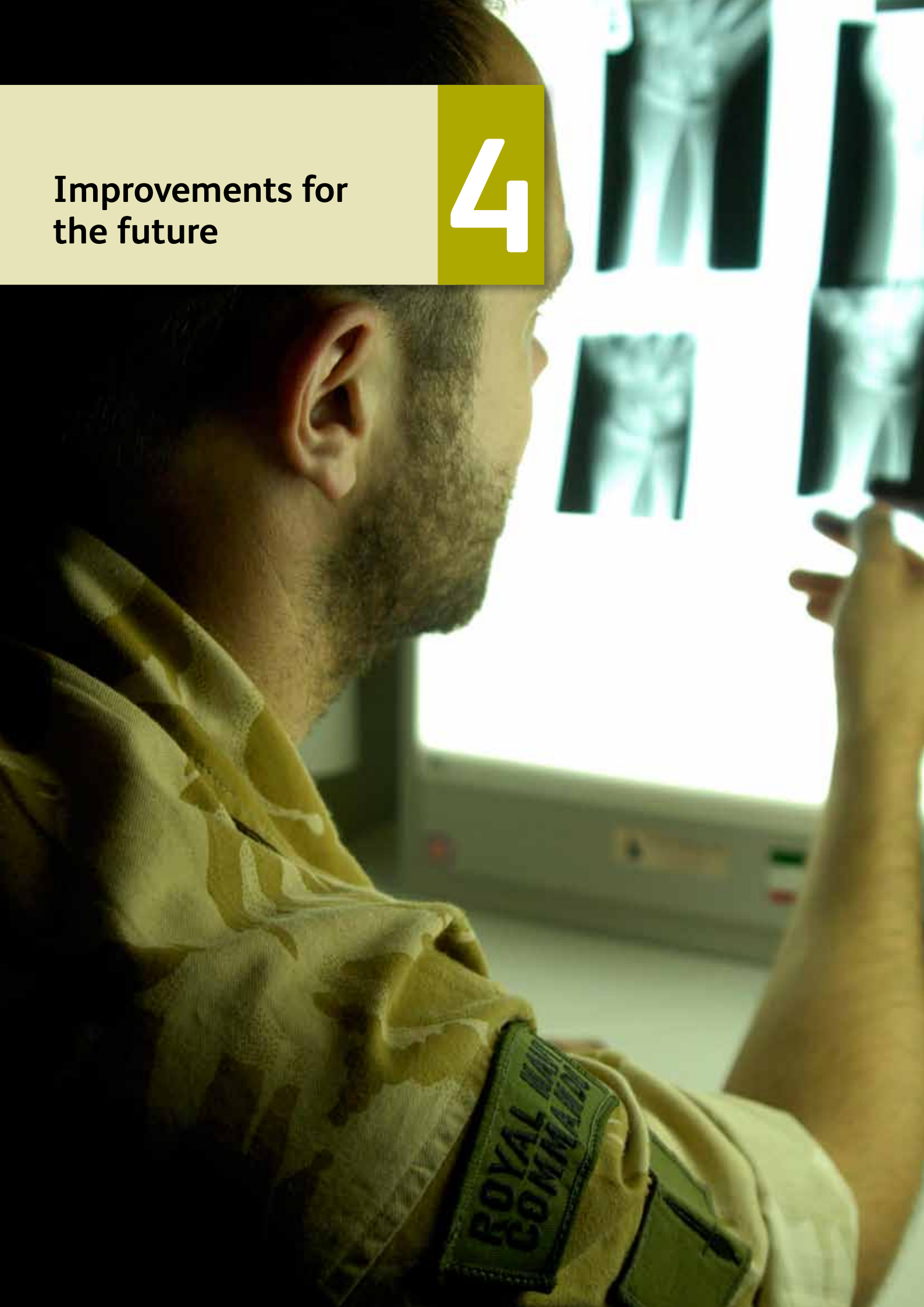
“The SCC has brought a much needed focus to the staffing of complaints within the military system but has done little to address the root causes of the complaints themselves.”

RAF Families Federation



Improvements for
the future

4



This chapter:

- reviews the impact of the improvements to the system made to date;
- identifies where the Service complaints system is working well (and where it is not);
- concludes that a radical step change is needed both in the design of the system and in the SCC's powers; and
- makes recommendations for change.

The system to date and its development

The new system for handling Service complaints was designed to provide a unified process across all three Services. At the end of my first year as Commissioner I concluded that the Service complaints system was based on sound principles but expressed reservation as to whether it would deliver against the aims I had set in the three year goals.

The experience of the last three years has shown that the system is now largely being applied consistently and I have asked the Services to address where this has not been the case. There have been signs this year of simple complaints being handled more speedily under new arrangements being introduced by all three Services. However there remains, particularly in the Army, a backlog of cases, some of which may have started as simple cases but which have become complex by virtue of delay. None of the Services have yet made much headway in handling more complex complaints or complaints of bullying, harassment or discrimination in an effective way.

Having overseen its implementation during the last 3 years, I have come to the conclusion that the Service complaints system is over engineered and that the very processes which were designed to deliver fairness to complainants, and those complained about, are acting to their detriment.

I have also concluded that changes should be made to simplify the complaints process and that to deliver these changes the SCC's powers need to be strengthened. The two

changes are interdependent. Any simplification of the processes designed to ensure fairness needs to be complemented and strengthened by new ways of ensuring the fair handling of complaints.

This chapter sets out my assessment of where the system has worked, where the system is still failing and the likely impact of currently proposed improvements. I conclude the chapter by setting out a vision for the system by the beginning of 2014.

Where the system has worked

Real progress has been made in the last three years.

Significant improvements have been made to the infrastructure put in place by the Services to manage complaints. Each Service has established a central complaint secretariat (with functions in line with my 2008 Annual Report recommendations) to provide expert advice to Commanding Officers and their chains of command. They have the capability to exercise central oversight, case flow management, quality control, data analysis and continuous improvement, of operational and people management issues, as well as in the handling of complaints. The central complaint secretariats are increasingly working together and learning from each other. The Services have consulted me in the development of these units and I have made suggestions where they can be improved further; each taking the most effective aspects from the others.

Progress has also been made in case management. Following my recommendations, a new module for recording complaints was introduced on 1 January 2011 which will provide more accurate data and management information. It will for example enable the Royal Navy (RN), for the first time, to have an overview of Level 1 complaints. I have asked for a repeat audit in autumn 2011 to ensure the JPA module is functioning well.

Each Service now has a centralised system overseeing the handling of complaints at every level, providing expert advice to Commanding Officers and having the ability to begin to undertake analysis of potential weaknesses or problems building up. Preliminary work has been done by one Service on a prototype model for capturing lessons learned from complaint cases and monitoring action as part of continuous improvement.

Each Service includes complaint handling as part of the induction for new Commanding Officers. The RN has invested in training those in the chain of command who first deal with complaints and those who advise them. They have also embarked on a second round of communication and education on this topic across the RN.

The Royal Air Force (RAF) has trained over 200 mediators which are being shared with the two other Services. They have a system for monitoring how mediation is being used and its impact. I have discussed with them how to develop this further by starting to measure the contribution mediation can make to the efficiency of the complaints system.

The Army has made significant changes to its central team of specialist equality and diversity investigators, the Service Complaints Investigation Team (SCIT) which is used for all complex complaints. The Army

Inspectorate has undertaken a second inspection of the SCIT and found that improvements have been made but more needs to be done. I have recommended a review of the quality of investigations. I also stand by my recommendations in the 2009 Annual Report with regard to non-Service police mixed membership and external training of investigators.

There has been an increasing use of the Service complaints system, both at Service level and in cases to the SCC. There have also been increased numbers of reasoned decisions (case decisions accompanied by appropriate explanatory details) and the RAF, in particular, is using its central team to monitor the quality of decisions at all levels and to provide assistance to those making them on complaint cases.

There has also been an increased use of Service Complaint Panels, including those sitting with independent members and the MOD is looking to increase the number of independent members. It is clear that many in these central teams, and indeed Commanding Officers and those deciding complaints at higher levels, have understood the link between good complaint handling and operational effectiveness.



The SCC visits RAF Fylingdales, August 2010

Where the system is failing

Delay

Delay remains the key area of weakness within the Service complaints system.

Targets set by the Services for resolving new cases are still twice or four times as long (60 days for simple cases, 120 days for complex cases) as the time set out in the original JSP831 guidance (30 days) and delays are particularly problematic in cases of bullying, harassment and discrimination. Delays regularly lead to an increase in case complexity, a hardening of positions within the case and too often a denial of justice. In a significant number of cases under my oversight, the complainant, the individuals complained about, witnesses, Assisting Officers (and in one case, the person investigating the complaint over a period of years), have left the Service by the time a decision has been made.

Too often the length of time taken to make a decision on a complaint has meant that the possibility of any type of redress has been lost. As cases drag on over a period of months and indeed years those involved suffer from additional stress. The cost to Service personnel themselves, both complainant and person complained about, and their families can be severe. Many of those involved with a case feel that those handling their complaint have no idea or interest in the impact of the delay.

Many simply give up; choosing to drop their unresolved complaints after heavy delays, hoping to move on with their careers rather than seeing their cases through to completion.

Moving on can and does lead to Servicemen and Servicewomen leaving the Services prematurely. This can leave areas in the Services suffering from manpower shortages affecting operational effectiveness.

Those who continue with their cases convinced that they have been wronged and determined to see that recognised, often feel

they face a Service united against them. The very determination, which is needed to keep challenging the chain of command once a CO has rejected a complaint (however unreasonably), is used against them. This can lead to requests for further escalation, even when a complaint is partly upheld. It also makes effective closure very difficult, when a complaint is finally upheld.

In many instances it appears that escalation could have been avoided by handling the case with better care, communication and humanity at the outset.

As has been shown in earlier chapters, although the RN and RAF have cleared their backlog of pre 2008 complaints under the old system, and the RAF particular appears to be dealing with many complaints in a more timely fashion, there is a concern that backlogs may start to build up. Table 7d on page 34 shows the percentages of undecided cases in all Services that are already outside the time targets. Table 9 on page 35 shows that at the end of 2010 there were 121 complaint cases in the system which were at least one year old, 97 of which are in the Army.

The Army has a chronic problem at Level 3 with 95 complaint cases to be considered at the end of 2010, 29 of which were started before 1 January 2008 and therefore have to be decided by the Army Board. Of these 6 have been in the system for over five years. The Army decided 33 cases at Level 3 in 2010. The Army had hoped that the backlog of cases at Level 3 being managed by the Army Appeals Wing (AAW) would have been cleared by August 2011, when their responsibilities are due to transfer to the Army's Service Complaints Wing. The Army Inspectorate estimates that over 100 cases will transfer to SCW at that date. The Army has said that there can be no increase in resources to clear the backlog of the cases and it is likely that SCW's resources will need to be reduced.

