CHAPTER 23

SERVICE COMPLAINTS

(Sponsor: NAVY PEOPLE-SCL SC LAW SO1)

CONTENTS

SECTION 1 - SERVICE COMPLAINTS

2301. General Matters
2302. Time Limits and Delay
2303. Processing a Service Complaint
2304. The Service Complaints Ombudsman for the Armed Forces (SCOAF)

SECTION 2 - REASONABLE CHALLENGE

2305. Reasonable Challenge (formerly Representations)
2306. Guidance on Reasonable Challenge

SECTION 3 - EMPLOYMENT TRIBUNALS

2307. Claims to Employment Tribunals
2308. Time Limits
2309. Legal Advice
2310. ACAS Mandatory Early Conciliation
2311. Application

ANNEXES

Annex 23A: Flow Diagram - Service Complaint Management in Navy Command
Annex 23B: Complaint Admissibility Form (CAF)
Annex 23C: Certificate Authorising The Release Of Information To Third Parties
Annex 23D: Guidance for Commanding Officers of Personnel against whom a Complaint of Bullying, Harassment or Discrimination has been upheld.
Appendix 23D1: Administrative Action Tri-Service/Single Service Equivalency of Sanctions Table

CHAPTER 23

SERVICE COMPLAINTS

SECTION 1

SERVICE COMPLAINTS

References:

A. JSP 831 Redress of Individual Grievance: Service Complaints
B. JSP 763 Behaviours and Informal Complaints Resolution
C. Armed Forces Act 2006 (AFA 06)

2301. General Matters

a. **Policy.** It is the statutory right of all Service Personnel to make a formal Service Complaint (SC) if they feel wronged in a matter relating to the Service. The Royal Navy's Service Complaints Policy complies with JSP 831 and this chapter contains supplementary guidance for the submission and administration of Service Complaints for officers, rating and other ranks. Personnel who submit a Service Complaint, or are required to assist a Complainant or investigate, staff or decide a Service Complaint are to make themselves aware of the References above and the contents of this chapter and follow the direction and guidance contained within. All communication will be confidential and direct to the participants and/or their Assisting Officer as required.[1]

b. **Flow Diagram.** Annex 23A provides a flow diagram of the SC management process. It is designed to supplement, not substitute, the SC policy in JSP 831 and JSP 763.

c. **Definitions.** The person who decides the admissibility of a Service Complaint is the Specified Officer (SO). The person(s) who decides the merits of a Service Complaint is the Decision Body (DB). A glossary of terms common to Service Complaints is within JSP 831, Part 1 at Annex A.

d. **Records.** All admitted Service Complaints are to be recorded on the Case Management System (CMS) by the Central Admissibility Team (CAT) within Service Complaints and Litigation (SC&L)

e. **Time Limits for Resolution.** 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 or Appeal Body stage.

f. **Alternative Resolution.** Where possible there are opportunities to resolve Service Complaints without completing the formal SC process. This might include use of mediation or a Special-to-Type (STT) complaints process.

[1] It is the responsibility of all involved in the process to ensure complaints are handled confidentially, fairly, promptly and correctly.

g. **Mediation.** This is a confidential process that provides a facilitated environment for parties to resolve their differences. It can be considered at any stage of the process and will ordinarily be undertaken by the Complaints Investigation and Mediation Team (CIMT), or a trained mediator from within or external to the Service.

h. **Informal Complaints.** The term 'informal complaint' is used to cover all complaints which are non-statutory. An informal complaint may become a Service Complaint if it is submitted in accordance with JSP 831 and deemed admissible by the SO.

i. **Combinations.** Individuals are not to act together in bringing a Service Complaint or informal complaint, either by the appointment of committees or in any other manner. Each individual must make their own Service Complaint or informal complaint.

j. **Civilians.** Grievances by civilian personnel, including those against Service personnel, are not governed by Armed Forces Act and therefore the procedures set out in this chapter and JSP 831 do not extend to them. Civilians are capable of being a Respondent to a Service Complaint but may elect not to engage.

k. **Malicious or Vexatious Complaints.** Disciplinary or administrative action may be taken against a person who makes a Service Complaint or informal complaint which is knowingly false, disrespectful, 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.

