

Service
Complaints
Commissioner
Annual Report 2012



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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 very disappointed that, for the fifth year running, I am still unable to say that the Service complaints system is working efficiently, effectively or fairly. This is unacceptable.

Two years ago I reported that the system was too complex and too resource intensive. The MOD's Review, which reported in 2012, confirmed my assessment about delay but rejected proposals for simplifying the system to reduce delay and increase confidence.

The information provided in this Annual Report raises serious questions as to whether the modest changes that have been agreed, including a tighter time limit and a small increase in the Service Complaints Commissioner's (SCC) powers of oversight in individual cases, will be sufficient to tackle delay and regain confidence in the chain of command, which is essential to Service life and operational effectiveness.

Despite deciding more cases in 2012 than in previous years, serious delays remain in the Army and RAF and backlogs in both Services were greater at the end of the year than at the start. The Navy has changed the way it deals with Service complaints, focussing on resolution, admitting mistakes and seeking to rectify problems and the causes of those problems as speedily as possible. They have also diverted more resources to complaints. Sustainability remains a concern.

However, confidence in the system is also a key issue. The 2012 Armed Forces Continuous Attitude Survey (AFCAS) showed the Royal Navy having the highest percentage of anonymous reports of bullying, harassment and discrimination and an increase in such reports by Officers. Yet the numbers of formal and informal complaints made about such treatment dropped significantly. Fear of adverse consequences is given by over half of those badly treated as a reason for not making a complaint.

Many complainants, those complained about and those who decide complaints, have raised concerns with me about the complexity and fairness of the system, as illustrated in the case studies and comments quoted in this report. Evidence to the House of Commons Defence Committee, as part of its enquiry in 2012 into the work

of the SCC, also suggested some loss of confidence in my office, due to lack of powers to independently investigate complaints of bullying or harassment by the chain of command. The data in this Report seem to support those views. Whilst the numbers of RAF Service complaints more than doubled in 2012, (and complaints of bullying trebled) the numbers of RAF personnel seeking SCC oversight increased only slightly. In 2012 RAF personnel made the lowest use of the SCC's services, having previously been proportionately the highest users.

Over the last year experience outside the Armed Forces has highlighted the importance of confidence amongst those who are abused, or who witness wrongdoing, that they will be listened to if they speak out and action will be taken to protect them and prevent further harm. It appears that in all three Services, there are concerns about how complaints about bullying, harassment and discrimination are handled and calls for more effective oversight of the Service complaints system.

In autumn 2012, Ministers rejected the recommendation I made for an Armed Forces Ombudsman. I believe that that was a missed opportunity to simplify the system, to regain confidence of Service personnel and to make best use of limited resources. It is also out of step with your vision for the MOD to be modern, innovative and efficient.

I remain firmly of the view that an Armed Forces Ombudsman is needed, as part of the Armed Forces Covenant, to provide Service personnel, their families and the public with confidence that those who put their lives on the line will be treated properly. My view is endorsed by the House of Commons Defence Committee's Report on my work. An Ombudsman would not undermine but strengthen the chain of command, for the reasons set out in this report. I ask that this proposal be revisited urgently.

Dr Susan Atkins

Service Complaints Commissioner for the Armed Forces

Executive summary

1. After 5 years of operation, the Service complaints system is still not working efficiently, effectively and fairly. Sometimes it provides a swift and easy to use means of resolving problems. The more common experience is of a slow and cumbersome process, which fails to re-gain the trust of the individuals concerned and has an avoidable, often significant, cost to the individuals themselves, to their families and to the operational effectiveness of the Armed Forces. Complainants, and those about whom a complaint has been made, say that the Services focus on process and lose sight of the individuals under their command. They call for a change from process to justice. (page 12; Formal case studies B, E, F, G and H)
2. The numbers of people contacting the Service Complaints Commissioner (SCC) continues to rise steadily. Contacts in general and about matters that could be a Service complaint have trebled since the SCC's office was established in January 2008. In 2012 the SCC received 572 potential Service complaints (out of 646 contacts). Most were from Army personnel (379), from Warrant Officers and NCOs (45 %) and about some form of improper behaviour. The SCC referred 85 % of potential Service complaints to the chain of command. The most common reason for not referring a matter was that it was resolved before referral. (pages 23-26)
3. MOD's Defence Internal Auditors (DIA) audited the JPA system for recording Service complaint data in 2012 but could give no assurance as to the accuracy of the Services' complaints data. Data from the Services in this report is provided with that caveat. This is of great concern. DIA found that unreliable data and a lack of incentives/penalties with regard to time targets undermined effective management by the Services of Service complaints and better identification of areas for improvement. A third audit is to be conducted in 2013. (page 29)
4. The majority of all Service complaints are made by Servicemen, who in 2012 made up 90% of the Regular Armed Forces. However the data on Service complaints suggest that Servicewomen in all three Services are more likely than Servicemen to complain about bullying, harassment, discrimination and other improper behaviour; and that Servicewomen in the Royal Navy and Army are more likely than Servicemen to seek the protection of the SCC's oversight of such complaints. MOD research suggests that Servicewomen may be more willing to make Service complaints about improper treatment than Servicemen but may also more frequently be subjected to such treatment. (pages 29-32)
5. The Naval Service has greatly improved its efficiency and effectiveness in handling Service complaints by adopting a new approach focussed on resolution. It appears to be in a strong position to meet the new 24 week time target. (pages 33-35) However the majority of Naval Service complaints are about personnel administration. The Naval Service has seen a significant reduction in numbers of formal and informal complaints about improper behaviour, although the Royal Navy has the highest levels in the Armed Forces Continuous Attitude Survey (AFCAS) of anonymous reports of incidents of bullying, harassment and discrimination. The reasons are not clear and should be investigated. A gender analysis should be part of this research. (page 48)
6. Despite the Army increasing its rate of decision making and seeking to streamline its handling of appeals, backlogs at the end of the year were greater than in 2011. Delay is still a serious issue, affecting efficiency, effectiveness and fairness. At the end of 2012 the Army had 430 cases which had been in the system for over 24 weeks, only 77 of them made in 2012. It is likely that the Army will struggle to meet the new 24 week target without significant changes in practice. Where Army complaints have been decided by Commanding Officers (COs) within time, the appeal rate has dropped significantly. However the data raises doubts as to how far the current system enables COs to handle Service complaints made by their people in an expeditious manner. The Army is currently reviewing the way it handles Service complaints. (pages 35-38)

7. The Army's Bullying and Harassment Helpline appears to be resolving more complaints about such behaviour informally and may be creating more confidence for those who have suffered serious bullying to make a Service complaint. Whilst the AFCAS survey does not indicate that bullying is increasing in the Army, more Service complaints about serious incidents appear to be being made. These have exposed deficiencies in the current systems and processes to tackle such behaviour and protect soldiers from significant harm. The Army has agreed to undertake a review during 2013, with independent assistance, to improve the handling of such cases. (page 38 and case study I)
8. **The numbers of Service complaints made to the RAF chain of command more than doubled in 2012 and the numbers of complaints about bullying trebled. (Contacts to the SCC from RAF personnel did not increase at the same rate). Delay continued to be a problem in the RAF, particularly at Unit level, and backlogs increased.** In October the RAF changed the way Service complaints were handled, empowering COs to make decisions more quickly. (pages 38-39)
9. **Between a fifth and a half of Service complaints were upheld in whole or in part, depending on Service and level. All Services made increasing use of informal resolution and rates of appeals fell in the RAF and in the Army (from COs' decisions).** This may suggest an improvement in handling and the quality of decision making, although the low percentages decided in these Services may be a factor, as may delay (some complainants saying they have given up when the time for the redress they sought has passed). (pages 39-40)
10. **Users of the complaints system believe that delay by the chain of command is unfair to those bringing complaints and those complained about, fails to protect Service personnel and undermines confidence in the chain of command.** (page 42)
11. **At the end of their Review of the Service complaints system, the MOD and Services rejected the SCC's recommendations for simplification of the system and for an Armed Forces Ombudsman. They agreed a new single time target of 24 weeks for the resolution of all new Service complaints, wherever and however they are resolved.** They also agreed to consider ways to encourage more informal resolution and avoid spurious appeals. A new system for SCC oversight was agreed from 1 January 2013, requiring the Services to inform the SCC of all cases which are likely to exceed (yellow flag) or have exceeded (red flag) the 24 week time limit. If the SCC is not satisfied with explanations or proposed action, she may report the case to the Secretary of State with recommendations. She may also make such a report if she believes there has been maladministration in the handling of a Service complaint. (pages 45-46)
12. **Whilst welcoming these developments, the SCC does not believe they are sufficient. Nor is she optimistic about the Services' ability to meet the new timeline under the current complex system, which is inefficient and too resource hungry.** The review of performance against the new time target in 2013 should include an assessment of costs. (page 44)
13. **The gap between incidence of bullying and other improper behaviour and levels of complaints about such behaviour has reduced only slightly.** The overall trend of anonymous reports in the Armed Forces Continuous Attitude Survey (AFCAS) remains downward, (with less than one in ten Service personnel reporting they have been the subject of bullying, harassment or discrimination). However there are reported increases for Officers in the Royal Navy and Army. Overall there has been no change in the percentages making a Service complaint, (less than one in ten of those wrongly treated), although the rate differs by Service. Data from the Services of actual Service complaints and informal complaints during 2012 confirms the trends reported in AFCAS. Naval personnel appear to be making fewer Service or informal complaints about wrongful treatment; Army personnel are making fewer Service complaints but more informal complaints; RAF personnel are making more of both types of complaint. Fear of adverse impact at work or on one's career is given by over half as the reason for not making a complaint, as is a view that the chain of command would do nothing. (page 47 and case study C)

- 14. The SCC has no evidence that complaints that are subject to specialist complaints system are being dealt with in a more timely manner.** The SCC makes recommendations with regard to improvements in the handling of complaints about pay and allowances, redundancy and medical treatment. There needs to be a whistleblower scheme, particularly for Service personnel who have professional responsibilities which may conflict with obedience to the chain of command. (pages 51-52)
- 15. The role and work of the SCC's office is highly valued by Ministers, Service Chiefs and some Service personnel and their families who contact her. However others report that the SCC is viewed as a "toothless tiger" and would wish the SCC to have powers of independent investigation.** A common theme in comments made in 2012 to the SCC, to the House of Commons Defence Committee (HCDC) and in the media, was a distrust of the chain of command and a perception of closing of ranks. The SCC is most concerned at the apparent erosion in confidence in the chain of command, which she believes is essential to operational effectiveness and at the heart of military life. (page 55)

- 16. The SCC still believes that an Armed Forces Ombudsman is required, to support simplification of the Service complaints system, operational effectiveness and the delivery of justice. Her view has been endorsed unequivocally by the House of Commons Defence Committee in their report on the work of the SCC.** An Ombudsman would bolster confidence in the chain of command, and enable complaints about services provided to Service personnel and complaints by the families of deceased Service personnel to be handled more efficiently and effectively. An Ombudsman would better promote continuous improvement through the use of thematic reviews and reports. The MOD and Services should consult the SCC on the best model for a UK Armed Forces Ombudsman, based on recognised principles and best practice, nationally and internationally. (pages 55-58)

2012 Recommendations

Recommendation 12.1 – The third DIA audit should check the proper use of the JPA module and that it supports the recording of informal complaints to secure efficiency savings. The audit should also include use of the new Management Information tool, which provides a time and resource efficient means for production of good management information.

Recommendation 12.2 – Each Service should analyse its data on formal Service complaints and informal complaints, scrutinise the subject matter of those complaints, together with any other Service specific information and consider what action should be taken to ensure that all Service personnel, regardless of their gender, are treated with respect throughout their career.

Recommendation 12.3 – The Services should consider with the SCC and MOD, whether and how data could be provided by ethnicity for 2013.

Recommendation 12.4 – The MOD and Services should find a resource efficient way to provide complete data on Assisting Officers for 2013.

Recommendation 12.5 – The third DIA audit should also check the timing of the offer of an AO, to ensure that AOs are offered before a complainant formalises a Service complaint; and as part of their process of checking the point at which complaints are recorded.

Recommendation 12.6 – The role of the AO should be reviewed as recommended in 2011, with the provision of better guidance and/or training.

Recommendation 12.7 – The Services should provide the SCC with a full report on their use of fee earning HIOs in 2012 and 2013. This should include data on how many have been used, how quickly they were appointed, costs, an end user assessment of the quality of investigations and the impact on timeliness of handling Service complaints.

Recommendation 12.8 – The review by the MOD, Services and SCC of the new 24 week time target should include an assessment of the cost of the complaints system.

Recommendation 12.9 – The MOD, Services and SPVA should consider the interface between the pay complaints and Service complaint system as part of and following the SPVA review. They should also consider how the establishment of an Armed Forces Ombudsman might simplify and speed up resolution of such complaints, particularly where large numbers of individuals are involved.

Recommendation 12.10 – All Service complainants alleging unfair discharge, including unfair selection for redundancy, should have the option of seeking an independent scrutiny of their complaint, whether by the inclusion of an independent member of a Service Complaint Panel or by an Armed Forces Ombudsman.

Recommendation 12.11 – The Defence Medical Service should establish a provision for whistleblowers in the new Defence Medical Services complaints policy. This should also be considered for Service lawyers and Service police. These policies could be considered in conjunction with an Armed Forces Ombudsman.

Recommendation 12.12 – The RAF should adopt the Army's best practice of mentioning the SCC on every recruit training course and welfare literature; and consider how to reach RAF personnel with such information over the next year.

Recommendation 12.13 – The MOD should reconsider their decision and include a mention of the SCC in the RTS for 2013.

Recommendation 12.14 – The powers of an Armed Forces Ombudsman should include complaints by families of Service personnel about how the Service person was treated whilst in the Services.

Recommendation 12.15 – An Armed Forces Ombudsman should be established as part of the Armed Forces Covenant and the MOD should consult on the powers and resources of the Ombudsman to best serve the UK Armed Forces.

This chapter explains:

- what is a Service complaint;
- the function of the Service complaints system; and
- how it has worked in practice.

Summaries of some cases concluded in 2012:

- highlight some of the difficulties faced by Service personnel in bringing Service complaints; and
- show how the system needs to be improved so that it can work efficiently effectively and fairly.

What is a Service complaint?

A Service complaint is in essence a workplace grievance. Any member of the Armed Forces who is currently serving or has served, whether in the regular Services or the reserve, can make a Service complaint about how they believe they have been wronged in their Service life.

This can include treatment by work colleagues and line management, including any actions taken in respect of poor work performance, conditions of work and the delivery of personnel services, such as pay and allowances.

Because of the nature of Service life, some of the matters which fall under the scope of a Service complaint include matters that would not usually be included in an equivalent civilian grievance scheme, such as the provision of medical care or accommodation. With one exception, Service complaints can also be made about the actions of the Service police, in the same way that members of the public can make complaints about the actions of members of civilian police forces in the UK. Victims can also bring complaints, for example if they believe the harm to them has not been taken seriously by the Police or chain of command.

Certain matters cannot be the subject of a Service complaint. These include decisions made as part of the Service Justice system i.e. decisions made by the Service police or Service Prosecutor to charge an individual with a Service disciplinary offence (the equivalent to a criminal offence), or decisions made by a Commanding Officer or Court Martial on the offence or sentence.

Complaints about the administration of Service pensions but not pensions policy are also excluded. Such complaints have a separate complaints system with an ultimate appeal to the Pensions Ombudsman.

The function of the Service complaints system

The Service complaints system is the main way in which Service personnel can raise their concerns at work and have any problems resolved. A Service complaint is usually made to the Serviceman's or Servicewoman's line manager in the chain of command. Many problems can be resolved informally, not least to enable those involved to get back to focussing on their work, rather than being distracted by their problem.

Informal resolution is not appropriate for some complaints, for example because of the seriousness of the allegation or the potentially widespread impact of the problem raised. Service personnel do not enjoy the same protections as other employees, such as having a recognised representative body to whom they can turn if, for example, there has been a mistake on a pay matter. Some mistakes may affect large groups of individuals. Service personnel have no access to Employment Tribunals (ETs) if they believe that they have been unfairly dismissed or unfairly selected for redundancy. They can make a claim at an ET about unlawful discrimination which, in the case of Service personnel, does not include discrimination on the grounds of disability or age.

The Service complaints system therefore seeks to provide an alternative route for service personnel on such matters. A Service complaint can only be about the wrong alleged to have been done to the complainant. It provides no mechanism for 'whistleblowers' who believe there is wrongdoing to others.

Where, for any reason, members of the Services lack the confidence to make a Service complaint directly to their chain of command, or have concerns that a Service complaint already in the system is not being handled properly, they can contact the Service

Complaints Commissioner (SCC) who can take oversight of their complaint. The SCC cannot investigate or intervene in the decision making process on a Service complaint. Changes have been made in 2013 to strengthen her ability to hold the Services to account on individual cases.

The SCC has to make an annual assessment, on the basis of her oversight of Service complaints and other information, as to whether the Service complaints system is working efficiently, effectively or fairly. She has a duty to report on her conclusions annually to Ministers and Parliament.

How Service complaints system has worked in practice

As will be shown in the Chapter 3, the Service complaints system in practice sometimes provides a swift and easy to use means of resolving problems. The more common experience is of a slow and cumbersome process, which fails to re-gain the trust of the individuals concerned.

This has an avoidable and often significant cost to the individuals themselves, to their families and to the operational effectiveness of the Service, for example because of ill-health or premature loss of expensive and expert personnel in shortage areas.

Feedback to the SCC at the end of a case, even when a complaint has been upheld, is that the Services have focussed on process and lost sight of the individuals under their command. Such comments are also made by those about whom a complaint has been made, increasing numbers of whom contacted the SCC in 2012.

They call for a change from process to justice. Some of their cases are given below.



Case study A – Serious delay in handling; focus on process over common sense; unfair application of postings process only rectified after individual had left the Service

In 2010, Acting Chief Petty Officer (CPO) contacted my office to make a Service complaint concerning posting issues and having to revert to Petty Officer. He had begun working as an Acting CPO in November 2008 and had been selected for promotion to CPO in October 2009 with a common promotion date of March 2011.

However, in March 2010 he was told about a non-preference draft to a ship on which he did not want to serve. He declined it. As a result of the way his preferences appeared to have been ignored (for no good reason), submitted his notice to leave the Service. The CPO was subsequently deselected for promotion and his assignment order was cancelled. In addition, and despite money being invested into his training and the fact that he was now fully trained, he was not allowed to continue as an acting CPO in his current department. He also then received a second non-preference draft to a posting to which he did not wish to move.

The CPO believed that, despite his current department wishing him to remain there as Acting CPO, he was purposefully reverted back to PO by the Navy, even though the role remained the same. He also felt unfairly punished for submitting his notice. The whole episode was extremely stressful for him and also for his family.

The SCC referred the case and he made a Service complaint. Because of the nature of the complaint it had to be referred to Fleet HQ (Level 2) for decision. However because he was based at an RAF base when he made the Service complaint, and the Service view was that it had to be handled first by his Commanding Officer (CO), it took over a year for the complaint to reach the Navy Deciding Officer. The Level 2 decision was not made before the Complainant left the Service.

The Deciding Officer (DO) partly upheld the complaint. He concluded that the Naval Careers Manager did not act harshly in assigning the CPO to a non-preference draft. However the removal of the Acting rank had been inappropriate and as a result, the DO awarded him the requisite back pay.

SCC comment: The Navy has made changes to the structure and staffing of the Naval Careers management, including upgrading the rank of some posts and ensuring a single point of responsibility. This should minimise the risks of policy being mis-applied as in this case.

However structural changes on their own may not be sufficient. Many complainants from the Navy refer to a culture which is resistant to admitting mistakes and victimises those who challenge wrong decisions. They also feel that the chain of command sticks together.

In this case the complainant wrote:

“My complaint was not about receiving the first non-preference draft, this is part of the service, but I did ask that I be given the weekend to talk to my family about it. The Naval Careers Manager did not give me the weekend to speak to my family; he sent it the same day.

I believe it was a deliberate act to remove me from a CPO post to a PO post. The Drafting Officer wanted to take my rate from me, and only agreed to let me stay in my current job as long as I was reverted to a PO. I was offered PO where I was currently working or a move to HMS Raleigh as a PO, nothing else was on offer. My Commanding Officer made no attempt to fight my corner for as long as he kept me in my current post it did not matter to him whether I was a PO or a CPO.”

