



House of Commons
Defence Committee

Fairness without Fear: The work of the Service Complaints Ombudsman

Sixteenth Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons
to be printed 9 July 2019*

The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

Current membership

[Rt Hon Dr Julian Lewis MP](#) (*Conservative, New Forest East*) (Chair)

[Leo Docherty MP](#) (*Conservative, Aldershot*)

[Martin Docherty-Hughes MP](#) (*Scottish National Party, West Dunbartonshire*)

[Rt Hon Mr Mark Francois MP](#) (*Conservative, Rayleigh and Wickford*)

[Graham P Jones MP](#) (*Labour, Hyndburn*)

[Johnny Mercer MP](#) (*Conservative, Plymouth, Moor View*)

[Mrs Madeleine Moon MP](#) (*Labour, Bridgend*)

[Gavin Robinson MP](#) (*Democratic Unionist Party, Belfast East*)

[Ruth Smeeth MP](#) (*Labour, Stoke-on-Trent North*)

[Rt Hon John Spellar MP](#) (*Labour, Warley*)

[Phil Wilson MP](#) (*Labour, Sedgefield*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

© Parliamentary Copyright House of Commons 2019. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/copyright.

Committee reports are published on the Committee's website at www.parliament.uk/defcom and in print by Order of the House.

Committee staff

Mark Etherton (Clerk), Dr Adam Evans (Second Clerk), Dr Ian Hart, Ian Thomson, Dr Lauren Twort, George Woodhams (Committee Specialists), Sarah Williams (Senior Committee Assistant) and Arvind Gunnoo (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Defence Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5745; the Committee's email address is defcom@parliament.uk. Media inquiries should be addressed to Alex Paterson on 020 7219 1589.

You can follow the Committee on Twitter using [@CommonsDefence](https://twitter.com/CommonsDefence).

Contents

Summary	3
1 Introduction	5
Background	5
Our inquiry	8
2 The work of SCOAF	9
Introduction	9
Types of investigations	9
Timeliness and staffing	10
Vetting	13
Measures of effectiveness	15
3 Complaints and SCOAF	18
Breakdown of complaints	18
Female and Black, Asian and Minority Ethnic (BAME) personnel	18
Culture towards complaints	19
Withdrawn complaints	22
4 Implementation of Annual Report recommendations	25
Rate of change	25
5 Future of SCOAF	27
Introduction	27
Scope of powers	27
“Own-initiative” investigations	28
Legal budget and representation	29
Time in office	30
Conclusions and recommendations	33
Formal minutes	37
Witnesses	38
Published written evidence	38
List of Reports from the Committee during the current Parliament	39

Summary

The role of the Service Complaints Ombudsman for the Armed Forces (SCOAF) is to provide independent and impartial oversight of the Service complaints system for members of the UK Armed Forces. This is done mainly by referring complaints from serving personnel to the chain of command and by carrying out independent investigations. SCOAF replaced the Office of the Service Complaints Commissioner (operational from 2008–2015) as part of a wide range of reforms to the overall Service complaints process.

The Ombudsman is required to produce an Annual Report to the Secretary of State for Defence on the fairness, efficiency and effectiveness of the Service complaints system. To date, the Ombudsman has never judged the Service complaints system to be efficient, effective and fair.

Staff shortages are a continuing challenge for SCOAF, with improvements having been introduced only recently. Staffing issues, together with the volume of cases and the complexity of many of them, are exacerbated by failings within the wider Service complaints system.

The negative culture towards complaints within the Services has discouraged serving personnel from coming forward and making a complaint. It is vital that the Ombudsman and complainants should play a significant role during the forthcoming review of the Armed Forces (Service Complaints and Financial Assistance) Act.

Issues within the Service complaints system are difficult to identify when there is only one metric to measure its performance objectively: a Key Performance Indicator (KPI) of 90% of Service complaints to be resolved within 24 weeks. To date no Service has achieved this target. An admissibility decision that should take two weeks is taking up to 86 weeks to complete. SCOAF is also falling below expected levels of performance with only 56% of all investigations completed within the time target.

It is also a serious concern that complaints from BAME and female Service personnel are disproportionately high, compared to their representation within the Armed Forces: in particular, they are far more likely to complain about bullying, harassment and discrimination.

The slow progress of the Ministry of Defence in implementing recommendations from the Ombudsman's previous Annual Reports is unacceptable and erodes Service personnel's confidence in SCOAF's ability to make positive changes.

We seriously doubt that the current Service complaints system is fit for purpose. Service personnel have little faith in it, with surveys indicating that many personnel choose not to make a complaint—in some cases because of worries about the impact on their future careers. When complaints are raised, their handling is unacceptably slow, both by the Services themselves and by SCOAF. There is a lack of information about where delays enter the system and why: the MoD and SCOAF need to work together to ensure that much better data is recorded about the time taken during the various stages in complaints procedures.

We are also concerned about allegations that, when complaints have been raised, pressure has been put on complainants to withdraw them. This, if true, is a cause for considerable concern. However, the absence of proper records means that it is not possible to know how widespread the practice may be. Better procedures are needed to ensure that potential abuse of the system in this way cannot occur.

It is evident to us that complaint handling within SCOAF and across the Services is understaffed and inadequately resourced. The decision taken in 2015 to task a relatively small office with the duty of re-examining the substance of complaints—rather than just ruling on the adequacy of procedures followed and time taken by the Services in handling them—has led to large backlogs and unacceptable delays. A plan to bring the workload of the Ombudsman back into balance with the resources given to her to deal with it must urgently be prepared. Otherwise, the whole system risks losing credibility.

1 Introduction

Background

1. The Service Complaints Ombudsman for the Armed Forces (SCOAF)¹ was established in 2016 by the Armed Forces (Service Complaints and Financial Assistance) Act 2015.² SCOAF replaced the Office of the Service Complaints Commissioner (operational from 2008–2015) as part of a wide range of reforms to the overall Service complaints process.³

2. The Act extended the remit of the Service Complaints Commissioner (SCC) and provided the Service Complaints Ombudsman (SCO)⁴ with investigatory powers. It streamlined the internal complaints system by reducing it to one level of appeal, rather than two, and increased delegation within the chain of command to remedy complaints at the lowest level.⁵ The Act also continued the requirement that the SCO produce an Annual Report to the Secretary of State for Defence on the fairness, efficiency and effectiveness of the Service complaints system.

3. The processes and procedures of the Service complaints system and the powers of the SCO are set out in the following legislation:

- The Armed Forces Act 2006, as amended by the Armed Forces (Service Complaints and Financial Assistance) Act 2015;
- The Armed Forces (Service Complaints) Regulations 2015;
- The Armed Forces (Service Complaints Miscellaneous Provisions) Regulations 2015;
- The Armed Forces (Service Complaints Ombudsman Investigations) Regulations 2015; and
- The Armed Forces (Service Complaints and Financial Assistance) Act 2015 (Transitional and Savings Provisions) Regulations 2015.⁶

4. Guidance on service complaints published by the Ministry of Defence (MoD) states that the role of the SCO is designed to give complainants who are not satisfied with the internal complaints process an independent route to address any concerns in the handling of their complaint with a “level of independent oversight”, and to provide “a means for improving the process”.⁷

1 The acronym describes the office as a whole and actions taken under the Ombudsman’s delegated powers (see glossary of Annual Report 2018).

2 Ministry of Defence ([SCO0005](#))

3 Service Complaints Ombudsman for the Armed Forces, [History and Legislation](#), website accessed 24 June 2019

4 The Service Complaints Ombudsman (SCO) or simply the ‘Ombudsman’ will be used to denote the individual post holder. SCOAF will refer to the office as a whole.

5 Ministry of Defence, guidance, [6 November 2015](#)

6 Ministry of Defence, [JSP 831](#), Redress of Individual Grievances: Service Complaints, Part 1 Directive, 22 January 2016, p 3

7 Ministry of Defence, [JSP 831](#), Redress of Individual Grievances: Service Complaints, Part 1 Directive, 22 January 2016, p 4–5

5. SCOAF says that its vision is “that all Service personnel have access to, and confidence in, a Service complaints system that is efficient, effective, and fair”.⁸ To date, the Service complaints system has never been judged to be efficient, effective and fair: this includes every Annual Report under the Service Complaints Commissioner (2008–2015). In her first Annual Report Nicola Williams, the current SCO, said she felt it was too soon to judge the result of the reforms.⁹ However, her 2017 and 2018 Annual Reports concluded that, despite improvements, the system is still not efficient, effective and fair.¹⁰