2302. Time Limits and Delay

a. **Time Limits.** A Complaint must normally be submitted within three months[2] of the 'relevant day' to be ruled admissible. The 'relevant day' is the day on which the wrong occurred, or if it occurred over a period of time the last day on which it occurred. Where a Complaint concerns a course of conduct by the same Respondent, the most recent incident complained of is used as the 'relevant day'. Where an STT[3] process exists that is yet to be exhausted, the 'relevant day' is the day the final outcome of the STT was notified to the Complainant.

[2] Some Complaints will have longer time limits. For example, complaints of discrimination pursued under the Equality Act 2010 on the basis of a 'protected characteristic' attract a six-month time limit under the Act. In addition, complaints regarding Equal Pay will have a time limit of 9 months for submission.
[3] Special-To-Type complaint processes include complaints about pay and allowances, healthcare and housing (this list is not exhaustive) and are to be exhausted prior to using the formal Service Complaints process. For more information about the STT complaints processes, please refer to JSP 831, Part 1 Chapter 2 para 2.7 and Part 2, Chapter 2 para 2.6.

b. **Just and Equitable Delay.** Where a Service Complaint is submitted 'out of time', the SO may still admit the case if they deem it 'just and equitable' to do so. Allowing a complaint that is out of time for Just and Equitable reasons is the exception rather than the rule. A Complainant will be asked to provide reasons for delay; these reasons may be different for each Head of Complaint. In addition to the reason given, additional factors may be considered, such as: (i) how far outside the time limit was the Complaint; (ii) whether it is possible to conduct a fair and reliable investigation; (iii) could the Complainant have used a quicker method to submit the Complaint; (iv) if the Complainant was able to work during the time of delay; and (v) was the Complainant able to access information within the time limit when raising their Complaint. If a Complaint is 'out of time' it is essential that any reasons for late submission are clearly set out in the Annex F at Section 6. In all cases, the SO should be given reasons from the Complainant as to why they have submitted the Complaint out of time before making a determination on admissibility.

2303. Processing a Service Complaint

a. **Submission**. All Service Complaints from Royal Navy personnel must be submitted by the Complainant directly to NAVY PEOPLE-SCL SUBMIT COMPLAINT (MULTIUSER) NAVYPEOPLE-SCLSUBMITCOMPLAINT@mod.gov.uk., normally using an Annex F form[4]. In the alternative complaints can also be submitted via the My Complaints App which is accessed via SCIO. It will be acknowledged directly by the CAT on behalf of the SO who will then decide upon the Complaint's admissibility under the Armed Forces Act 2006 and secondary legislation.

b. **Heads of Complaint.** The CAT will draft Heads of Complaint (HOCs), which summarise how the Complainant believes they have been wronged and by whom, for consideration by the SO. To do so, the CAT may seek a clarification interview with the Complainant to ensure the Complaint is correctly understood. The CAT may delegate conduct of the clarification interview to another body such as the Complainant's CO. In such cases the Complaints Advice Form (CAF) at Annex 23 B may be used. The CAT may also suggest the Complainant and Respondent engages with mediation or another form or Alternative Resolution.

c. **Admissibility Decision.** The SO must consider whether each HOC meets all the criteria to be admissible as a formal Service Complaint. The criteria for this decision are contained within JSP 831, Part 1, Chap 2. The SO may deem each HOC admissible or inadmissible. The SO may also 'Stay' a Complaint until the Complainant has exhausted a relevant STT process (see footnote 3 above). The SO will write to the Complainant, Respondent(s) and any likely Potentially Affected Person (PAP)[5] advising them of their decision for each HOC and the reasons. The SO will also write to the Commanding Officer of the complainant (see para e. below).

