

CHAPTER 23

REPRESENTATIONS AND COMPLAINTS

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CHAPTER 23

REPRESENTATIONS AND COMPLAINTS

References:

- A. JSP 831 (Redress of Individual Grievance: Service Complaints) (Jan 16 version)
- B. JSP 763 (MOD Bullying and Harassment Complaints Procedures)
- C. BR 1991 Chapter 10 (Medical Complaints)
- D. JSP 754 Chapter 1 Section 3 Annex C (Pay Complaints)

SECTION 1 - GENERAL MATTERS

2301. Representation or Complaint - Definitions

- a. **Representation.** A Representation is a question or suggestion, orally or in writing, about any Naval Service matter, whether personal or general, that an individual may wish to be considered by a higher authority. A Representation may not seek personal redress whereas a Service Complaint will seek personal redress.
- b. **Service Complaint.** The Armed Forces Act 2006 (AFA 06) gives a person who is subject to Service law and who thinks they have been wronged in any matter relating to their Service a right to make a formal statement of complaint which, subject to satisfying admissibility criteria, is referred to as a 'Service Complaint'. This is a statutory complaint in respect of which redress may be sought and granted. It is made under AFA 06 and in accordance with the policy laid down in JSP 831 and, in the case of formal complaints which make allegations of bullying and harassment, JSP 763. A person who is no longer subject to AFA 06 who thinks that they were wronged in a matter relating to their Service while they were subject to Service law has the same right to make a Service Complaint. A complainant who wishes to make a Service Complaint is to submit a statement of complaint to a "Specified Officer". The Specified Officer is usually the complainant's CO or, for ex-Service personnel the CO of their last unit, but see below for further guidance. The statement of complaint is to be made in writing preferably in the format set out at Annex F to JSP 831/763, signed and dated. The Specified Officer will decide whether or not the statement of complaint is admissible as a Service Complaint (see below) – ie. the 'Gateway decision' - and will inform the complainant accordingly.
- c. **Informal Complaint.** The term 'Informal Complaint' is used to cover all complaints which are non-statutory (ie. not a Service Complaint). They may be made orally (except where a relevant special-to-type procedure requires a written complaint to be made). They include the custom by which a complaint of an immediate nature, other than one about food, may be taken before the Officer of the Watch or the Officer of the Day. Similarly, they include the customary procedure by which complaints of an immediate nature about food in HM ships and establishments under the General mess system may be made. They also embrace informal complaints of bullying and harassment in accordance with JSP 763 or complaints made under special to type procedures eg. in relation to pay. An informal complaint may become a Service Complaint if it is submitted in writing to the "Specified Officer" in accordance with JSP 831 and/or JSP 763 and is deemed admissible by the Specified Officer.

- d. **Combinations.** Every Naval Service person has the individual right to make known to the relevant person in the chain of command any Representation, proper cause of Service Complaint or Informal Complaint relating to their Service. Individuals are not to act together in bringing a Representation, Service Complaint or Informal Complaint, either by the appointment of committees or in any other manner; nor are they to collectively sign petitions (including via social media) or applications, nor obtain signatures to such documents. Each individual must make their own Representation, Service Complaint or informal complaint. Joint Representations or informal complaints by two or more persons are prohibited as being contrary to the traditions and practice of the Service and injurious to its welfare and discipline. As far as Service Complaints are concerned, legislation made under AFA06 prohibits the submission of a joint Service Complaint.
- e. This chapter provides information on the handling within the Naval Service of Representations, Informal Complaints and Service Complaints (SCs) under the Armed Forces Act 2006 (AFA 06). It complements but does not supersede the tri-Service policy set out at References A and B and should be considered alongside other single Service guidance contained in BRd 3(1) Chapter 22 (PFS).
- f. Personnel who submit a Representation, an Informal Complaint or a Service Complaint, or who are required to assist a Complainant (eg. as an Assisting Officer) or otherwise investigate, staff or decide on a Representation, Informal Complaint or Service Complaint are to make themselves aware of both the relevant References above and the relevant contents of this chapter and are to follow the detailed direction and guidance contained within them.

SECTION TWO - SERVICE COMPLAINTS

2302. Statutory Right to make a Service Complaint and its relationship to Employment Tribunals

For all Service personnel, including reservists, the statutory right to make a complaint is provided in law under s.334 of AFA 06. An SC must have been submitted before an Employment Tribunal (ET) has jurisdiction to hear an application from a Service person, guidance on the related area of handling ET casework is also provided at Section 4 of this Chapter.

2303. Sources of Information

Reference A is the authoritative source of tri-Service policy for the management of Formal/Service Complaints. Reference B prescribes the quad-Service procedures to be followed when handling complaints that allege bullying and harassment. References C and D set out the special to type procedures for complaints related to medical and pay matters.

2304. Introduction to the Service Complaints Procedure

a. The Armed Forces (Service Complaints and Financial Assistance) Act 2015 provided for the creation of the role of an Ombudsman and for greater power to be devolved to the Chain of Command which in turn, aims to make the Service Complaints process quicker and improve open communication as well as delivering a system that is fairer, more efficient and more effective. The process strikes a balance between maintaining the authority of the Chain of Command, which must be responsible for looking after its people, and a strong, independent oversight through the Ombudsman. The Ombudsman has a more powerful, independent voice on the Armed Forces' complaints system, holding the Services to account and in turn giving confidence to personnel that their concerns are being looked after properly.

b. A 'complaint' or a 'statement of complaint' will not become a 'Service Complaint' until it has been ruled admissible by a Specified Officer (usually the complainant's Commanding Officer). Once a complaint has been accepted as a Service Complaint it will need to be forwarded to the Navy Service Complaints Secretariat, using e-mail address NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER), who will appoint a Decision Body (DB) to investigate and decide upon the complaint. A DB will, in most cases, consist of a single Service officer but may, where necessary, be a panel of two or more Decision individuals. The DB may or may not be the complainant's CO as, crucially, the appointed DB must have the authority to grant appropriate redress in the event that the SC is partially or fully upheld. In the event that a complainant is not content with the decision of the DB, they may (but not in all circumstances) be able to refer their SC to an Appeal Body (AB) which may consist of a single Service officer but may, where necessary be a panel of two or more individuals, one of whom may be an independent member. Tri-Service policy on the management of Service Complaints is set out in Reference A and also in Reference B in so far as it relates to the procedures for handling formal complaints which contain allegations of bullying and harassment¹. Tri-Service policy is to be followed in all cases, including the recording of Service Complaints on JPA (see also Paras 2326-2326 below).

¹ Formal Complaints of bullying and harassment are a class of Service Complaint.

2305. Service Complaints Ombudsman for the Armed Forces (SCOAF)

The Service Complaints Ombudsman for the Armed Forces (SCOAF) is a Crown Appointment that has significant powers, including being able to investigate whether an individual's complaint was handled correctly or whether there was undue delay in the process. The Ombudsman may also be able to investigate the substance of a complaint in some circumstances, however, in this instance the internal complaints process must be completed first. Full details of when the SCOAF can be asked to review a decision or investigate a SC and how to contact the SCOAF's office are in JSP 831 and at www.scoaf.org.uk.

2306. Definitions

In this chapter and its annexes, the following definitions apply:

- a. **Statement of Complaint.** In order to become a Service Complaint, a formal complaint must be submitted in writing, signed and dated – preferably using Annex F to JSP 831 or JSP 763. It is to be submitted to the Specified Officer. The statement of complaint will become a 'Service Complaint' only once it has been clarified and deemed admissible (in part or in full) by the Specified Officer (SO).
- b. **Specified Officer (SO).** The officer, usually the Commanding Officer, of a complainant to whom a statement of complaint should be submitted initially for a decision on admissibility as a 'Service Complaint'. For ease of reference 'CO' will be used below to mean the Specified Officer but it is important to note that there will be occasions when the Specified Officer is an officer other than the complainant's CO (see para 2310).
- c. **Single Service Secretariat.** For Navy Command, the Single Service Secretariat is the Navy Service Complaints Secretariat, to whom all admissible SCs are to be sent via NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER). From here the SC will be allocated to a DB. The same e-mail address is to be used for requesting referral to an AB. In the absence of the Navy Service Complaints Secretariat, CNLS SO1 Service Complaint Law has appropriate delegations and is authorised to undertake the actions where the Navy Service Complaints Secretariat is named.
- d. **Decision Body (DB).** The DB is one or more individuals who have been assigned by the Navy Service Complaints Secretariat to investigate and make a decision on a SC.
- e. **Appeal Body (AB).** The AB is one or more individuals who have been assigned by the Navy Service Complaints Secretariat to consider and make a determination on an appeal against a decision taken by a Decision Body.
- f. **Service Complaints Ombudsman for the Armed Forces (SCOAF).** Independent to the MOD, the SCOAF can investigate certain matters on application by the complainant. Full details are in JSP 831.
- g. **Defence Council.** In the context of this paragraph, the term Defence Council means either the Defence Council itself or the Admiralty Board of the Defence Council acting with the full delegated powers of the Defence Council.

- h. **Navy Service Complaints Secretariat.** The Navy Service Complaints Secretariat section is the organisation which is part of Commodore Naval Legal Services (CNLS) that manages Service Complaints for the Naval Service. CNLS is the lead for Naval Service Complaint policy and procedure and the focal point for the case management of Employment law and Administrative law litigation.
- i. **Hd NPS Personnel Policy (PPOL) Diversity and Inclusion (D&I).** Hd NPS PPOL D&I is a sub-section of the Head Naval Personnel Strategy's Division that advises on all aspects of D&I policy and also D&I complaints procedures.
- j. **Harassment Investigating Officer (HIO).** Harassment Investigating Officers (HIOs) are those appointed to investigate formal complaints of bullying and harassment – in Navy Command this will usually be a member of the Complaints Investigation and Mediation Team (CIMT), but alternatively may be a civilian Fee-Earning Harassment Investigating Officer.
- k. **Special to Type (STT).** Special to Type procedures exist to resolve certain types of complaint. These include complaints about Service Medical Care, Service Housing and Pay and Allowances complaints.

2307. Flow Diagram

Annex 23A provides a flow diagram of the reformed SC management process for Navy Command. The flow diagram is designed to be used as a supplement to, and not as a substitute for, the SC handling policy set out in JSP 831 and JSP 763. Its purpose is to act as an *aide memoire* in showing those complaint management actions required by personnel outside the Navy Service Complaints Secretariat which are additional to those set out in the tri-Service guidance at JSP 831 and JSP 763.

2308. Time Limits for Dealing with Service Complaints

- a. The MoD and the SCOAF require 90% of all Service Complaints to be completed within 24 weeks, irrespective of whether they have been finally resolved at the Decision Body stage or the Appeal Body stage. It is therefore essential that SCs are progressed with the utmost efficiency at all times to achieve a final outcome within 24 weeks. Time commences from the point at which a Specified Officer informs the complainant of their decision on whether the formal complaint (or parts of it) are admissible and therefore has become a Service Complaint. There are a number of steps that must be taken prior to the decision on admissibility (see [Para 2312](#) to [Para 2316](#)) and they must be conducted expeditiously to avoid criticism or a finding of maladministration if the delay is referred to the SCOAF for investigation. To this end, the following time limits are to be applied:

- (1) Commanding Officer (or other Specified Officer) – to write to the complainant and formally acknowledge receipt of the statement of complaint/Annex F. The letter must include the JPA reference number which is generated when the complaint is logged onto JPA.

- (2) Commanding Officer (or other Specified Officer) – to write to the complainant with a decision on admissibility within 2 weeks of the date of the statement of complaint/Annex F, having met with the complainant and undertaken necessary preliminary actions/enquiries and sought legal advice (see Para 2312 to Para 2315).
- (3) Decision Body for SC's not requiring investigation by an HIO – to write to the complainant with a decision within 12 weeks of the date of the SC.
- (4) Decision Body for SC's requiring investigation by an HIO – to write to the complainant with a decision within 14 weeks of the date of the SC.
- (5) Following a valid appeal by the complainant, the Appeal Body is to decide the appeal within 10 weeks of the date of the Decision Body decision, or within 24 weeks of the admissibility date of the complaint, whichever is sooner.

b. These targets are maximal and Officers handling SCs should make every effort to ensure that their actions are completed at the earliest opportunity. This is most important for COs making admissibility decisions and DBs deciding on the SC given that, if either of those decisions are referred to the SCOAF or appealed against, any further investigation, provision of legal advice, disclosure, decision-making, and communication also has to be completed within the overall 24 week timeline.

2309. Submission of Service Complaint

- a. A statement of complaint should be submitted in the prescribed format (Annex F to JSPs 831 and 763) within 3 months of the alleged wrong occurring. The statement must be written, dated and signed by the complainant. Although a statement of complaint can initially be submitted in any written format (provided it is dated), the Annex F provides a 'check list' which ensures that all necessary information is recorded and provided to the CO. Where a statement of complaint is submitted in an alternative format, the complainant should be encouraged to complete an Annex F at the earliest opportunity, but this should not delay processing or consideration of the complaint. It is essential that the complaint sets out clearly the specific matters complained about as well as the other information listed in JSP 831.
- b. It is the CO's responsibility to ensure that the complainant is offered the help of an Assisting Officer (AO) to draft their statement of complaint/Annex F. This should be done as soon as the Command becomes aware that an individual may wish to submit a formal / Service Complaint eg. on receipt of a referral by the SCOAF. The AO may be a commissioned officer, Warrant Officer, senior rating/SNCO, or civil servant of equivalent grade and must not be involved in processing or deciding the complaint, they should not be someone who is (or may be) asked to be a witness and they should not have a personal interest in the outcome.

- c. JSP 831 and BRd 3(1) Annex 23I provides advice on the role of the AO. Normal Naval Service practice would be for the DO/DSR or Tp Cdr/Tp Sgt to provide such assistance. The appointment or not of an Assisting Officer must be recorded on JPA to allow statistical analysis. This should be entered into the 'Other Related Objects' free text section and, where an AO has been appointed, the date of appointment should also be recorded. This will allow the unit to demonstrate adherence to correct procedure.
- d. Former Naval Service personnel, who wish to make a complaint after they have left the Service, should, in the first instance, request an Annex F² from their last CO (or the officer succeeding them in post if they have moved on) and return the completed form to that CO with any supporting documentation for consideration. Ex-Service personnel should be assigned an Assisting Officer as required.
- e. The procedure at BRd 3(1) Para 5448 should be followed where an individual wishes to make a Service Complaint against Discharge SHORE/SNLR.
- f. Disciplinary or administrative action may be taken against a person who makes a Service Complaint or informal complaint which is knowingly false, disrespectful or insubordinate or subversive of discipline, but no one is to be victimised for simply submitting a Service Complaint or expressing a wish to do so.