6. The following page contains a flowchart of the Service complaints process.

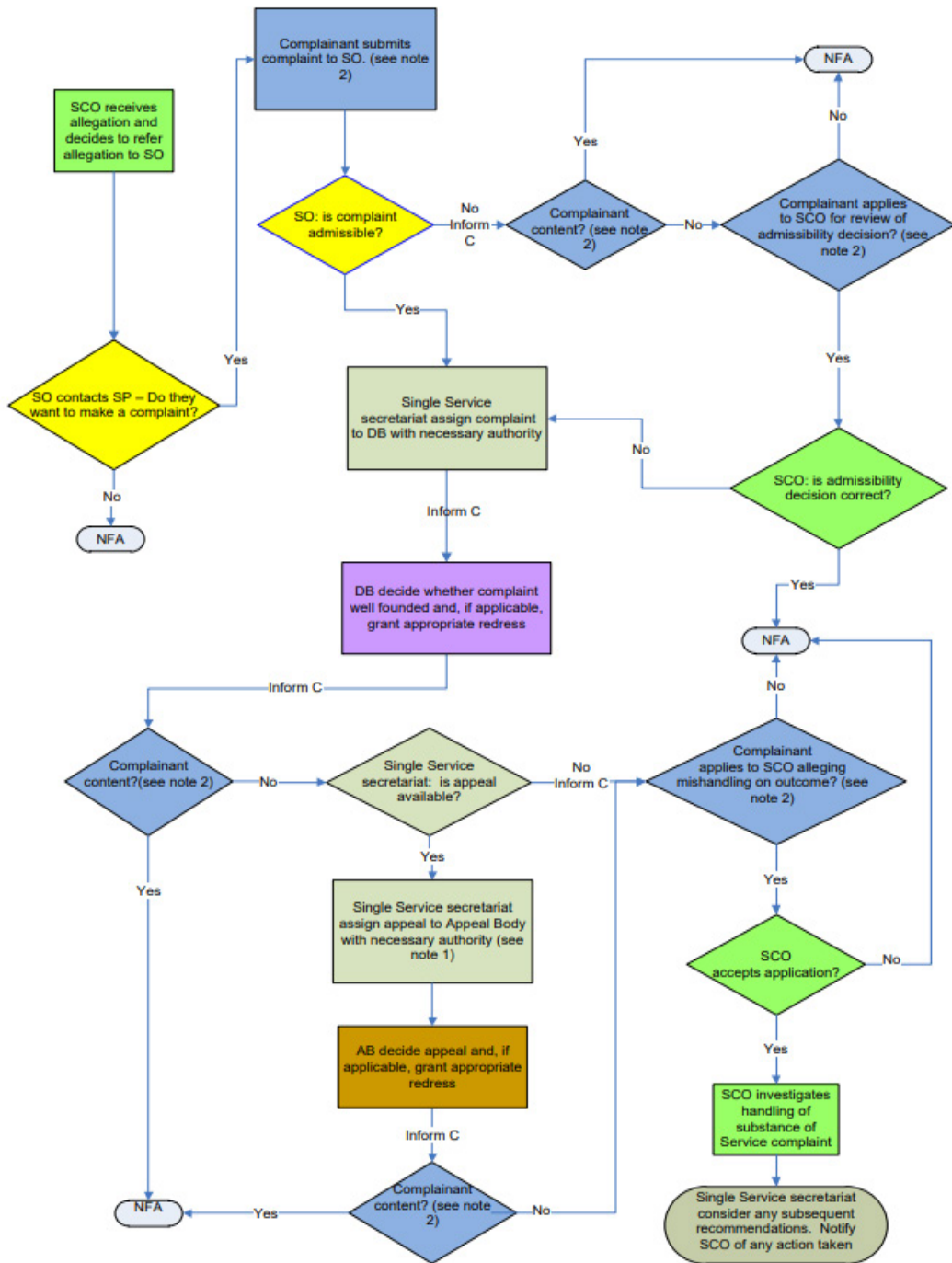
8 Service Complaints Ombudsman ([SCO0007](#))

9 Q1 [Nicola Williams]

10 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018; [Annual Report 2018](#), 11 April 2019

Service Complaints Process Flowchart

New Complaints Process



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

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

Glossary

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

Source: Ministry of Defence¹¹

11 Ministry of Defence, [JSP 831](#), Redress of Individual Grievances: Service Complaints, Part 1 Directive, 22 January 2016, Annex C, p 31

Our inquiry

7. Our predecessor Committee held a pre-appointment hearing for the post of Service Complaints Commissioner in November 2014 with Nicola Williams, who is now the incumbent Service Complaints Ombudsman (SCO).¹² On 9 January 2019, we launched an inquiry into the *Work of the Service Complaints Ombudsman* to examine the progress of the reformed complaints system. Our call for evidence asked for submissions on the following matters:

- the effectiveness of the Service Complaints Ombudsman, including the level of resources and powers available to her;
- the effectiveness of the new complaints system and any possible future improvements;
- the findings and recommendations of the Ombudsman in her 2017 Annual Report and the Ministry of Defence's response; and
- the Ombudsman's relationship with the Ministry of Defence and each of the individual Services.

8. We held one oral evidence session with the SCO and received eleven submissions of written evidence. We did not publish individual submissions which contained personal and sensitive information. Instead, we used the submissions for background to help frame and inform the inquiry. We are grateful to everyone who offered their time, experience and expertise to assist us in our work. We did not look into individual cases during this inquiry.

12 Defence Committee, Sixth Report of Session 2014–15, [Pre-appointment hearing for the Service Complaints Commissioner](#), HC 832

2 The work of SCOAF

Introduction

9. The Service Complaints Ombudsman for the Armed Forces (SCOAF) provides serving personnel and their families with an alternative point of contact outside the Services' internal complaints system.¹³ However, only persons subject to Service law can make a Service complaint.¹⁴ SCOAF is independent of the Ministry of Defence (MoD), with the Ombudsman being a Crown appointment.¹⁵

10. The mission of SCOAF is to “provide independent oversight and investigations in support of an effective Service complaints process for members of the UK Armed Forces”.¹⁶ The main ways that this is achieved is by referring complaints by serving personnel back to the chain of command, known as ‘referrals’, and carrying out investigations into admissibility decisions, undue delay, substance (merits) and maladministration.¹⁷ Investigatory powers were introduced with the establishment of SCOAF and did not exist under the Service Complaints Commissioner.

Types of investigations

11. In 2018 SCOAF made 168 referrals, making up 19% of all contacts with serving personnel, this was 18% down on 2017 (205).¹⁸ In the same year SCOAF received 346 applications for investigation, of which 87% met the eligibility criteria and were subsequently accepted.¹⁹

12. The Service Complaints Ombudsman (SCO) can conduct four types of investigation:

- Review of admissibility decision—review of a decision by the chain of command either (i) not to accept a complaint for investigation or (ii) not to allow a complaint to proceed to appeal;²⁰
- Undue delay—investigation of an alleged delay in the handling of an ongoing complaint;²¹
- Substance (merits)—investigation into whether the complaint of an alleged wrong is well-founded, this is conducted at the end of the Services internal process;²² and
- Maladministration—review of the handling of a complaint at the request of the complainant once it has completed the Services internal process.²³

13 Ministry of Defence ([SCO0005](#))

14 Service Complaints Ombudsman ([SCO0007](#))

15 Q47 [Nicola Williams]

16 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019

17 Service Complaints Ombudsman ([SCO0007](#))

18 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 70

19 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 17. For a list of the eligibility criteria for each investigation, see [Appendix B](#) of the Annual Report 2018

20 Service Complaints Ombudsman ([SCO0007](#))

21 Service Complaints Ombudsman ([SCO0007](#))

22 Service Complaints Ombudsman, *Annual Report 2017*, 26 April 2018, p 58

23 Service Complaints Ombudsman ([SCO0007](#))

13. The findings of the SCO on individual cases are binding in law²⁴ on each of the Services and can be challenged only through judicial review.²⁵ Recommendations are made based on the findings to allow for appropriate redress. These are not binding but cannot be rejected without a sufficient reason.²⁶ The MoD state that “whilst the department is not legally obliged to adopt her recommendations, we take them seriously and the vast majority are accepted”.²⁷

14. Investigation reports often include “wider learning points” which act as ancillary recommendations. These go beyond the individual case and are intended for general application across the Service complaints process.²⁸ Like the recommendations from individual cases, the wider learning points are not binding; however, the SCO believes that they are taken seriously by each of the Services.²⁹

Timeliness and staffing

15. SCOAF has time targets for referrals and each type of investigation with the aim of completing 90% of cases within a specific amount of time, varying according to category. SCOAF exceeded its target for referrals in 2018, completing 99% within 7 working days.³⁰ However, SCOAF only completed 56% of all investigations within the time target, well below the target.³¹

Table 1: Investigation outcomes within target (%)³²

Investigation type	Time target	Total cases closed in 2018	Outcomes within target (%)
Review of admissibility decision	17 working days	101	72%
Undue delay	17 working days	68	78%
Substance	100 working days	28	< 5%
Maladministration	100 working days	32	< 5%

Source: SCOAF

16. The two types of investigation with the highest levels of timeliness included undue delay (78%) and admissibility reviews (72%).³³ Although these are still below the 90% target they are a significant improvement on the previous year (41% and 42% respectively).³⁴

24 Ministry of Defence ([SCO0005](#))

25 Service Complaints Ombudsman ([SCO0007](#))

26 Service Complaints Ombudsman ([SCO0007](#))

27 Ministry of Defence ([SCO0005](#))

28 Service Complaints Ombudsman ([SCO0007](#))

29 Service Complaints Ombudsman ([SCO0007](#))

30 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 70

31 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 70

32 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, pp 19–24

33 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 70

34 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 19 and 21

17. Fewer than 5% of investigations into maladministration and substance (merits) were completed within 100 working days.³⁵ The time targets begin only once cases are allocated to an investigator: in 2018 this took on average 42 weeks, resulting in a significant backlog.³⁶ As of 1 February 2019, there were 148 unallocated cases.³⁷ The volume and complexity of these cases is significant.

18. The decision to expand the SCO's powers to investigate the substance of a complaint was taken in 2015 during the Committee stage in the Commons in which amendments were suggested to the Armed Forces (Service Complaints and Financial Assistance) Bill.³⁸ One of our predecessor Committees recommended the expansion of the SCO's powers to include the substance of complaints.³⁹ This went beyond investigating the adequacy of procedures and the time taken by the Services. Although such powers are the norm for Ombudsmen's offices, this has resulted in a considerable increase in SCOAF's workload without a proportionate increase in resources. The inevitable result has been large backlogs and unacceptable delays.

19. In written evidence, the SCO said: "That we have a backlog, particularly in our first 3 years, is not something I find acceptable",⁴⁰ and added that the main reason for missing the timeliness targets was that her investigations team had "never been at full complement".⁴¹ However, the decision to allow reinvestigation of the substance of complaints rejected by the Services internally is also responsible for this situation.

20. Staffing has been a continuing problem for SCOAF since its inception:

We have had staffing issues on both the investigative side and the administrative side of my office. If I just take the investigative side, we are now almost at full complement. We should have 11 people and we now have 10, but it has taken us nearly four years to get to that.⁴²

21. The response to a written parliamentary question about the number of investigations and investigation officers revealed the extent of the vacancies in 2017 and 2018:

Table 2: Number of investigations and investigating officers in SCOAF

Quarter ending	Full-time Investigator posts	Filled	Vacant	Current Investigations	Allocated	Unallocated
31-Mar-17	11	9 (1)	2	53	46	7
30-Jun-17	11	8 (2)	3	62	57	5
30-Sep-17	11	6 (3)	5	87	74	13
31-Dec-17	11	6	5	121	92	29
31-Mar-18	11	7	4	118	70	48 (4)

35 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 70

36 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 4

37 Service Complaints Ombudsman ([SCO0007](#))

38 House of Commons Library, [Armed Forces \(Service Complaints and Financial Assistance\) Bill \(HL\): Progress of the Bill](#), 6 March 2015, pp 7–8

39 Defence Committee, Fifth Report of Session 2014–2015, [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#), HC 508, para 42

40 Service Complaints Ombudsman ([SCO0007](#))

41 Service Complaints Ombudsman ([SCO0007](#))

42 Q17 [Nicola Williams]

Quarter ending	Full-time Investigator posts	Filled	Vacant	Current Investigations	Allocated	Unallocated
30-Jun-18	11	9	2	Data not available (5)		
30-Sept-18	11	9	2	166	44	122

Source: Ministry of Defence⁴³

Note: (1) two members of staff in filled posts were on long-term sick leave, (2) one member of staff in a filled post was on long-term sick leave, (3) one member of staff in a filled post was on a career break for this and the following three quarters, (4) a policy change was made at this stage to maintain investigations in an unallocated category rather than allocate them to investigators who had a backlog of cases, (5) no data is available for this period as statistics reports were not maintained while the Ombudsman Statistics Manager post was vacant.