[4] A statement of complaint can be submitted in any written format, provided it is signed and dated. However, the Annex F provides a 'check list' which ensures that all necessary information is recorded and provided to the SO.
[5] PAPs are those persons not named as Respondents within the Annex F, but whose conduct may be criticised by the Decision Body when deciding the complaint.

d. **Admissibility Decision (Appeal).** Where the SO determines that a Complaint is wholly or partially inadmissible, the Complainant will be advised that if they wish to appeal against the decision, they must refer the matter to the SCOAF within 4 weeks.

e. **Notification.** The SO may write to the Complainant's CO to ensure that the Complainant is given the support required from their Chain of Command or in order to assist with the disposal of the Complaint. Similarly, notification may be sent to the Respondent any Potentially Affected Person's Chain of Command. The notification letter will routinely include only the HOCs, however the full Annex F may be enclosed with the letter when there is a requirement for more information to be shared. The Chain of Command may also be notified should a Complainant not engage with the admissibility process in a timely manner.

f. **Appointment of Decision Body (DB)[6].** The letter of appointment provided to the DB by the Royal Navy's Complaints Secretariat will specify that the DB is to investigate and decide the Complaint. Copies of this appointment letter will be provided to the Complainant and Respondent(s). Care will be exercised in determining who should be appointed to DBs balancing rank and experience versus the potential delay from having too small a cadre of persons who can be appointed DBs.

g. **Investigation.** Investigations may be conducted by an Investigating Officer (IO) or a Harassment Investigation Officer (HIO). The investigation must be objective and fair, addressing all admissible issues raised in the SC. All IOs and HIOs act on behalf of the DB and in accordance with their Terms of Reference. Where 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.

h. **Disclosure.** Once an investigation is complete, all documentation that the DB will consider to reach a decision (redacted where appropriate) must be disclosed to the Complainant, Respondents and PAPs. They must be informed that they may comment on the disclosure and that their comments will be put before the DB for consideration. Comments are normally required within 10 working days; however, a longer period may be appropriate for complex Complaints or where significant documentation is provided. The disclosure period, plus reasons for any extensions beyond 10 days must be noted on CMS. Privileged and protected information is not to be disclosed or paraphrased, except when advised to do so by the relevant legal adviser. Legal advice is not disclosed as part of the disclosure process since it is privileged information.

[6] The default position will be single person DBs, unless the circumstances of the SC require a panel of persons.

i. **Decision.** 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 there is 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. The DB must decide, on the balance of probabilities, whether the SC (or each individual HOCs) is upheld or, alternatively, not upheld. 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 not uphold the SC must be made. The decision letter should address each element of the Complaint and identify the evidence relied upon as well as any comments provided in response to disclosure.

j. **Decision (Appeal).** The decision of the DB may be referred for appeal by the Complainant if they are not content with the decision by writing to the Royal Navy's Complaints Secretariat using e-mail address: NAVY PEOPLE-SCL APPEALS (Multiuser) (navypeople-sclappeals@mod.gov.uk) within 2 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 legal grounds upon which they consider an appeal to be valid. Guidance on the three valid grounds of appeal can be found in JSP 831 and from the DB's decision letter. The referral will be acknowledged by the Navy Service Complaints Secretariat and the SO will then consider whether the appeal is admissible. If the appeal is admitted, the Navy Service Complaints Secretariat will appoint an Appeal Body (AB) normally independent of the DB to consider the SC. If the appeal is not admitted, the Complainant may refer to the SCOAF for a review of this decision, the SO will also include advice on how to do this.

k. **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, e.g. an SC about a decision made by the Admiralty Board or a member of the Admiralty Board acting in that capacity. 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 for review.

l. **Financial and Non-Financial Redress.** Upon appointment, DBs (and Appeal Bodies) will be empowered to award appropriate non-financial redress where an SC is upheld. They will also be provided with a specific delegation by the Navy Service Complaints Secretariat for the award of financial redress, to be made using the latest version of the SCOAF Financial Remedy Guidelines.

