



**Ministry
of Defence**

**JSP 831
Redress of Individual Grievances: Service
Complaints**

Part 1: Directive

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Foreword

People lie at the heart of operational capability; attracting and retaining the right numbers of capable, motivated individuals to deliver Defence outputs is critical. This is dependent upon maintaining a credible and realistic offer that earns and retains the trust of people in Defence. In order to achieve this, all personnel must be confident that, not only will they be treated fairly, but also that their families will be treated properly and that Service veterans and their dependants will be respected and appropriately supported.

JSP 831 is the authoritative policy and guidance for all MOD Service personnel when making, responding to, advising on, investigating and deciding service complaints.

Defence Authority for People

**Chief of Defence Personnel
Lt Gen Andrew Gregory CB**

Preface

How to use this JSP

1. JSP 831 is intended as a guide for all MoD Service and civilian personnel on the application of policy for Service complaints. It is designed to be used by Service personnel when making a complaint and by all those responsible for handling and managing such complaints. This JSP contains the policy and direction on service complaints and guidance on the processes involved and best practice to apply.
2. The JSP is structured in two parts:
 - a. Part 1- Directive, which provides the direction that must be followed in accordance with Statute, or Policy mandated by Defence or on Defence by Central Government.
 - b. Part 2 - Guidance, which provides the guidance and best practice that will assist the user to comply with the Directive(s) detailed in Part 1.

Related JSPs	Title
JSP 763	The MoD Bullying and Harassment Complaints Procedures

Coherence with other Defence Authority Policy and Guidance

3. Where applicable, this document contains links to other relevant JSPs, some of which may be published by different Defence Authorities. Where particular dependencies exist, these other Defence Authorities have been consulted in the formulation of the policy and guidance detailed in this publication.

Further Advice and Feedback - Contacts

4. The owner of this JSP is CDP Secretariat Complaints. For further information on any aspect of this guide, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

Job Title/E-mail	Project focus	Phone
People-Sec-Complaints Pol 1	Service Complaints C1	0207 80 70702
People-Sec-Complaints Pol 2	Service Complaints D	0207 80 70077

1. Introduction

Legislative background

1. The legislation relating to the service complaints system for the redress of individual grievances is set out in the following primary and subordinate legislation:
 - a. The Armed Forces Act 2006, as amended by the Armed Forces (Service Complaints and Financial Assistance) Act 2015¹;
 - b. The Armed Forces (Service Complaints) Regulations 2015²;
 - c. The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015³;
 - d. The Armed Forces (Service Complaints Ombudsman Investigations) Regulations 2015⁴,
 - e. The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015⁵ (these cover how to handle service complaints that are in existence on the commencement of the new legislation).

Together the Act and the Regulations set out the legislation that determines how the service complaints process is to work, and creates the office and sets out the powers of the new **Service Complaints Ombudsman**.

2. Part 1 of this JSP sets out what must be included in the service complaints process based on that legislation, and how the Ombudsman is to operate. Other, relevant legislation is also covered in this part.
3. Part 2 of this JSP sets out the policy and guidance that is to be followed to give effect to the legislation. Separately, the legislation provides for the Ombudsman to produce guidance about the practices and procedures that the Ombudsman will adopt in carrying out investigations. This is available from the Ombudsman's office and referred to in the parts of this JSP where relevant. The Ombudsman's guidance can be found at:

<https://www.servicecomplaintsombudsman.org.uk>

¹ <http://www.legislation.gov.uk/ukpga/2015/19/contents>

² <http://www.legislation.gov.uk/uksi/2015/1955/contents/made>

³ <http://www.legislation.gov.uk/uksi/2015/2064/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2015/1956/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/2015/1969/contents/made>

The Ombudsman can also be contacted by:

email: contact@servicecomplaintsombudsman.gsi.gov.uk

phone 020 7877 3450

post to: SCO PO Box 72252, London SW1P 9ZZ

Terminology and definitions

4. Terms shown in bold and underlined text are linked to the glossary. The full glossary is at Annex A.

The purpose of the service complaints system and its key aspects

5. The aim of the service complaints system is to provide Service personnel with a process that is fair, effective and efficient through which they can have valid grievances on matters relating to their service in the Armed Forces addressed and can seek redress. It is the responsibility of all those involved in the process to ensure that complaints are handled fairly, promptly and correctly. The intent is that complaints are dealt with quickly and at the most appropriate level within the **chain of command**. Every effort should be made, where appropriate, to resolve a complaint informally.
6. On receipt by the chain of command, **a statement of complaint** will first be assessed to decide whether it is admissible as a service complaint. Some matters are excluded from the system, and time limits apply. In the majority of admissible cases there will then be a decision and an appeal stage available. At the decision and appeal stages, a person or panel of people will be appointed to decide on the complaint. They will also have the necessary authority to decide the complaint fully and to grant any appropriate redress. In some cases independent persons must be appointed.
7. There is a new Service Complaints Ombudsman, able to review decisions taken by the chain of command that can prevent a grievance being admitted as a service complaint or from being appealed. The complainant has to apply to the Ombudsman if not satisfied with the decisions that have been taken, and the Ombudsman's decision following a review is binding.
8. The Ombudsman also has an important role if the complainant is not satisfied when the service complaint process has been completed. The complainant can approach the Ombudsman for an investigation in to the complaint itself or because the complainant believes the complaint was not handled correctly, or both. It is also possible for the complainant to approach the Ombudsman alleging **undue delay** before or during the handling of a complaint. If the Ombudsman goes on to investigate, the Ombudsman must make a report with findings and recommendations, which the appropriate single Service is to respond to in writing.
9. The internal process is designed to be both quicker and simpler than its predecessor by removing one level of appeal. The creation of the Ombudsman is designed to give complainants who are not satisfied an independent route to addressing their

concerns, to increase the level of independent oversight and to provide a means for improving the process.

10. Anyone will be able to contact the Ombudsman with an allegation that a wrong has been suffered by a Service person. The Ombudsman can refer an allegation to the chain of command, where action must be taken to determine whether the Service person wishes to make a service complaint.
11. The Ombudsman must produce an annual report about the operation of the service complaints process and the exercise of their functions during the year, which the Secretary of State for Defence must lay in parliament.

Employment tribunals

12. A claim under the Equality Act 2010 may be presented to an Employment Tribunal by a Service person in connection with certain allegations of discrimination. To be able to do so, the complainant must have made (and not explicitly withdrawn) a service complaint under the service complaint procedures in respect of the same act that is the subject of the approach to the Tribunal. A Service person can also be deemed to have withdrawn the service complaint. This is where they miss the time limit for appealing an initial decision and either do not apply for a review of the decision that the appeal cannot proceed, or apply unsuccessfully for such a review.
13. There are different time limits that apply to claims under the Equality Act 2010:
 - a. If a matter is or has been capable of being pursued as a claim under Chapter 3 of Part 9 of the Equality Act 2010 (discrimination claims), a claim may not be made about the matter after six months beginning with the day on which the matter complained about occurred or, where the matter occurred over a period of time, the final day of that period;
 - b. If a matter is or has been capable of being pursued as a claim under Chapter 4 of Part 9 of the Equality Act 2010 (equal pay claims), a claim may not be made about the matter after the end of the qualifying period for a claim as determined in accordance with section 129 of that Act. The qualifying period is normally nine months.
14. To ensure that a Service person is not disadvantaged in being able to bring a claim to an Employment Tribunal within the time limits set out in the Equality Act 2010, the usual time limit for making a service complaint of three months is extended to six and nine months respectively for the types of claims set out above. Legal advice should be sought if it is unclear which time limit to apply to an individual complaint for which there has been or could be an application to an Employment Tribunal.