Case study D

Sgt D contacted the SCC regarding his failure to be promoted whilst serving in a Non-Regular Permanent Service (NRPS) post, a form of reserve service. When he had been recruited he had been told that although he could only be appointed at the rank at which he left the services he would be eligible to be promoted in time subject to satisfactory annual appraisals. In fact the terms of his service under NRPS did not allow him to be promoted, although a number of NRPS in other districts had been promoted in this way. He made a complaint, through the SCC, that he was being treated unfairly.

The General Officer Commander (GOC) took Sgt D's complaint very seriously and interviewed him personally to express his sympathy and to explain the position. As a result Sgt D accepted that his treatment was not the result of personal bias and that his chain of command was bound by the rules, even though others had benefited from a mistaken interpretation of those rules.

By meeting with Sgt D, the GOC was alerted to the disquiet amongst the NRPS community regarding a review then being undertaken by the MOD. He contacted the MOD to urge that the review be completed and published as quickly as possible. In the meantime, all individuals affected by the changes also received a personal letter, to inform them of progress and to try to allay their concerns.

The outcome of the Review was to remove many of the differences between the various types of reserve service which had given rise, at least in part, to the complaint. Although the complaint did not, of itself, lead to the changes to the terms and conditions of Reserve Service, it did help those individuals affected be kept informed and may have added a sense of urgency to the completion of the Review.

In October 2009, the European Court of Human Rights gave a judgment on a case concerning the handling by the British Army of a complaint from Mr Crompton, a former TA soldier. Article 6 of the European Convention of Human Rights provides that where civil rights and obligations are engaged, there is a right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The UK government had conceded that Mr Crompton's claim did concern his civil rights. The provision in the current Armed Forces Bill picks up one element of the judgment in Mr Crompton's case. The UK Government did not contest Mr Crompton's claim on ground of lack of

timeliness. The Court decided that the time taken by the Army was not reasonable. It had taken more than three years between the complaint being made and it being first considered by the Army Board. It then took a further nine months for a Board of Inquiry to be convened. Despite the Board of Inquiry upholding his complaint within four months, the Army Board did not agree to give compensation until over two years later and a sum was finally decided two years after that. The time from the complainant approaching the Commanding Officer to the first offer of redress was eight years and six months. The court commented on significant periods of inactivity and were not satisfied the complaint was handled with due diligence.

Case study E

The SCC was contacted in July 2009 by a member of the Defence Medical Services regarding the handling of a complaint he had made 2 months earlier about his mid-year appraisal report and the issue of a formal warning about his performance. He alleged that he was being singled out for unfair treatment by his line manager, that the formal warning had not been initiated correctly and that he was being set up to fail. He was concerned that he had not been interviewed regarding his complaint nor even received an acknowledgment. He was further concerned that his complaint was not being taken seriously, possibly because he was due to retire the following year. Despite an SCC referral, he had no contact about his complaint before he left the Service 9 months later. He agreed for it to be closed without resolution as he would be unable to achieve the redress which he had originally sought. The complainant said, "I felt let down by the system and could not wait to leave. As I am no longer serving, I find it fruitless to pursue it. It is rather sad that one should complete 22 years with the final months having nothing but ill feelings."

The exact scope of Article 6 as regards Service personnel is not clear. It is therefore not clear in how many of the 29 pre-2008 cases Article 6 may be engaged. However even if Article 6 is not engaged, the MOD's own Principles of Fairness demand that cases should be decided in a timely manner. Potentially decision could be judicially reviewed on grounds of fairness or delay, regardless of whether Article 6 was engaged. Given the ECHR judgement in Crompton and these wider issues, I recommend that the Army reconsider its decision not to devote resources to ensuring that these cases and those that

have been in the system since 2008 are brought to a conclusion without further delay. In the light of the growing backlog of Service complaint cases at all levels, this is one area where existing staffing levels need to be maintained. I therefore also recommend that Service Chiefs should resist cutting staffing levels in their complaints secretariats before the system is judged to be operating effectively, efficiently and fairly.

Recommendation 10.3

The Army should reconsider its decision not to devote resources to ensuring that heavily delayed complaint cases are speedily concluded.

Recommendation 10.4

Service Chiefs should resist cutting staffing levels in their complaints secretariats before the system is judged to be operating effectively, efficiently and fairly.

Complaints from those who work in a joint or cross Service environment are also subject to long delays. These delays can be caused by a lack of certainty about the correct chain of command, difficulties finding a suitable investigator and a lack of confidence in those handling the complaint, particularly if the Service deciding the case is that of the person complained about. There is a feeling among many complainants that the Service simply closes ranks. Even where there is not that distrust, a complaint in that situation may be escalated because the complainant feels that the Deciding Officer does not understand the whole case context.

Poor communication

In addition to issues of timeliness, communication also remains poor. There appears to have been an increase in the number of meetings between COs and complainants but complainants and those complained about are often ill-informed about the progress of their case. Once in the

system a complaint still appears to take on a life of its own, with focus more on process than the substance of the complaint itself.

It may be counter-cultural in the Services for those in the chain of command to account for and explain their decisions to those under them. A failure to do so, however, is experienced as a failure to acknowledge the individual or the importance of their issues to them. At a time of cuts across the Armed Forces, such a lack of respect risks damaging the moral component of fighting power. The RAF has recognised this and has recommended that Deciding Officers, particularly at Level 2, should meet the complainant to give them their decision in person, before they deliver a written note of that decision. This will enable the individual to alert the Deciding Officer, if there has been a misunderstanding about the key concerns. It will also enable the Deciding Officer to explain the reasons for the decision. The RAF anticipates that although it might take slightly longer at lower levels, it should lead to significant savings by reducing the numbers of appeals.

Loss of confidence

Delay, poor communication and an over focus on process by those handling the complaint, leads to a system which erodes rather than boost confidence in the chain of command and the Services. Many of those whose cases have been ongoing for over a year have also expressed a loss of confidence in the SCC.

In many of these cases the complainant approached the SCC with a hope of an independent investigation. In some cases, individuals have decided not to pursue a complaint when it is explained to them that the SCC has no independent powers of investigation. Some welfare agencies have told us of individuals who have decided not to contact the SCC because she can only refer the complaint to the very chain of command who they allege have wronged them.

A changing system?

The Services have made some recent changes and proposed others to improve the efficiency and effectiveness of the system.

Although they have rejected proposals to centralise the Service complaints system, being unconvinced that this would improve efficiency, the Services have agreed to a number of actions designed to improve it and address areas of weakness. These include commitments to make more use of Service Complaint Panels and mediators, use more analysis of data which should be available in 2011 from the new JPA module, and the development of the lessons learned mechanisms.

The Services have all agreed proposals for a new centrally sourced pool of Harassment and Investigation Officers (HIOs), who will be available to investigate less serious complaints of bullying and harassment from Service and civil service personnel. The limited availability and use of trained HIOs and the resulting delays and poor quality of investigations, are significant factors in the lack of timeliness, escalation of complaints and lack of confidence in the system. Following a cost benefit analysis, which showed the potential savings from such an arrangement, the proposal is now awaiting MOD approval. I recommend that this be approved as quickly as possible.

During the year the Army developed a proposal, based on its work with the Equality and Human Rights Commission (EHRC) and Royal Mail in 2009, to encourage soldiers to speak out about bullying and harassment and to improve the quality and timeliness of handling complaints. They proposed a specialist unit, outside the chain of command, to whom soldiers could turn if they believed they were being mistreated. This unit would make an assessment of the potential seriousness of the allegations, commission the appropriate level of investigation and provide guidance and direction for the chain

of command in handling such complaints. However this proposal was not approved because of spending constraints. The Army has instead gone ahead to provide a limited service along these lines from within the Army's current Equality and Diversity Unit resources. Seven individuals have been trained and this pilot unit will test the feasibility and potential benefits of the model.

The Army Service Complaints Wing has also issued separate guidance to Commanding Officers to encourage a more streamlined process. This requires the CO to interview the complainant with their Assisting Officer, determine the exact issues complained about and commission a proportionate investigation to agreed terms of reference within five working days. The CO can then see if he or she has sufficient information on which to take a decision or decide that further investigation is required. The streamlining guidance also makes it clear that management action is not dependent on the continuation of a complaint and that there will be circumstances when a CO should investigate a matter brought to their attention, even if the complainant, for whatever reason, decides not to take the matter further. This attempt to provide a timely proactive response through personal communication and a commitment to putting resources into a complaint at unit level is commendable. The impact needs to be monitored to ensure that complaints are resolved by this method and not simply squashed.

The MOD is to undertake a review of complaints from Joint Commands and already has a proposal that should clarify the chain of command in all such cases, so reducing some of the delays. I have outlined to them some other issues which also need to be considered.

In anticipation of an increased number of complaints related to redundancy post SDSR, the MOD and Services have also agreed a specific mechanism for such complaints. They hope that providing a separate route will enable these to be handled more efficiently, effectively and consistently. I have made recommendations, such as the inclusion of an independent element on appeals, to enable such complaints to be dealt with fairly and without delay.

Are these changes sufficient?

I believe that these changes signal a move in the right direction. Together with those already implemented, the proposed changes seem to provide the capacity for effective oversight outside the chain of command, the provision of expert advice and the potential to spot systemic weakness. If implemented, over time the proposals for an independent cadre of HIOs may reduce delays in the handling of bullying and harassment cases and could improve the quality of investigations. The quality assurance arrangements for the HIO cadre should be extended to those investigating the most serious allegations of mistreatment. Investigators for such complaints should not include Service police, but should receive appropriate external training.

Recommendation 10.5

The quality assurance arrangements for the HIO cadre should be extended to those investigating the most serious allegations of mistreatment. Investigators of such complaints should not include Service police, but should receive appropriate external training.

The proposed changes however will not deal with what might be termed, "Service focus blindness"; an inability to view a case from outside the cultural perceptions of the Service.

Case study F

An Officer approached me regarding how she had been treated after a complaint she had made was upheld. Her original complaint had been about harassment and bullying by a former colleague. Even though her complaint had been upheld, her Commanding Officer had given her an informal warning about allowing herself to be bullied in front of junior personnel. This was felt to have been contrary to a fundamental tenet of military discipline that officers should never be seen by junior ranks to disagree with someone more senior.

Her complaint to have the informal warning withdrawn and an apology from her CO was rejected at the 2nd level on these grounds. She felt this decision undermined the outcome of her complaint by shifting the responsibility for the

unacceptable behaviour from her colleague to her. It also failed to recognise that any other course of action could have had serious consequences for her, not least a charge of insubordination had she walked away. She therefore decided to appeal to the next level.

A Service Complaint Panel with an independent member decided that whilst the provision of guidance was an appropriate course of action by her CO, the tone was censorious and negative. They accepted the Complainant's view that it had been insensitive. Her request that it be rescinded was not granted as it no longer had any currency and would not show on her record. Therefore the result she sought had been achieved. No apology was given because this was not a remedy which can be ordered as redress. The Service has however clarified its guidance on such informal warnings.