22. The filled posts figures in the table include those who are on long-term sick leave and career breaks making the number of full-time investigators lower than it appears to be. The SCO argues that the relatively small size of her team means that “one vacancy will have a disproportionately high impact”.⁴⁴ She told us:

There was a point, probably about 18 months ago, when for various reasons the number of investigators was low [...] We should have been 10 at that time, but we went down from 10 investigators to four, and we had no senior team.⁴⁵

23. In an effort to reduce the backlog of cases, SCOAF currently use fee-earning investigators (FEIs) when permanent investigators are at full capacity. This is a short-term flexible solution which allows for “surge capacity” but it does not provide a long-term solution. The SCO suggests that this can be achieved only through an increase in SCOAF’s permanent staff complement.⁴⁶

24. In written evidence, the MoD stated that the SCO is “independent of the MoD and decides when to recruit staff and manages any such campaigns”.⁴⁷ The MoD also told us that since the establishment of SCOAF, they have “agreed to every request for additional staff”.⁴⁸ They added that the transition from the Service Complaints Commissioner (SCC) to SCOAF saw the number of funded posts (excluding the Ombudsman) increase from eight in 2013 to twenty-eight.⁴⁹

25. However, the SCO suggested that the number of full-time permanent staff required to operate effectively should be reassessed. The initial benchmarking exercise to calculate the number and type of posts was conducted before SCOAF’s new powers had been tried and tested. In her written evidence, she emphasised, “This was a new organisation with greater powers and with that came unknowns” which should be reflected in a revised organisational structure.⁵⁰ According to the SCO, the volume and complexity of many

43 PQ [1967 8](#)

44 Service Complaints Ombudsman ([SCO0007](#))

45 Q5 [Nicola Williams]

46 Q21 [Nicola Williams]

47 Ministry of Defence ([SCO0005](#))

48 Ministry of Defence ([SCO0005](#))

49 Ministry of Defence ([SCO0005](#))

50 Service Complaints Ombudsman ([SCO0007](#))

cases meant that expectations placed on investigators were “too optimistic”.⁵¹ Any reassessment should take account of the new investigatory powers of SCOAF and the unforeseen demands placed on its staff by “complex cases”.⁵²

26. The demands on SCOAF are also a consequence of failures within the Service complaints system itself. This is particularly the case in respect of investigations that SCOAF conduct into undue delay and maladministration, where the inadequacy of the individual Service complaints systems creates more work for SCOAF. In oral evidence the SCO suggested that the poor performance of the Services was in part due to “a shortfall of Armed Forces personnel” and issues concerning the training of staff in complaint handling.⁵³

27. Staff shortages have had a detrimental impact on the operational effectiveness of SCOAF. We believe that the MoD’s initial assessment of resources required for SCOAF to operate was fundamentally flawed, meaning that SCOAF has difficulty in carrying out its basic functions even when it achieves full capacity. We also believe that improvements to the functioning of the Service complaints system within each of the Services would lessen the burden on the Ombudsman. It remains to be seen whether, even if such problems are tackled, SCOAF will be in any position to fulfil its workload, as long as its terms of reference continue to include the reinvestigation of the substance of complaints, in addition to questions of procedure and maladministration.

28. We recommend that MoD should take a three-pronged approach. First, it should examine the procedures and current practices of SCOAF and the single Services to see how they can be simplified, speeded up and made more efficient. Secondly, in consultation with SCOAF, it should conduct a reassessment of the resources required for SCOAF to ensure it can fulfil its purpose without causing unnecessary delays to complainants. Finally, the Department should work with the individual Services to assess staffing and training requirements for complaint handling, so that it is a priority within each Service and resourced adequately. We wish to see a full report of the findings and outcomes of this work, with particular reference to the burden imposed by the duty to investigate the substance of complex cases in addition to issues of maladministration.

Vetting

29. The SCO told us that staffing issues are compounded by the nature of the work and delays in vetting new staff members. She explained the toll this type of work can have on employees: “if you deal with complaints all the time, there is an issue about morale”. She added, “you know that you are adding value, but what you hear is quite disheartening”.⁵⁴ SCOAF also has a flat organisational structure with few levels between staff and management leaving little room for career progression, and it was common for civil servants to move on after two to three years.⁵⁵ Over time these issues had led to a high turnover of staff.

51 Service Complaints Ombudsman ([SCO0007](#))

52 Service Complaints Ombudsman ([SCO0007](#))

53 Q11 [Nicola Williams]

54 Q17 [Nicola Williams]

55 Q17 [Nicola Williams]

30. The SCO added that delays in vetting successful candidates had also proved to be a challenge, causing successful applicants to withdraw from the process:

Each successful applicant is subject to the necessary vetting requirements. This process has [taken] and continues to take an excessively long time to complete and in some cases has taken so long that the successful applicant has withdrawn from the process. Vetting does not just affect my Office, but because of our size I believe it has a disproportionately onerous effect.⁵⁶

31. Recruitment for investigators requires candidates with investigative training and/or experience. Vacancies are therefore advertised both across the civil service and externally. The security vetting process takes on average 6–8 months to complete.⁵⁷ Defence Business Services (DBS) act as the vetting sponsor for SCOAF and provide the authority to the United Kingdom Security Vetting (UKSV) to start the appropriate level of vetting for a candidate’s role.⁵⁸

32. After the hearing, we wrote to UKSV asking about the reasons for the delays reported; the response was that the withdrawal rate for SCOAF was not unusual for MoD recruitment campaigns and that delays were often caused by a third party where UKSV had “limited influence”.⁵⁹ This includes the time taken for third parties to respond to requests for information.

33. They also outlined two options that the SCO could utilise to speed up the vetting process. The first entailed hiring a candidate at risk while security clearance was still pending, which would require security risk mitigations to be agreed by the Principal Security Adviser—and for the employment to be explicitly conditional on clearance. Alternatively, SCOAF could submit a business case requesting priority for operational reasons via its vetting sponsor (DBS).⁶⁰

34. In response the SCO stated these options were neither realistic nor reasonable for her office. First, the sensitive nature of the work conducted at SCOAF meant that she would not risk taking a candidate whose vetting was incomplete. She considered this to involve an “increased risk not only to the parties to the decision (both complainant and Service) but to the reputation of this Office”.⁶¹ Furthermore, if the candidate were not security cleared then the vacancy remained.

35. She also told us that submitting a business case for priority vetting is time consuming: “even where this has been done it has, on occasion, taken longer than I would have liked or expected”.⁶² Nonetheless, she welcomed the opportunity to discuss these issues further with DBS officials.⁶³

36. We are concerned about the impact on SCOAF caused by delays in vetting new staff members which has led to skilled personnel seeking alternative employment. We acknowledge that vetting delays are not always within the control of United Kingdom

56 Service Complaints Ombudsman ([SCO0007](#))

57 Service Complaints Ombudsman ([SCO0010](#))

58 Ministry of Defence ([SCO0009](#))

59 Ministry of Defence ([SCO0009](#))

60 Ministry of Defence ([SCO0009](#))

61 Service Complaints Ombudsman ([SCO0010](#))

62 Service Complaints Ombudsman ([SCO0010](#))

63 Service Complaints Ombudsman ([SCO0010](#))

Security Vetting (UKSV) and that the number of candidates who have dropped out during the vetting process is not unusually high. However, the anecdotal experience relayed to SCOAF portrays a problem that is not fully recognised by UKSV.

37. *We recommend that SCOAF, UKSV and Defence Business Services (DBS) meet soon to determine the extent of the problem faced by SCOAF. This should result in an agreed plan to reduce the time taken for vetting, which should be copied to us.*

Measures of effectiveness

38. The Service complaints system has only one objective metric to measure its performance—a Key Performance Indicator (KPI) to resolve 90% of Service complaints within 24 weeks.⁶⁴ This was introduced by the then Service Complaints Commissioner, Dr Susan Atkins, in her 2010 Annual Report.⁶⁵ To date, no Service has achieved this target.⁶⁶

39. Overall, the Services managed to close 50% of complaints within 24 weeks in 2018. The Navy performed the best, resolving 68% of complaints within 24 weeks, followed by the RAF (65%) and the Army (40%).⁶⁷ Although improvements have been made on results in previous years, the Services are still falling substantially below the agreed KPI.

40. In its written evidence the MoD suggested that the SCO's determination that the Service complaints system is not efficient, effective and fair was based on this sole KPI:

The way in which we measure performance is currently under review, but we would not necessarily agree that missing the target means that the way in which the Services operate the complaints process is unfair, ineffective or inefficient.⁶⁸

41. However, in supplementary evidence, the SCO strongly denied that this conclusion was based solely on the KPI:

It is not correct that I only use the objective KPI to judge whether the Service Complaints System is “efficient, effective or fair”. As is evidenced by my last two annual reports (2017 and 2018), there are a number of different factors which I consider when making this determination.