Recurring aspects of the system

15. Data protection when disclosing information The principle of providing information and disclosure to the complainant and any other person who might be affected by the outcome of the complaint is an important aspect of the service complaints process. The decision body and appeal body (if applicable) will as a matter of policy disclose

all relevant documentation and information relied on to decide a complaint prior to a decision being made.

16. There is a requirement for the decision body or appeal body to give any subject of a complaint or other persons likely to be criticised in a decision an opportunity to comment on allegations about them in the complaint. Those comments must be given due weight in the making of decisions.
17. Disclosure is subject to exclusions where appropriate and consistent with Information Rights legislation, i.e. the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Privileged and protected information and advice is not to be disclosed or paraphrased, without discussing with the relevant expert advisers e.g. legal, security or information. If doubt exists on any aspect of disclosure, legal and MOD policy advice should be sought from the appropriate single Service secretariat.
18. Standard of proof applied to deciding a service complaint In assessing a service complaint, the decision body and appeal body (if applicable) must establish if the complaint is well-founded. The basis for the decision is the standard of proof used in employment law – i.e. it is enough if the decision body or appeal body dealing with the case considers that a wrong probably occurred. In other words, at the very least, there must be evidence to show that it was more likely than not that the wrong alleged by the complainant occurred. This is known as “on the balance of probabilities”. The decision reached by a decision or an appeal body will be on the basis of a simple majority when more than one person has been appointed.
19. Role of the Defence Council and delegation of its functions The **Defence Council** is constitutionally responsible for the decisions and appointments made in the service complaints system, but in practice will delegate the majority of its functions to individuals. References made in this JSP to the “single Service **secretariats**”, “**decision body**” and “**appeal body**” relate to the Service acting on behalf of the Defence Council, based on delegations from the Defence Council that have been put in place to specified post holders (these are referred to as “nominated Defence Council delegates” in the rest of this part of the JSP to avoid confusion with the Defence Council itself).
20. Independent persons at the appeal and reconsideration stages An appeal body, or a body reconsidering a complaint following a report by the Ombudsman, must include one or more independent persons where the service complaint alleges:
 - a. discrimination;
 - b. harassment;
 - c. bullying;

- d. dishonest or biased behaviour;
 - e. a failure of the Ministry of Defence to provide medical, dental or nursing care for which the Ministry of Defence was responsible;
 - f. allegations concerning the improper exercise by a service policeman of his statutory powers as a service policeman.
21. In the context used above, “discrimination” means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of the complainant as a part-time employee.
22. An independent person can be any person appointed by the Secretary of State who is neither:
- a. a member of the regular or reserve forces; or
 - b. a person employed in the Civil Service.
23. Service of correspondence To ensure that the complainant is not disadvantaged, in any case where the complainant is notified of a decision, that notification is deemed to occur on the second day after which it was transmitted to the complainant. Where the complainant makes a statement of complaint, an application to the Ombudsman or brings an appeal, these are treated as having been done on the day they were made or brought. All of these actions must be posted, sent electronically or delivered in person.
24. Similar provisions operate in respect of notifications by the Ombudsman to the complainant and to the nominated Defence Council delegate. There are further such requirements in relation to the Ombudsman sharing draft and final reports. These actions must be posted or sent electronically.

Overview of the end to end process

25. A flowchart of the end to end process is at Annex C. It does not set out every aspect of the process and is not a substitute for reading the relevant chapters of Parts 1 and 2 of this JSP.

Points of contact for the single Service secretariats

26. A list of contact details is at Annex D.

Transitional provisions

27. The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015 provide for how service complaints are to be processed that were made before 1 January 2016 and had not been fully concluded by that date under the old complaints system. The intention is

that as far as possible pre-existing complaints should transfer to the next appropriate stage under the new system, so that the complainant can benefit from the streamlined process and access to the Ombudsman. Where a complaint does not transfer and was still open on 1 January 2016, the complainant will be able to approach the Ombudsman.

28. Existing rights for some categories of complainant have been retained, such as the right to Petition the Sovereign. Where a service complaint has been made at any point between 1 January 2008 and 31 December 2015 and the complainant had that right, it continues after the commencement of the new system. Where the right has not been exercised, the complainant can either Petition the Sovereign or ask the Ombudsman to investigate their complaint after it has concluded.
29. The table at Annex E sets out some of the scenarios covered by the transitional arrangements and what is to happen. It is not intended to be a comprehensive guide to the transitional regulations. If there is any doubt, the single Service secretariat legal teams and Central Legal Services CDC are to be consulted.

2. The Service Complaints Process

Who can make a service complaint?

- 1 A **service complaint** can be made by a serving Service person or by a former Service person, whether in regular or reserve service (hereafter referred to as a Service person).
- 2 A service complaint can only be made by an individual, but the same or a similar matter can be raised as a service complaint by others; there are, however, no procedures for a complaint to be made by a group.

What matters can and cannot be the subject of a service complaint?

- 3 If a Service person thinks they have been wronged in any matter relating to their service in the Armed Forces, they may make a complaint about that matter. A person who is no longer subject to Service law e.g. has left the Armed Forces, but thinks they were wronged in any matter relating to their service which occurred while they were still serving, may also make a complaint about that matter.
- 4 There are certain matters about which a service complaint cannot be made: these excluded matters are listed at Annex B. They include, for example, decisions taken by the chain of command in determining whether a statement of complaint is admissible or an appeal can proceed, and whether a service complaint or appeal is well-founded, and all decisions taken by the Service Complaints Ombudsman.

Time limit for making a service complaint

- 5 A service complaint must be made within a period of three months, beginning with the day the matter complained of occurred (or the day that the **special-to-type** process was exhausted – see paragraph 17). If the matter complained of occurred over a period of time, the complaint must be submitted within three months of the latest incident or the end of the period.
- 6 In most circumstances, a service complaint received by a **specified officer** (SO) more than three months after the matter complained of occurred will be ruled out of time. However, the SO can rule it in time if the SO considers that it is just and equitable to do so.
7. Different time limits may apply if the matter being complained of has or could be the subject of a claim to the Employment Tribunal. There is more information on this at paragraphs 12-14 of chapter 1.

How to make a service complaint

- 8 A service complaint is made by a Service person submitting a **statement of complaint** to a specified officer. The SO is the complainant's **commanding officer** (CO), unless the CO is the subject of the complaint or otherwise implicated in it. If so,

the SO will be the CO's immediate superior, unless also implicated. In that case, the nominated Defence Council delegate will appoint someone else at the superior officer's rank. If a complainant has left the Armed Forces, the complaint should be made to the CO of their last unit.

- 9 The complainant must provide the following information when making a statement of complaint:
 - a. how the complainant thinks they have been wronged;
 - b. whether the complainant's commanding officer or the CO's immediate superior in the chain of command is the subject of the complaint or is alleged to be implicated in any way in the matter, or matters, complained about (including any facts in support);
 - c. whether the complainant considers that the complaint includes allegations of the kind set out at Chapter 1 paragraph 20 (including any facts in support);
 - d. if the complaint is not made within the three month time limit (or that which applies due to the provisions of the Equality Act 2010), the reasons why;
 - e. the **redress** sought; and
 - f. the date.
- 10 The complainant must also state whichever of the following is appropriate to the matter(s) being complained about:
 - a. the date on which, to the best of the complainant's recollection, the matter complained about occurred or probably occurred;
 - b. that the matter complained about occurred over a period, and the date on which, to the best of the complainant's recollection, that period probably ended;
 - c. that the matter complained about is continuing to occur; or
 - d. that they are unable to recollect the date in a) or b).

