



House of Commons
Defence Committee

**Fairness without
Fear: Work of the
Service Complaints
Ombudsman:
Government Response
to the Committee's
Sixteenth Report of
Session 2017–19**

**First Special Report of Session
2019–20**

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The Defence Committee

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First Special Report

On 7 August 2019, the Defence Committee published its Sixteenth Report of Session 2017–19, [Fairness without Fear: The work of the Service Complaints Ombudsman](#) [HC 1889]. The response from the Government was received on 10 October 2019. The response is appended to this report.

Appendix: Government response

This memorandum sets out the Government’s response to the House of Commons Defence Committee’s Report “*Fairness without Fear: The Work of the Service Complaints Ombudsman*”, Sixteenth Report of Session 2017–19 (HC 1889) which was published on 7 August 2019.

The Ministry of Defence (MOD) believes that everyone deserves to work in an environment where they are valued, and their grievances, whatever the subject matter, are treated seriously and with respect. Key to that is ensuring effective mechanisms are in place to deal with such instances.

We are grateful for the Committee’s report on the work of the Service Complaints Ombudsman for the Armed Forces (SCOAF), and the operation of the Service Complaints system in general. Although we did not have the opportunity to say so in oral evidence, our written submission to the Inquiry made it clear that we fully support the work of the SCOAF and her organisation in contributing to a system that is efficient, effective and fair.

Some of the observations made by the Committee echo those made by the SCOAF in her Annual Report for 2018 (“SCOAF’s 2018 Report”), and also the findings of the ‘Report on Inappropriate Behaviours’ (“the Wigston Report”). This latter report was commissioned by the MOD and published on 15 July 2019 in response to instances of alleged inappropriate and unlawful behaviour by serving members of the UK Armed Forces. While the report makes a number of recommendations on how to investigate and deal with inappropriate behaviour, it also made a number of recommendations that related to improving the Service Complaints system.

In responding to the “Report on Inappropriate Behaviours” specifically, we have formed an Implementation Team to take that work forward, which will, as necessary, identify any wider reforms appropriate to the Service Complaints process as a whole. That work will now also consider recommendations from the SCOAF’s 2018 Report and this House of Commons Defence Committee Report. In preparing our response to the Committee’s report we have also taken into account the findings of the SCOAF’s 2018 Report and the Wigston Report, and have set out where we consider recommendations that aim to address similar themes or aspects of the system should be considered holistically and not in isolation.

Our response to the specific conclusions and recommendations made is as follows:

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)

The work that is being taken forward by the Implementation Team to review the Service Complaints system will examine the processes and procedures that currently support it. The training requirements for all parties involved in the Service Complaints process will also be re-assessed as part of this work.

In the written evidence provided to the Committee we set out that, while an annual budget is provided to the SCOAF from Defence funds, the role is independent of the MOD and it is for the SCOAF to decide when to recruit staff and to manage any such campaigns. The assessment of resources required for January 2016 (when the new role of the SCOAF was introduced) was undertaken by the SCOAF, not the MOD, and increased the number of support staff from 12 to 23. The SCOAF's office considered at the time this to be sufficient, with an option to review—the number of funded posts has since increased to 28.

Since the establishment of the SCOAF's office in 2016, the MOD has agreed to every request that has been made for additional staff. This includes funding the engagement of Fee Earning Investigators and three fixed-term Senior Investigators to assist with reducing the backlog of investigations within the SCOAF's office.

In her Annual Report for 2018, the SCOAF placed a recommendation (Recommendation 3.1) on herself to prepare and submit to the MOD a comprehensive proposal for additional resource, the aims being to: reduce her existing allocation backlog; prevent a new backlog developing; and execute in-depth research and analysis as required by the SCOAF's reporting function. We recognise the importance of ensuring the SCOAF has the resources she requires, and will give the proposal that has now been submitted careful consideration.

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)

All recruitment for the SCOAF's office is carried out by the Civilian Personnel Department of DBS. DBS also act as the vetting sponsor for the SCOAF and provide the necessary authority to UKSV to begin the appropriate vetting service commensurate with the level of security clearance the post requires.

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)*

The SCOAF and senior officials from DBS and UKSV have arranged to meet in October 2019 to discuss recruitment and vetting issues. We will provide the Committee with details of the agreed actions resulting from that meeting.

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)*

As previously mentioned, we have formed an Implementation Team to take forward the findings and recommendations of the Wigston Report. The Report makes a number of recommendations aimed at improving the Service Complaints process, including a review of the system and the arrangements that support it. This work will include consideration and identification of what measurable elements could constitute a fair, efficient and effective assessment of the system, and how we might capture the experience of both complainants and respondents.

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)*

Regarding the particular issue of the timeliness of admissibility decisions, this was also something highlighted in the SCOAF's 2018 Report. The SCOAF raised concerns regarding the length of time some were taking and recommended (Recommendation 3.6) that the MOD set a suitable Key Performance Indicator for making such decisions. As these proposed changes to the system follow the same theme, we will consider them in tandem.