While metrics are important, the assessment of efficient, effective and fair is not rigid and it cannot be reduced to metric analysis only.⁶⁹

42. She outlined a number of other sources which she uses to make her determination, including findings from the Armed Forces Continuous Attitude Survey (AFCAS), the level of undue delay and maladministration cases that come to SCOAF and customer feedback on the complaints process:

64 Service Complaints Ombudsman ([SCO0007](#))

65 Service Complaints Commissioner, *Annual Report 2010*, March 2011, p 79

66 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 3

67 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 74

68 Ministry of Defence, ([SCO0005](#))

69 Service Complaints Ombudsman ([SCO0010](#))

I undertake a judicious balancing of all this evidence, and more, in order for me to reach a determination as to whether the system is efficient, effective and fair. It is never boiled down to one factor alone, nor is a single factor such as the KPI referenced above given undue weight.⁷⁰

43. In oral evidence the SCO suggested to us that the failure of each Service to meet its internal KPI was linked to the shortfall of Armed Forces personnel which restricts the capacity of individuals to take on complex Service complaints:

Unless you are working in the dedicated Service complaints teams in the headquarters of each of the Services, you are going to be dealing with Service complaints as well as something else. So certainly lack of resource in terms of time to do it, and personnel—absolutely.⁷¹

44. In supplementary evidence, she also said that she had observed “significant delays” in Specified Officers reaching a decision on the admissibility of a Service complaint.⁷² Complainants submit their complaint to a Specified Officer at the start of the complaints process who is usually the individual’s Commanding Officer. An admissibility decision should take two weeks but, in some instances, it had taken 86 weeks to make a decision. More metrics to measure overall performance of complaint handling are needed at various levels of the complaints system—notably within the Services themselves—to determine where and why delays occur.

45. Both SCOAF and the MoD have previously acknowledged that more metrics are required to measure performance within the Service complaints system. In the SCO’s first Annual Report in 2016, she recommended that the MoD should identify an appropriate working group to evaluate the current target.⁷³ The Service Complaints Statistics Working Group (SCSWG) had been tasked with taking the recommendation forward. According to the Annual Report 2017, it produced a “detailed analysis paper with proposals” which were being considered by the MoD.⁷⁴ However, over a year later, the SCO is still waiting to see the results of this analysis which outlines potential alternative KPIs.⁷⁵

46. SCOAF also issues customer feedback forms to complainants, in order to judge their own performance. In 2018, 57% of complainants were satisfied with the service they received from SCOAF, a substantial decrease from 75% in 2016.⁷⁶ According to the 2018 Annual Report, this decline was largely attributable to the allocation backlog discussed in paragraph 17, and the perception that SCOAF is not independent. 45% of those who completed the survey “were dissatisfied with the objectivity of the office”.⁷⁷

47. The SCO notes that whilst:

... only 22% of individuals who were sent the survey responded and that those who are dissatisfied are more likely to respond, the Ombudsman does not wish to simply dismiss these findings out of hand. Further work

70 Service Complaints Ombudsman ([SCO0010](#))

71 Q11 [Nicola Williams]

72 Service Complaints Ombudsman ([SCO0010](#))

73 Service Complaints Ombudsman, [Annual Report 2016](#), 18 April 2017, p 18

74 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 51

75 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 3

76 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 8

77 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 8

will be done throughout 2019 to strengthen SCOAF internal processes and messaging to ensure that the office is actively demonstrating the cornerstone values of independence and impartiality.⁷⁸

48. The Service complaints system currently has only one objective measure to assess performance. We believe that this is insufficient. Without an effective performance management system, it is effectively impossible to assess whether real progress is being made in improving the Service complaints system.

49. A situation where complainants are waiting up to 86 weeks for an admissibility decision by their chain of command is simply unacceptable. We recommend the introduction of additional measures at different levels of the complaints system, in order to reveal problem areas where delays are likely to occur. The Department should ensure that it is possible to capture and assess the experience of the complainant throughout the Service complaints process. This exercise should be an integral part of the review of the legislation. Furthermore, the Department should immediately commission work to enable the streamlining of the system.

3 Complaints and SCOAF

Breakdown of complaints

50. In 2018 the Services received 1,185 complaints, 763 of these were deemed admissible and progressed through the Services' internal complaints system.⁷⁹ The top three areas complained about in 2018 were:

- Career management (33%);
- Bullying, harassment and discrimination (25%); and
- Pay, pensions and allowances (15%).⁸⁰

51. In the SCO's 2016 and 2017 Annual Reports the highest number of complaints were attributed to Terms and Conditions of Service (TACOS) (42% and 41% respectively).⁸¹ The 2018 Annual Report, however, has broken down this category to provide more detailed analysis on individual components and the percentage of complaints attributed to each category. TACOS is now broken down into career management (33%), discipline (2%), manning and discharge (6%) and other—such as accommodation, medals, welfare and training—(5%).⁸²

Female and Black, Asian and Minority Ethnic (BAME) personnel

52. Every Annual Report from the SCO has shown an overrepresentation of female and BAME Service personnel in the Service complaints system.

53. Female Service personnel account for 11% of the Armed Forces' total strength but made up 23% of complaints in 2018 (a rise of 3% on the previous year).⁸³ 43% of complaints from female personnel concerned issues of bullying, harassment and discrimination. This is a much higher rate than for male personnel, where it comprises 20% of complaints.⁸⁴

54. Similarly, BAME personnel account for 7% of the Armed Forces total strength but 13% of complaints. 39% of complaints from BAME personnel concerned bullying, harassment and discrimination, compared to 24% for white personnel.⁸⁵

55. There is still no clear data to help understand why female and BAME personnel are overrepresented in the complaints system. In the 2016 Annual Report the SCO recommended that the MoD should commission a study to determine the root causes of this overrepresentation and that appropriate action should be taken by the end of December 2018.⁸⁶

79 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 37

80 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 37

81 Service Complaints Ombudsman, [Annual Report 2016](#), 18 April 2017, p 36; Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 76

82 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 37

83 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 38

84 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p, 38

85 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 39

86 Service Complaints Ombudsman, [Annual Report 2016](#), 18 April 2017, p ix

56. The SCO was disappointed with the Department's interpretation of this recommendation which was taken forward "in the narrowest sense" by the MoD, with each Service reviewing its own data rather than commissioning an independent study.⁸⁷ She commented in her 2018 Annual Report:

The Ombudsman notes the response from the Ministry of Defence that the internal reviews did not wholly support her concerns. However, outside of the minimal information provided in the single Service narratives, no comprehensive report of these reviews has been provided to the Ombudsman. As such, the Ombudsman still considers that an independent review is appropriate.⁸⁸

57. The decision to conduct an internal study was contrary to the expectation and preference of the SCO,⁸⁹ who therefore considers this recommendation still to be pending.⁹⁰

58. It is a serious concern that complaints from BAME and female Service personnel are disproportionately high compared to their representation within the Armed Forces and that they are more likely than other groups to complain about bullying, harassment and discrimination. Ministers should instruct Service Chiefs to remedy this situation. It is unacceptable that SCOAF—the independent element of the complaints process—was excluded from previous internal reviews by each Service and has not even seen the results of the reviews. This sends the wrong message about valuing BAME and female personnel, with a potentially negative impact on their retention and future recruitment.

59. The MoD should provide the Committee and the Ombudsman with the full findings from the internal reviews. The MoD should also set out fully the proposed action to be taken by each Service and the Department to rectify this matter. We are not convinced that Ministers understand—or are sufficiently committed to discovering—the root causes of BAME and female Service personnel complaints. They must get a grip on this important problem urgently. We will be monitoring the next satisfaction survey closely to see if there has been any improvement.

Culture towards complaints

60. The Armed Forces Continuous Attitude Survey (AFCAS) 2019, published on 24 May 2019, reported that just over one in ten personnel (11%) had been subject to bullying, harassment or discrimination in the last 12 months, with 93% choosing not to make a formal written complaint.⁹¹ The main reasons for personnel deciding not to make a formal complaint were:

- Not believing anything would be done if a complaint were made (57%);
- Belief that it might adversely affect their career (50%); and
- Not wanting to go through the complaints procedure (30%).⁹²

87 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 37

88 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 46

89 Service Complaints Ombudsman ([SCO0007](#))

90 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 46

91 Ministry of Defence, [Armed Forces Continuous Attitude Survey Results 2019](#), May 2019, p 16

92 Ministry of Defence, [Armed Forces Continuous Attitude Survey Results 2019](#), May 2019, p 16

61. This appears to suggest a negative culture towards complaints across the Armed Forces which disincentivises serving personnel from making a complaint. Over half of those that made a complaint stated they were dissatisfied with the time taken (55%) and the outcome (64%).⁹³ AFCAS also revealed that 89% of Officers and only 67% of Other Ranks were aware to some extent of how the SCO can help with complaints concerning bullying, discrimination or harassment.⁹⁴

62. The SCO's 2018 Annual Report provided data from feedback surveys given to complainants to ascertain why they chose to approach the SCO to refer a complaint rather than approach their chain of command. Reasons for approaching the SCO were:

- Lack of confidence in the chain of command (54%);
- No longer serving (19%);
- Concerned about ill-treatment if they complain directly (12%); and
- Other (15%).⁹⁵

63. The lack of confidence in the chain of command and concerns over ill-treatment if personnel complain directly, suggest an environment in which personnel do not feel supported within the current Service complaints system.