Ombudsman's referral of allegations to the chain of command

- 11 Anyone can contact the Service Complaints Ombudsman with an allegation of wrongs done to a person who is or was subject to Service law. The Ombudsman can decide to refer an allegation to the officer who would have received the complaint had the complainant raised the matter instead to their chain of command – that person would usually be the complainant's commanding officer as the specified officer (SO) in the service complaints process.
- 12 Having referred an allegation, the Ombudsman is to be notified by the appropriate officer within three weeks of the day of the occurrence of each of any of the following matters:

- a. that the officer has informed the person that the allegation has been referred;
- b. that the person has been made aware of:
 - (1) how to make a service complaint, and
 - (2) the time limits for making a service complaint;
- c. of whether the person wishes to make a service complaint about the allegation;
- d. of a decision taken by the specified officer that the subsequent service complaint is inadmissible;
- e. of a decision taken by a decision body as to whether the service complaint is well-founded and, if it is, what if any redress is appropriate;
- f. of a decision that an appeal has been made out of time;
- g. of a determination reached by an appeal body as to whether the complaint is well-founded and, if it is, what if any redress is appropriate;
- h. of the withdrawal of the service complaint.

Deciding whether the service complaint is admissible

- 13 The SO has to decide whether all or part of a service complaint is admissible. It will not be admissible if:
- a. the complaint is not made by a serving or former Service person who is able to make a service complaint (paragraph 1 refers);
 - b. the complaint is not about a service matter (paragraphs 3 refers);
 - c. the complaint is made outside the time limit for making a service complaint, and having considered the matter it is not just and equitable to extend that time;
 - d. the complaint is substantially the same as a complaint brought by the same person which has either been decided previously under the service complaints process or is currently being considered under the service complaints process; or
 - e. it is about a matter that is excluded from the service complaints system (paragraph 4 refers).
- 14 Following that consideration, the SO must notify the complainant of the outcome in writing, and refer to the nominated Defence Council delegate any part of or all the service complaint that is admissible.
- 15 If the SO decides that all or part of the service complaint is inadmissible, the SO must:

- a. treat the remaining matters as an admissible service complaint: and
 - b. inform the complainant in writing that the other matters are not ones about which an admissible service complaint may be made, stating the reasons for the decision and informing the complainant of the right to apply for a review of that decision by the Ombudsman.
- 16 Once the SO has confirmed that an admissible service complaint has been made, the complainant cannot add matters to the complaint at a later date. Such matters would have to be raised as a fresh complaint and be subject to the same admissibility consideration as in paragraph 13.

Completing a special-to-type process before making a service complaint

- 17 The time limit for making a service complaint is three months from the exhaustion of a **special-to-type** process. If a complainant submits a statement of complaint that appears to the specified officer to be about a matter for which there is a special-to-type complaints procedure, the complainant will not be able to pursue a service complaint about that matter until the alternative process has been completed. The specified officer will stay the complaint until that process is ended, at which point the complainant can return to the service complaint process if they wish to.

What to do if the complainant is dissatisfied with a decision on admissibility

- 18 It is the complainant's right to apply to the Ombudsman to seek a review of the SO's admissibility decision.
- 19 The complainant must submit the application to the Ombudsman within four weeks of **receiving notification** of the SO's decision on admissibility. The application will not be considered by the Ombudsman outside this time limit unless the Ombudsman determines that it would be just and equitable to allow the application to proceed.
- 20 The Ombudsman must notify both the SO and the complainant of the determination in writing, giving reasons for the determination. The Ombudsman's decision is binding on the complainant and the specified officer.
- 21 If the Ombudsman finds that the complaint is admissible, the SO is to refer the complaint to the nominated Defence Council delegate of the Service that is providing the SO with advice and support.

How a decision body is appointed and how the service complaint is decided

- 22 The nominated Defence Council delegate is to appoint a decision body, consisting of a person or panel of persons or of the Defence Council itself, after the admissibility

decision has been received from the SO (whether that decision has been made by the SO or following a review by the Ombudsman).

- 23 A person or panel of people can only be appointed to consider the service complaint where:
 - a. the person, or all the persons in the body, are authorised to decide the matters and to grant appropriate redress; or
 - b. authorisation is given to that person or all persons.
- 24 The following must not be appointed to decide a service complaint:
 - a. a person who is the subject of the complaint, or is alleged to be implicated in any way in the matter, or matters, complained about; or
 - b. an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.
- 25 Where the nominated Defence Council delegate determines that a service complaint requires the Defence Council itself to decide the complaint, they must also inform the complainant that, in such circumstances, the complainant does not have the right to make an appeal against the Defence Council's decision on the complaint. The complainant does, however, retain the right to make an application to the Ombudsman at the end of the service complaints process.
- 26 If the decision body wants to, it can authorise another person to carry out the service complaint investigation. It is for the decision body however to decide the complaint.
- 27 The decision body must decide whether the service complaint is well-founded, and, if it is, what redress (if any) is appropriate, and grant such redress.
- 28 The decision body will decide the complaint on a simple majority basis when more than one person has been appointed.
- 29 If the decision body does not get a response from a complainant or any other person to a request to supply information or produce documents within a reasonable period of time, the decision body can go on to reach a decision based on the information or documents available to it.
- 30 There is a requirement for the decision body to give any subject of a complaint or other persons likely to be criticised in a decision an opportunity to comment on allegations made about them in the complaint. Those comments must be given due weight in the making of decisions.
- 31 The decision body must notify the complainant in writing of its decision, giving reasons for the decision, and of the complainant's right to appeal the decision if an appeal is available (or of the right to apply to the Ombudsman - see paragraph 25).

What if the complainant or respondent is dissatisfied with the decision?

- 32 Where an appeal route exists, the complainant can submit an appeal if not satisfied with the decision that has been taken.
- 33 There is no provision in the legislation for a respondent or any other person involved in a complaint to appeal the decision.

3. The Service Complaints Appeals Process

Time limit for making an appeal

- 1 An appeal must be brought within six weeks beginning with the day on which the complainant received notification of the decision. The time limit may be extended if it is considered just and equitable to do so.

How to submit an appeal about a decision on the service complaint

- 2 An appeal must be made by the complainant **in writing**, be dated, and state those aspects of the decision that the complainant does not agree with and why.
- 3 If the appeal is submitted beyond the six week time limit, the complainant must set out why that is the case.

Deciding whether an appeal can proceed

- 4 The nominated Defence Council delegate must decide whether the appeal can proceed. If the appeal is made outside the time limit, the delegate is to decide whether it would be just and equitable for the appeal to proceed.
- 5 The complainant must be notified in writing if the decision is that the appeal cannot proceed, giving reasons for that decision and informing the complainant of the right to apply to the Service Complaints Ombudsman for a review of that decision.

Action taken by the Ombudsman in a review

- 6 The Ombudsman can review a decision taken to rule an appeal as out of time if the complainant is dissatisfied with the decision and applies to the Ombudsman in writing seeking a review.
- 7 The Ombudsman must determine whether the decision to rule the appeal as out of time was right or not. The Ombudsman must notify both the nominated Defence Council delegate and the complainant in writing of the determination, giving the reasons for it.
- 8 The Ombudsman will not consider an application made by a complainant more than four weeks after the date on which the complainant received notification of the decision that the appeal could not proceed, unless the Ombudsman considers it is just and equitable to allow the complainant to apply outside that period.
- 9 A determination by the Ombudsman in relation to such a review is binding on the complainant and the nominated Defence Council delegate.