m. **Administrative Action.** Following the determination of an SC, it may be necessary to consider administrative action. The most common example will be where an SC alleging bullying has been upheld and administrative action is considered against the Respondent(s). Such administrative action can only be taken or initiated by the unit which exercises command over the potential subject and that unit should seek advice before determining what, if any, administrative action to take. Further guidance is at Annex 23D.

n. **Legal Advice.** When an SC is allocated to a DB or AB by the Navy Service Complaints Secretariat, a legal adviser will be available. If the DB/AB requires legal advice at any stage in the investigation or deciding of the SC, they may refer to that legal adviser if required.

o. **Organisational Learning.** Where Service policy is the subject of a Complaint and is having an adverse impact on Operational Capability, this will be formally recorded using the Defence Lessons Management Information System (DLMIS). This will allow consideration to whether that Service policy has had an adverse effect upon the Moral Component of Operational Capability (MCOC). Personal data which may identify the Complainant, or any respondent will not be inputted into DLIMS. Recommendations referring to the conduct of a person or unit will be referred to the Conduct and Culture team.

2304. The Service Complaints Ombudsman for the Armed Forces (SCOAF)

Where an allegation of a wrong has been received directly by the Service Complaints Ombudsman for the Armed Forces (SCOAF), the SCOAF will refer the matter to the Navy Service Complaints Secretariat. The Service Complaints Ombudsman for the Armed Forces (SCOAF) has the power 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 when the Royal Navy's process has been completed. Full details of when the SCOAF can be asked to review a decision or investigate an SC and how to contact the SCOAF's office are in JSP 831 and online[7].

[7] www.scoaf.org.uk

SECTION 2

REASONABLE CHALLENGE

2305. Reasonable Challenge (formerly Representations)

a. The concept and purpose of Representations have been replaced by reasonable challenge, for which a guide is available on the intranet[8]. As a result the policy in relation to Representations will now adopt reasonable challenge as the appropriate method that a Royal Navy Service Person can raise an issue or suggestion that does not amount to a Complaint.

b. Representations did not alter, and so this section does not alter:

(1) The procedure by which Service Personnel may bring requests before Inspecting Officers at inspections in accordance with the custom of the Service.

(2) 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.

(3) The procedure by which local questions of welfare and amenities may be dealt with by the Welfare Committee.

2306. Guidance on Reasonable Challenge

a. The Iraq Inquiry (Chilcot) Report tells us that it's important to avoid 'groupthink' as we develop policy, and the best antidote to that is reasonable challenge. An environment in which challenge is expected and accepted is important. People should be receptive to reasonable challenge and assume that it is provided with the best of intentions, while those offering challenge should know how to do so effectively. Challenge isn't about proving someone right or wrong; rather it's about highlighting and exploring alternative options. These cultures and behaviours reflect a healthy organisation, and we have created the following guide to support their development.

b. For those **receiving challenge**, you should:

(1) Not take it personally – the challenge isn't about you; it's about the issue at hand.

(2) Make it known that you welcome reasonable challenge and create space in the way you run your business to receive it. Recognise that challenge might result in change.

(3) Seek real diversity of thought, not just shades of mainstream thinking.

[8]modgovuk.sharepoint.com/sites/IntranetHeadOffice/Documents/Forms/AllItems.aspx?id=%2Fsites%2FIntranetHeadOffice%2FDocuments%2F20170405-Reasonable Challenge the Guide-U%2Epdf&parent=%2Fsites%2FIntranetHeadOffice%2FDocuments

(4) Give staff the opportunity fully to articulate different views and give them credit for doing so. And remember that the person challenging shouldn't be expected to have a solution there and then.

(5) Demonstrate that you are giving serious thought to the challenge being offered – do not dismiss it out of hand and make sure people aren't just telling you what you want to hear.

(6) Respond respectfully – never belittle someone's view, and never (even after the event) sideline those offering it.

(7) If you do not accept the challenge, explain your reasoning, including supporting evidence when necessary.

