

# JSP 763



## **THE MOD BULLYING AND HARASSMENT COMPLAINTS PROCEDURES**

A GUIDE FOR ALL MOD SERVICE AND CIVILIAN PERSONNEL ABOUT MAKING, RESPONDING TO, ADVISING ON, INVESTIGATING, AND DECIDING ON, COMPLAINTS OF BULLYING AND HARASSMENT.

MINISTRY OF DEFENCE  
Defence Personnel Secretariat Complaints  
Human Resources Director Strategy

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Throughout JSP	Defence Personnel Secretariat Complaints	01/07/13	Changes made throughout the JSP to reflect name change from PPPA to Defence Business Services (DBS).

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JSP 763 has been Equality and Diversity Impact Assessed in accordance with Departmental policy. This resulted in a Part 1 screening only completed (no direct discrimination or adverse impact identified).

This JSP is due for EDIA review in Oct 13.

## **INTRODUCTION**

### **SCOPE**

1.1. Service complaints<sup>1</sup> and civilian grievance procedures are the framework for dealing with complaints from MOD Service or civilian personnel<sup>2</sup> relating to their service or employment. For Service personnel, JSP 831 sets out MOD policy concerning Service complaints seeking redress of individual grievance under sections 334 to 339 of the Armed Forces Act 2006 (AFA 06). The procedures for civilian personnel are set out in the MOD Civilian Grievance Policy. If the complaint is related to bullying or harassment, Armed Forces and civilian personnel are to use JSP 763. For the purpose of this document, Service complaints are also referred to as ‘formal complaints’. The procedures set out in this publication supplement that framework but cover only complaints of bullying and harassment by MOD Service or civilian personnel against other MOD Service or civilian personnel. Complaints of bullying and harassment where the Respondent (see 1.3.b) is a MOD Police (MDP) Officer will be handled in accordance with the MDP harassment complaint procedures. Complaints of harassment involving non-MOD personnel are covered in paragraphs 1.16 – 1.18.

1.2. In practice, Complainants usually offer their own description of bullying and harassment. However for the purpose of making a formal complaint, working definitions of bullying and harassment can be found at Annex A.

1.3. These procedures are primarily for:

- a. **Complainants** – i.e. those who believe they have experienced bullying or harassment.
- b. **Respondents** – i.e. those personnel against whom allegations of bullying or harassment have been made.
- c. **Equality and Diversity Advisers (EDA)** – Those whose role within Service units is to provide impartial advice with regard to Equality and Diversity (E&D) issues, including alleged harassment and the MOD complaints procedures. For civilian personnel, in respect of bullying &

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<sup>1</sup> For guidance on Service Complaints and the role of the Service Complaints Commissioner refer to JSP 831. See also ch2, para 2.6.d below.

<sup>2</sup> The term ‘civilian personnel’ includes Royal Fleet Auxiliary personnel. It does not include locally employed civilians (LECs). Although overseas business units may choose to follow principles contained in this JSP, DBS is unable to provide policy advice or HIO support on cases involving LECs only. Local arrangements must be made. Where an LEC is a Complainant or Respondent and the other party is a MOD Service person or MOD civilian, then JSP 763 procedures should be applied. Those organisations that do not use DBS (i.e. Trading Funds) will also need to develop similar processes.

harassment complaint procedures, advice must be sought from Defence Business Services (DBS) Civilian HR.

- d. **Defence Business Services** (DBS) Civilian HR advisers. The DBS provides advice to all personnel in resolving bullying and harassment complaints involving civilian staff. The DBS will advise all parties on the bullying and harassment complaints procedures and is responsible for maintaining the list of trained civilian HIOs.
- e. **Assisting Officers** (AO) – Those assigned or invited to provide help and support to Complainants or Respondents when it is anticipated that a formal complaint is likely to be or has been made.
- f. **Harassment Investigation Officers** (HIO) – Those appointed to investigate formal complaints of bullying and harassment. Further guidance about their roles is in Chapter 6.
- g. **Deciding Officers** (DO) – Those empowered to take action in respect of formal complaints of bullying and harassment. Further guidance about their role is in Chapter 5.

## **MOD POLICY**

1.4. It is MOD policy<sup>3</sup> that all Service and civilian personnel, regardless of rank or grade, have a right to be treated with dignity. All Service and civilian personnel also have a responsibility to do all they can to ensure that the working environment is free from all forms of bullying and harassment and that the dignity of others is respected. All personnel are to:

- a. ensure that their own conduct does not amount to bullying or harassment;
- b. have the moral courage to challenge inappropriate behaviour;
- c. be prepared to support those who experience or witness bullying or harassment; and;
- d. report bullying or harassment against themselves or others.

1.5. The Chain of Command (CofC) and Line Managers (LMs) have additional responsibilities to set the highest example through their own behaviour and to ensure that personnel for whom they are responsible are aware of, understand and adhere to MOD policy. They must be vigilant and proactive in preventing bullying and harassment from occurring within their units or establishments (rather than waiting for complaints to arise). If it does occur, they must have the moral courage to deal with it properly and promptly, whether or not a complaint has been made.

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<sup>3</sup> This policy is encapsulated in the MOD Unified Diversity Strategy issued in 2008.

1.6. Complainants should not feel discouraged from making a bullying or harassment complaint for fear of negative consequences and should be reassured that they will be protected against victimisation. Commanding Officers (COs)/LMs should be aware that having a bullying and/or harassment complaint made within their command is not a sign of failure; the failure is not taking appropriate and timely action.

1.7. Bullying and harassment of any kind benefits no-one. It is damaging to the health, performance and morale of those on the receiving end of it and may ultimately result in them leaving MOD employment altogether. It also damages the operational effectiveness of teams and the reputation of the Armed Forces and MOD. Examples of unacceptable behaviour which will not be tolerated include:

- a. unwelcome sexual attention or 'environmental' harassment such as the open display of pornographic material;
- b. ridiculing someone (e.g. making fun of the way they look or speak) or insulting them (e.g. on the grounds of sex, gender reassignment, race or ethnic or national origin, disability, religion or belief, sexual orientation or age);
- c. encouraging, verbalising or acting on negative stereotypes of men, women or members of minority groups;
- d. ostracising someone, excluding them from group activities (or conversely, coercing them into taking part in unwanted activities through fear of being ostracised), or spreading malicious rumours about them;
- e. deliberately setting someone up to fail (e.g. by giving them unrealistic targets or deadlines to meet, or by giving them duties or responsibilities beyond their capability), unduly criticising their performance, or unfairly picking on them;
- f. publicly undermining someone's authority;
- g. labelling someone who has made a complaint of bullying or harassment a "troublemaker", or retaliating against/victimising them;
- h. pressurising someone into not making a complaint.

1.8. If possible and appropriate, early informal resolution of bullying and harassment allegations should be attempted in the first instance and at the lowest, appropriate level. However, all personnel have a right to make a formal complaint if they feel they have been bullied/harassed. For Service personnel, this is part of their statutory right of complaint under sections 334 to 339 of AFA 06. For civilian personnel, it is part of their contractual entitlement to raise a grievance relating to their employment under the MOD Civilian Grievance Policy.



1.9. Formal complaints under Service complaint or civilian grievance procedures should normally be made within 3 months of the alleged incident or, if the complaint is about a series or pattern of incidents, the latest incident. If it is just and equitable to do so, a formal complaint may be considered even if it is outside the 3-month time limit. The time limits for complaining to an Employment Tribunal<sup>4</sup> are at Annex B, para 6.

1.10. Complaints will be taken seriously and investigated without delay, impartially, thoroughly, sensitively and confidentially. The expectations of Complainants and Respondents from, and their responsibilities under, the complaints procedures are at Annex C.

1.11. If, during any stage of an investigation, the CO/DO becomes aware of inappropriate E&D related behaviour by any Service person, they may wish to consult JSP 757 Tri-Service Guidance for Appraisal Reporting, Ch 6 para 8.28 b. This is separate to a complaint and is not necessarily affected by the outcome of an investigation.

## **THE LAW**

1.12. Harassment is against the law. Failure by the CofC and LMs to prevent harassment from occurring may lead to the MOD being held responsible for the bullying or harassment. Individual harassers may also be personally liable, as may members of the Command/Line Management chain if they fail to take appropriate action. Further information about harassment and the law is at Annex B.

## **SANCTIONS**

1.13. Personnel whose behaviour constitutes bullying or harassment are liable to have appropriate administrative or disciplinary/misconduct action taken against them under the applicable Service or civilian procedures:

a. Under Service procedures, administrative action, ranging from warnings to administrative discharge, may be taken in respect of in-Service misconduct (including bullying and harassment). Disciplinary action may be taken in respect of offences under the AFA 06. Although unusual, there may be occasions where an individual is subject to both disciplinary action and administrative action arising out of the same set of circumstances. In such cases, the disciplinary action deals with the criminal behaviour, whereas the administrative action concerns the individual's continued employability. The two forms of action are not mutually exclusive.

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<sup>4</sup> In Northern Ireland (NI), Employment Tribunals are still referred to as Industrial Tribunals. Whilst there is a legal requirement for Service personnel to submit a Redress before submitting an application to ET/IT, there is an exception in NI under the 'Fair Employment and Treatment NI Order 1998' (which covers religious belief and political opinion in NI). Service personnel can submit an application to the Fair Employment Tribunal for Northern Ireland, and there is no legal requirement for them to submit a redress first.

b. Under civilian misconduct procedures, minor misconduct action in the form of a first warning may be taken in respect of minor misconduct (including less serious cases of harassment), while serious or gross misconduct action, involving penalties up to dismissal, may be taken (including more serious cases of harassment). Where it appears that a civilian has committed a criminal offence, the matter must be referred to the MOD Police. References to administrative action in the civilian context include refresher training, counselling, separation of staff, etc.

## **VICTIMISATION**

1.14. It is a fundamental responsibility of the Command/Line Management chain to protect personnel from victimisation. Appropriate administrative or disciplinary/misconduct action will be taken against personnel who victimise, retaliate against or interfere with a Complainant, Respondent or witness before, during or following an investigation and regardless of its outcome. It is equally important that Respondents are not pre-judged and do not incur any penalty or detrimental treatment other than appropriate administrative or disciplinary/misconduct action if found culpable.

## **MALICIOUS OR VEXATIOUS COMPLAINTS**

1.15. In the event of a complaint being determined to be malicious<sup>5</sup> or vexatious<sup>6</sup>, administrative or disciplinary action, as appropriate, should be considered against the complainant. Legal advice<sup>7</sup> should be obtained before determining whether a complaint falls into either of these categories. If such a determination is made the Complaint should be rejected and the complainant informed in writing. If any doubt exists as to whether a complaint is malicious or vexatious it should be treated as valid.

## **COMPLAINTS INVOLVING NON-MOD PERSONNEL**

1.16. Non-MOD personnel should address a complaint against MOD personnel to the Respondent's CO/Senior LM<sup>8</sup> for action.

1.17. MOD personnel should address a complaint against non-MOD personnel, including personnel from other government departments, contractors or personnel from other nation's armed forces (including US visiting forces), to their own CO/Senior LM.<sup>9</sup> The MOD will make clear to

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<sup>5</sup> i.e. a complaint motivated by malice, spite or ill-will, which is intended to cause harm to others.

<sup>6</sup> i.e. an unmeritorious and/or recurring complaint which seeks only to annoy or distress others, or cause unnecessary administrative effort.

<sup>7</sup> Civilians should seek advice from the DBS.

<sup>8</sup> Throughout these procedures the terms CO/Senior LM are taken to include, for example, Station Commanders and Heads of Establishment (including RAF Commanders at USAF bases), heads of Division / Directorates, and Senior National Officers in NATO HQs.

<sup>9</sup> Personnel with non-MOD LMs should refer their complaint to the first MOD Service or civilian person in their Command/Line Management chain.

the Respondent's employer its expectation that the latter will expeditiously invoke its own procedures, and will put pressure on that employer if no action is taken.

1.18. The MOD will make contractors and agency staff aware of MOD Equality and Diversity policies and procedures, including those detailed in this JSP. Similarly, bullying and harassment of contractors or agency staff by MOD personnel is unlawful and both MOD and the individual(s) responsible may be held responsible for this.

## **ASSIGNMENTS AND INVESTIGATIONS**

1.19. Each complaint should be investigated to establish the facts as clearly as possible and the details accurately recorded. Posting or discharge is not to be considered as a valid basis for excluding an individual from any inquiries.

## **LEVELS OF COMPLAINT (SERVICE PERSONNEL ONLY)**

1.20. The Service complaints process has 3 levels: Level 1- the DO, usually the CO (roles and responsibilities of the CO are detailed in JSP 831 Chapter 3); Level 2- the Superior Officer (SO) (roles and responsibilities at JSP 831 Chapter 4); and level 3- the Defence Council level (roles and responsibilities at JSP 831 Chapter 5). COs should consider carefully whether they can effectively deal with the complaint in reasonable time (see para 3.17). Should the CO not be able to do so or lack the authority to grant the desired or any other appropriate redress, they may refer the complaint to the SO after conducting an appropriate investigation. If the SO also does not have the authority to grant the appropriate redress, the CO may refer the complaint directly to the Defence Council, having consulted with the SO. On receiving a complaint, the SO should make the same considerations as the CO. At each of the first two levels, if the Complainant is not satisfied with the proposed resolution of the complaint or the redress to be granted they may apply to have the complaint referred to a higher level for consideration<sup>10</sup>.

1.21. It should be noted that the case investigation is carried out at level 1.

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<sup>10</sup> See chapter 3 para 19 JSP 831.

## **ADVICE, SUPPORT AND OPTIONS FOR COMPLAINT RESOLUTION**

### **INTRODUCTION**

2.1. This Chapter describes the sources of advice and support on bullying and harassment issues and the options available to Complainants and Respondents for complaint resolution.

### **SOURCES OF ADVICE AND SUPPORT**

2.2. **Moral Support.** Complainants and Respondents might initially turn for moral support to a family member, friend or work colleague, padre, chaplain or other pastoral carer, their unit medical officer/GP or, if they are a civilian, to their Trade Union representative.

2.3. **Impartial Advice and Support.** EDAs are the Command, Establishment, Station or Unit's primary source of impartial advice and support to all personnel on any E&D issue, including alleged bullying and harassment and the MOD complaints procedures<sup>11</sup>. For the Services, their role is also to assist the CO/Senior LM in implementing MOD E&D policies and initiatives, ensure they are being followed and monitor their effectiveness. They must have completed the 5 day EDA course at the joint Equality and Diversity training Centre (JEDTC). Information about the role and responsibilities of EDAs is at Annex D. For civilian personnel, advice is available from DBS Civilian HR and support is available from their TU representative.

2.4. **Practical Assistance.** Help with resolving bullying and harassment allegations may be provided by:

a. **The Command/Line Management Chain.** The first point of contact within an individual's command or line management chain is usually their immediate superior or LM, and they are often the best person to help resolve a harassment allegation informally. Involving personnel from within the command/line management chain does not automatically mean that the CO/Senior LM will be made aware of the situation, particularly if informal resolution is being sought. However, it will nevertheless be advisable to liaise with, and certainly de-brief, the EDA once satisfactory informal resolution of a complaint has been achieved. If the Immediate Superior or LM is the alleged Respondent, advice on how to proceed should be sought from the EDA in the first instance.

b. **Assisting Officers (AO).** AOs may be assigned or invited to provide help

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<sup>11</sup> Civilians should seek advice from DBS (see Para 1.3d)

and support to the Complainant and Respondent(s) when it is anticipated that a Formal complaint is likely to be, or has been, made. Information about the roles and responsibilities of the AO is in Chapter 4 and at Annex E.

**2.5. Confidential Advice and Support.** May be provided by:

- a. **Service Personnel and Welfare Officers.** Many Service units have personnel staffs and dedicated Welfare Officers, e.g. Soldiers Sailors and Airmen's Families Association (SSAFA), Naval Personal and Family Service and RM Welfare or Army Welfare Service (AWS) officers.
- b. **Padre/Chaplain.** Complainants and Respondents may seek confidential advice and support from a padre or chaplain, including a civilian Officiating Chaplain to the Forces (OCF), or an appropriate Civilian Chaplain to the Military (CCM).
- c. **Service Agencies.** Associated Service Welfare organisations, such as the Naval Personal Family Service and Royal Marines Welfare Service (NPFS & RMW), can offer confidential advice and support although they may not be able to offer detailed advice on the MOD complaints procedures.
- d. **Help Lines.** Personnel may also seek guidance from the following confidential support lines:

- Service Personnel

<b>UK:</b>	0800 731 4880	(free phone)
<b>Overseas:</b>	+44 (0) 1980 630854	(call back option) <sup>12</sup>
<b>Germany:</b>	0800 1827 395	(free phone)
<b>Cyprus:</b>	0809 1065	(free phone)
<b>Falklands:</b>	#6111	(free phone)
<b>Operations:</b>	Paradigm *201	(free phone)

Opening hours are 1030-2230 (365 days) for all the above. At other times there will be an answer machine.

- Civilian Personnel

Occupational Welfare Service (for victims of bullying or harassment wanting someone to talk to)

<b>UK:</b>	0800 345 7047 (93345 7047)
<b>Overseas:</b>	+44 (0)1225 747750

Opening hours are 0830-1630 Mon to Fri.

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<sup>12</sup> Whilst this is not a 'free phone' number, the service-provider will always immediately call back (so call costs will be minimal).

People Service Centre (for general queries on MOD policy and the complaints procedures)

**UK:** 0800 345 7772 (93345 7772)  
**Overseas:** +44 (0)1225 747772

Opening hours are 0800-1700 Mon to Fri

e. **External Agencies.** (E.g. help lines run by charities, advice bureaus) can be contacted in the strictest confidence and will be able to give general support, but they may not be able to offer advice on the MOD complaints procedure.

## **OPTIONS FOR A COMPLAINT**

2.6. Having obtained advice, a Complainant may decide:

- a. not to take the matter further;
- b. to try to resolve the matter informally (see Chapter 3); or,
- c. to make a formal complaint of bullying or harassment using these procedures (see Chapter 4).
- d. Contact the Service Complaints Commissioner (SCC), if the complainant is a Service person. The SCC organisation was created by AFA 06. If a Service person feels wronged in any matter relating to his/her Service, they can either make a service complaint to his CofC or contact the SCC independently. Members of a Service persons family, friends, MPs or anyone else can contact the SCC on a service person's behalf. Details of the SCC's role and responsibilities can be found in JSP 831, Chapter 7.

## **SUITABILITY OF RESOLUTION PROCESSES**

2.7. Even if the Complainant wishes to attempt informal resolution, their CO/Senior LM, if aware of the alleged bullying/harassment, may decide that such an attempt would be inappropriate and may encourage the Complainant to invoke the formal procedure. For example, there is little to be gained from initiating informal resolution if either party is unlikely to respond positively to it. The CO/Senior LM may initiate formal action if they become aware of allegations which they consider to be sufficiently serious or are aware of a Respondent's track record of negative behaviours that, when taken together, suggest that formal procedures would be more appropriate

2.8. The decision whether to follow the formal or informal procedure may also depend on:

- a. the seriousness, nature and extent of the allegation(s);

- b. what effect the incident(s) had on the Complainant, including whether they or the Respondent(s) are on long-term sickness absence as a result;
- c. the Complainant believes that informal resolution is inappropriate, e.g. if the allegation arose after a previous incident involving the same Respondent(s);
- d. whether the Respondent is in a position of superior responsibility;
- e. it is impossible to find common ground between the parties;
- f. one, or both, parties withdraw their co-operation; or,
- g. the complaint involves many other parties and/or is very complex.

2.9. The CO/Senior LM should seek legal or expert advice if they are unsure about the suitability of either the informal or formal resolution processes.

2.10. A series of flowcharts, illustrating the various stages in the informal and formal procedures, is at Annex I.

## **INFORMAL RESOLUTION**

### **INTRODUCTION**

3.1. This Chapter gives guidance to Complainants, Respondents and COs/LMs/AOs on the informal process for resolving bullying and harassment allegations.

3.2. In general, where an allegation of bullying and harassment has been made, the Complainant and Respondent(s) should make every effort to try and resolve the allegation informally. However, every allegation of bullying and harassment is serious and will be treated as such. In many cases, a Complainant simply wants the behaviour in question to stop and for its effect on them to be acknowledged. Quite often, the Respondent(s) will not have realised the adverse effect of their behaviour and will be willing to change. In such cases, the aim should be to take action promptly at the lowest appropriate level in order to achieve a mutually acceptable solution. This in turn should enable operational efficiency and/or a harmonious working environment (or accommodation area) to be restored as quickly as possible.

3.3. Making an attempt at informal resolution does not mean that the Complainant cannot make a formal complaint during the attempt, or if the attempt fails.

### **INFORMAL RESOLUTION**

3.4. The informal route involves the Complainant explaining clearly to the Respondent(s) that their behaviour was unwanted and unacceptable, and what the Complainant wants them to do about it (e.g. to acknowledge its impact on the Complainant, to agree not to do it again and to apologise). Action can include:

a. **Speaking to the Respondent directly.** The Complainant should remain calm, be civil, briefly describe what the Respondent(s) said, or did, which caused offence, listen carefully to any response and avoid getting involved in arguments. It may be helpful for the Complainant to explain their concerns to the Respondent(s) and then for the parties to agree to discuss the matter after a period of reflection.

b. **Writing to the Respondent.** The Complainant may choose to write to the Respondent about their behaviour. This would also establish an audit trail, particularly if sent as an e-mail attachment. A suggested letter format is at Annex G.

c. **Using the Command/Line Management Chain.** The Complainant may ask someone in the Command/Line Management chain to speak to the Respondent(s) about their behaviour. This does not necessarily mean that



more senior Commanders/LMs are made aware of the allegations, merely that appropriate Command/Line Management action – at the lowest appropriate level – may be taken as soon as possible to curtail the behaviour.

d. **Using an MOD Colleague or TU Official.** The Complainant may speak to the Respondent(s) in the presence of a MOD colleague or TU Official, or ask them to speak to the Respondent(s) on their behalf. In either case, the Respondent(s) may also have their own MOD colleague or TU Official present. However, all parties must understand that they cannot pass on responsibility for resolving the matter to their respective MOD colleagues or TU Officials.

e. **Using Mediation.** If all parties agree, they may try to resolve any dispute between them through the assistance of trained mediators. Guidance on the use of mediation is at Annex H.