How an appeal body is appointed and how the appeal is determined

- 10 Where the nominated Defence Council delegate or, following a review, the Ombudsman decides that an appeal can proceed, the delegate must appoint an appeal body.
- 11 Anyone appointed to determine an appeal must have or be given authority to determine the appeal and to grant appropriate redress.
- 12 The following must not be appointed to determine an appeal:
 - a. a person who is the subject of the complaint, or is alleged to be implicated in any way in the matter, or matters, complained about;
 - b. a person who was appointed to decide the complaint, or who was otherwise involved in the investigation or consideration of the complaint for the purposes of deciding the complaint; or
 - c. an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.
- 13 It may be necessary to appoint one or more independent persons to determine the appeal. Chapter 1 paragraph 20 sets out when an **independent person** will be required.
- 14 The appeal body appointed to consider the appeal must determine whether the service complaint is well-founded, and if it is, what redress (if any) is appropriate, and grant any such redress.
- 15 If the appeal body does not get a response from a complainant or any other person to a request to supply information or produce documents within a reasonable period of time, the appeal body can go on to reach a determination based on the information or documents available to it.
- 16 There is a requirement for the appeal body to give any subject of a complaint or other persons likely to be criticised in a decision an opportunity to comment on allegations about them in the complaint. Those comments must be given due weight in the making of decisions.
- 17 If the appeal body wants to, it can authorise another person to investigate the service complaint. It is for the appeal body however to determine the appeal.
- 18 The appeal body will determine the complaint on a simple majority basis when more than one person has been appointed.
- 19 The appeal body appointed to consider and determine the appeal must notify the complainant in writing of its determination and give the reasons for it. The complainant must also be informed of the right to apply to the Ombudsman for an investigation if they believe that there were mistakes made in the handling of the complaint or the decision reached was incorrect.

What if the complainant or respondent is dissatisfied with the determination?

- 20 Once the determination has been received, if the complainant is dissatisfied with the outcome of the complaint or how it was handled, or both, the complainant has the right to apply to the Ombudsman for an investigation to be carried out.
- 21 The respondent or any other Service person who has been criticised in relation to their character or reputation cannot apply to the Ombudsman if dissatisfied. A respondent or other person can however raise their own complaint for consideration as a service complaint, by raising the matter in writing with a specified officer (see chapter 2 of this part of the JSP). That service complaint cannot be a challenge to the decision reached in the other case, but about how they were treated.

4. The Service Complaints Ombudsman Process

On what matters can an application be made to the Ombudsman?

- 1 An application to the **Ombudsman** can be made on only the following grounds, for an investigation into:
 - a. the service complaint, when the complaint has been **finally determined** and the complainant is dissatisfied with the outcome of the internal process;
 - b. an allegation of **maladministration** (including **undue delay**), when the complaint has been finally determined and the complainant is dissatisfied with the way the complaint was handled by the internal process;
 - c. an allegation of undue delay in the handling of a service complaint that has been made but has not yet been finally determined under the internal complaints process and so is still active;
 - d. an allegation of undue delay that occurred before a complaint was made, whether or not the complainant went on to make a complaint. The matter that they would however have complained about must have been an issue that would have been admissible as a service complaint.
- 2 In addition, where the Ombudsman investigates a service complaint or alleged maladministration, the Ombudsman can go on to investigate other, non-alleged maladministration where the possibility that such maladministration may have occurred becomes apparent during the course of the investigation.

Time limit for making an application

- 3 A complainant whose service complaint has been finally determined has six weeks to apply to the Ombudsman, starting from the date that the complainant received notification of the final decision on the complaint. The Ombudsman can accept an application that is made after six weeks if the Ombudsman considers that it is just and equitable to do so. There is no statutory time limit for applying to the Ombudsman under the reasons at paragraph 1 c or 1d.

Who can make an application to the Ombudsman?

- 4 Only the person who made the service complaint (or who could have made or could still make one, in connection with 1 d) can apply to the Ombudsman on the grounds set out at paragraph 1.

How to make an application

- 5 An application to the Ombudsman must:

- a. be made in writing and dated;
- b. set out the kind(s) of investigation which the complainant is requesting the Ombudsman carry out;
- c. where asking for an investigation into the outcome of the service complaint, state those aspects of the decision or the appeal determination (as appropriate) that the complainant disagrees with and why;
- d. where asking for an investigation into maladministration, set out what that maladministration consists of, any injustice that the complainant considers has or may have resulted, and any facts in support;
- e. where asking for an investigation into paragraph 1 c) or d), state the undue delay that is alleged, any injustice that has or may have resulted, and any facts in support;
- f. include copies of the decision and any final appeal determination letters in connection with the service complaint, where the service complaint has been finally determined, or any related copies of decisions made where the service complaint has been reconsidered following an earlier investigation by the Ombudsman;
- g. if the application is not made within six weeks of the complainant having received notification of the final determination on the service complaint, or of the decision following reconsideration, state the reasons why the application was not made within that period.

What happens next?

- 6 The Ombudsman has wide discretion to start, continue or stop an investigation following receipt of an application from a complainant, and how to conduct individual investigations.
- 7 What the Ombudsman is seeking to establish during an investigation (the findings) and what recommendations might be made (to put right what has been found) depends on what the complainant has asked the Ombudsman to look at:
 - a. Where the Ombudsman investigates the subject matter of a service complaint, the purpose of the investigation is to decide whether the complaint is well-founded and, if the Ombudsman thinks it is, to consider what if any redress would be appropriate and make recommendations about any redress;
 - b. Where the Ombudsman investigates alleged maladministration in connection with the handling of a complaint, the purpose of the investigation is to decide whether the allegation of maladministration is well-founded and, if the Ombudsman thinks it is, to decide whether the maladministration has or could have resulted in injustice to the complainant, and to make any recommendations as a result of the findings;

- c. Where the investigation is into alleged undue delay, the purpose is to decide whether the allegation is well-founded and, if the Ombudsman thinks it is, to decide whether the undue delay has or could have resulted in injustice to the complainant, and to make any recommendations as a result of the findings.
- 8 The Ombudsman must decide whether to begin an investigation, and notify the complainant and the nominated Defence Council delegate of the decision giving reasons. If the Ombudsman decides to investigate, a copy of the application must be sent to the nominated Defence Council delegate. The Ombudsman must also give reasons if the decision is taken to begin an investigation when the application was made beyond the six week time limit.
- 9 The Ombudsman can decide whether to investigate a service complaint or an allegation in whole or in part.
- 10 If the Ombudsman decides to investigate any non-alleged maladministration that becomes apparent during an investigation into the substance of a complaint or its handling, the Ombudsman must notify the complainant and the nominated Defence Council delegate in writing and give reasons.

The conduct of investigations

- 11 The Ombudsman may hold an oral hearing as part of an investigation. A hearing must be conducted in private, unless the Ombudsman considers that it is necessary to hold all or part of the hearing in public. If it is in public, the Ombudsman may impose such restrictions on attendance at, or the reporting of, that hearing, as the Ombudsman considers reasonable.

Reimbursement of expenses

- 12 The Ombudsman is able to pay such expenses or allowances for loss of time as the Ombudsman deems necessary and reasonable to anyone asked to attend in connection with an investigation or to provide information or material.

Decisions on access to legal advice

- 13 It is for the Ombudsman to decide whether anyone involved in an investigation can be represented, including legally represented.

Withdrawing an application

- 14 A complainant may withdraw an application at any time before an investigation has been completed by the Ombudsman. Notice of the withdrawal must be made in writing and be shared by the Ombudsman with the nominated Defence Council delegate. It will be for the Ombudsman to decide whether to then begin, continue with or to discontinue that investigation, notifying the complainant and the nominated Defence Council delegate of the decision in writing and giving reasons.

Opportunity to comment during an investigation

- 15 Having decided to begin an investigation, the Ombudsman must give an opportunity to comment to:
- a. the nominated Defence Council delegate;
 - b. any person alleged by the complainant in their application to have been responsible for maladministration (including any undue delay) in connection with the handling of the service complaint;
 - c. any person who the Ombudsman considers is a subject of the service complaint;
 - d. any person who the Ombudsman considers is likely to be the subject of criticism in relation to that person's character or professional reputation in the findings or recommendations in the Ombudsman's report.