(8) Encourage the use of evidence from beyond the immediate organisation, think tanks, academia and other sources.

(9) Support both junior colleagues and peers to raise a challenge with more senior colleagues.

c. For those **offering challenge**, you should:

(1) Make challenge with courtesy and politeness.

(2) Be prepared to explain the logic and reasoning behind your alternative view and provide evidence. Keep your challenge concise and relevant to the issue at hand.

(3) Think about the interpersonal dynamics. Keep it professional - it's the issue you're challenging, not the person. Be respectful to the approach from which you are differing.

(4) Choose your moment and your medium. A one-to-one discussion or a smaller team meeting may be more appropriate than a big meeting at which positions are being taken and decisions are expected; a gently probing conversation or email is better than a confrontational one.

(5) Raise issues in a timely manner. Don't leave your challenge too late in the process, when changing course could be too difficult.

(6) Accept if the eventual decision remains unchanged – a decision has to be taken once all reasonable challenge has been considered. Only in cases where regularity or propriety have not been observed should you need to turn to the Department's whistleblowing process.

SECTION 3

EMPLOYMENT TRIBUNALS

2307. 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 2309 below).

b. Royal Navy 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. Royal Navy personnel also have the right of access to an ET in respect of claims alleging pay inequality 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 Royal Navy 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 People-SCL Litigation is to be kept informed of the progress of the SC.

2308. Time Limits

a. In recognition of the requirement for ET claims to be first submitted as an 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 6 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, an application may be made to an ET at any time during the person's service or within 9 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 2310 concerning Early Conciliation and its impact upon time limits.

2309. 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.

2310. 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 2311 sub para f 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 the ACA website[9].

2311. 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 0300 790 6234 (Scotland) or the Advisory, Conciliation and Arbitration Service (ACAS) on 0300 123 1100.

[9] www.acas.org.uk

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 People-SCL Litigation-Litigation as quickly as possible, as MOD's response is subject to tight deadlines.