The handling of Service complaints from joint environments remains a cause of concern. In this case it took too long for the Services to realise that the complaint could only be resolved by the Navy. Unfortunately, the case suffered from the delays in handling of RAF cases, due to the mandatory involvement of RAF lawyers and shortages in legal staff. The RAF made changes to their internal procedures in October 2012 which should mitigate the risk of similar delays going forward.

However all Services need to develop the ability in the Single Service secretariats to identify those cases where strict adherence to process is likely to cause delay/injustice and be swifter in handling complaints in a common sense and practical way to bring about resolution.

Case study B – Delay and selection for promotion

A SNCO contacted my office in 2010 seeking my oversight of a Service complaint she had already submitted. She was extremely concerned about the length of time the complaint was taking as the redress she was seeking was time critical.

The SNCO was selected in December 2008 by the Final Selection Board (FSB) to be commissioned as an Officer. Her attendance at Officer Training was deferred until the end of 2011, due to difficulties in identifying a suitable replacement for her. The delay not only disadvantaged her against her colleagues who had come off the same board and went to Officer Training in 2009. It would also impact on her future promotion prospects as an Officer beyond SO3. She alleged that there had also been an error made in the selection process and the order of merit.

I was most concerned that the Level 2 Deciding Officer (DO) had not had sight of the Service complaint. I had noted in my previous Annual Reports the adverse impact of the practice for a Level 2 DO to be appointed only when the complaint was deemed by the Level 2 caseworkers to be ready for decision. This meant that the person who was to decide the complaint was unaware of the detrimental impact of delay in deciding it and of the risk that further delay would cause irremediable harm to the SNCO's career as an Officer. I therefore contacted the Service to raise my concerns.

The case was then prioritised for decision and a DO appointed.

In his Level 2 decision letter, the DO decided that the SNCO might have suffered detriment from the selection process in that a candidate with lesser education qualifications was placed higher in the order of merit for promotion. He also concluded that, whether or not she had been wronged by the other candidate being called to the Board, she had been wronged in being held in her SNCO post. After selection for promotion, the SNCO had a legitimate expectation of achieving promotion to Officer in 2010, which had been thwarted. The delay was also detrimental to her future career prospects. He therefore upheld her complaint, directed that she be made available to attend the next Officer Training course and her seniority date to be backdated to 2010.

The DO also highlighted lessons regarding the selection process at FSB and in terms of handling her complaint. There was a real need to improve the “cradle to grave” management of complaints and to make one senior Officer responsible for the process to allow better oversight and to introduce a greater degree of legal rigour.

The SNCO appealed the element of the Level 2 decision backdating her seniority to 2010 stating that the redress she wanted was for her seniority to be backdated to Oct 2009 which would put her on a par with other successful candidates. Her appeal was upheld by an SCP in 2012.

In her response to the SCC’s request for feedback at the close of her case, the SNCO, now a Commissioned Officer, explained very articulately the stresses on the individual and family of making a Service complaint, the subtle (and not so subtle) pressures to dissuade Service personnel from doing so and the need for the SCC to have more powers.

SCC comment: The Navy reviewed the FSB procedures following the SCP decision in this case to ensure that there was proper oversight of the selection system particularly regarding eligibility (including educational qualifications) and the Recording Authority provided secretariat services to the selection board.

The Navy has changed the way Service complaints are handled, giving the Commodore/Director of Naval Legal Services personal responsibility for Service complaints. The results of these changes, including the triaging of new cases, were reported in the 2011 and 2012 Annual Reports. Defects of process are being spotted sooner and many Service complaints resolved before decision. In 2011, 78 % of cases at Level 2 were upheld in whole or in part. In 2012, no cases decided at Level 2 were appealed to Level 3.

The Navy has also greatly improved the timeliness of its decisions on Service complaints. Cases like this, that took nearly two years to be decided and the wrong redressed, should now be a thing of the past.

I am less confident that some of the other difficulties this complainant experienced have been eradicated.

The attitudes encountered in this case, that bringing a Service complaint will be detrimental to a Service career, is widespread. A Service complaint can be seen as a challenge to the authority of the chain of command – which of course is akin to an act of insubordination punishable by disciplinary action. The pressures that this can bring can result in such great strain that the complainant’s physical and mental health can be affected.

The complainant found delays by the Services in handling her complaint, whilst at the same time insisting on strict timelines for her responses very stressful. Whether intended or not such disparity can re-enforce a sense of powerlessness and subservience.

The Services claim that they are best placed to deal with and handle Service complaints, needs to take account of these perceptions. Having confidence that an external oversight body ultimately has the power to review and correct any injustice, and bring proper accountability to the Service complaints system, has the potential to strengthen, not undermine, confidence in the chain of command. That is why I believe that the SCC role should change to one of an Armed Forces Ombudsman, with power to act as a final review of a Service complaint, and with power to act sooner if the case is not decided internally within a reasonable time.

Case study C – Delay, poor internal handling and pressure not to use the Service complaints process lead to an erosion of confidence in the chain of command

A Major on an Intermediate Regular commission contacted us in 2011 after unsuccessful attempts to have the promotion prospect element of his 2008/09 annual appraisal report (OJAR) re-considered. His informal attempts to resolve his concerns had brought an admission by the Army's Personnel Department that his reporting chain was not correct but two meetings with Senior HQ officers to discuss the issue had been cancelled. He had not made a Service complaint as he had been informed by his CO that the submission of a complaint was likely to constitute a "suicide letter". An approach to the SCC was therefore a last chance.

The Complainant wanted to have his 2008/09 OJAR re-written and have an extension of service so that he could compete for promotion equitably with his peers. His commission would run out before the date of the next promotion board.

As a result of the SCC's referral, the complainant was interviewed by the Garrison Commander with whom he was able to discuss his complaint and also his concerns that the correct reporting process had not been followed. His concerns were resolved and he subsequently successfully converted to a Full Commission on the Regular Army Conversion Board.



He commented as follows:

"The role of the Service Complaints Commissioner was key; having been subject to so much 'static' in trying to have my case heard without resorting to the Service Complaints process, I was not confident that I would have any real action taken by the requisite chain of command had I submitted a Service Complaint directly to them and, after so much time and disinterest, I had started to doubt myself as to whether I was taking the correct course of action.

To have the issues looked at independently by the SCC resolved both these concerns, and I was more than happy to abide by the SCC's advice/direction if it had been decided that no further action should be taken. I feel that the SCC's office dealt with my Complaint speedily and fairly and I can do nothing more than pass on my gratitude for making the whole process as painless and straightforward as it possibly could be."

SCC comment: We know from the annual Armed Forces Continuous Attitude Survey that there is a great reluctance amongst Officers of all three Services to use the Service complaints system for fear of an adverse impact on their career. Over the last few years, more than half of those who said they had been bullied, harassed or discriminated against in the previous 12 months gave this as a reason for not making a formal complaint. Fewer than one in ten had done so.

In this case, it took 4 years for the problem to be resolved, an unacceptable length of time for any organisation to take to deal with their people's concerns.

Because of poor handling by a number of officers, the Major had lost confidence in the chain of command and was beginning to lose confidence in himself. Without the possibility of external oversight, the Army could have lost someone they clearly valued and who subsequently became a fully Commissioned Officer.

Case study D – Lack of accurate information given by Recruitment office, affecting confidence and commitment to the chain of command

Action taken to improve recruiting

A Foreign and Commonwealth soldier wrote to the SCC in September 2011 concerning lack of information given to him by the Army Recruitment Office about the security clearance. Prior to joining the Army he was not told by the Recruiting Office that he would be required to be security cleared after 36 months of living in the UK, or that, until his clearance was successful, he would have limited career options.

He had subsequently only discovered that he needed security clearance when he arrived at the Army Training establishment. Initially he was told that this would be resolved by the end of his Phase 2 training. However, one day before his Passing Out parade he was informed that he was not security cleared. It was also explained to him, for the first time, that this meant he could not take undertake the Basic Apache Course; nor could he go to most of the Regiments of his choice.

When the soldier contacted the SCC he said he had wanted to leave the Army but had been told he could not as he had signed a contract for 4 years and because money had been spent on training him. He said that the issue of security clearance was only mentioned after he had made decisions about his career and future that were based on false information.

The SCC was concerned that what had happened to this soldier could also happen to others joining the British Army. She therefore sought permission from the individual to contact the General in charge of the Army Recruitment and Training Directorate (DGART) to alert him to this potential problem.

DGART responded positively and agreed there was a problem. He directed that the Nationality and Residence page of the Army Job's website be revised to be more explicit about the requirement for three

years residency in the UK before the security clearance for specific trades could be obtained. He also said his Headquarters staff would re-examine the information provided for recruiters, particularly for those jobs which have Security Clearance requirements or that are linked to the duration of residency in the UK.

Following the SCC's referral, the soldier was interviewed by his Commanding Officer (CO) and given clear direction on his career options and an assessment of his position concerning his Security Clearance. As a result he decided to stay in the Army. He has now settled in his first posting and has received a positive Annual Report. He has also applied for Direct Entry Commissioning.

SCC comment: Allegations of wrong and misleading information by recruiting offices, with regard to the choice of trades and possibility of transfer between trades, has been a common issue raised with the SCC in her postbag and on visits over the last few years. Foreign and Commonwealth trainees have specifically raised concerns that they are not considered for trades for which they feel most suited, for example because of civilian (and sometimes professional) qualifications and experience. They were often left with a sense that they had been subject to stereotyping, bias or race discrimination, when the reason may have been down to other factors, as demonstrated by this complaint.

In 2011 the Army put a cap on the numbers of Foreign and Commonwealth soldiers in the Royal Logistics Corps and Adjutant General's Corps, Royal Army Dental Corps and Queen Alexandra's Royal Army Nursing Corps, in recognition of the heavy concentration of minority ethnic soldiers in these areas. Action taken as a result of this complaint may therefore have a wider benefit than simply to the individual who brought the complaint. Having an SCC with access at a high level demonstrates the value of effective external oversight.

Case study E – Delay and uncertainty in relation to medical fitness assessments, and in handling Service complaints. Effect on family/financial strain and success in redress (revision of process)

SSgt A contacted my office in June 2011 because of delays by the chain of command and HQ departments in sorting out his future career, which was having a detrimental effect on his wife and family, as well as himself.

He had been subject to the Medical Employment Policy Process (PAP10) whilst posted to Germany and had been unsuccessful in his application of September 2010 to be retained in his current post. This was because his medical category was below the required standard for his Corps. He received that decision in March 2011. As a result he submitted an application, also in March 2011, for reallocation or discharge with a request to be assigned back to the UK in March 2011. It took almost 3 months for the original application to arrive at Occupational Health, Glasgow and during this time the SSgt's wife gained employment back in the UK and had to be accommodated in Services' temporary accommodation in the UK.

The SSgt remained in Germany with sole care of their young child. The excessive delays and pressures placed upon him were compounded when he was diagnosed with cancer. He underwent an operation to remove a malignant melanoma in June 2011.

In writing to the SCC, the Serviceman was seeking a resolution of his own problems, but also to try to ensure that no other Service personnel suffered the same problems in future. The redress he sought included a review and rewrite of the PAP 10 process in order to speed it up and for the two application forms to be revised for clarity and simplicity. He also wanted PAP 10 to be re-written to allow both application forms to be submitted concurrently, so that if the initial application to be retained in post was rejected, then the application for relocation/discharge could be processed without delay.

He made a Service complaint in June 2011 that the PAP 10 process was too slow and placed considerable stress on individuals and their families. This was referred by his CO in May 2012 to a higher authority for decision as the redress requested was beyond

his powers to grant. A Superior Officer at Level 2 upheld the Service complaint on 07 August 2012. Whilst noting that complexity of some cases mean they take over a year, his application should not have taken that length of time. No apology was given for the stress and uncertainty experienced by the SSgt and his family, but it was acknowledged and regretted.

The Superior Officer directed that PAP 10 should be revised to take on the points raised. A concurrent submission of both application forms is to be included in the next review of PAP 10. The SCC will be following this up with the Services.

By the time his Service complaint was upheld, the SSgt had incurred more expenses and family disruption, for which he was not compensated. The decision also came after the expiry of his 22 year Service mark. He had been required to leave before he achieved that length of service, which would have been more financially advantageous, helped mitigate the losses he had suffered (because of the time taken to resolve his complaint), serving 22 years would also have enabled him to buy a house.

The SSgt described his experience of delay and lack of help during this time, on top of the feeling of being rejected from the Army to which he had given nearly 22 years as "soul destroying". Nevertheless he took some satisfaction that the PAP 10 process was being reviewed.

SCC comment: Many individuals who write to the SCC indicate that one of the reasons for making a complaint is to try to improve conditions for others. In this case, the complainant had the satisfaction of knowing that him speaking out would help Service personnel in similar situation in future.

However, that satisfaction was gained at some cost to him and his family. 14 months seems to me to be too long to resolve the Service complaint, particularly since the complaint was about delay and the problems this Service family faced actually began 9 months earlier. An effective, efficient and fair Service complaints system should enable such cases to be resolved much more speedily.

Case study F – Poor treatment of Service spouses causing loss of confidence in the chain of command and loss of valued soldiers in a shortage area. Good and swift handling by CO following contact from SCC. Broader lessons to be learned

The SCC was contacted in September 2012 by a Sgt who was married to a soldier serving in the same Regiment. They had two young children. Despite previous assurances that she and her husband would not be deployed to Afghanistan at the same time they had now been ordered to do so. In April 2012 her husband was first told that he was deploying on Op Herrick 18 and in July 2012 he discovered by chance that his wife was also deploying on Op Herrick 18.

The couple immediately contacted Unit Welfare for help. Receiving no reply, the husband asked his chain of command for assistance. A meeting was arranged at which the couple was told that they were deploying together due to a shortage of their trades and rank. The Sgt explained her childcare issues but was asked by the chain of command why she should be treated any differently to any of the other single mothers whilst her husband was deployed.

She raised the policy which states that “it is inadvisable for two parents to deploy together” and the reply was “there are lots of policies and it does not mean they have to be followed”. The couple then suggested that they split the tour which was something that had first been suggested as a possible option when she returned from maternity leave. The response was that this was “too much messing about for the regiment” and the suggestion that she could tour on Herrick 19 was also rejected. The couple left the meeting with no guarantee that they would not deploy together.

After summer leave the Sgt was given a list of all troops deploying and both she and her husband were on it. She felt she had no choice but to submit an application for discharge. She also asked her chain of command several times for an interview with the CO but it never happened. Their treatment dented the confidence of both spouses in the chain of command and her husband also considered applying to leaving the Army.

The SCC referred the complaint to the Commanding Officer, (CO), who immediately interviewed the Sgt. He arranged for her name to be removed from the forthcoming Op Herrick 18 deployment and said he would investigate the inappropriate comments made to her, regardless of whether she decided to go ahead with a formal Service complaint. He asked that she reconsider her application for discharge and, most significantly, he also apologised to the Sgt for the way she had been treated.

The SCC asked the Sgt for feedback before she closed the case. She replied:

“I was interviewed by the CO and he has told me that there will be an investigation into the way I was treated and also apologised to me. I am happy not to make a Service complaint at this time as I feel I have now been listened to.

Having your input has made the whole thing a lot easier for me and gave me access to the CO that I felt I was otherwise unable to get. I would like to take this opportunity to thank you for all your help. I have decided to continue with my termination of service but am happy that the unit will not treat anybody else in the same way that I was treated.”



SCC comment: The treatment of Service families where both spouses are serving has been raised with me, in cases that come in my postbag and on visits. Difficulties raised include lack of consideration when decisions are made about postings, deployment and working patterns. Service spouses are not seeking preferential treatment but for those making decisions to think outside the very narrow box of how things have always been done. Many of the alternatives put forward by the spouses and rejected out of hand by those making the decisions, could provide efficiency savings.

On visits I have met Service personnel who have been shown flexibility to enable their spouse to be deployed, their children looked after and the work of the home based parent valued by their chain of command. This shows that it can be done. However, I have also met couples, as in the case study above, who decide the only solution is for one, usually the wife, to give up her career. The Australian Defence Force in a recent report identified such treatment as one reason for the low levels of female representation in their senior ranks.

Although women's representation at Officer level is above their representation in the UK Armed Forces, it drops dramatically in the senior ranks. Of 500 starred ranks (Brigadiers and Generals and their equivalents in the Royal Navy and RAF) the UK has only 5 women (1 %). In Australia, which has a higher level of female representation at Officer level (17.4 % compared to 12.4 % in the UK), and which has taken action to understand the barriers to women's lack of promotion, there are still less than 5 % of women at these senior ranks.

Case study G – Joint Environment – concerns delay and mishandling of the complaint

An RAF Officer contacted the SCC in July 2011 with regard to length of time that an existing complaint had been in the system without any action. She was working in a tri-service environment and had made a complaint in 2009 about her accommodation, charges and allowances. Although the matters complained about had first to be considered by the specialist pay and allowances complaint system, run by the Service Personnel Veterans Agency, (SPVA), her complaint had to be made via her Unit. She had specifically asked them to pass it to SPVA for resolution. However it had been with her Unit for six months without them taking any action and now appeared to be further stalled.

The Officer contacted me because despite her best efforts to try to find out what was happening with her complaint at Unit level, she had been given no information about the status of her complaint and was being dealt with in a rude manner. She sought the SCC's assistance and assurance on the efficiency, effectiveness and fairness of the Service Complaints system and asked if we could unlock whatever was preventing her complaint from being sent on to SPVA.

The SCC referred and took oversight of her complaint. The delay was investigated by the Army, who took the lead for complaint handling at this particular Joint unit. The SCC was informed that the delay was due to an administrative error, but that the complaint had now been found and sent to SPVA. The Officer who should have dealt with it swiftly had apologised to the Officer.

When the Officer still heard nothing from SPVA, she contacted the SCC. The Commissioner personally enquired about the complaint on a visit to SPVA offices in Glasgow. The SPVA checked and confirmed that they had no record of it. The SCC made further enquiries of the Army, as to where the complaint was and why it did not appear to have been sent to SPVA as promised.

The Officer raised a second complaint in which she expressed extreme disappointment regarding the mishandling of her first complaint on 3 counts; it had taken 3 years, was still outstanding, it had been handled obstructively, and now “lost”.

When the RAF identified an Officer of the same rank as the complainant to hear the second complaint she gave up. She felt that he could not realistically be expected to investigate the staffing of any complaint that would involve Officers of a higher rank. She decided that there was no point pursuing the complaint and drew a line under the issue. She recognised that the substance of the complaint was of itself quite minor compared to the damage to trust and confidence in the chain of command engendered by the poor handling of the complaint. She also found the SCC powerless to resolve the situation and not as responsive as she would have wished. The Officer decided to leave the RAF and wanted to concentrate on her future.

SCC comment: Subsequent enquiries by the SCC identified that the unit responsible for passing on her complaint to SPVA was struggling with a very high workload, high levels of stress and reduced staffing.

The costs of this complaint went beyond the loss of investment in and skills of an RAF Officer. The Services also lost an opportunity to identify if mistakes were being made, either in calculations and award of allowances or in communication of correct information, which could have prevented other complaints in future.



Case study H – Failures in personnel procedures and in handling the subsequent Service complaint and subsequent resignation

An RAF Sqn Ldr contacted the SCC in October 2011 about a Service complaint he had made over 2 months earlier. He was worried about the handling of his complaint, in particular conflict of interest, deviation from policy, delays and lack of communication.

The Sqn Ldr had been removed from command of a Squadron. Although a review had decided that he should receive a non-blameworthy posting without sanction, to a posting commensurate with his rank and experience and a “clean sheet”, his new Line Manager was briefed damagingly on the reason for his removal. He believed that this had caused a very difficult working environment in his new post, which he also wanted to be resolved. In addition his OJAR for the period was over 12 months overdue and he had no reassurance that his personal records did not contain any unfair or damaging references.

Despite the SCC’s oversight, decisions on his Service complaint moved slowly. In October 2011, the lack of action on his Service complaint and the stress on him and his family that this and his difficult working conditions caused, led him to apply for Premature Voluntary Release and resign his commission. In January 2012 the Level 1 Deciding Officer, referred the Service complaint to Level 2, taking 5 months to conclude that he could not deal with it as he had no power to award the redress sought. The same month, no notice having been taken of his reasons for leaving the RAF, the Sqn Ldr submitted a second Service complaint about his treatment in the new post.