## **OUTCOME OF INFORMAL RESOLUTION**

3.5. **Monitoring.** The outcome of Informal resolution may be an agreement or reconciliation between the parties. However, where Commanders/LMs are aware of Informal resolution having been achieved, the relationship between the parties should be monitored for at least 3 months to ensure that the agreed outcome is respected and that there is no repetition of the behaviour in question.

3.6. **Administrative and Disciplinary/Misconduct Action.** Administrative or disciplinary/misconduct action, as appropriate, may be taken against a Respondent regardless of the outcome of Informal resolution. Alternatively, it may be appropriate for Commanders/LMs to remind a Respondent of MOD policy, to require them to attend refresher E&D training and/or to inform them that they may face administrative or disciplinary/misconduct action if the behaviour in question is repeated.

3.7. **Record Keeping.** Record keeping requirements for incidents/complaints involving Service and civilian personnel are set out in Chapter 8.

## **CESSATION OF INFORMAL RESOLUTION**

3.8. At any stage before, or during an attempt at Informal resolution, the Complainant retains the right to make a formal complaint, at which point the Informal process is terminated.

## **MAKING A FORMAL COMPLAINT**

### **INTRODUCTION**

4.1. A formal complaint of bullying/harassment may be submitted at any time although an attempt at Informal resolution should, whenever possible and appropriate, be made in the first instance.

4.2. Formal complaints must normally be submitted within 3 months of the incident complained about, or, if the complaint is about a series or pattern of incidents, the latest incident. In this latter case, the entire series or pattern of incidents will be considered.<sup>13</sup>

4.3. If it is just and equitable to do so, a formal complaint may be considered even if it is outside the 3-month time limit. Out-of-time formal complaints will be considered on a case-by-case basis and the advice of the EDA should be sought in the first instance – though it may be prudent to seek advice from higher authority/ legal services<sup>14</sup>. The Complainant will be expected to say why the complaint could not reasonably have been submitted in time. There are a range of factors that might, for example, have delayed the making of the complaint; the Complainant may have been hospitalised or deployed on operations and therefore unable to access the people, information or IT necessary to make the complaint.

### **MAKING A FORMAL COMPLAINT**

4.4. Before submitting a formal complaint, a Service Complainant is strongly advised to consult their EDA at the earliest possible opportunity. As well as providing general advice on complaints procedures the EDA<sup>15</sup>, can help in identifying an AO. A civilian complainant should contact the DBS Civilian HR for advice and to ensure that the formal complaint is recorded.

4.5. A formal complaint must be submitted in writing (it may be type-written, but must be signed by the Complainant). Although a complaint may initially be submitted in any written format, the Complainant will be expected to complete and submit a complaint form (see Annex F).

4.6. A formal complaint must be submitted to the DO. For Service personnel this is usually the Complainant's CO. For civilian personnel this is usually the Complainant's Senior LM. Generally, complaints should be considered by a DO of minimum Band C1 level for civilian personnel and at least 2 pay grades/ranks

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<sup>13</sup> Further details on time limits for Service Personnel can be found at Paragraph 5.17.

<sup>14</sup> For civilians advice should be sought from DBS.

<sup>15</sup> For civilians DBS can provide assistance in identifying an AO.

above the Respondent. If the CO/Senior LM is the Respondent, then the formal complaint should not be submitted to them and the EDA should seek advice from higher authority<sup>16</sup>.

4.7. Joint complaints by 2 or more Complainants are not permitted. Each Complainant must submit an individual formal complaint.

4.8. In drafting the formal complaint, the Complainant should:

- a. ensure that there is sufficient detail, including dates or approximate dates, to allow separate incidents and/or Respondents (if more than one is involved), and any witnesses, to be clearly identified;
- b. if applicable, attach documentary evidence of any attempts at informal resolution, e.g. a photocopy of a page from a personal diary where events have been recorded, or copies of any letters/e-mails to the Respondent(s);
- c. be aware that, as part of the process of investigating the formal complaint, a copy of it will be disclosed to the Respondent(s);
- d. understand that there are limits to what remedy or redress can be granted. A Respondent cannot be ordered to apologise<sup>17</sup>, although they may be invited to do so. Similarly, any expectation of some form of public apology is unrealistic;
- e. put their name to the complaint and sign it. Anonymous complaints will not be considered because they are unfair to the Respondent. They could be used by someone bearing a grudge. Also the alleged Respondent(s) has a right to know who has made a complaint against them. See also para 4.11

4.9. A template for a formal complaint of harassment is at Annex F.

## **REASSURANCE TO A COMPLAINANT**

4.10. Complainants who are reluctant to make a formal complaint because of the stress or anxiety this may entail should be advised to seek welfare/pastoral support and/or medical help.

4.11. Complainants should not feel discouraged from making a formal complaint for fear of negative consequences and should be reassured that they will be protected against victimisation.

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<sup>16</sup> For civilians advice should be sought from DBS.

<sup>17</sup> But if a Respondent is invited to apologise to the Complainant and refuses to do so, this may be taken into account when deciding what kind of subsequent administrative or disciplinary action might be taken against them.

## **ASSISTING OFFICERS (AOs)**

4.12. **Appointment.** The DO is responsible, with the EDA's assistance, for ensuring that AOs are available where required. AOs may be assigned (in the case of Service personnel) or invited (in the case of civilian personnel) to provide help and support to Complainants and Respondent(s) if a formal complaint is likely to be, or has been, made<sup>18</sup>. If appropriate (see 4.14/4.15), they could be a MOD colleague or TU official who has already been providing moral support. They should not be connected with the complaint in any way and there must be no possibility of them being called as a witness. Further information about the role and responsibilities of AOs is at Annex E. AOs should be granted reasonable time away from their primary duties to carry out their responsibilities.

4.13. In order to preserve their impartiality, the unit EDA, Padre/Chaplain, OCF, CCM, or DBS Civilian HR Employee Wellbeing Adviser must never act as an AO.

4.14. **Service AOs.** AOs may be assigned from within, or outside, the Complainant's/Respondent's unit. They should be at least the same rank as the Complainant/Respondent, and be of at least Sergeant or equivalent rank. Medical Officers and Service Lawyers are not permitted to act as AOs when they are in Medical/Legal Officer roles on the unit.

4.15. **Civilian AOs.** Civilian AOs must be either:

- a. an MOD Service person or another civilian who works for the MOD;
- b. a Trade Union official; or,
- c. staff association or professional representative (not in a legal capacity).

4.16. A civilian Complainant has a statutory right to be accompanied by their AO at any meeting to discuss the complaint which they are invited or required to attend. A civilian Respondent has a statutory right to be accompanied by their AO at any meeting that could result in some misconduct action being taken against them. A civilian invited by a Complainant or Respondent to be their AO is free to decline or to cease acting as their AO at any time. In such circumstances the Complainant or Respondent may nominate a replacement.

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<sup>18</sup> In most circumstances it will be prudent to appoint an AO much earlier in the process than after the submission of a formal complaint e.g. if the EDA considers that an attempt at Informal resolution would benefit from an AO's involvement, or if the EDA believes that a Complainant needs an AO's help to make a Formal Complaint. EDAs should not take on the role of AO themselves as their role is to provide impartial guidance.

## **ACTIONS FOR THE DECIDING OFFICER (DO) IN THE EVENT OF A FORMAL COMPLAINT**

### **INTRODUCTION**

5.1. This Chapter describes the DO's responsibilities on receipt of a formal complaint. Further guidance is set out in Chapters 6 (Investigating a formal complaint), 7 (The outcome of a Formal Investigation) and 8 (Recording Complaints). Further information for DOs on timelines for complaint handling are contained in JSP 831, ch 3.

### **ACKNOWLEDGING THE COMPLAINT**

5.2. SCC-Referred Complaints (For more information on the SCC process see JSP831 Chapter 7). If an allegation from a member of the public or a Service person is referred to the CofC by the SCC within statutory functions, the DO or other officer subsequently receiving the allegation from the SCC must:

- a. Inform the Service person alleged to have been wronged that the allegation has been referred.
- b. Ensure that the Service person alleged to have been wronged is aware of the procedures for making a Service complaint, the time limits that apply and the types of complaint that are excluded.
- c. Make the Service person alleged to have been wronged aware that, should they make a Service complaint and it is considered by a Service Complaint Panel (SCP), an independent person may sit on the panel in certain circumstances.
- d. Check whether the Service person wishes to make a Service complaint.
- e. If the Service person decides to make a Service complaint, deal with the complaint as instructed in the remainder of this Chapter, including para 5.3.
- f. Within 10 working days of receipt, inform the SCC (through the single-Service Secretariats) that they have completed the appropriate actions at sub paragraphs a to e above, and provide the SCC with the JPA reference number and confirmation that the complainant has been offered/appointed an Assisting Officer. In addition, the CO/DO must also inform the SCC within the same 10 working days of:
  - a. a decision by the complainant to withdraw the complaint (including their reasons for doing so);

- b. a decision by the DO that the complaint is well founded;
- c. a decision by the DO to refer the complaint;
- d. of any action in relation to redress.

This notification will be made through the appropriate single Service Secretariat. The notification should make reference to the name, rank/rate, number and unit of the complainant and to any previous correspondence on the matter.

**5.3. Non SCC-Referred Formal Complaints & Complaints From Civilian Personnel.** Within 24 hours of receiving a formal complaint, wherever reasonably practicable, the DO must acknowledge the complaint in writing and invite the Complainant to attend a meeting to discuss it as soon as possible. If written acknowledgement of the complaint is not possible or the DO is unavailable, then a suitable nominee should at least make telephone contact to reassure the Complainant. The purpose of the meeting is to understand fully the basis of the complaint; it does not form part of any subsequent formal bullying/harassment complaint investigation (see Chapter 6). The DO is also seeking to ascertain if there is any indication of criminal conduct by anyone involved. The DO should also try and confirm if any attempts have been made at informal resolution and ensure that the nature of the complaint is applicable to JSP 763 procedures, or alternatively, if the complaint would be more appropriately dealt with under JSP 831 procedures.

## **MEETING THE COMPLAINANT**

5.4. Complainants must take all reasonable steps to attend the meeting, at which they are entitled to be accompanied by an AO.

5.5. At the meeting, the DO should concentrate on resolving any ambiguities or uncertainties, and ask for clarification of details of the allegation(s) or incident(s), in order that the Respondent(s) may be fully apprised of the allegations that have been made against them. The DO should also ensure that the Complainant is content with the sources of support and guidance available to them, that civilian Complainants have lodged the complaint with the DBS Civilian HR and that any welfare/pastoral needs which they may have are being catered for. For the purposes of audit, a written record of the meeting should be held. The DO should not delegate the conduct of the meeting to anyone else, except to a recognised and fully empowered deputy during a period of absence, unless not delegating the meeting would cause undue delay.

## **MEETING THE RESPONDENT(S)**

5.6. The DO must fully inform the Respondent(s) in writing of the allegation(s) made against them (attaching a copy of the formal complaint letter) and invite them to attend a meeting to discuss the matter. A suggested letter template is at Annex J. Where a Respondent is not under the DO's Command/Line Management chain, their CO/Senior LM should be made aware of the formal

complaint and be invited to convene a meeting with the Respondent(s) and report back to the DO.

5.7. The meeting with a Respondent must not take place before the Respondent(s) has/have had a reasonable opportunity to consider their response, if any, to the allegation(s) made against them.

5.8. DOs should also ensure that the Respondent(s) is content with the sources of support and guidance available to them and that any welfare/pastoral needs which they may have are being catered for. This is particularly important when a Respondent is no longer serving in the same unit as the Complainant as lack of communication or feelings of isolation due to perceived lack of support can have a debilitating effect, especially if investigations become protracted.

5.9. The Respondent(s) are entitled to be accompanied by an AO.

### **POSSIBLE CRIMINAL/SERVICE DISCIPLINARY OFFENCES**

5.10. Following the meetings with the Complainant and Respondent(s), the DO must first consider whether a criminal or Service disciplinary offence may have been committed and, therefore, whether it is necessary to refer the matter immediately to the MOD Police (MDP) or Service Police (or inform the Respondent's CO/Senior LM that this is considered necessary).

5.11. If **at any stage** in the complaints process it appears that the alleged bullying and/or harassment might constitute a criminal or Service disciplinary offence the DO should immediately refer the complaint to the MDP or Service Police<sup>19</sup> (or inform the Respondent's CO/Senior LM that this is considered necessary) in accordance with the relevant procedures. If in any doubt whatsoever, the DO should always seek advice from higher authority.

### **ACTING ON AN ADMISSION**

5.12. Where a Respondent admits to behaviour that amounts to bullying or harassment but does not constitute a criminal or Service disciplinary offence, the DO (or the Respondent's CofC/Senior LM if not the DO) may proceed to take appropriate administrative or disciplinary/misconduct action against the Respondent, following relevant Service or civilian procedures as appropriate [insert link to civilian misconduct policy]. The Complainant should be informed promptly of the nature of any such action<sup>20</sup> and when it was implemented. The Complainant must undertake in writing to keep the information confidential<sup>21</sup>.

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<sup>19</sup> A Service Police investigation usually only needs to be instigated if the DO considers that the Respondent may have committed an offence under one of the Service Discipline Acts and the DO's decision is likely to result in disciplinary action.

<sup>20</sup> For civilians, this would be whether minor or major disciplinary action was taken; but to protect the Department's duty of confidence to the respondent you should not specify the actual penalty awarded.

<sup>21</sup> To ensure compliance with the Data Protection Act 1998 (Schedule 1); Article 8 ECHR and the Human Rights Act 1998.

## **ACTING ON A DENIAL**

5.13. Where a Respondent denies bullying/harassment, or disputes all or some of the allegations made against them, and the complaint does not warrant referral to the MDP or Service Police, the DO should immediately initiate an investigation of the formal complaint (see Chapter 6).

## **INFORMING THE PARTIES**

5.14. Whatever action the DO decides to take, the DO must inform the Complainant and Respondent(s) of the decision promptly and confirm this in writing. A suggested letter template is at Annex K.

## **SEPARATING THE PARTIES**

5.15. The DO may decide, at any time after receiving the formal complaint, that it is a sensible precaution to separate the Complainant and Respondent(s) pending the outcome of any investigation.<sup>22</sup> Such a decision is a neutral act taken in the interest of all parties and may depend, for example, on: the seriousness of the allegation(s), or incident(s); the risk of the alleged bullying or harassment being repeated; the risk of interference with, or compromise of, the investigation or witnesses, or of anyone else being victimised (including peers of the complainant). Every effort must be made to ensure that any separation is implemented fairly taking into account individual and environmental circumstances and operational/business considerations. Before taking any such action with regard to civilian employees, the DO should ensure the procedures for suspension from work or restrictions on duties are followed and that DBS Civilian HR are notified with a HR Consultant being appointed. Service DOs should always consult with the single Service Secretariat before taking such action and legal advice should be obtained.

## **ROLE AND RESPONSIBILITIES**

5.16. Guidance for the DOs is at Annex L.

## **OTHER TIMELINES**

5.17. The timeline for resolution of Service complaints is 24 calendar weeks. It will not be paused or include periods of discounted time such as for periods of disclosure or for absence of individuals who are party to a complaint. The timeline starts on the date on which the CO/DO receives the formal complaint in writing (see 4.5) and concludes when one of the following has occurred:

- a. the complainant withdraws their complaint;

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<sup>22</sup> At training establishments, this might include Respondents being temporarily removed from contact with trainees (or other specific groups) who might otherwise be put at risk.



- b. the complainant confirms on receipt of a decision letter at CO or SO level that they do not intend progressing the complaint further;
- c. no correspondence has been received from the complainant after 6 calendar weeks (i.e. equal to 30 working days) have elapsed from having been notified of a decision at the CO or SO levels or 3 months after the date on which the matter complained of occurred, whichever is the later;
- d. the final decision at Defence Council level has been communicated to the complainant.

### **ACTING ON A RETURN OF A CASE FROM MDP OR SERVICE POLICE**

5.18. Where a case is returned by Service Police or MDP for the attention again of the DO administratively, the DO does not have the option of simply doing nothing further. The complaint should be expedited in the normal manner. No presumption should be made about the merits or otherwise of the complaint, simply because the Police have decided not to take criminal/disciplinary action.

## **INVESTIGATING A FORMAL COMPLAINT**

### **INTRODUCTION**

6.1. This Chapter describes the actions to be taken by the DO and HIO (see 6.3) to investigate a formal complaint. Further guidance is set out in Chapters 5 (Actions for the DO in the event of a formal complaint), 7 (The outcome of a formal Investigation) and 8 (Recording Service complaints).

### **COMMISSIONING AN INVESTIGATION**

6.2. Once it is evident that an investigation is required, for example if a respondent denies the allegation(s), the DO must appoint a suitable person or team to conduct an investigation. In the case of civilians or under 18s this **must** be a trained HIO.

6.3. The investigation may be conducted by:

a. A **HIO**<sup>23</sup> must:

(1) be outside the immediate Command/Line Management chain of the Complainant and Respondent(s);

(2) be trained in handling complaints and skilled in interviewing, listening and report writing. They must, therefore, be of at least Warrant Officer or Commissioned rank, or civilian grade C or above, depending on the rank or grade of the Complainant and Respondent(s). Civilian HIOs may investigate military complaints and vice versa (with all parties' agreement). Service HIOs investigating complaints where the complainant and/or respondent(s) is a civilian must be of at least Pay Band C2 equivalent;

(3) have sufficient Service or wider MOD experience, and personal qualities/competences appropriate to the task;

(4) be seen by the Complainant and Respondent(s) as having credibility, integrity and impartiality; and,

(5) have undertaken HIO training and remained within currency guidelines.

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<sup>23</sup> Within the Services, this could be a designated unit HIO, an HIO from another Unit or an HIO from a pool which may be established by each Service. DBS Civilian HR maintains a list of civilians trained as HIOs who can be approached by them to undertake investigations.

**b. A Service Equal Opportunities Investigation Team (EOIT)<sup>24</sup> for complex cases<sup>25</sup> involving only members of that Service.**

c. Other available personnel of appropriate rank and experience in unavoidable circumstances<sup>26</sup>.

d. A Joint Investigation Team (for cases that cross Service boundaries) should only be used where parties do not agree to having one HIO.

The term HIO, as used in these procedures, is taken to mean any of the above.

6.4. The DO is responsible for commissioning the investigation, formally tasking the HIO, and setting the terms of reference of the investigation and its timescale (taking into account the complexity of the case, the number of allegations or incidents, and the number, location and availability of Respondents and any witnesses)<sup>27</sup>. The HIO should be appointed as soon as possible. The Initial Investigation Report should, as a rule, be disclosed to the Complainant and Respondent(s) for comment within 30 working days of the HIO's appointment.

6.5. DOs must take account of the views of the Complainant and Respondent(s) when appointing an HIO. If one of the parties objects (for whatever reason) to the choice of HIO, the DO must either reconsider and appoint another HIO who is acceptable to all parties or explain in writing why they are unable or unwilling to select another HIO. If the Complainant continues to object to the choice of HIO, the DO must also remind them of their right, if they are dissatisfied with the investigation, to appeal (if they are a civilian) or have the complaint referred to a higher authority (if they are a Service person). Civilian respondents can raise an individual grievance where they are dissatisfied with the manner in which an investigation has been conducted. They cannot however, raise a grievance where they are dissatisfied with the outcome of the investigation. See paragraph 7.14 for further guidance on appealing against a decision. Service respondents who are dissatisfied with the investigation may submit a Service complaint in accordance with JSP 831 Chapter 2.

6.6. Once the HIO has been appointed, the DO should ensure that the investigation of the formal complaint becomes the primary duty of the HIO (operational circumstances permitting).

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<sup>24</sup> Titled 'Service Complaints Investigation Team' in the Army and 'Equality and Diversity Investigation Team' in the Naval Service.

<sup>25</sup> For example, complaints consisting of complex or multiple allegations; complaints against or implicating the Complainant's CO, or complaints involving personnel who are geographically dispersed.

<sup>26</sup> That is, cases where no trained HIO is available and it is impossible (for example, because of the remoteness or inaccessibility of the unit/location) to call on a trained HIO from another Unit or an EOIT.

<sup>27</sup> When the EOIT are tasked by the DO to investigate a complaint, they will follow bespoke Terms of Reference (TsOR) written either by the single Service bullying & harassment complaint management lead in consultation with the DO, or by the DO for that investigation. The EOIT will produce a report for the DO. The DO will be responsible for ensuring JSP 763 procedures are followed as necessary (for example the appointment of AOs and disclosure of the report) but the EOIT, as professional investigators, may work to bespoke TsOR that could differ from JSP 763 where this has been authorised by the Service bullying & harassment complaint management lead in consultation with the DO, or the DO.