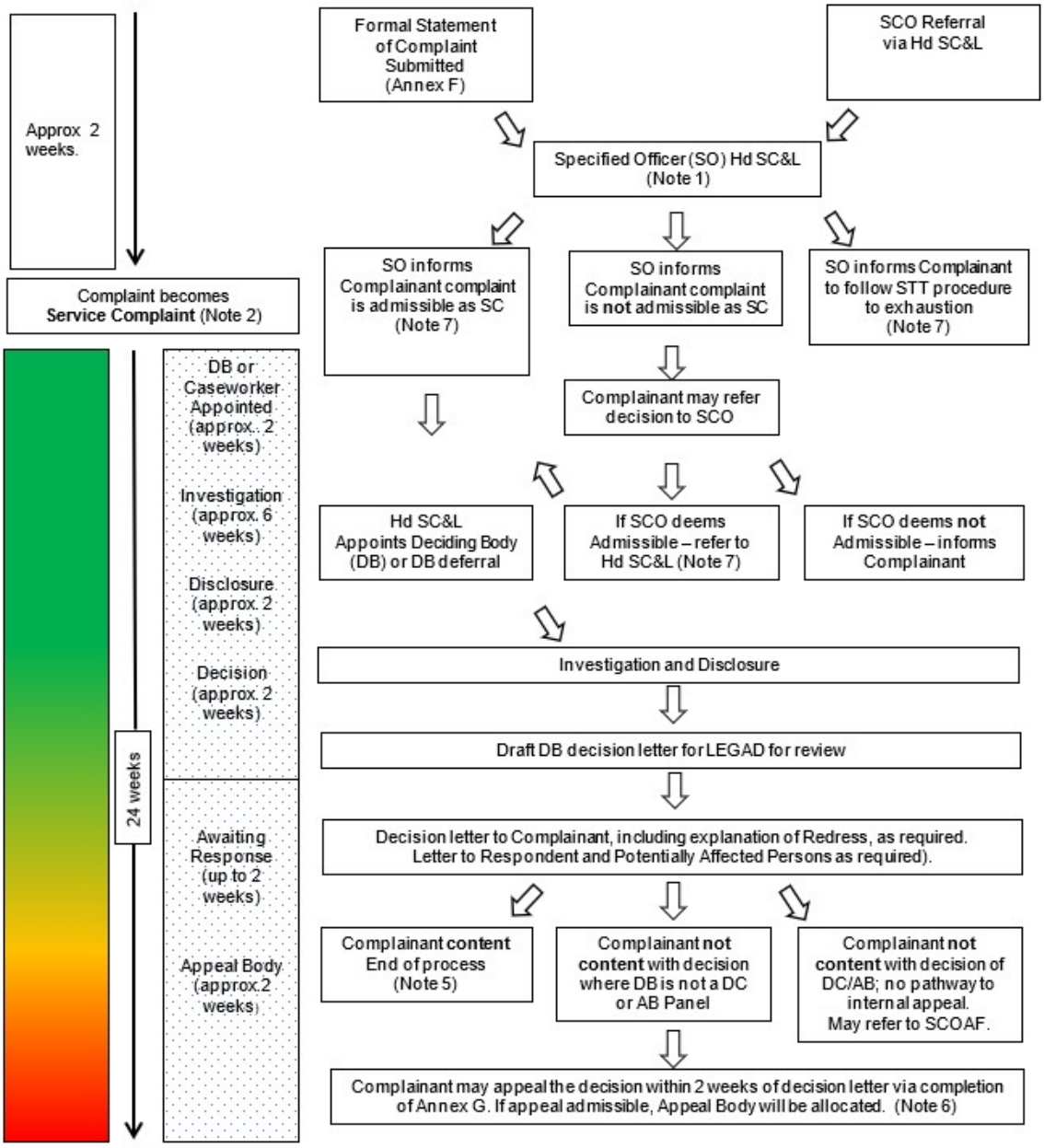
f. The Form ET1 asks for the name and address of the employer. To ensure that MOD is able to comply with the ET deadline for the employer's initial response, it is most important that the Claimant gives the correct MOD address on Form ET1.This is as follows:

Royal Navy
The Ministry of Defence
Navy People-SCL Litigation
1-Deck, People and Training Strategy, People and Training Directorate HQ,
Leach Building
Whale Island
Portsmouth PO2 8BY

g. If an 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 a stay of proceedings. 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

FLOW DIAGRAM - SERVICE COMPLAINT MANAGEMENT IN NAVY COMMAND



Notes:

1. Under Centralised Admissibility the SO who will take all preliminary actions, assess the admissibility of the SC and notify the parties of their decision and may also notify the Chain of Command.
2. Decisions to be made in 2 weeks, pending complexity of the complaint and availability of the complainant.
3. 24 week timeline for resolution commences, including the Appeal as required.
4. Must be referred to SCO within 4 weeks.
5. Administrative Actions may follow iaw Annex 23D.
6. If appeal not permitted, Complainant may refer the matter to SCOAF.
7. If HoC is not agreed by complainant this can be raised with the SO for amendment.

ANNEX 23B

COMPLAINT ADMISSIBILITY FORM (CAF)

1. A formal statement of complaint (Annex F) must be submitted to the Specified Officer (SO) via the Centralised Admissibility Team (CAT) - NAVY PEOPLE-SCL SUBMIT COMPLAINT.

2. All initial actions will be completed by the CAT: acknowledging receipt; creating JPA record; and completing the CAF as far as is possible.

3. If the CAT cannot complete the CAF in full, the SO's appointed delegate, normally the CO, will be requested to meet with the complainant to conduct a clarification interview. The clarification interview should be used to obtain any missing information and to ensure that an Assisting Officer has been appointed and appropriate support is provided (see JSP 831 Part 2 Chapter 3 Para 23k). **These functions must not be performed by the CO or any person within their Chain of Command in cases which allege misconduct of a sexual nature, or in which the CO is otherwise implicated.**

4. **JSP 831 and BRd 3(1) Chapter 23** are useful references to assist with the compilation of this CAF. The completed CAF should be returned to the CAT within 5 working days.