He still wanted to serve his country. However the unresolved issues over his complaint also impacted on his application to join the Territorial Army, for which he was required to present his last three OJAR’s, including the one missing from his period in command.

The Sqn Ldr's original Service complaint was not decided at Level 2 until the end of May 2012, when it was upheld by the Superior Officer. There was no reason why the OJAR was overdue and the Superior Officer directed that this should be completed without delay. He also upheld the element of the complaint concerning the disclosure of the reasons why the Sqn Ldr was removed from post. It was unnecessary for the receiving unit to be given this unless directly applicable to an appointment. Career Managers were to be directed accordingly.

Although the Sqn Ldr welcomed the Superior Officers decisions concerning the OJAR and unnecessary disclosure, he felt very aggrieved about the poor handling of his concerns by the RAF, which he felt had led him to lose his career. The Superior Officer's decision was made one month after he had left the Service. His second Service complaint had not even been started to be investigated by the time he left – 8 months after he had made it. He felt especially aggrieved about the discrepancy between the very strict adherence to time limits for complainants in the system and total disregard for any time limits by the Service.

He wrote to the SCC;

"I am saddened that the RAF have not felt able to explain to me their decision for refusing to address these issues.

How this fits with the Services' claims to be supportive and to adhere to extant EO legislation, I do not understand. Indeed, my experiences knock big holes in the Service's claims to be a fair and supportive employer, and I realise now why it finds itself so often putting out fires in the press, courts and the House."

During 2011 and 2012 the SCC was contacted with regard to a small number of cases of alleged serious bullying. These cases take a long time, as a Service complaint will be suspended whilst the Service police investigate and any disciplinary action is taken.

The cases are also very sensitive. For these reasons the SCC has not used such cases as case studies in her Annual Reports. The hypothetical case study below is drawn from the behaviour alleged in these and other cases. It does not and should not be read as representing a particular case.

Case study I – A hypothetical scenario – bullying

A soldier out of Phase 2 is sent to join his first training unit. The existing members of the Unit are by now "battle hardened" and concerned that the new recruits are too soft.

There is something about the new soldier which makes him stand out, e.g. being sent with the wrong kit, coming from a different part of the country from most of the rest, or some mannerism they can make fun of. The soldier's reaction to the "pack" testing him out, further identifies him as someone to be the scapegoat. He gets picked on, sometimes by his peers, sometimes his JNCOs, often a combination.

His life is made a misery in an increasing number of ways which then leads to a serious assault. These include being physically assaulted, urinated upon, being sexually assaulted by brooms or lit toilet paper (or threatened with similar – actual penetration not taking place). The individual is held for a while before being released – sometimes in most embarrassing circumstances.

The individual reports the matter, and the Service police will be brought in. No-one is prepared to speak out in support or be a witness. The person bullied is threatened by the perpetrator(s) that if he goes ahead with his complaint he will be attacked again but also so will his family, and they have addresses.



The soldier asks for a move to another unit, but is told to man up.

The Service police take many months before they give up – no case/insufficient evidence. The soldier was not initially given all appropriate support. He goes AWOL and the family contact the SCC, who refers the allegations. This results in psychiatric support and eventually a diagnosis of PTSD. He is recommended for a discharge.

The chain of command has given up on the Service complaint – as the RMP says there's no case, they think there's nothing to be done. The SCC reminds them that the focus of a Service complaint is to see if the individual has been wronged not whether any named perpetrator is to blame.

By now the soldier and his family are likely to have lost faith in the Army and also in the SCC. They have a son whose life has been ruined as has their family. The perpetrators remain in place. The culture continues.



SCC comment: Not all complaints of bullying that have a serious, harmful effect involve physical violence or potentially criminal behaviour. Nor are complaints about bullying confined to junior ranks or one Service. The SCC has overseen Service complaints about alleged bullying by these ranks in the chain of command against Senior NCOs and Commissioned Officers. Nevertheless, allegations involving acts of violence present specific problems. Under the Armed Forces Act 2006, sexual assaults short of rape or penetration do not have to be reported to the Service police and thus to the Service Prosecuting Authority. So any incident that can be seen as a joke (e.g. exposure to or indecent touching of female soldiers) or Horse play (e.g. threats involving vacuum cleaners or “posed” sexual assaults for Facebook – which are talked about as jokes) may not get picked up. (There are units, especially Training establishments where they have been taken seriously.) JNCOs tell the SCC quite openly that initiation ceremonies should not take place but they do. Officers despair at what some of those under their command think is funny.

Confidence in the chain of command and the Service police is essential for a victim to speak out and for others to become a witness, without any fear of repercussions. The current power of the SCC cannot deliver that confidence.

In these types of cases, the SCC has spent a lot of time, on the phone and at face to face meetings, trying to get information from the Army, suggesting what needs to be done, liaising between the psychiatrist, welfare providers, the family and the chain of command. What progress has been made is limited (some families have simply given up on the SCC who has no power to investigate or supervise the Service complaint). Close MP involvement helps but does not remedy the defect in SCCs powers.

Also essential is a change in the law and practice to require all sexual assaults (including exposure and voyeurism, and the use of social media) to be reported to the police and Service Prosecuting Authority.

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

- an overview of the numbers and types of complaints made to the SCC and referred to the Services in 2012; and
- the work of the SCC in sharing best practice and encouraging improvement.

Complaints to the SCC in 2012

The office of the Service Complaints Commissioner was set up in 2008 to give Service personnel the confidence to speak out when they believed they had been wronged in their Service life. Anyone can contact the SCC on behalf of a Serviceman or Servicewoman if they do not have the confidence to contact the SCC themselves. The SCC cannot investigate the complaint but has discretion to pass the complaint to that person's Commanding Officer (CO) or higher up the chain of the command if the complaint is about or involves the CO. The SCC can refer a complaint even if a Service complaint is already in the system.

If the complaint made to the SCC involves any sort of allegations of improper behaviour, she refers the allegations under her statutory powers, which imposes a legal obligation on the chain of command, up to and including the Defence Council, to keep her informed on the handling of any Service complaint made on those allegations. The types of improper behaviour which attract these powers are prescribed in regulations made under the Armed Forces Act 2006. These referrals are therefore known as prescribed behaviour referrals. Referrals about other types of complaints are therefore known as non prescribed referrals. The SCC can ask the chain of command to keep her informed of progress and/or outcome.

The SCC's discretion as to whether to refer any complaint made to her was confirmed by the High Court during 2012 on an application for judicial review of the SCC by a former Serviceman whose complaint the SCC believed would not be accepted, the matter complained about occurring many years previously.

As the SCC has a duty to report annually on the efficiency, effectiveness and fairness of the Service complaints system, she considers very carefully any allegations to her that she believes may not be accepted by the chain of command because they

occurred many years earlier. If she considers that there are likely to be no just and equitable reasons for the chain of command to accept the complaint as a Service complaint, she can refuse to refer the complaint. This does not preclude the individuals seeking to make a Service complaint directly to the Service.

The MOD rejected the SCC's Recommendation 10.17 in her 2010 Annual Report, that she should refer any complaints made to her and focus her resources on deciding appeals against decisions not to accept a complaint as out of time. This is to be regretted, not least because it would have closed the gap in relation to the lack of appeal from former Service personnel.

The MOD has also not implemented SCC's Recommendation 11.6 in her Annual Report 2011, that, if Recommendation 10.17 was rejected, the rules about notification of a complaint be amended so that notification to the SCC stops the clock for time purposes.

Numbers of people contacting the SCC

The numbers of people contacting the SCC in general and about potential Service complaints has more than trebled since the SCC's office was set up in January 2008.

646 people contacted the SCC's office during 2012. This compares to 527 in 2011 and 434 in 2010, a 23 % increase in contacts since 2011 (and 49 % since 2010). Of those 646 people contacting us, 74 (11 %) raised matters that could not be the subject of a Service complaint and were therefore not within the SCC's remit. This was a lower percentage than 2011.

Whilst many of the contacts were from members of the public, for example wishing to complain about the behaviour of Service personnel, especially with regard to abuse by new social media, a few were contacts from the families of Service personnel about how they were treated before they had died in service.

As a Service complaint can only be made by the Serviceman or Servicewoman, the SCC could not refer these complaints under her statutory powers and take oversight. She did however pass on the concerns, with the families' consent, to the appropriate person at the MOD or the Service. A recommendation (12.4) is made at page 57 about how such complaints should be treated in future.

Numbers of potential Service complaints

There were 572 contacts about matters that could become Service complaints, referred to in this report as potential Service complaints.

This compares with 436 in 2011 (and 357 in 2010). The increase in potential Service complaints to the SCC is therefore higher than the increase in contacts – (32 % since 2011 and 63 % since 2010).

This is consistent with trends noted in the 2012 Armed Forces Continuous Attitude Survey of an increasing awareness and understanding of the Service complaints system and the SCC's role.

Patterns of potential Service complaints by rank, Service and type of complaint¹

Figure 1 gives the numbers of contacts about potential Service complaints in 2012 by Service.

As in previous years, the majority of contacts about matters that could be the subject of a Service complaint were from or on behalf of Army personnel. Of those 572 potential Service complaints, two thirds were made by or on behalf of Army personnel, 15 % were made by or on behalf of Naval personnel and 17 % from or on behalf of RAF personnel. This is roughly the same distribution to that in 2011.

The rate of increase of potential Service complaints to the SCC was highest from or about Naval personnel (48 %) followed by the Army (33 %) and the RAF (11 %). Although the numbers are small relative to the size of the Services, the differences in increase may be attributable to awareness campaigns carried out by the Naval Service in 2011/12 and to publicity by on British Forces Broadcasting Service, (BFBS) shown overseas to a predominantly Army audience.

There have been slightly fewer contacts about potential Service complaints from operations in 2012 than in previous years.

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

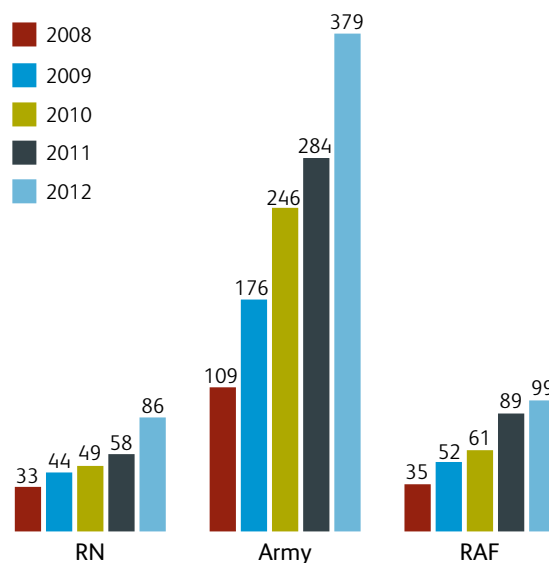


Figure 2 shows that, as in previous years, overall the majority of contacts about potential Service complaints came from Non Commissioned Officers (NCOs) and Warrant Officers (WOs). Around a quarter of contacts were from or about Commissioned Officers and from private soldiers and equivalents.

Figure 2: Percentage of potential complaints to the SCC by rank showing changes in pattern since 2008

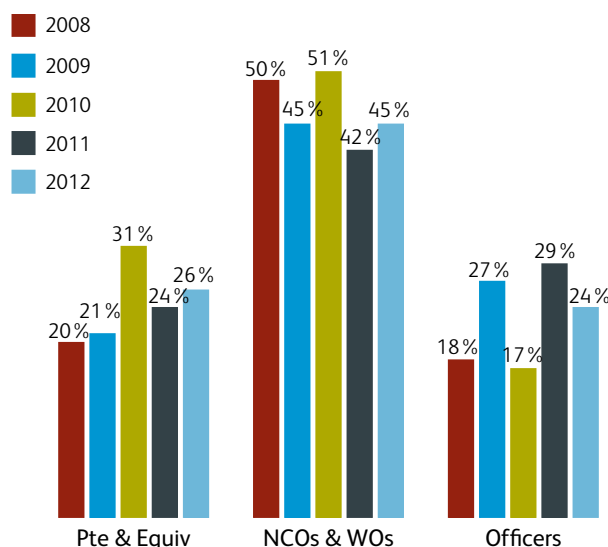


Figure 3 shows that this broad pattern holds across all three Services although in the Navy and the RAF potential Service complaints from Officers were more numerous than complaints from their equivalents to private soldiers. In the Army potential complaints were lowest from Officers.

¹ The Rank and Service is not always disclosed by those who contact the SCC.

Figure 3: Number of potential complaints to the SCC in 2012

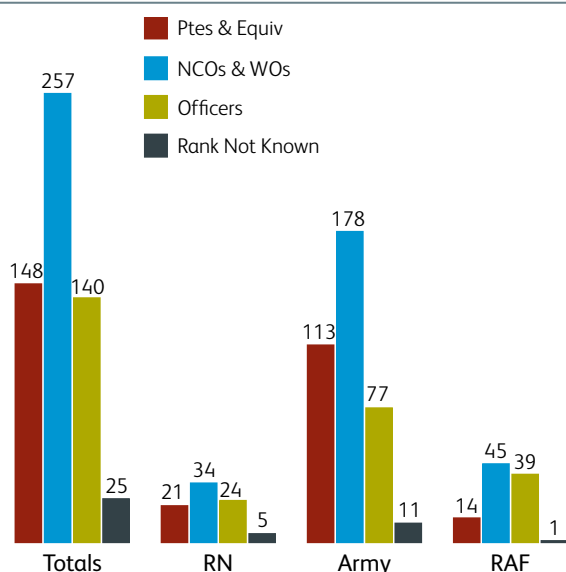
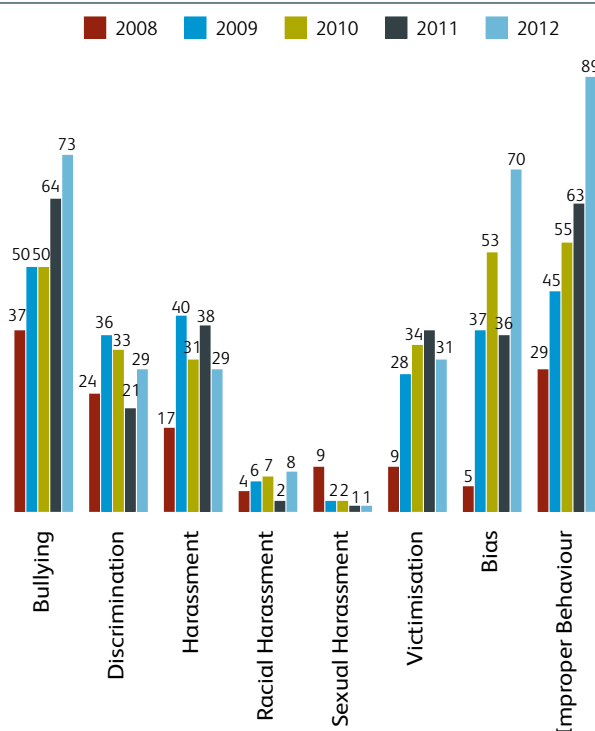


Figure 4 shows the trends in relation to allegations of different types of improper behaviour made to the SCC over the last 5 years. Whilst there are variations in many of the categories (which are to be expected with such small numbers) there is an upward trend in allegations of bullying and improper behaviour.

Figure 4: Potential Service complaints to the SCC by types of prescribed behaviour

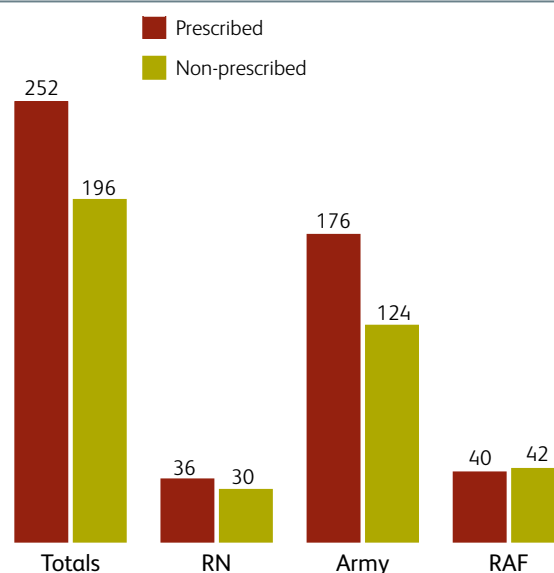


This is consistent with the increase in Service complaints about bullying reported by the RAF but out of line with the reductions in such Service complaints reported by the Navy and Army. Without further investigation it is not possible to explain the reason for these differences.

Referrals – potential complaints referred by type and Service

Figure 5 shows that of the 572 potential Service complaints made to the SCC in 2012, 448 (85 %) were referred. This is a higher proportion than in previous years and may be also indicative of a better understanding of the SCC role.

Figure 5: Total SCC referrals (prescribed and non-prescribed behaviour complaints)



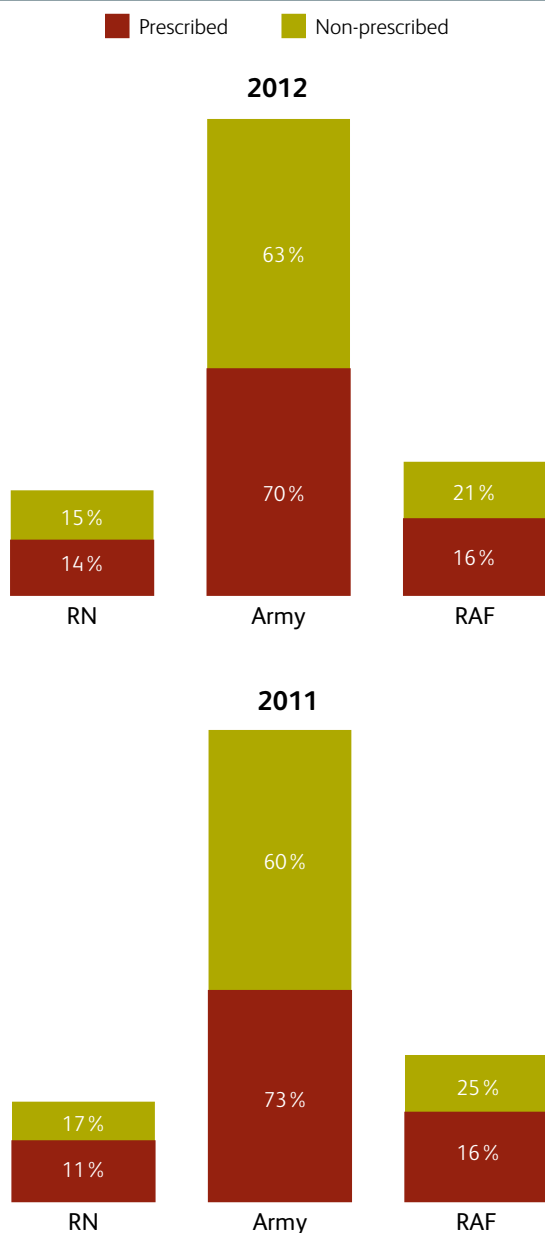
75 cases (13 % of potential Service complaints) were not referred because they were resolved or contact was lost before referral. In only 25 cases (4 % of potential Service complaints) did the SCC make a positive decision not to refer the matter, either because there appeared to be no allegation of wrong done during a Service life, or the matter complained of appeared to be severely out of time, with insufficient evidence of grounds on which the chain of command could decide there were just and equitable reason for accepting nevertheless.

Figure 5 shows that the SCC made more referrals of allegations of prescribed behaviour than non-prescribed behaviour in the Navy and the Army. This continues the pattern of previous years for the Army but is a reversal in position with regard to allegations from the Navy. Increased awareness of the SCC role amongst Naval

personnel may be a factor as may a lack of confidence to raise a complaint without SCC oversight. It is also inconsistent with a significant drop in such Service complaints being made directly to the Navy. However, the Navy numbers are low and too much should not be read into this shift.

Despite this shift, as shown in Figure 6, referrals about prescribed behaviour in relation to Naval personnel constituted a smaller share of all such referrals in 2012 than in 2011. Prescribed behaviour referrals relating to Army personnel increased.