6.7. A template for a letter of appointment of an HIO is at Annex M.

## **CONDUCTING THE INVESTIGATION**

6.8. The responsibilities of, and guidance for, an HIO are at Annex N.

6.9. Key elements of the investigation are that:

a. The investigation will be conducted initially on the basis of the written formal complaint, any accompanying written evidence and any written or recorded response from the Respondent(s) to the allegation(s) made against them.

b. The Complainant will be interviewed first to explore the written complaint in detail. Thereafter, the Respondent(s) and any witnesses whom they or the Complainant have named will be interviewed. Bearing in mind the need to progress the investigation expeditiously, the HIO may exercise discretion when deciding on the order of the interviews. The HIO may re-interview anyone if, for example, they need to clarify or check confusing or conflicting accounts.

c. All those involved in the complaint will be interviewed separately and discreetly. The Complainant and Respondent(s) have the right to have an AO present. Witnesses may be accompanied by a MOD friend or colleague, but not by another witness involved in the investigation.

d. Following each interview, the HIO will make a written record and invite the interviewee to check and sign it as an accurate record of the interview. Where the interviewee insists on changes to the record which are not acceptable to the HIO, both the unsigned original and the unaccepted changed version will be included in the Final Investigation Report.

e. Witnesses will not be compelled to give evidence and will be clearly told that their evidence will be disclosed to both the Complainant and the Respondent(s). Any apparent reluctance by witnesses to reveal information, which would indicate either that they were not being frank or that they felt under pressure to remain silent, will be recorded and they will be told that inferences may be drawn from this by the DO. In exceptional circumstances, where a witness is unwilling to have their identity disclosed because they are genuinely in fear of reprisal (or of their personal circumstances being compromised) and their evidence is considered vital to the investigation, an anonymous and suitably redacted interview record will be made.

f. Any counter-allegations made against the Complainant by the Respondent(s) before or during the investigation will not be investigated as a separate complaint unless the Respondent submits a formal complaint; but will be considered by the HIO as part of the case relating to the Respondent(s).

g. If evidence comes to light that a criminal or Service disciplinary offence may have been committed, the HIO will inform the DO immediately and suspend the investigation pending further direction from the DO. The Complainant's CO/Senior LM (if they are not the DO) will decide whether to refer the complaint to the MDP or Service Police, in accordance with the relevant procedures.

h. If the Complainant withdraws the formal complaint, the HIO will immediately inform the DO and suspend the investigation. The DO will speak to the Complainant, with an AO present, and may nevertheless direct that the HIO sees the investigation through to its conclusion, whether or not the Complainant agrees to this.

i. The investigation will be carried out without undue delay and the HIO will keep the Complainant, Respondent(s) and DO regularly informed of its progress.

j. The investigation is one of evidence gathering and is to be conducted impartially and thoroughly. However, delays to the conduct of an investigation must be justified by HIO and/or DO as appropriate.

k. The investigation will also be conducted sensitively and confidentially and in line with the Data Protection Act 1998. All interviewees and AOs will be directed by the HIO not to discuss their evidence or involvement, or any other aspect of the investigation with anyone else. The Initial Investigation Report and all relevant evidence obtained during the investigation will be disclosed, in accordance with the Data Protection Act 1998, to the Complainant and Respondent(s) for comment, before the Final Investigation Report is submitted to the DO.

l. The Final Investigation Report will include the original formal complaint, signed and unsigned interview records, the Complainant's and Respondent(s)'s comments on the Initial Report and all other material evidence, including written justification by the DO for any variations in the investigation's terms of reference or timescales. Both parties will be provided a copy of the Final Investigation Report.

m. The report will not reach any conclusions or make recommendations. However, the HIO will highlight any discrepancies or inconsistencies in the evidence and indicate that which corroborates or contradicts what is alleged by the Complainant or Respondent(s) to have occurred.

n. After considering the Final Investigation Report, the DO will decide within the level of his ability to deal with the case appropriately, what action is appropriate. They will not normally re-interview the Complainant or Respondent(s) before reaching their decision. If the DO feels he is not of sufficient a level to deal appropriately, he will refer the matter up to a higher authority (Service complaints only).

## **THE OUTCOME OF A FORMAL INVESTIGATION**

### **INTRODUCTION**

7.1. This Chapter describes the action to be taken following the conclusion of a formal complaint investigation. Further guidance is set out in Chapters 5 (Actions for the DO in the event of a formal complaint), 6 (Investigating a formal complaint) and 8 (Recording Service complaints).

### **REACHING A DECISION**

7.2. The DO must decide, on the basis of careful consideration of the evidence provided in the Final Investigation Report, whether all or some of the incidents complained about are more likely to have occurred than not and, therefore, whether the formal complaint is upheld in full or in part. Specifically, the DO must decide on the balance of probabilities whether there is sufficient, insufficient or no evidence to substantiate the allegations made and whether these amount to bullying and/or harassment.

7.3. If there is insufficient or no evidence to substantiate the complaint as a whole, the DO could decide that it was unfounded and possibly vexatious or malicious. See para 1.15.

7.4. Where the DO considers that the formal complaint has not been properly investigated, they may reserve their decision pending further investigation by the same or another HIO. In that event, the DO must inform the Complainant and Respondent(s) about the delay. The DO should also record their concerns and actions for audit purposes.

7.5. The DO must evaluate the evidence and draw conclusions from it. Guidance for DOs when considering the Final Investigation Report is at Annex O.

### **CONTENT OF THE DECIDING OFFICER'S DECISION**

7.6. The DO must inform the Complainant and Respondent(s) of their decision in writing<sup>28</sup> as soon as possible. The letters must be issued concurrently. Where a Respondent is outside the DO's Command/Line Management chain the DO must also notify the Respondent's CO/Senior LM of their decision with a recommended course of action. This does not limit the CO/Senior LM from awarding action as they see fit. For complaints referred by the SCC the CO must inform the SCC within 10 working days of a decision (see 5.2 for more details on SCC referrals).

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<sup>28</sup> Additionally, the DO may also choose to notify the decision at interview.

7.7. The tone and content of the written decision must take full account of the mental/emotional state, health etc. of both parties.

7.8. The written decision should be sufficiently detailed to reassure the parties that the formal complaint has been investigated thoroughly, and to tell them why and to what extent it has been upheld or rejected. The decision must contain:

- a. a summary of the elements of the complaint;
- b. an explanation of the investigation undertaken (including how it was conducted and by whom);
- c. full information about which aspects of the formal complaint have been upheld or rejected (and those that could not be determined), with reasons, stating clearly if harassment is judged to have occurred in each case and why;
- d. if the formal complaint is totally or partially upheld, a clear indication of the DO's intention with regard to taking administrative or disciplinary/misconduct action against the Respondent(s);
- e. a clear indication of the avenues of appeal or redress open to the parties if they are dissatisfied with the outcome;
- f. a review of any redress sought by the Complainant and the extent to which this can be granted (it may not be within the DO's authority to give). Where an aspect of redress is not considered to be appropriate, an explanation should be given;
- g. no irrelevant or inappropriate views concerning the parties or the formal complaint;
- h. no irrelevant or unnecessary information concerning the circumstances of any party or witness that may compromise them<sup>29</sup>;
- i. reassurance that the situation will continue to be monitored for at least 3 months; and,
- j. mention any career monitoring issues that may be pertinent<sup>30</sup>.

**7.9. Unproven Complaints.** If there is insufficient or no evidence to uphold the formal complaint which is nonetheless deemed to have been made in good faith, the DO should:

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<sup>29</sup> e.g. someone might disclose information to the HIO about their sexual orientation that they do not want to be common knowledge.

<sup>30</sup> The DIN on Career Monitoring (2008DIN01-026) can be found at:  
[http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/09/1043\\_01026DINs.pdf](http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/09/1043_01026DINs.pdf)

- a. separately explain the outcome to each party, give them appropriate counselling, and may suggest mediation or refresher training as a step towards reconciliation;
- b. reiterate that bullying/harassment will not be tolerated, and that action will be taken where it can be proved;
- c. assure the Respondent(s) that there is no stain on their character;
- d. assure the Complainant that there is no stain on their character; that any subsequent complaints made by them (against any Respondent(s)) will be treated just as seriously; and that no entry will be made on their personal record.
- e. remind the parties that the situation will be monitored for at least 3 months; and,
- f. remind the parties of the avenues of appeal or redress open to them if they are dissatisfied with the outcome.<sup>31</sup>
- g. mention any career monitoring issues that may be pertinent<sup>32</sup>.

**7.10. Proven Complaints.** If part or all of the complaint is upheld, the Respondent is liable to have appropriate administrative or disciplinary/misconduct action taken against them under the applicable Service or civilian procedures. The DO (or, after consultation, the CO/Senior LM of a Respondent not under the DO's Command/Line Management) may proceed to take appropriate administrative or disciplinary/misconduct action against the Respondent(s), following the relevant Service or civilian procedures. The Complainant should be informed promptly about the nature of any such action<sup>33</sup>, and when it was taken, on the clear direction that the information must not be disclosed to anybody else.

**7.11. Malicious or Vexatious Complaints.** Where the DO forms the opinion that the formal complaint is unfounded and was malicious or vexatious, and considers that administrative or disciplinary/misconduct action against the Complainant may be warranted, higher authority/legal advice<sup>34</sup> is to be sought before taking action. If higher authority/ legal advice concurs, the Respondent(s) should be informed promptly about the nature of any such action, and when it was taken, on the clear direction that the information must not be disclosed to anybody else.

## **APPEALING AGAINST THE DECISION**

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<sup>31</sup> Service personnel may take action through Service redress procedures. See JSP 831.

<sup>32</sup> The DIN on Career Monitoring (2008DIN01-026) can be found at: [http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/09/1043\\_01026DINs.pdf](http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/09/1043_01026DINs.pdf)

<sup>33</sup> For civilians, this would be whether minor or major disciplinary action was taken; but to protect the Department's duty of confidence to the respondent you should not specify the actual penalty awarded.

<sup>34</sup> Civilians should seek advice from the DBS.



7.12. When the DO informs the Complainant of their decision, they must also be notified of their right, as:

a. Service personnel - to have the complaint referred to, and considered by, higher authority in accordance with JSP 831 and the Armed Forces Redress of Individual Grievances (Procedures & Time Limits) Regulations 2007.

b. Civilian personnel - to appeal, normally within 10 working days of receiving the decision to the DO's LM.

7.13. The Complainant's disagreement with any sanction awarded against the Respondent(s), or their dissatisfaction that no action has been taken against a Respondent, does not constitute valid grounds for an appeal. However, the Complainant may make a fresh complaint that their original complaint was not taken seriously.

7.14. A Respondent who is dissatisfied with any decision to take disciplinary/misconduct or administrative action against them may, if they are a civilian, appeal against the misconduct decision under civilian misconduct procedures. If they are a Service person, they must make a complaint under Service complaint procedures (JSP831 Chapter 2).

7.15. The complainant and their agents (Assisting Officers etc) are prohibited from approaching SCP members or Service Board members about their complaints outside the Service Complaints process.

7.16. Further guidance on the nature of Defence Council, SCP and single Service Board process is contained in JSP 831, ch 5.

## CHAPTER 8

### **RECORDING COMPLAINTS**

#### **INTRODUCTION**

8.1 This Chapter describes the action to be taken to maintain records of bullying or harassment incidents and complaints. Further guidance is set out in Chapters 5 (Actions for the DO in the event of a formal complaint), 6 (Investigating a formal complaint) and 7 (The outcome of a formal investigation).

8.2 Records of formal complaints must be kept, having due regard for data protection regulations and procedures for recording and retaining personal data. Information is likely to be held on personnel computer systems (e.g. HRMS, JPA, etc) and on the personal files of Respondents (or Complainants where a malicious complaint has been made). Nothing is to be recorded on the Respondent's personal file if the formal complaint is not upheld, or is found to be malicious. Further details on the requirements for recording Service complaints on JPA are contained in JSP831 Chapters 3, 4 and 5 and in the JPA business process guide.

8.3 Sufficient records should be held to allow an audit trail to be followed – e.g. the formal complaint itself and supporting documentation, the Initial and Final Investigation Reports and supporting evidence, the DO's decision and any supporting advice, any disciplinary/misconduct or administrative action taken against the Respondent(s) or, in the case of malicious or vexatious complaints, against the Complainant and the reasons for this (or for taking no such action), whether there was an appeal (Civilian) or reference of the complaint to a higher authority (Service) and, if so, the outcome. The initial parent unit is to record information even if the parties leave that unit before a final decision is made.

#### **ARMED FORCES UNIT EQUALITY AND DIVERSITY LOGS**

8.4 Additional recording action is required for informal and formal bullying and harassment complaints involving Service personnel. Instructions for this are at Annex P. Civilian complaint records will be maintained by the DBS Civilian HR<sup>35</sup>.

#### **RETENTION/DISPOSAL OF RECORDS**

8.5 Records are to be retained within a unit/establishment for a period of 10 years (details of the investigation and outcome are to be kept for 100 years) and disposed of in accordance with JSP 441.

#### **CIVILIAN RECORD KEEPING**

8.6 DBS will maintain records of harassment or bullying complaints raised by civilian personnel. This is, first, to enable them to undertake their role in dealing

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<sup>35</sup> Guidance on this will be provided separately via the 'People Portal' on the Defence Intranet.

with individual complaints. Secondly, this will help the MOD in meeting its monitoring commitments under the MOD's Equality and Diversity Scheme. The Complainant should therefore contact the DBS at the following stages in the complaint process:

- a. before informal resolution is attempted;
- b. before a formal complaint is submitted;
- c. when the complaint process is concluded, either through informal resolution or following a formal Bullying/Harassment complaint.

8.7 The data required on informal complaints will not include personal details about the Respondent. No records of informal complaints made against a Respondent will be held on the Respondent's personal file.

8.8 Records of a formal complaint (e.g. the complaint statement, the Initial and Final Investigation Reports, the DO's decision and all supporting documentation) will be kept on the personal files of the Respondent if the complaint is upheld (or on the Complainant's personal file where the complaint is not upheld or is deemed to have been malicious or vexatious).

8.9 At the conclusion of the complaint process and after any subsequent disciplinary/misconduct action has been taken, the DO must ensure that all records are forwarded to DBS or JPA for inclusion in the appropriate personal file.

## DEFINITIONS OF HARASSMENT AND BULLYING

### LEGAL DEFINITIONS

1. For the purposes of the anti-discrimination legislation (see Annex B) **harassment** is –

- **unwanted conduct**
- on one or more **prohibited grounds** which
- has the **purpose or effect** of
- violating the recipient's **dignity**
- or of creating an intimidating, hostile, degrading, humiliating or offensive **environment** for the recipient.

2. **Sexual harassment** is –

- **unwanted verbal, non-verbal or physical conduct**
- of a **sexual nature** which
- has the **purpose or effect** of
- violating the recipient's **dignity**
- or of creating an intimidating, hostile, degrading, humiliating or offensive **environment** for the recipient.

3. Thus harassment must involve some kind of **conduct**, which may be physical (e.g. an assault), verbal (e.g. name-calling) or non-verbal (e.g. offensive texts, e-mails, graffiti or the display of sexually explicit publications or digital media). There need not be a course of conduct, a one-off incident may be enough if it is sufficiently serious. Nor does the conduct have to be targeted at, or directed to, a particular individual or individuals; it can consist of a general culture or atmosphere which is, for example, hostile to women, or individuals of a particular religion, or minority group.

4. The conduct must be **unwanted** by the recipient. However, this does not mean that a person is always required to make clear that they find certain conduct unacceptable. Some conduct, such as a sexual assault, is sufficiently gross as to be unmistakably unwelcome. Even where the conduct is not so obviously unwelcome (e.g. inappropriate banter), it is not necessary for a person to say anything to indicate their disapproval<sup>36</sup>. Once the person has made it sufficiently clear that the conduct is unwanted, any repetition of or persistence in it will generally constitute harassment or sexual harassment.

5. Harassment must be on one or more **prohibited grounds** – that is, on grounds of race, ethnic or national origins, religion or belief, sexual orientation,

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<sup>36</sup> Simply walking out of a room may be sufficient to demonstrate disapproval.

age, gender re-assignment, on the ground of the recipient's sex or for a reason which relates to the recipient's disability. So, for example, bullying a person because they are black or gay could constitute harassment.

6. Sexual harassment must involve conduct of a **sexual nature**, but it need not be on account of the recipient's gender or take place between members of the opposite sex. Examples of such conduct may include: inappropriate or over-familiar touching (groping, fondling, pinching, patting etc); pestering someone for a date, asking about their sex life or commenting on their anatomy; making suggestive remarks or obscene gestures; leering or wolf-whistling; displaying nude pin-ups; downloading, watching or reading pornographic images, films or magazines in a communal area; and, circulating e-mails, mobile telephone texts or multimedia messages containing 'dirty' jokes or other sexual content or images.

7. To amount to harassment, or sexual harassment, the conduct complained of must have the **purpose or effect** of violating the recipient's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It makes no difference whether the conduct was intended to have either of these effects. The fact that it was intended as a joke, or that no offence was meant, is no excuse. Where the conduct was unintentional, the test is whether in all the circumstances, including in particular the **perception of the Complainant**, the conduct could reasonably be considered as having either of the specified effects.

8. It follows that in most cases conduct violates a person's **dignity** if he or she finds it demeaning. It does not matter that not everyone would feel the same way as long as the conduct is objectively capable of causing offence and the recipient is not being oversensitive (i.e. they do not unreasonably take offence).

9. Similarly, it is for individuals to decide what conduct creates an intimidating, hostile, degrading, humiliating or offensive **environment** for them. Inevitably they will have different perceptions about this, but that does not matter providing the conduct in question is objectively capable of creating that kind of environment.

10. Knowing how and where to draw the line is particularly difficult when the same incident can be viewed in totally different ways by the parties involved. What one person (or even a majority of people) may see as friendly banter (i.e. good-natured teasing or joking) – or even as a compliment – may be unwelcome and demeaning to another colleague. Everyone has their own personal boundaries or limits. The context is important too. For example, certain behaviour may be acceptable outside the workplace or off duty but not in the workplace or on duty; or it may be acceptable from some people (e.g. particular work colleagues or friends) but not others.

11. For the purposes of the Sex Discrimination Act 1975 only, harassment includes treating a person less favourably than others because they rejected, or submitted to, sexual harassment or harassment on the ground of their sex (e.g. a Reporting Officer giving someone a bad report because they have refused to enter into a personal relationship with them).

12. For the purposes of the Protection from Harassment Act 1997 (see Annex B) harassment is-

**conduct** which occurs on **at least two occasions** which is **targeted at the complainant** which is calculated in an **objective sense** to **cause alarm or distress** and which is **objectively judged** to be **oppressive and unreasonable**.

**Intention is irrelevant.** All that is required is that the conduct occurs in circumstances where a reasonable person would realise that harassment would be its effect. In other words an objective test<sup>37</sup> will be applied.

## **VICTIMISATION**

13. For the purposes of the anti-discrimination legislation generally, **victimisation** is less favourable treatment of a person compared to others (who have not done a protected act – see para 13 below) because that person has done, or intends to do, a protected act.

14. Bringing any proceedings under the anti-discrimination legislation is a **protected act**, as is giving evidence or information in connection with such proceedings and alleging conduct which would amount to unlawful discrimination or harassment, unless the allegation was false and not made in good faith.

15. There is no need to show that the alleged victimiser was consciously motivated by the protected act.

16. Neither harassment nor victimisation in their legal senses can be justified.

## **BULLYING**

17. There are many definitions of what constitutes bullying but no legal definition. In general it may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

18. Bullying is not always a case of pulling rank. It can also take place between peers, and occasionally personnel are bullied by those junior to them.

19. Bullying can often be hard to recognise; it is not necessarily conducted face to face and may be insidious (the recent rise in bullying by mobile phone text message is a good example of this). The recipient may think it is normal behaviour for the organisation; they may be anxious that others will consider them weak or disloyal if they do not put up with it; or they may worry that if they report it, they will not be believed and may be victimised.

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<sup>37</sup> i.e. judged by the standards of a reasonable person.

20. Though most people will agree on extreme cases of bullying, behaviour that is considered bullying by one person may be viewed as, for example, 'firm management' or 'robust leadership' by another. Such perceptions should, however, be treated sceptically and strongly discouraged, in case they are being used as a pretext or euphemism for bullying.

21. Initiation ceremonies should also be strongly discouraged. Such activities are now prohibited. Whilst some individuals may still regard such activities as a means of 'bonding' or 'team-building', they invariably include an element of peer-group pressure/coercion to participate to some extent. Disapproval by the majority of any individual(s) who may be uncomfortable with such practices will still have a debilitating effect, can undermine operational efficiency, good order and military discipline and may constitute harassment or bullying.

## HARASSMENT AND THE LAW

1. Harassment and victimisation are against the law, though bullying in itself is not (it can, however, amount to harassment or victimisation). Moreover, the MOD and the Armed Forces (AF) are duty-bound to prevent and deal effectively with harassment and victimisation. Individual harassers or victimisers face, in addition to internal administrative or disciplinary/misconduct action, civil claims or criminal prosecution, or both. The MOD is also liable to be sued and/or censured.

## **ANTI-DISCRIMINATION LEGISLATION**

2. A raft of **anti-discrimination** legislation<sup>38</sup> makes it unlawful for employers or vocational trainers to:

a. subject to **harassment**, including **sexual harassment**, people whom they employ or to whom they provide vocational training; or

b. discriminate against them (including by way of **victimisation**) on specified grounds.<sup>39</sup>

3. Some anti-discrimination legislation also imposes a **positive duty** on listed public authorities, including the MOD and the AF, to eliminate harassment and promote equality of opportunity.<sup>40</sup> Meeting this duty could include introducing policies and procedures which prevent and deal effectively with harassment.

4. Neither the employment provisions of the Disability Discrimination Act 1995 nor the Employment Equality (Age) Regulations 2006 apply to service in the AF. However, there is no general exemption for the AF from the remainder of the anti-discrimination legislation, which applies to MOD Service and civilian

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38 The Sex Discrimination Act 1975 (and the Sex Discrimination (Northern Ireland) Order 1976), the Race Relations Act 1976 (and the Race Relations (Northern Ireland) Order 1997), the Disability Discrimination Act 1995, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 (and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003), The Gender Recognition Act 2004. and the Employment Equality (Age) Regulations 2006 (and the Employment Equality (Age) Regulations (Northern Ireland) 2006).

