



House of Commons  
Defence Committee

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# The work of the Service Complaints Commissioner for the Armed Forces

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**Eighth Report of Session 2012–13**

*Volume I: Report, together with formal  
minutes, oral and written evidence*

*Additional written evidence is contained in  
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## Defence Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are Alda Barry (Clerk), Dougie Wands (Second Clerk), Karen Jackson (Audit Adviser), Ian Thomson (Inquiry Manager), Christine Randall (Senior Committee Assistant), Carolyn Bowes and Rowena Macdonald (Committee Assistants), and Sumati Sowamber (Committee Support Assistant).

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# Conclusions and recommendations

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## The current Service complaints system

1. We accept that the steady increase in the level of Service complaints made directly to the chain of command or referred by the Commissioner may indicate an increasing level of confidence in the system. However, we are concerned to note the Commissioner's comments regarding a much lower rate of annual increase in contacts about matters that could become Service complaints compared to the first three years that her post had existed. Our concern was heightened by other organisations, such as the Service Families Federations, reporting lower levels of contact from Service personnel, solicitors reporting an increase in the number of individuals approaching them as they felt the Commissioner had no powers, and the increase in the number of people not pursuing matters with the Commissioner after initial contact for the same reason. (Paragraph 15)
2. We are further concerned that the Commissioner and others are reporting that fears of redundancy among Service personnel appear to be deterring them from making Service complaints. 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. As a matter of urgency the MoD and the Commissioner should investigate this matter and report their findings to us in response to our Report. (Paragraph 16)
3. We commend the work that the Commissioner has undertaken with the Services to identify systemic failures that could lead to potential Service complaints and we expect this work to continue so lessons are learned for the future. It is essential that each of the Services continuously learn lessons from the complaints they receive and ensure that appropriate steps are taken to stop the causes of the complaints arising in the future. This will lead to a more efficient system and release resources to deal with other areas in the complaints system. The MoD, the Commissioner and the single Services should undertake further work to improve the way weaknesses are identified and lessons learnt. 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 complaints system. The MoD should set measurable aims, objectives and targets for improvements in these areas and these should be included in the response to our Report. (Paragraph 23)
4. We note the challenges that the Commissioner has identified for the individual Services. We note the large backlogs at the unit level in the Army and RAF and expect action to be taken and appropriate resources identified to clear them. We also note that the RAF required lawyers to be involved at every stage of the complaints process. This had caused difficulties during the Libya campaign as the number of lawyers was capped and they were required for other duties. While operational requirements will always be paramount, the MoD should investigate actions that

could mitigate this in the future, for example whether lawyers from another Service could be used or whether lawyers are always necessary at every stage. (Paragraph 24)

5. We commend the Royal Navy for the way it has approached the handling of complaints and reducing its backlogs but it must guard against complacency. Although each case is different and the complainant must always have the final decision on whether to pursue a formal complaint, the Royal Navy's practice of, where possible, resolving complaints informally is advantageous. We hope that the Army and RAF will follow and adapt this approach to their circumstances. (Paragraph 25)
6. We note that the number of contacts that the Commissioner receives about bullying, harassment, improper behaviour and victimisation has continued to increase. Although this may indicate an increasing confidence in reporting such matters, it also suggests continuing problems in these areas. We are concerned about the continuing gap between anonymous reporting of incidents in the Armed Forces Continuous Attitude Survey and the Recruit Training Survey and the actual numbers of complaints. Further action is required to address this disparity. We note that the Commissioner has requested that the Adjutant General undertake an inquiry in relation to the serious complaints that she received in 2012 in respect of the Army. The MoD should update us on this as part of its response to our Report and we expect to see the report of any inquiry that the Adjutant General initiates. (Paragraph 31)
7. We are concerned that the number of sexual harassment and other sexual offences allegations made to the Commissioner remains low. Other evidence, such as the 2006 Equal Opportunities Commission and MoD Survey into sexual harassment in the Armed Forces, suggested that the incidence of such offences was a lot higher than the number of complaints would indicate. We also note that a number of complainants when going to the Commissioner with issues that are not about rape or sexual assaults cite such incidents from their past as contributing to their not trusting their chain of command. We note that the MoD is attempting to produce the most accurate information possible but it is inappropriate for them to fail to provide accurate figures in answers to Parliamentary Questions. Without accurate figures, the MoD is unaware of how severe a problem it is dealing with in relation to sexual offences within the Armed Forces or what measures it is required to take to rectify the offences committed. We recommend that the MoD instigate new research into the level of sexual offences in the Armed Forces and the actions required to tackle it and to encourage possible victims to report such allegations whether to the Commissioner, the Royal Military Police or the chain of command. (Paragraph 32)
8. We are disappointed and concerned that Service personnel who felt they had been the victim of a behaviour which may give rise to a prescribed complaint did not have confidence to pursue this matter through the chain of command. While it is entirely appropriate and understandable that potential complainants would prefer to make use of the Commissioner, we are concerned that some Service personnel may decide against pursuing their grievance altogether. The MoD and Service Chiefs should commission research into the reasons for the lack of confidence in the chain of command to deal with prescribed complaints. The MoD should also review the

systems in place for monitoring the performance of commanding officers in respect of these complaints. (Paragraph 34)

9. We support the introduction of fee-earning Harassment Investigation Officers (HIOs) to replace the previous system of civilian and Service volunteers who undertook this role in addition to their normal duties which caused delays in dealing with complaints. This should lead to an improvement in the investigation of MoD civilian and Service bullying and harassment complaints. We commend the MoD for recruiting the full operating capability of 50 HIOs by 1 August 2012. We recommend that the MoD continue to increase the number of HIOs to ensure that there is always sufficient capacity available especially if there is a surge in the number of the bullying and harassment complaints. The MoD should also consider similar arrangements for the investigation of other complaints. We further recommend that the Commissioner undertake an analysis of the effectiveness of HIOs at the end of 2013 and this should be included as part of her 2013 Annual Report. (Paragraph 36)
10. We agree with the Commissioner's warning that as many Service personnel leave the Services over the next few years there is a potential for an increase in Service complaints regarding discharges, particularly as there may be reductions in the personnel and back office functions of the Services and MoD. It is important that the MoD and the Services take pre-emptive action to lessen the impact of this and prevent a possible increase in complaints. A vital part of this will be learning lessons from previous complaints regarding discharge procedures. (Paragraph 39)
11. We note the rise in 2011 of potential Service complaints in respect of medical treatment and welcome the reduction in the numbers which the Commissioner anticipated for 2012. We welcome the Surgeon General's commitment to a continuous improvement approach to complaints. In response to our Report, the MoD should update us on progress on the review of medical complaints processes used across Defence Medical Services, particularly on lessons that might be learned from the complaints system for redundancy appeals process. (Paragraph 43)
12. We agree with the Commissioner that the review of the Service complaints system took too long. Given that she had reported in her Annual Reports that the system was not efficient, effective or fair, the review should have been given more urgency. (Paragraph 47)
13. We are concerned that the Commissioner sees the review of the Service complaints system as a missed opportunity. The changes to deal with issues relating to demand and resources, delay, and appeals while beneficial in themselves are tweaking a system that needed 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 the 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. (Paragraph 48)
14. We agree with the Commissioner that the Service complaints system is too complex and needs to be simplified. For example, three levels for the resolution of complaints

is too many and adds to the length of time taken to resolve them. The MoD should reconsider the Commissioner's proposal that one level of appeal in the system should be removed. (Paragraph 49)

## Future role of the Commissioner

15. In view of the Commissioner's evidence that "some of the Service Chiefs said they didn't quite understand what an ombudsman did, but they were sure they didn't want one", it is clear that discussions between the Service Chiefs and the Commissioner have not been as productive as they should have been. The MoD's wish to preserve the role of the chain of command in investigating and resolving complaints has been accepted by the Commissioner. The 2012 Armed Forces Covenant Annual Report said that there was more benefit to be gained for improving timeliness and tackling undue delay if the Commissioner were engaged whilst complaints were still live rather than her post becoming an ombudsman acting after the event. This contrasted with the Commissioner's view that any Ombudsman model which excluded the oversight function until the conclusion of the internal process would not be effective, fair or be able to drive through the efficiencies that are required. While the involvement of an Ombudsman in cases that have not completed the internal complaints process would not be normal practice in the UK, we see no reason why the MoD and the Commissioner cannot agree a model for an Armed Forces Ombudsman that satisfies both their aspirations and concerns. (Paragraph 60)
16. While we support the changes to the role of the Commissioner which she has agreed with the MoD, we are disappointed that the MoD and the Services continue to be opposed to changing her role to that of an Armed Forces Ombudsman. We repeat the findings of previous Defence Committees that the Service Complaints Commissioner's role falls far short of that envisaged by them. We recommend that the Service Complaints Commissioner's role should be changed to that of an Armed Forces Ombudsman. In response to our Report the MoD should set out in full its reasons for opposing the establishment of an Armed Forces Ombudsman. The Commissioner has regularly reported that the Service complaints system was not efficient, effective or fair and that the current system was not sustainable and needed simplification and redesign. An important first step to rectifying this would be to resolve the continuing debate on the role of the Commissioner. The MoD, Services and Commissioner should increase their efforts to resolve the differences between them on the Commissioner's role. (Paragraph 66)
17. We believe there would be value in the Commissioner being able to undertake research and report on thematic issues in addition to her Annual Reports. We appreciate that this would require additional resources but the Commissioner's experience on these issues should be utilised. The MoD should examine whether any legislative changes are required to enable this to occur. (Paragraph 69)
18. We note the Commissioner's assessment she does not have sufficient resources and that in fact the resources she has are those that she requested in 2008. A sufficiently resourced Commissioner and Service complaints secretariats are essential to an effective and efficient complaints system and raising confidence in it. It is also vital

that current resources are used in the most efficient manner. While we accept that in the current economic climate it is not easy to provide additional resources, it is not appropriate that the Commissioner feels “dissuaded” from making bids for resources. She should submit her requests for additional resources and a decision should be made on a case by case basis. In response to our Report, the MoD should inform us of the outcome of the discussions on future resources and the Commissioner should confirm that the additional resources are adequate to allow her to fulfil her tasks. (Paragraph 72)

19. The Service Complaints Commissioner’s work is an integral part in delivering the Armed Forces Covenant. We are surprised and concerned that the MoD did not consult the Commissioner during the development of the Armed Forces Covenant or on the Annual Reports on the Covenant. We welcome the MoD’s intention to give the Commissioner an opportunity to comment on statements made about the Service complaints system in future Annual Reports. Given the insight and information the Commissioner receives about the experience of Service life which is often wider than that of Service personnels’ treatment by the chain of command, we believe that there would be value in the Commissioner being consulted on the draft Annual Report as a whole and in her joining the Covenant Reference Group. (Paragraph 78)
20. We would like to thank Dr Atkins for her work as the Commissioner. She has worked ceaselessly to improve the Service complaints system and to make her post a success. We agree with Dr Atkins that the new Commissioner should not come from a military background. It is vital that the Commissioner should bring an outside perspective to the Service complaints system and that Service personnel should have confidence in using the Commissioner’s services. We expect the MoD in their response to this Report to give us their reaction to the Commissioner’s view that the post should be full time. (Paragraph 81)
21. We confirm our intention to hold a pre-appointment hearing with the proposed new Commissioner. We expect to be fully involved at every stage and for the MoD to consult us on the process and the job description from the beginning to ensure sufficient time for the recruitment process, the pre-appointment hearing and a smooth transition to the new Commissioner. Most importantly we expect the MoD to take full account of our views on the suitability of the proposed new Commissioner for the post. (Paragraph 82)

## Conclusion

22. The Service complaints system is an important part of ensuring that the duty of care that the nation owes to its Service personnel is carried out effectively. We commend the Government for recognising this in the Armed Forces Covenant. The Service Complaints Commissioner role is an integral part of honouring the Covenant’s commitment to the duty of care to the Armed Forces and the opportunity for Service personnel to seek redress when they believe they have been treated inappropriately or unfairly. We acknowledge the progress made in delivering a fair, just and efficient Service complaints system but there is a long way to go. There are too many reports of Service personnel being reluctant to raise genuine complaints and grievances. We

are also concerned that complaints are not being raised when they implicate individuals above the complainant within the chain of command. This is a time of great changes in the Defence arena and many of these changes may lead to an increase in the number of Service complaints. The Service complaints system has evolved, as has the role of the Commissioner, but there are still too many instances of delay, inefficiency and lack of resources. These must be dealt with urgently so as to ensure there is confidence in the system and the Commissioner. 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. We will maintain a close interest in the work of the Commissioner and the Service complaints system, particularly in whether the recent changes to the role of the Commissioner and changes to the complaints system prove to be effective. Our Servicemen and Servicewomen deserve a complaints system that is as good as it can be. Not to provide this would be a failure of the nation's duty to them—and a breach of the Covenant. (Paragraph 83)

# 1 Introduction

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## Our inquiry

1. Defence Committees have a long interest in the Service complaints system and the Service Complaints Commissioner, including recommending in the 2005 Report, *Duty of Care*, that the then Government should move towards establishing an independent military complaints commission (see Annex).<sup>1</sup> The Commissioner has now published four Annual Reports commenting on the Service complaints system and the MoD has deposited in the House of Commons Library a formal response to each of them and to the recommendations made in them. Given the concerns the Commissioner expressed in those Annual Reports about the Service complaints system and her opinion on the future role of the Commissioner, we decided it was an appropriate time to hold a short inquiry into the work of the Service Complaints Commissioner. We announced this inquiry on 17 July 2012 in order to examine the effectiveness of the Service Complaints Commissioner, including the powers and resources available to her, the complaints system (including possible improvements), and the Commissioner's relationship with the MoD and the single Services. We took oral evidence from Dr Susan Atkins, the Service Complaints Commissioner, on 21 November 2012. We received six pieces of written evidence to our inquiry and are grateful to all those who submitted evidence. We are also grateful to our staff and Specialist Advisers for their assistance during our inquiry.<sup>2</sup> As well as commenting on the Service complaints system, the powers of the Commissioner and her role in relation to the Armed Forces Covenant, our Report looks ahead to the appointment of the new Commissioner when the current Commissioner's appointment ends at the end of March 2014.

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<sup>1</sup> Defence Committee, Third Report of Session 2004-05, *Duty of Care*, HC 45, paras 423-427

<sup>2</sup> The relevant interests of the Committee's Specialist Advisers can be found in the Committee's Formal Minutes which are available on the Committee's website.

## 2 The current Service complaints system

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2. The Service complaints system introduced by the Armed Forces Act 2006 came into effect on 1 January 2008. It replaced the previous separate single Service legislation and processes. The policy and guidance for the new system is set out in Joint Service Publication (JSP) 831, the latest version of which came out in June 2010.<sup>3</sup> A new edition is expected in Spring 2013. The aim of the Service complaints system is to provide for members of the Armed Forces “a fair, effective, and efficient method for obtaining redress for grievances”.<sup>4</sup> The Ministry of Defence (MoD) told us that “increased independence, timely handling of complaints and instilling confidence in Service personnel about the efficiency of the complaints process were key policy considerations behind the construct of the new complaints process”.<sup>5</sup> The new process emerged against a background of calls for greater independence in the system, particularly in respect of complaints of bullying, harassment and other improper behaviour following the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002.

3. Any person subject to Service law who thinks they have been wronged in any matter relating to their Service, including bullying, harassment, discrimination, and biased, improper or dishonest behaviour, has a statutory right to make a Service complaint.<sup>6</sup> Service includes both regular and reserve Service. Service complaints must normally be made within three months, beginning with the day the matter complained of occurred. JSP 831 provides guidance on the procedures to follow for the submission and handling of complaints raised by both existing and former Service personnel, including the time limits that apply.<sup>7</sup> Individuals who are no longer subject to Service law, through having left the Armed Forces, also have the right to make a Service complaint if the matter which they are complaining about relates to their Service, occurred whilst they were still subject to Service law and is submitted within the appropriate time limits.<sup>8</sup> Service complaints can be raised in two ways:

- directly to the individual’s chain of command; and
- by notifying the Service Complaints Commissioner of a potential complaint.

### Role of the Service Complaints Commissioner for the Armed Forces

4. Any serving or former member of the Armed Forces, or someone acting on their behalf, can contact the Service Complaints Commissioner independently. The Service Complaints Commissioner’s role in the process has two functions:

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<sup>3</sup> Ministry of Defence, Joint Service Publication 831, *Redress of Individual Grievances: Service Complaints issue 2.2*, 7 June 2010. Available at: <https://www.gov.uk/government/publications/jsp-831-redress-of-individual-grievances-service-complaints>. Referred to hereafter as JSP 831.

<sup>4</sup> Ev 14

<sup>5</sup> Ev 14

<sup>6</sup> Ev 14

<sup>7</sup> Ev 14; see also JSP 831 para 2.3.

<sup>8</sup> Ev 15; see also JSP 831 para 2.12.

- to provide an alternative point of contact for Service personnel, or someone acting on their behalf, such as a family member, a friend or MP, who for whatever reason does not have the confidence, or is not able, to raise allegations of bullying, harassment, discrimination or other improper behaviour directly with the chain of command; and
- to provide independent assurance on the fairness, effectiveness and efficiency of the Service complaints system to Ministers, the Services and Parliament by way of an annual report.<sup>9</sup>

5. Under the Armed Forces Act 2006, the Commissioner may not herself investigate any complaint made to her, but can only refer the matter to the individual's chain of command who will contact the individual to see if they wish to make a formal Service complaint. If the Commissioner considers that the information provided to her includes an allegation of any type of bullying, harassment, discrimination or other improper, dishonest or biased behaviour (prescribed complaints (see paragraph 8 below)), any referral of those allegations places a legal obligation on the chain of command to keep her informed of the progress and any decision on the case. The Commissioner's referral of non-prescribed complaints (see paragraph 8 below), for example on pay and allowances, to the chain of command does not place on that command an obligation to keep her informed about the case. However in practice she does ask to be kept informed if the Service person makes a formal complaint and this is accepted (with reasons given for any rejection).<sup>10</sup>

## Complaint levels

6. All Complaints are resolved at one of three levels: Prescribed Officer, usually the Commanding Officer (CO) (Level 1), Superior Officer (SO) (Level 2), and the Defence Council (Service Board or Service Complaint Panel (SCPs)) operating with the delegated powers of the Defence Council) (Level 3). JSP 831 describes the three levels as set out in the box below.<sup>11</sup> In addition to single Service casework staff, the complaints process is supported by a secretariat.<sup>12</sup> The secretariat has two main components; a central secretariat (part of the central staff) and the secretariats of the three single Services. Further information on the roles of those involved at each level of, and the processes followed in, the complaint system can be found in JSP 831.

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<sup>9</sup> Ev 16

<sup>10</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 18

<sup>11</sup> JSP 831, para 1.15

<sup>12</sup> JSP 831, para 1.16

**Table 1: Service Complaint levels**

The Service complaints process has 3 levels:

Level 1—Prescribed Officer, usually the Commanding Officer (CO);

Level 2—Superior Officer (SO); and

Level 3—Defence Council level.

The CO is expected to consider carefully whether he or she can effectively deal with the complaint in reasonable time. If the CO is not able to do so or lacks the authority to grant the desired or any other appropriate redress, they may refer the complaint to the SO after conducting an appropriate investigation. If the SO also does not have the authority to grant the required redress, the CO may refer the complaint directly to the Defence Council, having consulted with the SO. On receiving a complaint, the SO should make the same considerations as the CO. At each of the first two levels, if the complainant is not satisfied with the proposed resolution of the complaint or the redress to be granted they may apply to have the complaint referred to the next higher level for consideration.

*Source: Ministry of Defence Joint Service Publication 831, Redress of Individual Grievances: Service Complaints, Issue 2.2, June 2010*

7. Service Complaint Panels (SCPs) were introduced by the Armed Forces Act 2006 and normally consist of two serving officers of at least one-star rank, usually of the same Service as the complainant.<sup>13</sup> Single Service secretariats are responsible for nominating SCP members, except that independent members are nominated by the central secretariat. The expectation is that a complaint at Level 3 will be dealt with by a SCP, and this should be the case if the complaint involves bullying, harassment or improper behaviour.<sup>14</sup> SCPs dealing with these types of cases will include an independent member who is neither a member of the regular or reserve forces nor a person employed in the civil service. The Armed Forces Act 2011 provided for SCPs to be made up entirely of independent members for some cases. Some cases may also be retained by the Board, particularly if they involve matters that have wider Service implications.

## Prescribed and non-prescribed complaints

8. The Secretary of State for Defence may prescribe in regulations made under the Armed Forces Act 2006 categories of behaviour to which specific procedures and legal obligations apply if a complaint is made. These are known as prescribed complaints. Prescribed complaints currently include those of bullying, harassment, discrimination, dishonesty, bias, victimisation and other improper behaviour.<sup>15</sup> Any other matter which a Service person may consider has caused them “wrong” may also be the subject of a Service complaint. Examples include terms and conditions of Service, appraisal reports, pay and allowances or dental and medical treatment. These types of cases are referred to as non-prescribed complaints.<sup>16</sup>

## Types and numbers of complaints

9. The Commissioner has published in each of her four Annual Reports data on the numbers and types of allegations her office has been contacted about and which may become formal Service complaints if she refers them to the chain of command. She also

<sup>13</sup> In the UK Armed Forces, typically a Commodore, Brigadier or Air Commodore

<sup>14</sup> Ev 15

<sup>15</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 18

<sup>16</sup> Ibid

provides an overview of the numbers and types of Service complaints submitted directly to the chain of command. The Reports also include data on the number of complaints by Service at each level, and outcomes. The MoD told us the number of new overall complaints had risen steadily each year from about 250 in 2008 to over 800 in 2011.<sup>17</sup> The MoD expected this trend to continue:

on the same path for the foreseeable future, not least if confidence in the process (as shown in responses in the Armed Forces Continuous Attitude Survey and Recruit Trainee Survey) continues to build as the SCC suggests in her 2011 Annual Report (page 24, paragraph 1). The MoD's strategy is to continue to encourage greater awareness and use of the complaints system.<sup>18</sup>

10. The Commissioner agreed that the increasing number of complaints may demonstrate an increasing confidence in the complaints system. In her 2011 Annual Report she said:

Over 1,300 people have contacted the SCC in the first four years. Overall referrals by SCC made up just over one third of all Service complaints in 2011. This was lower than last year's figure of nearly half, suggesting that confidence in making complaints directly to the chain of command may be increasing.<sup>19</sup>

She also noted that "the number of claims made to Employment Tribunals in 2011 [by Service Personnel had] also fallen, which may also indicate increasing confidence in the Service complaints system".<sup>20</sup>

11. However the Commissioner's 2011 Annual Report also stated that:

The number of contacts about matters that could become Service complaints, referred to in this report as potential Service complaints, was 436. This compares with 357 in 2010, also a 22% increase. This is a much lower rate of annual increase than in the first three years on the SCC's office.