Figure 6: The distribution of types of complaint across the Services in 2011 and 2012



Gender

In 2012, 86 % of contacts to the SCC about potential Service complaints were made by or on behalf of Servicemen. 13 % were from or on behalf of Servicewomen. This is higher than Servicewomen’s representation in the Armed Forces, which for 2012 stood at 9.7 % . (See pages 29-31)

There was no difference in the gender distribution of referrals made by the SCC to the Services (referrals in relation to Servicemen also constituting 86 % of all referrals). However across all three Services, the SCC made a higher proportion of referrals about prescribed behaviour from Servicewomen than non prescribed behaviour. This difference was most marked in relation to the Navy and Army. Gender differences by Service are analysed in the next chapter.

Closure rate and open cases

Of the cases referred by the SCC to the Services in 2012 that were closed by the end of the year: 63 were resolved informally or were not pursued by the complainant, 16 were withdrawn before a formal decision was made, 4 were ruled out of time, 2 were upheld, 2 were partially upheld and 1 was not upheld.

Table 1 shows the number of SCC cases that were still open at the end of 2012 by year. The 2011 Annual Report commented on the improper recording of informally resolved cases as withdrawn cases and the use of closure certificates to record withdrawal. This practice appears to have continued this year, in some cases. This may be one reason for the lower numbers of claims to an Employment Tribunal in 2012. (See Table 11 at page 40)

Table 1: Number of SCC cases still open at the end of 2012 by year

Year	Open Cases ¹
2008	22
2009	63
2010	118
2011	172
2012	417
Total	792

2 Table includes cases originating in one year that may have been referred in another and cases that have not yet been referred.

The work of the SCC in sharing best practice and encouraging improvement

The aim of the SCC is to ensure that all Servicemen and Servicewomen and their families have confidence in the complaint system and are treated properly by:

- monitoring individual complaints
- holding the Services to account
- working with the Services to see that lessons are implemented swiftly and effectively
- accounting publicly to Ministers and Parliament.

Since 2009 the SCC has participated in each of the Services' training courses for those about to assume command (Navy and Army Commanding Officers Designate courses) or being prepared for command (RAF Future Commanders Study Period). She also addresses the Advanced Senior Command Study Course at the Defence Academy annually. The SCC shares her insights and good practice on the handling of Service complaints and about good management and leadership, which is key to success. Her aim is to give confidence to Commanding Officers, not simply to treat their people properly and well when things go wrong, but also to enable them to take action to prevent wrong occurring in future. The major root cause of most Service complaints is poor management and poor communication.

As part of this sharing of good practice, the SCC meets the Boards of the three Services annually and with the Service Personnel Board twice or three times a year. She also meets the Deputy Chief of Defence Staff (Personnel and Training) and the Principal Personnel Officers for the three Services on a quarterly basis.

A list of her visits throughout the UK and overseas, and other invitations and key meetings in 2012 are shown at Appendix 5.

The SCC is also recognised internationally. She was invited to advise the preparatory meeting for the 4th International Conference of Armed Forces Ombudsmen Institutions in Ottawa in September 2012, at which she and her Head of Office gave key addresses. The SCC also chaired the final working session of the Conference. She was also asked to advise on the setting up of an external independent oversight body for the Armed Forces in Kosovo.

In its submission to the House of Commons Defence Committee the British Armed Forces Federation said:

"We are aware that the Commissioner and her staff are highly regarded in other countries which have or are already considering some form of Armed Forces Ombudsman institution. We have also observed that the appointment of the SCC has, if anything, enhanced the professional image of the United Kingdom Armed Forces amongst our overseas colleagues."

The SCC takes her accountability to Ministers and Parliament very seriously. In 2012 the House of Commons Defence Committee conducted an Enquiry into the work of the SCC and took evidence in person from the Commissioner and her Head of Office on November 21 2012. The Committee's report and copies of the evidence submitted to the Committee can be found on the Parliamentary website.



The SCC visits HM Naval Base Portsmouth, July 2012

This chapter provides:

- an overview of Service complaints in 2012 including the outcome of the DIA audit;
- statistics disaggregated by gender;
- reports on the working of the Service complaints system in the Navy, the Army and the RAF;
- comparisons between the performance of the three Services; and
- feedback from users of the system.

Overview of Service complaints in 2012

The data on Service complaints for the three Services are shown in Tables 7-9 Data is drawn from the recording systems each Service has used during 2012. As in 2011:

- Level 1 data from the Navy has been taken from the new Service complaints module on the Joint Personnel Administration system (JPA), which was introduced on 1 January 2011;
- none of the data from the Army has been taken from JPA but from an Army specific recording system (SCUD);
- RAF data derives from a mixture of JPA and an RAF specific recording system.

The new JPA module was developed following findings of a Defence Internal Audit in 2008 that the then JPA Service complaints module was not fit for purpose. A second Internal Audit in 2012 found inconsistent and unreliable use of JPA for recording Service complaints, except in the Navy. Data presented in this Annual Report therefore is presented and discussed with that caveat.

Defence Internal Audit, (DIA), of the new Service complaints module on JPA

The role of Defence Internal Audit (DIA) is to provide the Permanent Secretary of the MOD and the Defence Audit Committee with an independent, objective assurance on the effectiveness of MOD's systems of governance, risk management and internal control. The second audit of JPA, in 2012, reviewed the control framework that was in place to manage the risks associated with Service Complaints. Fieldwork was conducted during January – March 2012 primarily within the three Services. The Auditors reported that only limited assurance could be given on the effectiveness of MOD's systems of governance, risk management and internal control of the data collection on Service complaints. Whilst recommendations from the first audit in 2008 had been implemented, concerns remained about:

- the use of separate legacy systems;
- insufficient training and guidance on the use of the new JPA data recording module, which was supposed to have been used since January 2011 (but used only as a matter of course in the Navy); and
- inconsistent levels of involvement of the three Single Service Secretariats.

As a result, the Auditors were unable to place reliance on the integrity of the data being held on JPA or being collated by the MOD in relation to the Review it undertook in 2011 and 2012 of the Service Complaints system.



DIA Key Findings

- 1 Despite management information being readily available via JPA, Services preferred to use their own separate systems. Following a test of the data held on JPA and the separate systems the auditors found inconsistencies, which suggested that the information produced for the MOD and the Service Complaints Commissioner was inaccurate.
- 2 There remained a training gap for HR personnel and Deciding Officers at the units, particularly some of the smaller units that do not have the numbers of Service complaints to keep knowledge regarding them current.
- 3 Users' perception of the functionality of JPA remained a problem due, in the main, to technical difficulties experienced during roll out.
- 4 A Service Complaints Forum (tri-Service Complaints Working Group) had been instigated and provided a good platform for sharing best practice and technical updates. There remained an opportunity for those who attend to share information with the HR units and to put forward queries from the units to the group which would aid consistency.

Each Service had its own method of recording, compiling and checking data and there were no standard controls in how it was obtained. The auditors therefore could give no assurance that the statistics were accurate. This is of great concern.

The auditors also found that, although the use of JPA had been mandated since 2011 and the MOD's guidance on Service complaints, JSP831, included a workflow diagram detailing the targets for each stage of the process, there were no incentives to achieve the targets or penalties for delays. Misuse of the system, e.g. using it as a case management system, had led to functionality problems and lack of use by Units. Testing found varying levels of involvement by the Secretariats in the monitoring of individual cases. One Service did not actively "chase" progress. Therefore the potential for slippage remained.

The disregard of policies and cavalier attitude by the chain of command to time limits is a common theme in many complaints to the Commissioner as illustrated in the Case Studies in Chapter 1. The Service secretariats therefore need to manage the recording of data proactively and closely from 1 January 2013 if the new 24 week target for the resolution of Service complaints is to be achieved.

Service secretariats need to be alive to a potential risk of manipulation of data by Units, i.e. not recording Service complaints on JPA until the complaint is decided and upheld. If the complaint is withdrawn, voluntarily or after pressure, no complaint will be recorded. The SCC will ask the Auditors to include this potential risk in their fieldwork in the third audit which is to take place in 2013.

Recommendation 12.1

The third DIA audit should check the proper use of the JPA module and that it supports the recording of informal complaints to secure efficiency savings. The audit should also include use of the new Management Information tool, which provides a time and resource efficient means for production of good management information.

The sole use of JPA has been mandated for all Services from 1 January 2013. The Army has moved to recording Service complaint data on JPA only from that date and is back recording data onto JPA for all Service complaints that are still open from before 1 January 2013.

Gender

Following a recommendation in the SCC's Annual Report 2011, the Services have provided a breakdown of Service complaints by gender. Since 2008 the SCC has presented gender disaggregated data on cases dealt with by her office and has noted a higher percentage of Servicewomen contacting her than their numerical representation in the Services; and that they were more likely to do so with complaints of improper behaviour than Servicemen, whose complaints more often concerned non-prescribed matters.

For the first time it has been possible to see whether a similar pattern applies in the making of Service complaints (whether or not made with the benefit of an SCC referral); and to assess whether the confidence oversight by the SCC brings is sought more often by one gender.

MOD data shows that in 2012, 9.7 % of the UK's Regular Armed Forces were women; 12.4 % of Officers and 9.1 % of Other Ranks, (OR). That overall distribution has moved only a fraction of a decimal point since 2008 (when the representation was 9.4 % total: 11.9 % officers and 8.9 % other ranks).³

³ Figures taken from Defence Analytical Services and Advice (DASA) in UK Armed Forces Annual Manning Report 2012.

Table 2: Female representation in the Regular UK Armed Forces 2012

	All Services		Navy		Army		RAF	
	Officers	OR	Officers	OR	Officers	OR	Officers	OR
Female	12.4	9.1	9.7	9.1	11.6	7.7	15.9	13.2

Table 3: Percentage of potential Service complaints to the SCC by Service and Gender 2008–2012

	2008	2009	2010	2011	2012
RN					
Male	82 %	82 %	71 %	87 %	79 %
Female	15 %	18 %	29 %	13 %	20 %
Army					
Male	85 %	92 %	86 %	86 %	88 %
Female	15 %	8 %	14 %	14 %	11 %
RAF					
Male	83 %	88 %	82 %	89 %	86 %
Female	17 %	12 %	18 %	11 %	14 %

Table 4: Numbers and percentage of referrals by SCC by Service, Gender and category 2012

Service	Total		Prescribed Behaviour		Non-Prescribed	
	Number	%	Number	%	Number	%
Total Services						
Male	386	86 %	208	83 %	178	91 %
Female	62	14 %	44	17 %	18	9 %
RN						
Male	51	77 %	26	72 %	25	83 %
Female	15	23 %	10	28 %	5	17 %
Army						
Male	263	88 %	147	84 %	116	94 %
Female	37	12 %	29	16 %	8	6 %
RAF						
Male	72	88 %	35	87.5 %	37	88 %
Female	10	12 %	5	12.5 %	5	12 %

Female representation is lower in the Navy (9.2 %) and the Army (8.2 %) than the overall representation and higher in the RAF (13.8 %). As shown in Table 2, in all three Services female representation is higher in the officer ranks, although this level representation tapers to 1.3 % at the Starred Ranks (Commodore, Brigadier, Air Commodore and above).

Tables 3 and 4 show that Servicewomen in the Navy and the Army contacted the SCC more frequently than their male counterparts, and raised allegations of improper behaviour more often than Servicemen. This does not appear to be the case in the RAF; here Servicewomen approach the SCC in the same proportion as their representation in the RAF and about a range of matters.

A different picture appears however from the gender disaggregated statistics of new Service complaints made at Level 1 in the units, Table 5.⁴

The percentage of Service complaints made by Service women in the Navy is slightly higher than the rate of contacts to or referrals from the SCC. However the vast majority (86 %) of Service complaints about bullying, harassment, discrimination or other types of improper behaviour in the Navy were made by women. The position as regards other types of complaints was the complete opposite.

Servicewomen in the Army were also more likely than Servicemen to make a Service complaint about any type of improper behaviour.

In contrast to their contacts to the SCC, this was also true for women in the RAF, whose share of Service complaints about improper behaviour was higher than in the Army. In both these Services the rate of making a Service complaint about improper treatment was around double their representation in their Service. For Navy Servicewomen it was over 8 times.

The Services point out that compared to the numbers of personnel in the Services, these figures are very small. The data published in the Armed Forces Continuous Attitude Surveys, (AFCAS) suggest that just less than 1 in 10 of Service personnel (of both genders) say they have experienced bullying, harassment or discrimination in the previous 12 months and of those fewer than 1 in 10 make a Service complaint about it. The numbers of Service complaints about improper behaviour are therefore likely to be the tip of a much larger number of Service personnel who could make a complaint.

The AFCAS data is not disaggregated by gender. Commentary published in this Survey and the Recruit Trainee Survey, does suggest that Servicewomen may be more aware of the Service complaint system and may be more willing to make a formal complaint.

Table 5: Percentage of Service complaints made in 2012 at Level 1 by Service and Gender and category

Service	Total		Prescribed Behaviour		Non-Prescribed	
	Number	%	Number	%	Number	%
RN⁵						
Male	140	77%	4	14%	139	84%
Female	41	23%	24	86%	27	16%
Army						
Male	457	87%	140	79%	317	91%
Female	68	13%	38	21%	30	9%
RAF						
Male	204	83%	69	74%	135	89%
Female	41	17%	24	26%	17	11%

⁴ It is to be noted that some new Service complaints were made to the Services and referred quickly to the higher levels, either because they concerned matters which had to be resolved at HQ level (e.g. some Naval complaints about terms and conditions of Service or redundancy which were considered directly at Level 3). These extra cases are shown at the full tables of types of Service complaint by type at Appendix 3. They predominantly affect the non prescribed statistic and were predominantly made by Servicemen.

⁵ Naval complaints include some cases where allegations were made of both prescribed and non prescribed behaviour.

However these surveys also suggest that the rate of incidents of perceived improper treatment is higher amongst Servicewomen, as well as amongst minority ethnic or non white Service personnel. Research carried out by the MOD from 2007- 2009 on Sexual Harassment in the Services also confirms this picture.⁶

Recommendation 12.2

Each Service should analyse its data on formal Service complaints and informal complaints, scrutinise the subject matter of those complaints, together with any other Service specific information and consider what action should be taken to ensure that all Service personnel, regardless of their gender, are treated with respect throughout their career.

Recommendation 12.3

The Services should consider with the SCC and MOD, whether and how data could be provided by ethnicity for 2013.

Assisting Officers

It appears to be standard practice now for complainants to be offered the assistance of Assisting Officers, (although the SCC has concerns about the timing of such an offer). However Table 6 shows that less than half of the complainants in the RAF were offered an AO and the Navy have insufficient information to know whether AOs have been offered and appointed in over half the cases.

Recommendation 12.4

The MOD and Services should find a resource efficient way to provide complete data on Assisting Officers for 2013.

From our oversight of cases it appears that some Army COs, wrongly and misguidedly, appear to offer an AO only if a soldier/officer submits a completed form (the Annex F). This is inefficient and ineffective. Without help, a soldier may not have clearly articulated the alleged wrong or how he or she wants that wrong to be corrected. If the chain of command asks for the form to be amended and an AO offers advice at that stage, suspicion arises that the complaint is being suppressed/ manipulated; or the complainant feels bullied. AOs can also help, in appropriate cases, complainants achieve satisfactory informal resolution of complaints.

Recommendation 12.5

The third DIA audit should also check the timing of the offer of an AO, to ensure that AOs are offered before a complainant formalises a Service complaint; and as part of their process of checking the point at which complaints are recorded.

In the 2012 AFCAS survey over half of those who had made a Service complaint about bullying, harassment or discrimination were satisfied with the support given by their AO. However a quarter were not.

There can be problems with finding an AO, especially if the AO or the complainant is posted. Persons about whom a complaint is made should also be offered an AO but very often are not. The role of AO in the RAF is referred to informally by some as an "Airman's Friend" with connotations of being there to help those who might have difficulties articulating their concerns. Many RAF personnel, especially Officers, approach the SCC to provide an objective view and advice on their complaint, which is not her role but is the role of an AO.

Table 6: Percentage of all complaints worked on during 2012 where an Assisting Officer was:

	RN	Army	RAF
Appointed	10%	99%	43%
Not appointed	33%	1%	38%
Of which AO not offered	0%	1%	4%
Of which AO declined	5%	99%	96%
New case (less than 10 days old)	0%	<1%	0%
Not Known	54% ⁷	<1%	19%

⁶ MOD Sexual Harassment Surveys 2007 and 2009.

⁷ This is because JPA does not require information about AOs to be recorded.

AOs have no training for this role which is a key component of creating and regaining confidence. The MOD and Services are considering the recommendation I made in 2011 but have not taken any action yet.

Recommendation 12.6

The role of the AO should be reviewed as recommended in 2011, with the provision of better guidance and/or training.

The Navy

In contrast with contacts to the SCC from Naval personnel, which increased in 2012, the numbers of new Service complaints went down slightly in 2012. Table 7 shows the numbers of cases worked on at all levels in 2012.

The Navy had made significant improvements during 2011 in its handling of Service complaints at unit level and at the first level of appeal; but had severe delays at Defence Council level due to shortages of resource. Table 7 shows that in 2012 the Navy sustained its performance of resolving the majority of Service complaints made or worked on during the year.

The Navy made increasing use of informal resolution, particularly on complaints referred to Level 2 as being outside the CO's authority to redress. Complaints at Level 2 are triaged, with any obvious mistakes in the application of agreed policy or in administration, being spotted and resolved. The majority of Service complaints in the Navy, as confirmed by their own analysis, are not about improper behaviour but result from maladministration, often due to human error, for example with regard to the inputting of data on JPA.

The Navy also (with one potential exception), removed the backlogs at Defence Council level. Although the majority of cases which were decided at each level were not upheld, this has to be measured (certainly at Level 2) against the high numbers resolved before decision. The rate of appeal between Level 2 and Level 3 was higher in 2012 than in 2011 (almost a third of complaints that were not upheld or only partly upheld were appealed compared to a fifth in 2011). This is similar to the RAF but compares favourably with the Army, see Table 9.

As a result of this new approach, the Navy has dealt with new Service complaints in a much more timely fashion, particularly at Level 2, as is shown at Table 12. Moreover it decided 35 % of Service complaints at Level 1 and 75 % of complaints at Level 2 within 30 working days of the case arriving at that level.

Table 7: Service complaints in 2012 – Navy

Royal Navy	New complaints	Numbers worked on during year	Awaiting decision	Withdrawn/ informally resolved before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1 CO	181	207	59	21	11	11	105	91 ⁸
Level 2		116 ⁹	5	49 ¹⁰	24	11	27	12
Level 3 Total		43	13 ¹¹	3	3	3	21	
Of which Service Board				1	0	0	3	
Of which SCP with Independent member					0	3	10	
Of which SCP				2	3	0	8	

⁸ This includes 51 complaints which were referred to Level 2 without decision.

⁹ This includes the 51 referred for decision and redress.

¹⁰ Approaching 40 % of Level 2 Service complaints were concluded through "risk-based" informal resolution.

¹¹ In addition, one case, which had been closed before decision, is being reviewed to ascertain whether it should be decided at this level.

Defence Internal Audit is satisfied that the Navy's data is accurate and reliable. It appears in a strong position to meet the 24 week target in 2013.

There appear to be lessons for the other two Services in how the Navy has brought about this "sea change":

- Leadership: Making one senior Officer, Commodore Naval Legal Services (CNLS) responsible for the efficient, effective and fair handling of all Service complaints. Accountability to a Naval Service Governance board.
- Risk based approach – Mandatory involvement of Regional Lawyers to advise COs on quick win basis on Service complaints but also to ensure a mandatory turn around for legal advice of 4 days, which has been met. Uplifting legal resources to this task as an "invest to save" measure.
- Identification of quick wins. Where a Caseworker identifies that a complainant has clearly been wronged and a difficulty which, if resolved, will meet the required redress, an approach is made directly to the responsible authority to consider if appropriate remedial action can be taken immediately. This avoids nugatory staff work, and results in the complaint being swiftly resolved to the complainant's satisfaction.
- Proactive management and scrutiny by a HQ Service complaint management cell (SCMC) to identify causes of delay and potential hot spots, e.g. loss of continuity due to manpower churn. SCMC monitoring of performance to time limits, with the use of a Targeted Process Questionnaire to identify reasons for delay and enable suitable action or change of process to be taken.
- Integration of Level 2 and 3 casework cell, which with the increased use of quick wins has released legal advisors to advise on the more complex cases more speedily.
- Mandatory requirement for all those deciding Service complaints at Levels 2 and 3 to consider whether there are any lessons to be learned, such statements to be included in every decision letter. Regional Legal Officers mandated to consider this for Level 1 decisions. Appropriate lessons entered on DLIMS, the MOD's means of capturing and actioning lessons identified in any aspects of its work.
- Proactive management by Casework cell to follow up on lessons identified to ensure action has been taken.