64. The 2017 Annual Report states that some complainants are “discouraged from making a complaint, even following a referral from the Ombudsman”. The report continues:

This is of significant concern to the Ombudsman and while this negative culture towards complaints continues there will not be an effective complaints system.⁹⁶

65. The SCO discussed this culture with us during her oral evidence:

... you are right that there is a negative culture towards complaints. That is despite members of each of the Armed Forces, from the top down, making it clear that it is not a bad thing to complain, and that, in fact, if you make complaints, it highlights issues that can be dealt with. However, even though that message is coming from the top, I do not think it has permeated all the way down. It has hit permafrost, if you like, somewhere down the chain.⁹⁷

66. She identified the problem as cultural with personnel still viewing those who make a complaint as either a “snitch” or “weak”.⁹⁸ Regardless of well-intentioned efforts to tackle this issue, the perception of personnel remains that if they make a complaint “their card is marked”. This stigma follows them throughout their Service life: “They are career-fouled; they never recover from that. Their life is made a misery”.⁹⁹

93 Ministry of Defence, [Armed Forces Continuous Attitude Survey Results 2019](#), May 2019, p 16

94 Ministry of Defence, [Armed Forces Continuous Attitude Survey Results 2019](#), May 2019, p 16

95 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 15

96 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 5

97 Q32 [Nicola Williams]

98 Q32 [Nicola Williams]

99 Q6 [Nicola Williams]

67. There is also the view from respondents that being named in a complaint is considered as a “demerit or career limiting”:¹⁰⁰

Making a complaint is not a negative thing. Being on the receiving end of a complaint is not necessarily a negative thing, particularly because we do not know whether it will be made out or not. This is about how we deal with a complaint.¹⁰¹

68. When asked whether there was a culture of inefficiency within the Service complaints system, the SCO contextualised the scale of the reforms necessary for a system that has had little oversight:

My office has only been going as the Ombudsman’s Office since the beginning of 2016. There was only ever civilian oversight of Service complaints from 2008, and the most junior, in terms of chronological age, of the Services—the RAF—celebrated its 100th birthday. If you think about that—the Services have been going for hundreds of years, and independent oversight of any sort has only been going since 2008, and an ombudsman with some teeth has only been going since 2016—you see it is like turning round the Queen Mary. It is a work in progress.¹⁰²

69. Written evidence was submitted from individuals who had experience of the Service complaints system and SCOAF. Major (Rtd) Ross McLeod noted the “toxic culture of cover up”¹⁰³ he observed within the Army:

The system provides a veneer of procedural fairness, but the Army is blinded by rank and culturally unable to decide complaints fairly.¹⁰⁴

70. However, he believed that this was not the fault of individual officers, but the culture that ensues when the qualities championed are those of “obedience to authority and deference to power” in “a rank-focused, hierarchical organisation obsessed by status and symbols”.¹⁰⁵

71. Wing Commander (Rtd) Graham House identified “a culture of Blame instead of a Just culture” across the Services. He believes that this inhibited respondents from admitting mistakes, whilst also deterring potential complainants who are “in fear of making [a] complaint” in a system that is perceived to be “loaded against them”.¹⁰⁶ He added:

... there is no learning; the Services are adept at ‘career’ or administrative moves to avoid, mask, or ‘bury’ problems (notwithstanding policy against this).¹⁰⁷

100 Q32 [Nicola Williams]

101 Q32 [Nicola Williams]

102 Q11 [Nicola Williams]

103 Major (Rtd) Ross McLeod ([SCO0008](#))

104 Major (Rtd) Ross McLeod ([SCO0008](#))

105 Major (Rtd) Ross McLeod ([SCO0008](#))

106 Wing Commander (Rtd) Graham House, ([SCO0004](#))

107 Wing Commander (Rtd) Graham House, ([SCO0004](#))

72. Individuals who have been complainants and respondents to complaints submitted evidence to this inquiry. They detailed the negative impact that delays within the complaints system had on their emotional, financial and mental wellbeing.¹⁰⁸ The SCO stated in oral evidence that the majority of people who are questioned on why they don't make a complaint, respond, "I'll be victimised for making a complaint", or, "My life will be made a misery if I make a complaint".¹⁰⁹

73. These cultural issues are hindering positive change within the Service complaints system, resulting in some Service personnel either not making a complaint, withdrawing a complaint or taking their cases to the SCO.

74. A negative culture towards complaints exists across the Armed Forces at all levels, which makes it difficult to assess the true scale of the challenges being faced. Service personnel do not have faith in the Service complaints system. We have testimony from complainants who believe that going through the complaints system has negatively affected their career, mental health and wellbeing.

75. *The MoD must openly embrace a culture where reasoned challenge, complaint and whistle-blowing are acceptable practices in order to stop inappropriate and unlawful behaviour and activities. Training for Service personnel at all levels should be reviewed to determine why current initiatives are not successful. This will help to ensure that a supportive environment, free of persecution, exists for both the complainant and the respondent. Challenging wrongful behaviour and protecting colleagues should be a self-evident military value, championed from recruitment through to resettlement.*

Withdrawn complaints

76. The SCO was concerned that this negative culture could lead to complainants feeling pressured into withdrawing a complaint. In 2018, 130 formal complaints were withdrawn across the Armed Forces, with no data to determine the reasons for this.¹¹⁰ The SCO told us that it would be very difficult for her to know whether a complaint had been withdrawn voluntarily unless it was reported to her office:

Even with us being an alternative point of contact, some people are still happy to start their complaint within the chain of command and have the whole thing dealt with there. We do not hear about every complaint; we hear only about those that come to our office or, if I go on a visit—for example, my visit to Faslane—and someone comes and tells me if there are any issues.¹¹¹

77. She added that if evidence of this type of behaviour became apparent where someone with a legitimate complaint had been "dissuaded", her office would take "a very dim view of that". She added, "I have made that clear to the Services, and it is not something that would come as a surprise to them".

108 Wing Commander (Rtd) Graham House, ([SCO0004](#)); Lieutenant Colonel (Rtd) Fran Whatley ([SCO0006](#))

109 Q25 [Nicola Williams]

110 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 2

111 Q33 [Nicola Williams]

78. There is also evidence in Annex B of the AFCAS 2019 that 15% of Tri-Service personnel who did not make a formal complaint were being discouraged from doing so, in addition to those being persuaded to withdraw one.¹¹² The extent of this practice is even more difficult to detect and quantify.

79. The SCO's 2017 Annual Report revealed that over the years she had received "substantial anecdotal information that pressure has been applied on individuals to not proceed with a complaint" on the grounds that it would not be in their "best interests", they would be seen as a "troublemaker" and that it would have a "negative impact on their career" or be "bad for unit cohesion".¹¹³ As noted above, it is difficult for the SCO to ascertain the extent of the problem as her office must be approached with the information that a complainant felt pressured to withdraw a complaint. She commented in the 2017 Annual Report:

Levels of confidence in the system will never improve as long as these attitudes towards complaints prevail. Going forward [SCOAF] will be challenging all such instances it is made aware of and also expects the single Services to do this as part of changing the culture of complaints across the Armed Forces.¹¹⁴

80. The relevant recommendation reads:

That by December 2018, the Ministry of Defence amends JSP 831 to stipulate that the single Service secretariats are responsible for challenging withdrawals where the complainant, or potential complainant, has indicated they have been discouraged from making a complaint, or had undue pressure placed on them to withdraw their complaint. This must be accompanied by clear processes to be followed in such instances. Such processes can be developed at the local level so long as there is a consistency in approach across the single Services.¹¹⁵

81. The MoD's response to this recommendation highlighted a lack of consistency across the Services: the RAF requests a written reason from individuals when a complaint is withdrawn; the Navy "had no formal process for monitoring withdrawals", but would amend its current policy in line with the RAF approach "at the next opportunity"; and the Army was also amending its procedures to reflect the RAF approach to ensure consistency across the Services.¹¹⁶

82. At the time of the 2018 Annual Report (released on 11 April 2019) this recommendation was categorised as "in progress" with the MoD stating that provisions and processes are in place for complainants with the issue being considered as part of the review for JSP 831 (a guide on the application of policy for Service complaints).¹¹⁷

83. Whilst we welcome the progress made by the Department in putting processes in place to discover reasons for withdrawn complaints, the historic lack of data is

112 Ministry of Defence, Armed Forces Continuous Attitude Survey, [Annex B](#), May 2019, table B13.41

113 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 36

114 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 36

115 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p x

116 Ministry of Defence, [MOD Formal Response: Service Complaints Ombudsman's Annual Report 2017](#), 23 November 2018

117 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 49

problematic. To ascertain the extent of that problem, the Ombudsman has been forced to rely upon a sample of complaints that come to her office and upon anecdotal evidence. In addition, it appears that serving personnel are being discouraged from making formal written complaints in the first place. If true, this practice must be eradicated. It is unacceptable, and we are concerned that this issue is not being fully recognised or addressed by the MoD.

84. *The MoD should provide the Committee with a list of the specific provisions currently in place for each Service to monitor and record withdrawn complaints and should explain in detail how they ensure that personnel are not discouraged from making a formal complaint in the first place. This should include a timetable for implementation of additional processes needed. The MoD should also confirm how they intend to engage with SCOAF in the JSP 831 review to ensure that the Ombudsman's concerns are fully reflected in any changes. Failure to undertake such an engagement with the independent element of the complaints system would be unacceptable.*

4 Implementation of Annual Report recommendations

Rate of change

85. Since SCOAF was established the SCO has produced three Annual Reports (2016, 2017 and 2018) with a total of 31 recommendations. To date, only nine of the 22 recommendations from the 2016 and 2017 Annual Reports have been “substantially completed”.¹¹⁸ The 2018 Annual Report states, “The Ombudsman continues to be disappointed at the lack of real progress that has been made against these recommendations in the last two years”.¹¹⁹

86. Concerns were raised by the SCO in her 2017 report in which she suggested that scheduled progress reports on recommendations should be provided at agreed stages throughout the year and that a baseline agreement be reached as to what content should be provided.¹²⁰

87. In written evidence to the Committee, she said:

The progress made has been disappointing. The Ministerial response to recommendations made in my 2017 Annual Report in April 2018 was only received by my Office in a letter dated 20 November 2018. There was a similar delay in responding to the 2016 Recommendations... progress towards substantial compliance is far too slow.¹²¹

88. The MoD’s response to the 2017 Annual Report is five pages long and took just under seven months to produce. The content of the response provides few details on the proposed timescale for addressing recommendations and little clarity on the progress made on previous recommendations.

Table 3: Time taken for MoD response to SCO’s Annual Reports

SCO Annual Report	Publication date	Publication of MoD response	Time taken	No. of pages
2016	18-Apr-17	19-Oct-17	Just over 6 months	6
2017	26-Apr-18	23-Nov-18	Just under 7 months	5

Source: SCOAF and Ministry of Defence

89. The Committee felt it necessary to await the MoD’s response to the 2017 Annual Report before it initiated its own inquiry into the work of SCOAF. Such delay is unacceptable as it hampers the work of the SCO and Parliament.

90. The belated MoD response to the 2017 Report led to the inclusion of the following recommendation in the SCO’s 2018 Annual Report:

118 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 45

119 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 45

120 Service Complaints Ombudsman, [Annual Report 2017](#), 26 April 2018, p 43

121 Service Complaints Ombudsman ([SCO0007](#))

That the Ministry of Defence and the Service Complaints Ombudsman for the Armed Forces prepare a written agreement outlining when and how formal responses are to be provided to the recommendations made by the Ombudsman in her annual reports. This agreement should also include how updates on all open recommendations will be provided to the Ombudsman, the content to be included, and the frequency of these.