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)*

As a Department, we have made much progress in recent years in demonstrating our commitment to inclusion and diversity. In 2018, we published a Defence Diversity and Inclusion Strategy which outlines how we intend to become:

- An inclusive employer where all staff can fulfil their potential;
- An organisation that, at all levels, appropriately represents UK society;
- Recognised as a force for inclusion in wider society

Against this backdrop, we are keen to understand why women and BAME complainants feature disproportionately in the complaints process.

In response to a recommendation made by the SCOAF in a previous Annual Report (which did not specify that an independent review was being sought), each of the Services undertook their own individual analysis to establish the overrepresentation of female and BAME personnel in the Service Complaints system. The work undertaken by the Army is presented in the Army Inspector’s Review of the Army Service Complaints Process which was published in June, and which the SCOAF is sighted on. The findings of the studies conducted by the Navy and RAF were not shared with the SCOAF at the time, but they will now provide copies to both the Ombudsman and to the Committee.

The Wigston Report also observed that female and BAME personnel might be overrepresented in either having been subjected to, or complained about, bullying, harassment and discrimination. We will commission an independent study into the overrepresentation of Women and BAME in the complaints system, which will also examine the outcome of such complaints.

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)

We are committed to having a Service Complaints system in which our people have the confidence to raise matters of concern that relate to their service life, and to seek redress where they believe they have been wronged.

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)*

The Wigston Report specifically looked at whether such behaviour existed within the Armed Forces and, if it did, were effective systems in place to deal with it. The report highlighted that we must do more to stop instances of inappropriate behaviour occurring, and improve the current Service Complaints system.

The Wigston Report recommended: reform of the Service Complaints system, including consideration of a helpline; a parallel channel for raising Service Complaints outwith the Chain of Command; and a dedicated central Service Complaints Team equipped to handle the most complex allegations of bullying, harassment and discrimination. The review of the Service Complaints system will consider those suggestions and the training required for all those parties involved in the process, including the support provided to both complainants and respondents.

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)*

The MOD's policy is clear that complainants can expect their complaints to be taken seriously and investigated impartially, thoroughly, sensitively and confidentially. They are to be protected from victimisation for having made a complaint, and have access to advice

and support throughout the process. We will be reviewing JSP 831 (Redress of Individual Grievances: Service Complaints) as part of the work to take forward the findings and recommendations of the Wigston Report, and we will consider how we might better communicate and emphasise this message. As a key stakeholder the SCOAF will be engaged in this review.

The MoD can confirm that all three Services have provisions in place for the recording and monitoring of Service Complaints, including withdrawal of complaints.

All training provided by the Army Service Complaints Secretariat emphasises that no pressure is to be placed on individuals to dissuade them from submitting a complaint, and complainants who already have a Service Complaint in the system should not be coerced into withdrawing or closing them. The Army Service Complaints Standard Operating Procedures contain a templated withdrawal/closure certificate. The complainant and unit complete and sign the certificate, which is uploaded to the Joint Personnel Administration system (JPA) indicating that:

- A resolution has been awarded and agreed; or
- Indicating/explaining what agreed actions have been completed that warrant the Service Complaint to be closed; and
- No ‘pressure’ has been applied to enforce them to close the Service Complaint.

The Army also record the number of Service Complaints that are withdrawn and, where possible, the reason for this e.g. informal resolution.

The Navy have similar procedures in place and require that the withdrawal of a Service Complaint is made in writing by the complainant including the reasons stated for withdrawal; details are then uploaded to JPA to form part of the official record of the Service Complaint. In terms of monitoring such instances, action is necessarily bespoke and sensitive to the circumstances. For example, when a complainant initially indicates that they wish to withdraw or are considering withdrawing, whether that is indicated orally or in writing, the Decision Body or case handler would be expected to engage the complainant to understand the reason why they wish to withdraw if it wasn’t stated, and ensure the individual is given time to properly consider their decision.

The RAF’s Service Complaints Team can see when a complaint is withdrawn, and it is standard practice for the reasons to be recorded on JPA. The number of withdrawals are recorded and if there is an indication that the reason may be the result of duress or another alleged failing by the Service, it will be investigated. To improve further their process for recording and monitoring withdrawn complaints, the RAF intend to send a standard letter to all personnel who withdraw a Service Complaint. This letter will ask the complainant a small number of questions as to their reasons for withdrawal, and will be returned in confidence directly to the RAF Service Complaints Team. This will enable personnel to be candid in their response if reasons relate to any type of duress. The RAF will capture feedback and trends e.g. any particular units or groups of personnel that may be over-represented. A copy of the draft letter will be shared with the SCOAF for her comments and feedback prior to implementation. Dependant on the effectiveness of this new process, the adoption on a tri-Service basis will be considered.

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)**

We agree that the publication of our response to the 2017 Annual Report was overdue, but not that it demonstrates a low priority for the work of the Ombudsman and her office, or that her recommendations are not taken seriously. The MOD values the strong independent oversight that the SCOAF brings to the Service Complaints process, and that is why, wherever possible, our aim is to implement the recommendations that are made. There will be instances where we feel that we are unable to adopt certain recommendations, but these are few and far between and on such occasions we will provide the reasons and context to those decisions.