39 Discrimination in employment or vocational training against women or men, married people, civil partners or disabled people on the grounds of their sex, marital status, civil partnership or disability, respectively, is unlawful. The anti-discrimination legislation also outlaws discrimination in employment or vocational training on racial grounds (i.e. colour, race, nationality/citizenship, or ethnic or national origins) or on the grounds of gender reassignment, religion or belief, sexual orientation or age.

40 For example, Ministers (including the Defence Council) or government departments (including MoD) and the AF must, in carrying out their functions, have due regard to the need to eliminate unlawful racial discrimination and harassment, and to promote equality of opportunity and good relations between people from different racial groups. In addition, from April 2007 the MoD and the AF will have to comply with the 'Gender Equality Duty'.



personnel alike. Furthermore the exemption for AF personnel does not apply if the complainant is not a member of the AF.

5. There are **definitions** of harassment, including sexual harassment, and victimisation for the purposes of the anti-discrimination legislation (see Annex A), but there is no definition of bullying for these purposes.

## EMPLOYMENT TRIBUNALS

6. A complaint under the anti-discrimination legislation may be presented to an Employment Tribunal, but not before the Complainant has:

a. [if they are a member of the AF] made (and not withdrawn) a Service Complaint in respect of the act complained of under the applicable Service complaint procedures. A Service person must normally complain to an employment tribunal within 6 months of the act complained of.

b. [if the Complainant is an MOD civilian] submitted the complaint within 3 months of that act.<sup>41</sup>

7. The tribunal could hold the MOD responsible for unlawful harassment (other than a criminal offence) done by a Service person or MOD civilian employee “in the course of their employment”<sup>42</sup>, as well as holding the harasser individually responsible for their own actions, whether or not the harassment occurred with the knowledge or approval of their chain of command or line management.<sup>43</sup> However, the MOD would have a defence to such vicarious liability if it could prove that all reasonably practicable steps to prevent the harassment occurring had already been taken. At the tribunal the harasser may be responsible for personal legal costs, especially if the MOD successfully proves that it has no vicarious liability.

8. The tribunal could order the MOD (if it were found vicariously liable) and/or the harasser to pay the Complainant **compensation** (with interest) for injury to feelings<sup>44</sup> and any psychiatric and/or physical injury or financial loss suffered by the Complainant as a result of the unlawful harassment. There is no upper limit

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41 Harassment involving a course of conduct may be a continuing act (i.e. time will start to run when it is complete) and an employment tribunal may nevertheless hear a complaint which is out of time if they consider it is just and equitable to do so.

42 It would be a question of fact for the tribunal to resolve whether in the particular circumstances – in or outside the workplace, on or off duty, in or out of uniform – the harassment was “in the course of their employment”, giving these words their natural everyday meaning.

43 In a discrimination claim, a tribunal will normally go through two stages. First, to ensure that the claimant has established facts from which, in the absence of an adequate explanation, it can be concluded that unlawful discrimination for which the Respondent is responsible has taken place. If the claimant achieves that, in the second stage, the burden of proof then shifts to the employer to demonstrate, if they can, on the balance of probabilities, that there was an adequate non-discrimination explanation for what occurred. If they fail to do this, the tribunal is required to assume that unlawful discrimination has taken place.

44 An award for hurt feelings could include aggravated damages where, for example, the complaint had not been investigated properly or the harasser had been promoted.

on the amount of compensation that could be awarded.<sup>45</sup> The tribunal could also make a **recommendation** that the MOD or the harasser obviate or reduce the adverse effect of the harassment on the Complainant. Examples include that the harasser should be posted away from the Complainant, receive appropriate training or apologise to the Complainant. Failure to comply with such a recommendation without reasonable justification could lead to an increase in any compensation already awarded.

## OTHER LEGISLATION

9. The **Protection from Harassment Act 1997** makes harassment in breach of the Act's provisions a **criminal offence** and provides a civil remedy for actual or threatened breaches. The offence or **separate tort**<sup>46</sup> is committed by a person whose speech or other conduct on at least 2 occasions (or on one occasion to each of 2 or more people) amounts to harassment of another, where that person knows it amounts to such or where a reasonable person with the same information would think so. Harassment is not defined for these purposes, save that harassing a person includes alarming the person or causing them distress. Conduct might be harassment even if no alarm or distress were in fact caused, or actually foreseeable, although in most cases it would be. Further, to amount to harassment for these purposes, conduct must be of an order to sustain criminal liability. In other words, it must be oppressive and unacceptable as opposed to unattractive, even unreasonable, or regrettable.

10. A person who is convicted of the offence may be sentenced to a term of **imprisonment** or a substantial **fine**, or both. A civil court may award a victim of the tort **damages** for (among other things) any anxiety caused by the harassment and any financial loss resulting from it, and the MOD could be held vicariously liable for harassment committed by Service or civilian personnel in the course of their employment.<sup>47</sup> A victim may bring a claim under the Act up to 6 years after the harassment rather than within the time limits which apply under anti discrimination legislation. The court may also grant an **injunction** (backed up by a power of arrest) restraining the harasser from pursuing any conduct which amounts to harassment. A breach of such an injunction without reasonable excuse is a criminal offence in its own right.

11. The Crime and Disorder Act 1998 contains criminal offences of racially or religiously **aggravated harassment** in terms of the 1997 Act. Separate offences of (intentional and unintentional) **harassment, alarm or distress**<sup>48</sup> are to be found in the Public Order Act 1986 as amended.

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<sup>45</sup> However, only in the most exceptional case should an award for hurt feelings exceed £30,000.

<sup>46</sup> A tort is a civil (actionable) wrong

<sup>47</sup> Harassment is committed in the course of a person's employment where the conduct in question is so closely connected with acts which that person is authorised to do that it may fairly and properly be regarded as being within the scope of their employment.

<sup>48</sup> A common element of these offences is using threatening, abusive or insulting words or behaviour.

12. The **Human Rights Act 1998**<sup>49</sup> makes it unlawful for a public authority (such as the MOD or the AF) to act in a way which is incompatible with rights set out in the European Convention on Human Rights. So far as it is possible to do so, the anti-discrimination and other legislation must be read and given effect in a way which is compatible with such rights. Article 3 of the Convention provides that no one shall be subjected to (among other things) **degrading treatment** (e.g. treatment of an individual which grossly humiliates them in front of others), and harassment may in exceptional circumstances be considered such treatment.

13. Bullying and Harassment may also constitute criminal offences of (common, aggravated, sexual or indecent) **assault**, or the torts of assault or battery, for which individual harassers could be prosecuted or sued respectively.

14. The MOD could face censure for failing to comply with the duty imposed by the Health and Safety at Work Act 1974 on every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.<sup>50</sup> The matters to which that duty extends include the provision and maintenance of a **working environment** for employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

## **COMMON LAW**

15. Employers are also under a common law **duty of care** in relation to their employees<sup>51</sup>, which includes providing them with a safe place of work and not exposing employees to unnecessary risks. If the MOD were negligent it could be held responsible for any reasonably foreseeable physical and/or psychiatric injury caused by a harasser acting in the course of their employment.

16. A breach of the common law duty of care is also an actionable **breach of contract**, as the duty is an implied term of every contract of employment.<sup>52</sup> Such a breach would include the employer's failure to investigate the employee's complaint about a risk to their safety.

17. It is also an implied term of every contract of employment that the employer will not, without reasonable and proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of **confidence and trust** between employer and employee. A breach of that term would include a failure by the employer to treat the employee's allegation of harassment seriously, to investigate this properly or to prevent the harassment occurring owing to inadequate levels of supervision.

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49 This Act applies to a member of the AF as it applies to a civilian in MoD employment.

50 For these purposes, "employees" include Service personnel and recruits or trainees.

51 For these purposes also, "employees" include Service personnel and recruits or trainees.

52 There is no contract of employment between a member of the AF and the MoD whereas a MoD civilian employee may sue the Department for breach of contract.

18. A sufficiently serious breach of contract entitles the employee to resign and make a claim for **constructive dismissal**, which may be both wrongful (i.e. in breach of contract) and unfair (in terms of the Employment Rights Act 1996).

## **COMPLAINANTS AND RESPONDENTS – EXPECTATIONS & RESPONSIBILITIES**

### **INTRODUCTION**

1. This Annex describes what Complainants and Respondents may expect from the harassment complaints procedures, and what their responsibilities are.

### **COMPLAINANTS**

2. Complainants may **expect** from the complaint process:

- a. to be protected from victimisation caused by making the complaint;
- b. to have access to advice and support from various sources, including an EDA (Service personnel only) and DBS (civilian personnel only);
- c. to have an AO with them at any stage in the process to provide moral support;
- d. to have an AO to help with procedural matters throughout the process;
- e. if possible and appropriate, to have an opportunity to try to resolve the matter informally in the first instance;
- f. to have the right to make a formal complaint of harassment, normally within 3 months of the incident or of the latest incident complained about;
- g. to have the complaint taken seriously and investigated impartially, thoroughly, sensitively and confidentially by someone who is in no way connected with it;
- h. if unhappy with the DO's choice of HIO, to request an alternative (although reasonable justification must be given for such an objection);
- i. to be kept regularly informed of the progress of the investigation;
- j. to see the Initial Investigation Report, and have the opportunity to comment on it before the final version is submitted to the DO;
- k. to be informed promptly of the action taken by the DO in respect of the complaint; and,

l. if dissatisfied with the outcome, to have the right to appeal against the DO's decision (civilian) or to refer the complaint to higher authority (Service).

3. A Complainant's **responsibilities** are:

- a. where an attempt is made to resolve the matter informally, to do all they can to make the attempt succeed;
- b. to state clearly what remedy or redress they are seeking and to ensure that such redress is reasonable and practicable;
- c. if they decide to make a formal complaint, to document it accurately and in sufficient detail;
- d. to cooperate fully, and in good faith, with any investigation of the complaint;
- e. to help maintain the confidentiality of all aspects of the investigation process and its outcome; and,
- f. not to victimise or retaliate against the Respondent(s) or any witness who may have given evidence in support of the Respondent(s).

## **RESPONDENTS**

4. A Respondent may **expect** from the complaints process:

- a. to be given full details of the alleged harassment and an opportunity to respond to the allegation(s) against them;
- b. if a formal complaint of harassment is made against them, to have this investigated impartially, thoroughly, sensitively and confidentially by someone who is in no way connected with it;
- c. to have access to advice and support from various sources, including an EDA (Service personnel only) and DBS (civilian personnel only);
- d. to have a MOD friend or colleague and/or AO with them at any stage in the process to provide moral support;
- e. to have an AO to help with procedural matters throughout the process;
- f. if unhappy with the DO's choice of HIO, to request an alternative (although reasonable justification must be given for such an objection);
- g. to be regularly kept informed of the progress of the investigation;
- h. to see the Initial Investigation Report, and have the opportunity to comment on it, before the final version is submitted to the DO;

- i. to be informed promptly of any action intended by the DO in respect of the complaint against them; and,
- j. if dissatisfied with any administrative or disciplinary/misconduct action taken against them, to have the right to submit a redress of complaint, or to appeal against the disciplinary/misconduct decision, retrospectively.

5. A Respondent's **responsibilities** are:

- a. where an attempt is made to resolve the matter informally, to do all they can to make the attempt succeed;
- b. to co-operate fully, and in good faith, with any investigation of a Formal complaint against them;
- c. to help maintain the confidentiality of all aspects of the investigation process and its outcome; and,
- d. not to victimise or retaliate against the Complainant or any witness to the alleged harassment.

## ROLES & RESPONSIBILITIES: SERVICE EQUALITY & DIVERSITY ADVISER (EDA) & ASSISTANT EQUALITY & DIVERSITY ADVISER (AEDA)

### INTRODUCTION

1. This Annex sets out the roles and responsibilities of the EDA and the AEDA<sup>53</sup>. The nominated EDAs are the Command/Establishment/Station/Unit focal point for impartial advice and support to all Service personnel on any E&D issue. This includes alleged bullying and harassment and the MOD complaints procedure. They should have completed the 5 day EDA Course at JEDTC and should always be regarded as the primary source of advice and support to all personnel in resolving a complaint. Their role is also to assist the Commanding Officer/Senior LM in implementing MOD E&D policies, initiatives, and training/awareness-raising, ensure policy is being followed and monitor effectiveness. It is preferable to have at least two EDAs in a unit or establishment (appointing one as the Lead EDA) and to create a network of AEDAs at a variety of rank/grade levels. Wherever possible EDAs should ensure that their identity, position and availability is widely publicised within their area of responsibility. JEDTC also provides a 3 day training course for AEDAs which is aimed at JNCO ranks only.

### COMPLAINT HANDLING

2. The CO/Senior LM, retains overall responsibility for complaint handling. The EDA's role is to **advise and support** the Commanding Officer to ensure that:
- a. every effort is made to resolve personal differences as quickly, fairly and amicably as possible;
  - b. impartial advice and support is available to both Complainants and the Respondents, including, where appropriate, the provision of AOs; and,
  - c. a follow-up report is raised 4 weeks after any formal complaint investigation.

### OTHER DUTIES

3. EDAs are also responsible to the CO/Senior LM for:
- a. ensuring that the Unit Equality and Diversity Log (Unit E&D Log) reflects all complaints of bullying or harassment, whether formal or informal. Ideally, records of all informal approaches to the EDA for advice should, where possible, be maintained for audit purposes;

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<sup>53</sup> Civilians should contact DBS for any support or guidance.



- b. raising the monthly Unit E&D Log based executive summary sheets for the CO/Senior LM's inspection;
- c. raising bi-annual E&D reports as required by individual Services;
- d. ensuring that all personnel in the unit are aware that any form of bullying and harassment will not be tolerated and that any allegation of such behaviour will be properly investigated and appropriate action taken against the perpetrator(s);
- e. advising on all aspects of MOD E&D policies and anti-discrimination legislation;
- f. assisting the CofC in developing and maintaining an annual E&D action plan, ensuring that all aspects of MOD and appropriate individual Service E&D policies are included;
- g. ensuring, by means of a comprehensive E&D training and awareness-raising regime, that every individual who exercises authority over subordinates understands their responsibility to:
  - (1) promote an environment in which every individual is treated with dignity and respect;
  - (2) promote an environment conducive to harmonious working relationships, productive team work, and overall operational efficiency;
  - (3) take prompt action to ensure that personal differences are resolved early, fairly and amicably; and,
  - (4) have the moral courage to take firm action against any inappropriate behaviour, including harassment, bullying or unlawful discrimination.
- h. ensuring that all personnel are familiar with basic E&D principles - in particular, what constitutes harassment;
- i. ensuring that E&D briefings form part of all induction programmes;
- j. ensuring that relevant E&D publicity and education material is widely available on unit notice boards etc;
- k. ensuring that all personnel are aware of the existence and contact telephone numbers of the relevant Confidential Support/Helplines;
- l. ensuring that all areas of the workplace and communal recreation/ accommodation areas are free from potentially offensive material;

- m. ensuring that personnel of all faiths are given every reasonable opportunity to observe their religion in the normal and traditional way, subject to operational circumstances;
- n. ensuring that every effort is made within unit/establishment catering facilities to meet the cultural and religious requirements of all personnel; and,
- o. the continuous monitoring of the E&D 'climate' within the unit/establishment to assess the effectiveness of training and information provision, taking remedial action as necessary.

#### **ROLE AND RESPONSIBILITIES OF THE ASSISTANT EQUALITY AND DIVERSITY ADVISER**

- 4. The main role of the AEDA is to act as the point of contact on E&D issues for junior personnel within their area of responsibility, in particular they should:
  - a. ensure that personnel within their area of responsibility are aware that any form of harassment or bullying will not be tolerated and that any allegation of such behaviour will be properly investigated and appropriate action taken against the perpetrator(s);
  - b. be aware of all aspects of MOD E&D policies and the appropriate courses of action;
  - c. assist in promoting an environment in which every individual is treated fairly, with dignity and respect;
  - d. assist in promoting an environment conducive to harmonious working relationships, productive team work, and overall operational effectiveness;
  - e. have the moral courage to take firm action against any inappropriate behaviour, including harassment, bullying or unlawful discrimination; and,
  - f. ensure that personnel within their area of responsibility are aware of the existence and contact telephone numbers of the relevant Confidential Support/Helpline.

**NB: Under no circumstances are AEDAs to be employed or be expected to carry out the duties of the trained EDA.**

## **ROLE AND RESPONSIBILITIES OF THE ASSISTING OFFICER (AO)**

### **INTRODUCTION**

1. In any complaint scenario, it is essential that personnel are available to offer advice and guidance to the Complainant and Respondent(s). AOs are assigned (in the case of Service personnel) or invited (in the case of civilian personnel) to help Complainants or Respondents before, during and after the formal Complaints process. The following criteria apply for AO appointed for Service personnel:

- a. The AO may be an officer<sup>54</sup>, WO, SNCO or civil servant of equivalent grade. For Civilian staff the AO may also be a trade union representative.
  - b. The AO is not to be an officer involved in processing or deciding the complaint.
  - c. In major headquarters or the MOD, the AO is not to be directly in the employment chain of the complainant except in unavoidable and exceptional circumstances.
  - d. The AO is assigned by the CO but every effort is to be made to assign an AO requested by the complainant.
  - e. If the complainant declines the services of an AO the CO is to make a record of that fact.
2. On appointment and at appropriate times during the process the AO should be reminded by the DO of their duties and the obligation to comply with the regulations.
3. An AO should not be assigned or invited if they have had even the slightest involvement in the complaint, have a personal interest in the outcome or if there is any likelihood that they may be involved in any subsequent or related investigation.
4. Ideally, the person chosen as the AO should be well known to the Complainant or Respondent who may indeed ask for a specific person to help them. The AO's role is to provide support during the complaints procedures, not legal or other expertise.
5. All correspondence and discussion between the individual and the AO must be treated as confidential and should not be disclosed to the chain of command,

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<sup>54</sup> In the RN the AO will normally be the Divisional Officer.

unless agreed by the individual being assisted. The exceptions are matters concerning any other offences that come to light or breaches of security. The appointment of an AO does not at any stage prevent the Complainant from seeking legal advice from a civilian solicitor, but in all cases this would be at his/her own expense.

## **ROLE AND RESPONSIBILITIES**

6. The AO should:

- a. be briefed on appointment by a unit EDA (Service cases);
- b. read the MOD bullying and harassment complaints procedures (JSP 763);<sup>55</sup>
- c. be able to give objective advice on the application of those procedures;
- d. deal confidentially and sensitively with those seeking their help, recognising the stress or trauma which they may be experiencing;
- e. advise and assist one party only in a dispute, encouraging them to achieve an early resolution, through Informal means if possible and appropriate, while not making decisions on that party's behalf;
- f. liaise, via the EDA, with the other party's AO wherever practical and desirable to achieve a resolution;
- g. familiarise themselves with JSP 831 Service complaints process, particularly if the complainant request that their complaint be escalated to level 2 or 3;
- h. where Informal resolution is not possible or appropriate:
  - (1) ensure that they understand what the formal complaints process requires of them;
  - (2) when supporting the Complainant, assist them in drafting the formal complaint letter such that it is succinct, accurate, coherent and relevant, and that the redress sought is appropriate;
  - (3) when supporting a Respondent, assist them in making any written response to the complaint so that it is succinct, accurate, coherent and relevant;
  - (4) accompany the Complainant/Respondent, if called for initial interview by the DO, prior to a decision being taken as regards the investigation of the complaint;

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<sup>55</sup> This includes the mediation process at Annex H.

(5) accompany the Complainant/Respondent(s) when interviewed by the HIO as part of a formal investigation;

(6) accompany the Complainant/Respondent(s) if called for interview by the DO after the investigation has been completed.

## **POINTS TO NOTE**

7. AOs should be aware of the sensitivities and emotion involved in bullying and harassment allegations. Complainants may be upset, but may also be reluctant to take action because they are afraid of reprisals or other adverse consequences. Respondent(s) may be shocked at being accused, fearful about the impact of the alleged harassment on their career, angry and emotional. Respondent(s) can often view/portray themselves as the victim.

8. Both parties may experience considerable stress, and AOs should help them view the situation objectively and work actively towards a solution. They should avoid becoming entrenched, resentful and fixated on the problem rather than its resolution.

9. AOs should advise a party to seek welfare or medical help where they think it appropriate, and be alert to a possible rise in their own stress levels.

10. AOs should recognise the need to seek early expert advice where appropriate.

11. Although their role is to provide help and support, AOs must also act with integrity and report anything of a disciplinary/misconduct nature to the CofC/Line Management.

12. Assignment. If the Complainant (in the case of Service Personnel) is assigned to a new unit whilst the complaint procedure is ongoing then the AO should continue to help the Complainant, unless the complainant requests a new AO to be appointed by his new unit or further assistance from the existing AO is impracticable, in which case a new AO should be appointed. This premise applies equally if the AO is re-assigned.

13. In the event that a complaint is submitted by a Service or Civil Service person once they have left the Service (i.e. post Terminal Leave etc.), but the complaint relates to an incident or incidents that occurred during the individual's MOD service and is not out-of-time, then the MOD's duty-of-care obligation to the Complainant (and any Respondent who is also no longer a MOD employee) only extends to advising them of their entitlement to be supported/accompanied by an AO and of the prudence of obtaining one. The MOD is not obliged to appoint an AO arbitrarily although they will do so if requested.