The reasons for this are not clear. However other organisations, such as the Army and RAF Families Federations have also reported much lower levels of contact from Service personnel and their families and believe that this may be linked to the redundancy programmes announced in 2011. They suggest that Service families have been more reluctant to raise issues of concern, lest this should affect decisions on selection for redundancy. A number of solicitors have also reported individuals going to them because they felt the SCC had no powers. We have had an increasing number of people not pursue matters with us, after initial contact, for the same reason.<sup>21</sup>

12. The Commissioner confirmed to us in her oral evidence that she believed that concerns about redundancies were a factor in deterring Service personnel from contacting her and

<sup>17</sup> Ev 16

<sup>18</sup> Ev 16

<sup>19</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 9, para 3

<sup>20</sup> Ibid; Armed forces personnel have no contract of employment and no recourse to the employment tribunal, except in relation to equal pay and discrimination cases.

<sup>21</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 13

other organisations. She also confirmed this had led to a lot of complaints about appraisals, reports and postings at the start of 2011 as Service personnel submitted their complaints ahead of the redundancy selection process followed by a quieter second part of the year. The Commissioner added:

Because fear of the consequences of making a complaint is still an issue with service personnel that come to us and although, it is not written in any rules or guidance, I made it an internal rule for my office from the start that, unless there is a fear of immediate threat to life, we will only put complaints into the chain of command with the consent of the individuals concerned.<sup>22</sup>

13. The British Armed Forces Federation (BAAF) also thought that a fear of the consequences of making a complaint, particularly during the current redundancy programmes, deterred individuals from making a complaint. The BAAF told us:

The current atmosphere of redundancy and uncertainty is bound to increase the perception that submitting a service complaint may not be in the best interests of the complainer. Some will be particularly reluctant to seek redress if it is seen to involve their present commanding officer, as opposed to some impersonal administrative failing.<sup>23</sup>

14. The MoD accepted that the redundancy programme had created the potential for a sudden growth in the number of Service complaints and a potential backlog in dealing with them. However it pointed to a bespoke appeals procedures which was put in place that the MoD claimed was extremely successful in resolving the overwhelming majority of queries without recourse to the Service complaints process.<sup>24</sup>

**15. We accept that the steady increase in the level of Service complaints made directly to the chain of command or referred by the Commissioner may indicate an increasing level of confidence in the system. However, we are concerned to note the Commissioner's comments regarding a much lower rate of annual increase in contacts about matters that could become Service complaints compared to the first three years that her post had existed. Our concern was heightened by other organisations, such as the Service Families Federations, reporting lower levels of contact from Service personnel, solicitors reporting an increase in the number of individuals approaching them as they felt the Commissioner had no powers, and the increase in the number of people not pursuing matters with the Commissioner after initial contact for the same reason.**

**16. We are further concerned that the Commissioner and others are reporting that fears of redundancy among Service personnel appear to be deterring them from making Service complaints. 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**

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<sup>22</sup> Q 14

<sup>23</sup> Ev w1-2; [Note: references to Ev wXX are references to written evidence published in the volume of additional written evidence on the Committee's website.]

<sup>24</sup> Ev 16

they fear the consequences of making a complaint. As a matter of urgency the MoD and the Commissioner should investigate this matter and report their findings to us in response to our Report.

### *Complaints in the single Services*

17. In each of her Annual Reports, the Commissioner gives an analysis of the number of potential Service complaints received by her office and the overall number of complaints for each Service (this includes those made direct to the chain of command). She also assesses the performance of each Service in implementing the Service complaints system and potential challenges and problems that they face.<sup>25</sup>

18. In her 2011 Annual Report, the Commissioner noted that as in previous years the majority (65%) of the 435 contacts her office received about issues that might be the subject of a Service complaint were from Army personnel. The Royal Navy accounted for 13% and the Royal Air Force 20%.<sup>26</sup> However the Commissioner also noted that although the number of contacts from the Army was proportionately higher than its force strength, its percentage share of contacts to her office was slightly less than in previous years (69% of all such contacts between 2008 and 2010).<sup>27</sup> It is important to state that the number of potential complaints received by the Commissioner reflected a very low proportion of the total number of Service personnel in UK Armed Forces (at 1 April 2012: 185,690 full time trained and untrained personnel).<sup>28</sup> The Commissioner's 2011 Annual Report also said that in 2011, the rate of increase in potential complaints from or about Army personnel (16%) was slightly lower than that for the Royal Navy (18%) while the RAF's was higher (46%).<sup>29</sup> Figure 1 below shows the number of potential complaints received by the Commissioner for each Service between 2008 and 2011.

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<sup>25</sup> For example see: Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, pp 13–30.

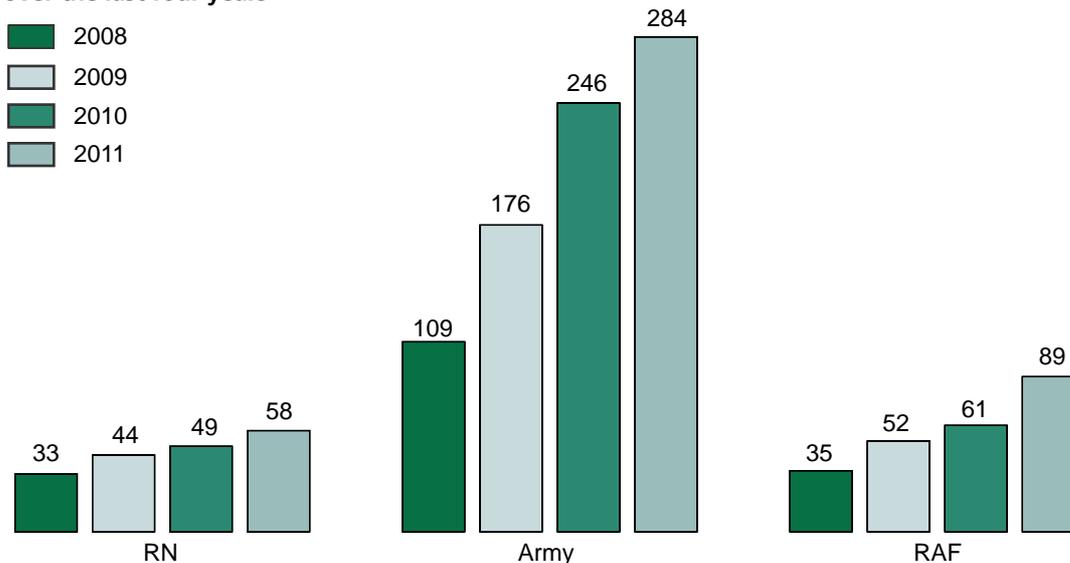
<sup>26</sup> *Ibid*, p 13. The SCC notes that "In 5 cases the Service was not stated and not subsequently discovered as the complainant did not pursue the matter after initial contact".

<sup>27</sup> *Ibid*, p 13 ; The Commissioner also gave the following information in footnote 1 in her 2011 Annual Report: "On 1 April 2011, the Army made up 57% of regular Service personnel and 62% of total UK Armed Forces (regular and voluntary reserve forces). The figures for the Navy were 20% and 18% and the RAF 23% and 20%). Defence Analytical Services and Advice (DASA) UK Armed Forces Annual Manning Report May 2011 and DAS statistical Bulletin TSP07. Contacts from volunteer reserves made up 7% of all contacts to the SCC about potential Service complaints in 2011".

<sup>28</sup> *Defence personnel Statistics*, Standard Note SN/SG/02183, House of Commons Library, November 2012

<sup>29</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 13

**Figure 1: The number of potential complaints to the Service Complaints Commissioner by Service over the last four years**



Source: Service Complaints Commissioner for the Armed Forces Annual Report 2011, p 13

19. It was unclear what the reason was for the RAF having the highest level of increase which, even discounting those potential complaints from officers deselected from flight training, was double that of the Army.<sup>30</sup> The Commissioner noted that the increase in part could be attributed to greater confidence in making a complaint, although the increase in contacts to her contrasted with a 10% reduction in the number of Service complaints made at Level 1 to the RAF. The Commissioner argued that this suggested that RAF personnel still wished to have the assurance of her overseeing their complaint.<sup>31</sup>

20. We were keen to establish whether the Commissioner had identified any systemic problems in the three Services which might lead to Service complaints. She told us that the three Services shared some systemic weaknesses, but there were also differences between them. She said:

One of the principles that I have put forward about good complaint handling, behind the proposal for an ombudsman, is that the complaints should be used as opportunities to identify systemic weaknesses and do something about them. I have been working with the services about how lessons can be recorded and lessons learnt. I am doing work with the Navy currently, which has led on this, to try and ensure that it delivers. Some of the issues are in relation to pay and allowances; complaints about pay and about putting people onto the wrong pay point come up time and again. I know that that is something that SPVA and Ministers are concerned about. There are those sorts of system errors, and there can be systemic weaknesses in the understanding and application of policy and procedure; there is a variety of systemic weaknesses.<sup>32</sup>

<sup>30</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 14

<sup>31</sup> Ibid

<sup>32</sup> Q 22

21. In the assessment of the Commissioner, each of the Services faced different challenges and priorities in their handling of Service complaints. The Army had a “huge backlog at the unit level and throughout the system, particularly at Army Board level” to which it had devoted more resources to resolve and ensure the more timely handling of cases.<sup>33</sup> In 2012, the RAF had changed the way it handled complaints, after the Commissioner attended a RAF Board meeting, as it also had “huge backlogs at unit level” as it required lawyers to advise on complaints at every stage of the process. The Commissioner told us that during the Libya campaign “there were capped posts for lawyers and their resources were used elsewhere, which meant that service complaints were waiting anything from eight to 24 weeks just to get started; and again, a similar length of time at the end”.<sup>34</sup>

22. The Royal Navy had taken a different approach in its handling of complaints and had seen positive results. The Commissioner told us the Royal Navy had seen startling results. In 2011, it had resolved large numbers informally and upheld three quarters of complaints that, either in whole or in part, that came to the Navy at level 2. This was due to the majority of complaints, whether through the Commissioner or to the Royal Navy directly, being about a procedural irregularity or maladministration, for example pay, allowances, promotion or posting. Rather than putting them into a queue until somebody could look at them, the cases were triaged and if the caseworker and lawyer thought a mistake had been made, they contacted the individual and asked for their thoughts on how the matter should be resolved. The Commissioner told us that “the Royal Navy had a backlog at the Navy Board level” and “had put additional resources in at unit level, ship level and at the Navy Board level and [were] now zipping through their cases”. The Commissioner thought the Navy was doing very well in the handling of complaints but she warned the improvement must be sustainable. She highlighted the danger of changing personnel but thought the Royal Navy was in a good position to “lead that continuous improvement approach”. The challenge would be to ensure lessons were learned from complaints and stopping the causes of complaint from arising in future. She described this as the efficiency circle she was looking for.<sup>35</sup>

**23. We commend the work that the Commissioner has undertaken with the Services to identify systemic failures that could lead to potential Service complaints and we expect this work to continue so lessons are learned for the future. It is essential that each of the Services continuously learn lessons from the complaints they receive and ensure that appropriate steps are taken to stop the causes of the complaints arising in the future. This will lead to a more efficient system and release resources to deal with other areas in the complaints system. The MoD, the Commissioner and the single Services should undertake further work to improve the way weaknesses are identified and lessons learnt. 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 complaints system. The MoD should set measurable aims, objectives and targets for improvements in these areas and these should be included in the response to our Report.**

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<sup>33</sup> Q 23

<sup>34</sup> Q 25

<sup>35</sup> Q 25

24. We note the challenges that the Commissioner has identified for the individual Services. We note the large backlogs at the unit level in the Army and RAF and expect action to be taken and appropriate resources identified to clear them. We also note that the RAF required lawyers to be involved at every stage of the complaints process. This had caused difficulties during the Libya campaign as the number of lawyers was capped and they were required for other duties. While operational requirements will always be paramount, the MoD should investigate actions that could mitigate this in the future, for example whether lawyers from another Service could be used or whether lawyers are always necessary at every stage.

25. We commend the Royal Navy for the way it has approached the handling of complaints and reducing its backlogs but it must guard against complacency. Although each case is different and the complainant must always have the final decision on whether to pursue a formal complaint, the Royal Navy's practice of, where possible, resolving complaints informally is advantageous. We hope that the Army and RAF will follow and adapt this approach to their circumstances.

### *Prescribed complaints*

26. The Commissioner's Annual Report for 2011 analysed the number of potential prescribed complaints by categories of behaviour (see Figure 2 below).<sup>36</sup> There were increases in contacts to her office in 2011 about bullying, harassment, improper behaviour and victimisation.<sup>37</sup> However she noted decreases in contacts about unlawful discrimination i.e. on the grounds of sex, race, sexual orientation and religion, and on more general allegations of discrimination (referred to by the Commissioner as bias).<sup>38</sup> She noted that allegations of sexual and racial harassment remained low.<sup>39</sup>

27. The Commissioner reported that most of the allegations she received about bullying involved alleged abuse of power or undermining authority, particularly regarding non-commissioned and commissioned officers and regarding Servicewomen.<sup>40</sup> There were also a small number of allegations in the Army from private soldiers which due to their serious nature had been referred from the Commanding Officer to the Royal Military Police which meant action on the Service complaint was suspended while the police investigated.<sup>41</sup> Complaints of victimisation continued to rise but the Commissioner stated the numbers were too small to draw any conclusions.<sup>42</sup> However she also noted increasing concern being expressed on this in the Armed Forces Continuous Attitudes Survey for 2011. In her 2011 Annual Report, the Commissioner said:

Of around a thousand Service personnel who said they had suffered some sort of discrimination, harassment or bullying in the previous year but had not made a

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<sup>36</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 15

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

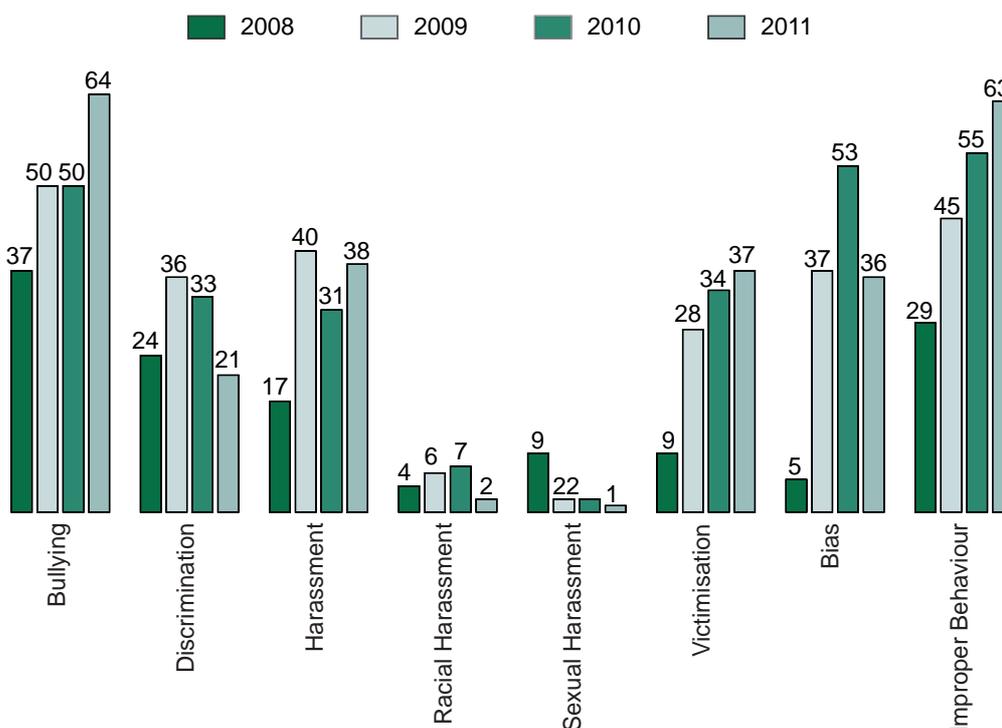
<sup>41</sup> Ibid

<sup>42</sup> Ibid

formal complaint, just under half (49%) said the reason was fear it might adversely affect their workplace or career. The percentage was higher for Royal Navy Officers, 65%, and this was higher than the previous year.<sup>43</sup>

There was also a continuing upward trend in complaints about improper behaviour, which included dishonesty and alleged failings of the standards expected.<sup>44</sup>

**Figure 2: Potential Service complaints to the SCC by types of prescribed behaviour**



Source: Service Complaints Commissioner for the Armed Forces Annual Report 2011, p 15

28. The Commissioner found a relatively low level of, and decline in, allegations of sexual harassment.<sup>45</sup> This contrasts with an Equal Opportunities Commission and MoD survey in 2006 where over two thirds (67% (6313)) of survey respondents had encountered in the previous 12 months sexual behaviours directed at them personally. These varied from making unwelcome comments, sending sexually explicit material and unwanted touching through to sexual assaults.<sup>46</sup> There were also media reports following our evidence session with the Commissioner which said that according to an internal Army report every single woman questioned said they had been the victim of unwanted sexual attention.<sup>47</sup> Answers to Parliamentary Questions on the number of allegations of sexual offences within the Armed Forces and associated media reports have called into question the MoD's statistical

<sup>43</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 15 and pp 48-49

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ministry of Defence and Equal Opportunities Commission, *Quantitative and Qualitative Research into Sexual Harassment in the Armed Forces*, 22 March 2006

<sup>47</sup> *The Telegraph*, Bullying 'seen as acceptable in Army' as survey reveals every woman questioned was victim of unwanted attention, 29 November 2012; Available at: <http://www.telegraph.co.uk/news/uknews/defence/9710091/Bullying-seen-as-acceptable-in-Army-as-survey-reveals-every-woman-questioned-was-victim-of-unwanted-attention.html#>

information.<sup>48</sup> In a Westminster Hall debate on military justice on 31 January 2013, Mark Francois MP, Minister of State, MoD, acknowledged that there was no single, consolidated set of statistics relating to sexual offences involving members of the armed forces, and there are considerable practical obstacles to producing such a comprehensive overall report. He thought it would be difficult, with the data that the MoD had available, to provide an overall and comprehensive report.<sup>49</sup> He added:

I have been pressing my Department hard to produce the most accurate information possible. That work is still in hand. It is complex, and given the seriousness of the subject, we must be thorough, but the initial trends suggest that incidents of sexual offences in the armed forces are declining.<sup>50</sup>

29. When taking post, one of the three goals the Commissioner set was to reduce the gap between the “overall level of anonymously reported incidents of bullying and harassment, assault and so on” that appeared in the Armed Forces Continuous Attitude Survey and the Recruit Training Survey, and the levels of complaints.<sup>51</sup> She added:

Those surveys showed that at that time around 12% of individuals, when asked anonymously, said that they had suffered some sort of ill treatment in that way. Of those 12%, however, less than 10% were raising a complaint. The more people felt confident to speak out, the more could be learned about the circumstances, how those things occurred and what to do about it.<sup>52</sup>

30. Although the underlying trend in incidence was going down, the Commissioner found that complaints to her office about bullying and assaults, in particular in the Army were increasing.<sup>53</sup> She noted that in the last year a “significant number of serious complaints” had been made in the Army in relation to physical and sexual assaults. She had raised the issue with the Adjutant General and had proposed that an inquiry should be held. This was under consideration.<sup>54</sup> The Commissioner thought that “there [were] some real lessons in relation to the complaints coming forward at present, because they should be dealt with better”.<sup>55</sup> The Commissioner deals with Service complaints and pointed out that if an allegation comes forward relating to a potential criminal matter such as rape and sexual assaults, the Service complaint is put on hold and it goes into the justice system.<sup>56</sup> The Commissioner regarded this as “right and proper”, but she also told us:

A number of complainants—particularly female complainants—come to me with issues that are not actually about rape or sexual assaults, but they raise rape and

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<sup>48</sup> HC Deb, 31 January 2013, cols 349-350WH; see also *The Times*, ‘Frightening cover-up’ over rape in Forces, 29 January 2013.

<sup>49</sup> HC Deb, 31 January 2013, cols 365WH

<sup>50</sup> *Ibid*

<sup>51</sup> Q 18

<sup>52</sup> Q 18

<sup>53</sup> Q 18

<sup>54</sup> Qq 18-20

<sup>55</sup> Q 20

<sup>56</sup> Q 20

sexual assaults as a matter in the past and a reason for not trusting the chain of command.<sup>57</sup>

31. We note that the number of contacts that the Commissioner receives about bullying, harassment, improper behaviour and victimisation has continued to increase. Although this may indicate an increasing confidence in reporting such matters, it also suggests continuing problems in these areas. We are concerned about the continuing gap between anonymous reporting of incidents in the Armed Forces Continuous Attitude Survey and the Recruit Training Survey and the actual numbers of complaints. Further action is required to address this disparity. We note that the Commissioner has requested that the Adjutant General undertake an inquiry in relation to the serious complaints that she received in 2012 in respect of the Army. The MoD should update us on this as part of its response to our Report and we expect to see the report of any inquiry that the Adjutant General initiates.