The independent members of Service Complaint Panels and the SCC's office have been recognised as making a valuable contribution in this respect. The fact that questions are asked from this independent point of view goes a long way to tackling the perception of the chain of command closing ranks against the individual; both the complainant and person complained about. The benefits of independent involvement in the Service complaints process has been recognised in other jurisdictions.

I have concluded that although the proposed changes outlined above may make some improvements to the timely handling of cases and indirectly prevent some loss of confidence, I believe that they are not sufficient. Changes are needed to the very design of the system and for more independent scrutiny.

"We have seen first hand, almost on a daily basis, through the work that has been done in the Office, how a modicum of distance, an outside perspective and a relationship of trust can defuse situations, solve problems, and reduce acrimony. Civilian oversight, if exercised well, quite simply improves not only the lives of those who are in the Canadian Forces, but also the institution itself."

Canadian Defence Ombudsman
"Overhauling Oversight: Ombudsman
White Paper" March 2005

Future direction

In the current economic and operational climate, efficiency, effectiveness and fairness remain critically important, perhaps more so than when the current system was being designed. In looking at its future direction, I have considered what changes should be made to improve the Service complaints system and the implications of this for the role of the SCC.

The Coalition Government has confirmed its support for the SCC position.

“I regard the post of Commissioner as an important safeguard... I expect you to hold us properly to account where our handling falls short and that is what you have done.”

Andrew Robathan MP, Minister for Defence Personnel, Welfare and Veterans

The Chief of the Defence Staff has made it clear that he sees the SCC as an integral part of modern defence. The issue is not therefore whether there should be an SCC but how it should operate in order to add most value to the Services and support Service personnel as part of the Armed Forces covenant.

Changes to the Service complaints system

Improving the investigative process

Concern has been expressed by many parties involved in complaint cases about the standard of investigations. Many investigations are felt to be unfocused, excessive in scope and insufficiently questioning. I have recommended that the proposals for recruiting a cadre of expert HIOs

which subject them to probationary and supervisory arrangements as part of a system of quality assurance, should be implemented as a matter of urgency. I also have recommended that these proposals be extended to those investigators used for more serious cases.

The HIO proposals have been accepted as releasing cost savings. Bringing the Equality and Diversity investigators into the same arrangements should be cost neutral at worst and potentially could release Service police for operational duties.

Some immediate changes need to be made in cases of complaints which are escalated without any investigation at command level or, if at a higher level, where there is a need for further investigation. This requires no additional expenditure. The first change is that a Deciding Officer should be identified as soon as the complaint arrives at Level 2 to be briefed on the key issues and agree the proposed handling and timescale. Secondly, if further investigation is required, no investigation should take place without the Deciding Officer, or (if at Level 3) the chair of a SCP, agreeing the terms of reference and scope of such investigation.

Recommendation 10.6

For cases escalated without investigation or where there is a need for further investigation: (a) a Deciding Officer should be identified as soon as the complaint arrives at Level 2 to be briefed on the key issues and agree the proposed handling and timescale, and (b) if further investigation is required, no investigation should take place without the Deciding Officer, or (if at Level 3) the chair of a SCP, agreeing the terms of reference and scope of such investigation.

The need for this change has already been recognised by the RN in relation to cases at Level 3. They have adopted the practice of appointing a senior officer to review the case and monitor the progress of the investigation. This process needs to be adopted in Level 2 cases in the RN for so long as cases are dealt at that level and at all levels within other Services. Failure to appoint a Deciding Officer until officials believe the case file is ready for decision has led to serious delays in a number of cases. In some, the delay has meant that the opportunity for redress has been lost.

In order to assess the effectiveness of all these changes the SCC should audit cases undertaken under the new arrangements. This will require existing resources to be augmented. The audit should take place by the end of 2011.

Recommendation 10.7

The SCC should audit cases undertaken under the new arrangements by the end of 2011.

Recommendation 10.8

The SCC's resources should be augmented to ensure effective assessment.

Simplifying the system

In my 2009 Annual Report I recommended that the MOD and Services should review the value of having three levels. The MOD response in summer 2010 indicated that they felt it was too early to do so. After three years I believe that delay is designed into the system and that the time is now right for a fundamental review of the system with a view to removing one level of appeal.

I have concluded that Level 2 appears to add little value and many cases it exacerbates matters. The view from the Services is that having three levels encourages appeals and there have been cases where complainants have been discouraged by the Services from

exercising that right. I have stepped in in cases under my oversight where they have asked complainants to give more detail than is required by regulations and guidance.

Over the last three years, the Services have consistently said to me that having two sets of guidance is confusing; for complaints of bullying and harassment and for other Service complaints. The MOD have concluded that since a significant number of bullying and harassment complaints often cross civil service and Service lines, it is important to have a unified system for dealing with all complaints. Having parallel systems for all workplace grievances, regardless of whether the individuals concerned are civilian or military, would meet both civilian and military concerns. This would still mean a complaint would be dealt with within the chain of command but would increase the options for staffing the final level of appeals.

It would also reduce delay. For civilians the minimum time for a complaint to complete all stages is between 14 weeks (if the complainant chooses a superior line manager as the person to hear an appeal) and 20 weeks (if the appeal is heard by an independent panel). The minimum for the completion of the Service complaints system is 50 weeks (assuming the minimum deadlines as set out originally in JSP831 and not the current targets set by the Services which are twice and four times as long).

The experience of the Canadian Armed Forces shows that such a move is workable. In 1998 the Canadian Government simplified a similar system to the current British model. They moved to a two stage process, with decisions taken by an initial authority, usually the Commanding Officer, and an appeal to the Chief of Defence Staff, who can delegate powers of decision making to an officer or the Defence Grievance Board. The Canadians also introduced a Defence Ombudsman.

Recommendation 10.9

The Service complaints system should be subject of a fundamental review with a view to removing one level of appeal. The review should focus on fairness as well as efficiency.

Improvements to the SCP process

Such a change would fit quite easily onto the Service complaint system. The Armed Forces Act 2006 currently gives any Service person the right to seek review by the Defence Council.⁴³ It also enables complaint cases to be referred from the chain of command to Level 3. Without primary legislation it would not seem possible to mirror the choice of appeal route which is integral to the civilian system and which, together with confidence, may be key to efficiency savings.

Efficiency must go hand in hand with fairness. Part of that fairness involves the role of the SCC as discussed below. However with choice, the current SCPs made up of two Service members, could be replaced with the senior officer in the chain of command. The removal of a level of appeal would make it important for any SCP to have an independent chair. This is increasingly standard practice in final appeal bodies in other professions. Under these new arrangements all SCPs should include an independent member and that they should always act as chair. Any additional expenditure needed to deliver this would be off-set by savings in resources from dispatching with the current Level 2 appeals. Getting cases to appeal more quickly should also reduce complexity.

SCP independent members have commented on the lack of standard processes for chairing panels. I recommend that independent members should be consulted on a new procedure for chairing SCPs. I also recommend that in Service complaints involving more than one Service or the civil service should always have a representative from each relevant Service(s) and, where appropriate, the civil service.

Recommendation 10.10

SCP independent members should be consulted on a new procedure for chairing SCPs.

Recommendation 10.11

Service complaints involving more than one Service or the civil service should have a representative from each relevant Service and, where appropriate, the civil service on the SCP.

Where the complaint is about the exercise of the duties of a member of the Service police, provision is already made for one independent member of any SCP.

I recommend that in future in such complaints, and in complaints made by members of Service police, there should be two independent members, one of whom has expertise in police professional standards.

Recommendation 10.12

Service complaints from or about the Service police should have two independent members on the SCP, one of whom should have expertise in police professional standards.

The current Armed Forces Bill includes provisions, following the judgement of the European Court of Human Rights in the Crompton case, for the membership and functions of SCPs, including the possibility of having SCPs made up of all independent members. The Court in that case was concerned that the Army Board may not have been an independent and impartial tribunal as required by the European Convention of Human Rights where civil rights were engaged. Although this defect might in some cases be remedied by the right to seek judicial review, this may not be possible, for example, where the contested matters included a question of fact. The factors considered in that judgement should form the basis for guidance as to the membership in an individual SCP.

⁴³ This can be either a Service Board or a Service Complaint Panel.

Clause 20 of the Armed Forces Bill amends the provision in the 2006 Act in relation to the delegation of the power of the Defence Council to decide if a case requires an independent member. In practice, the decision as to whether an independent member is needed is currently taken within the relevant Service. Civil servants make arrangements for one to be available. However the decision to be made at present is of a very different nature to the decision which will be required under the situation for which Clause 20 makes provision.

If Clause 20 is enacted substantially in its current form, a decision will need to be taken as to whether any case is one where civil rights are engaged; if the matter involves the special relationship between a commander and his or her people i.e. involves a military or operational judgement; and even if it does, whether the case depends on contested facts. These are not questions that should be delegated to individuals within the Service. Fairness requires that these are decisions that need to be taken with an independent external contribution. Otherwise the right under Act 6 ECHR to an independent and impartial tribunal could be confounded by the Service acting as gatekeeper to such a tribunal.

I recommend that such pre-hearing decisions should be taken by an SCP sitting with an independent member as chair. Clause 20 would need to be amended accordingly.

Recommendation 10.13

Pre-hearing decisions should be taken by an SCP sitting with an independent member as chair.

Independent members have made the distinction on the difference between a complaint case and any disciplinary action that may follow. They believe there is confusion in the advice that they have been given on cases as to what findings they should make in relation to an individual's handling of a case. Whether intended or not, the impact can be that poor handling of a case is not recognised. This is an issue that needs to be clarified.

The SCC has met the independent members annually as part of the evidence gathering exercise on which to base the Annual Report of the Service complaints system. I recommend that the relationship between the SCC and SCP independent members should be formalised with a requirement on the independent members to report annually to the SCC on their experience of the system.

Recommendation 10.14

The relationship between the SCC and SCP independent members should be formalised with the independent members required to report annually to the SCC on their experience of the system.



Changes to the role of the Service Complaints Commissioner

The Deepcut Review concluded that a Service Complaints Commissioner should have four functions:

1. **The ability to receive unresolved complaints from soldiers, or their families, about specific allegations of conduct prejudicial to their welfare.** If these have not previously been the subject of complaint to the relevant authorities, the Commissioner will want to consider why this is and whether there are compelling reasons why such a complaint could not be made.
2. **The supervision of the investigation of complaints that have been made to the authorities or to the Commissioner.** As noted above, the Review accepts that the relevant military investigation force will normally be investigating these matters, subject to existing protocols with the civilian police. The Commissioner will need to be satisfied that investigations have been thorough, fair and effective and should have the power to recommend further steps be taken where necessary and practicable.
3. **Supervising how the authorities respond to the complaint.** Where appropriate, the Commissioner should be consulted on decisions as to whether to bring disciplinary action and/or institute formal administrative action, including where it is intended that no such action is to be taken. The Commissioner should be given the opportunity to tender advice at this stage. Where the Commissioner is not satisfied with the outcome, despite the advice tendered, the Commissioner could intervene in the hearing of the complaint at the next level of redress. In an important case, the Commissioner should be able to institute legal proceedings to set aside legally flawed decisions not to prosecute.