Consideration should be given to including this agreement in future revisions to legislation.¹²²

91. The effectiveness of SCOAF is hampered if recommendations are stalled or only partially implemented by MoD, eroding the authority of the SCO and complainants' confidence in the complaints system.

92. The Department's exclusion of the SCO from discussions regarding the Service Justice Review shows a reluctance to use her knowledge and expertise. She accepted that Service justice was wider than Service complaints but argued that her role as SCO and her knowledge of the new system could have helped "in the functioning of their work".¹²³

93. The MoD should look on the Ombudsman as an asset who can play a crucial role in assisting the Department, through her recommendations and through engagement in the review of legislation. The MoD's response to the 2017 Annual Report is five pages long and took just under seven months to produce. We consider this to be an excessive delay and a demonstration of the low priority the Department gives to the Ombudsman and her office. It suggests that the Department has not properly come to terms with the creation of the Service Complaints Ombudsman and has failed to realise the potential benefits which would result from taking her work more seriously. The slow progress of the MoD in implementing recommendations from the Ombudsman's Annual Reports is unacceptable and erodes Service personnel's confidence in SCOAF's ability to make a positive change. We endorse the Ombudsman's recommendation in her 2018 Annual report that she and the MoD should agree an outline of when and how formal responses are provided.

94. Once recommendations are accepted, the MoD should put deadlines in place for implementation of the necessary changes. A detailed explanation of progress against timeframes for each recommendation should be included in an annex to the Government's response to each Annual Report.

95. The delayed response to the Ombudsman's 2017 Annual Report was unacceptable and hampered our work in holding Government and the Ombudsman to account. The MoD should commit to publishing a substantive response to the Ombudsman's 2018 Annual Report and all future annual reports within three months of publication.

122 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 45

123 Q7 [Nicola Williams]

5 Future of SCOAF

Introduction

96. The structure of SCOAF and the powers of the SCO are governed by the legislation mentioned in paragraph 3. However, the upcoming review of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 will be an opportunity to revisit some of these decisions.

Scope of powers

97. The SCO's powers are set out in the Armed Forces (Service Complaints and Financial Assistance) Act 2015. The SCO's written evidence stated that she would like to expand the scope of her current powers, "to ensure they are sufficient to effect change and that the system is fair to all parties to a complaint".¹²⁴ This includes playing a "significant part"¹²⁵ in the forthcoming review of the Act. The 2018 Annual Report stated:

At the end of the third year of operation, it is evident that the Ombudsman's powers are not of sufficient scope to effect the necessary change across parts of the Service complaints system.¹²⁶

98. An example of this expansion in powers can be found in recommendation 2.8 of the SCO's 2017 Annual Report, which seeks to amend current legislation to allow respondents to a Service complaint to ask SCOAF to investigate undue delay.¹²⁷ Currently this can only be requested by the complainant.

99. **The Ombudsman believes that her powers are too limited to fulfil her function and has said that she would like to play a "significant part" in the review of the current legislation. One specific change she highlights includes the ability to investigate undue delay when requested to do so by respondents who are named in a Service complaint—not just by complainants, as at present.**

100. *Before the forthcoming review of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 the Department should set out how it intends to engage with the Ombudsman and the scope of this engagement. This should include consultation with the Ombudsman on areas where she believes the extension of her powers could contribute to a more effective, efficient and openly fair Service complaints system.*

101. During our inquiry we also received written evidence from complainants who had been through the internal Service complaints system and SCOAF, and who were dissatisfied with the scope of the SCO's powers. Two people providing submissions would like to see the SCO intervene in ongoing complaints rather than wait until a complaint has been completed through the internal system.¹²⁸ However, this would result in two parallel investigations into the same complaint and would overburden SCOAF still further. Two other submissions wanted to see some type of financial sanction levelled against the MoD

124 Service Complaints Ombudsman ([SCO0007](#))

125 Service Complaints Ombudsman ([SCO0007](#))

126 Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 28

127 Service Complaints Ombudsman ([SCO0007](#))

128 Major Ross McLeod ([SCO0008](#)) and an unpublished written submission

when it failed to meet the target timeframes.¹²⁹ Lt Col (Retd) Fran Whatley suggested that the SCO should help Service personnel in recovering costs from the MoD which had been incurred during the complaints process.¹³⁰

102. Some complainants believe that the Ombudsman is too limited by her current powers. When reviewing the Act, the MoD should conduct a consultation process with complainants and respondents to consider their experience of the Service complaints system in any review of current policy. The consultation should include a cost-benefit analysis of recommendations made by complainants, which should be shared with the Ombudsman and the Committee.

“Own-initiative” investigations

103. In written evidence, the SCO set out other ways in which she believed the Service complaints system could be improved. These included extending the scope of her powers to enable her to conduct “own-initiative” investigations:

One matter which I think would improve the process as a whole would be for the Ombudsman to have the power to conduct Own Initiative, or Own Motion, Investigations. This would be a greater increase in the powers of the Ombudsman, and the details of how this would work would need to be fully thought through, particularly as I know from previous experience that such investigations can be very resource intensive. Nevertheless, I believe this would be of benefit to Service personnel and add value to the work already carried out by my Office.¹³¹

104. She believes that such investigations would allow her to examine systemic issues affecting personnel who, for a variety of reasons, are unwilling to make a complaint. Current legislation restricts the SCO from using her investigative powers unless an eligible application is received: the only way she can conduct this type of research is if she is instructed to do so by the Secretary of State for Defence.¹³²

105. The SCO had experience conducting own-initiative investigations in her previous roles and she credits this approach as creating “real change” that addressed “systemic issues” in her role as Complaints Commissioner for the Cayman Islands.¹³³

106. The 2018 Annual Report makes clear that own-initiative investigations are not limited to specific complaints and can include thematic research and investigations. Our predecessor Committee’s 2014 report on the *Armed Forces (Service Complaints and Financial Assistance) Bill* acknowledged that the SCO would have powers to draw attention to thematic problems in the Annual Report but suggested that it “may not be sufficient in all [cases]”.¹³⁴ It continued:

129 Major (Rtd) Ross McLeod ([SCO0008](#)); Lieutenant Colonel (Rtd) Fran Whatley ([SCO0006](#))

130 Lieutenant Colonel (Rtd) Fran Whatley ([SCO0006](#))

131 Service Complaints Ombudsman ([SCO0007](#))

132 Service Complaints Ombudsman, [Annual Report 2018](#), 11 April 2019, p 29

133 Q51 [Nicola Williams]

134 Defence Committee, Fifth Report of Session 2014–2015, [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#), HC 508, para 74

We believe it is inappropriate that the Secretary of State will have the power to ask the Ombudsman to report on a thematic issue but that the Ombudsman will not be able to do so of their own volition.

107. This recommendation does not specify investigatory powers as outlined by the SCO, however it demonstrates a concern dating back to the Service Complaints Commissioner that the oversight body should have the authority to inquire and act on matters that cause it concern, rather than simply drawing attention to them.

108. However, these types of investigation cannot be delivered with the current staffing challenges referred to earlier. As the SCO acknowledges, they would be “resource-intensive” requiring additional staff who would only be able to conduct one a year.¹³⁵

109. **The Committee notes the wish of the Ombudsman to take on more responsibility through proposing an extension of her powers to conduct “own-initiative” investigations. However, we do not believe that extending the scope of the Ombudsman’s powers at this time would be helpful, given the existing delays and backlogs linked to staffing challenges, which have led to low satisfaction with the work of SCOAF. *The workload borne by the Ombudsman and her team is already excessive in relation to their resources. This imbalance must be rectified before adding to it further. Otherwise, those Service personnel who look to the Ombudsman for resolution of their complaints within a reasonable timeframe will only be further disappointed.***

Legal budget and representation

110. SCOAF receives funding from the defence budget which is intended to cover all the costs associated with its independent function.¹³⁶ The annual budget must cover the cost of any independent legal advice sought by SCOAF as detailed in the financial statement of every Annual Report. In written evidence the SCO considered access to legal advice through an in-house lawyer to be essential to maximising the effectiveness of SCOAF.

111. Currently SCOAF has access to lawyers within the Government Legal Department (GLD): however, there have been two instances in which SCOAF was “not able to instruct any lawyers within GLD”.¹³⁷ This lack of direct access to legal advice is clearly detrimental to the work of SCOAF, as it restricts its ability to make fully informed decisions on “increasingly challenging complaints”,¹³⁸ causing delay to the complainant.

112. In oral evidence the SCO also emphasised the principle of independence in justifying her request:

You would be hard pressed to find any ombudsman’s organisation within the United Kingdom without a lawyer on staff. As you know, impartiality, independence and integrity are the three bylines of our report, and they are words with a meaning—they are not there just because it looks good. To underscore our independence, we would need that.¹³⁹

135 Q52 [Nicola Williams]

136 Ministry of Defence, ([SCO0005](#))

137 Service Complaints Ombudsman ([SCO0007](#))

138 Service Complaints Ombudsman ([SCO0007](#))

139 Q47 [Nicola Williams]

113. Employing an in-house lawyer would certainly require a substantial increase in the size of the legal budget allocated to SCOAF, which is currently only about £10,000.¹⁴⁰ Any increase would also need to consider the financial implications for SCOAF of having to defend a decision against a full judicial review challenge:

I also think that as the office matures and the cases that we deal with become more complex, the likelihood is that we will get challenged more by way of judicial review, either by the complainant or by the respondent—by which I mean the Service—if they are unhappy with the decision that we have made. You may or may not be aware that one fully contested or fully argued judicial review can pretty much exhaust our entire legal budget.¹⁴¹

114. Since the inception of SCOAF there have been five attempts to bring a judicial review against a decision made by the SCO. However, permission to do so was not granted by the courts in any of these cases.¹⁴²

115. In supplementary evidence the SCO stated that she had been “assured that money would be available for a judicial review or appointment of Counsel”.¹⁴³

116. It is unsatisfactory that SCOAF has said it has been unable to access legal advice from the Government Legal Department (GLD) in every instance that it has been needed. The Government should cover this issue in its response to our Report. In the absence of a GLD lawyer when one is required, funds should be found to enable an appropriately qualified alternative lawyer to be instructed. SCOAF should have the legal resources necessary to fulfil its independent function and defend its decisions.