## **FORMAL COMPLAINT FORM TEMPLATE**

1. Service personnel should fill out the form marked “Service personnel only” and Civilian staff should use the form marked “Civilian staff only”.
2. Before submitting a complaint or at the earliest opportunity **Service personnel** should seek the advice of their Assisting Officer (AO) if appropriate. This may be an Officer, Warrant Officer, SNCO or Civil Servant of equivalent grade, the AO will be appointed by the DO but every effort is made to assign an AO requested by the complainant. Further details on the role and responsibilities of the AO can be found in JSP 831, Annex I.
3. Before submitting a complaint or at the earliest opportunity, **Civilian staff** are advised to seek the advice of their Assisting Officer (AO) if appropriate. This may be an Officer, Warrant Officer, SNCO or Civil Servant of equivalent grade.
4. If possible all staff should seek advice from their unit EDA.
5. If the complaint involves a number of similar, related incidents involving the same subject of the complaint, you should submit a single Service Complaint Form. Otherwise, each complaint should be made using a separate form.
6. In setting out how you allege that you have been wronged, provide the facts as clearly as you can. In particular, give as much detail as you can about:
  - a. date(s), time(s) and location(s). If you cannot remember the date(s) of the incident complained of, you should say so;
  - b. the incident itself or, if there was more than one, each of them. If the incident(s) occurred over a period, you should say when the period ended or when the latest incident occurred;
  - c. details of anyone who witnessed the incident(s);
  - d. the effect that the incident(s) had on you; and
  - e. any attempt you have made to resolve the matter.
7. It is important to include details of who you believe is bullying and harassing<sup>56</sup> you, any witnesses to the incidents and what effect this had on you. This can be found in parts 4 of the form.

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<sup>56</sup> Refer to JSP 763 definitions of bullying and harassment.

8. Make clear what redress (outcome) you seek from this complaint. That is, the action you expect the officer dealing with the complaint and/or subject of the complaint to take.

9. Regulation 9 of The Armed Forces (Redress of Individual Grievances) Regulations 2007 refers to allegations as detailed below. If you are a Serviceperson and your complaint falls into one of the categories listed below, please detail at para 4.c of the Form why you think the complaint falls into that category and include details of the conduct.

- a. discrimination<sup>57</sup>;
- b. harassment;
- c. bullying;
- d. dishonest, improper or biased behaviour;
- e. failure of the Ministry of Defence to provide medical, dental or nursing care and that the Ministry of Defence was responsible for providing that care;
- f. negligence in the provision of medical dental or nursing care by MOD healthcare professionals; or
- g. concerns the exercise by a Service policeman of statutory powers as a Service policeman.

See also JSP 831 paragraph 1.18 (h) for complaints about a decision to reject a Service complaint for being out of time.

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<sup>57</sup> 'discrimination' means discrimination or victimisation on the grounds of colour, race, ethnic or national origin, nationality, sex, gender re-assignment, status as a married person or civil partner, religion, belief or sexual orientation, and less favourable treatment of part-time employees. The Armed Forces are exempt from employment discrimination on grounds of age and disability.

**SERVICE COMPLAINTS FORM - SERVICE PERSONNEL ONLY**

To:

Deciding  
Officer (normally the  
CO)

1. In accordance with Section 334 of the Armed Forces Act 2006, I:

(Service Number, Rank/Rate and Name)

Currently serving at (\* assigned/attached to:

or \* discharged on:

(Date)

Of current address:

claim:

a. that I have been wronged as set out in  
paragraph 2 below; and

that I seek the redress specified in paragraph 5 below.

(\* Delete as appropriate)



2. I believe that I have been wronged in the following manner:

(Include Date(s) and Times, Location and Nature of incident(s) as appropriate)

(Continue on separate sheet if required)

3. Does your complaint involve allegations of bullying and/or harassment?

Yes

No

Please tick as appropriate

If ticked yes, complete section 4 a – c. (Also complete sections 5 and 6.)

If ticked No, continue straight to section 5 - 6.

4a. Identify the person(s) you believe is bullying and/ or harassing you.

Name
Rank/Grade
Unit, phone, e-mail details

4b. Details of any witnesses:

Name
Rank/Grade
Unit, phone, e-mail details

4c. State why you believe your complaint falls into the bullying and harassment category and what effect the incident(s) had on you?

<p>(Continue on separate sheet if required)</p>
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5. What outcome or redress do you seek from this complaint?

<p>(Continue on separate sheet if required)</p>
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6. Complaints submitted under the Armed Forces (Redress of individual Grievance) Regulations 2007 must normally be submitted within 3 months of the date that the matter complained of occurred or of the latest in a connected series of incidents. Provide an explanation if you think that this complaint is made outside this time limit and say why it should be considered outside the time limit.

Date:

Signature of Complainant:

Note: Relevant supporting documents that you consider would be helpful to the investigation of your complaint should be enclosed and recorded on a separate sheet.

**COMPLAINTS FORM - CIVILIAN STAFF ONLY**

To:

Deciding  
Officer (normally the  
Snr Line Manger)

1.

(Staff Number, Grade and Name)

Currently employed at:

or left service on:

(Date)

Of current address:

claim:

a. that I have been wronged as set out in  
paragraph 2 below; and

that I seek the redress specified in paragraph 5 below.

(\* Delete as appropriate)

2. I believe that I have been wronged in the following manner:

(Include Date(s) and Times, Location and Nature of incident(s) as appropriate)

(Continue on separate sheet if required)

3. Does your complaint involve allegations of bullying and / or harassment?

Yes  No  Please tick as appropriate

If ticked yes, complete section 4 a – c. (Also complete sections 5 and 6.)

If ticked No, continue straight to section 5 - 6.

4a. Identify the person(s) you believe is bullying and/ or harassing you.

Name
Rank/Grade
Unit, phone, e-mail details

4b. Details of any witnesses:

Name
Rank/Grade
Unit, phone, e-mail details

4c. State why you believe your complaint falls into the bullying and harassment category and what effect did the incident(s) have on you?

<p>(Continue on separate sheet if required)</p>
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5. What outcome or redress do you seek from this complaint?

<p>(Continue on separate sheet if required)</p>
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6. Complaints submitted must normally be submitted within 3 months of the date that the matter complained of occurred or of the latest in a connected series of incidents. Provide an explanation if you think that this complaint is made outside this time limit and say why it should be considered outside the time limit.

Date:

Signature of Complainant:

Note: Relevant supporting documents that you consider would be helpful to the investigation of your complaint should be enclosed and recorded on a separate sheet.

**SUGGESTED FORMAT FOR INFORMAL RESOLUTION LETTER**

Date

Dear *(Respondent's name)*

**ATTEMPT AT INFORMAL RESOLUTION OF BULLYING/HARASSMENT ALLEGATION**

1. I am writing to you about your behaviour which I believe amounts to bullying/harassment.

2. The behaviour in question happened on *(date, time)* at *(place)*.

On *(this/ the first/ etc)* occasion you *(describe the incident(s) in question in as much detail as possible)*.

3. Your behaviour had a significant impact on me in that....*(e.g. I was offended/embarrassed/worried/humiliated by what you said/did.....)*

*I felt.....*

*I am angry/upset because.....*

*Your behaviour has affected my...(e.g. health, work, self confidence, professional status in the eyes of others).....*

4. It may be that you were unaware of the impact that your behaviour had on me. However, I want to make you fully aware of its effect, and would like you to ... *(e.g. stop the offending behaviour, and apologise to me for the offence caused to me)*.

5. I wish/do not wish to discuss this letter with you in person.

6. I am prepared to attempt to resolve this matter through Mediation (delete if inappropriate).

7. I sincerely hope that we shall be able to resolve the matter to our mutual satisfaction. However, I will consider making a formal complaint against you if either I am not happy with your response to this letter, or if the behaviour referred to above continues.

Yours sincerely,  
*(Complainant's name)*



## **MEDIATION**

### **INTRODUCTION**

1. There are occasions during complaint handling where trained specialists can help achieve resolution. Mediation is a process whereby an impartial third party (a fully trained Mediator) helps personnel in dispute to work out an agreement.
2. Complainants and Respondents, not the Mediator, decide the terms of this agreement. Mediation usually focuses on future rather than past behaviour, and provides a structured, Informal way of resolving complaints, differences of opinion and disputes.
3. Because mediation is not seeking to identify a culprit or scapegoat, it can help rebuild relationships and trust, restore communication and understanding. More formal options, like administrative/disciplinary/misconduct, complaint/grievance or bullying/harassment complaint procedures, can sometimes be effective. However, for issues such as "personality clashes", disputes over roles, and disagreements about work style or behaviour, mediation can achieve resolution without blame, bureaucracy or undue stress.
4. Advice and guidance on sources of Mediation can be obtained from Service E&D policy staffs and the civilian DBS Civilian HR People Service Centre.

### **FACTORS TO CONSIDER**

5. Mediation can only work as a voluntary process, its use should be on a case-by-case basis and it cannot be 'forced' on Complainants/Respondents. Factors to be considered include:
  - a. the history and dynamics of the conflict – mediation at an early stage is likely to be more effective than later;
  - b. the possibility of physical threat or verbal aggression – agreement on non-violence and the maintenance of even tempers throughout is essential;
  - c. the nature of the relationship between the parties – rank or status may mean that mediation is not a practical option;
  - d. the intensity of feeling – if antipathy is extreme, it may not work; and
  - e. the willingness of all parties to participate in the process – everyone needs to be able to contribute something constructive to a resolution.

6. There will be maximum opportunity for achieving a resolution through Mediation in cases where:

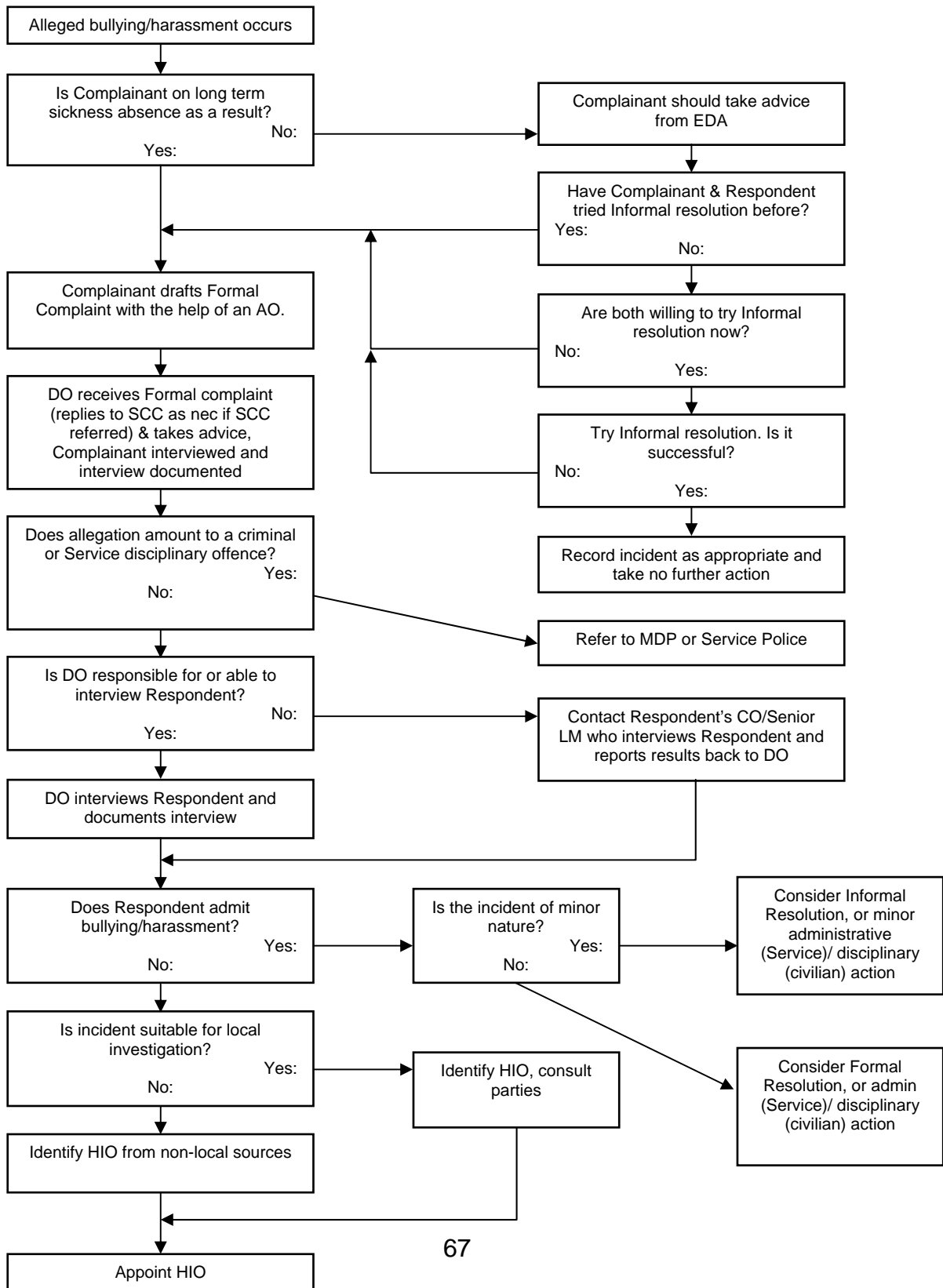
- a. there are low levels of anger and physical/verbal intimidation;
- b. there have been no serious breaches of workplace conduct rules or guidelines;
- c. no formal or other action is anticipated/underway which would conflict with the mediation process;
- d. allegation(s) made are being offset by counter-allegation(s);
- e. there is insufficient evidence for any other form of action;
- f. both parties are willing to contribute to a resolution;
- g. there is room for improvement in relationships; and,
- h. the Parties may not have been initially prepared to have face-to-face contact with each other, but are more inclined to do so with external help.

#### **WHEN NOT TO USE IT**

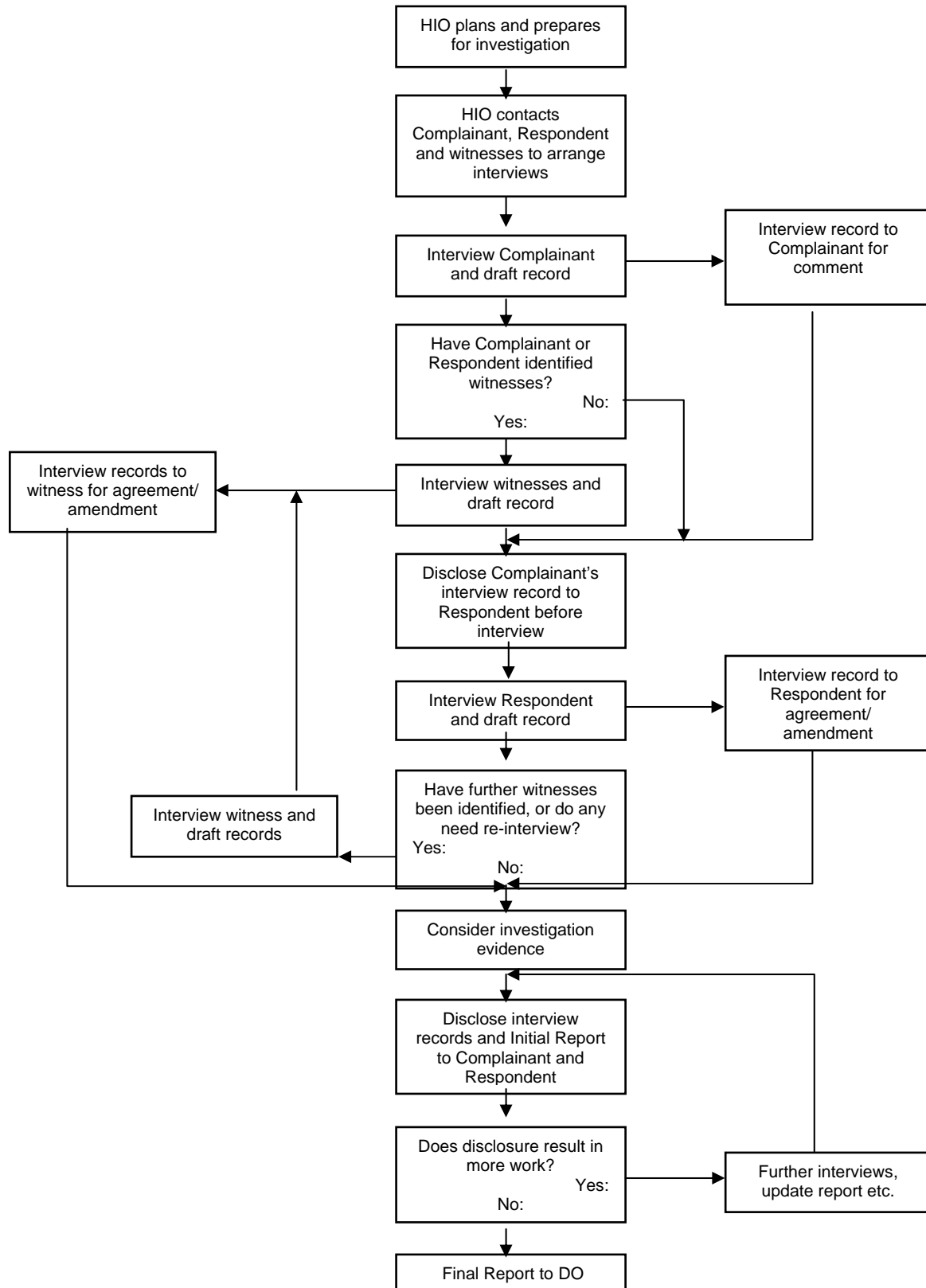
7. Mediation may be inappropriate if, for example:

- a. the nature of the relationship between the Complainant and Respondent(s) is such that one or more feel it is unsuitable to participate;
- b. formal external procedures need to be applied – for example if criminal activity is suspected/involved;
- c. internal administrative/disciplinary/misconduct or restoring efficiency procedures need to be applied – for example if serious misconduct or unsatisfactory performance is involved; or,
- d. the dispute is long-standing and complex, and the parties have become so embittered and entrenched that progress is very unlikely.

**BULLYING & HARASSMENT COMPLAINT PROCESS FLOWCHART**

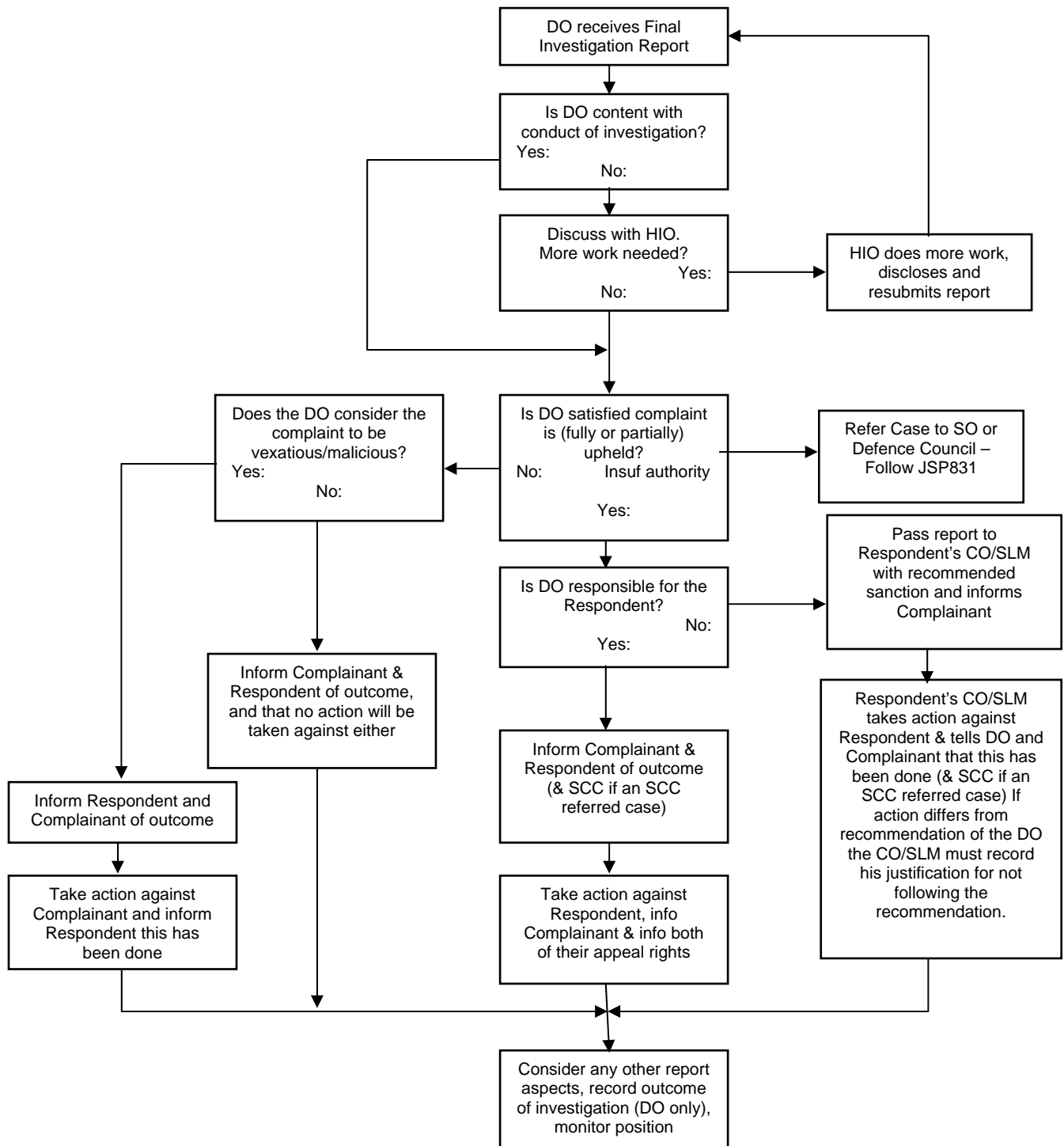


# BULLYING & HARASSMENT COMPLAINT PROCESS FLOWCHART – THE INVESTIGATION



The HIO may exercise discretion when deciding on the order of the interviews: they should interview the Complainant first, but may chose to interview either the Respondent or witnesses afterwards.