4. **Report annually, in public, to the Minister of State for the Armed Forces on issues relating to the welfare of all soldiers, based on the evolving practical experience, complaint surveys, a programme of visits and such other means as deemed necessary or desirable to keep abreast of developments.**

The House of Commons Defence Committee, in its report on *The Duty of Care*, recommended that an independent military complaints commission be established, with the authority and capability to make recommendations which would be binding on the Armed Forces and a research capacity to examine trends that it had identified (Paragraph 423). Both the Committee and Nicholas Blake QC in the *Deepcut Review Report* placed the emphasis on promoting the effective operation of existing military systems rather than to replace them with alternative investigators or decision makers. The object was to provide independent assurance that the procedures were working as effectively as possible and systemic failings were addressed.

As a result of these key reports, the Armed Forces Act 2006 established the SCC to fulfil three roles:

- To be a channel of communication to the chain of command for Service personnel about complaints;
- To oversee the fair handling of Service complaints referred to the chain of command; and
- To provide an annual independent assessment of the efficiency, effectiveness and fairness of the system.

Over 900 people have approached the SCC in the past three years, the majority of whom did not already have a complaint in the system. Many of those have said that without the SCC they would not have felt able to make a complaint and that without SCC involvement they do not believe their complaint would have been taken seriously by the Services. In 2010 referrals from the SCC

made up nearly half of all new Service complaints. It would therefore appear that the SCC is acting as an important channel of communication to the chain of command for Service personnel about complaints.

Feedback from those advising Service personnel and from those who have used our services would confirm that view. The ability of families, friends and welfare agencies to contact the SCC would seem to be particularly beneficial for the most vulnerable.

“I am aware that a number of complaints you deal with are from clients of Combat Stress who feel that whilst in service their problems were either poorly managed or in some cases caused or aggravated by their military service. Their comments to us about the concern shown, willingness to look deeper and help provided by the SCC are always very positive. And it is precisely these qualities that have without doubt set many of them on the road to treatment and recovery.”

David Hill, Former CEO, Combat Stress

The improvements highlighted in this Annual Report indicate the value of the SCC in relation to system improvement. The general conclusion, from those consulted is that our work has led to a greater awareness of the Service complaints system. It has also led to key organisational and procedural changes, which have improved the efficiency and effectiveness of the Service complaints system. It would therefore appear that my office has fulfilled two of the three roles set out in legislation.

I would recommend that the SCC role in following up on whether lessons have been learned by the Services should be formalised.

Recommendation 10.15

The SCC's role in following up on whether lessons have been learned by the Services should be formalised.

“It is healthy for the Services to have you – for both the person who needs to pursue a grievance but also for the Chain of Command to know that how they conduct their business is open to question and scrutiny.”

Naval Families Federation

However the impact of the SCC oversight in individual cases is much less clear. Solicitors and others advising those making a complaint through my office have said that my oversight has led to some complainants being dealt with better than in those cases where I am not involved.

However they have also said that SCC overview has been patchy, that we are perceived as taking too long to get back to complainants and that our lack of resources means we cannot keep on top of individual cases. We are told that some chains of command have been deliberately slow or have put pressure on complainants to withdraw, particularly in complaints of bullying and harassment, where the complainant is going to leave the Service, not withstanding the involvement of the SCC.



The SCC visiting the Household Cavalry Mounted Regiment, October 2010

This feedback confirms our own concerns. We have not received the required updates in many cases often despite three or four attempts to chase. In some cases we have not been given decisions until after the deadline for complainants to ask for case review by a higher authority. There certainly has been overt resistance to the SCC being able to “intervene” on individual cases, as it is perceived that the SCC’s questions can be managed by relying on a lack of resource capacity to pursue any issues raised. One solicitor commented:

“There is a need for you and your team to follow up more regularly with complaints which are reported to you. At the present time it certainly appears to me that you have been ‘swamped’ with differing forms of complaints which you have received so far and other difficulties which arise because of the failure to progress complaints quickly by the tri-service authorities. It is a matter of concern to me that on occasions you, and indeed the service personnel who have made complaints, are ‘fobbed off’ by members of the chain of command and therefore complaints are unnecessarily delayed, sometimes for two or three years.”

There is also some evidence from those advising potential complainants that the delays incurred in my office dissuades complainants from contacting us.

“Whilst many of the delays are not down to you but are due to a delayed response from the Services, the perception is that a delay is a delay, no matter whose fault it is. And if that delay is perceived in advance of submitting a complaint, it may well dissuade some from using your Services.”

RAF Families Federation

The feedback on the performance of the SCC’s role leads to two key conclusions:

The SCC is under-resourced

It is clear that as regards individual cases, the SCC has only been able to act as a case reviewer, the original model put forward by the MOD and on which the provisions of the Armed Forces Act 2006 were designed to improve. The level of resources provided to the SCC and the very lengthy processes by which those resources have to be secured has undermined the effectiveness of even that role. Until the beginning of 2010 one caseworker and one temporary agency worker to deal with 69 ongoing referred cases and 289 new complaints. At the end of 2010, I had three caseworkers dealing with 220 continuing cases from 2008 and 2009 plus 434 new cases.

The Guardianship and Audit Manager, who supports my assurance role, has also been diverted from her main duties by the need to support me on very difficult cases. The average caseload per caseworker ratio, of approximately 1:200 is far in excess of that typical in other oversight bodies (approximately 1:60-70 cases) and indeed of that in the Service secretariats. Cases become increasingly complex with time. Making sense of a continuing case and asking questions designed to resolve a case without unnecessary escalation, can take one or more days of caseworker’s, (or SCC’s), time. The complexity of the Service complaints system, as well as the time taken by the Services in handling complaints, has an impact on the level of resources needed by the SCC.

I understand the constraints of the current financial and operational climate. However the lack of resource is already undermining confidence in the office of the SCC and in the Service complaints system. This hampers my ability to save the Services money, by ensuring that complaints are indeed resolved at the lowest levels, in a way that prevents escalation, including to Employment Tribunals, and prevents the loss of expensive operational resource.

It is not sufficient simply for the SCC to act as a gateway for the Service complaints system; Service personnel must feel that the fact that the SCC is overseeing their case will mean that it is dealt with properly. The value of my assessment of the system is dependent on the qualitative view I gain from individual cases. A lack of effective oversight therefore impacts on my duty to provide an annual assurance on the system.

I recommend that the SCC's office should be properly resourced and these resources should be provided in a timely manner. In order to preserve the independence, and perception of independence of the SCC from the MOD, SCC staff should automatically be recruited from across the wider Civil Service and not just from the MOD.

Recommendation 10.16

The SCC's office should be properly resourced and resources should be provided in a timely manner. SCC staff should automatically be recruited from across the wider Civil Service and not just from the MOD.

The issue is not just one of resources but also of powers

In a number of cases decided this year, a complaint has been upheld in whole or in part due to mishandling of the process. In a number of cases, errors in process have been highlighted by the SCC with the Services as part of my oversight. However my office has no power to make recommendations to remedy these errors and is unable to act if the Services do not take heed of my office's advice. The mishandling of cases causes hardship to the individuals involved, to say nothing of significant financial costs.

Having to wait years for a wrong to be rectified is unreasonable. Even more concerning are cases where the Deciding Officer has been unable to come to a decision on the matters complained about because of delay. The apologies given by the Service to complainants

in these cases ring very hollow. Importantly the Service has lost any opportunity to learn from the complaint and take preventive action for the future. The perception appears to be that once individuals have left the Service the problem has gone away; even if the alleged perpetrator is still in the forces.

Feedback from those advising complainants is that the SCC needs more powers.

"I fear you are viewed as something of a "toothless tiger". Personnel who have spoken with us about the possible need to refer their case to you have expressed significant concern about your lack of authority. They see your role as simply passing back to the chain of command to re-investigate, something the chain of command has already reached a verdict upon. They see the need for a truly independent review of their case, using external investigators, not the chain of command and that without this type of resource; you are forced to rely on an internal review. The chances of that review reaching a different conclusion are considered slim... You keep an important focus on the complaints process across the Services but in order to deliver a truly independent service, including independent investigation of cases rather than referral back to the parent Service, you would need more authority and far more resources than currently provided."

RAF Families Federation

I am told that some Service personnel have little confidence that the SCC is independent and believe that my intervention can be damaging rather than helpful. We know from some of those who do contact us that going outside to an external body is perceived in some units as being disloyal.

Some Commanding Officers and other more senior officers have expressed support for a more powerful SCC. A number have told me that they would prefer to have complaints, particularly those of bullying and harassment, investigated totally independently by the SCC. They believe that this would provide assurance to all parties of fairness and that their command would be bolstered rather than undermined by such an approach. It is also a view expressed by some former senior officers, who admit that their position has changed since leaving the Service. It is however a minority Service view.

Those outside the Services providing support to personnel appear unified in expressing a desire for the SCC to have more power to intervene:

“The close relationship that members of the services have with their chain of command can often be supportive, reassuring and helpful. On the other hand, of necessity, the role that service personnel and their seniors enjoy is a close one and it can sometimes be similar to conflicts within a family where it is difficult for those involved to see the wood for the trees. Because service personnel have to continue to work with people they may have had a grievance against in sometimes trying or dangerous conditions, it is important if the matter cannot be resolved between the parties that someone objective, who carries authority and whose judgement is trusted by the service, can interpose to take the heat out of the situation and suggest a sensible compromise.”

A solicitor of many years' experience of the Service complaints system

The feedback seems to indicate that where the SCC is able to deal with simple cases early on, is able to devote resources to a case over time and meets a responsive chain of command, it can make a difference in an individual case. Where the problem is complex, drags on for many months, where we are unable to keep tabs on the case and meet a resistant chain of command, the SCC has little impact in individual cases. There is an expectation amongst those who contact the SCC's office that I can intervene in cases to ensure they are dealt with fairly.

“The work which you have been undertaking during these last three years has been of benefit to all Service personnel but there are clear restrictions upon your role and the activities which you can undertake and which, therefore, impeded your effectiveness at various levels... As SCC you should have the right to “intervene” and you should have the ability to impose sanctions, time limits with sanctions on the respondents to the complaint and even if in some cases, upon the complainant himself/herself.”

Another solicitor of many years' experience of the Service complaints system

“There have been occasions where I have felt it would be beneficial for the Commissioner's office to have more power and perhaps be more of an Ombudsman, able to rule on cases.”

Army Families Federation

Options for improvement

Against that background and the findings in this Annual Report, I have considered a number of options for strengthening the SCC role; making it more efficient, effective and fair. These fall into four broad categories:

1. **Strengthening the oversight model**
2. **Introducing a supervisory role**
3. **Introducing the independent investigation of Service complaints or particular types of complaints**
4. **Introducing an external review of complaint cases – the Ombudsman model.**

1. Strengthened oversight model

Summary: To better target problematic cases the SCC would be provided with powers to question the Services on the investigation of specific cases, make recommendations for further action and hold them to account through a Service response guaranteed by ultimate referral to ministers. To make the authority of the SCC clear, these new powers would be put on a statutory footing.