32. We are concerned that the number of sexual harassment and other sexual offences allegations made to the Commissioner remains low. Other evidence, such as the 2006 Equal Opportunities Commission and MoD Survey into sexual harassment in the Armed Forces, suggested that the incidence of such offences was a lot higher than the number of complaints would indicate. We also note that a number of complainants when going to the Commissioner with issues that are not about rape or sexual assaults cite such incidents from their past as contributing to their not trusting their chain of command. We note that the MoD is attempting to produce the most accurate information possible but it is inappropriate for them to fail to provide accurate figures in answers to Parliamentary Questions. Without accurate figures, the MoD is unaware of how severe a problem it is dealing with in relation to sexual offences within the Armed Forces or what measures it is required to take to rectify the offences committed. We recommend that the MoD instigate new research into the level of sexual offences in the Armed Forces and the actions required to tackle it and to encourage possible victims to report such allegations whether to the Commissioner, the Royal Military Police or the chain of command.

33. The Commissioner thought it was often the case that complainants preferred to contact her rather than the chain of command about potential prescribed complaints. She told us:

It is lack of trust. It could be about their immediate boss, if I can put it in civilian terms, whom they feel that their commanding officer is very close to, so they do not have confidence that they will be believed, or partiality. It may be about the commanding officer himself or herself. It is very often the concern that, without the protection of my oversight, if I can put it that way, their complaint will not be dealt with fairly. If a complaint is about a commanding officer, or the commanding officer is implicated in any way, I refer it to the next person up in the chain of command.<sup>58</sup>

34. We are disappointed and concerned that Service personnel who felt they had been the victim of a behaviour which may give rise to a prescribed complaint did not have

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<sup>57</sup> Q 20

<sup>58</sup> Q 16

confidence to pursue this matter through the chain of command. While it is entirely appropriate and understandable that potential complainants would prefer to make use of the Commissioner, we are concerned that some Service personnel may decide against pursuing their grievance altogether. The MoD and Service Chiefs should commission research into the reasons for the lack of confidence in the chain of command to deal with prescribed complaints. The MoD should also review the systems in place for monitoring the performance of commanding officers in respect of these complaints.

### **Harassment Investigation Officers**

35. Following the Commissioner's 2009 Annual Report and a cost benefit analysis by the MoD, new arrangements for the investigation of prescribed complaints of bullying and harassment were introduced in 2012.<sup>59</sup> Specially selected and trained fee-earning Harassment Investigation Officers (HIOs) would be available to all three Services and the MoD, to investigate such complaints. The new HIOs who are from outside the MoD, and do not work for the Commissioner, are engaged to undertake investigations on an ad hoc basis. This replaced the previous arrangement whereby former HIOs (civilian and Service volunteers) had to undertake such investigations in addition to their normal duties, a major cause of delay and reduced quality in the handling of such Service complaints. The full operating capacity of 50 dedicated HIOs was in place by August 2012. According to the MoD there are currently 60 HIOs who could be called upon.<sup>60</sup> The MoD set out the aims and principles of HIOs as follows:

The new FEHIO [fee-earning Harassment Investigation Officers] service is based upon the principle that it should support the timely and thorough completion of investigations once the need for an HIO has been identified. The aims of this service are to remove delays in the appointment of HIOs and in their subsequent production of reports, and to improve the quality of investigations given that the FEHIOs will be conducting investigations on a more regular basis (unlike the civilian and Service volunteers for whom this was a secondary role). The timescale will be for investigations to be completed and a final report submitted within 30 working days of the FEHIO being appointed. There will be close liaison between FEHIOs and Deciding Officers (DOs) to ensure that delays due, for example, to the unavailability of witnesses are understood by all parties to the complaint, and that by exception reasonable extensions to the investigation are agreed. The need for the HIO to report to the DO on progress every 5 working days beyond the 30 working days timescale will ensure that momentum is not lost.<sup>61</sup>

**36. We support the introduction of fee-earning Harassment Investigation Officers (HIOs) to replace the previous system of civilian and Service volunteers who undertook this role in addition to their normal duties which caused delays in dealing with complaints. This should lead to an improvement in the investigation of MoD civilian and Service bullying and harassment complaints. We commend the MoD for recruiting the full operating capability of 50 HIOs by 1 August 2012. We recommend that the**

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<sup>59</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 35

<sup>60</sup> Ev 17

<sup>61</sup> Ev 17

MoD continue to increase the number of HIOs to ensure that there is always sufficient capacity available especially if there is a surge in the number of the bullying and harassment complaints. The MoD should also consider similar arrangements for the investigation of other complaints. We further recommend that the Commissioner undertake an analysis of the effectiveness of HIOs at the end of 2013 and this should be included as part of her 2013 Annual Report.

### *Complaints about discharge and medical treatment*

37. In her 2011 Annual Report, the Commissioner noted that two types of non-prescribed potential complaints had increased: those relating to discharges and those involving medical treatment.

#### *Discharge*

38. The Commissioner said that complaints about discharge were not primarily about redundancy.<sup>62</sup> However towards the end of 2011 she had begun to receive potential complaints as the results of appeals against selection for redundancy were known.<sup>63</sup> Complaints about discharge included allegations that wrong procedures had been used.<sup>64</sup> She noted that:

As large numbers of Service personnel leave the Services over the next few years, it will be important to use the Service complaints system as a means to identify potential weaknesses in the discharge processes, to make the transitions as smooth as possible. There is a risk that reductions in the personnel and back office functions of the Services and MOD will lead to more complaints of maladministration.<sup>65</sup>

39. **We agree with the Commissioner's warning that as many Service personnel leave the Services over the next few years there is a potential for an increase in Service complaints regarding discharges, particularly as there may be reductions in the personnel and back office functions of the Services and MoD. It is important that the MoD and the Services take pre-emptive action to lessen the impact of this and prevent a possible increase in complaints. A vital part of this will be learning lessons from previous complaints regarding discharge procedures.**

#### *Medical treatment*

40. According to the Commissioner's 2011 Annual Report, complaints about medical treatment fell into three areas:

- *medical examination as part of the recruitment process:* A number of recruits complained in 2011 about miscommunication during the recruitment process of information about medical conditions. This appeared to be about conditions that should have prevented them from being accepted for training and not simply that the training tested their fitness, which would not have been picked up sooner.

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<sup>62</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 16

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

Similar comments were also received by the Commissioner during visits to training establishments. The Inspector General of the Defence Medical Services is undertaking an investigation;

- *treatment by defence medical staff and medical discharges:* A number of these have been resolved before a formal complaint has been made. An over-defensiveness on the part of the medical unit or delay can escalate what might have been resolved without further claims, for example for medical negligence. There appeared to be some confusion and delay caused by the necessity to first exhaust the two stage medical treatment system, before a Service complaint can be actioned; and
- *the interplay between medical treatment and the chain of command:* The Commissioner thought that some complaints which appeared to involve concerns about medical treatment were in essence concerns about treatment by the chain of command. These often appeared to be about poor communication and management. In referring them, the Commissioner flagged up her assessment of the nature of the potential complaint, and why she did not believe it needed to be diverted to the special medical complaints process. In a number of cases the Commissioner may also suggest that the complaint might be resolved informally.<sup>66</sup>

41. The Commissioner acknowledged that the Surgeon General took a continuous improvement approach to complaints and had ordered a review of medical complaints processes used across Defence Medical Services (DMS).<sup>67</sup> The Commissioner had recommended that the MoD, DMS and Services considered implementing a system for medical treatment similar to that for Service complaints about redundancy.<sup>68</sup> The MoD had committed itself in its response to this recommendation to work with DMS to consider what experience from the redundancy appeals process might benefit the work on the review.<sup>69</sup>

42. In oral evidence the Commissioner noted that, despite the rise in complaints about medical treatment in 2011, the numbers had fallen in 2012.<sup>70</sup> She added:

There is a phenomenal range of complaints that you would expect about doctors and medical services, which are provided in this country by Defence Medical Services as primary care and overseas as secondary care. There are a whole range of issues. I worked, and work, closely with the Surgeon General and his heads of the medical services in each of the three services and we discovered in 2011 that there was no clarity on how to make a medical complaint in many of the medical practices or in the hospitals overseas, and there was not an extant medical treatment complaints system in place. Actually, the complaints that were coming to me were largely because people could not make the complaints. They have worked on that and we

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<sup>66</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 17

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ministry of Defence, Formal Response to the Service Complaints Commissioner's Annual Report 2011, 24 May 2012: House of Commons Deposited Paper DEP2012-0846. Available at: [http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2012-05-24&td=2012-05-24&search\\_term=Ministry+of+Defence&itemId=120095#toggle-846](http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2012-05-24&td=2012-05-24&search_term=Ministry+of+Defence&itemId=120095#toggle-846)

<sup>70</sup> Q 30

will get the full figures at the end of this year, but the number of complaints to me about medical treatment have gone down.<sup>71</sup>

**43. We note the rise in 2011 of potential Service complaints in respect of medical treatment and welcome the reduction in the numbers which the Commissioner anticipated for 2012. We welcome the Surgeon General's commitment to a continuous improvement approach to complaints. In response to our Report, the MoD should update us on progress on the review of medical complaints processes used across Defence Medical Services, particularly on lessons that might be learned from the complaints system for redundancy appeals process.**

### Reform of the Service complaints system

44. In her 2010 Annual Report, the Commissioner reviewed the performance of the Service complaints system against the three year goals she had set when the new system came into operation in 2008.<sup>72</sup> She concluded that, although there had been some improvements, the system was not efficient, effective or fair.<sup>73</sup> She had recorded this conclusion in all her four Annual Reports and also concluded that the current system was not sustainable and needed simplification and redesign.<sup>74</sup> The Commissioner recommended that a fundamental review be undertaken to achieve this.<sup>75</sup> She also recommended changes to the system and to her role (see Chapter 3). Her recommendations for improving the system focused on:

- Improving the investigative process;
- Simplifying the system (including removing one level of appeal); and
- Improvements to the Service Complaints Panel process.<sup>76</sup>

45. In its response to the Commissioner's 2010 Annual Report, the MoD agreed to include the areas above in the review of the Service complaints system which the Service Personnel Board (SPB) had already decided to instigate at the end of 2010.<sup>77</sup> The review commenced in 2011 and its findings were considered by the SPB in June 2012 with the Commissioner in attendance.<sup>78</sup> Agreement was reached on a range of measures to be taken forward. The review concluded that, although recent incremental improvements were starting to be beneficial, more needed to be done to reduce undue delay in the system which the Commissioner had identified in her 2011 Annual Report as one of the key reasons why she was unable to report that the system was working efficiently, effectively or fairly.<sup>79</sup> The review concluded that the system's performance was affected by three main factors and

<sup>71</sup> Q 31

<sup>72</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2010*, March 2011, pp 38-39

<sup>73</sup> *Ibid*, p 6 & p 76

<sup>74</sup> *Ibid*, p 76

<sup>75</sup> *Ibid*, p 7

<sup>76</sup> *Ibid*, p 59-62

<sup>77</sup> Ev 17

<sup>78</sup> Ev 17

<sup>79</sup> Ev 17

proposed measures to address them which are set out in the box below.<sup>80</sup> These changes were to be complemented by changes to the Commissioner's role (see Chapter 3). The MoD committed to update the Commissioner on progress on these measures, and where necessary against recommendations from her earlier Annual Reports, in 2012, in order to inform her 2012 Annual Report which is expected in Spring 2013.<sup>81</sup>

**Table 2: Changes to the Service complaints procedures**

Issue	Action to be taken
<b>Demand and Resources:</b> the volume of complaints in the system and the sufficiency and efficiency of available resources to respond to them.	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).
<b>Delay:</b> its causes, and whether they are system-generated or result from the action or inaction of individuals.	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.
<b>Appeal:</b> the lack of restriction on what can be appealed and the number of levels available.	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.

Source: Ministry of Defence Written Evidence, Ev 15

46. Although the Commissioner had suggested that the review be carried out and was involved in it, she was disappointed in its outcomes and the length of time, nearly two years, it had taken to be completed. She told us “it was too long” and “it wasn’t fundamental and I don’t think the methodology was going to achieve what they wanted”.<sup>82</sup> We discuss the changes made to the Commissioner’s role and possible further changes in Chapter 3. The Commissioner agreed with the MoD’s assessment that the three main factors affecting the performance of the system were resources, delays and appeals but thought the measures to be taken were insufficient and too slow.<sup>83</sup> She told us:

<sup>80</sup> Ev 17

<sup>81</sup> Ev 17

<sup>82</sup> Qq 38-43

<sup>83</sup> Qq 41-42

I think the pattern over the last few years is slow. I have expressed doubts as to the changes that they propose making. Whilst beneficial in themselves, they are tweaking a system which needs to be fundamentally redesigned and simplified.<sup>84</sup>

**47. We agree with the Commissioner that the review of the Service complaints system took too long. Given that she had reported in her Annual Reports that the system was not efficient, effective or fair, the review should have been given more urgency.**

**48. We are concerned that the Commissioner sees the review of the Service complaints system as a missed opportunity. The changes to deal with issues relating to demand and resources, delay, and appeals while beneficial in themselves are tweaking a system that needed 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 the 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.**

**49. We agree with the Commissioner that the Service complaints system is too complex and needs to be simplified. For example, three levels for the resolution of complaints is too many and adds to the length of time taken to resolve them. The MoD should reconsider the Commissioner's proposal that one level of appeal in the system should be removed.**

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<sup>84</sup> Q 43

## 3 Future role of the Commissioner

### Commissioner or Ombudsman?

50. The role and powers of the Service Complaints Commissioner have long been a matter of debate (see Annex for the history of this debate). In her Annual Report for 2010, the Commissioner considered a number of options for strengthening her role.<sup>85</sup> The options she considered are set out in the box below.

**Table 3: Options considered by the Service Complaints Commissioner for strengthening her role**

Option	Summary of how the proposed model would work
Strengthened oversight model	To better target problematic cases the SCC would be provided with powers to question the Services on the investigation of specific cases, make recommendations for further action and hold them to account through a Service response guaranteed by ultimate referral to ministers. To make the authority of the SCC clear, these new powers would be put on a statutory footing.
Supervisory model	The SCC would be given additional powers to supervise the handling of certain types of complaint to ensure more robust quality control.
Independent investigation model	The SCC would be given powers to investigate and decide certain types of complaint.
Armed Forces Ombudsman model	The SCC is changed to a Ombudsman model where problem cases can be reviewed and investigated by the independent body during the Service complaints process. This system would retain the SCC's role as a direct channel for complaints and would retain the SCC's right to ask for case updates from the chain of command.

*Source: Service Complaints Commissioner for the Armed Forces Annual Report 2010*

51. Of these options, the Commissioner recommended that her role be changed to that of an Armed Forces Ombudsman as outlined above. In her 2010 Annual Report she said:

The Law Commission emphasised that an Ombudsman's primary focus is on administrative processes, the maladministration of which may have led to an individual suffering injustice. Unlike judicial review, the Ombudsman is not concerned with legality, but with fairness and due process. Ombudsmen do investigate complaints made to them but do not make final case decisions. Their role is to review and to make recommendations. They are independent of the bodies they oversee and publicly accountable. Most Ombudsmen models require the internal complaints mechanisms to be exhausted first.<sup>86</sup>

52. In the UK, the primary focus of public sector Ombudsmen is on maladministration. These Ombudsmen have common features such as the speedy resolution of complaints,

<sup>85</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2010*, March 2011, pp 68-78

<sup>86</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2010*, March 2011, p 76

usually after the internal complaint processes have been exhausted, and identifying lessons for the public body concerned to ensure continuous improvement in its services. Following completion of their investigations they make recommendations to the relevant public body based on their findings, which may include suggested sanctions, but the Ombudsmen themselves do not impose penalties or award compensation. However, in her 2010 Annual Report the Commissioner said that “bringing defence complaints within the standard national Ombudsman [was] not widely acknowledged to be particularly effective”.<sup>87</sup> She thought that having a dedicated Armed Forces Ombudsman, focused on the specific issues of Service life, was of more value to the Services. It enabled “the Ombudsman to exercise final powers of review and hold the Services to account more effectively because the Ombudsman understands and respects the special position of, and demands on, Service personnel and the special relationships that exist between them and the chain of command”.<sup>88</sup> The Commissioner thought that any Ombudsman model which excluded the oversight function until the conclusion of the internal process would not be effective, fair or be able to drive through the efficiencies that are required. She added:

The SCC is used across the Services to give Service personnel the confidence to speak when they feel mistreated. This is particularly valuable where there is alleged bullying or harassment. The key issue at present is delay. For these reasons, I recommend that a more flexible model be used; one that still encourages direct complaints to come through the SCC and that enables the SCC to intervene when clear procedural defects occur. Such a model in the UK should preserve the right of Service personnel to make a complaint through an Ombudsman and for the Ombudsman to have the right to ask for information from the Service, to set deadlines and ultimately to call the matter in for investigation, in the minority of cases where there is a failure to correct defects or unreasonable delay in handling. The Ombudsman would have discretion as to whether a case was accepted for review.<sup>89</sup>

53. The Commissioner also noted that Armed Forces Ombudsmen existed in many countries in a range of different models. For example, although they oversee the handling of complaints from Service personnel, a number of these ombudsmen, such as those in Canada, Germany and Norway, have a wider duty to report independently of Government on the welfare of Service personnel.<sup>90</sup>

54. Although she did not advocate a particular model for an Armed Forces Ombudsman, the Commissioner argued that an Ombudsman would enable the chain of command to retain the primary responsibility for investigating and deciding on Service complaints and also recognised that dealing efficiently with Service complaints was an integral element of command and exercise of the Commander’s duty of care to those under his or her command.<sup>91</sup> Members of Service Boards and those with the highest operational responsibilities would no longer have to combine these primary responsibilities with

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<sup>87</sup> Ibid, p 74

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2010*, March 2011, p 74

judging individual cases.<sup>92</sup> Service Boards would still be required to consider the few cases that involved a change of policy but she thought it would be helpful, in many cases, for Service Complaint Panels with an independent member to consider the complaint and provide advice to the Board. Service Boards would be strategic, looking at the system to see it was working efficiently and supporting operational requirements. She argued this in itself would reduce delay. The Commissioner added:

The Armed Forces Ombudsman model would focus on holding the Services to account for the proper administration of their processes and delivery of justice, ensuring that the system was functioning properly and that most complex delayed and problematic cases were being given priority and additional scrutiny. Having the backstop of an external appeal to the Ombudsman, albeit with a requirement to her criteria of a prima facie case of maladministration, should give Service personnel the confidence in appropriate cases to opt for appeal by the chain of command.<sup>93</sup>

55. The Commissioner concluded that this system would allow her to judge whether access to the Service complaints system was being unfairly denied and to rule on vexatious complaints.<sup>94</sup> It would also provide a more efficient and simpler way of protecting Service personnel in exercising their rights on issues for which there is a special complaints system, for example education, medical treatment, housing and pay.<sup>95</sup> At present these special systems have to be exhausted before a Service complaint can be made. The Commissioner argued that the Ombudsman should cover all specialist complaints systems. This would save resources and increase the value of external oversight in an efficient and effective way.<sup>96</sup>

56. Under this model, the Ombudsman would not make any final decision on a case that was accepted for investigation and review but would, however, be able to make recommendations to the Defence Council about any cases she had assessed to be dealt with improperly and had resulted in injustice.<sup>97</sup> These findings and any recommendations and the Defence Council response to them would then be published, suitably anonymised, as part of the Ombudsman's Annual Report to Ministers and Parliament. The Commissioner outlined to us the benefits and advantages of an Ombudsman model. She thought that it would fulfil the roles of an oversight body as envisaged by both the Defence Committee's *Duty of Care* Report and *The Deepcut Review*: to ensure that there was somebody independent to oversee and ensure the fair handling of complaints and to also identify wider patterns and trends which might be missed if a case was decided on the facts of the case.<sup>98</sup> The Commissioner also considered that an Ombudsman would address a "fairness gap" in the current system as complainants believed she was able to oversee and intervene to ensure complaints were dealt with in a timely and proper manner and "that it was not

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<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid, p 78

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Q 4

too late by the time their case [was] decided”.<sup>99</sup> The Commissioner said that in her current role she could not guarantee this would happen even though she could raise questions and ask for issues to be addressed. She believed an Ombudsman would fulfil this function as they would be able to review the case and make a decision, on whether any maladministration had occurred, and make recommendations to the Services in respect of the case.<sup>100</sup> The Commissioner told us:

At the end of the case, if somebody came to me at the end of a process and said, “I want you to review this, I don’t think I’ve been dealt with properly,” I could review it and make the decision on that. What I wouldn’t be able to do is to direct what should happen on the merits of that case. As an ombudsman, that would be a recommendation back to the services. But it would act as a final appeal. I believe that it would enable the service system to be simpler and would also enable complaints to be dealt with in a firmer, more effective and certainly cost-efficient way.<sup>101</sup>

57. The Commissioner’s recommendations were considered as part of the review of the Service complaints system which the Service Personnel Board (SPB) had established at the end of 2010 and recommended by the Commissioner in her Annual Report for 2010 (see paragraphs 44–49 above). On completion, the review did not support the change to an Ombudsman role “but accepted that greater benefit could be gained for the fairness, effectiveness and efficiency of the complaints system if the SCC offered views on the process whilst complaints were live”.<sup>102</sup> The Commissioner outlined to us the reasons why she thought the SPB had rejected the Ombudsman model:

[...] I believe there was some resistance to having an external body as the final port of call or final route for appeal. [...] Some of the Service Chiefs said they didn’t quite understand what an ombudsman did, but they were sure they didn’t want one. Some other people have said to me that they would be very comfortable with my being the ombudsman, but, as you know, I shall be stepping down at the end of my second term, and when there was no longer “the good doctor”, they weren’t too sure what would happen. I think it is fear of what might happen, rather than the arguments that I have put forward now.<sup>103</sup>

58. While the MoD acknowledges the value of the Service Complaints Commissioner, it has expressed reservations about the possible further evolution of the role. For example in December 2006, in response to a Defence Committee Report on the proposal for a Service Complaints Commissioner, the then Government cited the need to preserve of the role of the chain of command in investigating and resolving complaints as a reason for not extending the Commissioner’s role to that of an investigatory body. It said:

We remain absolutely convinced that our proposals for the SCC, coupled with the inclusion of an independent member on Service Complaints Panels considering

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<sup>99</sup> Qq 4-5

<sup>100</sup> Q 5

<sup>101</sup> Q 5

<sup>102</sup> Ev 13

<sup>103</sup> Q 3

certain types of complaints including bullying, harassment and other forms of improper behaviour, will provide a package of improvements to the Service complaints process that are right for the way our Armed Forces operate, and which meet the overall objective underpinning the recommendations made in *The Deepcut Review*. We listened carefully to what the Committee has said and to the debates that took place as the Armed Forces Bill progressed through Parliament and these proposals have evolved accordingly. They will strike the right balance between ensuring that Service personnel can have confidence in a system that is fair, effective and transparent, whilst preserving the fundamental responsibility of the chain of command to investigate wrongs and remedy them. Any move to enable a Commissioner to be able to supervise the handling or investigation of a Service complaint would undermine this responsibility. It would also risk undermining the system under which a Service Complaint Panel with an independent member would be responsible for dealing with complaints that have not already been resolved by the chain of command to the complainant's satisfaction.<sup>104</sup>

59. Another example of the MoD's reservations was given in the 2012 Annual Report on the Armed Forces Covenant. The Government said that it thought that there was more benefit to be gained for improving timeliness and tackling undue delay if the Commissioner was engaged whilst complaints were still live rather than her post becoming an ombudsman acting after the event.<sup>105</sup>

**60. In view of the Commissioner's evidence that "some of the Service Chiefs said they didn't quite understand what an ombudsman did, but they were sure they didn't want one", it is clear that discussions between the Service Chiefs and the Commissioner have not been as productive as they should have been. The MoD's wish to preserve the role of the chain of command in investigating and resolving complaints has been accepted by the Commissioner. The 2012 Armed Forces Covenant Annual Report said that there was more benefit to be gained for improving timeliness and tackling undue delay if the Commissioner were engaged whilst complaints were still live rather than her post becoming an ombudsman acting after the event. This contrasted with the Commissioner's view that any Ombudsman model which excluded the oversight function until the conclusion of the internal process would not be effective, fair or be able to drive through the efficiencies that are required. While the involvement of an Ombudsman in cases that have not completed the internal complaints process would not be normal practice in the UK, we see no reason why the MoD and the Commissioner cannot agree a model for an Armed Forces Ombudsman that satisfies both their aspirations and concerns.**

61. Following the MoD's rejection of the Ombudsman role, the Commissioner put forward an alternative non-Ombudsman model for her role.<sup>106</sup> This was intended to make the best use of all resources and enable her to focus more on tackling undue delay. Detailed consideration of the proposal was undertaken by the MoD and the Commissioner and in

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<sup>104</sup> Defence Committee, Second Special Report of Session 2006-07, *Armed Forces Bill: proposal for a Service Complaints Commissioner: Government Response to the Committee's Fourteenth Report of Session 2005-06*, HC 180

<sup>105</sup> Ministry of Defence, *Armed Forces Covenant Annual Report 2012*, December 2012, p 23; available at: <https://www.gov.uk/government/publications/armed-forces-covenant-annual-report-2012>

<sup>106</sup> Ev 13

September 2012 the Service Personnel Board agreed a phased introduction of the new model from January 2013. The MoD told us that:

As it is difficult to predict exactly how the new system will operate, to quantify its impact on resources or to determine whether it will indeed bring the benefits anticipated, we will closely monitor the operation of the new system from the outset so that we can adapt and refine it based on experience.<sup>107</sup>

62. The MoD regarded the new system as aiming to ensure that maximum value is delivered by the Commissioner's involvement in and oversight of the complaints process, and that she would be able to act more effectively than at present to tackle delay, all within current legislative powers.<sup>108</sup> Given the current pressure on resources, the new process sought to reduce bureaucracy which would benefit the office of the Commissioner and the single Services. It was also intended to hold the Services to account for a fair, effective and efficient handling of complaints in a way that would enable improved and effective performance management of the complaints process. The changes to the Commissioner's role are intended to complement the changes agreed by the Service Personnel Board (SPB) to the complaints process (see paragraphs 44–49 above).<sup>109</sup>

63. The Commissioner has retained her powers to refer cases and oversight of referred cases in line with current legislation. However the changes set out in the box below have been made to the process for allegations she refers to the chain of command.<sup>110</sup>

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<sup>107</sup> Ev 13

<sup>108</sup> Ev 13-14

<sup>109</sup> Ev 14

<sup>110</sup> Ev 14

**Table 4: Changes to the Service Complaints Commissioner's role**

Change	MoD analysis of benefits of the change
Discontinuation of SCC 30-Day Updates	The current policy requirement for the SCC to be updated on the progress of complaints every 30 working days that they remain live has been seen by some as bureaucratic and time consuming for all to administer, often adding little to understanding of the reasons behind delay or the action being taken to mitigate it. It will therefore cease, and be replaced by updates that are triggered by specified events (e.g. withdrawal or conclusion of a complaint, or referral to a further level).
Involvement in Live Complaints	Recognising the value that the SCC can add when complaints are still active, a mechanism will be introduced by which the SCC can offer views on process, for consideration by the relevant single Service, whilst a complaint is live. The presumption is that, at this stage, no further correspondence would be entered into, but when the complaint is concluded, the SCC would review the case, including seeing what consideration was taken of her earlier comments. The SCC may subsequently seek a further response from the Service on any process matters about which she remains concerned. Depending on the response received, the SCC would then have the option of submitting to higher levels including, ultimately, reporting to the Secretary of State in line with powers in existing legislation.

Source: Ministry of Defence Written Evidence, Ev 14

64. The MoD told us that there would also be a new system for all service complaints, not just those referred by the Commissioner, which was aimed at giving assurances to her “that the Services have in place an effective process for monitoring the progress of individual complaints and can identify and remedy undue delay”.<sup>111</sup> The system would be phased in, with the Services setting interim markers at appropriate intervals for a complaint, within the timelines for complaints to be resolved. These markers would also be used by the Services to monitor progress on a complaint and judge whether the timeline would be exceeded. The Commissioner would be notified of complaints expected to exceed the time limits, and later in the process of those that had exceeded the timeline with a short explanation of the reasons for the delay. The Commissioner would be able to seek a further response if she had concerns about the level of action taken to remedy undue delay and for referral to a higher level including ultimately a report to the Secretary of State. The MoD told us that this was aimed, as with the Commissioner’s involvement in live complaints, to provide her with an insight into the causes of undue delay, the effectiveness of the Services’ monitoring of cases and to acquire evidence for learning lessons. From 2013, these reports would be produced bi-monthly, for the first six months for Commissioner referred cases only and then for all cases.

<sup>111</sup> Ev 14

65. The Commissioner saw the new developments in her role as a “valuable step” and progress on closing what she described as the “fairness gap” because if the 24 weeks target for new Service complaints to be resolved or finally decided was overrun and there were no reasonable grounds for that, she could make a report to the Secretary of State.<sup>112</sup> She added:

I will be able to give a much more open, honest, understandable offer to complainants, which is, “I will refer your case and, even if you don’t come to me, I will get a report once your case is going to go beyond 24 weeks or has gone beyond 24 weeks and then there is something I can do.” Then it is over to the Secretary of State to read my report, accept or amend my recommendations, and come back to me on what action has been taken. So it gives Ministers visibility, it gives Service Chiefs visibility, it gives Parliament visibility—because I shall be reporting on that in the annual report—and it gives this Committee visibility.<sup>113</sup>

**66. While we support the changes to the role of the Commissioner which she has agreed with the MoD, we are disappointed that the MoD and the Services continue to be opposed to changing her role to that of an Armed Forces Ombudsman. We repeat the findings of previous Defence Committees that the Service Complaints Commissioner’s role falls far short of that envisaged by them. We recommend that the Service Complaints Commissioner’s role should be changed to that of an Armed Forces Ombudsman. In response to our Report the MoD should set out in full its reasons for opposing the establishment of an Armed Forces Ombudsman. The Commissioner has regularly reported that the Service complaints system was not efficient, effective or fair and that the current system was not sustainable and needed simplification and redesign. An important first step to rectifying this would be to resolve the continuing debate on the role of the Commissioner. The MoD, Services and Commissioner should increase their efforts to resolve the differences between them on the Commissioner’s role.**

### ***Thematic studies***

67. Under Section 339 of the Armed Forces Act 2006 the Commissioner reports annually to Ministers and Parliament on the exercise of her referral function in respect of Service complaints and the working of the complaints system and any other matter that she may think appropriate. The Commissioner told the Select Committee on the 2010 Armed Forces Bill that:

Ministers may ask the SCC to provide a special report on any aspect of her work within these parameters, but not, it would appear on welfare issues more widely. It is unclear as to the exact scope of the SCC’s powers to provide reports, say on matters such as housing, medical treatment or other issues that affect service personnel. A clarification in the Bill that it is open to Ministers to ask the SCC to report on a particular area or areas of concern, and that any such report should be laid before Parliament, may be helpful. If it was felt helpful for the Commissioner to prepare any such report, of her own volition or in response say to the House of Commons

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<sup>112</sup> Q 6

<sup>113</sup> Q 6

Defence Committee, the provisions of s.339 may need to be amended. There would also of course be resource implications.<sup>114</sup>

68. We understand that the Commissioner has never been asked by the Secretary of State for Defence to report on a particular area of concern she may have outside her normal annual reporting cycle. The Commissioner told us that, if she did, she would look at “cases of bullying, which include assault, and the issues to do with mental health, access to services, race [...] and the handling of those cases”.<sup>115</sup> During visits to units, she had been informed of issues that would not come to her as complaints and thought some work needed to be done on them. She added:

That is what I would do, and that is I think what ombudsmen do. They have this broader view, whether they be the health service ombudsman, parliamentary ombudsman or the Children’s Commissioner, who today has powers to do research and inquiries. They can pull together in an informed and responsible way evidence across the piece and put it forward in a way that is very valuable to the organisation that they oversee.<sup>116</sup>

**69. We believe there would be value in the Commissioner being able to undertake research and report on thematic issues in addition to her Annual Reports. We appreciate that this would require additional resources but the Commissioner’s experience on these issues should be utilised. The MoD should examine whether any legislative changes are required to enable this to occur.**

### The Commissioner’s resources

70. The Commissioner’s office is located in non-MoD premises in London. In 2008, her office had a team of two people. Currently her personnel consists of four caseworkers, a Communications Officer, an Audit Manager, an Executive Assistant and a Head of Office.<sup>117</sup> In 2011, the Commissioner’s office cost £478,800 (excluding VAT). The vast majority of this was spent on the salaries of the Commissioner (£82,200) and her support staff (£259,900). Other significant amounts were spent on accommodation and security (£83,200) and external communications and media support (£24,500).<sup>118</sup> In its evidence to us the MoD stated that it had “met all of the SCC’s requests for funded posts and additional resource”.<sup>119</sup> The Commissioner accepted that “technically” this was correct with one exception but told us that she had been “dissuaded from making bids for resources” and the resources she had were those she bid for in 2008.<sup>120</sup> She did not think she had sufficient resources. She told us:

[...] at the end of the review, the MOD’s conclusion was that the solution was actually to keep the status quo, but to formalise what I had already been doing in practice,

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<sup>114</sup> Select Committee on the Armed Forces Bill, Special Report of Session 2010-11, HC 779, Ev 93

<sup>115</sup> Q 45

<sup>116</sup> Q 45

<sup>117</sup> Ev 16

<sup>118</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2011*, March 2012, p 59

<sup>119</sup> Ev 16

<sup>120</sup> Qq 47-48

which was intervene, ask questions and spot where things were going wrong. At that point, we predicted that we would have 1,000 open cases. As of today, it is just slightly less than that, but the MOD accepted at the time that in order to deal effectively with the model that they were putting forward, I would need 15 caseworkers. In July this year, I got my fourth. That was one reason why I refused to accept the model that they put forward. They had made it quite clear that resources of that scale were not available.<sup>121</sup>

71. The Commissioner also warned that the new Service complaints system would require additional resources and that she had already submitted a request for an additional senior caseworker to ensure that it worked efficiently.<sup>122</sup> Part of the transition to the new system would be to review what resources were available and what were required.<sup>123</sup> She also told us that she had made a formal request to the MoD Permanent Secretary to be able to recruit her staff automatically from across the civil service rather than from the MoD alone.<sup>124</sup> This request was refused and she was told that each request would have to be looked at individually. Each request she had made had, in the event, been acceded to, but the Commissioner was concerned about the amount of resource it took to prepare a business case on each occasion. We note that the MoD and the Commissioner are in discussion on future resources.<sup>125</sup>

**72. We note the Commissioner’s assessment she does not have sufficient resources and that in fact the resources she has are those that she requested in 2008. A sufficiently resourced Commissioner and Service complaints secretariats are essential to an effective and efficient complaints system and raising confidence in it. It is also vital that current resources are used in the most efficient manner. While we accept that in the current economic climate it is not easy to provide additional resources, it is not appropriate that the Commissioner feels “dissuaded” from making bids for resources. She should submit her requests for additional resources and a decision should be made on a case by case basis. In response to our Report, the MoD should inform us of the outcome of the discussions on future resources and the Commissioner should confirm that the additional resources are adequate to allow her to fulfil her tasks.**

## **Role of the Commissioner and the Armed Forces Covenant**

73. The Government published the Armed Forces Covenant in May 2011.<sup>126</sup> The Covenant sets out the relationship between the nation, the state and the Armed Forces. It is intended to make clear that the whole nation has a moral obligation to the members of the Armed Forces and their families and establishes how they should expect to be treated. The Covenant exists to redress the disadvantages that the Armed Forces community face in comparison to other citizens and to recognise sacrifices made. The Covenant identified 15

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<sup>121</sup> Q 46

<sup>122</sup> Q 46

<sup>123</sup> Q 46

<sup>124</sup> Q 48

<sup>125</sup> HC Deb, 31 January 2013, col 363WH

<sup>126</sup> Ministry of Defence, *The Armed Forces Covenant*, May 2011, available at: <https://www.gov.uk/government/publications/the-armed-forces-covenant>

areas to be addressed.<sup>127</sup> The Commissioner is specifically mentioned under the Recourse section of the Covenant:

Members of the Armed Forces Community should have means of recourse open to them, if they believe that they are not being treated in a fair and appropriate way. Established routes of recourse such as complaints processes or Ombudsmen should be sensitive to the particular circumstances of the Armed Forces Community. In addition, for Serving personnel and those who have recently left service, there should be a responsive system for handling complaints relating to their service in the Armed Forces, overseen by the Service Complaints Commissioner.<sup>128</sup>

74. The Government also published *The Armed Forces Covenant: Today and Tomorrow*, which outlined in more detail specific pledges and the measures that the Government would take to fulfil its responsibilities.<sup>129</sup> This document outlined the role of the Service Complaints Commissioner in respect of fulfilling the Covenant's commitment to recourse for Armed Forces personnel if they believe they are not being treated in a fair and appropriate manner.<sup>130</sup> Additionally the Commissioner was also mentioned under the responsibility of care commitment, particularly her recommendations in her Annual Reports and the Single Services initiatives to build confidence in the system for dealing with complaints of bullying and harassment.<sup>131</sup>

75. The Armed Forces Act 2011, which received Royal Assent in November 2011, placed on the Government a statutory responsibility to report annually on the Covenant, particularly in four areas: healthcare, education, housing and the operation of inquests.<sup>132</sup> A Covenant Reference Group, previously known as the External Reference Group, which includes representatives from other Government departments, charities and the Service Families Federations, exists to monitor the performance of the Government in meeting the commitments of the Covenant and liaise with key stakeholders on issues relating to it. The group is consulted on the Annual Report on the Covenant and unedited observations by its external members are published as part of the report itself.<sup>133</sup> The Government published an interim report on the Covenant in December 2011<sup>134</sup> and the first statutory report was published in December 2012.<sup>135</sup> Both reports contained analyses of progress to date and specific pledges for further action. These included commentary on the MoD's response to

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<sup>127</sup> These are: terms and conditions of service; healthcare; education; housing; benefits and tax; responsibility of care; deployment; family life; commercial products and services; transition; support after service; recognition; participation as citizens; changes in defence; and recourse.

<sup>128</sup> Ministry of Defence, *The Armed Forces Covenant*, May 2011, p 9, available at: <https://www.gov.uk/government/publications/the-armed-forces-covenant>

<sup>129</sup> Ministry of Defence, *The Armed Forces Covenant: Today and Tomorrow*, May 2011, available at: <https://www.gov.uk/government/publications/the-armed-forces-covenant>

<sup>130</sup> *Ibid*, pp 66-67

<sup>131</sup> *Ibid*, p 36

<sup>132</sup> Armed Forces Act 2011, Sections 343A and 343B

<sup>133</sup> External members of the Covenant Reference Group are Naval Families Federation, Army Families Federation, RAF Families Federation, COBSEO—the Confederation of Service Charities, Royal British Legion, SSAFA (Soldiers, Sailors, Airmen and Families Association), War Widows Association (WWA) and Professor Hew Strachan.

<sup>134</sup> Ministry of Defence, *Armed Forces Covenant Interim Report (2011)*, December 2011, available at: <https://www.gov.uk/government/publications/armed-forces-covenant-interim-report-2011>

<sup>135</sup> Ministry of Defence, *Armed Forces Covenant Annual Report 2012*, December 2012, available at: <https://www.gov.uk/government/publications/armed-forces-covenant-annual-report-2012>

the Commissioner's three year goals and recommendations listed in her Annual Reports and the review of the complaints process and the future role of the Commissioner. The Armed Forces Covenant Annual Report 2012 commented on the outcome of the review of the Service complaints process and included the following commitment:

A new way of working with the SCC will be implemented from January 2013, aimed at giving the SCC greater insight into the causes of undue delay and the effectiveness of the Services' monitoring of cases, and enabling us to gain evidence for learning lessons.<sup>136</sup>

76. The Commissioner said that she sees her work and the Service complaints system as an integral part of the Armed Forces Covenant. In her 2010 Annual Report she said:

*The Service complaints system plays a central role in ensuring the fair and just treatment of members of the Armed Forces: Action by the chain of command to resolve workplace grievances as speedily and effectively as they can is an integral part of their duty of care to Servicemen and Servicewomen and thus to the Armed Forces covenant.*<sup>137</sup>

77. She also made the same point in evidence to us.<sup>138</sup> The Covenant explicitly mentions the Commissioner and the Annual Reports on the Covenant commented on developments in the Service complaints system and the Commissioner's role. However she had not been involved in the development of the Covenant and had not been asked to input into the Annual Report on the Covenant although she had been invited to one meeting of the Armed Forces Covenant Steering Group. Following her appearance before us, the Commissioner told us that the MoD had told her that she should have the opportunity to comment on statements made about the Service complaints system in future Annual Reports and that she had received an apology for the oversight. The Commissioner believes that there may be scope for her to be more widely involved in the production of the Annual Report on the Covenant:

[...] the information we receive from Service personnel and their families also often includes information about the experience of Service life, wider than treatment by the chain of command. There may also be value in the Service Complaints Commissioner being consulted on the draft report as a whole and joining the Reference Group.<sup>139</sup>

**78. The Service Complaints Commissioner's work is an integral part in delivering the Armed Forces Covenant. We are surprised and concerned that the MoD did not consult the Commissioner during the development of the Armed Forces Covenant or on the Annual Reports on the Covenant. We welcome the MoD's intention to give the Commissioner an opportunity to comment on statements made about the Service complaints system in future Annual Reports. Given the insight and information the Commissioner receives about the experience of Service life which is often wider than**

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<sup>136</sup> Ibid, p 23

<sup>137</sup> Service Complaints Commissioner for the Armed Forces, *Annual Report 2010*, March 2011, p 9, para 1

<sup>138</sup> Qq 10-11

<sup>139</sup> Ev 19

**that of Service personnels' treatment by the chain of command, we believe that there would be value in the Commissioner being consulted on the draft Annual Report as a whole and in her joining the Covenant Reference Group.**

## **New Commissioner**

79. Dr Susan Atkins, the current Commissioner, was appointed on 1 December 2007 for a three year fixed term appointment which was later extended by four months to the end of March 2011 to reflect the timetable for publishing the Commissioner's Annual Report. Dr Atkins was reappointed for a second and final three year term to 31 March 2014.<sup>140</sup> The Commissioner is one of those posts that is subject to a pre-appointment hearing by the relevant Departmental Select Committee as agreed by the House of Commons Liaison Committee and the Government in 2007–08. It is our intention to hold such a hearing for the appointment of the new Commissioner. To assist us with this we asked Dr Atkins for her views on the appointment process and the qualities the new Commissioner would require. Dr Atkins described three factors to us. The first of these was that the post should be filled by someone without a military background. Although the Armed Forces Act 2006 says that the Commissioner should not currently be in the military or the civil service, Dr Atkins told us:

First, the military is quite a closed world, and the real value to the services and the MOD is in having somebody who comes with an outside perspective. The Service Chiefs have actually said that that is what they value, because I can look at their perspective on things, and I can say, "Yes, you've got that absolutely right," or I can say, "Actually, there is a different way of looking at that." They find that very valuable. The second reason is the confidence of service personnel and the number of people who come to me, or whom I meet on training sessions or when I am out and about, and say that if I was from a military background, they and their families would not have used my services. I feel very, very strongly that that is what is required, predominantly.<sup>141</sup>

80. Secondly, she told us that an understanding and a good grasp of both justice and fairness and cultural and organisational change was very important because there was a need to be able to understand, respect and value the services you are working with and work with them to improve.<sup>142</sup> Finally Dr Atkins told us that she worked three days a week but in her opinion the post should be full time.<sup>143</sup> She also hoped to be consulted on her successor but thought it would be inappropriate for her to be part of the process.<sup>144</sup>

**81. We would like to thank Dr Atkins for her work as the Commissioner. She has worked ceaselessly to improve the Service complaints system and to make her post a success. We agree with Dr Atkins that the new Commissioner should not come from a military background. It is vital that the Commissioner should bring an outside**

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<sup>140</sup> Ev 16

<sup>141</sup> Q 50

<sup>142</sup> Q 50

<sup>143</sup> Q 51

<sup>144</sup> Q 53

perspective to the Service complaints system and that Service personnel should have confidence in using the Commissioner's services. We expect the MoD in their response to this Report to give us their reaction to the Commissioner's view that the post should be full time.