# BULLYING & HARASSMENT COMPLAINT PROCESS FLOWCHART – ACTING ON THE INVESTIGATION REPORT



**NOTIFICATION TO A RESPONDENT OF A FORMAL COMPLAINT OF BULLYING OR HARASSMENT - TEMPLATE**

To: *(Respondent's name)*

1. I have received a written formal complaint of bullying/harassment in relation to allegation/allegations made against you by *(Complainant's name)*. A copy of the complaint is attached.
2. Before deciding what action to take in response to the complaint, I would like to interview you about the matter.
3. The interview will take place at *(place)* on *(date)* at *(time)*. If this is not possible, or you do not wish to attend, please inform me at once so that alternative arrangements can be made.
4. If you have not already done so, you are strongly advised to consult an Equality and Diversity Adviser (EDA)<sup>58</sup> as soon as possible who can arrange for/advise you on finding an Assisting Officer (AO) who can support and help you.
5. You are also strongly advised to read JSP 763 (the MOD Bullying and Harassment Complaints Procedure) which explains the complaint process and the rights, expectations, duties and responsibilities of all those who are involved in it.
6. I must advise you that, depending on the outcome of our discussion, a formal harassment investigation may be commissioned and, if the complaint is upheld, administrative/disciplinary/misconduct action may be taken against you. It is, therefore, extremely important that you attend this initial interview.
7. Finally, I would ask you to keep this letter confidential, (except in dealings with the EDA and your AO) and do not approach or contact the Complainant or any witnesses.

Signed: *Deciding Officer*

Date.....

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<sup>58</sup> Civilians should seek advice from DBS.

**NOTIFICATION OF ACTION TO BE TAKEN IN RESPONSE TO A FORMAL COMPLAINT OF BULLYING OR HARASSMENT – TEMPLATE**

**To: (*Complainant and Respondent(s)*)**

1. Having received a formal complaint of bullying/harassment made by (*Complainant*) and interviewed (*Complainant*) and (*Respondent(s)*), I have decided on the action to be taken.

(Option 1) As (*Respondent(s)*) has accepted responsibility for the behaviour complained about and since I consider the substance of the complaint to be relatively minor in nature:

- *either* - I would ask the parties to seriously consider an(other) attempt at Informal resolution and I would be grateful for your views on this. If you disagree, or if any attempt made is unsuccessful, you should inform me in writing at the earliest opportunity.

- *or* - I intend to take (*administrative/disciplinary/misconduct*) action against (*Respondent(s)*) following the relevant (Service/civilian) procedures.

(Option 2) Responsibility for the behaviour complained about has been accepted by (*Respondent(s)*). While I consider the substance of the complaint to be serious in nature, I believe that an investigation would be inappropriate. I therefore intend to take immediate (*administrative/disciplinary/misconduct*) action.

(Option 3) (*Respondent(s)*) having denied the allegation(s), I have commissioned an independent investigation of the complaint. You will be hearing shortly from the Harassment Investigation Officer (HIO) who will wish to interview you and the witnesses you have named.

(Option 4) As the formal complaint submitted by (*Complainant*) cites circumstances that appear to indicate the commission of a (*criminal act/Service disciplinary offence*), I intend to refer the complaint to the MDP/Service Police) in accordance with the relevant procedures.

(Option 5) In making the complaint, (*Complainant*) sought (*insert detail of redress sought*).

- *either* - I believe that this has been achieved (*by the actions summarised in this letter*)

- or - I believe that (aspects of) this cannot be met because *(give reasons)*. I consider that the actions summarised in this letter are nevertheless a sufficient response to the complaint made.

**Note:**

*[The following paragraph should be included if Option 3 is selected]*

*(Respondent(s))* should be aware that this investigation could lead to *(administrative/ disciplinary/misconduct)* action being taken against them. Although I have formally interviewed you with respect to the complaint, you may wish to write a response to the allegation for the HIO's consideration prior to their formal interview with you. I would remind you that comprehensive advice and guidance is available to both Complainant and Respondent(s) in these circumstances and most strongly recommend that you discuss this with your AO at the earliest opportunity.

Signed: ..... *Deciding Officer (or delegated nominee)*  
Date.....

*Copy to:*

*The Complainant's Commanding Officer/Line Manager*  
*The Respondent's Line Manager (if different from above)*  
*DBS - for civilians only*



## **GUIDANCE FOR THE DECIDING OFFICER (DO)**

### **INTRODUCTION**

1. The role of the DO is fundamental to the success of the MOD's policy on combating bullying/harassment in the workplace. This guidance expands on the procedural guidance in Chapter 7 and covers the DO's key duties and responsibilities during the course of a formal complaint of bullying/harassment. This guidance should also be read by SOs dealing with referred complaints of bullying and harassment under Service Complaints procedures laid out in JSP 831. It does not cover every eventuality and DOs should always contact their appropriate authority for advice if in any doubt as to how to proceed.

2. The guidance is applicable to Service and civilian DOs, and covers any complaint of bullying/harassment made by a member of the Armed Forces or a civilian in MOD employment<sup>59</sup> about other MOD Service or civilian personnel.

### **DUTIES AND RESPONSIBILITIES**

3. DOs have overall responsibility for considering a formal complaint made by anyone in their area of responsibility or under their command. This includes: the initial consideration of the complaint; the instigation of an investigation; the review of its outcome; and any resulting action. In managing complaints, DOs have 2 overriding duties:

a. To prevent unnecessary delay. Bullying and harassment complaints are often complex and delays may arise due to uncertainty about procedure, the need to co-ordinate investigation arrangements, or the requirement to take expert advice. The HIO should aim to complete the Initial Report within 30 working days of being appointed but this should be balanced against awareness that complaints must be thoroughly investigated, and that this process may unavoidably take time.

b. To demonstrate impartiality. It is essential to preserve the DO's impartiality throughout the investigation process to avoid any question about their objectivity in assessing the outcome. If the DO appoints a suitably qualified subordinate (usually their immediate deputy)<sup>60</sup> in their management chain to conduct the initial interview with the Complainant and Respondent(s) and seek guidance, it should be made clear to all parties that, any actions taken will carry the full authority of the DO. Delegation should be avoided where possible see chapter 5, paragraph 5.5-5.6.

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<sup>59</sup> Irrespective of their employment status i.e. whether permanent, casual, an agency temp or a contractor.

<sup>60</sup> See para 5.5. This would normally only occur if the DO was absent from the unit (e.g. illness, urgent operational/business requirement etc.).

4. The DO is to discharge his/her duties expeditiously. The key responsibilities are:

a. to discuss the complaint with the Complainant and Respondent(s), consider what action is to be taken, and inform each of them, in writing, of the intended course of action;

b. where it is apparent that the complaint refers to an incident which may constitute a criminal/Service disciplinary offence, the DO should suspend all action and refer the complaint to the relevant authorities, i.e. the relevant Service Police (for incidents involving Service personnel) or the MOD Police (for incidents involving civilian Respondents);

c. to ensure that all parties have access to appropriate advice and guidance;

d. where a formal investigation is warranted, decide who should conduct this;

e. to issue a formal appointment letter to the chosen HIO;

f. to ensure that the investigation is concluded speedily and effectively, that it follows JSP 763 procedures, and that the Complainant and Respondent(s) are updated regularly of progress;

g. to consider, for serious allegations, whether the Respondent(s) should be suspended from duty pending the outcome of the investigation (for civilians only and to be considered and promulgated as a neutral act) or whether initial assessment of the case indicates that measures need to be taken to protect any party;

h. to decide whether it would be a sensible precaution to separate the parties for the duration of the investigation (as a neutral act). Other options are to reallocate work or, for civilians only, grant special paid leave;

i. to satisfy themselves that the investigation has been thoroughly and impartially conducted and that the parties' comments on the Initial Investigation Report have been considered, before accepting the Final Investigation Report;

j. where dissatisfied, to direct that further investigative work is undertaken, or ultimately choose not to accept the Final Investigation Report. In such cases the DO must articulate and record their reasons for doing so;

k. to decide, on the balance of probabilities, if the complaint of harassment is upheld. The test of law to be applied is at chapter 7, paragraph 7.2, which DOs must understand clearly;

l. to inform the Complainant(s), by letter, of the outcome of the investigation;

m. to inform the Respondent(s), by letter, of the outcome of the investigation;

n. to initiate administrative/disciplinary/misconduct action if the complaint is upheld. Alternatively, where the DO is not responsible for the Respondent(s), to pass the report to the latter's CO/Station Commander/Senior Line Manager to take appropriate action;

o. to inform the parties of their rights of appeal or redress, and any associated time limits;

p. having taken legal/E&D casework staff advice, to initiate appropriate administrative/disciplinary/misconduct action against the Complainant where the complaint is proved to be vexatious or malicious;

q. to decide if either party should be moved permanently to a new work area after the investigation;

r. to consider if either party would benefit from refresher Equality & Diversity training, or counselling;

s. to consider any action to be taken against others – eg line managers or superiors – if they have neglected their duties or have contributed through their actions to the complaint being brought (if any individual has since left the unit/establishment, then higher authority must be notified);

t. to ensure that the parties are monitored for a suitable period (not less than 3 months) after the resolution of the complaint, particularly if they continue to work closely together;

u. to ensure that complaints and lessons learned are all appropriately recorded on the appropriate IT systems, such as HRMS, JPA and DLIMS (FLIMS).

5. Seek Expert Advice. DOs are not expected to have all the answers and should always seek early advice from appropriate authorities if in any doubt whatsoever. Indeed, acting without proper advice can lead to complications, inequitable decisions, escalation of complaints to higher levels, potential litigation and criticism (personal and corporate). Where advice is required, DOs should seek it promptly, avoid delay in its implementation, and be satisfied that it is understandable and practicable for all concerned.

**LETTER OF APPOINTMENT TO HARASSMENT INVESTIGATION OFFICER (HIO) - TEMPLATE**

**To:** HIO

**Copy to:** Complainant and Respondent(s)

**TERMS OF REFERENCE FOR AN INVESTIGATION INTO A FORMAL HARASSMENT**

**COMPLAINT**

1. You are appointed to investigate the formal complaint(s) of bullying/harassment made by (*Complainant*) against (*Respondent(s)*). Copies of the formal complaint letter(s) and the record of the Deciding Officer's initial interviews with (*Respondent(s)*) (and *Complainant*) are attached.
2. The investigation is to be carried out confidentially and objectively, and you are to treat the parties involved equally, and impartially.
3. You may nominate someone as a note taker, with my approval, but your choice should be based on their suitability and ability to maintain the confidentiality of the investigation. You are not to discuss the case with anyone outside the confines of your investigation, but you may seek general advice on Equality and Diversity policy from any appropriately qualified source.
4. You are empowered to interview all MOD Service or civilian (including MOD contractor) personnel whom you consider may have information relevant to your enquiries. You are to be granted access to all documentation that may be relevant to the complaint; however, access to personnel records should only be required if considered essential to the investigation.
5. Prior to conducting interviews, relevant line managers should be informed that members of their staff may be interviewed. Details of the complaint are not to be disclosed to line managers, even if they are required to be interviewed as part of your investigation.
6. You are to remind the Complainant and Respondent(s) of their individual rights including the right to have a MOD friend/colleague and/or Assisting Officer present whenever you require to interact with them personally.
7. All interviewees and Assisting Officers are to be clearly reminded that the investigation is confidential and that they must not discuss their evidence or involvement with anyone, at any stage, unless you have given permission. You

must ensure that they are aware of the principles of disclosure at the start of an interview, and explain that all relevant evidence and both the Initial and Final Investigation Reports will be disclosed to both the Complainant and Respondent(s).

8. You are to make written summaries of interviews, and these are to be agreed and signed by the interviewees. The interview records will form part of the evidence supporting your Initial and Final Investigation Reports.

9. If you discover evidence that a criminal or Service disciplinary offence may have been committed, you are to suspend the investigation and refer the matter to me immediately. You are then to await further personal direction from me.

10. You are to keep me informed of your progress at regular intervals, and ensure that the parties are regularly kept fully aware of progress. Specifically, when you are ready to pass the Initial Report to the parties, I am to be informed and updated on the results of your investigation.

11. When all parties have seen the Initial Investigation Report and had the opportunity to comment on its contents, it is to be submitted to me, as a Final Investigation Report, in the format shown in JSP 763. The Complainant and Respondent are to receive a copy of the Final Investigation Report. You are to ensure that the report is restricted to fact and does not contain any opinion, nor makes, or implies recommendations that may potentially influence my decision in any way.

12. You are to submit your Final Investigation Report to me by (*date*) and I am to be informed immediately if this deadline cannot be met.

13. Finally, if at any stage you encounter difficulties, particularly in gaining access to personnel or information, you are to refer the matter to me immediately.

Signed:

Deciding Officer

Date:.....

**DUTIES AND RESPONSIBILITIES OF AND GUIDANCE FOR THE HARASSMENT INVESTIGATION OFFICER (HIO)**

**INTRODUCTION**

1. An HIO is tasked by a Deciding Officer, who is usually the Complainant's CO/Senior LM, to investigate formal complaints of bullying/harassment made by MOD Service or civilian personnel, (Complainants), about other MOD Service or civilian personnel (Respondent(s)).<sup>61</sup> HIOs should be trained in and have a good understanding of bullying and harassment issues. Ideally, they should have had no prior involvement with the parties as regards the issues surrounding the complaint and be regarded by those involved as having credibility, integrity and impartiality. DOs should take into account the views of the Complainant and Respondent(s) when appointing the HIO.

2. HIOs are to be skilled in interviewing, listening and report writing. They must, therefore, be of at least Warrant Officer (WO) or Commissioned rank<sup>62</sup>, or at minimum Band C2 for a Civilian HIO, depending on the rank or status of the Complainant and Respondent(s). By nature of their rank/grade at these levels, most personnel will possess the appropriate skills, but DOs must also satisfy themselves that HIOs have the appropriate personal qualities. The role is a demanding one and confidence and sensitivity will be required when dealing with all involved. HIOs must not be in the direct Command/Line Management chain of either the Complainant or Respondent(s) – civilian HIOs will be identified by DBS staff. Civilian HIOs may investigate military complaints and vice versa (with all parties' agreement). HIOs appointed to cases involving under 18 personnel must be CRB cleared or use an (over 18) chaperone. Service HIOs investigating complaints where the complainant and/or respondent(s) is a civilian must be a of at least Pay Band C2 equivalent.

3. The DO must ensure that for the duration of the investigation process the HIO's primary role is to conduct the investigation of the formal complaint and produce an objective report.

**ROLES AND RESPONSIBILITIES**

4. In conducting an investigation, the HIO must:
- a. have access to all MOD Service and civilian personnel considered to have information relevant to the investigation;

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<sup>61</sup> This applies irrespective of the party's employment status.

<sup>62</sup> No lower than OF2.

- b. have access to all paperwork relevant to the complaint;
- c. conduct themselves impartially and courteously;
- d. maintain confidentiality and objectivity in establishing the facts;
- e. keep the DO and the parties to the complaint fully and regularly informed of progress throughout the investigation and of any problems encountered;
- f. disclose the Initial Investigation Report to the parties for comment, and consider any changes they propose with them;
- g. submit to the DO a Final Report (providing a copy to the Complainant and Respondent) of the investigation's findings, analysing the evidence supporting, or otherwise, each aspect of the complaint;
- h. conduct the investigation under the presumption that the complaint was made in good faith. However a presumption of good faith should not engender a presumption that the complaint will be upheld.
- i. note that, should he/she receive information from witnesses regarding other instances of bullying or harassment, he/she has a duty to deal with such allegations as appropriate.
- j. justify any delay in the investigation to the DO.
- k. Safeguard all data pertinent to the investigation in line with Data Protection Act guidelines.

## **PREPARING FOR THE INVESTIGATION**

5. Thorough preparation is vital to the success of the investigation and merits considerable thought. The complaint may be about a one-off incident with no witnesses other than the Complainant and Respondent(s), which may make it straightforward to investigate but difficult to substantiate. It may cite several related and/or unrelated incidents, witnessed by a number of people, which generates the gathering and consideration of much evidence. It may involve a mix of civilian and Service personnel, or civilian non-industrial and industrial staff, or personnel from different Services, units or locations.

6. Whatever the nature of the complaint, there are normally 4 stages in any investigation, namely:

- a. reviewing the key documents;
- b. preparing, conducting, recording and agreeing interviews;
- c. reviewing the evidence;
- d. drafting, disclosing and submitting the report.

7. Reviewing key documents and planning the interview strategy will take time and it is helpful to make early contact with all parties to allay any concerns they may have and explain how the investigation will be conducted. To prevent this initial contact turning into an interview, it is recommended that the initial contact is made by letter. A suggested letter template is at Appendix 1.

## **REVIEW OF KEY DOCUMENTS**

8. Before starting the investigation the HIO should have copies of:
- a. the formal complaint letter signed by the Complainant;
  - b. the DO's letters to the Complainant acknowledging receipt of the complaint and advising that a formal investigation is to be initiated;
  - c. the DO's letters to the Respondent(s), advising that a formal complaint of bullying and harassment has been made against them, and that a formal investigation is to be initiated;
  - d. any written response to the complaint from the Respondent(s);
  - e. any records of attempts to resolve the allegations informally; and
  - f. any notes of interviews with the parties conducted by the DO.
9. All relevant information should be reviewed and carefully considered before each interview, particularly where there are conflicts or contradictions between the allegations in the complaint and any written or recorded response from the Respondent(s). In studying the written information, the HIO should draw up a chronology of the events, particularly if there is a series occurring over time, noting that the latest incident should be within 3 months of the submission of the written complaint. This will help in the conduct of the interviews, enable the HIO to discern apparent irrelevancies and ambiguities, allow the preparation of questions to address them and to consider when drafting the Initial Investigation Report.

## **PREPARING, CONDUCTING, RECORDING AND AGREEING INTERVIEWS**

### **SELECTION OF INTERVIEWEES**

10. The HIO has complete authority over the selection of interviewees, regardless of grade, rank or status. As part of the evidence gathering process, everyone directly involved with the complaint will need to be interviewed, including the parties and any witnesses cited by them in support of their respective cases. There may also be a need to interview people claiming to have witnessed incidents outside the scope of the investigation, but which the HIO considers may have a bearing on the case. HIOs should also consider interviewing the parties' line managers, if not already named as witnesses, to gain their perspective on the complaint, noting the requirement for confidentiality. If in doubt about whether to interview a potential witness, it is advisable to do so to show that the investigation has been thorough.



11. Personnel cannot be compelled to give evidence and, where there is continued reluctance to be interviewed, they should be advised that inferences may be drawn from their lack of co-operation.

### PLANNING INTERVIEWS

12. HIOs should be mindful that involvement in a harassment investigation can be very worrying, and when arranging interviews, personnel should be reassured as much as possible. It is good practice to confirm the interview arrangements in writing and suggested letter templates are at Appendix 2 (Complainant), Appendix 3 (Respondent(s)) and Appendix 4 (witnesses).

13. The Complainant should be interviewed first. Thereafter, the Respondent(s) and any witnesses whom they or the Complainant have named, will be interviewed. The HIO may exercise discretion, based on the circumstances of the case, when deciding on the order of the interviews. The interviews should be conducted in a discreet environment away from the immediate workplace. The HIO should have made arrangements for an appropriate person to take notes, if required.

14. It may be useful to view the conditions in which the parties work and the location where the incident(s) complained about took place.

15. HIOs should plan a structure for the interview by writing down the questions that need to be asked, and in so doing adopt an enquiring approach to the complaint and any response to it, whilst remaining objective and courteous. They should devise questions to probe for supporting information. For example, where there is an allegation that a Respondent was angry, it may be relevant to determine how they manifested their anger. Did it involve shouting and aggressive gestures, or less demonstrative behaviour such as glaring or silence?

16. Where a number of incidents over a period of time are involved, there may be lack of clarity about when they took place. Questions should be devised to refine or enhance the HIO's chronology of events and to identify where differences exist between the accounts of the Complainant and Respondent(s).

### CONDUCTING INTERVIEWS

17. It is mandatory to carry out face-to-face interviews with the Complainant and the Respondent(s). It is also best practice to conduct face-to-face interviews with any witnesses, although there may be occasions when interviews with them are conducted by telephone e.g. where they are in a remote location, or their involvement in the complaint appears marginal. HIOs should try to start with a friendly introduction or comment before moving to the main business of the interview. Although the interview is part of a formal process, HIOs should not appear officious, aloof or remote. A courteous, but authoritative, interview style will get the most out of the interviewees while maintaining control of the situation.

18. HIOs should be prepared for the 'difficult' interview. Bullying and harassment can be an embarrassing subject, and interviewees may be

uncomfortable, unresponsive, evasive, emotional, aggressive and/or obstructive. The interview style may have to be adapted accordingly. Although it is good practice to work through a list of prepared questions, flexibility is key. Information may emerge from an interviewee's response which needs further probing, causing the plan to be set aside momentarily, but it should be returned to when the new issue has been explored.

19. However difficult the interview, all necessary information must be gleaned in sufficient detail, however explicit or embarrassing, without unduly upsetting the interviewee. If not, there will remain the possibility of having to conduct another interview and of causing more stress for the interviewee.

20. Some Complainants may produce a diary of events to support their complaints, as may the Respondent(s) in their defence, before or at interview. It must be clarified in interview if those were made at the same time as the events occurred, or retrospectively and, if the latter, how long after the incidents. Even accounts made at the same time can later be "improved" to present evidence in a better light – especially if held on computer.