The statistical data and qualitative feedback show the SCC plays an important role in enabling Service personnel to exercise their right to make a Service complaint. They also suggest that for the most part people approach the SCC for good reasons, where they have tried but failed to tackle the problem themselves within their chain of command, or where they feel that they are not going to be believed, taken seriously or that their complaint will be lost. Only a minority of referred cases concern complaints that are already in the system. This suggests that the SCC is fulfilling the first of the Deepcut Review's function and that this aspect should be retained.

However there is a question as to whether my office needs to spend so much time in getting sufficient information from the complainant or representative on which the SCC can

exercise the discretion to refer. Currently we do so for two reasons: to avoid putting into the system complaints that are not likely not to be accepted and to ensure that we have a good idea of the nature of the case to ensure that it is dealt with fairly. However this builds in delay.

I have concluded that it would be a more efficient use of resources and a more effective guarantor of fairness if I referred all allegations made to my office to the chain of command. The current distinction in legislation between allegations of prescribed behaviour and other complaints would need to be changed, placing the duty on the chain of command to update the SCC on progress. This need not create additional bureaucracy. The chain of command would simply add the SCC to the electronic copy list of the update they should already be providing the complainant.

Such a change would allow my office to focus its powers of review on those cases where a complaint was not accepted by the chain of command. This would make my position on potential complainants and those complained about much clearer. I would then not simply act as a gateway to the Service complaints system but also be able to ensure that the Service acts fairly in deciding whether to accept it.

This change could potentially also close two gaps.

The first concerns those who seek to make a Service complaint once they have left the Services. The Armed Forces Act 2006 states that if a complaint is not accepted, the complainant can have that decision reviewed only by making a new Service complaint. However for there to be a Service complaint, the alleged wrong must have been suffered when the person was subject to Service law and we have had an increasing number of cases from veterans who have made complaints shortly before or after discharge

from the Services. There are cases of individuals who say they did not feel confident about raising a complaint about bullying or harassment whilst they were in the Service. Although the chain of command can accept their complaint out of time, if they decide it is just and equitable to do so, if they reject it, the veteran has no right to challenge that decision, even if it appears to the Commissioner that there has been a misapplication of the rules or that the rejection is unreasonable.

This contrasts markedly with those still in the Services who have the right to appeal to a Service Board and, if their Service complaint was made after referral by the SCC, to have an independent member sit on any Service Complaint Panel to decide that appeal.

The second gap is that of vexatious complaints. There is currently no mechanism for getting an independent judgement as to whether a complaint is vexatious. It is very difficult in the interests of fairness, for the chain of command to rule such complaints vexatious. In the Service complaints system a few such cases appear to absorb disproportionate amounts of resource to the detriment of other complainants. The role and value of external independent oversight bodies to bring to a definitive end unmeritorious claims, was recognised in 2010 by the Law Commission in its report on Public Service Ombudsmen.

I recommend that the SCC's role in enabling Service personnel to make complaints be recognised; that the SCC should, with consent of the complainant, refer any complaints made to her office; and that the SCC's gate-keeping resources focus on ensuring that decisions to reject Service complaints are properly made. This would involve the Services being able to ask the SCC to make an independent decision as to whether any complaint is vexatious.

It would also enable any former Service personnel to ask the SCC to review any

decision not to accept a Service complaint. In order to realise efficiency gains, the SCC would have to have powers to make a decision on whether the complaint entered the Service complaints system.

Recommendation 10.17

The SCC should, with consent of the complainant, refer any complaint made to her office to the Services, and SCC gate-keeping resources should focus on ensuring that any decision by the Services to reject a Service complaint is properly made.

The other weakness in the current oversight model is the lack of any power to make a difference when the SCC believes that a Service complaint is not being handled properly i.e. where there are excessive delays or fundamental mistakes in the handling of the process.

The role of the SCC is to see that the system works fairly in any complaint case. Although she gains oversight by referring allegations made by a complainant, the purpose of her oversight is to see that the complaint – and all parties – are dealt with properly. Some of the resistance to effective SCC oversight appears to flow from that misconception of the SCC as the complainant's representative and that as she does not have responsibility for deciding the complaint, she does not have the full picture. However the information provided by the Service should explain the key issues, the action being taken and provide reasons for any decisions.

I believe the SCC oversight model could be strengthened by empowering the SCC, where there appears to be a defect or unreasonable delay, to be able to ask the Service and chain of command for information. This would include reasons for the alleged problems and what action is proposed to be taken. The SCC would make an assessment on the procedural aspects of the case and, if satisfied with the Service's proposed handling, would take no further action.

If the response was inadequate or there was no reply, the SCC could make a recommendation as to what action should be taken. The person to whom a recommendation was made would be required to respond within a fixed time period, accepting the recommendation or giving reasons for not doing so. If the SCC was not satisfied with the response or there was no response she could escalate the matter to the head of the Service and hence on to the Chief of the Defence Staff, and ultimately Ministers. The power of recommendation could include referral to a higher authority in instances of perceived conflict of interest or unreasonable delay. This could include a recommendation to refer the complaint to a Service Complaints Panel with independent members.

These powers would provide the SCC with more authority in relation to process in individual cases but ensure the decision making capability on the substance of a complaint remains with the Service chain of command. Introducing these powers is only possible now given that the Services have established internal oversight mechanisms, timeliness targets, Principles of Fairness for handling complaints and have a JPA module to provide reliable data.

A strengthened oversight model would allow the SCC to focus on a selected number of problematic and delayed cases. If a complaint was being handled properly by the Services, the complainant would have no need to contact the SCC. With the history of delayed cases, especially in the Army, the changes would not provide any staff savings in the SCC's office in the short term. However they should create capacity to manage the SCC's caseload more effectively and enable the SCC to fulfil the purpose for which the role was established. It would fulfil the second function proposed in the Deepcut Review Report and provide external powers that many complainants believe the SCC currently lacks.

In the light of resistance to allow the SCC to intervene in individual cases, the new powers should be put on a legislative footing.

2. Supervisory model

Summary: The SCC would be given additional powers to supervise the handling of certain types of complaint to ensure more robust quality control.

A second option is to give the SCC power to supervise the handling of certain types of complaint that the Commissioner believed were not being handled properly. This was the external oversight model operated for the police complaints system under the Police Complaints Authority, the predecessor body to the Independent Police Complaints Commission (IPCC). Although the IPCC has powers of independent investigation and its own fully trained civilian investigators for that purpose, it also has powers to manage or supervise an investigation carried out by a police force. This involves an IPCC Commissioner agreeing terms of reference for that investigation, being kept informed of the investigation and agreeing the final report.

Adopting a similar supervision model for Service complaints would keep the investigative responsibility within the chain of command but enable the SCC to provide more robust quality control. Focus would be on the fairness and proportionality of investigations, rather than the decision making process itself. The SCC would be able to agree the scope of any investigation and to oversee its quality. The police complaints experience suggests that this would strengthen complainant confidence and reduce delay and resource expenditure by enabling investigations to be conducted under tighter terms of reference.

A system for deciding which cases should be supervised could be based on the following:

- Nature and seriousness of the alleged treatment or harm

- Complaints subject to excessive delay
- Complaints the SCC assesses are not being handled in a satisfactory manner for other reasons
- Concerns about handling of previous cases within that chain of command

The introduction of supervisory powers would allow the SCC to address directly the most complex, problematic and delayed cases and would encourage their resolution. It would mean that a more robust line could be taken as to what should be investigated and would substantially reduce delay. This system also has the advantage of already being familiar to the Armed Forces, most closely fits with the Deepcut Review Report's second function and enhances the system's ability to fairly deal with the most serious and complex complaints.

However this would inevitably lead to a differentiated level of oversight for different types of complaint; and pressures on SCC staff time, explaining the limits of the role and why the SCC was not going to supervise particular complaints. The expectation and desire for independent investigation of complaints at present is not limited to the most serious cases.

The changes would require investment in additional resources in the SCC's office, particularly at a senior level. Even on current levels of performance, were the SCC to be appointed full time, I assess there would be insufficient resources to undertake the role effectively. In order to make the full efficiency and effectiveness savings, the SCC would need to be supplemented by additional senior staff of a similar calibre and experience to the current SCP independent members. A lack of any understanding of the full costs of the current system makes it difficult to provide evidence that such an investment would lead to significant savings in the future, although evidence from elsewhere suggests that this would be the impact of this model.

The greatest savings are likely to be made in cases where the SCC has oversight from the outset. This could involve the SCC being notified of certain types of complaints; for example alleged bullying, harassment or discrimination, or complaints from minority or vulnerable groups, so that a decision could be made whether to supervise or simply oversee the case under existing powers. This would parallel the situation with police complaints, where in addition to complaints to the IPCC, police forces are required to notify the IPCC of particular types of incident irrespective of whether complaint has been made or not.

Powers for the SCC to call in a complaint for supervision could build on strengthened powers of oversight, so that instead of simply making recommendations for handling, the SCC could decide to call the complaint in for supervision by her office. Similarly if the SCC, on the basis of her supervision of the investigation of the complaint, was of the view that fairness required particular membership of an SCP, she would be able to give directions to that end. This would retain the focus of the SCC on process, rather than decision making.

Such a change would also need to be put on a legislative footing.



The SCC at the Joint Services Command and Staff College, November 2010

3. Independent investigation model

Summary: The SCC would be given powers to investigate and decide certain types of complaint.

I have noted in this report the increasing expectations of those who have approached the SCC that my office will conduct an independent investigation. A number of those who provided feedback on my role questioned why this could not be the case. Some went further and said that they favoured an independent Commission with powers of investigation. These included some former senior officers.

The model they advocate would be similar to the Independent Police Complaints Commission i.e. with powers to investigate the substance of a complaint and not simply how a complaint is being investigated. It is to be noted that the Armed Forces Act 2006 already makes provision for the Defence Council to commission an independent person to investigate a Service complaint on its behalf. The power to ask the SCC to investigate certain types of complaints may therefore already exist.

However, investigating a complaint for the Defence Council, i.e. becoming part of the system, would compromise the SCC's function of holding the Defence Council to account.

Those seeking an SCC investigation wish the SCC to also have the power to make a decision on the substance of the complaint. It should be noted that these include some of those against whom a complaint has been made. They shared with some complainants a distrust of the system, as did also some who were in positions of command.

The Services and MOD more generally are of the view that dealing with complaints is an integral part of command and the CO's duty of care to his or her people and that it would be wrong for an external body to make primary decisions on Service complaints. In principle, I agree with them.

I am concerned about the potential loss of perspective over what are, in essence, workplace grievances. The complexity and potential over-legalisation of the Service complaints process may raise the status of a Service complaint to a much higher level than it should be and may be one cause for the perception of complainants as troublemakers. Taking the decision making process outside the Services runs the risk of exacerbating this further.