5. Initial Actions

JPA Number:		**SCOAF Reference: (if applicable)**	
Date on Annex F:		**Date Annex F received by SO (CAT):**	
Date Acknowledgement letter sent:		**Date CAF sent to Delegated Officer for completion:**	
Delegated Officer for the purposes of completing the CAF:			
Informal Resolution - the following should be discussed with the complainant during the clarification interview.			

6. Personnel Details

Complainant's Details			
Name:		**Service Number:**	
Rank:		**Unit:**	
Service:		**Type of Engagement:**	
If the complainant has left the Armed Forces please provide their termination or discharge date:			

Commanding Officer's Details			
Name:		**Rank:**	
Position:		**Unit:**	

Commanding Officer's Immediate Superior's Details			
Name:		Rank:	
Position:		Unit:	

Assisting Officer's Details - Complainant			
Name:		**Service Number:**	
Rank:		**Unit:**	

Respondent's Details *duplicate as necessary			
Name:		Service Number:	
Rank:		Unit:	

Assisting Officer's Details – Respondent ***duplicate as necessary**			
Name:		**Service Number:**	
Rank:		**Unit:**	

Unit N1/G1 Advisor's Details			
Name:		**Rank:**	
Position:		**Unit:**	
Contact details :			

7. Complaint Checklist

Matter to be checked	Response by SO
Is the complaint in writing?	
Is the complaint dated?	
Is the complaint signed?	
Does the complainant state how they believe they have been wronged?	
Does the complainant state the redress they seek?	
Does the matter complained of relate to the complainant's service in the Armed Forces?	
Is the matter complained of excluded from the Service Complaints system? JSP 831 Part 1 Annex B	
Is there a relevant Special to Type Process for this type of complaint? JSP 831 Part 2 Chapter 3 & Annex Q.	
Has the Special to Type process been exhausted (i.e. every level of appeal has concluded)? Please provide date of final decision in the STT process.	
Does the complaint concern matters of a sexual nature?	
Is the complainant's CO implicated in the complaint?	
Are there any other related SCs of which the SO is aware?	
Is there any related Disciplinary or Administrative Action?	
Is there any related Employment Tribunal Action?	
Does the Annex F (or accompanying documents) provide dates for each alleged incident or decision which is the subject of the complaint?	
Has the complaint been submitted within 3 months[1] of the date on which the allegations occurred?	
If the complaint has been submitted 'out of time', has the complainant provided reasons for the delay to submission of the complaint?	

[1] If the complaint concerns discrimination on the grounds of gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation, the period for submission of the complaint is 6 months. If the complaint is a matter capable of being pursued as a claim the period for submission of the complaint is normally 9 months – see JSP 831 Part 1 Chapter 1 Para 18.

8. Legal Advice on Admissibility & Next Steps

ANNEX 23C

CERTIFICATE AUTHORISING THE RELEASE OF 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.

*Delete as appropriate

Signed .....

Date .....

DATA PROTECTION ACT 2018

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 2018.

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

ANNEX 23D

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, eg. 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. The process of complaint management is detailed in JSP 831 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, they 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 they choose to depart from this guidance, the CO must fully record their 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 sanction[1]. 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 5 and para 6). Where it is found that an individual has behaved in an unacceptable way that is sexual in nature, this policy should be read in conjunction with 2022DIN01-035[2] and 2022DIN01-073[3]; in such cases there is a presumption of discharge and COs must seek legal advice from their Regional Legal Office.

b. Although the definitions of bullying, harassment at Part 1 Chapter 2 and of discrimination are within JSP 763 Part 1, 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 follow. 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 fall towards the lower end of the spectrum of severity will generally be 'environmental' in their nature (as opposed to targeted towards a specific individual/group of individuals). This may include behaviour where the action had resulted from a lack of education on the part of an individual on a particular issue or where the behaviour was well intended but ultimately misplaced, for example:

(a) Inappropriate banter, jokes and suggestions.