117. In response to our report the Department should provide information about each case in which the Ombudsman was not able to access legal advice from the GLD and why this situation arose and make a commitment to explain any such future case to us. We also expect an assurance from the MoD that such situations will not be repeated and that funds will be made available for a judicial review or the appointment of Counsel, whenever necessary.

Time in office

118. The SCO’s time in office is a non-renewable term of five years, the current incumbent’s tenure ends on 31 December 2020.¹⁴⁴ The reasoning behind this was explained by the MoD in its response to our predecessor Committee’s inquiry:

The first Ombudsman will serve a five year non-renewable term. This strikes the right balance in length of term—it ensures that the person appointed

140 Service Complaints Ombudsman ([SCO0010](#))

141 Q47 [Nicola Williams]

142 Service Complaints Ombudsman, *Annual Report 2016*, 18 April 2017, p 14, Service Complaints Ombudsman, *Annual Report 2017*, 26 April 2018, p 25, Service Complaints Ombudsman, *Annual Report 2018*, 11 April 2019, p 31

143 Service Complaints Ombudsman ([SCO0010](#))

144 Q48 [Nicola Williams]

will have the time to get to grips with and perform the role effectively, yet not remain in post so long as to become complacent. There is also no risk of the post holder being affected by a desire to be reappointed.¹⁴⁵

119. However, the Government did not specify this in the legislation in order to allow for future flexibility:

We have not put this on the face of the Bill as it would remove all possibility for flexibility. These terms will however be set out in the appointment letter, which we judge is the most appropriate approach.¹⁴⁶

120. During oral evidence to the Committee, the SCO recognised the advantages and disadvantages of restricting her position to one term.

If you know that you have only one term that will not be renewed, you can just go for it, which is really what you should do anyway. I can tell you that whether I had one term or more than one, my approach would be exactly the same. I have been an Ombudsman for a really long time; I think I have reached quite an advanced stage, so I have done quite a lot of things. Sometimes people try to wear you down, so that you think, “I don’t ever want to do work like this again”.¹⁴⁷

121. The danger that people would “try to wear you down” led her to believe that the term of her office should be aligned with other Ombudsmen’s offices in the UK which, she told us, fall into two categories. The first is a term of up to five years that can be renewed with the incumbent applying for the role in open competition. The second is one longer tenure of either seven or ten years with no option of renewal.¹⁴⁸

This one falls betwixt and between, because it is a five-year appointment but is not renewable. I think that this office should be brought in line with other ombudsmen’s offices—in other words, if it is five years, you should have the option to renew ...¹⁴⁹

122. Our predecessor Committee’s 2014 report on *Armed Forces (Service Complaints and Financial Assistance) Bill*, recommended that the SCO should be appointed for a period of between five and seven years and specified that they should not be eligible for reappointment.¹⁵⁰ Our predecessors’ reluctance to renew the role was based on witness testimony that it could compromise the independence of the SCO.¹⁵¹

145 Defence Committee, Tenth Special Report of Session 2014–15, [Armed Forces \(Service Complaints and Financial Assistance\) Bill: Government Response to the Committee’s Fifth Report of Session 2014–15](#), HC 900

146 Defence Committee, Tenth Special Report of Session 2014–15, [Armed Forces \(Service Complaints and Financial Assistance\) Bill: Government Response to the Committee’s Fifth Report of Session 2014–15](#), HC 900

147 Q50 [Nicola Williams]

148 Q50 [Nicola Williams]

149 Q50 [Nicola Williams]

150 Defence Committee, Fifth Report of Session 2014–2015, [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#), HC 508, para 25

151 Defence Committee, Fifth Report of Session 2014–2015, [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#), HC 508, para 21–23

123. The Ombudsman Association’s membership criteria states that the appointment of an Ombudsman should be for a minimum of five years and if renewable, the renewal process should not undermine or compromise the office holder’s independence.¹⁵² However, on 15 March 2019, the “Principles on the Protection and Promotion of the Ombudsman Institution”, known as the “Venice Principles” were adopted by the Venice Commission.¹⁵³ There are 25 principles which “represent the first, independent, international set of standards for the Ombudsman institution”. These principles set out best practice as a term of office which is a single, non-renewable term of no fewer than 7 years.¹⁵⁴

124. As the first Ombudsman to take on the role, the SCO suggested in oral evidence that one option to consider for the future would be a longer tenure of seven or ten years if the position was to remain non-renewable. This should enable each new SCO to become accustomed to the role, as well as to initiate and to monitor progress on recommendations.

125. The provisions for the Service Complaints Ombudsman’s time in office fall outside the standard options for tenure that are applicable to other Ombudsmen’s offices across the UK. The Committee accepts that a non-renewable five-year term in office may limit the Ombudsman’s ability to enact change. It may also impact on her ability to take a long-term view on how the complaints system should develop and change.

126. Our predecessor Committee recommended a tenure of between five to seven years for the Ombudsman role to enable the appointees to “familiarise themselves with the role and to become fully effective”. However, having heard concerns from the Ombudsman regarding the length of time in office, this Committee agrees that SCOAF should be brought into line with other Ombudsmen and with the Venice Principles, and considers a seven-year, non-renewable term to be appropriate, and that this extension should be made available to the current Ombudsman.

152 Ombudsman Association, [Schedule 1 of the rules of the association](#), p 2

153 Otherwise known as the European Commission for Democracy through Law. The Venice Commission is a Council of Europe independent consultative body which deals with issues of constitutional law.

154 Council of Europe, [The Venice Principles](#), p 4

Conclusions and recommendations

The work of SCOAF

1. Staff shortages have had a detrimental impact on the operational effectiveness of SCOAF. We believe that the MoD's initial assessment of resources required for SCOAF to operate was fundamentally flawed, meaning that SCOAF has difficulty in carrying out its basic functions even when it achieves full capacity. We also believe that improvements to the functioning of the Service complaints system within each of the Services would lessen the burden on the Ombudsman. It remains to be seen whether, even if such problems are tackled, SCOAF will be in any position to fulfil its workload, as long as its terms of reference continue to include the reinvestigation of the substance of complaints, in addition to questions of procedure and maladministration. (Paragraph 27)
2. *We recommend that MoD should take a three-pronged approach. First, it should examine the procedures and current practices of SCOAF and the single Services to see how they can be simplified, speeded up and made more efficient. Secondly, in consultation with SCOAF, it should conduct a reassessment of the resources required for SCOAF to ensure it can fulfil its purpose without causing unnecessary delays to complainants. Finally, the Department should work with the individual Services to assess staffing and training requirements for complaint handling, so that it is a priority within each Service and resourced adequately. We wish to see a full report of the findings and outcomes of this work, with particular reference to the burden imposed by the duty to investigate the substance of complex cases in addition to issues of maladministration.* (Paragraph 28)
3. We are concerned about the impact on SCOAF caused by delays in vetting new staff members which has led to skilled personnel seeking alternative employment. We acknowledge that vetting delays are not always within the control of United Kingdom Security Vetting (UKSV) and that the number of candidates who have dropped out during the vetting process is not unusually high. However, the anecdotal experience relayed to SCOAF portrays a problem that is not fully recognised by UKSV. (Paragraph 36)
4. *We recommend that SCOAF, UKSV and Defence Business Services (DBS) meet soon to determine the extent of the problem faced by SCOAF. This should result in an agreed plan to reduce the time taken for vetting, which should be copied to us.* (Paragraph 37)
5. The Service complaints system currently has only one objective measure to assess performance. We believe that this is insufficient. Without an effective performance management system, it is effectively impossible to assess whether real progress is being made in improving the Service complaints system. (Paragraph 48)
6. *A situation where complainants are waiting up to 86 weeks for an admissibility decision by their chain of command is simply unacceptable. We recommend the introduction of additional measures at different levels of the complaints system, in order to reveal problem areas where delays are likely to occur. The Department should ensure that it is possible to capture and assess the experience of the complainant throughout the*

Service complaints process. This exercise should be an integral part of the review of the legislation. Furthermore, the Department should immediately commission work to enable the streamlining of the system. (Paragraph 49)

Complaints and SCOAF

7. It is a serious concern that complaints from BAME and female Service personnel are disproportionately high compared to their representation within the Armed Forces and that they are more likely than other groups to complain about bullying, harassment and discrimination. Ministers should instruct Service Chiefs to remedy this situation. It is unacceptable that SCOAF—the independent element of the complaints process—was excluded from previous internal reviews by each Service and has not even seen the results of the reviews. This sends the wrong message about valuing BAME and female personnel, with a potentially negative impact on their retention and future recruitment. (Paragraph 58)
8. *The MoD should provide the Committee and the Ombudsman with the full findings from the internal reviews. The MoD should also set out fully the proposed action to be taken by each Service and the Department to rectify this matter. We are not convinced that Ministers understand—or are sufficiently committed to discovering—the root causes of BAME and female Service personnel complaints. They must get a grip on this important problem urgently. We will be monitoring the next satisfaction survey closely to see if there has been any improvement. (Paragraph 59)*
9. A negative culture towards complaints exists across the Armed Forces at all levels, which makes it difficult to assess the true scale of the challenges being faced. Service personnel do not have faith in the Service complaints system. We have testimony from complainants who believe that going through the complaints system has negatively affected their career, mental health and wellbeing. (Paragraph 74)
10. *The MoD must openly embrace a culture where reasoned challenge, complaint and whistle-blowing are acceptable practices in order to stop inappropriate and unlawful behaviour and activities. Training for Service personnel at all levels should be reviewed to determine why current initiatives are not successful. This will help to ensure that a supportive environment, free of persecution, exists for both the complainant and the respondent. Challenging wrongful behaviour and protecting colleagues should be a self-evident military value, championed from recruitment through to resettlement. (Paragraph 75)*
11. Whilst we welcome the progress made by the Department in putting processes in place to discover reasons for withdrawn complaints, the historic lack of data is problematic. To ascertain the extent of that problem, the Ombudsman has been forced to rely upon a sample of complaints that come to her office and upon anecdotal evidence. In addition, it appears that serving personnel are being discouraged from making formal written complaints in the first place. If true, this practice must be eradicated. It is unacceptable, and we are concerned that this issue is not being fully recognised or addressed by the MoD. (Paragraph 83)
12. *The MoD should provide the Committee with a list of the specific provisions currently in place for each Service to monitor and record withdrawn complaints and should*

explain in detail how they ensure that personnel are not discouraged from making a formal complaint in the first place. This should include a timetable for implementation of additional processes needed. The MoD should also confirm how they intend to engage with SCOAF in the JSP 831 review to ensure that the Ombudsman's concerns are fully reflected in any changes. Failure to undertake such an engagement with the independent element of the complaints system would be unacceptable. (Paragraph 84)