2310. Service Complaint Made Against a Commanding Officer

Where a Service Complaint concerns the CO personally eg. a complaint about a decision made by the CO, an action the CO has taken or conduct by the CO which amounts to bullying or harassment, the complaint should be submitted to the next immediate superior in the chain of command. For example, a complaint which implicates the CO of a FF/DD/SSN/SSBN would be submitted to COMPORFLOT, COMDEVFLOT or CAPFASFLOT (as appropriate). Where there is any doubt, advice must be sought from the appropriate Navy Service Complaints Secretariat as to whether the CO is precluded from handling a complaint. Where the CO and immediate superior are precluded from dealing with a complaint, the Navy Service Complaints Secretariat should be requested to organise the nomination of an appropriate 'bespoke' Specified Officer.

2311. Time Limits for submitting a Service Complaint

A complaint must normally be submitted within 3 months of the incident complained of, or, if the matter is on-going, within 3 months of the last occurrence of the incident. A complaint submitted outside of the applicable time limits will only be accepted if it is 'just and equitable' to do so (see JSP 831), therefore it is essential that any reasons for late submission of a complaint are clearly set out in the Annex F. Failure to set reasons out in the Annex F will cause delay as COs must obtain reasons for delay/late submission from complainants before ruling a SC inadmissible for being out of time. Where a Special to Type (STT) process must be exhausted first, the 3 months commences from the date the final outcome of the STT process was notified to the complainant. Occasionally, a complaint may be capable of being pursued under the Equality Act 2010, in which case longer times for submission apply; legal advice should be sought in good time to verify this.

² JSP 831 is also available on the Internet.

2312. Preliminary Steps upon Receipt of a Statement of Complaint

a. Upon receipt of a statement of complaint/Annex F, the complainant's CO must take some important preliminary steps, as follows:

(1) The complaint must be logged onto JPA – see [Para 2325 to Para 2326](#) below.

(2) The complainant must be offered a nominated AO if they do not already have one – see JSP 831 and Annex 23I.

(3) The statement of complaint must be acknowledged within 48 hours of receipt using the template at Annex 23B (note that this template is specific for Navy Command and should be used in preference to the template provided in JSP 831). The letter of acknowledgement must inform the complainant of the JPA number of the complaint, that the CO will assess the complaint against the admissibility criteria (see JSP 831) and that it will not be accepted as a 'Service Complaint' unless it meets those criteria.

(4) The CO (or an appropriately nominated deputy) must meet with the complainant (and their AO if required) at the earliest opportunity and prior to making a decision on admissibility. The aims of the meeting will usually be four-fold, namely: to reassure the complainant that their complaint has been received and is being taken seriously; to clarify the complaint so that the issues being complained about (and therefore the areas of investigation – including, specifically, the identity of any respondents) are crystal clear from the outset; to ensure that the complainant is sufficiently supported by their AO and/or their line management/other agencies as required; and to assess whether informal resolution - including mediation - has truly been exhausted or may still be appropriate. While all elements of the meeting are important, clarifying the complaint is a vital preliminary step; experience shows that complaints are often submitted which are confused and do not make clear precisely how the complainant feels wronged. A clear and distilled summary of the complaint must be included in the SCAF so that it is instantly recognisable what the heads of complaint and redress sought are. It is entirely appropriate for a CO to ask the complainant to re-submit an amended/clarified Annex F following their meeting with them, but this should be done quickly and the original date of complaint is to remain.

b. Upon receipt of a formal complaint of Bullying and Harassment (B&H), if the complainant and respondent(s) work in the same department or unit, the CO will need to make an assessment of the potential requirement to separate or manage move one or more of the individuals concerned. In this instance, as well as meeting with the complainant, the CO will need to conduct an initial interview with the respondent(s) in order to assess necessary management action. Where a decision is taken to separate the parties, it should be made clear that doing so is a neutral act, ie. no pre-judgment of the merits of the complaint has been made at that stage. The respondent(s) will need to be made aware of the complaint made against them and should meet (accompanied by their AO if desired) with the CO to provide an outline (but no more) of their response.

- c. Because the formal B&H complaint has not been ruled admissible as a 'Service Complaint' at this time, the CO must take care not to stray into investigating the complaint or of forming a preliminary view on the merits of the complaint – the CO will be required to do this only in the event that the complaint is admissible as a SC and the same CO is appointed as the DB by Navy Service Complaints Secretariat for the SC (see below).
- d. It is essential that, upon receipt of a statement of complaint/Annex F about bullying and Harassment, ALL options of informal resolution are explored. One option is formal mediation. While informal 'mediation' may be attempted by others such as Divisional Officers or EDAs, formal mediation may ONLY be conducted by trained mediators – in the Naval Service formal mediation is provided by the Complaints Mediation and Investigation Team (CIMT). Formal mediation should always be explored but cannot be imposed; both the complainant and the respondent(s) must consent to formal mediation. Experience shows that many personnel are unaware of how mediation is conducted or that it can be immensely successful when conducted by trained mediators. Complainants and respondents who are asked to consider formal mediation should be advised by the CO, prior to making an admissibility decision, to contact CIMT at the earliest opportunity to discuss how it works and whether mediation would potentially work for them. Formal mediation can occur at any time, however, it is preferable if it conducted prior to an admissibility decision being made and reasonable time should be allowed for this option to be explored and, if applicable, conducted. If an admissibility decision is delayed pending formal mediation this MUST be recorded on JPA.

2313. Admissibility – the Gateway Decision

- a. Having undertaken all the above preliminary steps, the CO must consider whether the statement of complaint/Annex F meets all the criteria to be admissible as a formal Service Complaint. This is known as the 'Gateway Decision' and is a matter of law which is of utmost importance - COs are therefore required to seek legal advice on their provisional decision on this matter. When considering admissibility, COs are to complete Part A of the SCAF (Version 3) at Annex 23C and draw a provisional conclusion on admissibility. They must then pass (preferably by e-mail) the statement of complaint/Annex F, any supporting documentation provided by the complainant, and the SCAF to the Navy Service Complaints Secretariat who will advise them on admissibility and/or the need to refer the matter to the Service Police or advise the complainant to use a 'Special to Type' complaints procedure first for complaints involving eg. medical, pay and allowances or housing issues. The final decision on admissibility rests with the CO. The CO is to seek legal advice on admissibility within 5 working days of receipt of the statement of complaint – any delays (such as where the complainant requires time to amend or clarify their statement of complaint or where mediation is considered or undertaken) MUST be recorded on JPA. Legal advice will be provided within 3 working days of receipt of the SCAF or the CO will be informed if more time is required.

- b. A complaint (or parts of the complaint) may be inadmissible for a number of reasons – see JSP 831. If the CO is considering ruling a complaint (or any part of it) as inadmissible for being out of time, they must seek clear explanation from the complainant as to the reasons for the late submission and then go on to consider those reasons against the ‘just and equitable’ test (see JSP 831) to determine whether the complaint should be accepted notwithstanding its late submission. If the CO intends to reject the reasons ie. rule the complaint ‘out of time’ and assesses that it is not ‘just and equitable’ to accept it out of time, or intends to reject the complaint for any other reason, a draft response to the complainant, in which the full reasons for rejection are clearly explained should be drafted and included with the SCAF Part A for legal advice from the Navy Service Complaints Secretariat. A complainant who is not satisfied with the decision to disallow a SC on grounds of admissibility (including timeliness) can refer the matter to the SCOAF for a review of the decision so it is vital that fully considered and articulated reasons are clear for future reference.
- c. If, following legal advice, a CO decides to rule a complaint as inadmissible, then this must be stated in writing to the complainant. The complainant is to be further advised in that letter that if they wish to appeal against the decision, they must refer the matter to the SCOAF within 4 weeks. This is an improvement to the former SC system where a complainant who was not content with a decision to rule their complaint out of time/inadmissible, had to submit a second SC providing that they were still subject to AFA 06 at the time of the decision. Guidance on referring the matter to the SCOAF is at JSP 831.
- d. If the CO rules a complaint (or parts of it) as admissible, the Annex F and the completed SCAF must be referred (by e-mail) to Navy Service Complaints Secretariat, who is the Head of the Single Service Secretariat for Naval Service SCs. At the point at which a complaint (or parts of it) is ruled admissible by a CO and referred to the Navy Service Complaints Secretariat via the multiuser e-mail address: NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER) it formally becomes a ‘Service Complaint’. The decision to rule a complaint admissible as a SC by the CO can be reversed by a DB, but this may give rise to false expectation on the part of the complainant, in addition to causing a significant number of personnel to nugatory work, it is therefore is not a back-stop upon which COs should rely.
- e. COs are to refer to the Navy Service Complaints Secretariat for legal advice on admissibility of a statement of complaint as a Service Complaint. Contact details are NAVY LEGAL-CASEWORK MAILBOX (MULTIUSER) Mil: 93832 5232.

The e-mail title (in the subject box) should be in the following format, in accordance with the MOD naming convention:

DATE-NAME-SCAF-SHIP/UNIT (abbreviated title)

For example

20190801-AB SMITH-SCAF-RCMD
20190802-MNE JONES-SCAF-40CDO

2314. Service Complaint Advice Form - Advice on Gateway Decision (Part A)

The SCAF has been amended - see Annex 23C. Its purpose is now, initially (via Part A), to identify and comply with all the procedural requirements which must be considered when a statement of complaint is submitted in order for a decision on admissibility as a Service Complaint to be made. Many of these relate to legal obligations set out in AFA 06 and its subordinate legislation. The SCAF should therefore serve as a helpful aide-memoire to unit staff with responsibility for advising on Service Complaints within units. Secondly, where a CO is proposing to rule a complaint inadmissible, it makes provision for the CO's reasons to be drafted for legal scrutiny prior to being sent to the complainant. COs are not initially required to complete Part B of the SCAF – this may be used by the DB (including COs appointed as DB) to seek legal advice on specific aspects of handling and deciding the Service Complaint. In a subtle change to current procedures, the Navy Service Complaints Secretariat will not provide pre-emptive and all-encompassing legal advice on the handling of a SC, the DB is expected to refer to JSP 831 and JSP 763 for tri-Service guidance, this chapter of BRd 3(1) for single service guidance, and to seek specific legal advice from their nominated legal adviser (as advised in their appointment letter from the Navy Service Complaints Secretariat) only as required. Specific advice on the completion of Part A of the SCAF at Annex A is set out in sub-paragraphs (a) – (t) below.

- a. **CO for the Purposes of the Service Complaint.** The name of the CO should be inserted in this box. It will normally be the person who undertakes the role of CO for Service discipline purposes.
- b. **Is the CO the subject of the Complaint or Implicated in the Matter complained of?** If the CO is the subject of the Complaint, or is implicated in the matter complained of, then the admissibility decision cannot be taken by the CO. In these circumstances, in accordance with AFA 06 legislation, it should be submitted to the CO's immediate superior in the chain of command or, if that person is also the subject of the Service Complaint or otherwise implicated, to NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER) from where an alternative officer will be appointed as a bespoke Specified Officer (SO) to deal with the complaint.
- c. **Is the Complainant Subject to Service law?** For a complaint to be a Service Complaint it must be made by a person who is subject to Service law (eg. regular forces, reserve forces whilst on duty) or by a person who is no longer subject to Service law but who was so subject when the matter complained of occurred.
- d. **Does the Complaint Relate to the Person's Service?** If the matter does not relate to the complainant's service, it cannot be admitted as a Service Complaint.
- e. **Does the Complainant Consider Him/Herself Wronged?** If the complainant does not consider him/herself to be wronged it cannot be admitted as a Service Complaint.
- f. **Does the Complaint Involve Discrimination, Harassment, Bullying, Dishonest or Biased Behaviour or Failure Of Mod Medical or Dental Care?** Definitions of discrimination, bullying and harassment are in JSP 831.
- g. **Is the Complaint in Writing and Signed and Dated?** If it does not meet these criteria it cannot be admitted as a Service Complaint.

h. **Has the Complaint Originated from an Allegation Made by a Third Party?**

Allegations may be submitted by a third party, such as a family member, about the treatment of a Service person or former member of the Armed Forces. An allegation by a third party cannot be admitted as a Service Complaint. However, the CO is required to report the outcome and progress in relation to the third party's allegation in accordance with JSP 831.

i. **Has the SCOAF Referred the Matter?** A Service person or a third party can make an allegation to the SCOAF that the Service person has been wronged in some way. The SCOAF has a statutory responsibility to refer certain types of allegations (eg. bullying or harassment, discrimination) through the chain of command. Only when the allegation is adopted by the Service person and a written, signed and dated complaint is submitted does it become eligible for consideration of admissibility as a Service Complaint. Where an allegation has been referred by the SCOAF there is a requirement for the CO to make reports to the SCOAF at certain specified points as set out in JSP 831.

j. **Date of Complaint.** The date of complaint should be the date on the Annex F/statement of complaint. If the date of receipt is later this date should be noted also.

k. **Date of Last Incident Complained of.** If the Complaint covers a series of consecutive incidents, all of which may be considered to be a continuing act, then the latest incident is the one that counts for the purposes of deciding whether or not the Complaint has been submitted in time. This is important for calculating whether the Complaint is being made in or out of time – see below.

l. **Is the Service Complaint Within the Time Limit?** To be admissible as a Service Complaint, a complaint must normally be made within 3 months of the matter complained of, but consideration will need to be given to whether the Complaint falls within one of the exceptions. It is vital that when a statement of complaint is submitted beyond the normal time limit that the CO does and says nothing which may give the complainant a false or premature impression that the CO has ruled the matter in time as a Service Complaint.

m. **If a Service Complaint is Submitted ‘Out of Time’, Have Reasons Been Provided?** Reasons for the late submission of a complaint must be obtained from the complainant, preferably in writing.

n. **If the Complaint is Submitted Out of Time, is it Intended to Rule it ‘In Time’ on the Grounds That it is ‘Just and Equitable’ to do so?** If a Complaint is submitted beyond the normal time limits it may still be ruled ‘in time’ if it is ‘just and equitable’ to do so. If it is intended to admit the Complaint on this basis then reasons should be provided in the SCAF. If it is intended to rule the complaint inadmissible on the grounds that it is out of time and not just and equitable to rule it in time, a draft response to the complainant, which it makes it clear what weight has been given to each of their reasons for late submission and explanation of the decision, is to be provided for legal scrutiny.