However, there does appear to be a fundamental difference between complaints in Service and civilian life. Service personnel are unable to go to an Employment Tribunal, except where there is an allegation of unlawful discrimination, and the nature of Service life means that workplace disputes can have greater impact on the families of Service personnel than in other employments. Having a fair efficient and effective grievance system is therefore an important part of the Armed Forces covenant.

I have reported in this and my previous Annual Reports on my serious concerns about the handling of complaints of bullying, harassment and discrimination. My concerns are shared by the independent members of the SCPs. If there is no significant improvement in the standard of handling of such cases, my view on this model may change.

It should be noted that the introduction of an independent investigation and decision model would require changes in legislation, additional and more senior staffing resources for the SCC's office.

4. Defence Ombudsman model

Summary: The SCC is changed to a Defence Ombudsman model where problem cases can be reviewed and investigated by the independent body during the Service complaints process. This system would retain the SCC's role as a direct channel for complaints and would retain the SCC's right to ask for case updates from the chain of command.

At the time of the last Armed Forces Bill, in 2005–6, there was some resistance to the concept of a Military Ombudsman as proposed by the House of Commons Defence Committee in its 'Duty of Care' report. There were fears that such a model would interfere with and undermine the duties of the chain of command. In its *'Review of the role of Public Services Ombudsmen in 2010'*, the Law Commission laid out the three key functions of an Ombudsman role:

"First, to address individual complaints. This was the reason for the establishment of the ombudsmen and will, rightly, always be at the core of their work. Public services ombudsmen can be viewed as standing at the summit of a complaints pyramid, meeting a demand for an independent review where internal mechanisms have not satisfied the complainant. This would include allowing a public body to bring to a close an unmeritorious claim by reference to an independent arbiter.

Secondly, the public services ombudsmen are in a privileged position to address systemic failures that occur across the administrative landscape. Repeat investigations into the behaviour of public bodies allow them to build up a good picture of that behaviour. The ombudsmen's recommendation and reporting functions allow them to address issues in a way not open to courts – who are reliant on individual cases.

Third, the public services ombudsmen are in a position to disseminate knowledge across governance networks. This, we suggest, is slightly different to addressing systemic failure. This is more about allowing for knowledge transfer and the spread of good practice across different parts of the administrative landscape. This can be through reporting on performance, setting out codes of practice or the creation of principles to aid and inform administrative behaviour."

The Law Commission

The SCC's current role fulfils the second role outlined above. The results of three Annual Reports and the way that my office has worked with the Services fulfil the third function; the improvements in the complaints infrastructure and awareness of good practice are a result of that knowledge transfer and consultancy role. Where the SCC role has been lacking, and where it fails to meet the expectations of complainants and those who advise them, is in what is described as an Ombudsman's primary role.

The Law Commission emphasise that an Ombudsman's primary focus is on administrative processes, the maladministration of which may have led to an individual suffering injustice. Unlike judicial review, the Ombudsman is not concerned with legality, but with fairness and due process. Ombudsmen do investigate complaints made to them but do not make final case decisions. Their role is to review and to make recommendations. They are independent of the bodies they oversee and publicly accountable. Most Ombudsmen models require the internal complaints mechanisms to be exhausted first.

Bringing defence complaints within the standard national Ombudsman is not widely acknowledged to be particularly effective.⁴⁴ Having a dedicated Ombudsman for Defence, focussed on the specific issues of Service life, is felt to be of more value to the Services. It enables the Ombudsman to exercise final powers of review and hold the Services to account more effectively because the Ombudsman understands and respects the special position of, and demands on, Service personnel and the special relationships that exist between them and the chain of command.

Even within this model, arrangements are often made for the Ombudsman to investigate some complaints even when the internal processes are still ongoing. For example, the Irish Defence Ombudsman has the ability to call in complaints for investigation that have not completed the internal processes, if she has set a time limit for completion and this has not been met. Any Ombudsman model which excludes the oversight function until the conclusion of the internal process would not be effective, fair or be able to drive through the efficiencies that are required.

The SCC is used across the Services to give Service personnel the confidence to speak when they feel mistreated. This is particularly valuable where there is alleged bullying or harassment. The key issue at present is delay. For these reasons, I recommend that a more flexible model be used; one that still encourages direct complaints to come through the SCC and that enables the SCC to intervene when clear procedural defects occur. Such a model in the UK should preserve the right of Service personnel to make a complaint through an Ombudsman and for the Ombudsman to have the right to ask for information from the Service, to set deadlines and ultimately to call the matter in for investigation, in the minority of cases

where there is a failure to correct defects or unreasonable delay in handling. The Ombudsman would have discretion as to whether a case was accepted for review. The Irish Ombudsman's experience is that in 2009 approximately 30 % of complaints do not pass the first filter.

Defence Ombudsmen exist in many countries around the world. In some, defence is one of the areas within a wider Ombudsman role. In these countries, the Ombudsmen are usually able to deal with complaints by citizens about the Armed Forces, as well as complaints by Service personnel about their treatment. In others, the ombudsmen are mandated to deal exclusively with their armed forces. Although they oversee the handling of complaints from Service personnel, a number of these ombudsmen, such as Canada, Germany and Norway, have a wider duty to report independently of Government on the welfare of Service personnel. The German Ombudsman, for instance, has in recent years raised the issue of an insufficiency of kit in Afghanistan and the impact of poor levels of fitness on operational effectiveness. The Canadian Defence Ombudsman has provided reports on Operational Stress, the treatment of Injured Reservists and the process of recruitment through initial training to tackle dropout rates of quality recruits.

The Ombudsman model could also include oversight of the other complaints mechanism within the Armed Forces; those which cover pay, housing, and medical treatment. At present, although Service personnel can use the Service complaints system on other matters, COs are unable to review any such complaint until after the specialist complaints system has been exhausted. In effect the Service complaints system acts as the oversight mechanism for these complaints, although it is likely that the chain of command has no authority to resolve the complaint or provide redress until a Service Board at Level 3. This is a most ineffective

⁴⁴ See 'Ombudsman Institutions for the Armed Forces; A Comparative Perspective' Hans Born and Aidan Wills; Geneva Centre for the Democratic Control of Armed Forces 2009.

system. It causes extreme delay and fails to deliver justice. It also leads to inconsistencies. During 2010 I identified that two of the Service Boards were taking opposite views on their powers of review of cases that were in effect appeals from specialist complaints systems. I asked that this be reviewed and a consistent approach taken.

Bringing all such cases under the remit of an Armed Forces Ombudsman would simplify the process, reduce delay, and improve consistency. As these complaints tend to be about matters that go to the heart of the Armed Forces covenant e.g. pay and allowances, access to schooling, housing and medical care, it would also bolster the Armed Forces covenant.

“Rather than having separate complaints system for welfare issues, it would simplify the systems if there were only one oversight.”

Daniel's Trust

Placing the Armed Forces Ombudsman as the ultimate authority to which an individual could appeal would also enable the Services to move to only one level of internal appeal as of right for all complaints. This seems likely to be a fairer and more effective system than current Service proposals to reduce the levels

of appeal for certain complaints which appear to contrast with the Services recognition of the dangers of separating out complaints by type.

Introducing the power of external review, as with an Ombudsman, is likely to be a much more efficient and effective use of SCC's resources, enabling focus on a much reduced and carefully selected number of cases. Its introduction would depend on the ability of the Service secretariats to exercise day to day oversight of complaints dealt with by the chain of command, to provide advice, ensure cases were dealt with in a timely manner, to monitor data, capture lessons and ensure that remedial action was taken. Secretariats, rather than an external body, also appear to be better placed to measure impact of actions arising from complaints on operational effectiveness and to step in where it appears there is a systemic weakness.

Together with the proposal for removing a level of appeal, this model would enable the Service Boards and, within the Army divisional commands, to exercise strategic oversight consistent with their other duties rather than expend time and resources in a quasi-judicial function on individual cases.

Legislation would need to clarify the limits of the Armed Forces Ombudsman role e.g. being unable to interfere with matters of command, disciplinary decisions.



Conclusion

As Commissioner my priority is to ensure the Armed Forces have the complaints system that they deserve; one that is fair, efficient and effective. For the third year running I have not been able to give Ministers and Parliament the assurance that the Service complaints system is working efficiently, effectively or fairly.

The improvements already made have been important and have the ability to deliver the infrastructure that is necessary for an efficient and effective system. The additional changes proposed by the MOD and Services will also help, if the current levels of resource in the Service central complaint secretariats are maintained. But without a simplification of the system, I do not believe that the Service complaint system can work efficiently, effectively or fairly. I believe that a simplified system with increased independent scrutiny can deliver efficiency savings and work more fairly.

Those savings however depend to a large extent on the confidence of Service personnel in the system. Redesigning the Service complaints system on the MOD civilian grievance model, providing choice as to whether an appeal is heard by the superior officer in the chain of command or by an SCP sitting with an independent member (or in certain cases with a fully independent panel) would go some way to increasing confidence in the system. However, external feedback shows that those gains could only be realised if the SCC role were to be strengthened.

Although the SCC is recognised to have made a significant difference to the system, there is consensus that I have not been able to ensure that the system works fairly. The SCC's office has to be adequately resourced and provide with those resources in a timely fashion. The SCC's powers also need to be increased.

The relative strengths and weaknesses of the four options considered above for strengthening the SCC's role and ultimately

the Service complaints system are summarised in Table 13. Strengthening the existing role by providing the SCC with adequate resources and powers to question the Services and make recommendations to correct defects or challenge delay would be a useful immediate step.

Having considered the options for change I recommend that the SCC role is changed to one of an Armed Forces Ombudsman. This will enable the chain of command to retain the primary responsibility for investigating and deciding Service complaints, recognising that dealing efficiently with Service complaints is an integral part of command and exercise of a commander's duty of care to those under command. Members of Service Boards and those with the highest operational responsibilities would no longer have to combine their primary responsibilities with sitting in judgement on individual cases. The Service Boards would still need to consider those few cases where a complaint involved a change of policy but it would still be helpful in many cases, such as those involving a claim of indirect discrimination, for an SCP with an independent member to consider the complaint and provide advice. The focus of the Service Boards would be strategic, looking to see that the system was working efficiently and supporting operational requirements. Such a change would of itself reduce delay.

The Armed Forces Ombudsman model would focus on holding the Services to account for the proper administration of their processes and the delivery of justice, ensuring that the system was functioning properly and that the most complex, delayed and problematic cases were being given priority and additional scrutiny. Having the backstop of an external appeal to the Ombudsman, albeit with a requirement to meet her criteria of a *prima facie* case of maladministration, should give Service personnel the confidence in appropriate cases, to opt for appeal by the chain of command.