21. Some potential interview opening remarks are at Appendix 5.

#### INTERVIEWING THE COMPLAINANT

22. The Complainant should always be interviewed first and the HIO should always explain that:

- a. the MOD takes bullying and harassment complaints seriously and expects the conduct of investigations to be thorough and expeditious;
- b. although the DO has decided to instigate an investigation, it does not automatically mean that the complaint will be upheld;
- c. the MOD expects all parties to harassment complaints to be protected from victimisation or retaliation and that any subsequent complaints of this nature will also be investigated thoroughly;
- d. the interview is part of the investigation of the complaint and is intended to give a fuller understanding of the incident(s) covered by the formal complaint statement;
- e. the Complainant's agreed and signed interview record will be disclosed to the Respondent(s) before they are interviewed so that they are fully aware of the detailed allegations;
- f. all the agreed and signed interview records will subsequently be disclosed to the Complainant and Respondent(s) as part of the Initial Investigation Report;
- g. all parties will have an opportunity to comment on the Initial Investigation Report and be given a copy of the Final Investigation Report, and;

- h. all parties will be advised, in person and in writing, of the DO's decision whether or not to uphold the complaint.
23. Information that must be obtained during the interview includes:
- a. the specific details of the allegation(s);
  - b. the working/social relationship the Complainant has with the Respondent(s);
  - c. the impact of the alleged behaviour on the Complainant e.g. sickness absence, reduced work performance;
  - d. the Complainant's opinion of the reasons for the alleged bullying and harassment;
  - e. details of any informal attempts to resolve the allegations;
  - f. details of any previous incidents which are not part of the formal complaint, but which may have a bearing on the allegations;
  - g. the nature of the redress that the Complainant seeks; and
  - h. the names of any additional witnesses not originally listed in the complaint.
24. If the Complainant withdraws some of the allegations during interview, it should still be recorded in the interview record.
25. If the Complainant withdraws all the allegations during interview, the HIO should record the fact in the interview record and consult the DO, particularly if the HIO suspects the withdrawal may be due to fear of further harassment/victimisation.
26. If there are a number of Respondents, and the Complainant withdraws the allegations against some of them, it should be recorded in the interview record and the HIO should consider if the exonerated Respondent(s) should still be interviewed as potential witnesses.

### INTERVIEWING THE RESPONDENT(S)

27. It is essential that the Respondent(s) clearly understand the nature and details of the complaint before being interviewed. As well as the original formal complaint statement, the Respondent must be given the Complainant's agreed and signed interview record a reasonable time in advance of their own interview with the HIO.
28. Having interviewed the Complainant, the HIO should have a reasonably clear view of the sequence of events and should shape the questioning of the Respondent accordingly. As well as the introductory remarks (Appendix 5), the HIO should explain that:

- a. the MOD takes bullying/harassment complaints seriously and expects the conduct of investigations to be thorough and expeditious;
- b. although the DO has decided to instigate an investigation, it does not automatically mean that the complaint will be upheld;
- c. the MOD expects all parties to bullying/harassment complaints to be protected from victimisation or retaliation and that any subsequent complaints of this nature will also be investigated thoroughly;
- d. the interview is part of the investigation of the complaint and is intended to give a fuller understanding of the incidents covered by the formal complaint statement;
- e. any refusal to answer questions will be recorded and that the HIO, and subsequently the DO may draw inferences from such refusal.
- f. all the agreed and signed interview records will subsequently be disclosed to the Complainant and Respondent(s) as part of the Initial Investigation Report;
- g. the Complainant and Respondent(s) will have an opportunity to comment on the Initial Investigation Report and be given a copy of the Final Investigation report;
- h. all parties will be informed, in writing, of the DO's decision whether or not to uphold the complaint.

29. During the interview, each allegation must be explored in detail and the Respondent's comments on all issues should be recorded, including:

- a. what led up to the alleged incident(s)?
- b. what happened and why?
- c. who said what at the time?
- d. what was the Complainant's reaction? and,
- e. were there any witnesses?

30. The HIO should also discuss the Respondent's comments on the Complainant's version of events and if there are any other factors that may have a direct bearing.

### INTERVIEWING THE WITNESSES

31. Witnesses need to be sensitively handled, particularly if they are distressed or confused about loyalties to colleagues, or fearful of detrimental consequences. They must be reassured that any unfair treatment or victimisation that may result from their involvement in the investigation will not be tolerated.

32. On rare occasions, a witness may be so deterred by the prospect of disclosure of their account of events that co-operation is unlikely. If they cannot be reassured and the HIO is convinced that there are substantial and genuine grounds for this reluctance and that the witness is important to the investigation, they should inform the DO and it may, exceptionally, be agreed to disclose an anonymous or redacted version of the witness statement.

### RE- INTERVIEW

33. If the results of any interview or the disclosure process leaves the HIO with significant doubt or lack of clarity about aspects of the complaint or evidence already collected, it must be resolved.

34. The HIO may need to re-interview a party if witness evidence significantly contradicts their version of events or provides additional factors which need exploration. It may also be necessary to re-interview witnesses if other interviewees' evidence appears to be contradictory or if additional allegations emerge which they claim to have witnessed. Disclosure of the Initial Investigation Report to both parties may also result in the need to re-interview.

35. If there is a subsequent need to re-interview, even if to clarify points of detail by telephone contact, a signed and agreed record must be produced.

### RECORDS

36. Any notes made during the interview, as well as the final typed and signed copy, will be considered as evidence in any subsequent administrative, disciplinary/misconduct or legal proceedings. A hardbound page-numbered notebook is to be used.

37. A formal record must be made of each interview for inclusion in the report. Interviewees are not to write their own statements. The HIO should make sufficient notes during the interview to enable an accurate summary to be produced. If a note taker is employed, their participation must be agreed by the interviewees and they must observe confidentiality. They must be suitably skilled and be unconnected with the allegation(s) in question or the personnel involved.

38. The interview record should not be a verbatim account (although important questions and answers may be included in this way), but should cover all the essential facts.

39. Any questions that the interviewee declined to answer must be recorded, along with the reason given, if any, for not answering, noting that the interviewee does not have to give a reason.

### AGREEING THE INTERVIEW RECORD

40. The typed interview record should be prepared promptly using the recommended template at Appendix 6. The interviewee should read, agree, sign and date it. A suggested letter format is at Appendix 7.

41. If an interviewee refuses to sign an interview record or produces an amended version that does not reflect statements made at interview, the interviewee must be informed that the report will be based on the HIO's understanding of the interview. Any disputed interview record from the interviewee must be included in the Initial and Final Reports with explanation.
42. A number of difficulties can arise with interview records:
- a. Having seen their evidence in print, interviewees may try to remove or change passages. Any attempt to conceal or obscure the truth must be resisted.
  - b. Interviews with the parties may be lengthy and the interview records equally so. The HIO might have missed, or misunderstood, some aspects in writing up the record and should be open to proposals by the interviewee to clarify.
  - c. Interviewees may try to rewrite the interview record to make it reflect what they wish they had said. This should be resisted by stating that the intention is for the record to be a summary rather than a verbatim account.
  - d. Interviewees may try to amend the interview record to add information not discussed at interview. If it is merely amplification, it may be allowed, but significant information should be explored and tested at a re-interview.
43. The agreement of interview records may be a lengthy process. As well as the reasons for debate, records can be mislaid or recipients may try to avoid the uncomfortable task of dealing with them. HIOs may need to hasten regularly, eliciting assistance from AOs, or LMs, as appropriate.

### REVIEWING THE EVIDENCE

44. When all the initial interviews have been conducted and the records agreed, the evidence must be reviewed. The HIO may have formed subjective views on the allegations, perhaps subconsciously, leading to the risk of some of the evidence being given more weight in the Initial Investigation Report. To guard against this, the HIO should constantly challenge the assumptions made in light of all the evidence given. The HIO should, at all times, remember that it is the DO's responsibility to conclude if there is any substance to the allegation(s) made. The more thorough the analysis of the evidence the more straightforward the decision for the DO.
45. The HIO must review all the evidence obtained through interview and from relevant documents. The alleged incident(s) should be considered separately and all evidence identified, whether supporting or otherwise.
46. In considering the evidence, it may be helpful to review the guidance in Annex A and view it in the context of some characteristics identified with harassment or bullying. Chief among those are that:

- a. it is the **impact** of the behaviour on the Complainant, not the Respondent's **intention**, which is important;
- b. the Complainant's perception of the behaviour should be a reasonable one;
- c. although the behaviour complained of may be widespread or accepted by the majority this does not legitimise it; and,
- d. although individual incidents may appear minor or even trivial in themselves they may have had a cumulative effect on the Complainant.

47. In order to disguise or excuse harassment, euphemisms may be used by interviewees:

a. **Applied to the Respondent.** Comments might include:

- (1) has a "forceful", "strong" or "robust" character;
- (2) has an "unfortunate manner";
- (3) does "not suffer fools gladly";
- (4) is not a "people person";
- (5) "it's just his/her way";
- (6) a "hard taskmaster"; or
- (7) one of the "old school".

b. **Applied to the Complainant.** Comments might include:

- (1) "over sensitive";
- (2) "can't take a joke";
- (3) a "natural victim";
- (4) a "(bit of a) loner";
- (5) "not a team player"; or
- (6) has an "attitude problem".

48. When applied to the relationship between the Complainant and Respondent(s), the phrase "personality clash" is often used. This may be correct and individuals may not always get on, but it is often used flippantly without giving due consideration to the real reasons underlying the problem.

49. In deciding whether the alleged incident constitutes bullying, tests to indicate the latter include:

- a. Was it destructive, rather than constructive?
- b. Did it criticise the person, rather than their mistakes or shortcomings?
- c. Had the Complainant been publicly humiliated, rather than privately corrected?
- d. Did it result in the person feeling threatened, vulnerable or compromised?

## **WRITING, DISCLOSING AND SUBMITTING THE REPORT**

50. **Writing the Report.** Having completed the interviews and agreed the statements, an Initial Investigation Report must be drafted for comment by the parties. A suggested format is at Appendix 8. The report should set out:

- a. the nature of, and parties to, the complaint;
- b. the scope of the investigation; and
- c. an examination of each allegation in the complaint, analysing the evidence which supports or contradicts it.

The HIO should, at all times, remember that it is the DO's responsibility to conclude if there is any substance to the allegation(s) made.

51. Formal interview notes and any other relevant documentary evidence should be presented in annexes or appendices and be cross-referenced in the main report. Where there is a contradiction in the facts described by witnesses, it should be made clear which evidence is regarded as being the more reliable, giving reasons. The DO must be made aware of any witnesses who refused to co-operate with the investigation and their reasons, if known.

52. The report is to comprise a synopsis of the evidence gathered in investigating the complaint. It must not contain the HIO's opinions or make recommendations.

53. Where an investigation reveals shortcomings in Command/Line Management's ability to deal effectively with complaints or to promote a safe and amenable working environment, or if there are concerns about specific/general management practices, these should be communicated in writing to the DO separately.

54. **Disclosing the Report.** The Initial Investigation Report should be disclosed to the Complainant and Respondent(s) for their formal comment. On disclosure, the requirements of the Data Protection Act 1998 must be fully complied with. Only such disclosure as is necessary for the purposes of investigating the complaint should take place. Information about third parties should be redacted. A suggested covering letter template is at Appendix 9. The DO should be made aware that disclosure is taking place and must be updated on the progress of the investigation, subject to comment from the parties.



55. The responses to disclosure may raise issues needing clarification by further interviews or by an interview with a newly identified witness. These must be conducted promptly.

56. **Submitting the Report to the DO.** The DO will consider the final report and decide what action it is appropriate to take. If the DO believes that the investigation is incomplete, or that there is some contradiction in the evidence presented which has not been fully explained, they should discuss this with the HIO and, if appropriate, direct that further work is undertaken. The Final Investigation Report should be disclosed to the Complainant and Respondent.

57. Once the report is accepted, the HIO will have discharged all investigation responsibilities and have no further involvement in the subsequent handling of the complaint, unless required in the context of Employment Tribunal proceedings.

Appendices:

1. Initial Contact Letter.
2. Letter to Arrange an Interview with the Complainant.
3. Letter to Arrange an Interview with a Respondent.
4. Letter to Arrange Interviews with Witnesses.
5. Interview Points and Questioning Techniques.
6. Interview Record.
7. Interview Record Covering Letter.
8. Harassment Investigation Report.
9. Report Disclosure.

## **APPENDIX 1 TO ANNEX N**

(Classified Protect - Staff)

### **INITIAL CONTACT LETTER**

*[To Complainant and Respondent(s)]*

#### **FORMAL HARASSMENT INVESTIGATION**

1. I have been appointed as the Harassment Investigation Officer (HIO) to investigate a formal complaint of harassment made (*by you/against you*). I am writing to explain how the investigation will be conducted.
2. I was appointed by (*name of the Deciding Officer*), the Deciding Officer, to carry out this investigation. I will begin by interviewing the Complainant, then the Respondent(s) (i.e. the person(s) against whom the complaint is made) and any witnesses. Interviews will be arranged as soon as possible and dates/timings will be confirmed by letter. You are entitled to be accompanied by an Assisting Officer during the interview, though that person cannot be anyone directly involved in the complaint – for example, someone who is likely to be called upon as a witness. Potential candidates for Assisting Officers are described in JSP 763 (The MOD Bullying & Harassment Complaints Procedure) and further guidance may be obtained from the unit EDA/DBS.
3. It would be very helpful if I could be informed now of details of any witnesses whom you would wish me to interview, so that arrangements can be made.
4. Harassment investigations are often complex and take time, but it is my intention to start as soon as possible, as I am required to submit the Final Investigation Report to the Deciding Officer by (*dd/mm/yy*). The Initial Investigation Report will be disclosed to both Complainant and Respondent(s) for comment. The Final Investigation report will be disclosed for information only.
5. If you have any questions about the process to be followed, you should initially consult your Assisting Officer, an EDA, or JSP 763. I will be happy to answer any remaining questions you may have about the overall process, but will not be able to discuss the complaint itself with you prior to the formal interview.

## **APPENDIX 2 TO ANNEX N**

### **LETTER TO ARRANGE AN INTERVIEW WITH THE COMPLAINANT**

(Classified Protect - Staff)

#### **TITLE**

Reference:

#### *A. (initial contact letter details)*

1. Reference A advised you of my appointment as the HIO to investigate your Formal Complaint of harassment against (*name of Respondent(s)*). Information obtained during the investigation will be treated on a strictly “need to know” basis and in accordance with the Data Protection Act 1998. The Initial Investigation Report will be disclosed to you and the Respondent(s) for comment before my Final Investigation Report is submitted to the Deciding Officer. You will also receive a copy of the final investigation Report.

2. The role of the HIO is to establish the facts of the complaint and to report to the Deciding Officer, who will then decide on the balance of probabilities<sup>63</sup> whether your complaint is upheld and what further action is necessary.

*either:*

(For this purpose, I intend to interview you at (*time/date/place*). If, for any reason, you are unable to be present, you should inform me immediately by telephone, so that an alternative date and/or venue can be arranged).

*or:*

(I will obviously need to interview you as soon as possible. I would be grateful, therefore, if you would contact me to arrange a suitable date, time and place).

3. You are entitled to have someone accompany you during the interview, provided that they are not likely to be called as a witness in the course of investigation of the complaint, or are directly involved in the complaint itself. Potential candidates for individuals to accompany you during your interview can be advised by a unit Equality and Diversity Adviser (EDA)<sup>64</sup>.

4. The purpose of the interview will be to establish, in detail, the events leading to, and circumstances surrounding, your complaint. The content of the interview will be summarised in an interview record which you will have an opportunity to examine and agree (or, if necessary, propose amendments to) before signing. The agreed and signed record will be disclosed to the Respondent(s) prior to their interview.

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<sup>63</sup> Explanation of this, and other principles and processes, should be sought from your AO.

<sup>64</sup> Civilians can seek advice from DBS.

5. Other personnel who may have witnessed the alleged events, or have other relevant evidence to offer, will also be interviewed, including any witnesses whom you have nominated. It is essential that you do not discuss any aspect of the investigation with any witnesses or Respondent(s), as this may be seen as attempting to influence the outcome. You should also be aware that retaliating against anyone connected with the complaint, if upheld, and which is found to have resulted from the making of the complaint, would be viewed as victimisation and dealt with accordingly.

## **APPENDIX 3 TO ANNEX N**

### **LETTER TO ARRANGE AN INTERVIEW WITH A RESPONDENT**

(Classified Protect – Staff)

#### **TITLE**

Reference:

#### *A. (initial contact letter details)*

1. Reference A advised you of my appointment as the Harassment Investigation Officer (HIO) to investigate the Formal complaint of bullying/harassment against you made by (*Complainant's name*). Information obtained during the investigation will be treated on a strictly "need to know" basis and in accordance with the Data Protection Act 1998. The preliminary results of the investigation will be disclosed to you and the Complainant for comment before submission of my Final Investigation Report to the Deciding Officer.

2. My role is to establish the facts of the complaint and to report to the Deciding Officer, who will then decide on the balance of probabilities<sup>65</sup> whether the complaint against you is upheld and what further action is necessary.

*either:*

(For this purpose, I intend to interview you at (*time/date/place*). If, for any reason, you are unable to be present, you should inform me immediately by telephone so that an alternative date and/or venue can be arranged).

*or:*

(I will obviously need to interview you as soon as possible. I would be grateful, therefore, if you would contact me to arrange a suitable date, time and place).

3. You are entitled to have someone accompany you during the interview, provided that they are not likely to be called as a witness in the course of investigation of the complaint, or are directly involved in the complaint itself. You and any AO accompanying you during your interview may be advised by a unit Equality and Diversity Adviser (EDA)<sup>66</sup>.

4. The purpose of the interview will be to establish, in detail, your response to the allegations made in the complaint. The content of the interview will be summarised in an interview record which you will have an opportunity to examine and agree (or, if necessary, propose amendments to) before signing. The agreed and signed record will be disclosed to the Complainant as part of the Initial Investigation Report.

5. Other personnel who may have witnessed the alleged events, or have other relevant evidence to offer, will be interviewed, including any witnesses whom you have nominated. It is essential that you do not discuss any aspect of the investigation with any witnesses or the Complainant, as this may be seen as attempting to influence the outcome. You should also be aware that retaliating against anyone connected with the complaint, if proven, and

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<sup>65</sup> Explanation of this, and other principles and processes, should be sought from an EDA, or by reading JSP 763 thoroughly.

<sup>66</sup> Civilians can seek advice from DBS.

which is found to have resulted from the making of the complaint, would be viewed as victimisation, and dealt with accordingly.

## **APPENDIX 4 TO ANNEX N**

### **LETTER TO ARRANGE INTERVIEWS WITH A WITNESS**

(Classified Protect - Staff)

#### **TITLE**

1. In accordance with JSP 763 (the MOD Bullying and Harassment Complaints Procedures), I have been assigned by (*Deciding Officer's name*) who is the Deciding Officer, to conduct an independent investigation of a formal complaint of bullying/harassment which has been made by (*Complainant's name*), the Complainant, against (*name(s) of Respondent(s)*), the Respondent(s). In this connection, your name has been mentioned in confidence as a potential witness to the incident(s) cited in the complaint.

2. My role is to establish the facts of the complaint and to report to the Deciding Officer, who will then decide on the balance of probabilities<sup>67</sup> whether the complaint is upheld and what, if any, further action is necessary. Any information obtained during the investigation will be treated on a strictly "need to know" basis and in accordance with the Data Protection Act 1998. All relevant evidence arising from the investigation will be disclosed to the Complainant and Respondent(s) for comment.

*either:*

(For this purpose, I intend to interview you at (*time/date/place*). If, for any reason, you are unable to be present, you should inform me immediately by telephone, so that an alternative date and/or venue can be arranged.

*or:*

(I will obviously need to interview you as soon as possible. I should be grateful, therefore, if you would contact me to arrange a suitable date, time and place).

3. The purpose of the interview will be to establish, in detail, your account of the incident(s) which you are said to have witnessed, and any other information which may be relevant to the complaint. The content of the interview will be summarised in an interview record, which you will have an opportunity to examine and agree (or, if necessary, propose amendments to) before signing.

4. You are entitled to have someone accompany you during the interview, provided that they are not likely to be called as a witness in the course of investigation of the complaint, or are directly involved in the complaint itself. Potential candidates for individuals to accompany you during your interview can be advised by a unit Equality and Diversity Adviser (EDA)<sup>68</sup>.

5. Other personnel who may have witnessed the alleged incident(s), or who may have other relevant evidence to offer, will be interviewed and it is essential that you do not discuss any aspect of the investigation with anyone, as this may be seen as attempting to influence the outcome. You should also be aware that retaliating against anyone connected with the complaint, if proven, and which is found to have resulted from the making of the complaint, would be viewed as victimisation and dealt with accordingly.

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<sup>67</sup> Explanation of this, and other principles and processes, should be sought from an EDA, or by reading JSP 763 thoroughly

<sup>68</sup> Civilians can seek advice from DBS.

## **APPENDIX 5 TO ANNEX N**

### **INTERVIEW POINTS AND QUESTIONING TECHNIQUES**

1. Opening remarks are vitally important to set the scene and allow the interviewee to relax as much as possible and adapt to the environment.
2. To ensure consistency, and that the necessary points are covered, a Harassment Investigating Officer should begin by using the following basic narrative by way of introduction; it should be adapted as appropriate for each interviewee:

“Good \_\_\_\_\_. My name is \_\_\_\_\_ and I have been appointed as the Harassment Investigation Officer by \_\_\_\_\_, the Deciding Officer, to investigate the Complaint made by \_\_\_\_\_ against \_\_\_\_\_. This interview, and any other interviews associated with this Complaint, will be conducted in accordance with the procedures laid down in JSP 763, The MOD Bullying and Harassment Complaints Procedures. The purpose of the interview is to determine the facts/circumstances associated with the complaint.

I would like to point out from the outset that I take a completely impartial role in this investigation. I may need to cross-check specific points raised during interviews with yourself and others.

This investigation is confidential and consequently I request that you do not discuss the contents of this interview, or any other aspect of the investigation, with anyone else. Disclosure of information obtained will be strictly on a “need to know” basis. In effect, this means that witness records will be disclosed to both the Complainant and the Respondent(s) with the Initial Investigation Report for comment, before submission of the Final Report to the Deciding Officer.”

#### **For Complainant and Respondent(s) only:**

**When the investigation is complete, all relevant evidence and my Initial Investigation Report will be disclosed to you and the Complainant/Respondent(s) for comment, before submission of the Final Investigation Report to the DO. You will also receive a copy of the final report.**

The DO’s role, on receipt of my report, will be to judge, on the balance of probabilities (inquire here if the interviewee understands what this means), if the complaint is upheld and to assess the need for any further action. I will be taking notes during the interview from which a formal narrative record will be made. You will have the opportunity to comment on my draft record, before you are asked to sign and date a final typed interview record.