Responding to the Ombudsman's requests for information

- 16 The Ombudsman can carry on with an investigation and prepare a report even if information or other material that has been requested is not forthcoming within the period that the Ombudsman has specified as being reasonable in the circumstances. The Ombudsman can also specify the form and manner in which documents or information that has been requested should be provided.

Ombudsman's power if information is being unlawfully withheld

- 17 The Ombudsman has the same powers as the High Court in respect of the production of documents or the attendance or examination of witnesses for the purposes of an investigation. Where there is a serious failure to comply with a request, the Ombudsman has the power ultimately to ask the High Court to investigate whether in withholding material requested by the Ombudsman there has been a contempt of court, and for the court to consider whether action should be taken against anyone for that. Information can only be withheld from the Ombudsman where it is lawful to do so.

Ombudsman's discretion to share a report in draft

- 18 It is open to the Ombudsman to share a copy of a draft report for comment with any of the people set out at paragraph 15. Any comments received must then be taken into account and be referred to in the final report along with the Ombudsman's response to them.

Content and distribution of Ombudsman's final report

- 19 Having completed an investigation the Ombudsman must produce a report setting out findings and any recommendations resulting from those findings.

- 20 The nature of findings in a report and of the subsequent recommendations are dependent on the type of investigation that has been conducted by the Ombudsman. Paragraph 7 sets out what the Ombudsman's findings and recommendations are to cover.
- 21 The Ombudsman must include in a report the reasons for each of the findings and recommendations.
- 22 The Ombudsman must send a copy of the final report to:
- a. the nominated Defence Council delegate;
 - b. the person who made the application to the Ombudsman;
 - c. the subject, if any, of the service complaint; and
 - d. any person who is, in the opinion of the Ombudsman, the subject of criticism in the report's findings or recommendations in relation to that person's character or professional reputation.
- 23 It is open to the Ombudsman to place confidentiality obligations on any person to whom the Ombudsman sends a copy of the draft or final report, where the Ombudsman considers it would be appropriate to do so on the grounds of national security or for someone's safety.

Acting to correct errors in a published report

- 24 The Ombudsman is able to issue a certificate correcting any clerical mistakes or other errors in a published report arising from an accidental slip or omission. A copy of the certificate must be sent to the complainant, the nominated Defence Council delegate and any person to whom a copy of the final report was sent.

Considering the Ombudsman's published report

- 25 The nominated Defence Council delegate must consider a report that has been issued by the Ombudsman following an investigation. The Ombudsman and the complainant must be notified in writing:
- a. of the action (if any) the nominated Defence Council delegate has decided to take in response to the findings and recommendations made by the Ombudsman, and the reasons, and
 - b. why it has decided to reject a recommendation if that is the case.

Implementing the Ombudsman's recommendations

- 26 Where the nominated Defence Council delegate decides in response to a recommendation that a service complaint should be reconsidered to any extent, the following considerations must be taken into account in deciding who to appoint:
- a. whether the reconsideration should be carried out by a person or panel of persons, or by the Defence Council itself, and then if any of those persons should be independent for the reasons set out at chapter 1 paragraph 20;
 - b. the person or panel appointed must have the authority to consider and decide the complaint, to determine any appropriate redress and to grant it;
 - c. the following cannot be appointed to reconsider the service complaint:
 - i. a person who is the subject of the complaint, or is alleged to be implicated in any way in the matter, or matters, complained about;
 - ii. an officer of the Naval Chaplaincy Service, the Royal Army Chaplains Department or the Royal Air Force Chaplains Branch.
- 27 Following reconsideration of a service complaint, the decision is to be sent to:
- a. the complainant;
 - b. the Ombudsman; and
 - c. any person to whom the Ombudsman sent a copy of the published investigation report on the complaint in question.

What if the complainant, respondent or other party is dissatisfied with the final report or MOD's response?

- 28 There is no provision in the legislation for any person to take the matter up with the Ombudsman or with MOD.

Can a complainant apply to the Ombudsman again about the same complaint?

- 29 If the Ombudsman has investigated the substance of a service complaint or its handling, and that service complaint has been reconsidered by the chain of command following a report by the Ombudsman, the complainant may make a subsequent application to the Ombudsman for an investigation into the substance or handling of the same service complaint. The subsequent application can only relate to proceedings at the reconsideration stage. There is a six week time limit for making a subsequent application, starting from when the complainant receives notification of the decision that has followed reconsideration of the complaint. An application can be considered by the Ombudsman beyond this period if the Ombudsman considers that it is just and equitable to do so.

30. If the complainant has approached the Ombudsman for an investigation into pre-complaint delay, or into undue delay in relation to an on-going service complaint, there is nothing to prevent the complainant from applying to the Ombudsman for an investigation into its substance or handling once the service complaint has been finally determined.

Glossary

Annex A

Annex F	A Service Complaint Form (Annex F to Part 2 of this JSP) which captures key information about the matters being complained about and the redress that is being sought.
Appeal Body	One or more individuals (who might include independent members) who have been appointed by a single Service complaints secretariat to consider and to make a determination on an appeal
Assisting Officer (AO)	A person who is appointed by the chain of command to provide help and support to a complainant or a respondent during the service complaints process. A complainant or respondent can also nominate someone to act as their AO.
Chain of Command (CoC)	CoC is the line of authority and responsibility along which orders are passed within a Service unit and between different units.
Commanding Officer (CO)	The CO is the officer who has been appointed by the appropriate authority to be in command of and to exercise discipline over a ship, unit or establishment.
Complainant	A serving or former Service person who has made a service complaint.
Decision Body	One or more individuals who have been appointed by a single Service complaints secretariat to investigate and make a decision on a service complaint.
Defence Council	The Defence Council is the senior departmental committee. It is chaired by the Secretary of State and comprises the other ministers, the Permanent Under Secretary, the Chief of Defence Staff and senior Service officers and senior officials who head the armed services and the department's major corporate functions. It provides the formal legal basis for the conduct of defence in the UK through a range of powers vested in it by statute (such as in relation to redress) and Letters Patent.
Equality and Diversity Advisor (EDA)	EDAs are the command/establishment focal point for providing impartial advice to all Service personnel on any E&D issue, including allegations of bullying and harassment.
Finally determined	A complaint that has been completed in the internal process – i.e. a decision has been taken on the complaint by the decision body and, if an appeal is available, there has been a determination by the appeal body. In some cases, there will be a decision stage with no appeal because of the seniority of the decision body. A complaint has not been finally determined for the purposes of an Ombudsman investigation if an appeal is available and the complainant chooses not to pursue it.
Harassment Investigation	An individual appointed to investigate formal complaints of bullying and harassment.

Officer (HIO)	
In writing	Many of the formal steps in the process such as making the application and the complainant being notified of decisions need to be “in writing”. This includes email but is not defined in the legislation.
Independent Member/Person	A person who is not a member of the Armed Forces or the Civil Service, who has been recruited by MOD on a fee earning basis to provide an independent view on appointment to complaints of a specific type. Those types of complaint are set out at paragraph 20 of Part 1 of this JSP.
Internal process	The process that is handled by the Services from receiving a service complaint through to making a final decision
Investigating Officer	An individual appointed by a decision or appeal body to investigate a complaint on its behalf and to report back with findings of fact
Joint Personnel Administration (JPA)	JPA is the intranet-based personnel administration system used by the Services to log all complaints dealt with under this JSP. All complaints must be entered by the complainant’s unit admin staff at the earliest opportunity after submission.
Maladministration	Maladministration is a broad term with no set definition in law. However it generally means that there has been a failure to follow procedure and can include, but is not limited to: delay; failure to take action; incorrect action; providing misleading information; broken promises; inadequate record-keeping or inadequate liaison or consultation;
Mediation	A private, informal dispute resolution process, in which a neutral third-person (the mediator) helps the disputing parties to reach an agreement which resolves the dispute.
Principles of Fairness	The principles of fairness set out the good behaviour that should be followed to help ensure Service complaints are handled confidently, fairly, promptly and correctly in the best interests of all those involved.
Receive notification	Any reference to a person having “received notification” means that they are deemed to have received the communication on the second day after the day on which it was posted, sent electronically or delivered in person to the intended recipient
Redress	The remedy sought by the complainant, or that determined by the decision or appeal body to be an appropriate remedy in answer to a Service complaint which has been upheld or partially upheld. A decision or appeal body is obliged to consider appropriate redress which may differ from the redress requested by a complainant
Respondent	A person who is the subject of a Service complaint
Secretariat	The complaints process is supported by a secretariat which has two main components; a central secretariat and the secretariats of three single Services. The central secretariat is part of the central staff reporting to DSP Pol through Hd Defence Personnel Secretariat (DPS) and Asst Hd DPS Complaints. The single Service secretariats are embedded within their single Service chains of command in their separate locations.