- o. **Does the Service Complaint relate to a matter for which there is a 'Special To Type' procedure?** Various types of complaint are covered by 'Special To Type' procedures. If the Complaint is related to one of these special to type procedures, the complaint should be logged onto JPA (as a 'complaint informal') but a decision on admissibility should not be considered until the final result of the Special To Type procedure has been received.
- p. **Is the Service Complaint of an excluded nature?** Certain specified matters are excluded by AFA 06 legislation from being the subject of a Service Complaint (eg. pensions, discipline, security vetting, and certain types of compensation, including Personal and Criminal Injuries Compensation).
- q. **Is it intended to accept some of all of the complaint as a Service Complaint?** The CO should make clear which parts (if any) of the complaint it is intended to accept, and which are intended to be ruled out – with full reasons.
- r. **Would the CO have the authority to grant appropriate redress in the event that the Service Complaint was to be upheld?** If the answer to this question is in the negative, the Service Complaint will be referred by the Navy Service Complaints Secretariat to a DB who will be empowered with the requisite authority.
- s. **Name of nominated Unit Investigating Officer.** The nominated Unit IO may be used by the DB to conduct the investigation into non-B&H complaints or elements of complaints. This is the case whether the DB that is appointed is the complainant's CO or another officer/Panel.
- t. **Has an Assisting Officer been appointed?** Name and details of an Assisting Officer (if appointed) are to be provided and recorded on JPA.
- u. The RN N1 Command Adviser/RM G1 Adviser (Command Adviser) to the complainant's CO (or SO where applicable) will be responsible for completing the SCAF Part A, consulting JSP 831 and JSP 763 as appropriate. Where a Complaint contains allegations of bullying and harassment, it will be necessary for the Command Adviser and the EDA to liaise prior to the completion of the SCAF. The Command Adviser, and EDA where appropriate, must state whether the option of informal resolution has been discussed with the complainant and/or exhausted. In units where there is no Command Adviser (eg. MM/PP) the CO will be responsible for the completion of the SCAF, but may wish to nominate an appropriate officer (eg. the D&IA) to assist in its compilation.

2315. Single Service Secretariat – DACOS Casework

Once a Service Complaint is submitted to the Navy Service Complaints Secretariat, it will be allocated to an appropriate Decision Body (DB). The DB may be the complainant's CO (ie. the SO who made the admissibility decision) or it may be another individual or body of individuals – crucially, the DB appointed will be given the authority to grant appropriate redress if the SC is partially or fully upheld. This marks another significant change from the previous SC system where a CO investigated a SC at Level 1 and referred it to Level 2 if it was considered to have merit, but the redress was outwith the Level 1 Deciding Officer's authority. The letter of appointment provided to the DB by the Navy Service Complaints Secretariat will specify that the DB is to investigate and decide the complaint. Where necessary the appointment letter will allocate an Investigating Officer as nominated by the complainant's CO or a CNLS Caseworker. The letter will also state the authority under which the DB acts and delegate to them authority to grant appropriate redress for the particular SC. The Navy Service Complaints Secretariat will also request that a copy of the DB's appointment letter is provided to the complainant and respondent(s). Care will be exercised in determining who should be appointed to DBs; a balance needs to be struck between rank and experience versus the potential delay of having a small cadre of persons who could be appointed to DB.

2316. Referrals made by the Service Complaints Ombudsman for the Armed Forces and Allegations made by Third Parties

- a. Where an allegation of a wrong has been received directly by the Service Complaints Ombudsman for the Armed Forces (SCOAF), the SCOAF may refer the matter to the Navy Service Complaints Secretariat who will forward the referral to the complainant's CO (or last CO or other appropriate Specified Officer as applicable). The CO is to establish whether the complainant wishes to make a formal complaint and, in the event that they do, is to take the above preliminary actions and make a decision on admissibility only at this stage (see above). If the CO rules some or all of the complaint admissible as a Service Complaint, the admissible parts (or whole complaint as applicable) are to be forwarded to the Navy Service Complaints Secretariat as above for allocation to an appointed DB. Where the SCOAF refers an allegation, the SCOAF's office is to be notified within 3 weeks of any of the specified occurrences set out in JSP 831.
- b. There is an enduring requirement to provide the SCOAF with outcomes and updates on referrals until the SC is concluded as set out in JSP 831 and 2013DIN01-002 (note that other parts of this DIN have been superseded).

2317. Handling of a SC by a Decision Body

- a. DBs appointed by the Navy Service Complaints Secretariat can consist of a single person or body of persons. The default position will be single person DBs, unless the circumstances of the SC require a panel of persons. Once appointed, a DB is to act quickly to ascertain a clear understanding of the SC. This should be ascertainable from the Annex F and/or SCAF but if further detail is required from the complainant, they (and/or their AO and/or their CO) should be contacted directly. The DB must then cause an investigation into the issues raised by the SC. The investigation may be conducted by the DB themselves or the DB may appoint an appropriate investigating officer (IO), noting that the complainant's CO will have nominated an IO (in the SCAF) who may be used (most appropriate when the DB and the complainant are not collocated so as to minimise travel requirements), or the DB may choose a different individual. Guidance on the responsibilities of the IO is in JSP 831. In the case of bullying and harassment SCs handled in the Naval Service, the presumption is that an Harassment Investigating Officer (HIO) will be used to investigate the SC. Legal advice must be sought if a DB is considering not using an HIO to investigate a complaint which alleges (however briefly) bullying, harassment or improper behaviour. Where there is a requirement for an HIO, the Navy Service Complaints Secretariat will usually allocate one of the two members of the CNLS Complaints Investigation and Mediation Team (CIMT) but may source alternative HIOs including DBS Fee Earning Harassment Investigating Officers (FEHIOs) when necessary. Further guidance is provided at Annex 23G. Whoever investigates the SC must be thorough and address all the points of complaint raised by the complainant. A report of the investigation is to be provided to the DB within a time agreed between the DB and the IO/HIO. The report may contain witness statements and copies of relevant policy or reports and should offer analysis of the evidence but should not offer an opinion on the outcome of the SC – this is a matter for the DB alone.
- b. Upon receipt of the completed investigation from the IO/HIO, the DB is to ensure that all necessary lines of enquiry have been investigated and the investigation provides sufficient evidence for a decision to be made. If more evidence is required, the DB is to ensure that it is obtained in good time. Once the DB is satisfied that the investigation is complete, but before considering a decision on the matter, all the evidence that has been gathered in the course of the investigation is to be disclosed to the complainant (see [Para 2319](#)), any respondents and any potentially affected persons.
- c. Once the investigation and disclosure process is complete, the DB will proceed to make a decision on the SC. The DB must decide whether, on the balance of probabilities, the SC (or individual elements of it) is upheld or, alternatively, rejected. In some instances the DB may conclude that elements of the SC cannot be ruled upon, however, an overall decision to either fully or partially uphold or reject the SC must be made.

d. A fully drafted decision letter (including proposed redress) is to be passed to the legal adviser nominated by the Navy Service Complaints Secretariat for checking. The decision letter must give clear explanation of the weight given to the various pieces of evidence and the reasons for the decision. Experience shows that full and carefully considered decision letters have the effect of a) more successfully reassuring complainants whose complaints are not upheld that the decision was properly considered, rational and fair and b) minimising the need for the SCOAF's office to seek information and paperwork from Navy Command in the event that a complainant refers their SC to the SCOAF's office for any reason. Once the decision letter has been staffed by the legal adviser and amended as appropriate, it is to be sent to the complainant promptly. DBs should not be afraid to say clearly "I'm sorry" in the decision letter where it is evident to them that the complainant has been wronged; this is good management practice and is very much endorsed by the SCOAF.

2318. Investigation

- a. The importance of a thorough investigation by or on behalf of the DB cannot be over-emphasised. A fair and reasoned decision is difficult to achieve if relevant information is missing or not explained fully. Further, it is difficult for ABs to remedy investigative or procedural deficiencies, particularly as evidence may become tainted or diminished with the passage of time.
- b. Unnecessary delay will always have a detrimental effect on the investigation of any Service Complaint. DBs should aim to investigate complaints at the earliest possible opportunity and try to resolve factual issues on a basis that is accepted in writing by the disputing parties as being fair and accurate.
- c. The aim of every investigation should be to 'add value' in terms of factual content and supporting evidence, rather than mere assertion. For non-bullying and harassment SCs, IOs should conduct interviews following the guidance in JSP 831. JSP 763 Chapter 6 sets out the investigative procedures to be followed for complaints alleging bullying and harassment.
- d. With more difficult cases (not concerning bullying and harassment) the DB may consider ordering a Ship's Investigation, following the procedures stated in FPN 172 (The Yellow Guide), which provides a useful framework for the investigative process.
- e. Where a SC alleges any form of discrimination (ie. direct or indirect), or the CO or the Navy Service Complaints Secretariat sense that discrimination may be being alleged, the IO is to refer to JSP 763 for a definition of discrimination. Further, the IO must take specific advice from the nominated legal adviser on the conduct of their investigation. The investigation is to be scrutinised by the nominated legal adviser prior to it being provided to the DB to ensure that it addresses the issues surrounding discrimination specifically in order that the DB can make an informed and legally-compliant decision.

f. Further guidance on the management and investigation of Service Complaints alleging B&H is provided at Annex 23H. Informal complaints of bullying and harassment are not Service Complaints. Consequently they are not covered by the procedures described in this BR, but are covered in JSP 763 and Navy Command's 'Equality, Diversity and You' booklet. Such complaints should be managed as advised by the unit EDA, who may seek advice from the NCHQ Hd NPS D&I policy staff, and utilise mediation facilities (primarily through the CNLS Complaints Investigation and Mediation Team) as appropriate. Where resolution of an informal complaint on the advice of the EDA fails, COs are encouraged to seek further advice from the Navy Command Complaints Secretariat.

g. Where, at any stage, it is judged necessary to access medical-in-confidence information to deal with a Service Complaint, the individual's signed consent must always be obtained first before any request is made to medical authorities. The appropriate medical consent form is at Annex 23F.

2319. Disclosure

a. Once an investigation is complete but prior to the DB making any decision on the merits of the SC, all documentation and information that will be relied upon to make a decision must be disclosed to the complainant and others who may be affected by the outcome of the SC. They must be informed that they may comment on the disclosure and all comments made will be put before the DB for consideration. Parties should be encouraged to respond within 10 working days in order to avoid unnecessary delay, however, a longer period may be appropriate for more complex complaints or where significant documentation is provided to the parties for the first time. In exceptional cases, a maximum period of 30 working days may be offered where it would be in the interests of fairness and completeness to do so. The disclosure period, plus any reasons for extensions beyond 10 days must be noted on JPA.

b. Disclosure is subject to exclusions where appropriate and consistent with Information Rights legislation, ie. the Data Protection Act 2018, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Privileged and protected information and advice is not to be disclosed or paraphrased, except when advised to do so by the relevant legal adviser.

2320. Decision by Decision Body

Upon completion of investigation and disclosure, the DB must make a decision on the SC in accordance with JSP 831. The draft decision letter is to be passed to the nominated legal adviser for scrutiny. The quality of the decision letter is crucial. A fully reasoned and clearly explained decision goes a long way to reassure a complainant whose complaint is not upheld that it was considered in a fair, thorough and balanced way. Further, the decision letter will form the primary evidence upon which the SCOAF's office will decide whether not there is a requirement for further information from the DB in order to understand a decision or the outcome of the complaint. The letter should address each element of the complaint and explain the weight given to the evidence in the investigation as well as any comments provided by the complainant (and respondents as applicable) in response to disclosure. A DB should not be afraid to say "sorry" to a complainant who has been wronged; this goes a long way to reassure a complainant and is fully endorsed by the SCOAF as good practice.

2321. Appeal Body

- a. In some instances the DB will consist of members of the Admiralty Board/Defence Council. In this instance, the decision of the DB is final and there is no route for appeal within the internal Service Complaint system. A complainant who is not content with a decision of the Defence Council may, within 6 weeks, refer the matter to the SCOAF.
- b. In all other cases, the decision of the DB may be referred for appeal by the complainant if they are not content with the decision. A complainant who wishes to appeal the DB decision is to write to the Navy Service Complaints Secretariat using e-mail address: NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER) within 6 weeks of the DB's decision. The request for appeal must be signed and dated by the complainant and must set out what aspects of the DB's decision they wish to appeal and the reasons for this. The complainant's referral will be acknowledged by the Navy Service Complaints Secretariat who will then consider whether the appeal is brought in time or, if not, whether it is just and equitable to rule it in time. If the appeal is not permitted, the complainant may refer to the SCOAF for a review of the decision.
- c. If the appeal is permitted, the Navy Service Complaints Secretariat will appoint an Appeal Body (AB) to consider the SC. An AB is independent of the DB and is not bound by any decision made by the DB. ABs can consist of a single person or body of persons. If the circumstances of the Service Complaint require an Independent Member (IM) to be appointed, the AB will consist of a minimum of 2 service members and 1 Independent Member. Additional members can be added if required. Consistent with the DB, the AB will make its decision on the 'balance of probabilities'. Where the AB consists of 3 or more individuals they will make a decision based upon a simple majority.

2322. The Defence Council

When the Admiralty Board is acting on behalf of the Defence Council as a DB the panel will normally consist of two or more members. The Admiralty Board may reserve certain cases for itself, eg. a SC about a decision made by the Admiralty Board or a member of the Admiralty Board acting in that capacity. The Navy Service Complaints Secretariat will staff SCs which have been referred to the Defence Council and will follow the process set out in JSP 831. Legal advice will be provided by CNLS lawyers.

2323. Further Advice on Management of SC for Appointed Decision Bodies and Appeal Bodies - SCAF Part B

- a. It is mandatory for COs to seek legal advice on the admissibility of a complaint (including draft written responses rejecting a complaint on the grounds of admissibility) before it is accepted as a Service Complaint (see [Para 2313](#) above). This decision is a matter of law and errors will lead to both criticism of the Service and significant nugatory work, hence the requirement for legal advice on the admissibility decision.