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)

In her Annual Reports for 2016 and 2017, the SCOAF made a total of 22 recommendations, of which we assess 14 have either been completed or require no further work. Work on those eight recommendations we consider to be outstanding, along with the nine new recommendations made in the SCOAF’s Annual Report for 2018, will be addressed as part of normal business or as specific issues to be addressed by the team which has been established to take forward the work resulting from the Wigston Report.

We regularly provide the SCOAF’s office with an update on progress against the recommendations made, both verbally at monthly meetings with representatives from her office, and through written correspondence. The quarterly Service Complaints Working Group, attended by single Service and SCOAF staff, also review the recommendations and progress made.

In response to the SCOAF’s recommendation (Recommendation 3.9) in her Annual Report for 2018 regarding a written agreement outlining when and how formal responses to her reports are to be provided, including the frequency of updates on open recommendations, we are engaged with the SCOAF’s office regarding the content of this agreement. We also see the benefits of setting deadlines and including an update on progress against recommendations in future responses to the SCOAF’s Annual Reports. We will implement this for the next report.

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)

The MOD provided the SCOAF with its formal response to her 2018 Report at the beginning of August. This was slightly later than planned due to changes in the Ministerial team within the Department.

As set out in our response to the previous recommendation, we are in the process of drafting a written agreement with the SCOAF outlining when and how the MOD’s formal responses to her reports are to be provided. This work will include a timeline within which to respond and will be no more than three months from the date of publication.

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)

Delay in the Service Complaints system is clearly an issue that needs to be addressed, and is highlighted as such in both the SCOAF’s 2018 Report and the Wigston Report. The review of the Service Complaints system we are undertaking will consider this recommendation alongside others made in this Report, SCOAF’s 2018 Report and the Wigston Report. We will shortly be sharing our plans for the review with the SCOAF, and will consult with her and her office throughout this process.

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)

The role and powers of the SCOAF will be considered as part of the review of the Service Complaints system as discussed above. The review will consider all aspects of the process and will require a strong evidence base to support any changes to policy and legislation, including any changes to the functions currently carried out by the SCOAF. Consultation will form an important part of building that evidence base and we will consider how best to deliver this recommendation as we develop our plans.

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)**

As highlighted in the above recommendation, the role and powers of the SCOAF will be considered as part of the review of the Service Complaints system we are conducting. We are committed to working in partnership with the SCOAF and believe that her inclusion in our review will help improve the system.

As discussed earlier in this response, the SCOAF has submitted a proposal to the MOD for additional resource, the aim being to: reduce her existing allocation backlog; prevent a new backlog developing; and to execute in-depth research and analysis as required by the SCOAF’s reporting function. We are currently giving that proposal careful consideration.

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)

The SCOAF is provided with an annual budget from Defence funds which, under the financial delegation given to her, is used to meet all the costs associated with her independent function; this includes the procurement of any legal advice. The amount spent by the SCOAF’s office on legal advice varies year on year, and is detailed in the financial expenditure statements in her annual reports to Parliament on the fairness, effectiveness and efficiency of the Service Complaints system.

In general terms lawyers cannot act where their duty towards two clients conflict or there is a significant risk of such conflict. The SCO and MOD are both public bodies with the MOD funding the SCOAF. The SCOAF and MOD have agreed that GLD should provide SCOAF with legal advice. GLD charge for this advice.

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)

In Paragraph 117, the Department is asked to provide information about each case in which the Ombudsman was not able to access legal advice from the GLD and why this situation arose. SCOAF were unable to access legal advice from GLD on two occasions. On both occasions this was due to a potential conflict of interest. The first occasion was

when one of the Armed Services sought to challenge the Ombudsman’s decision on its admissibility to review certain Service complaints. The situation was resolved between the parties. The second occasion was when GLD was asked to advise the SCOAF in relation to the MOD’s proposed response to a letter from a third party and there was a difference of opinion between the MOD and SCOAF as to the scope of her remit.

The MOD understands that GLD are able to advise the SCOAF on most issues. However, GLD cannot represent the SCOAF in litigation where the SCOAF is adopting a position in direct opposition to that of the MOD or Armed Forces. In those cases where there is a conflict of interest, the SCOAF will need to instruct external lawyers. The MOD will support SCOAF in providing appropriate additional resource when it is necessary to instruct external lawyers.

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)*

When deciding the terms that would apply to the post of the SCOAF, the MOD considered the length of tenure of other Ombudsmen posts and concluded that five years was appropriate and that it would be non-renewable.

At the time the Ombudsman Association agreed that the term should be of sufficient duration not to undermine independence and be for a minimum of five years. This was also recognised internationally as best practice to avoid the perception that an Ombudsman’s decision might be influenced by their employment position. The current SCOAF took up the role of Services Complaints Commissioner in January 2015, transitioning to the role of Ombudsman in January 2016. By 2021, Nicola Williams will have been Service Complaints Commissioner/Service Complaints Ombudsman for six years in total.

As part of the overall review of the Service Complaints system, we will review the role of the SCOAF, the powers and length of tenure. In doing so, we will engage with and take account of the views of the current SCOAF.

10 October 2019