82. We confirm our intention to hold a pre-appointment hearing with the proposed new Commissioner. We expect to be fully involved at every stage and for the MoD to consult us on the process and the job description from the beginning to ensure sufficient time for the recruitment process, the pre-appointment hearing and a smooth transition to the new Commissioner. Most importantly we expect the MoD to take full account of our views on the suitability of the proposed new Commissioner for the post.

## 4 Conclusion

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83. The Service complaints system is an important part of ensuring that the duty of care that the nation owes to its Service personnel is carried out effectively. We commend the Government for recognising this in the Armed Forces Covenant. The Service Complaints Commissioner role is an integral part of honouring the Covenant's commitment to the duty of care to the Armed Forces and the opportunity for Service personnel to seek redress when they believe they have been treated inappropriately or unfairly. We acknowledge the progress made in delivering a fair, just and efficient Service complaints system but there is a long way to go. There are too many reports of Service personnel being reluctant to raise genuine complaints and grievances. We are also concerned that complaints are not being raised when they implicate individuals above the complainant within the chain of command. This is a time of great changes in the Defence arena and many of these changes may lead to an increase in the number of Service complaints. The Service complaints system has evolved, as has the role of the Commissioner, but there are still too many instances of delay, inefficiency and lack of resources. These must be dealt with urgently so as to ensure there is confidence in the system and the Commissioner. 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. We will maintain a close interest in the work of the Commissioner and the Service complaints system, particularly in whether the recent changes to the role of the Commissioner and changes to the complaints system prove to be effective. Our Servicemen and Servicewomen deserve a complaints system that is as good as it can be. Not to provide this would be a failure of the nation's duty to them—and a breach of the Covenant.

## Annex: Establishment of the Service Complaints Commissioner

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The Defence Committee in previous Parliaments has reported on the Service complaints system and role of the Service Complaints Commissioner for the Armed Forces.

### *Duty of Care Report 2005*

In 2004, the Defence Committee, prompted by the individual deaths of recruits and trainees at initial training establishments especially the deaths of four young soldiers, between 1995 and 2002, at the Princess Royal Barracks, Deepcut, Surrey, announced an inquiry into the MoD's duty of care to Service personnel. In its 2005 Report, *Duty of Care*, the Committee recommended that an independent military complaints commission be established. The crucial elements of the commission were to be:

- It would be independent of the Armed Forces and the MoD;
- Its recommendations would be binding;
- It would have the power to look at past cases; and
- It would have access rights to all documentation and persons.<sup>145</sup>

In July 2005, in its response to the *Duty of Care Report*, the then Government accepted that there was a case for introducing an independent element to the Service complaints system and undertook to examine the different models for this and take it forward in the forthcoming Armed Forces Bill.<sup>146</sup>

### *Armed Forces Bill 2005*

An Armed Forces Bill is required every five years to provide the legal basis for the Armed Forces and the system of military law which exists in the UK.<sup>147</sup> The Armed Forces Bill was introduced in the House of Commons in November 2005 and included provisions to establish a Service complaint panel, but the Government's response to the independent element suggested by the Defence Committee appeared to be a single voice on the panel in certain circumstances. Complaints could either reach the Service complaint panel once the existing chain of command process had been exhausted or if requested by the complainant. Many details of how the panel would function would be set out in regulations to be made by the Secretary of State for Defence. It was clear that the Government had rejected the main principles of our predecessor Committee's recommendations—the Bill did not include provision for a way to deal with complaints that was truly independent of the chain of command.

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<sup>145</sup> Defence Committee, Third Report of Session 2004-05, *Duty of Care*, HC 45

<sup>146</sup> Ministry of Defence, the Government's response to the House of Commons Defence Committee's Third Report of Session 2004-05, *Duty of Care*, July 2005, Cm 6620, pp 26-28

<sup>147</sup> Following its Second Reading, the House of Commons' convention is that the Bill is examined by a Select Committee established specifically for this purpose although this does not exclude other Committees from examining the Bill.

Our predecessor Committee published a report on the Armed Forces Bill in December 2005.<sup>148</sup> This stated that the establishment of a Service complaint panel was insufficient, and urged the Government to put forward amendments to the Bill to strengthen the level of independence in the proposals.<sup>149</sup> It also urged the Select Committee on the Armed Forces Bill to express a clear view on the inadequacy of the Bill. In its response to the Defence Committee's Report, in March 2006, the then Government did not accept these arguments. The response said that it was intended retain key elements of the system for handling service complaints: its availability to all service personnel; the ability to raise any grievance related to service; and the opportunity for the commanding officer to resolve grievances. It was also planned to modernise and improve the system by: reducing the number of stages before the matter is considered at Defence Council level; providing for complaint panels that in most cases would exercise the functions of the Defence Council, and which should result in swifter decisions; and by providing for a wholly independent member to be included on complaints panels in cases that involved improper behaviour such as: unlawful discrimination or harassment on the grounds of gender, religion or belief, or sexual orientation; bullying; or dishonesty and other improper, unprofessional or biased behaviour. The Government also intended for the new complaints system to be subject to an annual assessment by an independent reviewer, who would report directly to the Secretary of State for Defence. No statutory powers were required to provide for this appointment.<sup>150</sup>

### ***The Deepcut Review 2006***

Sir Nicholas Blake QC, in his 2006 report (*The Deepcut Review*) on the deaths of four soldiers at Princess Royal Barracks, Deepcut, between 1995 and 2002 recommended that there should be an independent 'Commissioner of Military Complaints' or an Armed Forces Ombudsman, with the ability: to receive unresolved complaints from Service Personnel or their families; to supervise the investigation of such complaints; and to supervise the response to a complaint, including providing advice on any disciplinary or administrative action to be taken. He also recommended that this Commissioner should report annually, in public, on issues relating to the welfare of soldiers.<sup>151</sup>

In June 2006, the then Government in its response to *The Deepcut Review* argued that some of the functions for the Commissioner recommended in the Report—the ability to intervene in the handling of a complaint and to supervise investigations, and to institute legal proceedings against decisions not to prosecute—were inappropriate for an independent commissioner and risked undermining the chain of command and the independence of prosecution authorities. The Government agreed, however, to extend the role of the external reviewer proposed under the Armed Forces Bill, to change the title to 'Service Complaints Commissioner', and to give the Commissioner access to Ministers.<sup>152</sup>

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<sup>148</sup> Defence Committee, First Report of Session 2005-06, *Armed Forces Bill*, HC 747

<sup>149</sup> *Ibid*, para 11

<sup>150</sup> Defence Committee, Fourth Special Report of Session 2005-06, *Armed Forces Bill: Government Response to the Committee's First Report of Session 2005-06*, HC 1021

<sup>151</sup> *The Deepcut Review*, Nicholas Blake QC, 29 March 2006, HC 795; available at <http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.asp>

<sup>152</sup> *Government Response to The Deepcut Review*, June 2006, Cm 6851; available at <http://www.official-documents.gov.uk/document/cm68/6851/6851.pdf>

### **Report of the Select Committee on the Armed Forces Bill**

The Report of the Select Committee on the 2005 Armed Forces Bill was published in May 2006.<sup>153</sup> The Committee was unconvinced that an Ombudsman or a Commissioner was the appropriate mechanism to deal with complaints. However it believed that “scope existed to deal with grievances more effectively, particularly those involving cases of alleged bullying”. The Committee went on to say that if the MoD proposed to make further changes to the redress of grievances procedures, as part of its response to *The Deepcut Review*, that required primary legislation but was unable to make them by amending the current Bill, the Government’s business managers should allow time for the necessary legislation to be considered as soon as possible. The Report also welcomed the intention to establish an independent reviewer of the Armed Forces’ redress of complaints procedures”.

### **Amendments to the Armed Forces Bill**

In November 2006, during the Bill’s Committee stage in the House of Lords, the Government tabled amendments providing for a Service Complaints Commissioner with the power to review the fairness and effectiveness of the military complaints system and to provide the Secretary of State with an annual report to be laid before Parliament. These amendments also gave the Commissioner a limited role in regard to the investigation of complaints. The Commissioner was given power to refer allegations of certain types of wrongdoing—whether made by the alleged victim or by someone else—to an officer (normally the Commanding Officer of the alleged victim). The officer would have a duty to inform the alleged victim about the allegation and to find out whether he or she wanted to make a complaint about it. The officer would have a duty to ensure that the alleged victim knew how to make a Service complaint and was aware of any time limits on this. The amendments were passed.

### **Defence Committee Report**

Our predecessor Committee published its Report, *Armed Forces Bill: proposal for a Service Complaints Commissioner*, on 7 November 2006.<sup>154</sup> It welcomed the proposal to create a Service Complaints Commissioner: it concluded that creating an independent office to which people could make complaints would meet a key concern that Service men and women and their families are not always willing to raise issues with the chain of command. However, it also concluded that it was desirable that Parliament should be aware that the role proposed for the Commissioner fell a long way short of the investigatory body proposed by the previous Defence Committee in its *Duty of Care* Report. The Armed Forces Bill received Royal Assent on 8 November 2006.

In its response to the Defence Committee’s Report, the Government said that its proposals in the Armed Forces Act 2006 struck the right balance between ensuring that Service personnel could have confidence in the complaints system while preserving the

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<sup>153</sup> Select Committee on the Armed Forces Bill, Special Report of Session 2005-06, HC 828-I

<sup>154</sup> Defence Committee, Fourteenth Report of Session 2005–06, *Armed Forces Bill: proposal for a Service Complaints Commissioner*, HC 1711

responsibility of the chain of command to investigate and remedy wrongs.<sup>155</sup> It provided an assurance that the Commissioner would be adequately resourced and said that it intended to establish the post of Commissioner in advance of full implementation of the Act, for which the target was the end of 2008. The appointment of Dr Susan Atkins, formerly the Chief Executive of the Independent Police Complaints Commission (IPPC), was announced on 7 November 2007 and she took up her post on 1 January 2008.

### ***Service Complaints Commissioner for the Armed Forces: the first year***

In July 2009, our predecessor Committee published its Report *Service Complaints Commissioner for the Armed Forces: the first year*.<sup>156</sup> This was a review of the first year of the work of the Service Complaints Commissioner. The report reasserted that the powers of the Commissioner fell short of those envisaged by the previous Defence Committee in its *Duty of Care* Report and by Sir Nicholas Blake in *The Deepcut Review*, but added that it was too early to decide whether the Commissioner had sufficient powers. It stated that the Commissioner would be better placed to judge the performance of the system in her next Annual Report and that further evidence should be taken from the Commissioner on her powers at an appropriate time.

### ***Armed Forces Bill 2010***

The next Armed Forces Bill was presented to Parliament on 8 December 2010. It made a number of minor changes to the makeup of Service Complaints Panels and the role of the Defence Council in handling complaints. The Service Complaints Commissioner gave evidence to the Select Committee appointed to examine and report on the Bill. The Committee noted, that although real progress had been made, the concerns of the Commissioner and others remained concerned that there were areas in the Service complaints procedures in which further significant improvements could be made, particularly in relation to the powers of the Commissioner and the complexity of the system as a whole.<sup>157</sup> The Bill received Royal Assent on 3 November 2011.

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<sup>155</sup> Defence Committee, Second Special Report of Session 2006-07, *Armed Forces Bill: proposal for a Service Complaints Commissioner: Government Response to the Committee's Fourteenth Report of Session 2005-06*, HC 180

<sup>156</sup> Defence Committee, Eighth Report of Session 2008-09, *Service Complaints Commissioner for the Armed Forces: the first year*, HC 277

<sup>157</sup> Select Committee on the Armed Forces Bill, Special Report of Session 2010-11, HC 779

# Formal Minutes

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**Tuesday 12 February 2013**

Members present:

Mr James Arbuthnot, in the Chair

Mr Julian Brazier	Sandra Osborne
Mr Jeffrey M. Donaldson	Sir Bob Russell
Mr Dai Havard	Bob Stewart
Mrs Madeleine Moon	Ms Gisela Stuart

Draft Report (*The work of the Service Complaints Commissioner for the Armed Forces*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 83 read and agreed to.

Annex agreed to.

*Resolved*, That the Report be the Eighth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, in addition to that ordered to be reported for publishing on 31 October 2012 and 9 January 2013.

[Adjourned till Wednesday 13 February at 2.00 pm]

## Witnesses

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**Wednesday 21 November 2012**

*Page*

**Dr Susan Atkins**, Service Complaints Commissioner for the Armed Forces,  
and **Darren Beck**, Head of Office, Office of the Service Complaints  
Commissioner for the Armed Forces

Ev 1

## List of printed written evidence

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1	Ministry of Defence	Ev 13: Ev 17
2	Service Complaints Commissioner for the Armed Forces	Ev 17

## List of additional written evidence

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(published in Volume II on the Committee's website [www.parliament.uk/defcom](http://www.parliament.uk/defcom))

1	British Armed Forces Federation (BAFF)	Ev w1
2	RAF Families Federation	Ev w3
3	Major R A McLeod R SIGNALS LLB MA JP	Ev w4

## List of Reports from the Committee during the current Session

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2012–13

First Special Report	Ministry of Defence Annual Report and Accounts 2010–11: Government Response to the Committee's Eighth Report of Session 2010–12	HC 85
First Report	Ministry of Defence Supplementary Estimate 2011–12	HC 99 (HC 577)
Second Report	The Armed Forces Covenant in Action? Part 2: Accommodation	HC 331 (HC 578)
Third Report	MoD Main Estimate 2012–13	HC 133 (HC 607)
Fourth Report and First Joint Report	Scrutiny of Arms Exports (2012): UK Strategic Export Controls Annual Report 2010, Quarterly Reports for July to December 2010 and January to September 2011, the Government's Review of arms exports to the Middle East and North Africa, and wider arms control issues	HC 419 (Cm 8441)
Fifth Report	Future Maritime Surveillance	HC 110 (HC 827)
Sixth Report	Defence and Cyber-Security	HC 106
Seventh Report	Defence Acquisition	HC 9

# Oral evidence

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## Taken before the Defence Committee on Wednesday 21 November 2012

Members present:

Mr James Arbuthnot (Chair)

Mr Julian Brazier  
Mrs Madeleine Moon  
Penny Mordaunt

Sandra Osborne  
Bob Stewart  
Ms Gisela Stuart

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### Examination of Witnesses

*Witnesses:* **Dr Susan Atkins**, Service Complaints Commissioner for the Armed Forces, and **Darren Beck**, Head of Office, Office of the Service Complaints Commissioner for the Armed Forces, gave evidence.

**Chair:** Dr Atkins, welcome back to the Defence Committee. You are always most welcome in front of us, and we are grateful to you for coming to give evidence. Would you like to introduce Mr Beck?

**Dr Atkins:** Darren Beck, ladies and gentlemen of the Committee, is my head of office. He was not in that post when I appeared before you previously, but he did come with me to the Armed Forces Bill Committee and some of you may have met him then.

**Q1 Chair:** Thank you very much. You have been in post for four years, and you have produced four annual reports. Over those four years, what do you think is the best thing you have managed to achieve?

**Dr Atkins:** There are two things, and they are both partial successes. The first is that I believe that I have changed the views of the services about independent oversight. You will remember when I was first appointed there was a lot of reluctance, a bit of concern and some resistance to having an independent oversight. Now, not only has the Chief of Defence Staff said that I am an integral part of modern defence, but over just the past few weeks a number of the Service Chiefs who are most intricately involved with service personnel matters have said that without me they would never have made the changes and improvements that have been made. I think they are more comfortable and they value the work that we do. That is a big achievement.

**Bob Stewart:** Not a partial success but a notable one.

**Chair:** Bob Stewart is muttering that that is not a partial success, but a notable success, and I think we would all agree with that.

**Dr Atkins:** I think the second thing is beginning to change the culture. When I was first appointed, people did not know how many complaints were made, by whom, about what or where, and frankly it was not very high on priorities. One of the cultural changes I wanted was to stop people who made complaints being perceived as trouble makers. These were service personnel who were giving of their all for their country, and if things went wrong, they needed to be treated properly. There were lessons to be learned in order to prevent such occurrences in the future.

I would say that they are partial successes because there is still a lot more to do. As you know, one of the recommendations was for an Armed Forces

ombudsman, and that has not been accepted. I think we have a way to go, but I think those are the two key achievements.

**Chair:** We will come on to some of those things. I think it has been because of your approach—how you have shown sensitivity to the chain of command, but you have also shown a real determination to work for the Armed Forces in general. That must have been a difficult tension for you to resolve, but you have clearly been extremely successful at it.

**Dr Atkins:** Thank you.

**Q2 Chair:** You say in your most recent report that, for the fourth year running, you are “unable to report... that... the Service complaints system is working efficiently, effectively or fairly.” Why is that?

**Dr Atkins:** It is largely because when people make service complaints they are not dealt with in a timely manner, and delay is the key reason for unfairness. In many cases, it means that by the time a complaint is decided the redress that the individual wants can no longer be achieved. There can be occasions where people make complaints about individuals who, by the time the case is investigated and decided, have left the service. We have had occasions when people who want to complain that they are being discharged find that they are discharged, and it is a matter of years later that the services say a mistake has been made. A number of service personnel and their families then have huge choices to make. Do they go back to the career that they loved and felt they were doing well with a chain of command that they trusted, or do they give up? In many cases, they have to give up a home, and their career, and leave the services with a bitter feeling in their heart and mind.

Delay is a problem and it is the cause of unfairness to people who are complained of. Increasingly over the past few years, I have had complaints from people who have been the subject of a complaint, and the stress on them and their families is unimaginable. Mental health is one of the issues in relation to service complaints and delay.

So that is the lack of fairness. There is a lack of efficiency because the system is extremely complex. In my view, it is designed to give every member of the forces who makes a complaint a Rolls-Royce system with all the protections that are not to be found

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in the civilian world. There are cases, such as discharges, where other civilian employees can go to an employment tribunal—unfair selection for redundancy is another example—and those avenues are not open to service personnel. So there are cases where there should be protections, but the very protections designed to ensure fairness actually work against individuals. They also take too many resources. When I put forward a proposal for an ombudsman, it was part of a package: having an independent, external right of appeal at the end of the process would enable the system to be simplified. The services are trying to make the system work, but they are doing so by putting in more and more resources. In a period of financial constraints, that is not a sensible option.

**Chair:** We were going to ask about your suggestion of an ombudsman later, but since you have raised it, I shall ask Sandra Osborne to raise this issue now.

**Q3 Sandra Osborne:** Why did the Service Personnel Board not support your proposal for an ombudsman? What is the reason?

**Dr Atkins:** They must answer for themselves—the Minister can answer for them—but I believe there was some resistance to having an external body as the final port of call or final route for appeal. That is why, in relation to the Chairman's question and to Mr Stewart, I said I thought it was a partial success. Some of the Service Chiefs said they didn't quite understand what an ombudsman did, but they were sure they didn't want one. Some other people have said to me that they would be very comfortable with my being the ombudsman, but, as you know, I shall be stepping down at the end of my second term, and when there was no longer "the good doctor", they weren't too sure what would happen. I think it is fear of what might happen, rather than the arguments that I have put forward now.

**Q4 Sandra Osborne:** This whole service came about, as I understand it, in legislation in 2006 in the context of the Deepcut inquiry, which had been ongoing for some time. I had a constituent who was affected—not from Deepcut, but from elsewhere. I thought the whole idea was to ensure that that kind of situation did not arise again and that there would be independence in the system, which is what an ombudsman role does. Maybe it is a bit of an unfair question, but do you feel that the intentions of the report that came out after the Deepcut inquiry and the legislation have been followed up properly?

**Dr Atkins:** The recommendation of the Defence Committee in its 2005 "Duty of Care" report and Sir Nicholas Blake's Deepcut review report was that there should be an oversight body—a commissioner or an ombudsman—to fulfil a number of functions. One was to oversee and ensure fair handling of individual complaints to ensure that families and recruits who tried in the context of Deepcut to raise their concerns—and were assured that everything was all right and it wasn't—had somebody external and independent that they could go to, who didn't take no for an answer, and who kept coming back and asking more questions. But it was also to identify patterns

and trends, because you can decide an individual case on its individual facts and not perceive that there is an issue to be tackled—that what is alleged to be occurring here is also occurring here, and is exactly the same as what occurred in the past. That is what an ombudsman does.

I believe—and the Chairman was very kind to say that this was so—that because of my reports there have been significant improvements in the system. However, as I identified in my reports, there is a fairness gap in relation to individual complaints. Complainants—and I know some of them have written to you—come to me in the expectation that I can oversee and intervene to ensure that their complaint is dealt with in a speedy and proper way, and that it is not too late by the time their case is decided. What I don't have is the ability to bring about that change. I can raise questions and ask for issues to be addressed, but I cannot guarantee it. The ombudsman would fulfil the function that both reports address and which is absolutely vital. What an ombudsman can do and what I can't do is make a decision on a case.

Let me give you an example. People can come to me with a matter that is quite old, that occurred a long time before the three-month time limit. There is a three-month time limit. If I put that complaint into the system and the service decides that it is out of time and that there are no just and equitable reasons for accepting it, it can take a lot of resources to get to that point.

I tend not to put those cases in if I am not satisfied with the reasons given as to why no complaint has been made sooner. If I refuse to put them in—because that is an inefficient use of service resources—then that person can come back to me again and again and again. Because I don't have the power to make decisions—and I am a statutory office holder—I must not fetter my discretion, I find it very difficult to say no. Quite a lot of our resources are spent in dealing with people who can't understand why I won't refer their complaint. What I would prefer to do is to put those into the system. Because the services would have the ability of an independent person making the final decision, they could deal with those much more speedily and firmly. They would be able to turn off vexatious or unmeritorious complaints much more easily, and then people could come to me and I would have the power to make a decision, and that would be the end of it.