Service complaint	A complaint submitted in writing in a statement of complaint explaining why a current or former Service person thinks themselves wronged in a matter relating to their service
Service Complaints Ombudsman (SCO)	The Ombudsman is independent of MOD. The appointment is approved by The Queen on the recommendation of the Secretary of State for Defence. The Ombudsman is required to produce an annual report on the operation of the service complaints process, and can investigate certain matters on application by a complainant.
Special-to-Type (STT)	Special-to-Type (STT) procedures exist to resolve certain types of complaint. These include: complaints about Service health care for which the Services operate distinct informal procedures; housing complaints for which a review panel has been established by DIO and housing contractors; pay and allowances complaints for which the Pay and Allowances Casework and Complaints Cell (PACCC) has been established within the Joint Personnel Administration Centres. This list is not exhaustive.
Specified Officer (SO)	The person to whom a complainant submits a statement of complaint at the start of the service complaints process. The specified officer is usually the Service person's Commanding Officer.
Statement of complaint	The document in which a Service person must set out the particulars of their service complaint
Undue delay	There is no legal definition of undue delay, as what constitutes such delay is dependent on the circumstances of each individual case. Undue delay is more than simply a delay in the handling of a complaint or exceeding a time limit or target, which may not be desirable but can be justified.
Victimisation	To treat someone unfairly, e.g., because they have submitted a Service complaint or approached the SCO.

Excluded Matters

The following matters are excluded from being raised as a service complaint under the Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015 regulation 3 and the schedule.

Excluded complaints

- 3.—(1) A person may not make a service complaint about a matter within the Schedule.
- (2) A person may not make a service complaint about—
- (a) a decision under regulations made for the purposes of section 340B(4)(a) (admissibility of the complaint);
 - (b) a decision under regulations made for the purposes of section 340C(2) (decision on the service complaint);
 - (c) a decision under regulations made for the purposes of section 340D(2)(c) (decision relating to whether an appeal has been brought before the end of the specified period);
 - (d) a determination of an appeal brought under regulations made for the purposes of section 340D(1) (appeals);
 - (e) alleged maladministration (including undue delay) in connection with the handling of his or her service complaint;
 - (f) a decision by the Ombudsman for the purposes of any provision of Part 14A of the Act;
 - (g) the handling by the Ombudsman of a service complaint;
 - (h) a decision for the purposes of regulations made under section 334(2) whether a service complaint could be made about a matter;
 - (i) a decision under regulations made for the purposes of paragraph (b) of section 334(5) whether a service complaint, or an application referred to in that paragraph, could be made after the end of a prescribed period.

SCHEDULE

Regulation 3(1)

1. Subject to paragraph 2, a matter is within this Schedule if it—

- (a) is or was capable of being the subject of a complaint under the internal disputes resolution procedures established for the armed forces in accordance with section 50, 50A and 50B of the Pensions Act 1995⁽⁶⁾;
- (b) is or was capable of being the subject of an appeal to the Discretionary Awards Panel;
- (c) is or was capable of being the subject of an appeal to the Discretionary Awards Appeals Panel;
- (d) is or was capable of being the subject of a review under rule D.8 of the scheme set out in the Armed Forces Pension Scheme Order 2005⁽⁷⁾;
- (e) is or was capable of being the subject of a review under regulation 58 of the scheme set out in the Armed Forces Pension Regulations 2014⁽⁸⁾;

⁽⁶⁾ 1995 c. 26; section 50 was substituted with new sections 50, 50A and 50B by section 273 of the Pensions Act 2004 c. 35, to which further amendments were made by S.I. 2005/2053 and section 16 of the Pensions Act 2007 c. 22.

⁽⁷⁾ S.I. 2005/438; relevant amending instruments are S.I. 2006/717, 2009/544.

⁽⁸⁾ S.I. 2014/2336, to which there are amendments not relevant to these Regulations.

- (f) is or was capable of being the subject of an appeal to a service appeals panel under paragraph 59 of the Criminal Injuries Compensation (Overseas) Scheme⁽⁹⁾;
- (g) is about any decision made under the scheme set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽¹⁰⁾;
- (h) is about any decision made under the scheme set out in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006⁽¹¹⁾;
- (i) is or was capable of being the subject of an appeal under section 141;
- (j) is or was capable of being the subject of an appeal under the Courts-Martial (Appeals) Act 1968⁽¹²⁾;
- (k) is a decision of a judge advocate under any provision in or made by virtue of the Act;
- (l) is a decision of the Director of Service Prosecutions, or of a prosecuting officer exercising a function of the Director of Service Prosecutions, under any provision in or made by virtue of the Act or in relation to the exercise of a right of review under the Schedule to the Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015⁽¹³⁾;
- (m) is a decision of the court administration officer made in exercise of a function of his under a provision in or made by virtue of the Act;
- (n) is a decision of a service policeman under any provision in or made by virtue of Chapter 1 of Part 5 of the Act or in relation to the exercise of a right of review under the Schedule to the Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015;
- (o) is a decision of a commanding officer under Chapter 1 or 2 of Part 5 of the Act or in relation to the exercise of a right of review under the Schedule to the Criminal Justice (Armed Forces Code of Practice for Victims of Crime) Regulations 2015;
- (p) is a decision under—
 - (i) section 152 (review of summary findings and punishments);
 - (ii) section 177 (review of service compensation orders);
 - (iii) section 251(3) or (4) (time for payment of, or directing payment by instalments of, a fine or service compensation order);
 - (iv) section 267 (power of court to remit fine); or
 - (v) section 276 (compensation for miscarriages of justice);
- (q) is or was capable of being the subject of an appeal to a reserve forces appeal tribunal under section 81(4), 83(4) or 84(3) of the Reserve Forces Act 1996⁽¹⁴⁾;
- (r) is a decision of the Security Vetting Appeals Panel in relation to the complainant;
- (s) is or was capable of being the subject of an appeal by the complainant to the Security Vetting Appeals Panel;
- (t) is or was capable of being the subject of a claim for clinical negligence against the Ministry of Defence; or
- (u) is or was capable of being the subject of a claim for personal injury against the Ministry of Defence.

2. Nothing in paragraph 1 shall prevent a person making a service complaint about anything referred to in regulation 5(2) which he or she alleges has occurred in connection with a matter specified in paragraph 1.

The following explanation of regulation 3 (1) does not form part of the legislation and is provided for guidance:

⁽⁹⁾ The Criminal Injuries Compensation (Overseas) Scheme is a non-statutory, Ministry of Defence scheme under which lump sum payments may be made to members of the armed forces and their eligible dependants who in certain circumstances are killed or injured overseas as a result of a crime of violence.

⁽¹⁰⁾ S.I. 2011/517, amended by S.I. 2012/1573; there are other amending instruments but none is relevant.