As a result of careful resource allocation, robust governance and an increased emphasis (within resource constraints) on lessons identified, the Navy hopes to maintain and improve on current process performance while preventing repetition of substantive complaint issues.

Reforms implemented as a result of lessons learned in recent Service complaints have included a:

- revision to Naval policy concerning the awarding of backdated promotion/advancement where a qualifying factor has not been achieved for Service reasons; and
- review and re-publication by the Promotions Office of guidance for recording OPS on JPA and implementation of Continuous Improvement (CI) analysis led to bullying and harassment complaint management and the Complaints Investigation and Mediation Team being brought under CNLS authority.

Having identified a new way of working and with strong and proactive management at the centre, the Navy needs to ensure that their approach does result in resolution of individual complaints and removal of the causes of the complaint for the future. There is a risk, especially in a climate of constrained resources and increased operational demands, of misunderstanding of the new approach: i.e. that it leads to suppression not resolution. The Navy is taking steps to guard against this. The Navy also recognises an associated risk of churn of N1 (senior personnel officer) in large establishments. Table 6 also indicates that there may be problems in complainants offered or having the services of an Assisting Officer. Although many Naval complainants have praised their AO and the SCC has seen the impact a good AO can have, others have had a less positive experience.

The Navy recognises the need to invest further in the development of AOs. The Navy is also conducting a fundamental review of the reasons for a lack of female representation in its top ranks and the perceived barriers to an extended career for female personnel.

The Navy believes that it has largely achieved its aims with regard to better and more timely management of

the Service complaint process. The Navy sees the challenges ahead as being one of sustainability – particularly with increased pressure on resources, and the uncertainties around the new reporting arrangements to the SCC. New routines are being put in place to provide additional scrutiny by the SCMC at Level 1 with a view to identifying further “quick wins” and to provide targeted assistance to those units struggling to meet timelines. The Navy will also put greater focus on finding efficient mechanisms to permanently resolve substantive and recurring issues.

The Navy, in its commitment to continuous improvement, has invited the SCC to identify areas of concern and help the postings and promotion processes. She will advise generally on the retention of personnel, particularly Servicewomen and Service personnel whose spouses are also serving; to help ensure a culture free from labelling of complainants as troublemakers.

The Second Sea Lord has summed up the challenge:

“The challenge for 2013, having made such significant improvements in our complaints handling processes, is to improve further on current complaint handling in order to meet the SCC’s new performance target while ensuring efficient, permanent resolution of substantive issues, particularly those which concern “maladministration”. (“Maladministration” is the term used by the SCC to describe failure to follow process, a reluctance to admit a mistake, failure to respect confidentiality and poor communication leading to a lack of understanding.) It is recognised that a failure to follow process (e.g. JPA recording errors) is the origin of a significant number of complaints in the Naval Service, however this is almost always the result of human error).

Analysis of performance throughout 2012 suggests that there is a realistic prospect of the Service achieving this goal though this will require careful resource allocation, robust governance and oversight (particularly of Level 1) and an increased emphasis (within resource constraints) on the implementation of lessons identified in the resolution of complaints.”

The Army

The numbers of new Service complaints made by Army personnel increased by nearly 7 % in 2012. Table 8 shows the numbers of cases worked on at all levels in 2012.

The Army has drawn its data from the same sources as previous years. It is moving to using JPA from 1 January 2013 and is undertaking a process of retrospective recording on JPA of open pre-2013 cases.

At Unit level, because of the 399 Service complaints still in the system the end of 2011, the numbers of cases worked on during 2012 increased by 48 %. Commanding Officers (COs) decided more Service complaints during 2012 but the Army still ended the year with 46 % more cases at unit level awaiting decision than at the end of 2011.

Table 12 shows that many of those cases which were decided by COs were decided within the time targets which applied during 2012. However, because only a third of Level 1 cases were decided, resolved or withdrawn during the year, less than a third of Army Service complaints were closed by COs in a timely manner. The Army has identified two causes of delay, the demands on units of deployments and the unexpected calls on resources to support security at the Olympic Games 2012.

By the end of the year, 582 Service complaints at Unit level remained undecided or unresolved, of which, over a third, (213), were made before 1 January 2012; i.e. were at least 52 weeks old. By the end of 2012, the Army had 290 Service complaints that had been at Unit level for more than 24 weeks.

Delay makes the handling of complaints more difficult.



The SCC visits BATUS, September 2012

Table 8: Service complaints in 2012 – Army

Army	New complaints	Numbers worked on during year	Awaiting decision	Withdrawn/ informally resolved before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1	525	931	582	19	118	22	190	44
Level 2		34	16	2	5	3	8	8
Level 3 Total		203	148	1	13	6	35	1 ¹²
Of which Service Board					5	4	18	
Of which SCP with Independent member					5	2	14	
Of which SCP					3	0	3	

In the SCC's Annual Report she recommended a simplification of the Service complaints system including moving from two to one level of appeal. Whilst the system has not been simplified, the Army has made changes to its practice, to try to ensure that Service complaints reach the level where redress can be given as swiftly as possible. This has meant referring cases directly from Unit level, (Level 1) to Defence Council level (Level 3) if redress could not be awarded at lower levels.

At the end of 2011, the Army Board also delegated powers to the Director of Manning (Army) and the Military Secretary to be able to redress Service complaints at Level 2 about discharge, appraisals and other career matters on its behalf. The impact of these changes is unclear. The table at Appendix 3 shows only 5 complaints about terms and conditions of service being dealt with at Level 2 and 10 at Level 3 during 2012. The SCC is aware of a number of Service complaints about discharge that have resulted in a discharge being revoked, before the complaint reached the Defence Council Level. From the information presented it may be that the Army's proposal to curtail appeals, for example on appraisals complaints, is not as necessary as previously thought.

The numbers of Service complaints worked on at Level 2 (Divisional Level) dropped from 104 in 2011 to 34 in 2012. Of these over half were decided or resolved before decision during the year. Less than a fifth were decided within time limits at Level 2.

15 of the 16 cases awaiting decision have been in the system since at least 2011, with 6 having been made before 2010.

It appears that many cases have been passed directly to the Defence Council level in 2012 that in previous years might have been passed through the Divisional Level, despite the General Officer Commanding having no authority to award redress. However the cases that have gone from Level 1 to Level 3 have simply joined a queue, with the exception of Service complaints against redundancy which have been prioritised.

The Army worked on 203 Level 3 cases during 2012 (compared to 127 in 2011) and decided 55 with another 1 withdrawn or resolved before a decision had been made. This is double the rate of decision making compared to 2011.

However it still means that only just over a quarter of complaints were decided during the year. 148 complaints were awaiting action, over half as many again than as at the end of 2011 (96). Of those 148, 17 had been in the system since 2008, 31 since 2009, and 42 since 2010. None of the cases decided at Level 3 were decided within time limits in 2012.

Delay is still a very serious issue in the Army.

Despite a relatively low increase in new Service complaints, compared to the increase in complaints to the SCC, and despite a higher rate of throughput at all levels, the Army's position, as regards numbers of cases awaiting decision, is worse at the end of 2012 than it was in 2011.

12 A petition to the Sovereign.

At the end of 2012, there were 290 service complaints at unit level that had been in the system for more than 24 weeks. In total, i.e. including complaints at all levels, the Army had 430 complaint cases at the end of 2012 that had been in the system for over 24 weeks, only 77 of them made in 2012.

If the cases which have been decided are typical of all cases worked on during the year, the data at Table 8 suggests that between 130 and 180 of complainants whose cases are delayed will eventually be found to have been wronged. Delay is not only inefficient but unfair.

These figures suggest that there are good grounds for doubts as to how far many in the chain of command have the ability, under the current system, to handle Service complaints made by their people in an expeditious manner.

They also show that the SCC's concerns about sustainability of the current processes, noted by the Executive Committee of the Army Board during the year, appear to be well founded. The additional resources the Army Board directed as a result should be provided will come on stream fully in 2013.

The Army is also conducting a short review in 2013, with a view to handling their Service complaints in a smarter, fairer and more effective way. This means learning from those COs who did decide Service complaints in a more timely fashion and calculating the resource savings to be made by doing so. The data at Tables 8, 11 and 12 provide the evidence. Of the 311 Service complaints decided at unit level over 70 % were decided or resolved within time target. Only 44 were escalated to a higher level or review. Indeed the appeal rate from Unit level reduced by more than half compared to 2011, (21 % of those not upheld or partly upheld compared to 51 % in 2011 and 61 % in 2010), although the percentage of cases upheld or partly upheld remained the same.

In contrast the rate of appeal of cases from Level 2 to Level 3 reduced only slightly. Less than a quarter of cases decided at Level 2 met the timeliness targets.

This review is also to consider learning from other Services and the applicability in the Army specific context and culture. It should also consider the differences in types of Service complaints, which

may have an impact on how complaints need to be investigated. For example Service complaints about bullying, for which the 'Navy' approach may not be appropriate in many cases, constituted 19 % of all new Service complaints in the Army (and in the RAF) compared to 6 % in the Navy.

With the backlogs at Level 1 and Level 3 increasing over time, whatever new processes are put in place are likely to be overwhelmed with the pressure of these existing cases, unless more action (and probably resources) is taken. The HCDC has commented that it expects action (and appropriate resources) to be taken to clear the backlogs.

As with the Navy, the Army also needs to avoid taking measures that act to suppress complaints, rather than resolve them, or to be perceived as doing so.

Unlike the Navy, which is now in a position to focus on learning from complaints, the Army's main challenge is to improve their handling of Service complaints, particularly with regard to timeliness.

The SCC has commented before that cases become more complex over time, usually due to the suspicion and lack of trust engendered by delay and are least likely to be resolved without an appeal.

To co-incide with the Army's move to JPA and the new system of reporting to the SCC, the Adjutant General has put in place new monitoring and accountability mechanisms. This is to be welcomed.

However the SCC has flagged up with the Army her concerns about the handling of complaints of serious bullying, which usually involve the interplay between the Service complaints and the Service justice systems. Whilst the data in the AFCAS survey does not suggest that there is an increase in incidents of bullying in the Army, the complaints which are now being raised through the SCC suggest that some of these incidents are serious and occur on operations and not simply in regimental bases. These cases also suggest serious harm is being done to Service personnel who are victims of such bullying, including to their mental health and the health and wellbeing of their families. The cases also suggest that the Service complaints and Service justice systems are not working effectively to stop such incidents occurring.

The Army has agreed to undertake a review during 2013, with the SCC and other independent assistance, to identify ways in which more of those who have been the subject of, or who have witnessed, bullying or harassment can have confidence to speak out and how such cases can be better handled.

The RAF

As Table 9 shows, Service complaints in the RAF more than doubled in 2012. There were slight reductions in Service complaints about terms and conditions of service (down from 113 in 2011 to 107 in 2012); and in complaints about sex and race discrimination. There were slight increases in Service complaints about medical and dental issues, the major increases were in relation to pay and allowances (up from 16 in 2011 to 36 in 2012) but particularly in complaints about different types of improper behaviour. Overall complaints about behaviour which would be treated as prescribed behaviour nearly doubled from 47 in 2011 to 93 in 2012.

Within those categories, Service complaints about bullying more than trebled (from 13 to 47). Women brought a third of the Service complaints about bullying, harassment and discrimination – a rate which is twice as high as their representation in the Service. The breakdown of types of complaint is given at Appendix 3. The gender distribution by type of complaint is given in Table 5 on page 31.

Over a fifth of Service complaints worked on during the year at unit level were either withdrawn or resolved informally before decision. More Service complaints were decided by Commanding Officers (COs) than last year but because of the huge increase in new complaints, the numbers awaiting decision at the end of the year increased by over a third, compared to the end of 2011.

Just over half of cases decided by COs were decided within the time targets but just over half of all complaints worked on during 2012 were resolved or decided by the end of the year. Table 12 shows that the RAF had the worst performance record of all three Services as regards timeliness of handling at Unit level.

The SCC flagged up her concerns with the Air Marshal Personnel (AMP) during the year and with the Air Force Board in July. COs had raised with the SCC on her visits the delays being caused by the mandatory requirement for COs to get agreement of RAF regional lawyers at the start and before decision on all Service complaints. Originally designed to improve quality (by giving COs good advice and support), other higher priority demands, combined with staffing shortages, had resulted in backlogs. This was to the detriment of a number of cases, where resolution started to unravel during the wait.

The Air Force Board agreed to the proposal put forward by the Air Member for Personnel and Capability for COs to be given more discretion as to which cases should be referred for legal advice, recognising the opportunity for rectification by a higher authority (appeal to Level 2 or 3) if needed. These changes were introduced at the beginning of October. Monitoring by the RAF Secretariat and the SCC during the year of the Service's performance against the new 24 week target for resolution should indicate the impact of the changes.



Table 9: Service complaints in 2012 – RAF

RAF	New complaints	Numbers worked on during year	Awaiting decision	Withdrawn/ informally resolved before decision	Upheld	Partially upheld	Not upheld	Taken to next level
Level 1	245	360	150	50	9	1	35	1
Level 2		69	49	2 ¹³	3	2	13	5
Level 3 Total	39 ¹⁴	85	38	2	3	4	38	2
Of which Service Board					0	0	2	
Of which SCP with Independent member					2	2	23	
Of which SCP					1	2	13	

At Level 2, just over half of Service complaints were decided (compared with 60 % in 2011) and 49 were outstanding at end of year, compared to 20 in 2011. At Level 3, 47 Service complaints were decided and 38 remained outstanding at the end of the year.

The majority of these were decided by a Service Complaint Panel sitting with an Independent member. Of those, the majority concerned Service complaints about selection for redundancy of pilots. The RAF decided, very sensibly, to use the same panel for all these complaints to ensure consistency and fairness. Because one complaint included an allegation of improper behaviour, all of these complaints had the benefit of the Independent member. In the SCC's Annual Report for 2011, she recommended the use of Independent members on Service Complaint Panels hearing complaints against Redundancy. She repeats this recommendation which was not accepted (page 52).

Table 12 shows that more Service complaints were heard in a timely fashion at Level 3 than at Level 2; although because of the low percentage of cases which were decided, overall the RAF only met the target in 24 % of cases.

At the end of 2012, the RAF had 51 Service complaints that had been in the system for over a year, 36 of them still at Unit level. 148 Service complaints had been in the system or more than 24 weeks at the end of 2012.

Outcomes and Appeals

The high levels of Service complaints upheld, at Level 2 in the Navy and by COs in the Army have been commented on above.

Of particular note in 2012, is the majority of Service complaints which were rejected by Service Complaint Panels, sitting with independent members in all three Services. This should give the Services confidence that they have nothing to fear from greater independent involvement in their decision making. Where a complaint is not upheld, parties to a complaint can have re-assurance that a person of standing and experience, with no connection to the Services, has considered the complaint. The Services can have assurance that such a person has considered their actions very carefully and has decided that their Service personnel have not been wronged.

Where a case is upheld, the Services have the opportunity to learn. In one case, whilst an independent member disagreed with the two Service members as to whether there had been any maladministration, the independent member concluded that the complainant had not been wronged, as the maladministration was not relevant to the case. Independent judgement, made with a wealth of experience in organisations and professions outside, can be of enormous benefit to the Services, as can recommendations for action following a complaint case.

¹³ One case was stayed awaiting the outcome of a medical treatment complaint and one case was transferred to the Army.

¹⁴ These are Service complaints about selection for redundancy which under the agreed procedure entered the Service complaints system at Level 3.

Table 10: Cases upheld or partially upheld as a percentage of all cases decided during 2012 by Service and Level

	RN		Army		RAF	
	Upheld	Upheld & Partially upheld	Upheld	Upheld & Partially upheld	Upheld	Upheld & Partially upheld
Level 1	9%	17%	36%	42%	20%	22%
Level 2	41%	56%	32%	50%	17%	28%
Level 3	11%	22%	24%	35%	7%	16%

Table 11: Percentage of not upheld or partially upheld decision referred to a higher authority

	Level 1-2(3)			Level 2-3			Petitions to the Sovereign			Claims to ET		
	2010	2011	2012	2010	2011	2012	2010	2011	2012	2010	2011	2012
RN	n/k	37%	94%	32%	21%	29%		0	0	7	2	4
Army	61%	51%	21%	76%	76%	73%		3	1	39	15	9
RAF	60%	20%	3%	62%	45%	33%		0	2	6	6	5

Table 11 shows the reduction over the last three years in the Army and RAF of appeals to Level 2. (The figures for the Navy include significantly more Service complaints referred by the CO for redress). This pattern is also to be seen in the RAF at Level 2 to 3 but not in the Army. The longevity of the Army cases may be a factor – delay eroding confidence in a decision. Delay may also have been a factor in Navy cases at these levels.

Timeliness and Delay

In 2008 the SCC set a three year goal for the Services to achieve a decision on 90 % of Service complaints within the JPA timelines within 30 working days at Levels 1 and 2 and 60 working days at Level 3. Whilst keeping that as the three year goal, the MOD and Services agreed more generous, and, at that stage, what was felt to be more realistic goals. These differentiated between cases deemed to be simple and those which were more complex:

- Level 1: 80 % of non-complex cases to be completed within 60 working days; complex or multiple complaints within 120 working days
- Level 2: 80 % of non-complex to be completed within 30 working days; complex or multiple complaints within 60 working days
- Level 3: 70 % of all types of complaints to be completed within 70 working days.

Table 12 shows the Service's performance against these targets; and the percentage of all cases worked on during the year which met these targets. This table also gives the numbers of cases in the system at the end of 2012 at least one year old and shows very clearly the problems with delay in the Army and RAF.



The SCC visits HMS Illustrious, Portsmouth, July 2012

In 2012 new fee earning Harassment Investigating Officers (HIO) were recruited, trained and made available to COs, to reduce a previous cause of delay – the difficulty of releasing Service personnel to undertake investigations. The Services have not yet provided any evidence of the use of these new HIOs or their impact on timeliness. The Army does believe that they are making a difference. The HCDC has recommended that the SCC should undertake an analysis of the effectiveness of HIOs at the end of 2012 and that this should be included in the 2013 Annual report.

Recommendation 12.7

The Services should provide the SCC with a full report on their use of fee earning HIOs in 2012 and 2013. This should include data on how many have been used, how quickly they were appointed, costs, an end user assessment of the quality of investigations and the impact on timeliness of handling Service complaints.

Table 12: Performance of the Services against agreed timeliness targets in 2012

Service	Percentage of decided cases which met time targets	Percentage decided/resolved	Percentage of all cases worked on during 2012 which met the time targets	Numbers of undecided complaints submitted before 1/1/12
Navy				
Level 1	64 % / 70 % ¹⁵	71 %	48 % ¹⁶	6
Level 2	61 % / 63 %	96 %	61 % ¹⁷	12
Level 3	7 %	70 %	5 %	11
Army				
Level 1	72 % / 70 % ¹⁸	35 %	31 %	213
Level 2	17 % / 25 %	47 %	8 %	15
Level 3	0 %	27 %	0 %	125
RAF				
Level 1	72 % / 71 %	26 %	19 %	36
Level 2	33 % / 20 %	51 %	15 %	7
Level 3	63 %	38 %	24 %	8

The Users' view

Organisations use complaints in different ways. In manufacturing and retail industries, such as the food industry, complaints are used as part of the quality assurance mechanism – to check and identify any defects in the supply chain. Service industries will use complaints as a means for checking on quality of delivery of services. The public sector can also use complaints for quality assurance, especially, for example in the Health Service, where there may be a number of ways in which information about what is going wrong does not reach the people who need to

know and can take action. Public sector organisations, such as the Police service, also use complaints as part of their approach towards operational continuous improvement.

Common to all these approaches, is an analysis of the subject matter of the complaint and the experience of the consumer or service user.