**Q5 Sandra Osborne:** Is that the main difference between the role you have and what would be the role of an ombudsman?

**Dr Atkins:** Yes. At the end of the case, if somebody came to me at the end of a process and said, "I want you to review this, I don't think I've been dealt with properly," I could review it and make the decision on that. What I wouldn't be able to do is to direct what should happen on the merits of that case. As an ombudsman, that would be a recommendation back to the services. But it would act as a final appeal. I believe that it would enable the service system to be simpler and would also enable complaints to be dealt

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with in a firmer, more effective and certainly cost-efficient way.

**Q6 Sandra Osborne:** What is your view about the role that has been agreed? Is it fit for purpose?

**Dr Atkins:** Well, I designed it and put it forward, so I am pleased that the services and the MOD have agreed it. I think it is a valuable step and it begins to close the fairness gap, because if the 24 weeks is overrun and there are no reasonable grounds for that, I will be able to make a report to the Secretary of State. I will be able to give a much more open, honest, understandable offer to complainants, which is, "I will refer your case and, even if you don't come to me, I will get a report once your case is going to go beyond 24 weeks or has gone beyond 24 weeks and then there is something I can do." Then it is over to the Secretary of State to read my report, accept or amend my recommendations, and come back to me on what action has been taken. So it gives Ministers visibility, it gives Service Chiefs visibility, it gives Parliament visibility—because I shall be reporting on that in the annual report—and it gives this Committee visibility.

**Q7 Mr Brazier:** Forgive me. I understand the importance of these process points, and you are very clear on what is happening and what you feel needs doing, but could bring it alive for us slightly by giving us some concrete examples? Could you mention a particular case—obviously without giving the names of the people involved—and show how the current system works and where it does not work?

**Dr Atkins:** Yes, I have a number of complaints that were made in 2008, some of which have not yet had a decision at level 1. It is a very small number—

**Q8 Mr Brazier:** I am sorry; we misunderstand each other. Could you give us some actual examples of the kind of complaints you are talking about and then explain how being held up affects the complaint? Do you see what I mean? When you say "a number of complaints" what are they about?

**Dr Atkins:** I see. We have had complaints from individuals who allege that they have been bullied. Particularly going back quite a while, they have not been dealt with very well. They tend to be fumbled for the first few months and then, in the past, they have had to try to find someone within the unit or the chain of command. In the last year, there have been some specialist investigators available. But they can take a long time to be investigated, by which time the individuals have lost confidence and they start then to make complaints about the complaints. We have had one in that situation, whereby because the individual's complaint has taken so long, she has been moved to different units to try to help, has got mental health problems and the complaints are just escalating. So it can take three or more years before a decision is made.

We have other allegations of serious bullying where the service police have been involved. They will do their investigation in relation to the criminal allegations, which can involve the prosecutors. At the end of that time, the case comes a back to be determined as a service complaint and the

individuals—both the people who made the complaint and the people about whom the complaint is made—are in this limbo land for one or two years. These are a very real instances; yes, I am talking about processes, but partly that is because I have to protect individuals. This is not a process matter; this is a fairness matter. It is about individuals and their families.

**Q9 Mr Brazier:** I do understand that, but I have two related points. First, who are these special investigators, if they are not the police? Secondly, I must say I feel a certain uneasiness about the idea that something can go through a criminal investigation process and be separately investigated through a second complaints process, although I know that is not quite double jeopardy. Who are the special investigators?

**Dr Atkins:** Let me answer both those points. A complaint can be made about bullying, harassment or discrimination, which can be about matters that would not cause the police to be brought in. They would not be criminal allegations. If it is a physical assault—a violent assault—then the police would be involved, but if it is abuse of power or the sorts of bullying that you see in the workplace, the police would not come in. Under the second circumstances, the MOD and services have now recruited a cadre of fee-earning individuals—former civil servants, former service personnel who have left the services—who have been specially selected and trained to go in and do short, proportionate, good-quality investigations, interviewing the individual who makes the complaint and the people who are witnesses.

That links to your second question. The purpose of a criminal investigation is to find out whether an individual is culpable. It is about justice, and it is about holding the perpetrator to account. A service complaint is about the wrong allegedly suffered by an individual. It is about redress and it is about resolving issues. There can be an overlap. To give an example, somebody recently made a complaint about bullying, which involved an assault. It was investigated by the service police and it went to the prosecutors. They decided that there was, on the criminal test, a better-than-evens chance—and it was in the public interest—that the individual might be found guilty on the beyond reasonable doubt test. They decided that it was not a court-martial offence, so it went back to the commanding officer, who made a decision.

Separately, the commanding officer then had to decide whether the individual who was the victim had been wronged. The culpability of the perpetrator had been dealt with, but what did that individual want? What that individual wanted was to be moved away from the person with whom he had had the problem. Do you see the difference? It is not double jeopardy, because you are looking to resolve the problem of the victim, not to double count the culpability of the offender.

**Q10 Bob Stewart:** Dr Atkins, can you tell me how you were involved in the development of the Military Covenant, if you were?

**Dr Atkins:** I was not.

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**Q11 Bob Stewart:** So that is the answer? You were not. Okay, so the next question, which might be equally shortly answered, is, do you have an input to the annual report on the Covenant?

**Dr Atkins:** I have not yet, although I would hope that I would. I was invited to one meeting of the Armed Forces Covenant Steering Group, because I am very firmly of the view that my work is part of the Armed Forces Covenant, but it is not just about how service personnel and their families are dealt with outside the services. It is also by their chain of command. I would hope that the work that I do and my annual reports are taken into account and that I would be consulted in compiling, certainly the—

**Q12 Bob Stewart:** Maybe we should say something about that in support of your work.

**Dr Atkins:** That would be helpful.

**Bob Stewart:** I hope you will forgive me if I now skip out, because there is a debate on the Military Covenant taking place any second, and I would very much like to appear there, with your—well, I am going, but I would like to apologise for going.

**Chair:** That is understood.

**Bob Stewart:** With your approval, Mr Chairman, I am going.

**Q13 Mrs Moon:** I was very alarmed to see that the annual rate of increase in potential complaints to your office is much lower than previous years—that is counter-intuitive because complaints nearly always go up, especially when a new system is introduced. Why do you think the number of complaints is going down? Is it a lack of trust in your office? Is it people's lack of faith in the complaints process? What is happening? Why is it going down?

**Dr Atkins:** The number of complaints to my office is not going down; it continues to rise. What appears to happen is that, every other year, we get a big increase in contacts, but a substantial number in that huge increase are either family members or members of the public contacting me. So it appears to be like dropping a stone and the ripples going out. More people who hear about you contact you. The second year you get an increase again, but a much higher percentage of those contacts are from service personnel about matters that could be a service complaint. This year, for instance—Darren will remind me of the figures—we have had just under 600 contacts. Of those, only 10% are from members of the public or about matters that could not be a Service complaint. It was a higher proportion last year. So there is a steady increase year on year.

**Q14 Mrs Moon:** One of the things that has been suggested is that service families are more reluctant to raise issues of concern in case raising them leads to being selected for redundancy. Is that a concern that you have picked up and been aware of?

**Dr Atkins:** When I met the Army, RAF and Naval Families Federations at the beginning of the year, we compared patterns of increase. They said that they had seen contacts to their offices go down and they were hearing on the ground that it was because people did not want to put their head above the parapet for fear

of affecting their selection for redundancy. Interestingly, in 2011 we saw a year of two halves. We got quite a lot of complaints at the beginning of the year about appraisals, reports and postings, where people seemed to be getting in their complaint ahead of the selection for redundancy, then all that went quiet in the second half of the year. So the fear of redundancy was a factor. Because fear of the consequences of making a complaint is still an issue with service personnel that come to us and although, it is not written in any rules or guidance, I made it an internal rule for my office from the start that, unless there is a fear of immediate threat to life, we will only put complaints into the chain of command with the consent of the individuals concerned.

**Q15 Mrs Moon:** An interesting change. Reading about who the Complaints Commissioner's office refers to, I see that the briefing says: "Individuals who are no longer subject to Service law, through having left the Armed Forces, also have the right to make a Service complaint if the matter which they are complaining about relates to their Service". What time scale applies there?

**Dr Atkins:** They are subject to the same three-month rule as regular and serving personnel. So for anybody who wants to make a service complaint there are two conditions. The first is that the alleged wrong must have occurred during their service life; and the second is that they must raise that service complaint within three months of the incident—or last incident if it was a continuing issue. It does not matter whether people are still serving or have left, but there is quite a tight window in order to raise a service complaint. They can seek to make a complaint outside that tight window, but they have to bring forward good reasons for it being accepted. Quite clearly, the longer the gap between the incident complained of and them trying to make a complaint, the higher the burden to give reasons why it should be accepted now.

**Q16 Mrs Moon:** In your annual report, there is a list of potential service complaints by types of prescribed behaviour, which shows the complaints you had in 2008, 2009, 2010 and 2011. In terms of the complaints, are you noting any links to the complaints, with people feeling they needed to come to you rather than the chain of command, because the complaint refers to someone within the chain of command who would have to deal with their complaint?

**Dr Atkins:** Yes, very often that is a reason why people come to us. It is lack of trust. It could be about their immediate boss, if I can put it in civilian terms, whom they feel that their commanding officer is very close to, so they do not have confidence that they will be believed, or partiality. It may be about the commanding officer himself or herself. It is very often the concern that, without the protection of my oversight, if I can put it that way, their complaint will not be dealt with fairly. If a complaint is about a commanding officer, or the commanding officer is implicated in any way, I refer it to the next person up in the chain of command. It is quite usual, if it is not clear who that person is or if there are concerns, that

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when my office sends the referral on my behalf—I having made the decision to refer—they will ask the particular service secretariat to inform me who that senior officer will be and get my express agreement before it is passed on to that individual.

**Q17 Mrs Moon:** Are there any particular complaints that tend to relate specifically to people who have left the Armed Forces? Are you finding that people who have left come back with their complaint and the majority of them tend to be in any particular area of those that are here—bullying, discrimination, harassment, racial harassment, sexual harassment, victimisation, bias and improper behaviour? Do any of those stand out as areas that people who have left the Armed Forces come back and raise?

**Dr Atkins:** I would like to check with Darren, but my impression is that they are across the piece.

**Darren Beck:** Yes, that is correct.

**Q18 Mrs Moon:** I have been looking in particular at issues in relation to rape and sexual assault. The numbers that are coming to you appear to be going down. Do you have any explanation as to why the numbers have gone down in the way they have?

**Dr Atkins:** When I established the office, one of the three-year goals I set was to reduce the gap between the overall level of anonymously reported incidents of bullying and harassment, assault and so on that is in the Armed Forces continuous attitude survey and the recruit training survey, and the levels of complaints. Those surveys showed that at that time around 12% of individuals, when asked anonymously, said that they had suffered some sort of ill treatment in that way. Of those 12%, however, less than 10% were raising a complaint. The more people felt confident to speak out, the more could be learned about the circumstances, how those things occurred and what to do about it.

The underlying trend in the incidence is going down but we are finding that, not just to my office but particularly in the Army, the percentage of complaints about bullying and assaults is going up. In the last year in particular—this is not in this annual report but we will be talking about it in the next one—we have had a significant number of really serious complaints coming forward. I think that, ironically, it is the quality of the complaints that matters, not necessarily the numbers. It is actually a mark of confidence that people are feeling more able to raise these issues. My concern is that the system is not dealing with them very well.

**Q19 Mrs Moon:** Are you able to tell us where these very serious complaints come from?

**Dr Atkins:** They tend to come from the Army.

**Q20 Mrs Moon:** Are they in relation to anything in particular?

**Dr Atkins:** They are in relation to physical assaults and sexual assaults. I have raised this with the Adjutant-General; I have said that we needed to have an inquiry and he is now considering how best to do that. But there are some real lessons to be learned in relation to the complaints that are coming forward at

present, because they should be dealt with better. I would like them to be dealt with better. I should say that in relation to rape and sexual assaults, I deal with service complaints and it goes back to the question that Mr Brazier asked me, so if a complaint comes forward relating to a potential criminal matter, the service complaint is put on hold and it goes into the justice system. That is right and proper.

A number of complainants—particularly female complainants—come to me with issues that are not actually about rape or sexual assaults, but they raise rape and sexual assaults as a matter in the past and a reason for not trusting the chain of command. This goes back to the question you asked me at the first part of this section.

**Q21 Mrs Moon:** Thank you. That was also what I picked up and it is nice to have you confirm it. In relation to bullying and discrimination, two areas that have been brought to my attention as concerns relate in particular to service personnel who come from overseas to serve. They feel they are often subject to bullying, discrimination and harassment because of a desire to have negative reports on their military service records where they respond, which would lead to them losing any future application for citizenship. Is that something you picked up at all? Is that in any way, shape or form a concern you would have?

**Dr Atkins:** I do not think it is quite as simplistic as the way you have suggested. Certainly I am concerned; you may recall from my background that I started life as an anti-discrimination lawyer and I am concerned about the issues of race and bullying. It is very difficult to put a finger on, but in the proposed inquiry that is one of the things I would be looking at. Some of the cases I get—along with those from foreign and Commonwealth soldiers who say they have been bullied—are actually from British soldiers who are not black or from an ethnic minority but are assumed to be part of a minority ethnic group, particularly a religious one. They allege they have been subject to racist taunts as well. So I think race is an issue and there is a complex dynamic—which the services are aware of and I will try to do something about—which can be the sort of dynamic that those who teach in schools are aware of, of somebody who is very bright who feels that if they put their head above the parapet they are going to suffer for it. So they then play dumb and get poor reports and find they are kicked out of the services because of it. So I think there is a complex issue there and there are a number of dynamics; it is something that needs to be looked at.

**Mrs Moon:** Thank you.

**Q22 Penny Mordaunt:** Does your analysis reveal any systemic problems in the three services?

**Dr Atkins:** I think there are systemic weaknesses. Some of them are shared and some of them differ, service to service. One of the principles that I have put forward about good complaint handling, behind the proposal for an ombudsman, is that the complaints should be used as opportunities to identify systemic weaknesses and do something about them. I have been working with the services about how lessons can be

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recorded and lessons learnt. I am doing work with the Navy currently, which has led on this, to try and ensure that it delivers. Some of the issues are in relation to pay and allowances; complaints about pay and about putting people onto the wrong pay point come up time and again. I know that that is something that SPVA and Ministers are concerned about. There are those sorts of system errors, and there can be systemic weaknesses in the understanding and application of policy and procedure; there is a variety of systemic weaknesses. There is also the one I talked about earlier this afternoon: the interrelationship between the criminal justice system, the military system and the service complaints system.

**Q23 Penny Mordaunt:** What would you say the priorities should be for each service in terms of making improvements in the handling of those complaints—not so much about the issues that are forming the complaints, but the approach to them? If you could give a priority for each service, what would it be?

**Dr Atkins:** The Army has huge backlogs at the unit level and throughout the system, particularly at Army Board level. It has put in a lot more resources to try to deal with those and ensure that it speeds up the handling of cases. That is overwhelmingly the number one process issue.

**Q24 Penny Mordaunt:** Can you give an idea of the volume that we are talking about in terms of those cases?

**Dr Atkins:** While I talk, Darren will have a look at the numbers and then give them to you. Last year, for instance, the Army only decided a third of the cases that were made during the year at unit level by COs. I was told that at present the Army has over 70 cases that are more or less ready to be decided at Army Board level and another 70 cases waiting in the wings. That means that anybody who has a case today which needs to be decided at Army Board level has at least a year to wait before it can be decided. That just gives you the scale.

Darren has just provided the information, which says that in 2011 the Army worked on 630 cases at the unit level and 399 were still waiting to be decided at the end of the year. There were 50 cases at divisional level and, at that point, 96 waiting at Army Board level. It currently has 140.

**Q25 Penny Mordaunt:** And in terms of priorities for the other services?

**Dr Atkins:** The RAF recently changed the way it handles its complaints, after I went to the RAF Board and talked about it. It had huge backlogs at unit level, because it required the lawyers to advise on the complaints at every stage. What the Board found in relation to Operation Ellamy last year and the Libya campaign was that there were capped posts for lawyers and their resources were used elsewhere, which meant that service complaints were waiting anything from eight to 24 weeks just to get started; and again, a similar length of time at the end. I have to say that in relation to the complaints, the Navy has adopted a very different approach. I have worked very

closely with the Navy. You will see the startling figures in relation to last year, where it resolved huge numbers informally and upheld nearly three quarters of complaints, either in whole or in part, that came to the Navy at level 2, the headquarters level. That was because the majority of complaints, whether through me or to the Navy directly, are about some procedural irregularity or maladministration—something has gone wrong with pay, allowances, promotion or posting. Rather than putting them into a queue until somebody could look at them, they were triaging them. If the caseworker and lawyer thought a mistake had been made, they were picking up the phone and talking to the individual, saying, “I think something went wrong here. What do you think we should do about it?” and being able to resolve that. They had a backlog at the Navy Board level. They put additional resources in at unit level, ship level and at the Navy Board level and they are now zipping through their cases.

In terms of handling, the Navy is doing very well. I am not giving up on them, because this has got to be sustainable. Personnel have changed fairly recently and I want to make sure they are keeping going. They are in a good position now really to lead that continuous improvement approach. Their challenge is to ensure that they are learning from their complaints and stopping the causes of complaint arising in future. That is that efficiency circle that I talked about that I am really looking for.

**Q26 Penny Mordaunt:** I have a couple more quick questions. You mentioned that people can suffer stress and mental health difficulties when they are going through a lengthy process. It is a concern of the Committee—a theme we have picked up and I have seen in my casework—that there is perhaps a lack of integration between health care within the Armed Forces and someone’s civilian GP. Is that an issue that you have picked up? Are there other major themes like that that are causing difficulties for people to be dealt with in the best way?

**Dr Atkins:** There are difficulties when individuals, for whatever reason, go home and then decide whether to use the service medical services or their GP medical services. We see it a lot where individuals go AWOL and then go to their civilian doctor and the civilian doctor’s report is not respected by the chain of command. There are problems about that.

There are also problems with families of individuals who are suffering bullying and have real problems in the services and then go home. We do need to do something about that whole dynamic. That is why I want this inquiry to look into the handling. There is a range of issues I have talked about this afternoon that I really feel need to be looked at. I would like the services to sit down with an independent expert—and I would like to be part of that—to work through a number of cases and say, “What happened here? What should have happened here?”

Mrs Moon talked about sexual assault and rape, so it could be about access to specialist victim support services, medical services and psychiatric services. It is a matter of concern that there could be very good reasons why service personnel, or former service

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personnel, do not want to go into a service environment, but nevertheless there needs to be this continuity of care.

**Q27 Penny Mordaunt:** Following on from that, clearly the forces families' organisations, I imagine, would be quite heavily involved with supporting families. My experience has been that there is a very limited amount of support for families. Perhaps in the example you have given they have had someone come home and they are in real emotional difficulties. We are going to come on to talk about your resources, but are there things that those third parties—I'm thinking of charities and federations—could be doing more of that you would perhaps like to see? Or would that be something that your inquiry would look to?

**Dr Atkins:** It is certainly something the inquiry would do. I am actually meeting with the service charities tomorrow, predominantly about the new arrangements but to make sure that we are getting these issues on the agenda. It is quite difficult, because some of the families would not want to see themselves as part of the service community. I think that goes back to the point that you made, Ms Mordaunt, about how you get the civilian world and charities link in with the service world and services. If, for whatever reason, the families distrust the service world, that can also link in to Service charities. I have seen it a number of times when the family of the service member who comes back has so lost confidence in the services that they do not want to have anything to do with me or with any of the service charities. I really think we need to find ways of ensuring that the families are supported, because after all it is their son or daughter. They often feel very guilty because they have encouraged them to go into the services and then they have come back damaged, so the whole family dynamic is damaged.

**Q28 Mr Brazier:** I want to preface this with a comment, which links to my earlier question about the distinction between criminal investigations and your investigations. I have been dealing with a very, very upsetting case involving somebody I know very well in my constituency who has been subject to appalling psychological bullying but of a kind where there was no criminal content, so I well understand where you are coming from, but I still feel a little uneasy about some of the things you are saying to us. What sort of matters could come under the category of rape and sexual harassment that are not criminal? I do not mean that naively at all, but could you just expand on what you mean by that?

**Dr Atkins:** I apologise if I was not clear. If there is any suggestion of behaviour that could constitute a crime, so rape or sexual assault, the police—whether it is civilian police or military police—will be brought in. You talked about psychological bullying, and there can be bullying where it would not be appropriate to bring the police in. It would be a civil—not a civilian—matter.

**Q29 Mr Brazier:** In the bar chart in your report, what is the category of rape and sexual assault referring to?

**Dr Atkins:** I do not have criminal categories in my report; I talk about where people come to me to say that they have been bullied. I will give you an example. I had a soldier who came to me who talked about a pattern of bullying by his peers and by his junior NCOs, both at home and on operations, which ended up with an assault by individuals unknown, which had followed threats. You very often get cases—it could be criminal damage—where somebody has been bullied, picked on, undermined and threatened, and then their room is trashed and their belongings are taken.

Part of that may be criminal behaviour, but there is a broader context here of bullying behaviour. If you focus on the criminal behaviour, as is right and proper in the criminal justice system, you are holding the perpetrators to account through the criminal justice system, but the individual who is the victim of bullying may actually want something very practical. They may not simply want the individual perpetrators to be held to account; they may want to change their unit or get their property back. They want to feel safe. They may want an apology. None of that is susceptible to the criminal justice system, but just because one part of the behaviour has been dealt with by the criminal justice system, I do not believe that that should stop the focus on the individual to say, "I am sorry, you were wronged."