- b. When a SC is allocated to a DB by the Navy Service Complaints Secretariat, a legal adviser will be allocated to the DB for that SC. If the DB requires legal advice at any stage in the investigation or deciding of the SC, they may refer to that legal adviser. DBs will be expected to exercise discretion, on a case-by-case basis, as to whether further advice is necessary. For example, the DB may require advice at the point of pre-decision disclosure or prior to the DB making a decision. Similarly, enquiries may need to be made on the suitability of mediation, on what may constitute discrimination, or what weight to attach to hearsay evidence in a Final Investigation Report for a SC which contains allegations of bullying and harassment. Part B of the SCAF should be used for this purpose. A copy of any legal advice sought and received is to be retained within the case file but is not to be disclosed without the permission of the lawyer providing it.
- c. It is mandatory for DBs to submit decision letters to their legal adviser (or their CNLS Caseworker as appropriate) for scrutiny prior to finalising and sending to complainants. Only the draft decision letter should be forwarded – the relevant caseworker/legal adviser will call for any further documentation they consider to be necessary in order to enable them to advise.

2324. Advice on Administrative Action

There will be cases when, following the determination of a SC by a DB or AB, it is necessary for the DB or AB to consider administrative action. The most common example will be where a SC alleging bullying or harassment has been upheld and there is a need to consider taking administrative action against the Respondent(s). Such administrative action can only be taken or initiated by the unit which exercises command over the potential subject of administrative action. That unit should seek advice before determining what, if any, administrative action to take. Similarly, advice should also be sought on how to recommend administrative action where the DB or AB upholding the complaint does not exercise command over the potential subject of administrative action. Further guidance on appropriate administrative action is at Annex 23H.

2325. Service Complaints and JPA

Except where stated, the unit receiving a complaint or allegation is responsible for creating and updating JPA records as follows:

Type of Complaint	JPA Record Type
Informal D&I Complaint Non D&I Statement of Complaint / 'Annex F', where Special To Type exists	'Complaint Informal'
Statement of Complaint/'Annex F' (All Subject Matters	'Complaint Formal'

	Non D&I	D&I
Regular Units	RN N1/RM G1 Adviser. (May be delegated to SR WTR for STT Informal)	EDA, i.e. those in the JPA D&I resource group. (See Annex 23H)
RNR/RMR Units	For Service Complaints arising in RNR units, the Support Manager will be responsible for JPA recording. In RMR units this function will be performed by the AO with the relevant Joint Support Unit providing assistance as necessary.	In RNR and RMR units only, the Support Manager and AO respectively are permitted to record Informal D&I Complaints where the EDA is unavailable.
Complaints Submitted by ex-Service personnel.	Units are unable to create records for ex-Service Personnel. SCMC performs this function for the Navy Command. Once created the responsibility for further updating of the JPA record reverts to the unit.	

Notes:

1. *The Unit Establishment Administrator (UEA) is responsible for allocating individuals to the relevant resource groups and this action is to be completed in accordance with the extant UEA guide, which contains detailed guidance on the single Service policy as to who should have membership of a D&I resource group.*
2. *Recording of complaints on JPA enables the chain of command to monitor the progress of individual cases to determine whether the timelines and targets for their handling, (laid down in Reference A) are being met. The data placed on JPA is also used by the Service Complaints Ombudsman for the Armed Forces (SCOAF) to assess the Naval Service's complaint handling performance and to inform the SCOAF's periodic reports. The SCOAF Annual Report is presented to the Secretary of State for Defence and laid before Parliament. It is therefore essential that Service Complaints, and their associated documentation, are properly recorded on/uploaded to JPA.*
3. *In addition, JPA recording provides a robust audit trail of events and decisions which may be used to inform further investigations, SCOAF appeals, or to provide evidence at Employment Tribunals. The Management Information held on JPA also permits the analysis of trends in numbers and types of complaints to assist with Naval Service life management and employment policy.*
4. *JPA recording of Service Complaints (at all levels) is supported by a relevant Business Process Guide (BPG) which provides guidance on how to record data correctly on JPA. The BPGs can be accessed via the JPA Portal. Further guidance on the recording of complaints on JPA can also be obtained from the Service Complaint Management Cell (SCMC).*
5. **SCOAF Referrals.** *Where an allegation of complaint has been referred to the CO by the Office of the SCOAF, a Complaint Informal record must be created to generate a SR reference number to be used for further communication with the SCOAF.*
6. **Special to Type Complaints.** *If a Statement of Complaint (Annex F to JSP 831) is received and the matter is subject to Special To Type (STT) resolution (most commonly pay, housing and medical complaints), the STT process, including STT appeals, must be exhausted before the 'Annex F' is accepted as a Formal Service Complaint. However a JPA record of 'Complaint Informal' must be raised and set to 'Suspended STT'. As a Non-D&I matter, the responsibility is with the RN N1 Command Adviser/RM G1 Adviser, though this may be delegated to the Senior Rate Writer/SNCO Clerk where they have JPA Discipline permissions.*



Continued

Notes: (Continued)

7. If the complainant is permanently assigned away from the unit while the STT is on-going, the SCMC should be contacted to discuss transfer of the 'Complaint Informal' to the new unit.
8. Once the STT process has been completed, if the complainant is not satisfied, it is their right to raise a Formal Service Complaint against the outcome of the STT. The complainant should review and revise the Statement of Complaint, including any new information or circumstances discovered during the STT process.
9. **Proxy Recording of Service Complaints on JPA SC.** Submarines are expected to record their own SCs on JPA. It is appreciated that, whilst on deployment, a submarine's JPA connectivity may be interrupted for lengthy periods. Accordingly, where a submarine is deployed and does not have access to JPA, the N1 Command Adviser should, wherever possible, liaise with parent Flotilla N1 staff and request that Service Complaint data be recorded by proxy on JPA. This process is equally applicable to informal D&I complaints.
10. **Decision Body Review.** If a SC is allocated by the Navy Service Complaints Secretariat to a DB outwith the complainant's unit, the SCMC will manage the transfer of the record. If the DB is the Unit's Higher Authority/Chain of Command for Non-D&I complaints, the N1/G1 Adviser in the Higher Authority will become responsible for updating the JPA record.

**2326. Management of Complaints on JPA**

- a. **Service Complaints Management Cell (SCMC).** The SCMC is responsible for the management and oversight of complaints on JPA. The contact details are set out below and in the first instance the SCMC e-mail mailbox should be used for non-telephone contact:

SCMC Manager: CPO WTR Tel: 93-832-5739.
SCMC Assistant: LWTR Tel: 93-832-5749.
SCMC Mailbox: NAVY LEGAL-SCMC MAILBOX
Fax: 93-832-5755

- b. **Terms of Reference for the SCMC.** The Terms of Reference for the SCMC are set out at Annex 23F. As well as managing the JPA recording performance within the Navy Command, the other primary purpose of the SCMC is to provide an advisory service to units to assist them in complying with JPA recording requirements.

c. **Compliance Monitoring.** As a further check that complaint data is being recorded on JPA in accordance with policy, relevant supersession checks have been introduced for Logistics Officers and RM G1 Advisers and these will also be conducted during Fleet Logistics Inspections. For Informal D&I Complaints compliance monitoring will be included in D&I assurance visits.

2327. Transitional Arrangements

a. The procedures outlined above will apply to all formal Complaints received on or after 1 Jan 16. It is the date that the complaint is submitted rather than the date of the matter complained of that determines whether the new arrangements apply.

b. Where individuals are acting as Level 1 Deciding Officers (DOs) for SCs which were submitted prior 1 Jan 16 but a decision has not been made on admissibility, the CO will become the SO for that complaint and must proceed to make a decision on admissibility in accordance with the guidance above and in JSP 831. The SC must then be referred to the Navy Service Complaints Secretariat for allocation to a DB (which may or may not be the CO) as above. If a decision has already been made on a SC at (former) Level 1 and advised to the complainant by 1 Jan 16, any request by the complainant to refer the SC to (former) Level 2 will be treated as a request to refer to an Appeal Body – the CO is to refer the matter to the Navy Service Complaints Secretariat. For SCs which were already referred to (former) Level 2 but had not been decided by 1 Jan 16, an Appeal Body will be allocated by the Navy Service Complaints Secretariat and the complainant informed accordingly. If an (former) Level 2 decision has been made and notified to the complainant by 1 Jan 16, the complainant retains the right to ask for the complaint to be referred to (former) Level 3 – the Navy Service Complaints Secretariat will allocate it to a Service Complaint Panel (SCP) or the Admiralty Board as appropriate (former Level 3). The complainant retains the right to refer their complaint to the SCOAF on completion of the SCP/Board decision. For SCs that were already at (former) level 3 but had not been decided by 1 Jan 16, they will continue to be considered by an SCP/Board (former Level 3) and the complainant retains the right to refer their complaint to the SCOAF on completion. If a SC has been decided at (former) Level 3 prior to 1 Jan 16, then the matter is deemed closed and there is no right to refer to the SCOAF.

2328. Financial Redress in Service Complaints

a. HM Treasury Guidelines and Government Accounting Regulations restrict the circumstances in which awards of financial compensation may be made as well as the authorities empowered to approve such awards. Novel and contentious financial awards or those that appear to raise issues of financial propriety will always require referral to HM Treasury via the TLB Senior Finance Officer (SFO ie. the Finance Director (Navy)) and always where the financial issues are complex or significant (eg. a change to accrued pension). This will be processed through MOD DG Fin.

b. In cases involving subjective assessments eg. compensation for injury to hurt feelings, nominal ‘goodwill’ payments in lieu of a wrong, the MOD position is that it has no basis upon which to value such claims authoritatively, which should be left to the courts to decide.

- c. Under the reformed SC system, DBs and ABs will be empowered by the Navy Service Complaints Secretariat to award appropriate redress including quantifiable financial redress where a SC is upheld. Each DB and AB will be provided with a specific delegation by the Navy Service Complaints Secretariat in this respect at the time they are appointed to decide a SC.
- d. If, during the process of staffing or deciding a Service Complaint, a DB or AB considers that it may be appropriate to award an unquantifiable financial award (see [sub-para b](#) above) the DB/AB must '*pause*' in order to consult the TLB SFO via the Navy Service Complaints Secretariat without delay in order to obtain advice about the '*regularity*' of such a payment in terms of Government Accounting Regulations. It is essential that the DB/AB '*pauses*' to take SFO advice before communicating any aspect of the complaint decision to the complainant.
- e. The need for SFO advice is crucial in cases where the proposed financial redress involves some form of *ex-gratia* payment, and it is the responsibility of the DB/AB to establish clearly whether the sort of payment they are inclined to recommend can properly be awarded. Where the DB/AB proposes a form of redress within their empowered authority (such as promotion) that has clear financial consequences, but where the payment would then follow as a matter of course, SFO involvement should not be necessary. Certain allowance casework, however, is potentially sensitive and/or subjective and may be of SFO interest. In all cases, it is the DB/AB's responsibility to establish whether there is an SFO interest or not, after taking advice from the Navy Service Complaints Secretariat.
- f. Should the DB/AB disagree with the SFO's advice, the matter may be referred by the SFO to DG Fin or to HM Treasury to resolve. In such circumstances, the '*pause*', including the restriction not to communicate any aspect of the complaint decision to the complainant, must be maintained until a definitive ruling on financial redress is provided.

2329. Non-Financial Redress in Service Complaint

Under the reformed SC system, DBs and ABs will be empowered by the Navy Service Complaints Secretariat to award appropriate non-financial redress where a SC is upheld. Every DB and AB will be provided with a specific delegation by the Navy Service Complaints Secretariat in this respect at the time they are appointed to decide a SC.

2330. Civilian Grievances

Grievances by civilian personnel, including where they are against Service personnel, are not governed by AFA 06 and therefore the procedures set out in this chapter and JSP 831 do not extend to them. JSP 763, however, applies equally to Service personnel and civilian personnel. Grievances by civilian personnel must be submitted to DBS in accordance with civilian grievance policy and units will receive handling and legal advice via DBS; Naval lawyers are not permitted to advise on civilian grievances.

2331. Service Complaint Governance in the Navy Command

- a. Commodore Naval Legal Services (CNLS) is the NCHQ lead for Service Complaints and process. CNLS is supported in this role by the Navy Service Complaints Secretary and Navy Service Complaints Secretariat.
- b. The Naval Service Complaint Governance Board (NSCGB) meets termly to provide regular strategic oversight of the operation of the Service Complaints system in the Navy Command. It meets under the chairmanship of CNLS and all relevant policy stakeholders in the Service Complaint process are represented. NLS prepares an annual report on Service Complaints for submission to the Navy Board via 2SL.

2332. Service Complaint Training

- a. CNLS is the Naval Service requirements authority for Service Complaints training. Accordingly NLS owns the training content for all single Service courses which provide Service Complaint training. This training is delivered on behalf of CNLS by relevant training agents. The Instructional Specifications provided by CNLS to its training agents will be periodically reviewed by CNLS, at least annually, to ensure that they remain up to date, including being compliant with relevant law and tri-Service policy.
- b. Queries about Service Complaint training should be directed to NAVY LEGAL-SCMC CPOWTR in the first instance.

2333. Organisational Learning/Lessons Identified

- a. An important measure of a mature Service Complaints system is the ability to capture any lessons identified by the decision of the DB or AB and to record them formally. It is important that, where Service policy is the subject of complaint and is having an adverse impact on Operational Capability, this be formally recorded.
- b. Within Navy Command where a Service Complaint raises such a policy issue, it should be recorded using the Defence Lessons Management Information System (DLMS). Given that most Service Complaints relate to Terms and Conditions of Service, consideration will be given to whether the Service policy that has been the subject of complaint has had an adverse effect upon the Moral Component of Operational Capability (MCOC).
- c. Any level in the chain of handling a Service Complaint may identify a lesson and input it into DLMS in the same manner as other Lessons Identified, however, it will normally only be possible to identify a lesson after the DB or AB has reached a determination on the facts and merits of a complaint. Personal data which may identify the complainant or any respondent should not be inputted into DLMS. The Naval Service Complaint Governance Board will consider the progress of pan-Service, tri-Service, strategic and other key Lessons Identified at its termly meetings.