In the Armed Forces, the Navy has the most developed approach to using complaints to identify where and how processes are going wrong, although, as they recognise, this is still in fairly early stages.

¹⁵ These figures include the 51 cases which were referred to a higher authority as being outside the Level 1 authority to redress.

¹⁶ However this does not take account of the cases resolved informally or referred by the CO to the next level for redress without decision.

¹⁷ Similarly this does not take account of nearly 40 % of complaints at this level which were resolved informally, many if not all of which may have been resolved within the time limits.

¹⁸ These include Service complaints that were withdrawn or informally resolved.

None of the Services yet have focussed on seeking and using feedback on their experience of the Service complaints system, from complainants and those complained about.

Before the SCC closes a case, she offers the person who has contacted her, the opportunity for feedback on their experience and to make any suggestions for improvement. Many of the comments received are thoughtful and highly informative. A common theme over 2012 was a call for the role of the SCC to change to that of an Armed Forces Ombudsman.

Extracts are given here from two individuals; one who brought a Service complaint which was eventually upheld in full at Level 3 after 2 years in the system; the other from someone who was the subject of a complaint.

A complainant's view

"The Service Complaints Commissioner's limited power to intervene results in the Armed Forces paying lip service to a flawed complaints process where there is benefit in not having an independent arbitrator.

Having been through the Service Complaints process I would ensure that any individual thinking about submitting a Complaint is fully aware of the practical and emotional impact both on themselves and their family.

The management of my Service Complaint has resulted in two previously committed, professional Officers now re-considering their future. Whilst the Services have no control over an individual's actions that give rise to a complaint, they do have the ability to:

- Make the Service Complaints process more user friendly
- Quicker to point of resolution
- Independent (and thus transparent)
- Without fear of reprimand and
- Educate to reduce the stigma."

Delay is equally unfair to those about whom a complaint is made. During 2012, the SCC received an increased number of complaints from individuals in this position. Many were concerned, not only for their own reputation and career, but also about an apparent lack of appreciation of how delay in handling the complaint was impacting on the work of the team, and operational effectiveness.

One individual, about whom a Service complaint of bullying was not upheld after 12 months in the system, wrote to the Commissioner:

The view of a person who was the subject of a complaint

"I absolutely agree with the principles of the Service Complaint (SC) system, and it is quite proper, as you state, that Service personnel should have the right to raise a SC. It is vital, therefore, that the system is as swift, thorough and fair as possible, and I am very reassured by the progress you and your team are making to ensure that it becomes fully fit for purpose.

Bureaucratic arguments over command chain responsibility for administration of the complaints process cannot be deemed a satisfactory excuse for delay in instances where serious allegations of bullying and harassment are made. Given the gravity of the allegations that were made against me, the vital thing to do was to get the investigation on the move in order to secure timely evidence and, if necessary, to address my alleged bullying behaviour. If I was the bully I was accused of being, it was inexcusable that I was allowed to continue in my instructional duties for a further period of 7 months (at which point I was posted) without any additional supervision, let alone suspension from my role."

This chapter:

- reports on the outcome of the MOD's Review of the Service complaints system.

The MOD's Review of the Service complaints System

Following the SCC's attendance at the Service Personnel Board in December 2010, the MOD and Services agreed to undertake a review into the working of the Service complaints system. In her Annual Report for 2010 the SCC recommended that this review should be fundamental, considering from first principles the function and purpose of a Service complaints process in the Armed Forces and considering best practice elsewhere, including the ACAS guidelines on Workplace Grievance systems.

The methodology the MOD used was to track Service complaints made in the first 6 months of 2011, to consider particularly if the SCC was correct in her assessment that delay was endemic and that the Service complaint system too complex. The chosen methodology inevitably required a period of time. Because of the level of delay in the Service complaints system, it took until spring 2012 before the MOD could make any meaningful assessment. The conclusion was that delay affected new Service complaints, not simply those which had been made before 2011. The changes the Services had made following the SCC's recommendations, were therefore not sufficient to make the existing system work.

The MOD reported to the House of Commons Defence Committee on the outcome of the Review:

The review concluded that although recent incremental improvements were starting to bear fruit, more was needed to be done to reduce undue delay in the system. Delay is one of the key reasons why the SCC was unable to report in her Annual Report for 2011 that the Service complaints system is working efficiently, effectively or fairly (page 6, paragraph 1).

The review found that performance of the system was affected most by three main factors:

- demand and resources (the volume of complaints in the system and the sufficiency and efficiency of available resources to respond to them);
- delay (its causes, and whether they are system-generated or result from the action or inaction of individuals); and
- appeals (the lack of restriction on what can be appealed and the number of levels available).

Actions being taken forward to address the issues that arose from this work include:

- **Demand and Resources.** Encouraging greater use of informal resolution such as mediation, nipping complaints in the bud early and reducing time taken and resource pressures; ensuring effective processes are in place for issues such as pay and allowances, housing and appraisals, to resolve complaints without subsequent recourse to the Service complaints system; removing bureaucracy (see the new model for working with the SCC);
- **Delay.** Replacing the current set of timelines for each level with a single timeline and target, with the single Services monitoring progress to ensure complaints are kept moving against interim timelines so that critical points are flagged and action taken to address delays; reinforcing the message that effective complaints handling is a function of command, and that early and timely handling of issues/grievances, whether formally or preferably informally, has a direct benefit for unit cohesion and effectiveness;
- **Appeals.** Exploring how to focus the basis for appeals more tightly so as to reduce those based on spurious grounds and to provide a sharper focus for subsequent action by the chain of command; continuing to assess the reasons for appeals/escalation so that we can, as the Army did in 2010, consider for example whether levels of authority for granting redress are at appropriate levels, and can learn lessons to prevent recurrence.



The SCC visits RAF Leuchars, January 2012

The information given in the last chapter shows that the Army and RAF are struggling to cope with an increasing demand – a doubling of new complaints in the RAF – and that despite increasing levels of output, backlogs are increasing not reducing. The Navy’s experience is that throwing sufficient extra resources in the short term may reduce the backlogs but that the key to effective resolution is empowerment of Commanding Officers who will provide time and attention (or are allowed to do so by their staff and superiors).

The Navy’s experience also raises questions about willingness to make some complaints and confidence in the system. At a time of redundancies, gaps in staffing and general change, the SCC is not convinced that tweaking the system will be sufficient.

As the only person who has day to day and detailed oversight of hundreds of cases and across all three Services, and with the benefit of experience in the civilian world, the SCC remains of the view that the system does require simplification. The bureaucracy, the focus on process over common sense, common care and decency, is commented upon by complainants, those complained about and many of those deciding cases alike.

The SCC welcomes the new single timeline of 24 weeks and supports fully the change in role of the single Service secretariats. Indeed it is a change she has been advocating since her arrival in 2008. However she is not optimistic about the Services’ ability to meet that timeline, under the current complex system.

She is also sure that the system is inefficient, and too resource hungry and not sustainable.

The HCDC Report¹⁹ also concluded that:

“The changes to deal with issues relating to demand and resources, delay and appeals while beneficial in themselves are tweaking a system that needs to be fundamentally redesigned and simplified. The MOD must demonstrate to us, and more importantly to Service personnel, that the changes will bring real benefits and lead to a fairer and more efficient system. In response to our report, the Commissioner and MOD should set out how they will measure the effectiveness of these changes. If they do not produce the desired effects the MOD should commit to an early and speedy reassessment of them and to further, more fundamental changes.”

The SCC, MOD and Services will review, in summer 2013, the operation of the 24 week time limit and the resources needed to make the new system work, in the Services and in the SCC’s office. They will also have the benefit of 9 months of the RAF new way of working at Level 1 and the Army’s conclusion in its review of Army process.

Recommendation 12.8

The review by the MOD, Services and SCC of the new 24 week time target should include an assessment of the cost of the complaints system.



The SCC visits British Army Training Unit Canada, September 2012

19 HCDC Report ‘The work of the Service Complaints Commissioner for the Armed Forces’. Eighth Report of Session 2012-13. Paragraph 13 Conclusions and Recommendations.

This chapter:

- reports on progress against the three year goals the SCC set in her Annual Report 2010; and
- repeats the case for an Armed Forces Ombudsman.

In 2010, the SCC set new simplified three year goals for the MOD and Services, which took account of the experience of the first three years of the new Service Complaints system. These recognised the changes in infrastructure put into place within the Services and the differences between Services in organisation and culture. They also reflected the different relationship she believed was appropriate for the second three years of the Service Complaints Commissioner role. Having given advice and recommendations at a more tactical level, appropriate to what she found on taking up office, She believed her role should be more strategic. The four three year goals focus on outcomes and give the MOD and Services flexibility about how these should be achieved.

Goals for the Service Complaints system by 2014

- 1 90 % of all complaints from Service personnel completed in the internal system within 24 weeks
- 2 Significant and continued reductions in the anonymous reports of bullying, harassment discrimination and victimisation in general and amongst the most vulnerable
- 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
- 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

Progress against these four goals is reported within this chapter. In her Annual Report for 2013, the SCC will assess the extent to which they have been met.

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

24 weeks

The Review of the Services Complaints system undertaken by the MOD and Services between 2011 and 2012 confirmed that delay was still a serious problem. The MOD and Services agreed to adopt the 24 week time target set out by the SCC in her Annual Report 2010. This replaces the complex set of time targets that applied to the end of 2012.

The data reported in Chapter 3 shows that at the end of 2012, 662 Service complaints had been in the system for over 24 weeks: Navy, 69, Army 445, RAF 148. Nearly two thirds of the Navy's 69 cases were Service complaints made during 2012. In the RAF, half of the 148 were brought in 2012, and nearly another quarter in 2011. However fewer than a fifth of such Army cases were brought in 2012, nearly half were brought in 2011 and over 10 % were started in 2009.

The MOD and Services agreed new powers for the SCC to hold the Services to account for achieving this target and to close the fairness gap in her powers with regard to oversight of individual cases.

The yellow and red flag system

In her Annual Report 2010, the SCC concluded that her current powers were inadequate and needed to be strengthened so as to ensure that complaints brought by Service personnel were handled fairly in accordance with proper procedure or without unreasonable delay.

The SCC's recommendations that her role by strengthened and changes to that of an Armed Forces Ombudsman, acting as a final external and independent level of review, was rejected. The MOD and Services preferred a model which gave more effective oversight by the SCC of Service complaints whilst they were in the system. To be effective, such a model would have required a significant increase in SCC resources (a quadrupling of caseworkers on the basis of a

thousand live cases). Extra resources were not on offer. Moreover this model would do nothing to change the Services' way of working or facilitate a more efficient use of resources in the Services.

The SCC therefore proposed an alternative model that focussed her limited resources on the cases that were at risk of unreasonable delay or being dealt with poorly; and to strengthen her powers to hold to account those investigating a complaint.

From 1/1/13, the powers of the SCC have been strengthened with respect to individual cases. She will be informed of all Service complaints that are likely to (yellow flag) or do exceed the 24 week target, (red flag). If she is not satisfied with the explanations for delay or the proposal for expediting resolution, she may make a formal report to the Secretary of State on that individual case, with recommendations.

She may also make such reports where she believes a Service complaint in the system at or brought after 1/1/13 has not been handled properly. The SCC will report on the exercise of these powers and their impact in her Annual Reports to Ministers and Parliament.

There will be no change to the SCC's referral powers. The SCC will no longer be updated every 30 working days but will expect the Services, (usually the chain of command) to keep the individuals informed. More of the SCC's time will be spent on reviewing those cases which do not meet the standards in timing or fair handling.

The new SCC powers mean that the Services will need to be more proactive in managing Service complaints and focussing on resolution, not simply process.

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

Less than 10 % of those in the Armed Forces who say they have been the subject of bullying or other improper behaviour make a formal complaint. Any increase in Service complaints may not therefore necessarily represent an increase in incidents.

Two surveys are conducted each year which ask Service personnel about how they have been treated: the Armed Forces Continuous Attitudes Survey, (AFCAS) which is sent to over 30,000 Service personnel; and the Recruit Trainee Survey (RTS) which is given to all recruits at the end of their Phase 1 and again at the end of their Phase 2 training. Both are anonymous.

AFCAS and RTS also ask whether Service personnel have made a formal complaint and, if not, the reasons why.

This information can be triangulated with the Service data on Service complaints and information which, since 2006, has been provided by the Services and MOD on formal and informal complaints.

AFCAS

Every year the Armed Forces Continuous Attitude Survey (AFCAS) surveys a significant proportion of service personnel on a range of matters concerning their Service life. It includes a section on fairness and diversity, asking about experience of discrimination, harassment and bullying, knowledge of how to complain and, since 2008, understanding of the SCC role. The SCC's Annual Reports have provided information from the AFCAS surveys as a baseline from which to measure trends in relation to incidence of discrimination, harassment and bullying, and use of the Service complaints system to resolve such problems. This report gives information primarily from AFCAS 2012, drawing on the earlier reports where appropriate to show trends.

Levels of bullying, discrimination and harassment

AFCAS 2012²⁰ reports little change in the overall experience of bullying, harassment or discrimination in the Services compared to 2011. Overall 8 % said they had experienced such treatment, down from 9 % in 2011. However the downward trend was reversed for officers in the Royal Navy and the Army (rising from 7 % and 6 % to 8 % and 7 % respectively). There was a decrease in reports of improper treatment experienced in the RAF Other Ranks (from 11 % to 9 %). Reports across other categories remained the same. The highest reports were in the Royal Navy Other Ranks (11 %); the lowest in the Royal Marines – (Officers 3 %, Other Ranks 4 %). 8 % of Army Other Ranks reported being the subject of such treatment.

20 Table B4.3 at page 130. AFCAS is published by Defence Analytical Services and Advice (DASA) UK.

AFCAS gives a more detailed breakdown of the experience of bullying, harassment and discrimination, in general and because of gender, ethnicity, sexual orientation, religion and social class. The format of these questions changed in 2010 and again in 2012, making it difficult to compare experience in the different Services or spot trends over time.

From AFCAS 2012, it appears that there are more reports of discrimination (for any reason) in the Royal Navy (6.1 %) than other Services and by Other Ranks than officers. There were more reports of discrimination by Army personnel (5.4 %) than RAF personnel (5.2 %). This may represent an increase since 2011 for Army personnel.²¹

Reported incidents of bullying are less frequent. Overall around 3 in 10 Service personnel reported being bullied in the previous 12 months, with higher percentages in the RN and RAF Other Ranks (4.1 % and 3.4 % respectively). The reports from the Army were lower (2.2 % of officers and 2.8 % Other Ranks). The RM have the lowest reports (just over 1 %).

Overall levels of harassment are lower again: 2.3 % overall with RAF Other Ranks reporting the highest levels (3.3 %) followed by RN Other ranks (2.9 %).

Willingness to make a complaint

The differences between what Service personnel report as their actual experience of Service life and the increases in Service complaints in 2012 (most notably in the RAF, where complaints about bullying more than trebled) may be explained by the AFCAS results with regard to willingness to complain. Whilst overall there was no difference since 2011 (only 9 % of those who said they had experienced improper treatment having made a formal complaint) this Service wide figure disguised differences between the Services.

In AFCAS 2012, the numbers of personnel who had made a formal complaint (Service complaint) in the RAF doubled – from 5 % to 10 %, with a higher increase for Officers (4 % to 10 %). There were increases too in the figures for Army Officers and RM Other Ranks, although of a lesser magnitude (7 % to 10 % and 9 % to 10 % respectively).

The numbers of RN Officers who had made a formal complaint halved (14 % to 7 %) and there was a decrease also in Army Other Ranks (10 % to 8 %). Information given elsewhere in AFCAS 2012 may provide some of the answer with regard to the Army figures. There was a large increase in soldiers (Army Other Ranks) giving as the reason for not complaining that they did not know what to do (3 % in 2011 to 16 % in 2012). Fewer soldiers were put off by the complaints process, thought their problems too minor to report or tried to resolve the situation informally. AFCAS 2012 does not provide any answers with regard to the drop in complaints by RN officers. The largest increase in reasons for not making a complaint being “other”. It is notable that the numbers of RN Officers giving as a reason, that making a complaint might adversely affect their career, had decreased – down from 65 % to 54 %. By contrast there was a large increase in RAF officers giving this reason, from 45 % to 64 %.

There were increases too in the RAF Officers and Army Other ranks giving fear of retribution from perpetrators as the reason for not making a complaint (20 % to 24 % and 24 % to 30 % respectively).

The AFCAS Survey was completed in the early months of 2012 and cannot therefore be correlated with Service complaints data for the whole of 2012. These figures do, however, raise questions about whether the changes in Service life, including the threat of redundancy, have impacted on stress levels and willingness to make a complaint. The HCDC in its report stated²²:

“It is unacceptable that Service personnel who believe they have a genuine grievance in relation to redundancy or any other matter are reluctant to seek redress and resolution of the matter through the appropriate channels because they fear the consequences of making a complaint.”

The HCDC required the MOD and SCC to investigate this matter and report back to them as a matter of urgency and report back to them.

²¹ The figure in 2011 AFCAS was 3 %; but that Survey included a “prefer not to say box” which was dropped in 2012. The RAF figures however remained more or less the same in the two surveys.

²² Paragraph 2 Conclusions and Recommendations.

Table 13 shows that formal complaints (Service complaints) in the RAF about bullying, discrimination and harassment more than doubled in 2012 (also noted in chapter 3) and that informal complaints also increased.

Service complaints in the Army decreased (noted also in Chapter 3) but informal complaints nearly doubled. This is likely to be due to the Army's Bullying and Harassment helpline, established in 2011, who estimate that they can resolve the less serious complaints within weeks, rather than the months usually experienced in the Service complaint system.

Table 13 shows the numbers of formal and informal complaints made in 2012. These represent a drop in

Service complaints in the Naval Service – down from nearly 35 Service complaints in 2011 to 22 in 2012 and a huge drop in numbers of informal complaints from 93 to 23 in 2012.

This pattern of reductions in complaints in the Naval Service contrasts with the continuing highest levels of anonymous reports in AFCAS 2012 of bullying, discrimination and harassment and of increased reports by Officers of such behaviour. The Navy should investigate the drop in the numbers of complaints and causes which prevent Naval personnel speaking out when they have been improperly treated.