⁽¹¹⁾ S.I. 2006/606, relevant amending instruments are S.I. 2008/679, 2013/241.

⁽¹²⁾ 1968 c. 20.

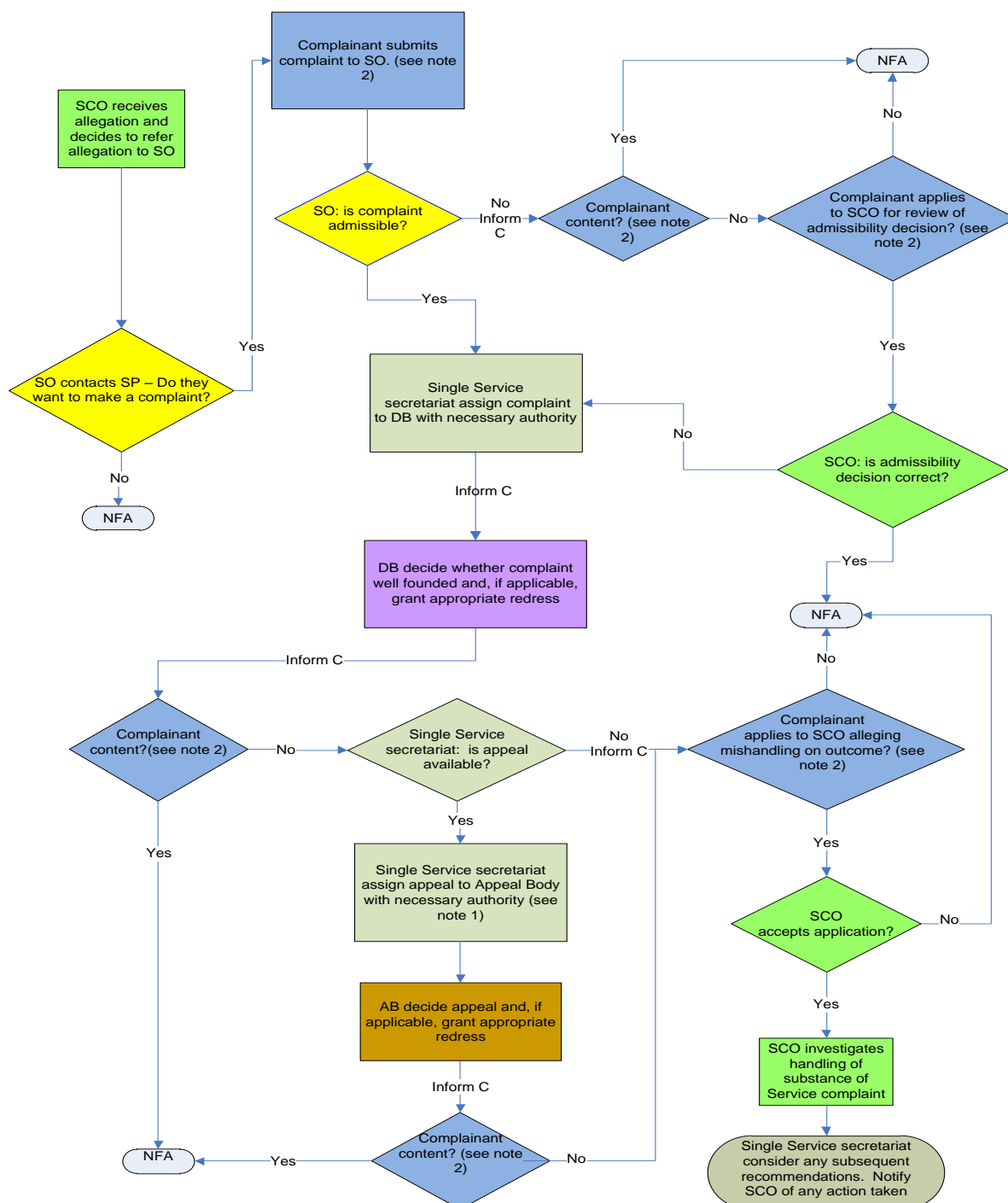
⁽¹³⁾ S.I. 2015/1811.

⁽¹⁴⁾ 1996 c. 14.

- (a) is a decision made by the specified officer on admissibility. This can be reviewed instead by the Service Complaints Ombudsman;
- (b) is a decision made by a decision body on whether the service complaint is well-founded. This can instead be raised as an appeal or, depending on the circumstances, with the Ombudsman
- (c) is a decision made by a single Service secretariat that an appeal cannot proceed. This can be reviewed instead by the Service Complaints Ombudsman.
- (d) is a decision made by an appeal body that a complaint is not well-founded. This can be the subject instead of an application to the Service Complaints Ombudsman.
- (e) is an allegation by a complainant that their service complaint is being or was delayed unduly. This can be the subject instead of an application to the Service Complaints Ombudsman.
- (f) is any decision taken by the Ombudsman on a review or in relation to an investigation. This can instead be taken to the courts.
- (g) is self explanatory
- (h) is a decision that was taken by a prescribed officer under the service complaints process that was in place up to 31 December 2015, that a service complaint had been submitted about a matter that was excluded under the previous system from being raised as a service complaint. This is excluded from being raised as a new service complaint under the process in place from 1 January 2016, because the complainant can apply instead to the Service Complaints Ombudsman for a review of the prescribed officer's decision.
- (i) is a decision that was taken by a prescribed officer under the service complaints process that was in place up to 31 December 2015, that a service complaint had been submitted too late. This is excluded from being raised as a new service complaint under the process in place from 1 January 2016, because the complainant can apply instead to the Service Complaints Ombudsman for a review of the prescribed officer's decision.

Service Complaints Process Flowchart

New Complaints Process



Note 1 – If appeal deemed out of time, SP can apply to SCO for review. SCO decision is final.

Note 2 – Complainant can apply to SCO to consider undue delay at any point in the process from contacting the SO until their Service Complaint is finally determined.

Glossary

AB = Appeal Body, C = Complainant, DB = Decision Body, DC = Defence Council, NFA = No Further Action, SCO = Service Complaints Ombudsman, SO = Specified Officer, SP = Service Person

Single Service Contact Points

Naval Service: Email: NAVY LEGAL-CASEWORK MAILBOX (MULTIUSER)

Army: Email: Army PersSvcs-PS2-SC-Group (MULTIUSER)

Telephone:

SO1 Service Complaints Wing 94391 2022 (01264 382022),

SO2 Service Complaints Wing 94391 7701 (01264 381701),

SO3 Service Complaints Wing 94391 7992 (01264 381992)

RAF: Email: Air-COSPers-Pol SCT Gp Mlbox (MULTIUSER)

Telephone: SCT Admin Support 95221 6468 (01494 4964)

Transition Arrangements

Annex E

This table sets out some of the scenarios covered by the transitional arrangements and what is to happen. It is not intended to be a comprehensive guide to the Transitional Regulations. If there is any doubt about how to handle a complaint, the single Service secretariat legal teams and Central Legal Services CDC are to be consulted. References to Regulations are to the Transitional Regulations at <http://www.legislation.gov.uk/ukxi/2015/1969/contents/made>. References to “the Act” are to the Armed Forces (Service Complaints and Financial Assistance) Act 2015 at <http://www.legislation.gov.uk/ukpga/2015/19/contents>