I talked to a commanding officer the other day who had not understood that point. He thought that he had dealt with the criminal behaviour and there was nothing more he could do, and I said, "Actually, you have to now address whether the individual victim was wronged and what they want." He said, "I have absolutely no doubt that they were wronged. I was not able to find the perpetrators guilty of the whole list of criminal offences that were put to me to decide, but I have no doubt at all that the individual was wronged." We can now seek to try to put him in a place where he would have been, had he not been suffering this bullying and harassment.

**Q30 Mr Brazier:** Okay. I understand that. In the context of operations and so on, I am thinking of some of the individual constituency cases that I have dealt with over the years. I wonder how much can be done outside the chain of command, but I will not trouble the Committee with some hard cases. Can I ask you what, in your view, are the reasons for the rise in potential non-prescribed complaints about medical treatment and what action has been taken to address that?

**Dr Atkins:** Last year, we saw a rise in complaints about medical treatment and this year the numbers are down again.

**Q31 Mr Brazier:** Could you give us some examples, rather than the statistics?

**Dr Atkins:** On medical treatment, there were examples—I do not want to go into too much detail—of families who were given the wrong advice or were treated discourteously at a time of tremendous domestic family stress. It was how they were treated by the doctors. There can be examples of the individual having a weight fracture or some impact

from physical training. There can be many stress injuries that are not picked up or given the right physiotherapy and those issues are continuing.

There is a phenomenal range of complaints that you would expect about doctors and medical services, which are provided in this country by Defence Medical Services as primary care and overseas as secondary care. There are a whole range of issues. I worked, and work, closely with the Surgeon General and his heads of the medical services in each of the three services and we discovered in 2011 that there was no clarity on how to make a medical complaint in many of the medical practices or in the hospitals overseas, and there was not an extant medical treatment complaints system in place. Actually, the complaints that were coming to me were largely because people could not make the complaints. They have worked on that and we will get the full figures at the end of this year, but the number of complaints to me about medical treatment have gone down.

**Mr Brazier:** Thank you.

**Q32 Mrs Moon:** I wonder whether I could go back to some of your answers to Ms Mordaunt's questions. You talked about people on operations. Are you happy that service personnel on operations have adequate opportunities to raise complaints?

**Dr Atkins:** I know that they do make complaints and I know that they come to me on operations. We had 11 individuals contact us last year. We had six from Afghanistan. We have had six this year and we get complaints from Kenya and Brunei and other places where people are on operations. One of the ways in which I publicise my services is a public broadcast advert with BFBS and it is interesting, particularly on operations, the number of soldiers, sailors, airmen and airwomen who say that they have seen the advert so they know they can e-mail me.

I know that individuals also make complaints on operations without coming through me, because all you need to do is write your complaint and sign and date it and commanding officers can then deal with it. I have talked with commanding officers—I help train commanding officers designate before they take up command in all three services and have done for three years—who have dealt with complaints quite successfully on operations.

What confidence can I have that anybody who is suffering on operations does feel comfortable about making a complaint? Well, I cannot say hand on heart that they can do that, because there could be all sorts of reasons why they may not feel confident about doing so, but I am notified of all non-explainable, non-combat deaths, as you know, and I am getting complaints from operations. So, I know it happens. It is an area to keep looking at.

**Q33 Mrs Moon:** Is there a difference in the complaints, in any way, that you get while people are on operations? Do they have a different focus? Are they usually around any particular area? Is there anything that makes them unique?

**Dr Atkins:** They tend to fall into three categories. The first is bullying. That can happen particularly if they are augmentees, either regular or reservist—they have

not gone out as part of a unit, they are put into a unit and people are picking on them and undermining them. That is one category.

The second category is about pay and allowances. In this annual report I gave as an example a case study of somebody who was in Afghanistan on operations and discovered by checking his bank account that he had not been paid. He queried it and was told that he had left the services; he said, "No, I don't think so; I think I am in uniform and in Camp Bastion." So, the second category is if something has gone wrong with pay and allowances.

The third category is about when something has gone wrong at home, and being away from home and worrying about whether it can be resolved. When they come to me in that category, we can give them assurance that they have logged it with us, they do not have to worry about it and, if it is something that needs to be sorted out urgently, like them not being paid, we will try to sort it out. Otherwise they do have time to pick it up when they come back, because that is an exception to the three-month rule. It tends to be those three categories.

**Q34 Mrs Moon:** You also mentioned that you would refer something on to either the military police or the civilian police. If the complaint relates to the military police, where do you go? Do you refer it always to the civilian police? If a complaint was about someone in the military police and there was an element that you felt needed to be followed up by a police investigation, would you put that to the civilian police? Where would you go with it?

**Dr Atkins:** If they are making a service complaint, it goes to their chain of command, so it would go to their own commanding officer. If they are not in the service police themselves, it will go to their chain of command outside the service police. If it is about the behaviour of a particular service police force, it will very often be investigated by another service police force, if it relates particularly to criminal wrongdoing. So there is that barrier. If the complaint is by a member of the service police, then clearly it goes to their chain of command. That is where having me oversee their complaint is very important.

I have raised the issue of service complaints about the service police in my annual reports—I worked very closely with the former Provost Marshal (Army) and the Provost Marshals, and I am seeing the new Provost Marshal (Army) in a couple of weeks—saying that they needed to have proper professional standards departments. There has been a programme of work with HMIC and the civilian police to do that. But I am concerned that, uniquely of the police forces in this country, they do not have effective independent oversight. Service personnel who make complaints about the service police are in the same position as citizens and members of the public who make complaints about the civilian police. I know that the MOD and the service police are seized of this. I did make a recommendation that, when a complaint about the service police gets to the defence council level, there should be two independent members sitting on the service complaints panel. That has not yet been adopted.

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**Q35 Mrs Moon:** That is very helpful. Can I clarify a third area that you touched on, which is to do with deaths? Where you have been party to an investigation of a complaint and someone dies—someone who has left military service or who remains in military service—in theatre, in an accident or by taking their own life, what do you do with that complaint and do you pass details of it on perhaps to a coroner? Where does it go? How do you ensure that justice does not end because the person has died?

**Dr Atkins:** If someone has made a complaint to me and I have referred it and it has become a service complaint, and then they die, that is the end of it. That is because a service complaint is a workplace grievance and can be taken only by the individual who is the service member. That can be very distressing for the families. Last year I had two members of the services who had raised complaints—they were long, ongoing complaints—and they died for reasons totally unconnected with their service and with their complaint. In one case, the family was extremely distressed—in both cases, actually, the families were extremely distressed—that the matters that their loved one had started to raise would not be investigated. In one case, the individual about whom the complaint was made was also very distressed, because they felt that they had lost the opportunity to clear their name, as it were. So that is the first thing.

If we have been approached by somebody about a complaint, but they do not consent for us to put it to the chain of command, there is nothing we can do. When I am notified of non-combat, non-explained deaths, what we will do is check against our contact list to see if there is anything that we know—whether we have been contacted by that individual or if there is anything in the circumstances there, that would then be information we held that would need to be given to the coroner. So far, we have not been in that circumstance.

What I would say is that that is a really good demonstration of the difference between a Service Complaints Commissioner who is linked to service complaints and an ombudsman. I do think there is a gap there. I have talked about it in an earlier report and with the Committee the last time. I am approached from time to time by families who say that something had gone wrong in the service life of the person who has died, and there is nothing I can do. What I will do is offer to write on their behalf, but it is totally outside my statutory remit, because it has to be a service complaint to be within my remit.

**Q36 Mrs Moon:** Again, if I can pick up on your comment about reservists. We are expecting an increase in the number of reservists. As that is going ahead, will we need to have a new process? Has any work been undertaken to look at the impact of changes in the numbers of reservists in relation to their access to service complaints and how they would be dealt with?

**Dr Atkins:** I do not believe there would need to be a new process. About 9% of contacts with my office are from reservists. Some of those are individual reservists. Some of them are reservists on full time contracts. I have visited TA units and naval reserve

units and talked about this. My office has also picked up with the lead in the MOD on the reservist policy about the changes that need to be made to communicate information about service complaints; how to make them, information about the Service Complaints Commissioner and information about terms and conditions which can give rise to complaints. The communication of those is not good. There also needs to be better access to JPA, which is the personnel administration system. That is all part of the future reservist 2020 plans. Some thought is being given to what is required.

**Q37 Chair:** Can I talk about reviews of the entire process of the Service Complaints Commission? In your 2011 annual report, you said: “In my Annual Report for 2010 I reviewed the performance of the Service Complaint system, against the three year goals”. You also said: “A review started in summer 2011 but is not now due to be completed until May 2012... I have expressed concerns about its design and approach as well as timing”. That implies that the first review was undertaken by you, but the second was undertaken by someone else. Is that right?

**Dr Atkins:** Not quite. What I did at the outset was put out a vision in six goals of what I hoped the service complaints system would look like by 2010. I assessed the progress of that 2010 report and said I thought the service complaints system was over-engineered and the powers and resources of the Service Complaints Commissioner were insufficient. I looked at different models of strengthening the role and simplifying the system, but because I wanted the MOD and services to take ownership of the need for reform and the changes to be made, I recommended that they should do a review, taking into account my report and recommendations in 2010. I made that recommendation in December 2010—nearly two years ago—at the service personnel board and I presented them with two models. One was the service complaints system—not if they went through their time targets, but if they went through the tougher time targets as originally envisaged in 2007. The minimum amount of time to get through that was 50 weeks. The minimum period for the civil service workplace grievance system or the customer services complaints system that applied, for instance in Germany, was between 20 and 24 weeks. I said to them: “Look, basically, your system is designed to be too long and it’s just too complex”. So I recommended a review. The MOD and services agreed that they would start a review—

**Q38 Chair:** And that itself turned out to be too long and too complex.

**Dr Atkins:** And that did not conclude until this summer.

**Q39 Chair:** So exactly the same complaint that you could make about the system, you could make about the review. Would that be fair?

**Dr Atkins:** I think it was too long and—

**Q40 Chair:** That is a yes.

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**Dr Atkins:** It wasn't fundamental and I didn't think the methodology was going to achieve what they wanted.

**Q41 Chair:** Well, the MOD itself says that the system suffers from demand for resources, delay and appeals. Would you agree? The MOD assessment is that the three main factors affecting the performance of the system are demand for resources, delay and appeals. Would you agree with that?

**Dr Atkins:** Yes.

**Q42 Chair:** What do you think they are doing to put it right? Do you think it is enough or too slow?

**Dr Atkins:** Both.

**Q43 Chair:** It is too slow?

**Dr Atkins:** I think the pattern over the last few years is slow. I have expressed doubts as to the changes that they propose making. Whilst beneficial in themselves, they are tweaking a system which needs to be fundamentally redesigned and simplified. I gave my solution in my annual reports—

**Q44 Chair:** Which was the ombudsman.

**Dr Atkins:** But it is a package—it is an ombudsman for external protections, which means that you can strip out and simplify some of the procedures. I was talking to Ms Mordaunt about what the Navy has done. Part of that is cultural, part of that is not focusing on process, but it is understanding what a workplace grievance is for. It is, when something has gone wrong, to get your concern to the individual who can do something about it quickly enough so that they can establish the facts, deal with everyone fairly and come up with a practical solution. If it is that you are not getting your pay paid correctly, it is about getting to the person in the system who can sort out your pay and who is also looking at all the pay complaints and can then say, "Actually, we have a problem here."

In this annual report, I talked about the case study of the person who discovered on operations that he had been discharged. That happened again this year. Why does it happen? Someone put in the wrong date, or the system automatically made the wrong date, so that when the person applied for discharge—they have to serve 12 months' notice—they were discharged from that day or the day after and the pay automatically stops. It is a system weakness, or it is a human fault with a system weakness. It should not happen that individuals who are serving do not get paid. It should not happen the first time, but it jolly well should not happen more than once.

Apologies, but you can see that I feel things need to be sorted out and to be sorted out quickly.

**Chair:** Yes, well, that is what you are there to achieve, and we very much hope that you will. So there are improvements to be made and one of those is instigating studies yourself.

**Q45 Mrs Moon:** When I worked in the inspectorate, I tried to tell people, "Complaints are your best friend." You do not need to improve practice if you get a compliment, but a complaint will show you how you can make more people happy; so always listen to

complaints, because there might be a gem, a peach of a piece of information there, that you are turning your back on.

I am intrigued by your suggestion—and quite shocked, in fact—that you are not able to instigate studies other than those you are directed to undertake by the Secretary of State; nor indeed are you able to undertake studies that the Defence Committee might like you to undertake. If you were given free rein, after your period in office, what would you want to undertake a study into? Is there anything that you feel we need to shine a light on? If it was in your power, what would you do?

**Dr Atkins:** I would look at the cases of bullying, which include assault, and the issues to do with mental health, access to services, race—the issues I talked about—and the handling of those cases. That is because—I was speaking with the junior Minister about this a few weeks ago—the cases that are coming up now are not from a particular part of the Army, and they are very similar to the cases that were being brought up years ago, historical cases, involving practices that people thought were no longer taking place. They are initiation ceremonies. In the past few weeks I have done visits to units and been told about issues that have not come my way as complaints, but they have been dealing with those issues as well. There is a problem out there. I am pleased that individuals are beginning to raise them, but actually we need to do some work.

That is what I would do, and that is I think what ombudsmen do. They have this broader view, whether they be the health service ombudsman, parliamentary ombudsman or the Children's Commissioner, who today has powers to do research and inquiries. They can pull together in an informed and responsible way evidence across the piece and put it forward in a way that is very valuable to the organisation that they oversee.

**Q46 Penny Mordaunt:** Do you have enough resources? If not, what additional resources do you require?

**Dr Atkins:** No, I do not have sufficient resources. The Chairman talked about the review; at the end of the review, the MOD's conclusion was that the solution was actually to keep the status quo, but to formalise what I had already been doing in practice, which was intervene, ask questions and spot where things were going wrong. At that point, we predicted that we would have 1,000 open cases. As of today, it is just slightly less than that, but the MOD accepted at the time that in order to deal effectively with the model that they were putting forward, I would need 15 caseworkers. In July this year, I got my fourth. That was one reason why I refused to accept the model that they put forward. They had made it quite clear that resources of that scale were not available.

The alternative interim proposal that I put forward will need more resources. I have asked immediately for an additional senior caseworker to make the new model work effectively. We will be introducing that model in the transition over the next year. Part of the transition is to review what the resources are, and to see what we need.

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I am not here to make a huge bid for resources. In a time of financial constraint, I am looking for an effective, efficient and fair system. Apologies for going back, but I cannot stress this sufficiently: the rejection of my proposal for an ombudsman and a simplified system is a lost opportunity.

**Q47 Penny Mordaunt:** If you could make some decisions, you could put resources where they were needed.

**Dr Atkins:** If I could make decisions, I could provide the external protections on fairness. The services could deal with cases in a much firmer way and be more confident in making the decisions. If people did not like their decisions, they would have somebody external to go to. It is exactly the same as when I was the first chief executive of the Independent Police Complaints Commission. On average, it took two years for the police to investigate homicides following police involvement. We reduced that in the first year to six months because somebody external was either investigating or overseeing it.

I do not have insufficient resources. I have the resources that I bid for in 2008. As the Chairman said, they have taken a long time to come. I do not have sufficient resources for the model, but I have asked for them and I understand that that is being looked at now. I have asked for very minimal additional resources, but I have not got resources to do the work, even participating in inquiries of the type that we talked about and I believe are necessary.

**Q48 Chair:** So when the MOD says that they have met all of your requests for funded posts and for additional resource, that is not quite right.

**Dr Atkins:** With one exception, it is technically correct. There are subtle ways that I have talked about, but I have been dissuaded from making bids for resources. I have to say that I have had absolutely no compunction in going to the service boards and telling the service boards that they need to put extra resources in. The Army has done so and so has the Navy as a result of that. It is very difficult to plead your own case.

I think you will remember, Chairman, that I said at the outset that I wanted to be able to recruit my staff from across the civil service, rather than from the MOD as a matter of principle. I made that request very formally, but the Permanent Secretary refused that request and said it would be looked at on a case-by-case basis. The Permanent Secretary pointed out that, every time I had made a case, it had been acceded to, but that takes a lot of time, because every time I have to make a business case. Contrary to when I was set up and I had staff from other Government Departments on secondment, the staff who came to work in my office now are all MOD civil servants, even if they came from another Government Department.

**Q49 Chair:** You are stopping next year—sorry, not next year. You are stopping in March 2014. I sense a certain frustration with the pace of change that you would like to see. Is that fair?

**Dr Atkins:** The end of my second term is March 2014, so there is still a lot of life and energy in the Service Complaints Commissioner yet, but I have made recommendations and they have taken a very long time to be put into place.

**Q50 Chair:** Your successor should have what sort of qualities?

**Dr Atkins:** I think there are three aspects. First, I believe very firmly that they should not come from a military background. The Act says that the person should not currently be in the military or in the civil service, but I think that they should be from outside the military. That is for two main reasons. First, the military is quite a closed world, and the real value to the services and the MOD is in having somebody who comes with an outside perspective. The Service Chiefs have actually said that that is what they value, because I can look at their perspective on things, and I can say, “Yes, you’ve got that absolutely right,” or I can say, “Actually, there is a different way of looking at that.” They find that very valuable. The second reason is the confidence of service personnel and the number of people who come to me, or whom I meet on training sessions or when I am out and about, and say that if I was from a military background, they and their families would not have used my services. I feel very, very strongly that that is what is required, predominantly.

Secondly, in terms of personal qualities, somebody who understands and has a good grasp of both justice and fairness and cultural and organisational change is very important, because you need to be able to understand, respect and value the services you are working with and work with them to improve. In my experience that has been very, very important.

The other aspect, and I have already started discussions with officials on this, is that I think the post needs to be full-time.

**Q51 Chair:** Do you not work full-time?

**Dr Atkins:** No, I work three days a week.

**Chair:** Okay. Right.

**Dr Atkins:** When I was appointed people didn’t understand—

**Q52 Mrs Moon:** Do your four members of staff work full time?

**Dr Atkins:** I have eight members of staff, four caseworkers, and they all work full-time. My staff have worked full-time from the outset, although when I was appointed I was asked to work two and a half days a week and have two staff who worked two and a half days a week. I said that that was not sufficient.

**Q53 Chair:** So will you have any say or input into who your successor is?

**Dr Atkins:** I hope I will be consulted, but I think it would be totally inappropriate for me to be part of the process.

**Chair:** Right, I see. Well, we very much hope that we will see you again before March 2014, because we always enjoy and appreciate what you tell us and what you do, so thank you very much indeed. Are there any other questions? No. Dr Atkins, thank you very much

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indeed, and Mr Beck, thank you as well for coming along and for being able to sit so silently for so long.

**Dr Atkins:** I have to say that he has been invaluable in making sure that we give you the correct information. Obviously, if on reflection there is anything you did not ask and would like us to provide, we will be very happy to do that.

**Chair:** I think that there may well be. We will want to think about this, and we may well want to ask you some written questions, but according to past form that will not cause you any problem.

**Dr Atkins:** Thank you very much.

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# Written evidence

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## Written evidence from the Ministry of Defence

1. This memorandum provides the HCDC with information for its inquiry into the effectiveness of the Service Complaints Commissioner (SCC) for the Armed Forces, including the resources and powers available to her, the complaints system (including possible improvements), and the Commissioner's relationship with the MoD and each of the individual Services.

### EFFECTIVENESS

2. 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 in 2008. The HCDC will have seen in our formal responses to each of the SCC's four Annual Reports, MoD's views and opinions on the role of the SCC and our comments on and actions in response to the recommendations she has made.

3. To deliver a fair, effective and efficient complaints process, MoD (including the Services) has continually reviewed, developed and implemented changes to process, policy and to single Service complaints handling organisational structure since the introduction of the new Service complaints system. Many have come from specific recommendations made by the SCC in her annual reports and, together with those identified by the Services through continuous improvement work, have improved considerably the manner in which complaints are now managed. Details of these changes and improvements are reported in the SCC's Annual Reports and in MoD's formal responses to them, which can be found [in the following reports]:

- Service Complaints Commissioner's Annual Report 2008.<sup>1</sup>
- Service Complaints Commissioner's Annual Report 2009.<sup>2</sup>
- Service Complaints Commissioner's Annual Report 2010.<sup>3</sup>
- Service Complaints Commissioner's Annual Report 2011.<sup>4</sup>
- MoD's Formal Response to the SCC's Annual Report for 2008.<sup>5</sup>
- MoD's Formal Response to the SCC's Annual Report for 2009.<sup>6</sup>
- MoD's Formal Response to the SCC's Annual Report for 2010.<sup>7</sup>
- MoD's Formal Response to the SCC's Annual Report for 2011.<sup>8</sup>

### SCC POWERS

4. In her Annual Report for 2010, the SCC made four recommendations and considered a number of options for strengthening her role (pages 68–78, recommendations 10.17–10.20), concluding that the role be changed to one of an ombudsman (page 76, paragraph 6). These recommendations were considered as part of a review of the Service complaints system which had been directed by the Service Personnel Board (SPB) at the end of 2010 and then recommended by the SCC in her annual report for that year (page 61, recommendation 10.9). The review concluded in June 2012 that it did not support the SCC's recommendation that the role become an ombudsman but accepted that greater benefit could be gained for the fairness, effectiveness and efficiency of the complaints system if the SCC offered views on process whilst complaints were still live.

5. As a result, and with the aim of making best use of all resources and enabling her post to focus better on tackling undue delay, the SCC subsequently put forward an alternative, non-ombudsman model for her role. Following further detailed consideration of the proposal between MoD and the SCC, it was taken formally by the SPB in September 2012 and a phased introduction of the new model from January 2013 was agreed. As it is difficult to predict exactly how the new system will operate, to quantify its impact on resources or to determine whether it will indeed bring the benefits anticipated, we will closely monitor the operation of the new system from the outset so that we can adapt and refine it based on experience.