SECTION 3 - REPRESENTATIONS

2334. Exceptions to Procedure for Representations

The instructions in this section do not alter:

- a. The procedure by which Service Personnel may bring requests before Inspecting Officers at inspections in accordance with the custom of the Service.
- b. The custom by which any rating is allowed to request, through the Divisional Officer, to see the Commanding Officer with regard to matters of a private nature.
- c. The procedure by which local questions of welfare and amenities may be dealt with by the Welfare Committee.

2335. To Whom a Representation is to be Made

Any officer or rating who wishes to make any Representation connected with the Naval Service should bring the subject to the notice of the relevant superior in the following manner:

- a. If the person making a Representation is an officer, the Representation should be made initially to the Commanding Officer (through the Head of Department and the Executive Officer as appropriate) or, in the case of Commanding Officers and above, to the next immediate superior in the chain of command.
- b. If the person making a Representation is a rating, the Representation should be made initially to the Divisional Officer (through the divisional senior rating when appropriate) or, in the case of ratings on detachment, to the officer under whose immediate command he/she is.

2336. How the Representation is to be Dealt With

- a. Representations should be handled with despatch and should in all cases be answered at the lowest level commensurate with an authoritative reply. A flow diagram showing the process is at [Annex 23D](#). On receipt of any Representation the Commanding Officer or other officer receiving the same is to satisfy themselves that it is made in accordance with the appropriate regulations in this section. The officer is then to deal with it as may seem to be right. If the officer is unable to grant the remedy but supports the case it is to be forwarded to the Navy Service Complaints Secretariat for consideration by higher authority. However, if an officer receiving a Representation considers that it is not worthy of serious consideration, they should inform the person making the Representation by rejecting the case and stating that they do not intend to take the matter any further. If the person making the Representation is dissatisfied with this decision, he/she may submit a Service Complaint in accordance with their statutory rights under AFA 06 and the policy set out in JSP 831.
- b. Any officer in the chain of command who is personally involved in the substance of a Representation is to forward it, with their comments, to their next immediate superior in the chain of command.

- c. In framing Representations the following rules apply:
 - (1) Any oral Representation should subsequently be confirmed in writing if it is to be referred to an authority higher than the officer first addressed.
 - (2) Representations on matters directly affecting an individual are to be confined to a statement of facts and the alleged consequences for the individual themselves. This does not apply to those Representations which are suggestions which have a wider application.
- d. Disciplinary or administrative action may be taken against a person who makes a Representation (or a Service Complaint or informal complaint) either orally or written which includes a statement of fact which is untrue to the knowledge of the originator.
- e. Similarly, disciplinary or administrative action may be taken against a person who makes a Representation in language or comment that is disrespectful or insubordinate or subversive of discipline, except insofar as such language or comments are necessary for an adequate statement of facts.
- f. No officer or rating shall be penalized for having made a Representation in accordance with these rules.

SECTION 4 - EMPLOYMENT TRIBUNALS

2337. Claims to Employment Tribunals

- a. This Section is intended for general guidance only and individuals who wish to present an Employment Tribunal claim should consider obtaining their own advice before doing so (see [Para 2339](#) below).
- b. Naval Service personnel have the statutory right to submit claims to Employment Tribunals (ETs) where allegations are made of discrimination because of the protected characteristics of gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Armed Forces are exempt from the legislation which prohibits discrimination in relation to age and disability and therefore Service personnel do not have the right of access to an ET for such matters. Discrimination may be either direct or indirect. Claims may also be made of harassment because of a protected characteristic, and victimisation. Naval Service personnel also have the right of access to an ET in respect of claims alleging pay inequality because of sex and also claims under the Working Time Regulations 1998.
- c. ETs do not have jurisdiction to hear other types of claims, including claims of unlawful deduction from wages, unfair dismissal (e.g. constructive dismissal) or wrongful dismissal (an action for breach of contract) from Naval Service personnel. This is essentially because the Employment Rights Act 1996 does not apply to members of the Armed Forces and Service personnel are not employees governed by a contract of employment.
- d. Legislation provides that an ET does not have jurisdiction to hear a claim made to it by a Service person unless it has first been submitted in the form of a Service Complaint (SC) under the appropriate internal redress procedures (see Armed Forces Act 2006 (AFA 06) and JSPs 831 and 763) and has not been withdrawn. Where an Application has been made to an ET, Navy Legal-Litigation is to be kept informed of the progress of the SC.

2338. Time Limits

- a. In recognition of the requirement for ET claims to be first submitted as a SC under the AFA 06 internal redress procedures, the statutory time limit for a Service person to refer their claim to an ET on eligible matters is six months from the date of the incident complained about or the latest date in a series of incidents giving rise to the claim, which is three months longer than for civilians. There is one exception to these time limits. Generally, where a claim is made alleging pay inequality on the grounds of sex, an application may be made to an ET at any time during the person's service or within nine months of leaving the Service, which is again, for the same reason, three months longer than the period permitted for an equivalent claim to be lodged by a civilian.
- b. ET Claimants should note that ETs will normally refuse to accept a claim if it is submitted outside the appropriate time limit. Responsibility for complying with the time limit lies entirely with the Claimant.

- c. Complainants who are awaiting the outcome of the internal redress procedures before applying to an ET must note the need to submit their ET claim before the six month statutory deadline irrespective of whether the SC has been concluded. If a final decision on the SC has not been reached by then, the MOD will nevertheless continue its investigation with a view to reaching a decision before an ET hearing date has been set. The ET process may be put on hold pending the outcome of the SC procedure. If a decision on the SC is reached before the ET hearing and the complainant is satisfied with its outcome, they may withdraw the application to the ET.
- d. Please see [Para 2340](#) concerning Early Conciliation and its impact upon time limits.

2339. Legal Advice

The decision as to whether to refer a claim to an ET is solely for the individual to make. Complainants may seek advice from an independent source at any time on any matter relating to a complaint. Complainants may also take legal advice from a solicitor at their own expense at any time.

2340. ACAS Mandatory Early Conciliation

Before a person may bring an ET claim they must first notify the Advisory, Conciliation and Arbitration Service (ACAS), either over the phone or by completing an online form. The prospective Claimant will be required to provide prescribed information and it is important that they provide accurate contact details concerning the organisation and any person they are complaining about (if that person is to be named as a Respondent) as ACAS will need to get in touch with them. If in doubt use the contact details at [Para 2341 sub para d](#) below. ACAS will send the information to one of its conciliation officers who will seek to promote a settlement within a one month 'prescribed period'. If a settlement is not achieved, either because it is not possible in the conciliation officer's view or the prescribed period expires, the conciliation officer must issue a certificate to this effect. A Claimant may not submit an ET claim without this certificate as it will contain a unique reference number which must be quoted on the subsequent ET form. The conciliation period may impact on the time limit for presenting claims to the ET but the Claimant will have at least one month following the unsuccessful conciliation to submit an ET claim. For further information visit: www.acas.org.uk.

2341. Application

- a. An application to the ET should be made on a Form ET1. Information on how to acquire a form in England, Wales and Scotland can be obtained from the Ministry of Justice website (see www.justice.gov.uk/tribunals/employment) or the Citizens' Advice Bureau. Advice on ET procedures can be obtained from the Public Enquiry Line (Telephone: 0300 123 1024 (England and Wales) or 0141 354 8574 (Scotland) or the Advisory, Conciliation and Arbitration Service (ACAS) on 0845 747 4747.

- b. If the claim is for an ET in England or Wales then it can be sent online. Alternatively, claims may be sent by post to:

Employment Tribunal Customer Contact Centre (England and Wales)
PO Box 10218
Leicester LE1 8EG

- c. If the claim is for an ET in Scotland then it can be sent online. Alternatively, claims may be posted to:

Employment Tribunals Customer Contact Centre (Scotland)
PO Box 27105
Glasgow G2 9JR

- d. If the claim is for an ET in Northern Ireland then it can be sent online. Alternatively, claims may be sent by post to:

The Secretary
Office of the Industrial Tribunals and the Fair Employment Tribunal
Killymeal House
2 Cromac Quay
Belfast BT7 2JD

- e. A copy of the ET1 should also be provided to the Commanding Officer (CO). Any ET1 received by COs should be sent to Navy Legal-Litigation as quickly as possible, as MOD's response is subject to tight deadlines.

- f. The Form ET1 asks for the name and address of the employer. To ensure that MOD is able to comply with the ET deadline for the employer's initial response, it is most important that the Claimant gives the correct MOD address on Form ET1. This is as follows:

Royal Navy
The Ministry of Defence
Navy Legal-Litigation
Navy Command Headquarters
Leach Building
Mail Point 4-2
Whale Island
Portsmouth PO2 8BY

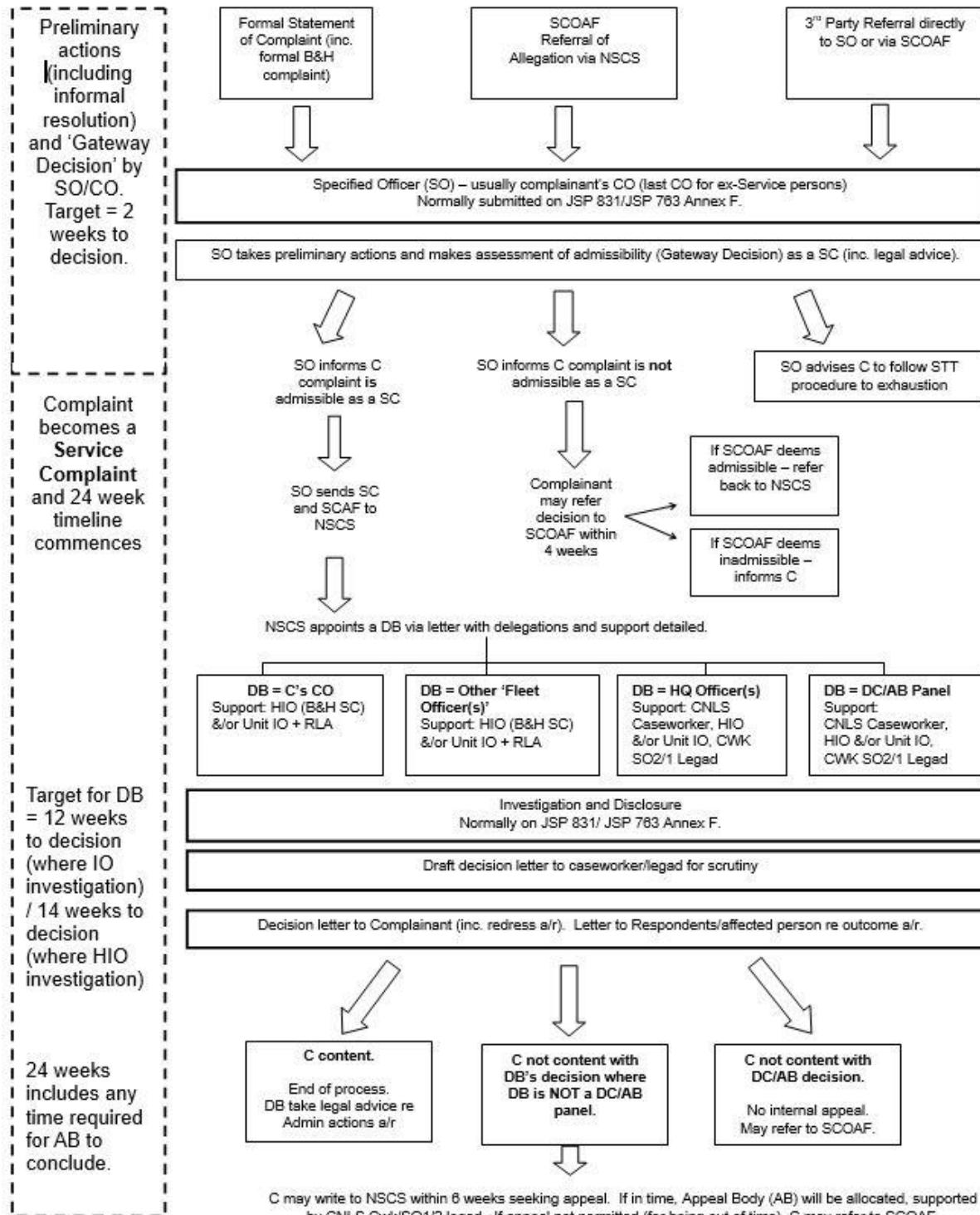
Mil Tel: 93832 5865
Civ Tel: 02392 62 5865
Fax: 02392 62 5755

- g. If a SC is still being considered under the internal redress procedures when the Form ET1 is received, the MOD response will confirm this, indicating the likely duration of the procedures, and will normally request an adjournment. It is general practice for ETs to refrain from listing a case for hearing if a final decision on a SC has not been made.

ANNEX 23A

SERVICE COMPLAINT MANAGEMENT IN NAVY COMMAND

Key: C - Complainant
NSCS - Naval Service Complaint Secretariat



Note. 3rd party allegations, SCCF referrals and informal complaints are not Service Complaints and the fact that they have been made does not automatically mean a Service Complaint will result.

ANNEX 23B

**TEMPLATE FOR ACKNOWLEDGING RECEIPT OF STATEMENT OF
COMPLAINT/FORMAL COMPLAINT/‘ANNEX F’**

HMS NONSUCH
BFPO XXX

[Name, rank/rate, Service Number of Complainant]

[Date]

- 1.** I am writing to acknowledge receipt of your statement of complaint/formal complaint/Annex F [delete as applicable] dated xxxx which was received on xxxx [insert date]. It has been logged onto JPA and the reference number is xxxx [insert].
- 2.** I now need to consider your complaint in detail and will arrange for us to discuss it within the next 5 working days. That discussion will enable me to more fully understand the nature of your complaint and the redress that you are looking for. You may be accompanied by your Assisting Officer, who I understand is xxxxx [insert rank, name and telephone number] – you should contact them and my office [insert details a/r] to agree a suitable time for the meeting. If needs be you will then be able to send me a revised complaint form.
- 3.** Following the discussion I will need to decide whether your complaint is valid and admissible as a Service Complaint in accordance with JSP 831. In the meantime, you can find more information on the Service Complaint process in JSP 831 and BRd 3(1) Chapter 23, both of which can be found on the Defence intranet and the internet. If your complaint alleges Bullying or Harassment you are advised to consult JSP 763 also.
- 4.** You should be aware that, at this stage, I will not consider the merits of your complaint; if I deem your complaint (or any part of it) to be admissible I shall forward it to the Navy Command Complaints Secretariat who will nominate a Decision Body to decide the merits of your Service Complaint and award appropriate redress if your complaint is upheld. The DB may be me or another person or a panel of persons. You will be kept informed throughout the process.
- 5.** I encourage you to make good use of your Assisting Officer - as we take matters forward - as a useful source of guidance and support.