COMPLAINTS MADE TO A COMMANDING OFFICER AND WHICH WILL NOT TRANSFER

Serial	Scenario (Action that has been completed by transition day)	Comments
1	The complainant has received notification of the final decision taken at level 3, whether as the only substantive decision or as the first or second appeal level	<p>The complaint is finalised and there is therefore no access to the Ombudsman or to any other aspect of the new process (Regulation 3 (1) (d)).</p> <p>However, if the complainant had the right under the old system to petition the Sovereign, that right is retained under the new system. If the complainant has asked to petition the Sovereign before transition day the petition can continue. If they have not, they can choose whether to exercise that right or to approach the Ombudsman after transition day (Regulation 13).</p> <p>There is no time limit for petitioning the Sovereign, and the time limit for approaching the Ombudsman does not apply (Regulation 13 (4)). Access to the Ombudsman is on the matters at section 340H (1) (a), (b), and (d) of the Act. (Regulation 13 (2)).</p>
2	A decision has been made by the Prescribed Officer and the Superior Officer’s appeal decision has been received by the complainant	<p>This will stay in the old system, with a second appeal available to level 3 (Service Board or Service Complaint Panel).</p> <p>As the complaint was open on transition day, access to the Ombudsman will be available for all reviews and investigations that are still to come under the new system (a review would be available on the basis of a referral/appeal to level 3 having been ruled out of time after 3</p>

		<p>Dec 2015, in which case the complainant would have 4 weeks to apply to the Ombudsman – Regulation 3 (3)).</p> <p>If the complainant had a right to petition the Sovereign under the old system, they will have the option to exercise that right or to approach the Ombudsman once they have received the level 3 decision. There is no time limit on seeking a referral to the Sovereign, but these complainants would have to meet the time limit for applying to the Ombudsman under the new system (Regulation 14).</p>
3	<p>The complaint has been ruled out of time or as being on an excluded matter, and the complainant was notified on or before 1 October 2015</p>	<p>Under the old system, the complainant had three months from being told that the complaint cannot proceed in which to bring a new service complaint about that decision. In this scenario, that three month limit has passed by transition day. The complaint does not transfer to the new system. The complainant's only option is therefore to try to make an out of time review application to the Ombudsman.</p> <p>A review by the Ombudsman would be conducted against the criteria that applied under the old system NOT under the new, as the excluded matters are different. After the Ombudsman has made a decision it is binding.</p> <p>This scenario is covered by Regulations 3, 6 and 8, and by Regulations 5 and 7 of the Service Complaints Regulations.</p>
COMPLAINTS MADE TO A COMMANDING OFFICER AND WHICH WILL TRANSFER		
4	<p>A service complaint has been made but no decisions at all have been taken on it</p>	<p>The process is to start at the beginning with the specified officer's admissibility decision. The specified officer is to treat the complaint as though raised under the new system, but is to apply the schedule of excluded matters from the old process as it would be unfair to apply the new. The Ombudsman must therefore apply the same exclusions from the old system, if the complainant subsequently</p>

		<p>seeks a review of the admissibility decision.</p> <p>Serials 4-9 are “Part 3” complaints in the terms set out in the Transitional Regulations. The rules under that Part provide for adjustments to time limits, independence and excluded matters to be applied in these cases, as they were provided for under the old system, to ensure that complainants are not disadvantaged from the move to a new system.</p>
5	<p>The complaint has been ruled out of time or as being on an excluded matter, and the complainant has received notification between 2 October 2015 and 31 Dec 2015</p>	<p>(Regulation 3 (2)) The service complaint enters the new process at the point where the complainant has the right to apply to the Ombudsman for a review of the admissibility decision that has been taken. Under the old process the complainant has three months in which to bring a new service complaint about that decision. Whatever remains of the three months after the day of transition to the new process is the period left to the complainant within which they can apply to the Ombudsman for a review (i.e. the three months starts to run from notification of the admissibility decision). That period can be extended if the Ombudsman considers it is just and equitable to do so.</p> <p>The Ombudsman’s review would be against the criteria that applied under the old system NOT under the new. The Ombudsman’s decision will be binding.</p>
6	<p>The Prescribed Officer (or the Superior Officer or the Defence Council/Service Board/Service Complaint Panel on referral from the PO or SO respectively) is considering the complaint, but has not yet reached a decision on it or has not communicated a decision to the complainant</p>	<p>(Regulation 9) The complaint transfers to the new system at the point where the secretariat decides on the appointment of a decision body (a person, panel of persons or the Defence Council) that must have the authority to decide the complaint and to grant any appropriate redress. It is therefore possible that the secretariat will reappoint the Prescribed Officer/Superior Officer/Service Complaint Panel who was dealing with the complaint on the day of transition to the new process.</p>
7	<p>One substantive decision has been made on the complaint, either by the CO or by the Superior Officer acting as the first decision level, and the complainant has received notification of that decision.</p>	<p>(Regulation 10) If a referral/appeal is only put forward after the day of transition to the new process, the service complaint transfers across to the stage where the secretariat decides on the appointment of an appeal</p>

	No referral/appeal has yet been put forward	<p>body.</p> <p>The one substantive decision made on the service complaint will stand. The time limit for making an appeal is however the more generous one that applied when the substantive decision was made, i.e. that under the old process of three months from the date of the matter complained about or six weeks from receiving the Prescribed Officer's decision whichever is the later (see regulation 7(5)).</p> <p>Once this time limit from the old process has been applied, all subsequent time limits (for reviews under the new system and applications to the Ombudsman) will be those applicable to the new process.</p>
8	One substantive decision has been made on the complaint, either by the CO or by the Superior Officer acting as the first decision level, and having received notification the complainant has put in an appeal by transition day. No decision has been taken on whether it has been made in time	<p>(Regulation 11) The service complaint transfers to the stage in the new process where the secretariat has to decide whether the appeal has been made in time.</p> <p>The time limit for an appeal is the one that applied under the old process. If the complainant is dissatisfied with a decision to rule the referral/appeal as out of time, they can apply to the Ombudsman for a review and the Ombudsman must consider it against the time limit that applied under the old process.</p>
9	One substantive decision has been made on the complaint, either by the CO or by the Superior Officer acting as the first decision level, and having received notification the complainant has put in an appeal by transition day. The referral/appeal has been found to be in time, but no decision has been made on the appeal or a decision has been made but has not been communicated to the complainant	<p>(Regulation 12) The service complaint transfers to the stage in the new process where the secretariat is to appoint an appeal body that has the authority to determine the appeal and to grant any appropriate redress. It is therefore possible that the secretariat will reappoint whoever was already considering the appeal on the day of transition to the new process.</p>
ALLEGATIONS MADE TO THE SCC AND WHICH WILL <u>NOT</u> TRANSFER		
10	An allegation has been referred by the SCC; the single Service secretariat has referred it to the relevant officer; and the complainant has decided not to make a service complaint	<p>(Regulation 7 (11)) If the SCC had not been notified of the complainant's decision by the day of transition to the new process, the secretariat is to ensure that the Ombudsman is notified instead.</p>

ALLEGATIONS MADE TO THE SCC AND WHICH WILL TRANSFER		
11	An allegation has been received by the SCC but no decision has yet been taken on whether to refer it on	(Regulation 15 (1)) The allegation is treated as if it had been made to the Ombudsman, and the Ombudsman is to apply the new process from the outset.
12	The single Service secretariat has received the referral from the SCC but has not sent it on to chain of command; or , the chain of command has received it but taken no action with the potential complainant	(Regulation 15 (3)) The referral is to be treated as if it had been received from the Ombudsman and the new process is to be applied from the outset.
13	The relevant officer has spoken to the potential complainant but the latter has not decided whether to make a service complaint	(Regulation 15 (4)) The relevant officer under the old system (the “appropriate officer” under the new system) has complied with the requirement to notify the Service person that a referral has been received. All the other notifications to the Ombudsman are to be applied from hereon.
14	The complainant has made a service complaint but no decision, including an admissibility decision, has been taken on it	The service complaint is to be treated as if it had been referred by the Ombudsman under the new process, so that the new reporting requirements to the Ombudsman apply. For the chain of command, the service complaint is to be handled under the internal process in the same way as at serial 4.