Table 13: Summary of strengths and weaknesses of different oversight models

Oversight Model Function	SCC Today	+ Power to Intervene	+ Supervision	+ Independent Investigation	Armed Forces Ombudsman
Report to Parliament	✓✓	✓✓	✓✓	✓✓	✓✓
Provide advice on process	✓✓	✓✓	✓✓	✓✓	✓✓
Ensure right complaints enter system	X	✓✓	X	X	✓✓
Turn off vexatious complaints	X	✓✓	X	X	✓✓
Assure standards of investigation	X	X	✓	✓✓	✓
Ensure proper and timely handling	X	✓	✓	✓✓	✓✓
Make decision on complaint	X	X	X	✓✓	X
Assess sufficiency of response	X	✓	X	X	✓✓
Hold Services to account	✓	✓✓	✓	X	✓✓
Assure the complaints system	✓	✓	X	X	✓✓
Identify systemic weakness	✓	✓	✓	✓	✓✓
Disseminate knowledge & good practice	✓✓	✓✓	✓✓	✓✓	✓✓
Review all complaints affecting Service personnel	X	X	X	X	✓

This system would also allow the SCC to decide whether access to the Service complaints system was being unfairly denied and to rule on vexatious complaints. The Ombudsman model also would provide a more efficient and simpler way of protecting Service personnel in the exercise of their rights in relation to issues for which there are special complaints system, such as housing, education, pay, and medical treatment. These specialist systems have to be exhausted before a Service complaint can be made. The Ombudsman should cover all of the specialist internal complaint systems. This should save resources and increase the value of external oversight in an efficient and effective way.

The Ombudsman would not make final decision on any case she accepted for investigation and review but would be able to make recommendations to the Defence Council about any cases she assessed had been dealt with improperly and had resulted in injustice. Those findings, recommendations and the Defence Council response would be published (with all necessary protections of individuals) as part of the Annual Report to Ministers and Parliament.

Recommendation 10.18

The powers and remit of the SCC should be strengthened as part of the fundamental review of the Service complaints system.

Recommendation 10.19

The SCC role and title should be changed to one of an Armed Forces Ombudsman.

Recommendation 10.20

The Armed Forces Ombudsman should also include all the specialist complaints systems within the Services as part of the Armed Forces covenant.



The SCC visits the Britannia Royal Naval College, May 2010

Goals for the Service Complaints System 2014

At the beginning of 2008, I set out 7 goals which described what I thought would be the key indicators of an efficient, effective and fair Service complaints system by the beginning of 2011. For each of the following years I also suggested a series of objectives to assist the Services and the SCC make progress to achieve those goals. In my two previous Annual Reports, I made specific recommendations to improve weaknesses I found in my assessment of the system.

As a result of action taken by the Services, they now have the understanding of what is required to deliver an efficient, effective and fair system and the infrastructure to support that delivery.

My approach for the next three years is deliberately simpler and more strategic. The four goals below set out my vision of how the system should be operating by the beginning of 2014. The recommendations I make in this report should support the Services to achieve this vision. I will assess progress each year in my Annual Report, focussing particularly on the types of evidence set out under each goal.

1. 90% of all complaints from Service personnel completed in the internal system within 24 weeks

Evidence to be considered to include:

- Prioritisation at unit level to deal with complaints quickly and properly
- Good and regular communication with all parties
- Use of mediation and other informal resolution
- Comprehensive offer of Assisting Officers of good quality
- Vexatious complaints identified and turned off fairly
- Complaints heard at the appropriate level for resolution
- Good quality and proportionate investigations
- Time targets that are monitored so that Services know where the problems are
- Reasoned decisions
- Escalation rates
- Use of SCPs with independent members
- Numbers of Outstanding cases at each level by length of time in the system
- Impact of action taken by the MOD/ Services on recommendations made by the SCC

2. Significant and continued reductions in the anonymous reports of bullying, harassment, discrimination and victimisation in general and amongst the most vulnerable

Evidence to be considered to include:

- Reports in AFCAS and RTS surveys of incidence of all types of improper behaviour and number of complaints from trainees, minorities within the Services, those in joint environments and reservists working with regular personnel
- Reports in AFCAS and RTS surveys on the willingness of Service personnel to make formal and informal complaints
- Complaints about how Service personnel or members of their family have been treated because they made a complaint
- Evidence of action being taken to tackle the causes of complaints
- Evidence of learning from complaints and action being taken to tackle the causes of indirect discrimination
- Impact of action taken by the MOD/ Services on recommendations made by the SCC

3. Complaints for which there is a specialist complaints procedure, such as complaints about pay and allowances, housing, education, and medical treatment dealt with in a timely and fair manner

Evidence to include:

- Evidence that everyone involved, (whether a complainant, in the chain of command or dealing with the complaint) is aware of the correct procedures and that those procedures are being followed correctly and consistently
- Complaints decided within reasonable time limits
- Complainants informed on a regular basis and provided with reasoned decisions and information on how to appeal if they are dissatisfied
- Escalation rates
- Evidence from the Service Families Federations, SSAFA and other welfare agencies
- Impact of action taken by the MOD/Services on recommendations made by the SCC

4. The SCC judged by Services, their families, Ministers and Parliament to be playing an effective part in assuring the proper treatment of Service personnel

Evidence to be considered to include:

- Levels of awareness of the Service complaints system and of the SCC, amongst trainees, regular and reserve personnel
- Evidence that SCC's involvement in a case has led to improved treatment of Service personnel
- Evidence that SCC involvement has saved time and resources
- 360 degree feedback from MOD, Armed Forces, welfare agencies, Service personnel, Parliament and others
- Impact of action taken by the MOD/Services on recommendations made by the SCC



The SCC visiting HQ London District, October 2010

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Appendices



Appendix 1

Recommendations

- 10.1 The SCC's office should have unlimited read-only access to the JPA complaints module, and all associated complaints files. Page 27
- 10.2 The proposal for the establishment of a cadre of HIOs should be implemented without further delay. Page 34
- 10.3 The Army should reconsider its decision not to devote resources to ensuring that heavily delayed complaint cases are speedily concluded. Page 55
- 10.4 Service Chiefs should resist cutting staffing levels in their complaints secretariats before the system is judged to be operating effectively, efficiently and fairly. Page 55
- 10.5 The quality assurance arrangements for the HIO cadre should be extended to those investigating the most serious allegations of mistreatment. Investigators of such complaints should not include Service police, but should receive appropriate external training. Page 57
- 10.6 For cases escalated without investigation or where there is a need for further investigation: (a) a Deciding Officer should be identified as soon as the complaint arrives at Level 2 to be briefed on the key issues and agree the proposed handling and timescale, and (b) if further investigation is required, no investigation should take place without the Deciding Officer, or (if at Level 3) the chair of a SCP, agreeing the terms of reference and scope of such investigation. Page 59
- 10.7 The SCC should audit cases undertaken under the new arrangements by the end of 2011. Page 60
- 10.8 The SCC's resources should be augmented to ensure effective assessment. Page 60
- 10.9 The Service complaints system should be subject of a fundamental review with a view to removing one level of appeal. The review should focus on fairness as well as efficiency. Page 61
- 10.10 SCP independent members should be consulted on a new procedure for chairing SCPs. Page 61

- 10.11 Service complaints involving more than one Service or the civil service should have a representative from each relevant Service and, where appropriate, the civil service on the SCP. Page 61
- 10.12 Service complaints from or about the Service police should have two independent members on the SCP, one of whom should have expertise in police professional standards. Page 61
- 10.13 Pre-hearing decisions should be taken by an SCP sitting with an independent member as chair. Page 62
- 10.14 The relationship between the SCC and SCP independent members should be formalised with the independent members required to report annually to the SCC on their experience of the system. Page 62
- 10.15 The SCC's role in following up on whether lessons have been learned by the Services should be formalised. Page 64
- 10.16 The SCC's office should be properly resourced and resources should be provided in a timely manner. SCC staff should automatically be recruited from across the wider Civil Service and not just from the MOD. Page 66
- 10.17 The SCC should, with consent of the complainant, refer any complaint made to her office to the Services, and SCC gate-keeping resources should focus on ensuring that any decision by the Services to reject a Service complaint is properly made. Page 69
- 10.18 The powers and remit of the SCC should be strengthened as part of the fundamental review of the Service complaints system. Page 78
- 10.19 The SCC role and title should be changed to one of an Armed Forces Ombudsman. Page 78
- 10.20 The Armed Forces Ombudsman should also include all the specialist complaints systems within the Services as part of the Armed Forces covenant. Page 78

Appendix 2

Glossary

AFCAS – Armed Forces Continuous Attitudes Survey

AO – Assisting Officer

BFBS – British Forces Broadcasting Service

BIOA – British and Irish Ombudsman Association

CO – Commanding Officer

DIA – Defence Internal Audit

DIN – Defence Instructions and Notices

DITC – Defence Individual Training Capability Team

DMS – Defence Medical Services

DO – Deciding Officer

EHRC – Equality and Human Rights Commission

E&D – Equality and Diversity

HIO – Harassment Investigation Officer

JPA – Joint Personnel Administration

MOD – Ministry of Defence

Non-prescribed behaviour – These are categories of behaviour that are not prescribed by regulations. This covers a wide range of matters including pay, appraisals, promotion, discharge and medical treatment.

Prescribed behaviour – These are categories of behaviour prescribed by regulations, including bullying, harassment, discrimination, bias, dishonesty, victimisation, and other improper behaviour.

RTS – Recruit Trainee Survey

SCC – Service Complaints Commissioner

SCIT – Service Complaints Investigation Team

SCW – Service Complaints Wing (Army)

SSAFA – Soldiers, Sailors, Airmen and Families Association

Appendix 3

SCC assessment of progress by MOD/Services on the recommendations made in the 2009 Annual Report

This is the last year in which progress will be reported against these recommendations in this way.

	Recommendations for the MOD/Services	Assessment of delivery
1	Timeliness and communication	
i.	Services to review performance against targets set for 2010 for percentage of cases at each level completed within JSP deadlines, monitoring those completed within JSP deadlines and set targets for 2011.	
ii.	Services to review use of specialist equality investigation teams to ensure efficient and effective handling of cases and to capture and implement lessons learned. The Army should also share with other Services the impact of the new Service Complaints Wing and the proposals to speed up handling of complaints of bullying, harassment and discrimination.	
iii.	COs and SOs to ensure that effective communication is made with both the complainant and the person complained about, including progress reports every 30 days (for those complaints not decided within that deadline). Both should be provided with written copies of a reasoned decision.	
iv.	All Services should improve their management of Service complaints in the system and identify more speedily suitable cases for decision by Service Complaint Panels.	
2	Ownership and more proactive management at the heart of command and action to dismantle barriers to access	
i.	The requirement on COs to review monthly E&D complaints (including bullying allegations) should be extended to all formal Service complaints.	
ii.	Following the JPA upgrade, COs should also be required to provide electronic reports to Service HQ twice yearly on complaints made, upheld or not upheld and action taken as a result.	
iii.	All COs should personally meet any Service man or woman who wishes to make a formal complaint to explain how to make a complaint, find out what they want to happen as a result, ensure they are provided with an Assisting Officer, ensure they are kept updated on the progress of the complaint and explain the decision on the complaint with reasons. The Services and SCC should monitor the impact.	
iv.	All Services should take action to tackle the perception that having complaints made on a CO's watch is a sign of failure. Services need to send a signal from the top that the failure is not having a complaint made, but failing to take action to improve matters where a complaint discloses issues that need improvement.	
v.	The impact of guidance on separating parties to a complaint should be monitored to ensure that it is implemented in accordance with best employment law practice and ensures fairness and confidence in the system.	