(b) Displaying, downloading, circulating, reading or watching offensive material or images in an environment shared by other personnel.

Sanction Entry Point[4]: formal written warning through to formal censure (see Appendix 1, Sers 5-7).

[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] Zero Tolerance to Sexual Offences and Sexual Relationships Between Instructors and Trainees.

[3] Zero Tolerance to Unacceptable Sexual Behaviour: A Victim Survivor Focused Approach.

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

(2) **Higher Level.** At the higher end of the spectrum are more deliberate, usually targeted behaviours. Any behaviours, including those which are environmental that relate to a protected characteristic[5] will also be considered under this higher level category. Examples include:

(a) Sexist/racist/homophobic and anti-religious language/action directed at an individual.

(b) Pestering someone for a relationship after being asked to stop.

(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 Point[6]: formal censure, through to administrative discharge (see Appendix 1, Sers 7-12). When considering sanction entry point, 2022DIN01-035 and 2022DIN01-073 must also be consulted where the behaviour is sexual in nature.

(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.

[5] As defined by Section 4 of the Equality Act 2010.
[6] Where no other factors affecting severity of sanction have been taken into account.

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 Point**[7] is reduction in rank through to administrative discharge (see Appendix 1, Sers 11-12). When considering sanction entry point, 2022DIN01-035 and 2022DIN01-073 must also be consulted where the behaviour is sexual in nature.

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-blameworthy and without prejudice. Further guidance is in JSP 831.

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.

[7] Where no other factors affecting severity of sanction have been taken into account.

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 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 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 Defence Service Personnel Policy Secretariat.

APPENDIX 1 TO ANNEX 23D

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

<table>
<tr><th>Ser</th><th>Tri Service Guideline</th><th>RN Approx Equivalent</th><th>Army Approx Equiv</th><th>RAF Approx Equiv</th></tr>
<tr><td>1</td><td>Minor admin action sanctions</td><td colspan="3">As column b</td></tr>
<tr><td>2</td><td>Counselling</td><td colspan="3">As column b</td></tr>
<tr><td>3</td><td>Additional E&D training[1]</td><td colspan="2"></td><td rowspan="3">Informal interview
Formal interview
Formal warning</td></tr>
<tr><td>4</td><td>Informal warning</td><td>(MAA)</td><td>Formal interview</td></tr>
<tr><td>5</td><td>Formal written warning</td><td>(Ratings/RM OR only) for reversion/discharge

CO’s Logging (Officers)

SPEC SJAR/OJAR (Ratings/ORs and Officers)</td><td>Formal interview</td></tr>
<tr><td>6</td><td>Assignment restrictions</td><td>Career monitoring to be recorded between DO/CM. SJAR/OJAR to reflect</td><td rowspan="2">Assignment restrictions
Letter of Censure</td><td rowspan="3">Formal warning (promotion restrictions)[2] .

Removal of acting rank</td></tr>
<tr><td>7</td><td>Formal Censure</td><td>As per BR3(1) Ch 20 Para 2032</td></tr>
<tr><td>8</td><td>Promotion restrictions</td><td>Quarterly Reports (Officers)

FC/2SL Severe Displeasure

Admiralty Board’s Severe Displeasure</td><td>Rebuke[3]
Expression of Displeasure
Expression of Severe Displeasure</td></tr>
<tr><td>9</td><td>Removal from appointment</td><td>Removal From Assignment - approval by NAVSEC</td><td>Removal from appt[4] by the Army Board.</td><td>QR 1027 Administrative Report (Assignment)</td></tr>
</table>

[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	RN Approx Equivalent	Army Approx Equiv	RAF Approx Equiv
10	Promotion blocked for a given period	Admiralty Board's Severe Displeasure FC/2SL Severe Displeasure	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.