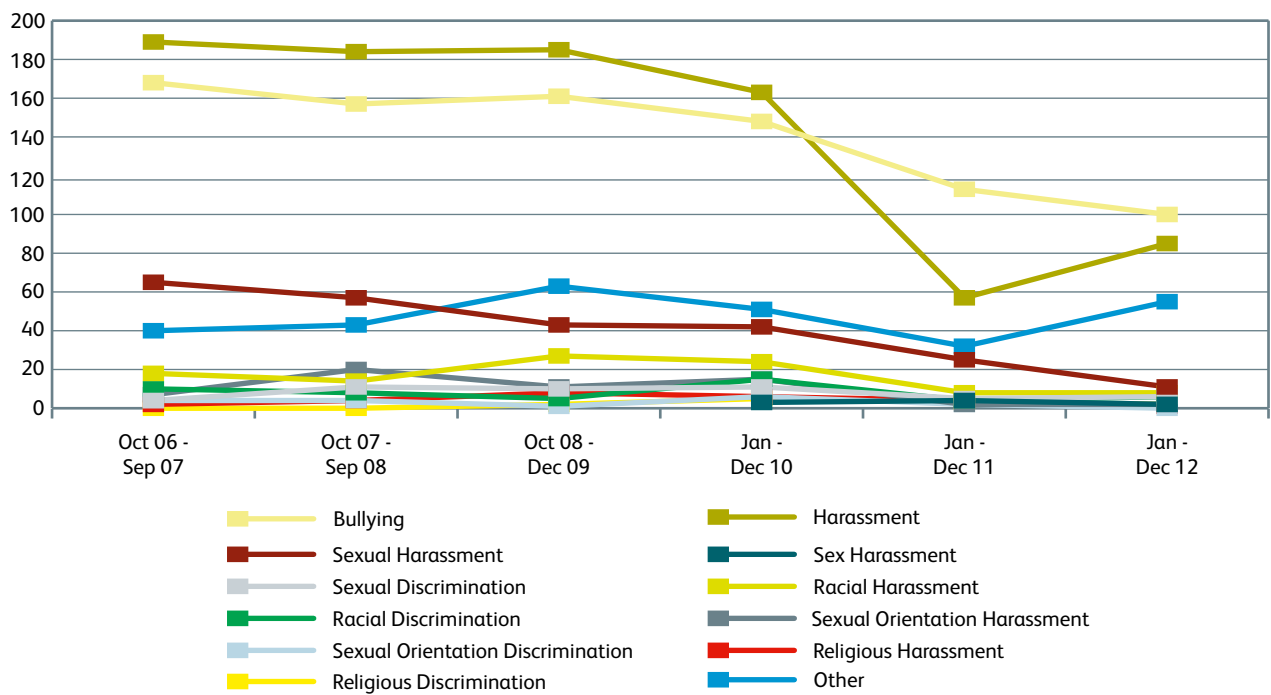
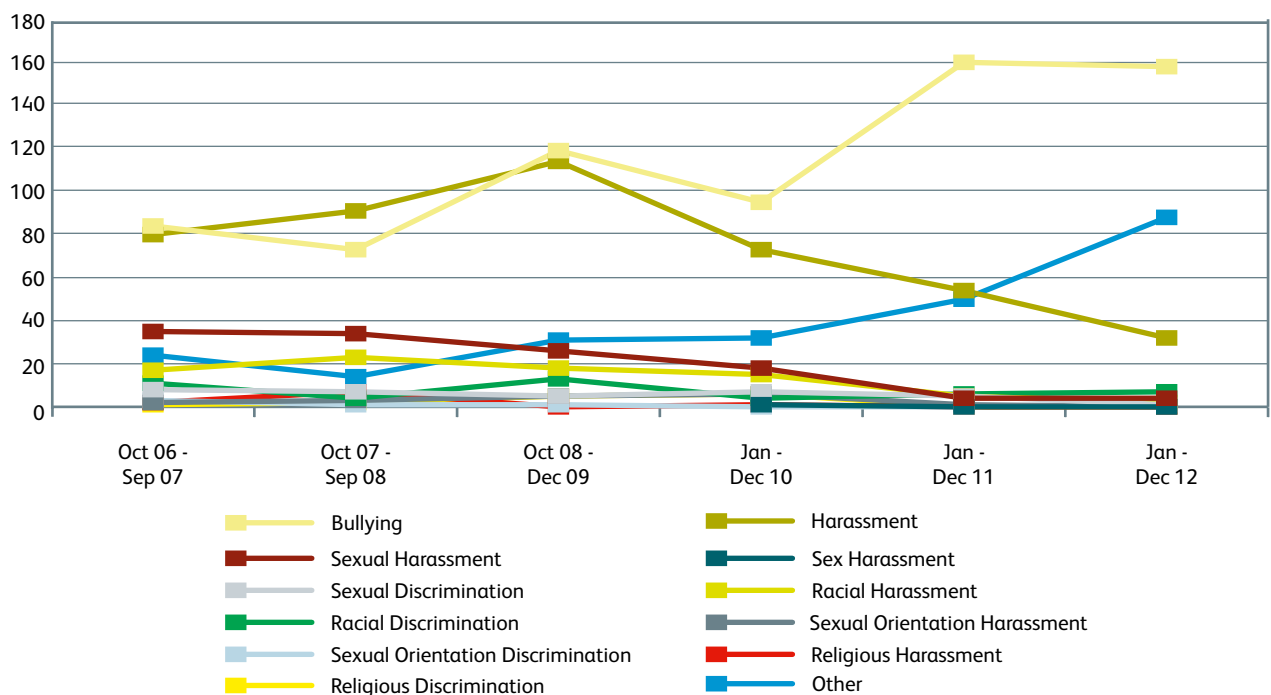
Table 13: Numbers of formal and informal complaints by Service and type 2012

Type of complaint	RN		Army		RAF		Purple TLBs ²⁶		Totals	
	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal
Bullying	11	8	99	59	47	32	1	1	158	100
Harassment	4	6	16	51	12	25	0	3	32	85
Sexual harassment	2	2	0	6	2	3	0	0	4	11
Sexual discrimination	0	0	0	2	1	4	0	0	1	6
Sex harassment	0	0	0	1	0	0	0	1	0	2
Racial harassment	0	0	2	7	0	0	0	1	2	8
Racial discrimination	0	2	7	4	0	0	0	0	7	6
Sexual orientation harassment	0	1	0	1	0	0	0	0	0	2
Sexual orientation discrimination	0	0	2	0	0	0	0	0	2	0
Religious harassment	0	0	0	1	0	0	0	0	0	1
Religious discrimination	0	0	0	2	0	0	0	0	0	2
Other	5	4	52	40	31	8	0	3	88	55
Totals	22	23	178	174	93	72	1	9	294	278

The Navy should also investigate whether there is a gender dimension given the gender breakdown in the formal Service complaints.

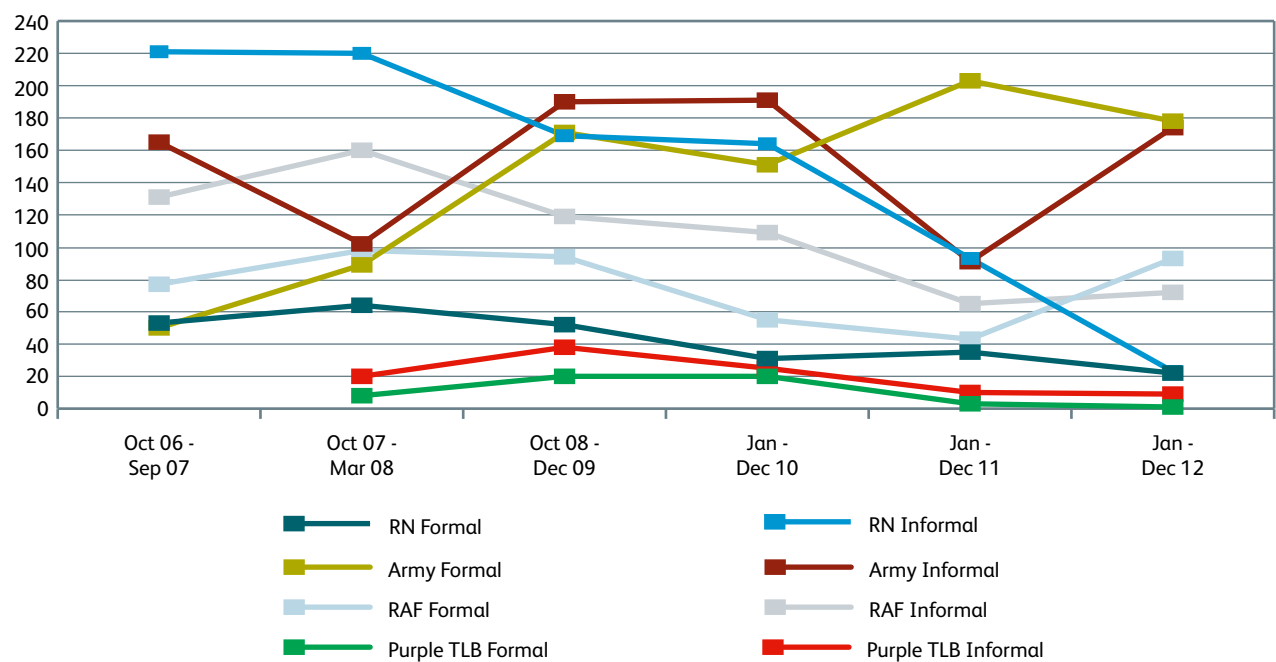
Figures 7 and 8 below (Formal Complaints by category over time) and (Informal complaints by category over time) show that the switch made in 2011 from the majority of complaints about bullying being made

formally (rather than informally) has continued, although there were fewer complaints (formal and informal) made in 2012 than in 2011. The numbers of total complaints about harassment were about the same in 2012 as in 2011, although more had been made as Service complaints. The data given in Figure 9 for 2012 with regards to formal complaints appears consistent with Service complaints data.

Figure 7: Informal complaints trends by category 2006–2012**Figure 8:** Formal complaints trends by category 2006–2012

Formal and informal complaint data provided by the MOD and Services

Figure 9: Formal and informal complaints by Service 2006–2012



Recruit Training Survey (RTS) findings for 2011

The MOD were not able to confirm that the RTS 2011 would be published before the date of publication of the SCC Annual report 2012. Unfortunately therefore this section had to be withdrawn at the final stage of preparation.

Goal 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

The SCC has no evidence that complaints that are subject to a specialist complaints system are being dealt with in a more timely manner.

The HCDC Report stated²³:

“Attention should be given to the areas that the Commissioner has already identified as demonstrating systemic weaknesses such as pay and allowances, the application of policy and procedure and the relationship between the criminal justice system, the military system and the Service complaint system. The MOD should set measurable aims, objectives and targets for improvement in these areas.”

Pay and Allowances

Complaints about pay, allowances and pensions make up 22 % Navy, 15 % Army, and 30 % RAF Service complaints. Behind the individual complaints can be errors that affect hundreds and sometimes thousands of Service personnel. In these cases, any Service complaints are suspended whilst the totality of the problem is investigated and, if there has been a mistake which has led to overpayment to individuals through no fault of their own, a decision as to whether this can be written off. The SCC has been approached by many personnel and families about the anxiety and hardship this has caused. Delay in these circumstances is particularly unfair.

A number of complaints that the SCC referred during 2012 were from Service personnel who approached the SCC because of the length of time their complaint about pay or allowances had been in the system. The SCC discovered that the reason for the delay was that the individual was one of hundreds in the same situation. Whilst it is right that care should be taken to establish the truth and to follow Treasury rules about any write off of public money, delay and uncertainty are very stressful.

The complaints systems, whether specialist or Service complaints, are designed for determining individuals' complaints and are not suited to addressing wrongs which affect a large number of class of complainants. In a visit to the Service Personnel Veterans and Welfare Agency (SPVA) by the SCC in 2012, SPVA estimated that half of the complaints they received about wrongful pay or claims for repayment of overpayment were caused by mistakes in Service units. The SCC has not yet seen any evidence of lesson being learned by the Services following such complaints, to prevent similar mistakes arising in future. In its evidence to the House of Commons Defence Committee, the RAF Families Federation also commented on the causes of such situations and the stress involved.

The SCC proposal that the interface between the specialist pay and allowances complaints procedures and the Service complaints process be simplified and speeded up, on the model adopted for complaints about redundancy, does not appear to have been considered as part of the MOD Review. No changes have yet been made.

The MOD has shared the SCC's findings, in particular about the importance of timeliness and learning lessons, and the Principles of Fairness for Complaints Handling, with SPVA, who are currently reviewing their complaints process.

Complaints about pay and allowances cannot be considered only as matters for SPVA and in isolation from systems for unit and self management by Service personnel or from the Service complaints system.

Recommendation 12.9

The MOD, Services and SPVA should consider the interface between the pay complaints and Service complaint system as part of and following the SPVA review. They should also consider how the establishment of an Armed Forces Ombudsman might simplify and speed up resolution of such complaints, particularly where large numbers of individuals are involved.

23 Paragraph 3 Conclusions and Recommendations.

Redundancy

Service complaints about redundancy have largely been dealt with in a timely fashion (one RAF case did not go straight to Level 3) and have been prioritised, in order to ensure that a decision was made before the date the Service person was due to leave the Service.

All Service complaints made by Army personnel about redundancy decisions to date have been considered by the Army Board, due to the significance of the policy issues that were being challenged in the complaints. The Army Board, unlike a Service Complaints Panel, does not include an independent member.

Recommendation 11.7 in the SCC's Annual Report 2011²⁴ has not yet been accepted. The MOD has said it would consider this in the light of experience and have recently confirmed that it will keep this recommendation under consideration.

During 2012 a number of complainants, directly or through their legal advisers or MPs, wrote to the SCC about their concerns that Service personnel had no access to an Employment Tribunal where they believed they had been unfairly selected for redundancy or unfairly dismissed. The SCC believes that such calls for the law to be changed are likely to increase and that an independent element is required in the final decision making on discharges to give Service personnel confidence and the Services an assurance that Service personnel are being treated fairly.

Recommendation 12.10

All Service complainants alleging unfair discharge, including unfair selection for redundancy, should have the option of seeking an independent scrutiny of their complaint, whether by the inclusion of an independent member of a Service Complaint Panel or by an Armed Forces Ombudsman.

Medical Complaints

Recommendation 11.1 in the SCC's Annual Report, that the new Medical Complaints procedure should use a similar route of appeal to that used in redundancy complaints, is being considered. The Surgeon General commissioned work on a new complaints framework and principles for medical treatment complaints during 2012. The SCC was consulted in early 2013 and recommended more work on appeals. She also raised the issues of the

complexities that Service medical personnel face in working in the NHS and in being accountable both up the Defence Medical Services chain of command and to their professional bodies in relation to professional standards. Her comments have been acted upon.

The numbers of complaints to the SCC from Service medical staff about their treatment and from Service personnel about medical treatment or the interface between medical services and the chain of command (for example leading to discharge) were slightly lower in 2012 than in 2011. This may be due to heightened awareness within Defence Medical Services occasioned by the SCC's work with them but also their own work in developing their specialist medical complaints system.

Whistleblowers

During 2012 and early 2013 the issue of whether and how to provide protection for whistleblowers received media and public interest in the UK in general. The SCC's case bag shows that this is an issue in the Services, particularly in relation to the professions, (medicine and law), where Service personnel have professional duties which may conflict with obedience to the chain of command. Similar conflicts may also arise elsewhere, for example in the Service police. The Services take their responsibilities under national and international law very seriously and have codes of ethics, values and standards to support those who witness wrongdoing and feel unable to speak out or are threatened or coerced into remaining silent. However it is clear that speaking out, like making a Service complaint, can be very difficult.

A whistle-blowing policy in a Service environment has particular complexities over and above those in other employments. The SCC has recommended that the Defence Medical Complaint system include a provision for whistleblowers and this should be also considered for Service lawyers and Service police. These policies could be considered in conjunction with an Armed Forces Ombudsman.

Recommendation 12.11

The Defence Medical Service should establish a provision for whistleblowers in the new Defence Medical Services complaints policy. This should also be considered for Service lawyers and Service police. These policies could be considered in conjunction with an Armed Forces Ombudsman.

²⁴ The use of Independent members for redundancy related Service complaints should be considered by the Review as a matter of urgency; and the Services consider the option of having a Defence SCP for redundancy related Service complaints.

Goal 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

Levels of awareness of the SCC and Service complaints system

AFCAS shows a steady increase year on year, in all Services and across the ranks, in awareness and understanding of the SCC role. The Army, which has included information about the SCC on all recruit trainee courses since 2008, and on welfare cards given to recruits and their families, has the highest levels of awareness, as is shown in Table 14.

The Royal Marines have the lowest understanding of the SCC role. The Royal Marines also have the highest levels of ignorance about where to get information about the Service complaints procedure. In 2012, 29 % of RM Other Ranks did not know where to get such information, compared to 15 % of Royal Navy Other Ranks and 18 % of Other Ranks in the Army and RAF. The Naval Service undertook a programme of awareness raising throughout 2012 (the AFCAS survey was conducted in the first few months of 2012). AFCAS 2013 will show how effective it has been.

The RAF has the lowest percentage of officers who understand the SCC role and the highest proportion of Officers and Other Ranks who have not heard of the SCC. This is likely to be linked to the anomaly that whilst the number of Service complaints in the RAF more than doubled in 2012, the SCC only received 10 more contacts from RAF about matters that could be a Service complaint – a 11 % increase. This compares with 28 (a 48 % increase) from Naval personnel and 85 (a 33 % increase) from Army personnel.

Evidence from the RAF Families Federation to the House of Commons Defence Committee suggests that the lower levels of contact with the SCC may also be linked to other factors, including the SCC's lack of powers and adequate resources. Nevertheless the RAF should take action to raise awareness of the SCC.

Recommendation 12.12

The RAF should adopt the Army's best practice of mentioning the SCC on every recruit training course and welfare literature; and consider how to reach RAF personnel with such information over the next year.

Table 14: Levels of awareness and understanding of the SCC role – AFCAS 2012

	Officers	Other Ranks	Total
Tri-Service			
Understand SCC role fully or to some extent	87 %	73 %	75 %
Never heard of SCC	6 %	12 %	11 %
Royal Navy			
Understand SCC role fully or to some extent	84 %	71 %	74 %
Never heard of SCC	7 %	14 %	12 %
Royal Marines			
Understand SCC role fully or to some extent	81 %	63 %	65 %
Never heard of SCC	8 %	15 %	14 %
Army			
Understand SCC role fully or to some extent	90 %	76 %	78 %
Never heard of SCC	4 %	10 %	9 %
RAF			
Understand SCC role fully or to some extent	78 %	67 %	70 %
Never heard of SCC	10 %	17 %	16 %

Recruit Trainee Survey 2011

In her Annual Report 2011, the SCC recommended that the RTS questionnaire should include a question on levels of awareness of the SCC. The MOD rejected that recommendation, saying that the RTS includes a significant section on complaints outcomes as well as process along with questions on equality, fairness and treatment and is currently fit for purpose. Whilst the addition of a question about awareness of the SCC is not considered necessary, it will be kept under review.

Recommendation 12.13

The MOD should reconsider their decision and include a mention of the SCC in the RTS for 2013.

Feedback on SCC's performance

Ministers have acknowledged privately, in letters to the SCC, and publicly, the value they place on the SCC's work and the contribution she has made. In its written evidence to the House of Commons Defence Committee's Enquiry into the work of the SCC the MOD wrote:

"MoD values the independent oversight and scrutiny that the SCC provides and has acknowledged the part the SCC has played in the changes and improvements that have been made to the complaints system since its introduction since 2008.

The MoD believes that the solid foundations laid by Dr Atkins and the range of improvements and planned improvements to the Service complaints process itself, are continuing to strengthen this vital component of the fair and effective management of the Armed Forces. They also increase the confidence with which the process is regarded by Service personnel and the wider community."

Such comments have been made also by Service chiefs, and those advising Service personnel, such as the RAF Families Federation:

"The SCC's role has brought a much needed focus to the staffing of complaints within the military system but has done little to address the root cause of the complaints themselves."

Feedback from the Services in relation to the SCC's contribution to training has also been positive. The Director of the Advanced Command and Staff Course wrote:

"Your candid view of a less than perfect system is an essential part of our learning needs and prompted much debate and argument in the subsequent syndicate room discussion. I am now more confident that the students understand their challenge in the forthcoming command and management assignments and the associated imperatives for operational effectiveness."

Many individual complainants, and those about whom a complaint has been made, who have contacted the SCC, have been grateful for the support the SCC and her team have given. One Officer, who was the subject of a complaint and had written to the SCC when that complaint was bedevilled by delay, thanked the SCC for what she had tried to do to ensure a decision was made more speedily. His comments also show the importance of dealing with Service complaints well.

"I should just like to say how very impressed I have been with the SCC and her staff. My experience of the Service Complaints system has been less than positive (although I concede it could have been much, much worse), but I have developed a very strong admiration for what you and your colleagues are trying to do.

Given my disappointing experience of being a respondent, it might seem ironic that I am more committed to the SC system than I have ever been, and I remain absolutely convinced of the rightness of the principles that the SC system seeks to uphold. Major improvements have been made, but the bureaucratic paralysis that continues to blight swift conclusions to Service complaints appears to remain a serious threat to the credibility of the system. I wish the SCC, you and all your colleagues the very best of luck in improving the vital SC process."

Throughout 2012, the SCC received comments and views from increasing numbers of Service personnel and Service families that the powers of the SCC were insufficient; and that a more effective and independent oversight of the Services was required, including independent investigation of the most serious allegations of abuse of power, bullying or improper treatment.



The SCC meets the Welfare Officer at ATC Pirbright, June 2012

The RAF Families Federation said in its evidence to the House of Commons Defence Committee:

“Our perceptions regarding the role of the SCC are that the RAF families we represent tend to see Dr Atkins as something of a “toothless tiger”. Personnel who have spoken with us about the possible need to refer their case to the SCC have expressed significant concern at the SCC’s lack of authority. They see her role as simply passing back to the chain of command to re-investigate something the chain of command has already reached a verdict upon – in effect “marking their own homework”.

Service personnel and families we have dealt with over the last few years have indicated the need for a truly independent review of their case, using external investigators, not the chain of command.”