Implementation of Annual Report recommendations

13. The MoD should look on the Ombudsman as an asset who can play a crucial role in assisting the Department, through her recommendations and through engagement in the review of legislation. The MoD's response to the 2017 Annual Report is five pages long and took just under seven months to produce. We consider this to be an excessive delay and a demonstration of the low priority the Department gives to the Ombudsman and her office. It suggests that the Department has not properly come to terms with the creation of the Service Complaints Ombudsman and has failed to realise the potential benefits which would result from taking her work more seriously. The slow progress of the MoD in implementing recommendations from the Ombudsman's Annual Reports is unacceptable and erodes Service personnel's confidence in SCOAF's ability to make a positive change. We endorse the Ombudsman's recommendation in her 2018 Annual report that she and the MoD should agree an outline of when and how formal responses are provided. (Paragraph 93)
14. *Once recommendations are accepted, the MoD should put deadlines in place for implementation of the necessary changes. A detailed explanation of progress against timeframes for each recommendation should be included in an annex to the Government's response to each Annual Report.* (Paragraph 94)
15. The delayed response to the Ombudsman's 2017 Annual Report was unacceptable and hampered our work in holding Government and the Ombudsman to account. *The MoD should commit to publishing a substantive response to the Ombudsman's 2018 Annual Report and all future annual reports within three months of publication.* (Paragraph 95)

Future of SCOAF

16. The Ombudsman believes that her powers are too limited to fulfil her function and has said that she would like to play a "significant part" in the review of the current legislation. One specific change she highlights includes the ability to investigate undue delay when requested to do so by respondents who are named in a Service complaint—not just by complainants, as at present. (Paragraph 99)
17. *Before the forthcoming review of the Armed Forces (Service Complaints and Financial Assistance) Act 2015 the Department should set out how it intends to engage with the Ombudsman and the scope of this engagement. This should include consultation with the Ombudsman on areas where she believes the extension of her powers could contribute to a more effective, efficient and openly fair Service complaints system.* (Paragraph 100)

18. Some complainants believe that the Ombudsman is too limited by her current powers. *When reviewing the Act, the MoD should conduct a consultation process with complainants and respondents to consider their experience of the Service complaints system in any review of current policy. The consultation should include a cost-benefit analysis of recommendations made by complainants, which should be shared with the Ombudsman and the Committee.* (Paragraph 102)
19. The Committee notes the wish of the Ombudsman to take on more responsibility through proposing an extension of her powers to conduct “own-initiative” investigations. However, we do not believe that extending the scope of the Ombudsman’s powers at this time would be helpful, given the existing delays and backlogs linked to staffing challenges, which have led to low satisfaction with the work of SCOAF. *The workload borne by the Ombudsman and her team is already excessive in relation to their resources. This imbalance must be rectified before adding to it further. Otherwise, those Service personnel who look to the Ombudsman for resolution of their complaints within a reasonable timeframe will only be further disappointed.* (Paragraph 109)
20. It is unsatisfactory that SCOAF has said it has been unable to access legal advice from the Government Legal Department (GLD) in every instance that it has been needed. The Government should cover this issue in its response to our Report. In the absence of a GLD lawyer when one is required, funds should be found to enable an appropriately qualified alternative lawyer to be instructed. SCOAF should have the legal resources necessary to fulfil its independent function and defend its decisions. (Paragraph 116)
21. *In response to our report the Department should provide information about each case in which the Ombudsman was not able to access legal advice from the GLD and why this situation arose and make a commitment to explain any such future case to us. We also expect an assurance from the MoD that such situations will not be repeated and that funds will be made available for a judicial review or the appointment of Counsel, whenever necessary.* (Paragraph 117)
22. The provisions for the Service Complaints Ombudsman’s time in office fall outside the standard options for tenure that are applicable to other Ombudsmen’s offices across the UK. The Committee accepts that a non-renewable five-year term in office may limit the Ombudsman’s ability to enact change. It may also impact on her ability to take a long-term view on how the complaints system should develop and change. (Paragraph 125)
23. *Our predecessor Committee recommended a tenure of between five to seven years for the Ombudsman role to enable the appointees to “familiarise themselves with the role and to become fully effective”. However, having heard concerns from the Ombudsman regarding the length of time in office, this Committee agrees that SCOAF should be brought into line with other Ombudsmen and with the Venice Principles, and considers a seven-year, non-renewable term to be appropriate, and that this extension should be made available to the current Ombudsman.* (Paragraph 126)

Formal minutes

Tuesday 9 July 2019

Members present:

Rt Hon Julian Lewis, in the Chair

Rt Hon Mr Mark Francois

Gavin Robinson

Johnny Mercer

Ruth Smeeth

Mrs Madeleine Moon

Rt Hon John Spellar

The Draft Report (*Fairness without Fear: The work of the Service Complaints Ombudsman*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 126 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Sixteenth Report of the Committee to the House.

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

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

[Adjourned till Tuesday 16 July at 11.15am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 26 February 2019

Nicola Williams, Service Complaints Ombudsman for the Armed Forces

[Q1–66](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SCO numbers are generated by the evidence processing system and so may not be complete.

- 1 ForcesWatch ([SCO0013](#))
- 2 Graham House ([SCO0004](#))
- 3 Liberty ([SCO0011](#))
- 4 Major Ross McLeod ([SCO0008](#))
- 5 Ministry of Defence ([SCO0005](#))
- 6 Ministry of Defence ([SCO0009](#))
- 7 Service Complaints Ombudsman ([SCO0007](#), [SCO0010](#))
- 8 Fran Whatley ([SCO0006](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Gambling on 'Efficiency': Defence Acquisition and Procurement	HC 431 (HC 846)
Second Report	Unclear for take-off? F-35 Procurement	HC 326 (HC 845)
Third Report	Sunset for the Royal Marines? The Royal Marines and UK amphibious capability	HC 622 (HC 1044)
Fourth Report	Rash or Rational? North Korea and the threat it poses	HC 327 (HC 1155)
Fifth Report	Lost in Translation? Afghan Interpreters and Other Locally Employed Civilians	HC 572 (HC 1568)
Sixth Report	The Government's proposals for a future security partnership with the European Union	HC 594 (HC 1570)
Seventh Report	Beyond 2 per cent: A preliminary report on the Modernising Defence Programme	HC 818 (HC 1994)
Eighth Report	Indispensable allies: US, NATO and UK Defence relations	HC 387 (HC 1569)
Ninth Report	Armed Forces Covenant Annual Report 2017	HC 707 (HC 1571)
Tenth Report	UK arms exports during 2016	HC 666 (HC 1789)
Eleventh Report	Armed Forces and veterans mental health	HC 813 (HC 1635)
Twelfth Report	On Thin Ice: UK Defence in the Arctic	HC 388 (HC 1659)
Thirteenth Report	Future Anti-Ship Missile Systems: Joint inquiry with the Assemblée nationale's Standing Committee on National Defence and the Armed Forces	HC 1071 (HC 2033)
Fourteenth Report	Mental Health and the Armed Forces, Part Two: The Provision of Care	HC 1481 (HC 2213)
Fifteenth Report	Missile Misdemeanours: Russia and the INF Treaty	HC 1734 (HC 2464)
Seventeenth Report	Drawing a line: Protecting veterans by a Statute of Limitations	HC 1224
First Special Report	SDSR 2015 and the Army	HC 311
Second Special Report	Armed Forces Covenant Annual Report 2016	HC 310

Third Special Report	Investigations into fatalities in Northern Ireland involving British military personnel: Government Response to the Committee's Seventh Report of Session 2016–17	HC 549
Fourth Special Report	Gambling on 'Efficiency': Defence Acquisition and Procurement: Government Response to the Committee's First Report	HC 846
Fifth Special Report	Unclear for take-off? F-35 Procurement: Responses to the Committee's Second Report	HC 845
Sixth Special Report	Sunset for the Royal Marines? The Royal Marines and UK amphibious capability: Government Response to the Committee's Third Report	HC 1044
Seventh Special Report	Rash or Rational? North Korea and the threat it poses: Government Response to the Committee's Fourth Report	HC 1155
Eighth Special Report	Lost in Translation? Afghan Interpreters and Other Locally Employed Civilians: Government Response to the Committee's Fifth Report	HC 1568
Ninth Special Report	Indispensable allies: US, NATO and UK Defence relations: Government Response to the Committee's Eighth Report	HC 1569
Tenth Special Report	The Government's proposals for a future security partnership with the European Union: Government Response to the Committee's Sixth Report	HC 1570
Eleventh Special Report	Armed Forces Covenant Annual Report 2017: Government Response to the Committee's Ninth Report	HC 1571
Twelfth Special Report	Mental health and the Armed Forces, Part One: The Scale of mental health issues: Government Response to the Committee's Eleventh Report	HC 1635
Thirteenth Special Report	On Thin Ice: Defence in the Arctic: Government Response to the Committee's Twelfth Report	HC 1659
Fourteenth Special Report	UK arms exports during 2016: Government Response to the Committees' First Joint Report	HC 1789
Fifteenth Special Report	Beyond 2 per cent: A preliminary report on the Modernising Defence Programme: Government Response to the Committee's Seventh Report	HC 1994
Sixteenth Special Report	Future Anti-Ship Missile Systems: Joint inquiry with the Assemblée nationale's Standing Committee on National Defence and the Armed Forces: Government Response to the Committee's Thirteenth Report	HC 2033
Seventeenth Special Report	Armed Forces Covenant: NAO Review of LIBOR Funding	HC 2201
Eighteenth Special Report	Mental Health and the Armed Forces, Part Two: The Provision of Care: Government Response to the Committee's Fourteenth Report of Session 2017–19	HC 2213

Nineteenth Special Report	Missile Misdemeanours: Russia and the INF Treaty: Government response to the Committee's Fifteenth Report of Session 2017–19	HC 2464
Twentieth Special Report	Shifting the Goalposts? Defence Expenditure and the 2% Pledge: An Update	HC 2527