[Signature Block]

ANNEX 23C

SERVICE COMPLAINT ADVICE FORM (SCAF) – VERSION 3

Actions and Timings		
<p>A formal statement of complaint must be submitted to the Specified Officer (SO). This is usually the complainant's CO (or last CO for ex-Service personnel). The CO is to acknowledge the statement of complaint in writing within 24 hours and record it on JPA. The CO is to meet with the complainant at the earliest opportunity and clarify the complaint prior to seeking advice on admissibility via this SCAF. This SCAF is to be completed and submitted, along with the statement of complaint (and any clarification statement required), to the Navy Service Complaints Secretariat (NSCS) within 3 working days of receipt of the formal complaint. ALL boxes in Part A must be completed initially. The CO/Unit should receive a response from the NSCS within 3 working days. Part B may be completed by the Decision Body (DB) appointed to investigate and decide the Service Complaint (this may or may not be the complainant's CO).</p>		
PART A: GATEWAY DECISION		
SHIP/UNIT		To include contact (e-mail/phone) details of N1/G1 adviser or SC administrator.
COMPLAINANT'S DETAILS		To include rank, initials and Service Number.
DETAILS OF COMPLAINANT'S CO		To include full name, rank and appointment. This should normally be the CO for discipline - if not give explanation. If a Specified Officer other than the complainant's CO has been allocated, their details are also to be provided.
IS THE COMPLAINANT'S CO THE SUBJECT OF THE COMPLAINT OR IMPLICATED IN THE MATTER COMPLAINED OF?	YES/NO	If the CO is the subject of the complaint or is implicated in any way in the matter complained of, alternative arrangements need to be made for another officer to deal with the complaint - see JSP 831 .
IS THE COMPLAINANT SUBJECT TO SERVICE LAW (OR WERE THEY AT THE TIME THE WRONG IS ALLEGED TO HAVE OCCURRED)?	YES/NO	For a complaint to be accepted as a Service Complaint it must be made by a person who is subject to service law (eg. regular forces, reserve forces whilst on duty) or relate to a matter that occurred when the person was subject to service law (ex-regular Service personnel). – see JSP 831 .
DOES THE COMPLAINT CONCERN A MATTER WHICH RELATES TO THE COMPLAINANT'S SERVICE?	YES/NO	For a complaint to be accepted as a Service Complaint it must relate to that person's Service. – see JSP 831 .
DOES THE COMPLAINANT CONSIDER HIM/HERSELF TO BE WRONGED?	YES/NO	For a complaint to be accepted as a Service Complaint it must explain why the complainant considers him/herself to be wronged – see JSP 831 .
CLARIFICATION OF COMPLAINT AND REDRESS SOUGHT. THE CO/SO IS TO PROVIDE A SUCCINCT LIST OF THE POINTS COMPLAINED ABOUT AND REDRESS SOUGHT HERE. The purpose of this is to ensure that the precise areas of complaint are established (and agreed with the complainant) from the outset. Where they are not clear from the submitted complaint, the CO/SO must refer to the complainant and obtain clarity. Respondent(s) must be identified. This may take the form of a list of bullet points. The NSCS will not advise on admissibility until the complaint has been clarified (where necessary) by the CO who is to meet with the complainant to achieve clarification.		

DOES THE COMPLAINT INVOLVE DISCRIMINATION, HARASSMENT, BULLYING, DISHONEST OR BIASED BEHAVIOUR OR FAILURE OF MOD MEDICAL OR DENTAL CARE?	YES/NO	A provisional assessment of whether the complaint engages any of these areas should be identified and details provided. In this context, 'discrimination' means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender reassignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of the complainant as a part-time employee.
IS THE COMPLAINT IN WRITING, SIGNED AND DATED?	YES/NO	For a complaint to be accepted as a Service Complaint it must be in writing, signed and dated – see JSP 831 . A formal complaint should normally be submitted on a JSP 831/JSP 763 Annex F form.
HAS THE COMPLAINT ORIGINATED FROM AN ALLEGATION MADE BY A THIRD PARTY?	YES/NO	Allegations received from third parties cannot be accepted as Service Complaints. They should be dealt with by the CO taking advice from the Navy Service Complaints Secretary as appropriate. See JSP 831.
HAS THE COMPLAINT ORIGINATED FROM AN ALLEGATION REFERRED BY THE SCOAF?	YES/NO	If YES, then there is a requirement for the CO to keep the SCOAF informed of the progress of the Service Complaint - see JSP 831 and JSP 763 .
DATE OF COMPLAINT		If the date on the complaint letter/Annex F is different to the date of receipt, then state both dates.
DATE OF LAST INCIDENT COMPLAINED OF		If the complaint covers a series of consecutive incidents all of which may be considered to be a continuing act, then the latest incident is the one that counts for the purposes of deciding whether or not the complaint can be accepted as a Service Complaint - see JSP 831 and JSP 763 .
IS THE COMPLAINT WITHIN THE TIME LIMIT?	YES/NO	A complaint must normally be made within 3 months of the matter complained of for it to be accepted as a Service Complaint. If it is made more than 3 months of the matter complained of, consideration will need to be given to whether the complaint falls within one of the exceptions - see JSP 831 and JSP 763 . NB: Special rules apply for complaints capable of being pursued as claims under the Equality Act 2010 – legal advice is to be sought.
IF THE COMPLAINT HAS BEEN SUBMITTED OUT OF TIME HAVE REASONS BEEN PROVIDED?	YES/NO	Reasons for late submission MUST be obtained in writing from the complainant. The reasons provided will form the basis of the decision on whether it is 'just and equitable' to rule the decision in time. If reasons are not provided in the original complaint, they must be sought before a decision on admissibility is made.
IF THE COMPLAINT IS SUBMITTED OUT OF TIME IS IT INTENDED TO RULE IT IN TIME?	YES/NO Reason:	If it is intended to allow the complaint to be admitted as a Service Complaint on the basis that it is 'just and equitable' to do so then provide reasons why this action is proposed - see JSP 831 and JSP 763 .
DOES THE COMPLAINT RELATE TO A MATTER FOR WHICH THERE IS A 'SPECIAL TO TYPE' (STT) PROCEDURE?	YES/NO	Some types of complaint are covered by 'Special to Type' procedures. If the formal complaint is covered by a STT procedure the admissibility as a Service Complaint should not be considered until the final result of the STT process has been received.

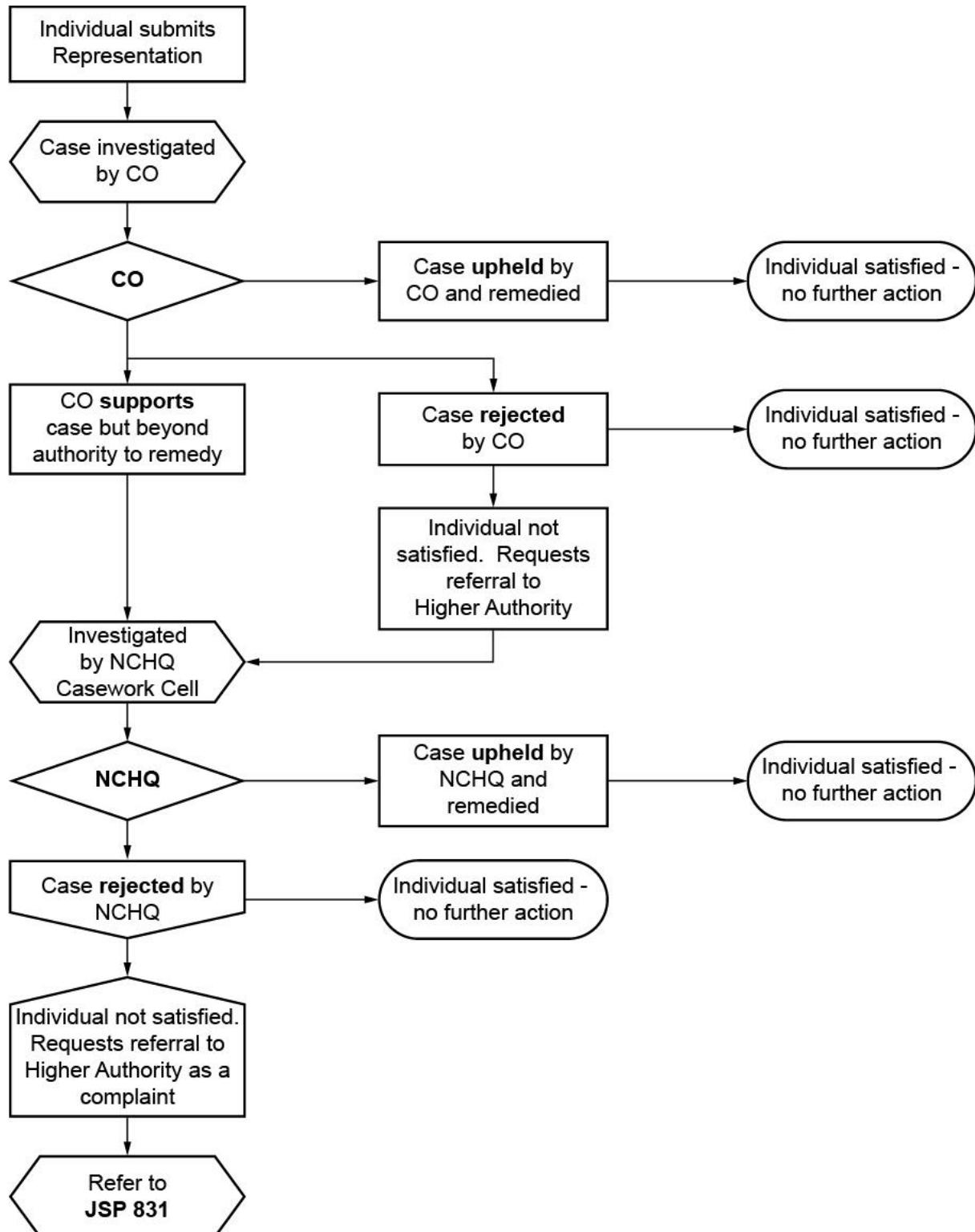
IS THE COMPLAINT OF AN EXCLUDED NATURE?	YES/NO	Certain specified matters are excluded from being the subject of a Service Complaint (eg. pensions, discipline, compensation or Criminal Injuries Compensation) – see JSP 831.
IS IT INTENDED TO ACCEPT SOME OR ALL OF THE COMPLAINT AS A SERVICE COMPLAINT?	YES/NO	If the answer to any of the questions above is 'No' or is uncertain, further advice must be sought from the NCSC via this SCAF. In the event that part of the complaint is deemed inadmissible this is to be made clear to the NCSC.
IF IT IS INTENDED TO RULE SOME OR ALL OF THE COMPLAINT INADMISSIBLE AS A SERVICE COMPLAINT, PROVIDE A DRAFT RESPONSE TO THE COMPLAINANT HERE FOR LEGAL SCRUTINY. Where some or all of the complaint is to be ruled inadmissible, the CO must provide full and clear explanation for the decision. The explanation must include the weight that was given to any reasons provided by the complainant for submitting a complaint out of time.		
WOULD THE CO (OR OTHER SPECIFIED OFFICER WHERE APPLICABLE) HAVE AUTHORITY TO GRANT APPROPRIATE REDRESS IF THE COMPLAINT WERE TO BE ACCEPTED AS A SERVICE COMPLAINT AND THEN BE UPHELD?	YES/NO	If no, either the CO will need to be delegated necessary authority or the Service Complaint will need to be allocated to an alternative DB. This decision will be made by the Navy Service Complaints Secretary - see JSP 831.
NAME OF NOMINATED UNIT INVESTIGATING OFFICER		To include rank, name, service number, post title and contact details of an individual, usually selected from the complainant's Unit. If the SC is allocated to the CO (as a DB) to handle, the nominated IO may be tasked by the CO (except in B&H complaints which will be investigated by an HIO). If the SC is passed to an alternative DB, the nominated IO will be required to support the CNLS Casework Cell in the conduct of an investigation into the SC. The nominated IO may be the Unit EDA but should not normally be the Command N1/G1 adviser.
HAS AN ASSISTING OFFICER BEEN APPOINTED?	YES/NO	The complainant must be offered the services of an Assisting Officer. If an AO is declined this must be recorded on JPA – see JSP 831 and JSP 763.
ARE YOU AWARE OF ANY OTHER RELATED SERVICE COMPLAINTS OR APPLICATIONS FOR EMPLOYMENT TRIBUNAL, OR ANY OTHER LEGAL ACTION?		
ANY OTHER FACTORS WHICH MAY BE RELEVANT		
ADVICE ON ADMISSIBILITY BY NSCS		

Once the CO (or other Specified Officer (SO)) has made a decision on admissibility of the complaint (following legal advice), this decision is to be advised in writing to the Complainant. If the complaint (or any part of the complaint) is not accepted as a SC, the complainant may ask the SCOAF to review the decision. The SCOAF's decision is final. If the complaint is accepted by the CO/SO as a SC, a copy of the SC (Annex F) and a copy of this SCAF are to be forwarded to the Navy Service Complaints Secretary (via email NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER)) who will allocate the SC to a Deciding Body (DB) for investigation and decision. The DB may be the original CO/SO, or it may be a different officer or panel of officers where appropriate redress is outwith that which the CO/SO is authorised to provide. The DB will be informed of the identity of their NLS Caseworker/legal adviser, or IO/HIO. The DB may then use Part B of this SCAF to ask for specific legal advice on the handling/investigation/decision etc. of the SC. For SCs being handled by NSCS on behalf of a DB, the nominated caseworker is to complete Part B and submit it, along with the SC, to the allocated LEGAD for comment.