6. The new system of engaging with the SCC aims to ensure that maximum value is derived from her involvement in and oversight of the complaints process, and that her post can act more effectively than currently to tackle delay, all within current legislative powers. It seeks to reduce bureaucracy, to the benefit of both the SCC's office and the single Services, given the ongoing pressure on resources, and to hold the Services to

<sup>1</sup> [http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/423526\\_sccar\\_annualrep\\_tag.pdf](http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/423526_sccar_annualrep_tag.pdf)

<sup>2</sup> [http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/scc\\_2009\\_ar.pdf](http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/scc_2009_ar.pdf)

<sup>3</sup> [http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/scc\\_annual\\_report\\_2010\\_with\\_erratum.pdf](http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/scc_annual_report_2010_with_erratum.pdf)

<sup>4</sup> <http://armedforcescomplaints.independent.gov.uk/linkedfiles/afc/independent/sccannualreport2011web.pdf>

<sup>5</sup> [http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2009-07-06&td=2009-07-07&search\\_term=Ministry+of+Defence&itemId=120095#toggle-1913](http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2009-07-06&td=2009-07-07&search_term=Ministry+of+Defence&itemId=120095#toggle-1913)

<sup>6</sup> [http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2010-09-14&td=2010-09-14&search\\_term=Ministry+of+Defence&itemId=120095#toggle-1706](http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2010-09-14&td=2010-09-14&search_term=Ministry+of+Defence&itemId=120095#toggle-1706)

<sup>7</sup> [http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2011-07-11&td=2011-07-11&search\\_term=Ministry+of+Defence&itemId=120095](http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2011-07-11&td=2011-07-11&search_term=Ministry+of+Defence&itemId=120095)

<sup>8</sup> [http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2012-05-24&td=2012-05-24&search\\_term=Ministry+of+Defence&itemId=120095](http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2012-05-24&td=2012-05-24&search_term=Ministry+of+Defence&itemId=120095)

account for fair, effective and efficient handling of complaints, in a way that provides for improved and effective performance management of the complaints process. It complements the incremental changes agreed by the SPB in June following conclusion of the complaints review (see paragraph 15).

7. The SCC will retain her powers of referral and oversight of referred cases in line with existing legislation, but the following changes will be made to process in respect of allegations she refers to the chain of command:

- (a) *Discontinuation of SCC 30-Day Updates.* The current policy requirement for the SCC to be updated on the progress of complaints every 30 working days that they remain live has been seen by some as bureaucratic and time consuming for all to administer, often adding little to understanding of the reasons behind delay or the action being taken to mitigate it. It will therefore cease, and be replaced by updates that are triggered by specified events (eg withdrawal or conclusion of a complaint, or referral to a further level);
- (b) *Involvement in Live Complaints.* Recognising the value that the SCC can add when complaints are still active, a mechanism will be introduced by which the SCC can offer views on process, for consideration by the relevant single Service, whilst a complaint is live. The presumption is that, at this stage, no further correspondence would be entered into, but when the complaint is concluded, the SCC would review the case, including seeing what consideration was taken of her earlier comments. The SCC may subsequently seek a further response from the Service on any process matters about which she remains concerned. Depending on the response received, the SCC would then have the option of submitting to higher levels including, ultimately, reporting to the Secretary of State in line with powers in existing legislation.

8. There will also be a phased introduction of a system, for all Service complaints not just referrals, aimed at assuring the SCC that the Services have in place an effective process for monitoring the progress of individual complaints, and can identify and mitigate undue delay. The Services will be responsible for setting interim markers for a complaint, at intervals that they judge appropriate to that complaint within the overall timeline for complaints to be resolved. They will use these markers to monitor progress on the complaint, and reach a judgement on whether the overall timeline is likely to be exceeded. Each Service will flag up to the SCC those complaints they believe will exceed the timeline and, later in the process, those which have already exceeded it, with a brief explanation of why delay has occurred. Again, there is an option for the SCC to seek a further response if she has concerns about the extent to which action has been taken to mitigate undue delay, and for referral to a higher level including ultimately by a report to the Secretary of State. As with the new process at 7b above, the aim here is to give the SCC insight into the causes of undue delay, the effectiveness of the Services' monitoring of cases and to gain evidence for learning lessons. For 2013 these reports will be produced bi-monthly, for the first six months for SCC-referred cases only and thereafter for all cases. The aim is that reporting will become monthly from January 2014.

9. The SPB determined that there was potential for these changes, along with others agreed as a result of the complaints review (see paragraph 15), to further improve the complaints process such that it could be fairer, more effective and more efficient. Progress will be closely monitored at working level and reported to the SPB.

## THE SERVICE COMPLAINTS PROCESS

### *When it was introduced*

10. The new Service complaints process was introduced by the Armed Forces Act 2006 (AFA 06) and came into effect on 1 January 2008, replacing the separate single Service legislation and processes that had previously existed. Joint Service Publication (JSP) 831 Redress of Individual Grievances: Service Complaints provides the policy and guidance for all those involved in processing or deciding a Service complaint, as well as the individual seeking redress.<sup>9</sup>

### *Aim*

11. The aim of the Service complaints process is to provide members of the Armed Forces with a fair, effective and efficient method for obtaining redress for grievances. Increased independence, timely handling of complaints and instilling confidence in Service personnel about the efficiency of the complaints process were key policy considerations behind the construct of the new complaints process. This was against the backdrop of calls for greater independence in the process, particularly in respect of complaints of bullying, harassment and other improper behaviour following the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002.

### *Who it applies to*

12. Any person subject to Service law who thinks they have been wronged in any matter relating to their Service, including bullying, harassment, discrimination, and biased, improper or dishonest behaviour, has a statutory right to make a Service complaint. This includes both regular and reserve service. Individuals who are no longer subject to Service law, through having left the Armed Forces, also have the right to make a Service complaint if the matter which they are complaining about relates to their Service, occurred whilst they

<sup>9</sup> <https://www.gov.uk/government/publications/jsp-831-redress-of-individual-grievances-service-complaints>

were still subject to Service law and is submitted within the stated time limits (JSP 831 paragraph 2.12 refers). Service complaints must normally be made within three months, beginning with the day the matter complained of occurred. JSP 831 provides guidance on the procedures to follow for the submission and handling of complaints raised by both existing and former Service personnel, including the time limits that apply (JSP 831 paragraph 2.3 refers).

#### *Process*

13. The Service complaints process has three levels with the aim of resolving complaints at the lowest most appropriate level within the chain of command that has the power to grant redress. The levels are Commanding Officer, Superior Officer and Defence Council (Service Board or Service Complaint Panel). At the third level, the Board or Panel operates with the delegated powers of the Defence Council. Panels were introduced for the first time under AFA 06. The expectation is that a complaint at this level will usually be dealt with by a Panel, and should be so if the complaint involves bullying, harassment or improper behaviour. Where this is the case, an independent member (non civil service or military) is to be included on the Panel. Some cases will be retained by a Board, for example if they involve issues that have wider Service implications. Panels were introduced as a further element of independence, but also to reduce the burden on Service Boards which had led to a delay in cases being heard and resolved.

#### IMPROVEMENTS—REVIEW OF THE SERVICE COMPLAINTS PROCESS

14. The HCDC will see in MoD's formal response (paragraph 7) to the SCC's Annual Report for 2010 that a review of the Service complaints system commenced in 2011. The purpose of the review was to scrutinise all elements of the existing process to assess the scope for substantially reforming and shortening the process to make it as fair, effective and efficient as possible. In her Annual Report for 2010, the SCC had also recommended (page 61, recommendation 10.9) that the complaints system be subject to a fundamental review. For the purpose of taking this work forward these reviews were conducted as a single body of work and considered in the course of the review, those recommendations made in the SCC's Annual Report for 2010 (pages 68–78, recommendations 10.17–10.20) regarding the powers and remit of the SCC role.

15. The findings of the review were considered by the SPB in June 2012 with the SCC in attendance, and agreement was reached on a range of actions to be taken forward. 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 at paragraph 7);
- *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 (complemented by the changes at paragraph 7); 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 will be updated on progress against these actions, and against recommendations from earlier annual reports where necessary, later in the year so as to inform her next report.

#### GENERAL QUESTIONS

MoD understands that it may be of help to the Committee members to clarify some particular aspects of the policy and process of the complaints system.

#### TYPES AND NUMBER OF COMPLAINTS

16. Since the introduction of the new Service complaints process on 1 January 2008, the SCC has published in each of her four Annual Reports information on the numbers and types of allegations made to her office and which she has referred to the Services, as well as an overview of the numbers and types of Service complaints submitted directly to the chain of command. This information can be found in each of the SCC's Annual Reports as follows:

- Service Complaints Commissioner's Annual Report 2008 (pages 38–52 & 54–56).
- Service Complaints Commissioner's Annual Report 2009 (pages 16–17 & 32–36).
- Service Complaints Commissioner's Annual Report 2010 (pages 13–24).
- Service Complaints Commissioner's Annual Report 2011 (pages 13–30).

17. The number of new complaints submitted has risen steadily each year since 2008, from around 250 in that year to over 800 in 2011. This trend can reasonably be expected to continue on the same path for the foreseeable future, not least if confidence in the process (as shown in responses in the Armed Forces Continuous Attitude Survey and Recruit Trainee Survey) continues to build as the SCC suggests in her 2011 Annual Report (page 24, paragraph 1). The MoD's strategy is to continue to encourage greater awareness and use of the complaints system.

18. A surge in the volume of complaints has the potential to create backlogs, and MoD therefore seeks to anticipate when these might occur so that mitigating action can be taken. The redundancy programme created such a potential, in response to which a bespoke appeals procedure was put in place that was extremely successful in resolving the overwhelming majority of queries without recourse to the Service complaints process. We remain alert to the possibility of situations of this kind arising in the future and for which a similar approach might be appropriate.

#### SERVICE COMPLAINTS COMMISSIONER

##### *Post*

19. The post of SCC was created by AFA 06 with a remit which covers relevant complaints made after 1 January 2008. It came from recommendations made by the then Nicholas Blake QC in his review into the deaths of four soldiers at Princess Royal Barracks, Deepcut, and the HCDC's report on Duty of Care in 2004–2005. The SCC has a two-fold role:

- to provide an alternative point of contact for Service personnel, or someone acting on their behalf, such as a family member, a friend or MP, who for whatever reason does not have the confidence, or is not able, to raise allegations of bullying, harassment, discrimination or other improper behaviour directly with the chain of command; and
- to provide independent assurance on the fairness, effectiveness and efficiency of the Service complaints system to Ministers, the Services and Parliament by way of an annual report.

20. Dr Susan Atkins was appointed as the first SCC on 1 December 2007 for a three year fixed term appointment. This was later extended by four months to the end of March 2011 to reflect the rhythm of publishing the annual report. The HCDC was notified of the decision to subsequently reappoint Dr Atkins for a second and final three year term to 31 March 2014.

21. The office of the SCC is located in a non-MoD establishment in central London. Having started with a team of two individuals in 2008, one of whom was her Executive Assistant (EA), the SCC's team currently stands at four caseworkers, a Communications Officer, an Audit Manager, an EA and a Head of Office, MoD having met all of the SCC's requests for funded posts and additional resource.

#### CONCLUSION

22. The MoD welcomes the Committee's intention to conduct a further inquiry into the effectiveness and role of the SCC. It believes the solid foundations laid by Dr Atkins, and the range of implemented and planned improvements to the Service complaint 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.

*October 2012*

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### Further written evidence from the Ministry of Defence

Q1: *Please can you give some further information on the use of specialist investigators, including targets and numbers?* (See oral evidence transcript Q 8–9)

Q2: *Please can you update us on the recruitment and role of Harassment Investigation Officers referred to in your 2011 Annual Report? Was the target of 50 HIOs reached as planned by August 2012? (As a point of clarification are these different to the Specialist Investigators referred to in Q 1 above?)*

In the context of the transcript from the oral evidence session with the SCC, we can confirm that the “Specialist Investigators” referred to by the Commissioner are the same as HIOs. Therefore, these two questions are answered as one.

On 1 February 2012, MOD introduced a new service to provide a cadre of Fee Earning Harassment Investigating officers (FEHIOs) to investigate MOD Civilian and Service bullying and harassment complaints. These individuals are from outside of the MOD and are engaged to undertake investigations on an ad hoc basis. The Full operating capability of a cadre of 50 trained FEHIOs was achieved as planned by 1 August 2012. The strength of the cadre is closely monitored and maintained by additional recruitment of officers as and when required. There are currently in the region of 60 FEHIOs in the cadre who can be called upon to conduct investigations.

The new service was set up following the outcome of a review into the way in which such investigations were being carried out, which found that the use of volunteer investigators (whether civilian or Service) was not the most efficient means by which to conduct investigations. Volunteers were increasingly finding that pressure from their primary role was preventing them being released to conduct investigations, with consequences for the timely conclusion and quality of investigations.

The new FEHIO service is based upon the principle that it should support the timely and thorough completion of investigations once the need for an HIO has been identified. The aims of this service are to remove delays in the appointment of HIOs and in their subsequent production of reports, and to improve the quality of investigations given that the FEHIOs will be conducting investigations on a more regular basis (unlike the civilian and Service volunteers for whom this was a secondary role). To that end, FEHIO terms of reference make it clear that investigations are to be carried out thoroughly but in a reasonable period of time. The timescale will be for investigations to be completed and a final report submitted within 30 working days of the FEHIO being appointed. There will be close liaison between FEHIOs and Deciding Officers (DOs) to ensure that delays due, for example, to the unavailability of witnesses are understood by all parties to the complaint, and that by exception reasonable extensions to the investigation are agreed. The need for the HIO to report to the DO on progress every five working days beyond the 30 working days timescale will ensure that momentum is not lost.

There is a system in place to ensure that investigation reports are of good quality and delivered within the timescales, and that there are sufficient individuals in the cadre to meet demand.

*December 2012*

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### Written evidence from the Service Complaints Commissioner for the Armed Forces

Q1. *What will be the impact of allowing you to be involved in live complaints?*

From the start, I have been able to oversee any complaints about which I have made a referral. The gap in my powers has meant that if there has been delay or I have spotted a defect in handling of a complaint, I have had no power to intervene effectively. My ability to make a difference has depended on soft power and the willingness of the Service/chain of command to take notice. From 2013 my involvement in live complaints should be more effective. Where I am not satisfied with the handling of an individual’s complaint I will be able to make a formal report, with recommendations, to the Secretary of State and comment in my Annual Reports on action taken subsequently to those reports.

This should hold the Services to account on individual cases and focus the chain of command on dealing with complaints promptly and properly. My new powers will provide the opportunity to draw attention to process and handling issues on individual cases before they are concluded so that concerns are taken into account by single Service decision makers. The ultimate impact is to have Service complaints decided reasonably quickly and to be resolved without unnecessary appeals.

The new system may also give visibility to issues that might otherwise go unseen by those not closely involved in handling individual complaints and will allow me to highlight particular areas of concern to the Secretary of State for Defence in advance of my Annual Report.

— *Are you concerned about the discontinuation of 30 day updates?*

The aim is to focus our resources on key stages and on where there appear to be problems. It was my idea for the Services to move from 30 day updates to “event triggered” updates, where I am informed of specific developments in the case. A lot of our resources have been tied up chasing 30

day updates that are late and which, when they do arrive, often tell us very little. These updates also currently take up Service resources that could and should be used in resolving the complaint.

Commanding Officers (COs) will still be required to provide 30 day updates to complainants, as regular communication between the complainant and the CO is important in ensuring the timely and fair handling of complaints.

Discontinuance of 30 day updates therefore carries some risk. However this is balanced by the fact that for the first time we will be informed of all Service complaints that are delayed; and mitigated by the fact that complainants will still be able to alert me at any time to any concerns they have about how their complaint is being handled by the Service. I can pass these concerns to the chain of command and check to see how they have been dealt with.

- *What work is required to implement these changes by you, the MoD and the single Services from January 2013?*

Much work has already been done by my office, the MOD and single Services and this will continue into the New Year. The new approach can be achieved without changes to the legislation and will be set out in a protocol between the SCC and MOD/Services. The MOD will issue a Defence Information Notice to Service personnel early in the New Year and will update the Joint Service Publication (JSP) that deals with Service complaints (JSP831). I will be writing to those whose complaints I am currently overseeing to explain the changes.

- *Has there been sufficient lead in time?*

The new approach is to be introduced in an incremental way that will allow it to be refined based on practical experience (eg introducing it for SCC referrals only for the first six months and building in reviews during the year). Although more lead-in time might have helped refine processes in advance, I was keen for it to start from 1 January 2013 so that I can assess performance under the new way of working over a full year and report on this to the Secretary of State and Parliament in my Annual Report for 2013.

*Q2. The MoD states that it is difficult to predict exactly how the new system will operate, to quantify its impact on resources or to determine whether it will indeed bring the benefits anticipated. What is your reaction to this statement?*

I agree that it is difficult to quantify the full impact on resources, although I anticipate that I will require a modest increase in SCC staff in order to make it a success. Indeed I have already asked for an extra post for the transition year. I am confident that if the MOD and Services fully embrace the new way of working it will lead to improvements in the timely handling of Service complaints. As in very many cases delay fosters complexity, quicker complaint handling will reduce the single Service resource tied up in dealing with complaints. It will also be fairer to complainants and those about whom a complaint is made.

- *The MoD says it will closely monitor the operation of the new system from the outset so that it can be adapted and refined based on experience. What metrics should be used and what will be your involvement in assessing the new system?*

I and my office will be closely involved in monitoring the operation of the new approach with the MOD and single Services and in agreeing any refinements. The key metrics will concern timeliness: the number of cases resolved within and outside the 24 week deadline, by Service, by type of complaint, by level of resolution and by whether the complaint is the subject of a referral by the SCC. I will also assess the response to reports that I submit to the Secretary of State on individual cases.

I will report my assessment of the effectiveness of the new system in my Annual Reports.

*Q3. There will also be a phased introduction of a system, for all Service complaints not just referrals, aimed at assuring the Service Complaints Commissioner that the Services have in place an effective process for monitoring the progress of individual complaints, and can identify and mitigate undue delay. How will you assess this new system and what opportunity will there be for you to suggest improvements and changes?*

(See Q1 and Q2 above). I and my office will be closely involved in monitoring the operation of the new approach with the MOD and single Services and in agreeing any refinements. The new approach is to be introduced in an incremental way that will allow it to be refined based on practical experience (eg introducing it for SCC referrals only for the first six months and building in reviews during the year). We will review the effectiveness of the new approach over the first six months and I will assess performance under the new way of working over a full year and report on this to the Secretary of State and Parliament in my Annual Report for 2013.

- *Under the new system the Services will be responsible for setting interim markers for a complaint, at intervals that they judge appropriate to that complaint within the overall timeline for complaints to be resolved. Will you be consulted on these markers?*

The interim markers are likely to be different for each Service and for different types of Service complaint. I am available to offer advice and guidance to the single Services if they wish but expect them to decide what the interim markers should be. I will be able to assess the effectiveness of the Services' management of complaints in any reports to the Secretary of State.

*Q4. What differences will individual members of the Armed Services see under the new processes?*

The new way of working has been designed to tackle the major cause of unfairness within the Service complaints system: delay. It sets a single clear time target of 24 weeks for new Service complaints to be resolved or finally decided, replacing a complicated set of differing time limits, at different levels and by type of complaint. These were poorly understood by both complainants and the chain of command. The new simple time target should encourage good practice, including good communication, fair and proportionate investigation and reasoned decisions. It should also focus the Services on resolution.

So individuals should see prompter action on any Service complaints from the outset and, in general, decisions on cases within shorter timescales. This will be of benefit to those about whom complaints are made as well as those who raise complaints.

*Q5. Please can you give details of your contacts with MoD Ministers to discuss the new processes and other matters?*

I met the new Minister for Defence Personnel Welfare & Veterans on 7 November 2012 and will be meeting him again in March 2013. I regret that the Secretary of State for Defence has not been open to meeting me since his appointment and I have not had the opportunity to discuss with him my Annual Report for 2011, the Service complaints system and my views on the need for an Armed Forces Ombudsman.

*Q6. In your Annual Report for 2011, you refer to a loophole which prevents a former Service person whose complaint is rejected after they leave the Service from appealing the decision (page 36). How should this loophole be resolved?*

This problem is a consequence of the provisions of the Armed Forces Act 2006 and would require legislative amendment to resolve. Until the legislation is amended, the MOD and single Services could agree to accept appeals from individuals whose complaints have been ruled out of time as if they were still serving. This has been done on an exceptional, but inconsistent, basis in a very limited number of cases.

However, I recognise that the reason for the Armed Forces Act provision was to prevent the Service complaints system being clogged up with complaints that were a long way out of time and being pursued by those who had left the Services; and that it may be difficult to devise a policy which would adequately reflect equity between different types of case, eg a Service complaint made before one individual left the Service may not necessarily be more meritorious than that of someone who only felt able to make a complaint after they had left, for fear of victimisation by bullies. For these reasons my proposal for an Armed Forces Ombudsman, to decide appeals independently against out of time decisions, appears to me to provide the most efficient, effective and fair solution.

*Q7. Please can you give some further information on the use of specialist investigators, including targets and numbers? (See oral evidence transcript Qq 8–9)*

This question should be directed to the MOD.

*Q8. Please can you update us on the recruitment and role of Harassment Investigation Officers referred to in your 2011 Annual Report? Was the target of 50 reached HIOs reached by as planned by August 2012? (As a point of clarification are these different to the Specialist Investigators referred to in Q 7 above?)*

This question should be directed to the MOD.

*Q9. What should your role be in respect of the Armed Forces Covenant and the Annual Report on the Armed Forces Covenant? (See oral evidence transcript Qq 11–12)*

In my last two Annual Reports, I have drawn explicit attention to the work of the SCC and the Service complaints system as an integral part of the Armed Forces Covenant. I therefore regret that I was not consulted by the MOD on the text of the Armed Forces Covenant Report 2012. The MOD has said that I should have the opportunity to comment on statements made about the Service complaints system in future and I have received an apology for the oversight.

However the information we receive from Service personnel and their families also often includes information about the experience of Service life, wider than treatment by the chain of command. There may also be value in the Service Complaints Commissioner being consulted on the draft report as a whole and joining the Reference Group.

*December 2012*

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