	Recommendations for the MOD/Services	Assessment of delivery
3	Need to focus on organisational improvement as well as individual redress	
i.	The MOD and Services should meet the timetable they have set following the Defence Internal Audit Report to improve the Service complaint recording system. This will enable accurate and meaningful management information to be available to Commanding Officers, Service Boards, HQs and the SCC.	
ii.	The Services should also develop a system for identifying trends, capturing lessons and monitoring implementation, similar to that developed by DITC following reports by the Defence Committee, the Deepcut Review and by Ofsted.	
4	Lack of knowledge of SCC role	
i.	The Services and the SCC to take further action over the next year to reduce the numbers of Service men and women who do not know or are unsure about how to make a complaint and the role of the SCC.	
ii.	The SCC should be provided promptly with sufficient resources to ensure good customer service to individuals and the Services.	
5	Inconsistency of practice and lack of expertise	
i.	Service Secretariats to be resourced to monitor operation of the Service Complaints System effectively, to identify where the chain of command is less familiar with the process and to provide assistance or take remedial action as necessary.	
ii.	The review of guidance on the handling of complaints to explore how best to eliminate the confusion that arises by having two sets of guidance for E&D and other complaints.	
iii.	MOD and Services should develop a statement of Principles of Fairness, in consultation with SCC, as speedily as possible and disseminate this as part of the revised JSP Guidance.	
iv.	Services should work together to review whether there is any systemic weakness in the systems of sanctions against unacceptable behaviour and explore options which increase transparency and fairness to all.	
v.	MOD and Services should reconsider the policy and practice on the validity and use of a contested appraisal report, with a view to achieving consistency of practice across the Services and to minimise disadvantage to parties to a complaint of unacceptable behaviour in connection with that report.	
6	Difficulties with complaints that cross command boundaries	
i.	As part of their monitoring role, Service Secretariats should review the handling of complaints which arise outside of the scope of the chain of command and feed any lessons arising into the MOD's review of JSP 831.	

Recommendations for the MOD/Services		Assessment of delivery
7	Need to gear the complaints system around lowest appropriate levels	
i.	Service Secretariats to provide and monitor statistics on numbers of cases decided at each level; to review complaints taken to levels two and three to identify which cases could have been decided at level one and the reasons why they were not; and to implement lessons learned.	
ii.	As part of the Review of JSP 831, Service Secretariats and the MOD to review procedures for identifying and fast tracking complaints which cannot be resolved at level one, for whatever reason, and to consider what further action needs to be taken, if any, on complaints in mixed Service/Service and civilian environments.	
8	Improve the handling of complaints of bullying, harassment and discrimination	
i.	MOD and Services should reconsider the system for investigating complaints of bullying, harassment and discrimination in 2010.	
ii.	As part of this review, MOD and Services should review very carefully the value added by having three levels of decision. They should develop proposals, in consultation with the SCC, for ensuring that a final internal decision is made within six months on all complaints on which a complaint could be made to an Employment Tribunal.	
iii.	Service Secretariats should review and share their experience of SCPs sitting with independent members, consulting and taking into full account the views of those Panel members, with a view to developing best practice and a consistent approach.	
iv.	MOD and Service should take appropriate action following their review of the guidance on the correct burden of proof and disseminate any changes very carefully and clearly.	
v.	All Services should consider very carefully the findings of the MOD 2009 Sexual Harassment Survey in the context of their handling of Service Complaints. The RAF and RN should also consider the findings in developing action following their projects with the EHRC and share that work with the Army.	

Appendix 4

Distribution of Servicemen and Servicewomen in the Regular Forces 2008–2010

Service	2008	2009	2010
Naval Services			
Male	90.5 %	90.4 %	90.4 %
Female	9.5 %	9.6 %	9.6 %
Army			
Male	92.2 %	92.2 %	92.1 %
Female	7.8 %	7.8 %	7.9 %
RAF			
Male	86.8 %	86.5 %	86.3 %
Female	13.2 %	13.5 %	13.7 %

Appendix 5

SCC referrals and new Service complaints

	RN	Army	RAF
Percentage of new Service complaints which were SCC referrals ⁴⁵	N/S	56 %	34 %
Number of referrals by SCC about existing complaints	N/S	9	5
Numbers of referrals by SCC in 2009 which were about existing complaints	3 (Level 2 & 3 only)	30	5 ⁴⁶

⁴⁵ Table 2.7 UK Defence Statistics Strength of Regular Forces by Service and Sex taken at 1 April each year – Published by Defence Analytical Services Agency.

⁴⁶ The SCC was informed by the RAF during the preparation of this Annual Report that the figures that they provided for 2009 were wrong. SCC referrals during 2009 to the RAF about complaints already in the system numbered 5 and not 78 as reported in the 2009 Annual Report.

Appendix 6

Service complaints by type and Service 2010⁴⁷

Service	RN			Army			RAF		
Level	1 ⁴⁸	2	3	1	2	3	1	2	3
Harassment	N/S	8	6	17	0		30		1
Sexual Harassment	N/S	0	0	5	0	1	1		
Sexual Orientation Harassment	N/S	0	0	0			0		
Racial Harassment	N/S	0	0	3			1		
Religious Harassment	N/S	0	0	0			0		
Discrimination	N/S	12	9	17			11	6	4
Sexual Discrimination	N/S	3	2	4			3		1
Sexual Orientation Discrimination	N/S	0	0	0			0		
Racial Discrimination	N/S	0	2	9	1		0	1	
Religious Discrimination	N/S	0	0	0			0		
Bullying	N/S	5	8	83			25	2	4
Improper Behaviour (including dishonesty & bias)	N/S	8	6	4			15	3	1
Victimisation	N/S	5	1	5		10	10	6	1
Terms & Conditions of service (including career & reports)	N/S	71	23	157	16	67	70	20	15
Pay and Allowances	N/S	37	7	32	1	17	23	9	7
Medical & Dental	N/S	10	0	11	3	3	13	3	3
Total	N/S	158	64	347	21	98	196	50	37

⁴⁷ A complaint may contain one or more allegation.

⁴⁸ The RN do not have complete data for the full year for Level 1 so this data has not been included.

Appendix 7

Places visited by the Commissioner in 2010

Royal Navy

Royal Navy Commanding Officers' Designate Course, HMS Collingwood, **February, June and October 2010**

Director Naval Legal Services' Termly Update, Royal Naval Command Headquarters, Portsmouth, **March 2010**

Britannia Royal Naval College, Dartmouth, **May 2010**

Naval Service Complaint Organisational Learning CIE Day, Portsmouth, **July 2010**

Maritime Warfare School, HMS Collingwood, **September 2010**

HMS Dauntless, Portsmouth, **October 2010**

Army

Army Commanding Officers' Designate Course, Warminster, **June and November 2010**

Army Staff and Personnel Support Training School, Winchester, **September 2010**

Headquarters London District, London, **October 2010**

Household Cavalry Mounted Regiment, London, **October 2010**

Army Technical Foundation College, Winchester, **November 2010**

British Forces Germany, HQ UKSC, **December 2010**

7 Signal Regiment, Rheindahlen, **December 2010**

Royal Air Force

RAF Future Commanders' Study Period, Defence Academy, Shrivenham, **January, June and November 2010**

Director of Legal Services (RAF), Service Complaints Training Day, Headquarters Air Command, **January 2010**

RAF Shawbury, **June 2010**

RAF Fylingdales, **August 2010**

Headquarters Air Command, High Wycombe, **December 2010**

Tri-Service

Defence Diving School, HMNB Portsmouth, **January 2010**

Defence Medical Services Board, Lichfield, **July 2010**

Defence College of Policing & Guarding, Southwick Park, **September 2010**

Defence School of Personnel Administration, Winchester, **September 2010**

Joint Support Unit, Northwood Headquarters, **November 2010**

Advanced Command & Staff Course, Defence Academy, Shrivenham, **November 2010**

Welfare

MOD Welfare Conference, London, **September 2010**

List of invitations the Commissioner accepted

RAFA Lords & Commons Branch Dinner,
House of Lords, **February 2010**

Armed Forces Art Society's Annual Reception,
London, **July 2010**

Service Prosecuting Authority Annual
Conference and Dinner, RAF Northolt,
September 2010

Directorate of Naval Legal Services Annual
Dinner, Portsmouth, Southwick Park,
November 2010

Forces Pension Society Parliamentary Lunch,
House of Lords, **November 2010**

German Ambassador's dinner in honour of Air
Marshal Sir Stephen Dalton and Lady Dalton,
London, **December 2010**

Appendix 8

Financial Statement

Description	Cost (£,000) ⁴⁹
SCC salary ⁵⁰	81.2
SCC staff costs	228.4
Accommodation and security	74.3
IT, stationery and consumables	2.9
Travel and subsistence	2.7
External communications and media support	87.6
Annual report production	10.7
Independent legal advice	2.7
Stakeholder event	0.7
Training and professional membership fees	0.4
Total	491.6

⁴⁹ Excluding VAT.

⁵⁰ The Service Complaints Commissioner is a statutory fee based appointment. It is not subject to superannuation.

Annual Report 2010 – Erratum

On 22 March 2011 the MOD published revisions to some tables in the AFCAS 2009 report originally published on 5 May 2010. The revisions to AFCAS 2009 figures require one change of substance and one slight change of emphasis to the SCC's Annual Report for 2010.

The revised AFCAS 2009 figures do not show the previously reported increases in reports of experience of discrimination and harassment on the grounds of gender and sexual orientation, and to a lesser extent race, class and for other reasons in the Royal Navy (see **pages 16, 18 and 45** of the Annual Report). The revised figures show a small decrease since 2007 in RN officers who reported experience of discrimination on grounds of social background. They also remove the previously reported increase in reports of experience of discrimination on the grounds of gender in the RAF (see **page 18**), and discrimination for other reasons across all Services (see **page 16**). The revised figures show no other significant changes from previous years reports of such behaviours in these Services. They do show some falls in such reports in the Army.

The revisions to AFCAS 2009 do not affect the SCC's conclusion that the overall levels of discrimination, harassment and bullying appear to be falling.

The revised AFCAS 2009 figures make some changes to the frequency with which particular reasons for not making a formal complaint are cited. The revisions mean that the three most frequently cited reasons are mentioned by just under half, rather than just over half, of those respondents who answered these questions (see **page 42**). There were no increases in the frequency of citing these reasons, as reported originally in AFCAS 2009. Nor was there an increase in the reason that the matter was too minor for a formal complaint to be made (see **pages 17 and 42**).

The revised AFCAS 2009 report is available on the MOD's website.