PART B: HANDLING OF SERVICE COMPLAINT BY DECIDING BODY	
DECIDING BODY (Rank(s), name(s), Service number(s) and contact details)	
SPECIFIC COMMENTS/QUESTIONS ON THE HANDLING/INVESTIGATION/DECISION ON THE SERVICE COMPLAINT This space should be used to clearly identify the issues and the redress sought. It should also be used to list the intended areas of investigation including all those persons who will be interviewed/asked for evidence and the evidence which will be sought.	
LEGAL ADVICE (To include name of Legad and date)	
<p>Once the investigation and disclosure is complete, the DB must make a decision on the SC. The DB must pass the draft decision letter to their nominated Legad/Caseworker for approval before it is finalised. The decision letter may be forwarded alone; the Legad/Caseworker will call for further documentation as required. Once the decision letter has been finalised it must be sent to the complainant forthwith.</p>	

ANNEX 23D

SUBMISSION OF A REPRESENTATION



ANNEX 23E

SERVICE COMPLAINT MANAGEMENT CELL - TERMS OF REFERENCE

1. Statement of Requirement

The JPA Service Complaints (JPA SC) business process has been identified as the means by which the Services, MOD Centre and the SCC will monitor progress of Service Complaints (SC) within the Armed Forces. There is therefore a need for the Naval Service to have its own organic capability to monitor Naval Service Complaints from 'cradle to grave'. That capability will be provided by a Service Complaint Management Cell (SCMC).

2. Terms of Reference for SCMC

- a. To act as the Naval Service JPA SC business process policy lead, including:
 - (1) Naval Service lead for input to JPA SC Business Process Guides.
 - (2) Lead for single Service guidance on JPA SC business process.
- b. To provide Naval Service JPA SC statistical compilation.
- c. To provide 'through life' management of Naval Service SCs on JPA, including:
 - (1) Quality assurance of SC data inputted on JPA SC, feedback to units and promotion of best practice.
 - (2) Review on JPA SC of compliance with agreed SC timelines and requesting, on behalf of NCHQ, explanations from Units, Decision Bodies and Appeal Bodies for breach of agreed handling timelines.
- d. To provide Subject Matter Expert (SME) advice for units in relation to the business process of inputting JPA SC data.
- e. To serve as the Naval Service point of contact for D SP Pol SCW on JPA SC business process issues and Naval Service JPA SC statistical compilation.
- f. To provide JPA SC business process training expertise to DMLS.

ANNEX 23F

CERTIFICATE AUTHORISING THE RELEASE OF MEDICAL INFORMATION TO THIRD PARTIES

I

(Rank, Initials and Name)

.....

(Service No)

give my consent/do not give my consent* for the release of the relevant parts of my Ministry of Defence medical records held by the Armed Forces/Ministry of Defence to those personnel responsible for staffing or deciding on my Service Complaint/s. I understand that the Medico Legal Services (Institute of Naval Medicine) will determine which elements of my medical records are relevant for the sole purpose of addressing or answering the points I raised in my Service Complaint/s.

Signed

Date

*Delete as appropriate

DATA PROTECTION ACT 1998

The MOD is committed to ensuring that all your personal data including that of a sensitive nature is used with your consent, respect for your privacy and only for the limited, clearly stated purposes within the form. This accords with our legal obligations under the Data Protection Act 1998.

Once completed, this certificate is to be returned to: [originator insert details]

ANNEX 23G

PROCEDURE FOR THE MANAGEMENT OF BULLYING AND HARASSMENT SERVICE COMPLAINTS IN THE NAVY COMMAND

References:

- A. JSP 831 - Jan 16 version.
- B. JSP 763.

1. Introduction

This Annex sets out the procedure for units in the Navy Command to follow when processing complaints which allege bullying and harassment (B&H). It also sets out the procedure to be followed in order to make application for investigation of B&H Service Complaint by the Complaints Investigation and Mediation Team (CIMT) or a fee-earning Harassment Investigation Officer (FEHIO).

2. Initial Action on Receipt of Formal Complaint of Bullying and Harassment

a. It is often the case that a CO becomes aware of a potential bullying and/or harassment complaint prior to it being submitted as a formal complaint. As such, it is incumbent upon COs to ensure that as much informal resolution is pursued as early as possible – this may include Divisional discussions or informal mediation. It may also include formal mediation, which can only be provided by trained mediators – in Navy Command this is provided by the Complaints Investigation and Mediation Team (CIMT). The CIMT should be contacted early to establish whether mediation may be appropriate and to explain the process and potential benefits to the complainant (and respondents as applicable). It is important, however, that a CO remains as impartial as possible (ie. by not getting too involved in trying to understand or resolve the parties' issues) because if a bullying or harassment complaint is deemed admissible (by the CO or other SO), it is usually the CO (or other SO) who is appointed as the Decision Body (DB) – a role they should undertake with no pre-conceived ideas as to the outcome. If a CO becomes too involved in a complaint before formally deliberating on a properly investigated and disclosed case file they risk being criticised for lack of impartiality and either party to the complaint may appeal against the decision. Furthermore, an alternative DB may have to be allocated from the outset – undermining an essential tenet of the SC process which is to keep COs at the heart of complaint resolution whenever possible.

b. COs must obtain legal advice on the admissibility of bullying and/or harassment complaints. In order to do this they should ensure that what the complainant is complaining about, and the redress sought, is crystal clear (dates, times, how the alleged incident(s) made them feel, witnesses etc.) – an Assisting Officer is often invaluable in achieving this. Once a complaint has been admitted (either partially or in full), it is to be sent to the Navy Service Complaints Secretariat who will allocate it to a Decision Body (DB). The DB appointment letter will allocate an appropriate legal adviser and will indicate whether an HIO is required to conduct the investigation.

- c. In the Navy Command it is to be presumed that bulling and/or harassment complaints will be investigated by an HIO. The nominated legal adviser will act as the definitive single point of contact and source of legal and procedural advice. Units should not seek advice on the handling of formal complaints directly from elsewhere.
- d. As part of the enquiry into the admissibility of a formal complaint, the CO (or other appointed SO) is required to meet with the complainant (and their Assisting Officer as required) in order to clarify the complaint. During this meeting, the CO (or other SO) will, amongst other things, examine whether mediation has been considered/offered and if the case is amenable to being mediated. Formal mediation can often be an effective means of achieving swift resolution and thereby restoring working relationships and OC, without the need for further formal investigation and determination of such complaints. .
- e. In addition to meeting with the complainant, the CO (or other SO) may need to hold a meeting with the respondent(s) to make them aware of the complaint against them and to ascertain their agreement (or otherwise) to any informal resolution/formal mediation agreed to by the complainant. At this stage the CO is not to engage in any assessment of the merits of the complaint; it has yet to be deemed admissible as a Service Complaint. The CO (or other SO) needs to consider management action ie. whether one or more parties need to be separated, whether the allegations warrant referral to MDP or Service Police and whether all parties are able to access the support they require. Making an admissibility decision may be delayed if informal resolution or formal mediation is being actively pursued. Notwithstanding this, a CO (or other SO) should aim to make a 'Gateway Decision' on admissibility no later than 28 days from the date of submission of the complaint.
- f. Part A of the Service Complaint Advice Form (SCAF) Version 3 at Annex 23C is to be completed by the CO (or other SO) and, following legal advice from the Regional Legal Office, a Gateway Decision is to be made on admissibility. Any part or parts of the complaint which are deemed admissible are to be forwarded, along with the completed (Part A) SCAF to the Navy Service Complaints Secretariat using the email address NAVY LEGAL-SC ALLOCN MAILBOX (MULTIUSER).
- g. The Navy Service Complaints Secretariat will allocate the Service Complaint to a DB. In the case of most SCs about B&H the DB is likely to be the complainant's CO, because they are likely to have the authority to grant the redress sought and are likely to be most appropriately placed to ensure the matter complained of does not affect operational capability. If the CO is implicated in the complaint or does not have the authority to act as the DB, the SC will be allocated to an alternative DB in accordance with Para 2315. The alternative DB may be another 'fleet officer' such as Capt SS or COMPORFLOT/COMDEVFLOT/CAPTFASFLOT etc.
- h. Within the allocation letter, the Navy Service Complaints Secretariat will nominate an HIO. This will usually be a member of the CIMT but, if necessary a FEHIO will be allocated.

3. Formal Investigation by Harassment Investigation Officer

- a. **Investigation by CIMT.** In the case of investigation by CIMT, the DB will liaise directly with the team. The DB will formally appoint the CIMT as the Harassment Investigation Officer (HIO), defining the scope of the investigation, which is then to be investigated in accordance with Reference B.
- b. **Investigation by FEHIO.** In the case of investigation by a FEHIO, the DB will need to define the scope of the FEHIO's investigation and then contact CNLS Service Complaint Management Cell (SCMC) in order for it to obtain prior budgetary approval from NCHQ finance staff to allow for the appointment of a FEHIO. The SCMC will send the DB the relevant application form for engagement of a FEHIO. It is the DB's responsibility to ensure that it is completed in full, however, the nominated legal adviser should be prepared to lend assistance as the information required will include an assessment of the length of time the investigation will take, the requirement for witnesses, and anticipated expenses etc.
- c. Once budgetary approval has been granted, the SCMC will notify the DB, Defence Business Services (DBS) and the nominated legal adviser. DBS will then inform the SCMC of the name of the FEHIO nominated, which will then be passed to the DB. Once the DB has agreed to the nomination and authorized DBS, via the SCMC, to engage the FEHIO, the DB will be in a position to commission the FEHIO to conduct the investigation (the scope of which will have been defined by the DB beforehand) in accordance with Reference B. DBs should be aware that financial approval is capped. Where there is a foreseeable increase in cost, eg. additional lines of inquiry requiring an extended investigation, the SCMC should be contacted and given sufficient information to arrange further financial approval. On completion of the investigation, the FEHIO will submit an expense claim to the DB. This should be scrutinised to ensure that expenses claimed are reasonable before being forwarded to the SCMC.
- d. Once the HIO has reported and the DB has decided the complaint, the DB will be required to complete a DBS feedback questionnaire. The DB is to provide feedback on the quality of the HIO investigation and report to enable DBS and CNLS SO1 Service Complaint Law to conduct quality assurance and facilitate organisational learning.

4. Informal Complaints of Bullying and Harassment

As set out at Para 2301, informal B&H complaints (like any other informal complaint) are not Service Complaints. Consequently they are not covered by the procedures set out in this Annex. Should D&IAs wish to seek advice on the management of such complaints they should contact NCHQ Hd NPS D&I policy staff.

ANNEX 23H

GUIDANCE FOR COMMANDING OFFICERS OF PERSONNEL AGAINST WHOM A COMPLAINT OF BULLYING, HARASSMENT OR DISCRIMINATION HAS BEEN UPHELD

1. Introduction

- a. Discrimination, bullying and harassment are unacceptable in the Armed Forces. This means that where a complaint has been upheld and unless circumstance may prevent it, e.g. where no respondent has been identified or the respondent is no longer serving, the CO of the respondent is required to consider initiating administrative action. In order to ensure that COs are informed of such cases, and where the Decision Body (DB) and CO of a respondent are not the same person, the DB will notify the CO of an individual against whom a complaint of bullying, harassment or discrimination has been upheld in accordance with JSP 763. The process of complaint management is detailed in JSP 831, JSP 763 and BRd 3(1) Chapter 23 and is not repeated here. Additionally, this Guidance does not cover Service disciplinary procedures in any way nor is it intended for use before a CO decides a case.
- b. Where a DB upholds a formal complaint of discrimination, harassment or bullying, COs are reminded of the importance of taking adequate, appropriate and prompt action in order to correct the behaviour of the respondent. In respect of Service respondents, there is a range of administrative sanctions for the CO to consider. Any action ultimately taken against the respondent should reflect the nature, seriousness and frequency of their behaviour, taking into account any other factors which may lessen or increase the severity of a sanction, and should be applied as consistently as possible. Appropriate comment should be included in an individual's SJAR/OJAR in accordance with JSP 757.
- c. COs should refer to this Guidance in order to provisionally determine what action should be taken. Advice must then be taken from the relevant Regional Legal Office as to the appropriateness of the proposed sanction. This Guidance does not entirely limit CO's rights to apply sanctions as they see fit, which include the possibility of taking no administrative action (in exceptional cases), however the CO must appreciate that it has been designed to protect both them and the Service from criticism and possible legal action and to ensure consistency and appropriateness of sanction across the Service. Where a CO proposes to depart from this Guidance, he or she must first seek the advice of the appropriate Regional Legal Office. In addition to recording the reasons for the imposition of a particular sanction (which is mandatory in all cases), if he or she chooses to depart from this Guidance, the CO must fully record his or her reasons for doing so.

2. Range of Actions

Following an upheld formal complaint of discrimination, harassment or bullying, the list of administrative sanctions that may be taken to deal with a Service Person is at Appendix 1 to this Annex. Tri-Service guidelines (used in this Note hereafter) are shown aligned to the approximate equivalent single Service sanction¹. Sanctions are shown in broad order of severity, from least to most severe. Minor Administrative Action sanctions are not listed in detail.

3. Guidance on Taking Action

a. Every complaint of discrimination, harassment or bullying is different and must be considered on its merits. Action taken to deal with a respondent will depend on all the circumstances of the case, including the nature, extent and seriousness of the behaviour involved and any other factor which might increase or reduce the severity of sanction imposed (see para 10 and para 11).

b. Although the definitions of bullying and harassment at Annex A to JSP 763 and of discrimination within JSP 831, Chapter 2 for all levels of behaviour detailed below, COs must always seek legal advice from their Regional Legal Office as to the appropriateness of the proposed sanction. Examples of some of the more commonly observed behaviours which may properly be the basis of a complaint are given below. The examples are listed in lower and higher levels of severity, but COs must take into account the pertinent factors which may lessen or increase the severity of a sanction when considering where to place individual cases.

(1) **Lower Level.** Behaviours that might be considered to be at the lower end of the spectrum include:

- (a) 'Environmental' (as opposed to 'targeted') harassment, such as sexual/racial/religious banter, jokes and innuendoes.
- (b) Displaying, downloading, circulating, reading or watching offensive material or images in an environment shared by other personnel.

Sanction Entry Point²: formal written warning through to formal censure (see Appendix 1, Sers 5-7).

(2) **Higher Level.** At the higher end of the spectrum are more deliberate, usually targeted behaviours. Examples include:

- (a) Sexist/racist/homophobic and anti-religious language/action directed at an individual.
- (b) Pester someone for a relationship after being asked to stop.

¹ The process by which sanctions are *applied* is through existing single Service administrative procedures. COs are to refer to specific single Service regulations for comprehensive lists, including caveats. These are BRd 3(1) Chapter 20 (RN), AGAI 67 (Army) and RAF QRs (RAF).