One family explained the loss of confidence they had experienced when they understood the limit of the SCC’s role:

“The SCC is toothless and actually makes families feel more isolated and desperate, as there is no one to turn to.”

Service families expressed particular disillusion at the gap in the SCC’s powers to investigate treatment of their family member after that Service person’s death or the exercise of judicial powers by Commanding Officers as part of the Service justice system (which is outside the Service complaints system).

In the Army, in particular, there was concern about the confusion between the Service justice system (known as the discipline system) and the Services’ system for internal and administrative discipline (known as the administrative action system). The SCC received an increased number of complaints about what was perceived to be the unfair and unaccountable system of discipline. A common theme was a distrust of the chain of command and a perception of closing of the ranks.

The SCC is most concerned at the apparent erosion in confidence in the chain of command, which she believes is essential to effective operational performance and at the heart of military life.

She remains firmly of the view that an Armed Forces Ombudsman is required, as part of the Armed Forces Covenant and that such an Ombudsman will strengthen not undermine the chain of command. That view is supported by the experience of the use of independent members on Service Complaint Panels.

The Case for an Armed Forces Ombudsman

The SCC recommended an Armed Forces Ombudsman in her Annual Report 2010 as her preferred option for strengthening the SCC’s powers to meet the fairness gap and to enable the Service complaints system to be simplified. She concluded, on the basis of 3 years’ oversight, that the Service complaints system was too complex; and that the very processes which were designed to guarantee fairness for Service personnel were having the opposite effect.

Removing those protections for some or all Service complaints, however also ran the risk of unfairness. The SCC therefore recommended a traditional form of public sector Ombudsman – a final reviewer at the end of the internal complaints system who could investigate and review the substance of the decision but who could only make a recommendation to the Defence Council, not award redress directly.

Comments to the SCC over the last year have re-inforced her view that having an Armed Forces Ombudsman could make the Service complaints system more efficient. One senior Officer wrote of his experience and his firm view of the benefits such a role would bring:

“The process is so cumbersome and legalistic at present that more time is spent constructing lines of defence than addressing the issue, mediating with the individual and trying to bring about a resolution to what is considered by the complainant to be an injustice.

I remember spending a whole day negotiating with an individual who had put in a redress. At the end of the long debate he withdrew his complaint as we had explored every aspect of what had troubled him. The failure to engage with an individual, deal with a complaint in a timely manner and engage an independent arbiter means that you are simply asking a broken engine to run faster.”

Although the Navy has significantly improved the way it handles Service complaints, as described in this Annual Report, it is clear from comments to the SCC that confidence and fear of adverse consequences remains a factor in the Navy. This is shown in the AFCAS 2012 reports. Although the numbers of Royal Navy Officers identifying fear of adverse consequences on their career as a reason for not making a Service complaint when they have been treated wrongly has gone down, this was still given as a reason for not making a complaint by over half of Officers. Perhaps of more concern in 2012, is the lower levels of Royal Navy Officers and to a lesser extent Other Ranks who are prepared to make a Service complain when treated wrongly. The levels of incidents has not gone down, indeed it appears to be increasing for RN officers. The Royal Navy overall has the highest levels of reported improper behaviour in AFCAS 2012.

In 2010 the SCC recommended the creation of an Ombudsman for the focus it would bring to the Services to decide Service complaints within a reasonable time. The Irish Defence Forces Ombudsman, (ODF) established in 2005, has the ability to receive and refer Service complaints (known as Redress of Wrongs) in the same way as the SCC does under the Armed Forces Act 2006. The ODF is also informed of all Redress of Wrongs made. Service personnel can ask the ODF to review their complaint at the end of the internal system or earlier, if the complaint is not decided within a reasonable time. Statute enables the ODF to review a case after 28 days but the ODF will usually seek an explanation from the chain of command before doing so.

As with other Ombudsmen, the focus of the ODF is on tackling the root causes of complaints as well as ensuring individual justice. The ODF can make recommendations to the Defence Minister on these broader issues as well as on redress for the individual case. The ODF's recommendations and the Minister's responses are included in the ODF's Annual Reports.

In the light of the numbers of Service complaints in the UK already in the Service complaints system for more than 24 weeks at the end of 2012, and the performance of the Army and RAF whose backlogs increased during 2012, similar powers could be accorded to an Armed Forces Ombudsman in the UK. This would build on the changes in SCC powers already agreed by the MOD and Services.

Securing and increasing confidence in the Service Complaints System

The SCC has serious concerns that an insistence on the chain of command being the sole arbiter of Service complaints, without the possibility of real accountability for their decisions, risks losing the very confidence in the chain of command which is essential to Service life. During 2012, the SCC was struck by the numbers of Service personnel of long standing, Officers particularly, who appeared to have lost confidence in the chain of command, by reason of their experience with the Service complaints system.

"The sooner the SCC becomes an Armed Forces Ombudsman, with powers, the better. My experience has proven that the command chain does not have the will, resource or competence to investigate complex complaints, especially those involving cross-Service boundaries, senior Officers or sensitive topics."

Service personnel and welfare organisations have also expressed the lack of confidence in the chain of command and called for an Armed Forces Ombudsman with powers of investigation.

Maladministration in the provision of services

The Armed Forces covenant, enshrined in statute now in the Armed Forces Act 2011, seeks to ensure that Service personnel and their families are not disadvantaged because of their Service. In relation to the provision of services, such medical and dental services, housing, social work support and policing, they do not enjoy the same protections as civilians, who do have access to an Ombudsman or, in the case of policing, to a body with powers of independent investigation.

Some complaint cases have tested the gaps in the remit of UK based Ombudsman to provide protection to Service personnel and their families living outside the UK. The submission by the British Armed Forces Federation to the House of Commons Defence Committee also identified similar disparities in the position of Service personnel with regard to medical services, provided by the MOD rather than the NHS.

Only in relation to pensions do Service personnel have access to an Ombudsman. Service personnel have a final avenue of appeal, to the Pensions Ombudsman in relation to allegations of maladministration of pension

when the internal systems are exhausted. They have no similar access when mistakes are made with regard to pay or allowances, when the only avenue of appeal from the internal Pay complaints system is to make a Service complaint – i.e. to their chain of command. The SCC has identified this as inefficient, ineffective and by reason of the unavoidable delay, unfair.

There appear to be difficulties extending the remit of the specialist Ombudsmen, to Services provided by or on behalf of the MOD, not least jurisdictional difficulties for Service personnel and their families serving abroad. However, even if it were practicable, it is not recognised as being the most effective or efficient model. The experience of mature democracies across the world is that it is more beneficial for the concerns of Armed Forces personnel to be under the remit of a dedicated Armed Forces Ombudsman, who deals only with their cases, rather than simply opening up access to the general Ombudsman. **As part of the Armed Forces Covenant, Service personnel should not be disadvantaged by their lack of access to an Ombudsman in relation to these services.**

Oversight of Service police

The MOD has agreed that the position of Service personnel (and those who are subject to Service law) should be the same as other citizens with regard to alleged abuses or failings in policing standards. The MOD is considering whether and how to bring the Service police under the oversight of the Independent Police Complaints Commission (as are the MOD police). If, for any reason, this does not prove possible, an Armed Forces Ombudsman should have powers to investigate complaints about Service police or notifiable incidents involving Service police in the same way as the IPCC (and similar oversight bodies

in Scotland and Northern Ireland) has powers in relation to the MOD and civilian police forces.

Complaints by families about how deceased personnel were wronged during their service lives

Currently the SCC only has oversight of any Service complaint, which by its very nature can only be brought when the Service person who is alleged to have been wronged is alive. In 2011, two Service complaints under the SCC's oversight lapsed with the untimely death of the Service person who had made it. This was unfair to the family of the individuals who had brought the complaint but also to the individuals about whom the complaint was made and who felt cheated of the opportunity to establish the truth. In 2012 the SCC was approached by the family of a Service person who they believed had been wronged in Service and whose death had also prevented a Service complaint being made to investigate the causes of any wrong. One motive of many of those who make a complaint, in any walk of life, is to prevent a similar wrong occurring to someone else in the future. This can be especially so in the case of an unexpected death. The SCC has been approached by a number of families over the last 5 years in similar circumstances and has never been able to help, other than by referring their concerns to the Service or MOD. An Armed Forces Ombudsman would not be constrained and would be able to review complaints by family members, as does the Health Service Ombudsman in the case of families of NHS patients who have died.

Recommendation 12.14

The powers of an Armed Forces Ombudsman should include complaints by families of Service personnel about how the Service person was treated whilst in the Services.



The SCC visits RAF Leuchars, January 2012

Systemic weaknesses and continuous improvement

A key role of any Ombudsman is to review and report on areas for improvement. At present the SCC has no power and insufficient resources, to be able to prepare reports on issues of concern identified during her oversight of complaint cases. This role of an Armed Forces Ombudsman to research and report was highlighted by the House of Commons Defence Committee's report in 2005 into Duty of Care.

The House of Commons Defence Committee Report on the work of the SCC re-iterated the importance of this function. Having an independent body to which Ministers and Service Chiefs can turn to prepare such reports is valued in those countries where there is such an Ombudsman. It also gives Service personnel, their families and the broader public, confidence that issues of concern are being looked into objectively and fairly and not perceived to be covered up or minimised. The Armed Forces Ombudsman should have powers to prepare such reports, on his or her own initiative.



The SCC visits HQ School of Infantry, Catterick, January 2012

In early 2013, the concept of an Armed Forces Ombudsman received support from MPs of all three main political parties in a Westminster Hall debate in the House of Commons.

It remains the SCC's judgement that an Armed Forces Ombudsman is required. The House of Commons Defence Committee agreed²⁵:

"The Government should change the role of the Commissioner to one of an Armed Forces Ombudsman. This would be an important first step in raising confidence in the Service Complaints system and making it more effective and efficient."

Models for consideration

The exact role and remit of an Ombudsman is usually shaped by the needs and interests of the sector it holds to account and for whom it provides a secondary quality assurance mechanism. The Ombudsman Association, the Parliamentary Ombudsman and the Law Commission, within the UK and, internationally, the Centre for the Democratic Control of Armed Forces, (a Non-Governmental Organisation supported by the British Government), have all published principles and guidance on the point. It is for the MOD and Services, in consultation with interested parties, including the SCC, to decide on the powers and role of an Armed Forces Ombudsman.

Recommendation 12.15

An Armed Forces Ombudsman should be established as part of the Armed Forces Covenant and the MOD should consult on the powers and resources of the Ombudsman to best serve the UK Armed Forces.

25 Paragraph 22 Conclusions and Recommendations.

Appendix 1

Glossary

AFCAS – Armed Forces Continuous Attitude Survey

AO – Assisting Officer

BFBS – British Forces Broadcasting Service

BIOA – British and Irish Ombudsman Association. Now the Ombudsman Association

CO – Commanding Officer

DIA – Defence Internal Audit

DIN – Defence Instructions and Notices

DLIMS – Defence Lessons Identified Management System

DMS – Defence Medical Services

DO – Deciding Officer

EHRC – Equality and Human Rights Commission

E&D – Equality and Diversity

HCDC – House of Commons Defence Committee

HIO – Harassment Investigation Officer

JPA – Joint Personnel Administration

MOD – Ministry of Defence

Non-prescribed behaviour – These are categories of complaint 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

SCW – Service Complaints Wing (Army)

SPVA – Service Personnel and Veterans Agency

SSAFA – Soldiers, Sailors, Airmen and Families Association

Appendix 2

Assessment of implementation of recommendations – to be checked against the Government's response

	Recommendations for the MOD/Services	Assessment of delivery	SCC comments
11.1	I recommend that the Ministry of Defence (MOD), Defence Medical Services (DMS) and Services consider implementing a system for complaints about medical treatment similar to that adopted for Service complaints about redundancy. This could be reviewed as part of the Review into how to improve the Service complaints system, which is still underway.	Amber	Not yet implemented. MOD and Services did not include the interface between the specialist complaints systems and the Service complaints system as part of their Review. The Defence Medical Service (DMS) consulted the SCC on a draft medical complaints procedure in early 2013.
11.2	Now the Services have had a year to embed recording of Service complaints on Joint Personnel Administration (JPA) system, I recommend that they provide statistics for Service complaints by gender for 2011 and beyond.	Green	Implemented. Gender disaggregated statistics on Service complaints are included in the SCC's Annual Report 2012.
11.3	I recommend that the report of the second audit of JPA, currently being undertaken at my request by Defence Internal Audit (DIA), be considered by the Defence Service Personnel Board, and its subcommittees, and any management action agreed in response to the audit's findings, should be implemented as part of the Review of the Service complaints system.	Amber	Partly implemented. All three Services are to record data only on JPA from 1/1/13. (The Navy had done so since 1/1/12). The Army and RAF are recording back data on live ongoing data onto JPA.
11.4	I recommend that the recording of diversity complaints be reviewed also as part of management response to the DIA audit of JPA so that Ministers, Service Chiefs, Parliament, the Equalities and Human Rights Commission and I can have confidence in the information reported.	Amber	Partly implemented. The diversity reports have been double checked against the Service complaint data for consistency. The third DIA audit should check that the JPA module supports the recording of formal and informal data recording to secure efficiency savings. The audit should also include use of the new Management Information tool, which provides a time and resource efficient means for production of good management information.
11.5	I recommend that the role of the Assisting Officer (AO) be reviewed and clarified as part of the action following the Review of the Service complaints system. This review should consider the criteria for selection being used by the Services and the possibility of better guidance and/or training.	Red	Not yet implemented. MOD will include material specific to AOs in communications material from spring 2013 and consider further the need for any specific training material.

	Recommendations for the MOD/Services	Assessment of delivery	SCC comments
11.6	I recommend that, if the SCC retains discretion to refer, the rules about notification of a complaint be amended to include notification to the SCC or agreement be given to stop the clock for the period of time the SCC has taken to make these enquiries.	Rejected	Not agreed. The MOD considers that the current ability of the CO, in exercising discretion as to whether to accept a complaint out of time, to take account of any delay in the process, due to an individual contacting the SCC first, is sufficient. The SCC does not agree but will keep the matter under review, as will the MOD.
11.7	Given that Service personnel do not have the right to make a claim to an Employment Tribunal (ET) about unfair selection for redundancy, and in the light of the provisions in the Armed Forces Act 2011 for fully independent member Service Complaint Panels (SCPs), I recommend that the use of Independent members for redundancy related Service complaints should be considered by the Review as a matter of urgency. I also recommend that the Services consider the option of having a Defence SCP for redundancy related Service complaints.	Red	Not implemented. The MOD said it would consider these recommendations in the light of experience and have recently confirmed that it will keep this recommendation under consideration. Complainants continue to express concern to the SCC about the lack of any independent element in deciding such cases and their inability to go to an Employment Tribunal.
11.8	I recommend that the proposal to reduce delay in the handling of complaints about policy in relation to pay and allowances, put forward, in 2011, by the Services Veterans and Personnel Agency (SPVA) be considered as part of the Review and with expedition.	Red	Not implemented. The MOD said it would consider as is as part of their Review of the Service complaints system, the specific proposal that had been sent to them by SPVA in 2011. It does not appear to have done so. It has shared the Principles of Fairness for Complaints Handling and the SCC's findings, with SPVA, in particular about the importance of timeliness and learning lessons. The SPVA are currently reviewing their complaints process.
11.9	I recommend that the MOD should undertake some further analysis and work to try to find out the reasons for the higher levels of complaint making in Phase 2 establishments; and that the RTS questionnaire includes a question on levels of awareness of the SCC.	Amber	Partly implemented. The MOD started work on this recommendation in 2012, which is ongoing but does not yet have a conclusion as to why more personnel in Phase 2 training establishments have made complaints. The MOD has rejected, but will keep under review, the recommendation about inserting a question about the SCC into the RTS on the grounds that the survey is already comprehensive and is fit for purpose. The SCC believes this is a lost opportunity.

Appendix 3

Service complaints by type and Service 2012²⁶

Service	RN			Army			RAF		
Level	1	2	3	1	2	3	1	2	3
Harassment	4	0	0	16	0	0	12	0	2
Sexual Harassment	2	0	0	0	0	0	2	0	0
Sexual Orientation harassment	0	0	0	0	0	0	0	0	0
Racial Harassment	0	0	0	2	0	0	0	0	0
Religious Harassment	0	0	0	0	0	0	0	0	0
Discrimination	5	0	0	5	0	1	15	3	1
Sexual Discrimination	0	0	0	0	0	0	1	0	0
Sexual Orientation Discrimination	0	0	0	2	0	0	0	0	0
Racial Discrimination	0	0	0	7	0	0	0	0	0
Religious discrimination	0	0	1	0	0	0	0	0	0
Bullying	11	1	1	99	1	0	47	5	2
Improper Behaviour (including dishonesty and bias)	3	1	1	18	0	1	9	1	1
Victimisation	3	0	1	29	0	0	7	1	0
Terms and Conditions of service (including career & reports)	119	66	0	279	5	10	107	22	20
Pay and allowances	20	13	0	40	0	0	36	6	10
Medical and Dental	17	7	0	28	0	2	9	2	6
Uncategorised	10	3							
Total	194	91	4	525	6	14	245	40	42

Appendix 4

Financial statement

Financial Statement	Cost (£,000) 2012 ²⁷
SCC Salary ²⁸	83.4
Support staff	312.7
Accommodation and security	110.7
IT, stationery and consumables	4.8
Travel and subsistence	6.0
External communications and media support	12.0
Annual report production	14.1
Independent legal advice	3.0
Training and professional membership fees	0.3
Total	547.5

²⁶ A complaint may contain one or more allegation.

²⁷ Excluding VAT.

²⁸ The level of remuneration has not been increased, but reflects more days worked.

Appendix 5

Places Visited by the Commissioner in 2012

Royal Navy

February, May and October	Navy Commanding Officer Designate Course, HMS Collingwood
March	Navy Warrant Officers Conference, HMS Collingwood
March	Defence Naval Legal Services Termly Update, HMS Excellence
July	Department of Community Mental Health, Portsmouth
July	HM Naval Base, Portsmouth
July	HMS Illustrious, Portsmouth
July	30 Commando Information Exploitation Group, Plymouth
July	HMS Raleigh, Torpoint

Army

March, April and November	Army Commanding Officer Designate Course, Warminster
April	Executive Committee of the Army Board, London
June	Army Training Centre (ATC), Pirbright
July	Bullying & Harassment Cell, Land Forces HQ, Andover
September	British Army Training Unit Suffield (BATUS), Canada
September	Scots Dragoon Guards, BATUS
September	3 Mercian Regiment, BATUS
September	105 Logistic Support, BATUS
September	Trails Ends Camp- Army Adventure Training, Alberta, Canada
October	106 (Y) Royal Artillery, Lewisham
November	Infantry Training Centre (ITC), Catterick

Royal Air Force

January	RAF Leuchars
January	RAF Brize Norton
January, September and November	RAF Future Commanders Study Period (FCSP), Joint Command and Staff College (JCSC), Shrivenham
July	Royal Air Force Board, London
November	HQ Air Command, RAF High Wycombe
December	RAF Waddington

Tri-Service/Welfare

January	Defence Medical Services Board, Lichfield
January	Service Personnel and Veterans Agency (SPVA), Pay and Allowances Casework Cell, Glasgow
March	SPVA Veterans Service Welfare Conference, JCSC, Shrivenham
May	Forces Pensions Society Annual General Meeting, London
June and December	Service Personnel Board, London
July	Army Families Federation, Andover
November	Service Prosecuting Authority (SPA), RAF Northolt
December	Advanced Command and Staff Course (ACSC), JCSC, Shrivenham

List of Invitations accepted by the Commissioner 2012

January	Meeting with Forces Law Network, London
May	Meeting with Coffin Mew Solicitors, Portsmouth
June	Army Legal Services Regimental Dinner, JCSC, Shrivenham
July	Centre for the Democratic Control of Armed Forces, Geneva, Switzerland
August	Soldiers, Sailors and Airmen Families Association, Invitation to "An evening of Art," London
September	4th International Armed Forces Ombudsman Conference, Ottawa, Canada
November	Directorate of Naval Legal Services Annual Dinner, Royal Naval College, Greenwich
December	Conference organised by the Government of Austria and the Centre for the Democratic Control of Armed Forces, to include proposals for the establishment of an Armed Forces Ombudsman for Kosovo, Vienna, Austria