² Where no other factors affecting severity of sanction have been taken into account.

- (c) Inappropriate comments about someone's appearance/anatomy or sex life.
- (d) Needless and invasive questions about someone's private life.
- (e) Name-calling/taunts or jibes (especially about someone's gender, sexual orientation, colour, race, ethnic or national origin, religion or belief).
- (f) Ridiculing someone because of the way they look, speak or dress.
- (g) Obscene gestures or derogatory remarks; victimisation; unwarranted physical contact.
- (h) Undermining or trivialisation of someone's job performance by a superior (in rank or grade) causing deliberate or unwarranted humiliation of a subordinate.

Sanction Entry Point³: formal censure, through to reduction in rank (see Appendix 1, Sers 7-11).

(3) Misconduct That May Constitute a Criminal or Service Disciplinary Offence. In the event of a complaint being submitted or referred to the Service Police, any decision on administrative action must await the conclusion of criminal/disciplinary proceedings. Any consequent administrative action taken should be proportionate to the conduct and remain in line with published Service guidelines. Behaviours at this level include, but are not limited to:

- (a) Sexual assault or other assaults, nuisance/obscene phone calls.
- (b) Threatening behaviour; obscene acts; etc.

Such behaviours may be dealt with either through administrative procedures, Service disciplinary procedures or both. If dealt with through administrative procedures, then the **Sanction Entry Point⁴** is: reduction in rank through to administrative discharge (see Appendix 1, Sers 11-12).

4. Separating the Parties

During an investigation into a complaint it may be necessary to take management action to avoid the risk of prejudicing the outcome, e.g. where possible and appropriate, separating the respondent(s) from the complainant to safeguard the parties and minimise any impact on operational effectiveness. In advance of a decision on the complaint by the DB, all such action is non-blameeworthy and without prejudice. Further guidance is at JSP 763, Para 5.15 and JSP 831.

³ Where no other factors affecting severity of sanction have been taken into account.

⁴ Where no other factors affecting severity of sanction have been taken into account.

5. Factors Reducing Severity of Sanction Imposed

Factors that may be taken into account which might reduce the severity of a sanction include:

- a. The individual's previous conduct and warnings.
- b. Isolated incident/behaviour unlikely to recur.
- c. Youth/immaturity/inexperience.
- d. Genuine remorse/regret.
- e. The individual's response to the discovery of the incident.
- f. Any circumstances relevant to the degree of culpability (e.g. one-off mistake).
- g. Unpremeditated/unintentional.
- h. Informal resolution.
- i. No harm done to/perceived by complainant.
- j. Any relevant personal circumstances.

6. Factors Increasing Severity of Sanction Imposed

Factors that may be taken into account which might increase the severity of a sanction include:

- a. Rank/position of responsibility/failure to set a good example.
- b. Vulnerability of complainant.
- c. Behaviour committed in presence of subordinates.
- d. Breach of trust/abuse of rank or authority/exploitation of subordinates.
- e. Repeated or persistent behaviour, despite requests to stop.
- f. Behaviour motivated by gender, race, ethnic or national origins, sexual orientation, religion or belief of complainant.
- g. Administrative and/or disciplinary action taken for prior misbehaviour.
- h. Refusal to accept responsibility/acknowledge wrongdoing.
- i. Lack of remorse/regret.
- j. Acting as part of a group and/or inciting others.

k. Context in which the incident(s) occurred and any adverse effect on operational efficiency/unit morale.

l. Premeditated/intentional.

m. Complainant threatened/fearful of victimisation.

7. Communication of Decision

DBs should communicate their decision in respect of the Service Complaint in accordance with the guidance in JSP 763 and JSP 831; this may include the fact that a recommendation has been made to the CO of the person against whom a complaint has been upheld that the CO considers taking appropriate administrative action. COs should report their decision in respect of administrative action to the chain of command in accordance with BRd 3(1) Chapter 20.

8. Record Keeping

Records of the action taken should be kept in accordance with the guidance in JSP 763, Chapter 8 and JSP 831 and as prescribed through JPA reporting of upheld complaints. For audit purposes, the CO should also record the reasoning behind a sanction. This information will be monitored by single-Service D&I Policy staffs and the D SP Pol SCW Diversity Team.

APPENDIX 1 TO ANNEX 23H

ADMINISTRATIVE ACTION TRI-SERVICE/SINGLE SERVICE EQUIVALENCY OF SANCTIONS TABLE

Ser	Tri Service Guideline	NS Approx Equivalent	Army Approx Equiv	RAF Approx Equiv
1	Minor admin action sanctions	As column b		
2	Counselling	As column b		
3	Additional E&D training ¹			
4	Informal warning	(MAA)	Formal interview	
5	Formal written warning	(Ratings/RM OR only) for reversion/discharge CO's Logging (Officers) Fleet Commander or Higher Authority's Formal Warning	Formal interview	Informal interview Formal interview Formal warning
6	Assignment restrictions	Career monitoring to be recorded between DO/CM. SJAR/OJAR to reflect	Assignment restrictions Letter of Censure	
7	Formal Censure	Fleet Commander or Flag/General Officer's Displeasure		Formal warning (promotion restrictions) ² .
8	Promotion restrictions	Quarterly Reports (Officers) Fleet Commander's Severe Displeasure Admiralty Board's Displeasure or Severe Displeasure	Rebuke ³ Expression of Displeasure Expression of Severe Displeasure	Removal of acting rank
9	Removal from appointment	Landing - approval by NAVSEC	Removal from appt ⁴ by the Army Board.	QR 1027 Administrative Report (Assignment)

¹ To be delivered in unit by qualified Equality and Diversity Adviser.

² On issue, subject becomes a grade C candidate during the next promotion cycle and thus not competitive.

³ Rebuke, Expression of Displeasure and Expression of Severe Displeasure involve promotion restrictions. They may also involve employment restriction in that they preclude consideration at command boards for the period of validity.

⁴ Exceptionally, the Army Board is permitted to order removal from appointment as part of its sanctions and under this exception, and only this, removal from appointment can be ordered as a sanction - see AGAI 67, Appendix 3 to Annex D. Removal from appt not normally a sanction but may accompany another sanction.

Ser	Tri Service Guideline	NS Approx Equivalent	Army Approx Equiv	RAF Approx Equiv
10	Promotion blocked for a given period		Rebuke Expression of Displeasure Expression of Severe Displeasure	Formal warning - on issue subject becomes a grade C candidate during the next promotion cycle and thus not competitive
11	Reduction in rank ⁵	Reduction in Rank(RM OR only) Reversion (ratings only) involves Career Check for 6 months minimum	Reduction in rank	QR 1027 Administrative Report (Reduction in rank)
12	Administrative discharge	Administrative discharge	Termination of Service Discharge, Retirement or Resignation	QR 1027 Administrative Report (Discharge from the Service or termination of commission)

Notes:

1. Action may be taken against a service person who has behaved inappropriately, regardless of whether a formal complaint has been made and/or whether the matter has been resolved informally. This may be as a result of a CO-initiated formal procedure or taken from the findings of fact by another body (eg. summary hearing or Court Martial).
2. Sanctions are not always mutually exclusive and a combination of actions may be appropriate. The CO may also wish to take into account the views of the complainant, including those on the nature of sanction imposed; though this will not necessarily determine the outcome.
3. If a complainant were to claim in an Employment Tribunal (ET) that they had been unlawfully harassed or victimised, and the ET upheld the claim, the ET could decide to give the complainant 'aggravated damages' if it considered that the action taken against the respondent(s) by the CO (or the lack of any such action) suggested that the complaint was perceived to be trivial.
4. Given the desire for consistency across the Services, commanders at Joint Service establishments who are required to decide on sanctions against a respondent from a different Service should seek advice from specific single Service career managers and relevant legal staff.

⁵ For administrative sanctions, this can only be one rank and can only be imposed upon NCOs, not officers.

ANNEX 23I

GUIDANCE TO NAVAL SERVICE ASSISTING OFFICERS FOR BULLYING AND HARASSMENT COMPLAINTS

References:

- A. JSP 763 - MOD Bullying and Harassment Complaints Procedures
- B. JSP 831 - Redress of Individual Grievances: Service Complaints
- C. BRd 3(1) Chapter 20 - Discipline Policy and Processes
- D. BRd 3(1) Chapter 23 - Representations and Complaints
- E. BRd 3(1) Chapter 30 - Diversity and Inclusion
- F. Equality Act 2010

1. Purpose of this Guide

- a. The role of the Assisting Officer (AO) is to provide advice and guidance to either the complainant or the respondent(s); it is not to provide legal advice or other expertise. It is the responsibility of AOs to become familiar with their duties which are defined in Reference A and Reference B, and with the bullying and harassment complaints procedures.
- b. The aim of this guide is to assist AOs in understanding their duties and responsibilities, to draw together disparate instructions relating to their role, and to provide the AO with visibility of key milestones to help them ensure that the processes in Reference A have been followed correctly. Key milestones are indicated with a question and a tick box to allow the AOs to record whether the milestone activities have been completed.

2. Assigning of the AO

- a. It is the responsibility of the complainant's CO (or the Specified Officer when this is not the CO) to ensure that an AO is assigned to each party, to ensure that they are in no way connected with the complaint and that there is no possibility of them being called as a witness. Whilst it is highly advantageous for the AO to be EDA-trained this is not a pre-requisite and, in some cases, would be unachievable. The key requirements are that the potential AO has a thorough understanding of the complaints system and is trusted by the complainant/respondent. The AO can be an Officer, Warrant Officer, SNCO or MOD civil servant of equivalent grade (or Trade Union Official) and must be at least the same rank as the complainant/respondent they are assisting. However, they must not have even the slightest involvement in the complaint or have a personal interest in the outcome. The following should not be an AO: CO; an EDA (where they are also the nominated EDA); unit Chaplain; Civilian Chaplain to the Military; a Medical Officer/Service Lawyer when in medical/legal roles within the unit; or any other individual where there is any likelihood that they may be involved in any subsequent or related investigation. In addition, it is preferable that DLOs and EAs, given their responsibilities for the management of Level 1 complaints and the provision of immediate advice to the Command, do not act as AOs. Where a DLO or EA is assigned, they cannot administer a subsequent Service Complaint in any way and an appropriate substitute must be found.

b. It is preferable for the AO to be assigned to the complainant before the Annex F (to Reference A) is submitted in order that they can assist with the drafting of the formal complaint. It is also preferable for an AO to be assigned to the respondent before they are given a copy of the complaint so that assistance can be given in drafting a response. The Lead EDA is to record on JPA the name of the AO and the date by which the AOs had been assigned in order that the unit's adherence to correct procedure can be demonstrated.

Milestone 1	Confirm that the date by which the AO had been appointed and their name has been recorded in JPA by the Lead EDA. This should be entered into the 'Other Related Objects' free text section.	
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c. The AO should meet with the lead EDA as soon as possible in order to establish communication and discuss the nuances of the case. The AO should also meet with the Complaints Investigation and Mediation Team (CIMT), or Harassment Investigation Officer (HIO) if they are engaged, and should contact the D&I Policy Team in NCHQ if there are any concerns over policy or process.

3. Submission of the Complaint

a. A formal Service Complaint may be submitted at any time within 3 months of the alleged incident, or the latest alleged incident when the complaint refers to a series of events. An attempt at informal resolution should, however, be made in the first instance. A Service Complaint must be in writing, dated and signed by the complainant. Although it may be in any format, the complainant will be expected to complete and submit a complaint form using Annex F to Reference A. The AO for the complainant should assist them and ensure that the complaint meets the following criteria:

- (1) Contains sufficient detail, including dates, to allow separate incidents, respondents and witnesses to be identified.
- (2) Is crystal clear in what the complainant is alleging and against whom.
- (3) Is accompanied by relevant documentary evidence.
- (4) Specifies what redress is requested, noting that it is not for the complainant to specify particular sanctions (no one can be ordered to make an apology, and some forms of redress (such as Service disciplinary action) may not be within the powers of the DB to impose).

b. Upon receipt of a formal complaint/Annex F, the CO is to acknowledge receipt of the complaint, making use of the template at Annex 23B. The CO is then to meet with the complainant (and their AO) to fully understand the basis of the complaint – in cases of alleged bullying and harassment this meeting does not form part of the formal investigation.

c. The CO is also to provide the respondent(s) with a full copy of the complaint and, once they have had time to consider their response, invite them to attend a meeting (with their AO) to discuss the matter.

d. Should the DB decide that it is necessary to separate the parties, the action should be neutral and fair (see Reference A paragraph 5.15).

Milestone 2	Complainant received confirmation of receipt of complaint, and interviewed by CO. Respondent received full copy of complaint and supporting documentation and interviewed by CO.	
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4. Admissibility of the Complaint as a Service Complaint

Once the CO has met with both the complainant and the respondent(s), a ‘Gateway Decision’ will be made on whether any or all of the complaint is admissible as a Service Complaint. In the event that none of the complaint is admissible, the complainant will be informed in writing. In the event that some or all of the complaint is deemed admissible the complaint will be forwarded to the Navy Service Complaints Secretariat who will assign a Decision Body to investigate and decide the Service Complaint. The Decision Body may or may not be the complainant’s CO.

5. Investigation of the Complaint

a. Alleged cases of Bullying and Harassment should be investigated by a person who is trained in interviewing and harassment investigation. This will normally be a member of the CIMT or a HIO allocated by the CIMT.

b. The AO should accompany the Complainant/Respondent when they are interviewed by either the DB or the HIO. In order to comply with the Data Protection Act 1998, the AOs, complainant and respondent(s) are not to discuss the evidence, their involvement, or any other aspect of the investigation, with anyone else.

c. The Complainant, Respondent, and their respective AOs, are entitled to see the Initial Investigation Report before the final version is submitted to the DB.

Milestone 3	Initial Investigation Report disclosed to complainant and respondent(s) within 30 days of HIO's appointment.	
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6. Resolution of the Complaint

The target for resolving all complaints is 24 weeks, starting from the date that the complaint was admitted by the Specified Officer as a Service Complaint. In the majority of cases it should be possible to resolve the complaint well within this time scale – early resolution benefits both parties and restores the cohesion and capability of the unit.

7. Management of Assignment Action

In the event that a complainant, respondent or one of the AOs is re-assigned from the unit part way through the complaint process, in order to provide continuity it is preferable that the AOs remain assigned to the complainant/respondent.