**Note: Alternatively, introduce your note-taker if you have one, explain their role, and emphasise their impartiality and confidentiality**

We may take a short break, if necessary, at any time during the interview.

#### **Either,**

Before proceeding, I would like to confirm the identity of your AO/the person who is accompanying you during your interview, and also that they have no direct or personal involvement with the complaint. Also, I expect you, as the interviewee, to do most of the



talking during the interview. Please be aware that your AO/the person accompanying you will not be permitted to answer any questions on your behalf.

**Or (Complainant/Respondent(s) only):**

I would like to remind you that you have an entitlement to be accompanied by an AO. Do you need time to make arrangements for one to attend, or are you happy to proceed without one?<sup>69</sup>

Do you have any questions or concerns?

Are you happy to proceed with the interview?

3. Each interview will develop in different ways, but the HIO should:
  - a. ensure that the interviewee does most of the talking;
  - b. show that they (the HIO) are listening carefully and attentively;
  - c. focus on reactions, responses and feelings, as well as matters of fact;
  - d. not be pressured into filling the gaps in the conversation. Periods of silence, used carefully, can encourage the interviewee to speak. Allow time for the interviewee to vent emotions/feelings;
  - e. use 'open' questions, e.g. commence with 'Tell me about' ... or 'How/What/Why/Which/When/Who...' On occasion, 'closed' questions, requiring "yes" or "no" answers, will nevertheless be needed to clarify points of detail;
  - f. discourage the interviewee from offering 'hearsay' (i.e. third party) evidence; the interviewee's evidence should be confined to their own observations/experiences;
  - g. not fall into the trap of 'leading' the interviewee into giving certain answers, or put words into the interviewee's mouth, or draw inappropriate inferences/conclusions from their responses;
  - h. paraphrase the interviewee's statements to confirm an understanding of what has been said, and invite the interviewee to confirm that understanding;
  - i. not allow the interviewee to stray too far from the point; link the questions back to the relevant issues;
  - j. if they believe the interviewee has misunderstood a question, or is being deliberately evasive, try to ask the question in a different way, or return to the point later;
  - k. if the interviewee is embarrassed or inhibited in describing incidents, or someone's behaviour, or their own personal circumstances, reassure them of the confidentiality of the interview, and then sensitively clarify what is being said to remove all suggestion of euphemism, vagueness or ambiguity;

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<sup>69</sup> If the interviewee chooses not to be accompanied by an AO, then this fact should be established at the very outset of the interview and recorded.

- l. keep control of the situation; if the interviewee becomes distressed, wait for them to regain composure before continuing the interview. Take short breaks, as necessary, to reduce the stress on the interviewee, or to give them time to think/reflect;
- m. guard against giving the impression, in either words or body language, that they believe or disbelieve the interviewee's statements. This might lead to inferences being drawn about the outcome of the investigation and undermine the confidence of the interviewee in the impartiality of the interview/investigation process;
- n. show empathy with the interviewee, but avoid overt sympathy, which might give the impression of partiality. In particular, beware of attempts to get the HIO to express personal opinions about the behaviour under discussion – e.g. "Don't you think that was a horrible thing to do?"; and,
- o. take mental note of any personal prejudices that the interviewee may infer/display outwardly, but do not react in any way; an HIO must show impartiality at all times.



**APPENDIX 7 TO ANNEX N**

**INTERVIEW RECORD COVERING LETTER**

(Classified Protect – Staff)

**TITLE**

1. A record of my investigatory interview with you held on (*dd/mm/yy*) is at Enclosure1. It should be checked for accuracy and, when you are content, signed and dated.
2. Should you wish to propose changes, or contest the record, the document should be returned, together with your comments – or telephone contact made – so that your proposals can be considered.
3. In either case, you are to respond by (*dd/mm/yy*), so that the investigation can be completed and the Initial Investigation Report produced.
4. You are reminded that you must not disclose the interview record to, or discuss it (or any other aspect of this investigation) with anybody not present at the interview.

Signed:

Date:

.....

Harassment Investigation Officer

Enclosure:

1. Record of interview with (*name/details*).

## **APPENDIX 8 TO ANNEX N**

### **HARASSMENT INVESTIGATION REPORT**

*(Classified Protect – Management)*

#### **TITLE**

#### **BACKGROUND**

The Harassment Investigating Officer's Investigation Report into a formal complaint of bullying/harassment by (*Complainant*) against (*Respondent(s)*) is forwarded at Enclosure 1.

(It is often appropriate to include an explanation of the key terms used in the report – e.g. definition of harassment as at Annex A, principle of balance of probabilities etc).

#### **INVESTIGATION**

The investigation was conducted at (*location(s)*) over the period (*dates*). Following an initial briefing by (*Deciding Officer*), I received the papers listed at (*Annex A to Enclosure 1*) and during the course of the investigation, I collated/generated the papers listed at (*Annex B to Enclosure 1*).

Personnel interviewed in connection with the complaint are listed at (*Annex C to Enclosure 1*)

#### **INTERVIEWS**

The interviews were held in private in/at (*location(s)*). Each interviewee was clearly informed of: the purpose of the interview; the HIO's Terms of Reference; that a formal record of the interview would be prepared, which they would be asked to agree and sign; and that the record of interview and the Initial Investigation Report would be subject to disclosure to the Complainant and Respondent(s) in due course.

The signed interview statements, together with working notes are at:

- a. (name) - (*Annex D*)
- b. etc

It is confirmed that all relevant information established during the investigation has been disclosed to the Complainant and Respondent(s) (*detail dates of disclosure, refer to any responses, any resulting supplementary interviews and the location of responses and interview records in the report*).

#### **EXTRAORDINARY FACTORS**

*(Include any factors such as variations from the laid down investigation procedures, extensions of timescales etc., together with justification.)*

#### **FINDINGS**

**(SUMMARY OF THE SPECIFIC INCIDENT(S) SET OUT BY THE COMPLAINANT, AND THE REDRESS REQUESTED)**

(SUMMARY OF THE RESPONSE BY THE RESPONDENT(S) TO INCIDENT(S) CITED IN THE COMPLAINT)

(SUMMARY FOR EACH INCIDENT OF:

- CORROBORATIVE EVIDENCE
- NON-CORROBORATIVE EVIDENCE)

The rest of the report should comprise a balanced judgement of the evidence in relation to the complaint in terms of its considered validity.

**It must not include the HIO's recommendations or opinions.**

**APPENDIX 9 TO ANNEX N**

**REPORT DISCLOSURE .**

(Classified Protect – Staff)

To:

Complainant

Respondent(s)

TITLE

1. The interviewing stage of the investigation into the formal complaint of bullying or harassment made (by/against) you (against/by) has been completed and the Initial Investigation Report (Enclosure 1) prepared. You should now read it extremely carefully in order to satisfy yourself that all elements of the complaint have been satisfactorily covered in the investigation, and all relevant witnesses interviewed. There may be aspects of the evidence established which cause you some concern, but they cannot be examined in more detail unless there is additional evidence to support your view. You are reminded that the report (or any other aspect of this investigation) should not be disclosed to anyone else without first consulting me.

2. You might find reviewing the report stressful, in which case you are reminded that advice and support is available from (e.g. Welfare Officer/ Assisting Adviser, as appropriate).

3. To minimise any delay in the submission of the final report to the Deciding Officer, the check form below should be signed (with written comments as necessary by... (a date equivalent to 5 working days from the date of disclosure)).

To: [The HIO]

\*I have examined the evidence disclosed to me and have no comments to make. I am content that the investigation has followed JSP 763 procedures.

OR:

\*I have examined the evidence disclosed to me and have the following comments to make relating to the completeness of the investigation and/or the range of witnesses interviewed:

\* *delete as appropriate*

Signed..... Date: .....

## CONSIDERING THE FINAL INVESTIGATION REPORT – GUIDANCE FOR THE DECIDING OFFICER (DO)

### CHECKING THE INTEGRITY OF THE INVESTIGATION

1. The DO, taking expert advice as necessary, should ensure that the Final Investigation Report is complete and that the contents are in order by checking that:
  - a. the investigation has been carried out in accordance with applicable procedures;
  - b. all interview records and supporting documents are attached, with the records signed by the relevant interviewee;
  - c. each allegation covered by the complaint has been explicitly addressed and investigated by the HIO; and,
  - d. the Final Report contains only factual evidence and does not contain any opinions of, or recommendations from, the HIO.
2. The DO should confirm that the HIO has disclosed all relevant evidence and the Initial Report to the parties, and that their responses have been taken into account in completing the Final Report. If the DO is uncertain about, or disagrees with any aspect, these concerns must be discussed promptly with the HIO.
3. Within 5 working days of receiving the Final Report, the DO should inform the HIO in writing that:
  - a. the Final Report is satisfactory; or,
  - b. further investigation is required (stating exactly into what and by when); or,
  - c. exceptionally, the report is not accepted, stating fully the reasons why. Expert/higher authority<sup>70</sup> advice must be sought before reaching this conclusion.

### ANALYSING THE EVIDENCE

4. **Bullying and Harassment Complaints.** Before considering the evidence in the report, the DO should be absolutely clear about the definitions of bullying and harassment (see Annex A).
5. For each aspect of the complaint, the DO must assess if there is sufficient evidence to reach a decision. In doing so, the factors to be considered include:
  - a. The standard of proof required is on the “balance of probabilities”, and not “beyond reasonable doubt”. In other words, it is sufficient to establish that it is **more likely than not** that the incident occurred as alleged by the Complainant.

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<sup>70</sup> Civilians should seek advice from DBS.



b. It is the impact of the behaviour on the Complainant, not the Respondent's intent, which determines whether harassment has occurred. Although the behaviour complained of may be widespread or accepted by the majority, this does not legitimise, or excuse it.

c. Individual incidents may seem minor or even trivial in themselves, but may still have a cumulative effect on the Complainant and qualify as harassment when viewed in their entirety.

d. A witness's evidence of the Complainant's, or a Respondent's, demeanour or actions immediately before or after an alleged incident may be valid, even though the witness did not actually see the incident (in what might have been a series).

e. Witness statements may be biased in favour of a party, distorting the quality of the witnesses' evidence and their credibility. Similarly, where there is evidence to suggest that a witness was reluctant to be interviewed, or was not frank, or withheld information, their credibility may be called into question.

f. Witness statements about the latest in a series of incidents may be extremely accurate. However, if the report covers earlier incidents, care should be taken, as the recollections of all concerned may have become unreliable, or even distorted, over time.

6. In order to disguise or excuse harassment, euphemisms may be used by interviewees:

a. **Applied to the Respondent.** Comments might include:

- (1) has a "forceful", "strong" or "robust" character;
- (2) has an "unfortunate manner";
- (3) does "not suffer fools gladly";
- (4) is not a "people person";
- (5) "it's just his/her way";
- (6) a "hard taskmaster"; or
- (7) one of the "old school".

b. **Applied to the Complainant.** Comments might include:

- (1) "over sensitive";
- (2) "can't take a joke";
- (3) a "natural victim";
- (4) a "(bit of a) loner";
- (5) "not a team player"; or
- (6) has an "attitude problem".

c. **When Applied to the Relationship Between the Parties.** A phrase often used in this case is a “personality clash”. Personnel may not always get on, but this phrase is often used to avoid looking too closely at the reasons underlying the problem and instead attribute it solely to “human nature”.

7. In deciding if the behaviour complained about is bullying, the DO should consider, for example:

a. was it destructive, rather than constructive?

b. did it criticise the person, rather than their mistakes or shortcomings?

c. had the Complainant been publicly humiliated/undermined, rather than privately corrected?

d. did it result in the Complainant feeling degraded, threatened, vulnerable or compromised?

8. The DO must have regard to all the circumstances of the complaint (including, in particular, the perception of the Complainant) before deciding whether the behaviour complained about should reasonably be considered as harassment. The question the DO should ask is, “*would a reasonable person, with the same perception, attitudes and characteristics of the Complainant, regard the behaviour as harassment?*” For example, a particular incident might reasonably be considered harassment where the Complainant is an 18-year-old trainee, but not if they were a SNCO with many years’ service. DOs should seek appropriate advice if further guidance is required.

## ARMED FORCES UNIT EQUALITY AND DIVERSITY LOGS

1. COs/Station Commanders/Heads of Establishment are to maintain standard records of bullying, harassment or discrimination incidents and complaints (both formal and informal) involving MOD Service personnel only, or involving both Service and civilian personnel (but not those involving MoD civilian personnel only, even if they occur on military bases), in order to:

- a. monitor the progress of individual complaints;
- b. check that appropriate follow-up action has been taken;
- c. provide documentary evidence of how a complaint was handled, including mediation if used;
- d. provide evidence for Policy staffs to monitor the extent of harassment in individual units and across the Services and subsequently compile statistics and reports<sup>71</sup>;
- e. inform any necessary remedial action or the award of administrative sanction;
- f. allow COs/Station Commanders/Heads of Establishment to monitor trends; and,
- g. ensure resources are properly targeted.

2. A unit's lead EDA should be the custodian of the E&D Log. The log will be used to record all reported incidents of bullying, harassment or discrimination whether resolved informally (including by the use of mediation) or the subject of a Formal complaint. It should also include a record of all approaches to the EDA by personnel seeking advice. Top Level Budget Holders (TLBHs) of tri-Service organisations, Joint Units, Defence Organisations and Agencies should designate an appropriate representative from each Service represented in their TLB, who will be required to maintain an E&D Complaint Log for personnel of their Service, in accordance with these instructions. These representatives will be required to submit the necessary report to their respective PPOs biannually (paras 9-11 refer), and will be accountable to the TLBH. Civilian complaint records will be maintained by DBS<sup>72</sup>.

3. There will be occasions when a Complainant has reported an incident and sought advice from someone other than the EDA e.g. their line manager, chaplain/padre/OCF, welfare officer, medical officer, etc.<sup>73</sup> All such personnel should be aware of the

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<sup>71</sup> All details of Informal Complaints remain within the unit and only anonymised statistics are forwarded to policy staffs for analysis. However, all details of Formal Complaints are made available to policy staffs, after the complaint has been resolved and all consequent action taken.

<sup>72</sup> Guidance on this will be provided separately via the 'People Portal' on the Defence Intranet.

<sup>73</sup> Complainants should be encouraged to report incidents of harassment to the EDA, even if the parties managed to resolve the matter themselves.

requirement to record the incident in the log and pass completed log sheets to the lead EDA.

## COMPLETION OF THE ARMED FORCES UNIT EQUALITY AND DIVERSITY LOG COMPLAINT OR INCIDENT REPORT FORM

4. Information relevant to any complaint or incident of bullying, harassment or discrimination is to be recorded on the form at Appendix 1, which is a worked example for illustration. A blank template is at Appendix 2.

5. The report form should be completed in ink at the time of interview, be at a minimum classification of 'PROTECTED STAFF' and be kept securely.

6. Guidance on completing the form, which corresponds to its nomenclature, is set out below.

a. **Serial Number.** Each incident/complaint is to be sequentially numbered.

b. **Type of Complaint or Incident.** By referring to the table below, select the alphanumeric code that most closely fits the incident.

<u>(1)</u> <b>INCIDENT</b>	<u>(2)</u> <b>FORMAL</b>	<u>(3)</u> <b>INFORMAL</b>	
		<b>Cat 1</b>	<b>Cat 2</b>
Bullying	1A	2A1	2A2
Harassment	1B	2B1	2B2
Sexual Harassment	1C	2C1	2C2
Sexual Discrimination	1D	2D1	2D2
Racial Harassment	1E	2E1	2E2
Racial Discrimination	1F	2F1	2F2
Sexual Orientation Harassment	1G	2G1	2G2
Sexual Orientation Discrimination	1H	2H1	2H2
Religion or Belief Harassment	1I	2I1	2I2
Religion or Belief Discrimination	1J	2J1	2J2
Other - to be specified in text	1K	2K1	2K2

Note that:

(1) 'Formal' refers to any written complaint to the CO/Senior Line Manager submitted under Service complaint procedures.

(2) 'Informal' refers to any incident which results in the Complainant seeking resolution through the Informal procedure and which is to be classified as:

(i) 'Category 1' – any incident which is serious enough to merit administrative action or censure if admitted or substantiated; or,

(ii) 'Category 2' – all other incidents.

(3) 'Other' should be qualified by as much detail as is possible

c. **Date(s) of Interview.** The date(s) on which the Complainant was interviewed by the EDA in relation to the incident/complaint.

d. **Date of Complaint.** The date when the original complaint was signed by the Complainant.

e. **Date of Incident** (if different from the above). If there was more than one incident this should be the date of the last of them, and dates of earlier incidents should be recorded in the notes at (g).

f. **Personnel Involved.** The name, Service, number, rank and gender of the Complainant and the Respondent(s), and whether they consider they are a member of any particular minority group. Also, the age/date of birth of the Complainant highlighting whether U18 or not and the name, Service, number and rank of any witnesses.

g. **Nature of Complaint and Summary.** This should be brief but detailed enough to establish the facts. Where possible, what the Complainant alleges was said or done by the Respondent(s) should be described in the Complainant's own words.

h. **Redress Sought.** This should be a clear, unambiguous and realistic statement of the outcome that the Complainant seeks.

i. **Advice Given.** Provide full and accurate details of the advice given to the Complainant, including the names of those who gave the advice, who could be MOD friends or colleagues and/or Assisting Officers.

j. **Action/Conclusion.** Provide full and accurate details of how the complaint/incident was dealt with, and the outcome (including any sanctions awarded), and make clear, where appropriate, those allegations which were accepted and which were not, due to a lack of evidence. Full details of any mediation sessions, including dates, should be recorded here.

k. **Signatures.** The EDA and Complainant should sign and date the form, to support the accuracy of the log.

## **INCIDENT/COMPLAINT FOLLOW-UP REPORT**

7. The EDA should ensure that a follow-up report is completed at least 4 weeks after informally resolving the complaint or, if it is a Formal complaint, communicating the outcome to the Complainant. The EDA is to check whether the Complainant is satisfied with the outcome, and if they have been the subject of any victimisation or further harassment. Details should be recorded of any subsequent developments, including administrative or disciplinary/misconduct action taken against the Respondent(s) or the reasons for not taking such action, and lessons that have been identified. A template is at Appendix 3

## **EXECUTIVE SUMMARY SHEET**

8. An executive summary sheet is to be completed by the EDA and submitted to the CO/Station Commander/Head of Establishment at the end of each month for their review. The names or other information identifying the Complainant or Respondent(s) are not to be recorded, merely a brief description of the incident and its status. A template is at Appendix 4. The CO should take action to address any issues arising and progress complaints as necessary

## **ARMED FORCES EQUALITY AND DIVERSITY BI-ANNUAL RETURN**

9. Bi-annual reports (30 Jun and 31 Dec), including nil returns, are to be made by all units. These are to include a numerical breakdown of incidents/complaints corresponding to the categories in the table at paragraph 6(b).

10. In addition, for each type of complaint/incident (as listed at 6(b)(1)) the report should state:

- a. the number of complaints that were upheld and what disciplinary/misconduct, administrative or other action was taken to deal with the Respondent(s);
- b. the number resolved by mediation;
- c. the number of complaints not upheld;
- d. whether follow-up action was taken (in accordance with para 7 above) and if not, why;
- e. the number of cases ongoing (and, if passed on to another unit, give details);
- f. in the case of the option 'other', having been chosen, a breakdown of what the incident/complaint comprised;
- g. timescales in relation to complaint investigation and management.

11. Reports are to be rendered bi-annually to:

- a. **Naval Service.** FLEET-DNPS PPOL EandD SO2A.
- b. **Army.** SO1 Diversity, Employment Branch, DM(A).
- c. **RAF.** SO1 Air Personnel Casework, HQ AIR

12. Single-Service personnel E&D policy staffs are to consolidate unit returns and provide a report to DCDS(Pers) biannually as at 30 Jun and 31 Dec using the same criteria. In addition, the report should include, for each type of complaint/incident listed at 6(b)(1), the number of Employment Tribunal Cases concluded during the period together with details of the outcomes.

## **FURTHER GUIDANCE**

13. Further information and advice may be obtained from the following Equality and Diversity Policy staffs:

Naval Service: NS: FLEET-DNPS PPOL EandD SO1 (or SO2A or B) - Tel: 02392 6285706; Mil: 93832 5706

Army: DM(A) SO1 Diversity - Tel: 01980 615350; Mil: 94344 5350

RAF: Pers Pol, SO2 E&D – Tel: 01494 495046; Mil: 95221 5046

### **MANAGEMENT CHECKS**

14. Management checks will be made on the maintenance of Unit E&D Logs and reports via single-Service staff and other inspections.

### **DATA PROTECTION ACT**

15. EDAs and others using the Unit E&D Log must ensure that they comply with the requirements of the Data Protection Act 1998.

### **RETENTION/DISPOSAL OF LOG SHEETS**

16. Records are to be retained within a unit/establishment for a period of 10 years (details of the investigation and outcome are to be kept for 100 years) and disposed of in accordance with JSP 441.

**APPENDIX 1 TO ANNEX P**

PROTECT STAFF WHEN COMPLETE

**ARMED FORCES UNIT EQUALITY AND DIVERSITY COMPLAINT LOG/INCIDENT RECORD – EXAMPLE**

Serial No:	(a) 001			
Type of Complaint:	(b) Sexual Harassment	Code: 1C		
Date of Interview:	(c) 23 Mar 05			
Date of Complaint:	(d) 22 Mar 05	Date of Incident (If different):	(e) from mid Jan 05 to present	
Complainant(f):	Name, Service and number Andrea Parks	Rank/Rate/DOB AB Logs(Pers)	Gender Female	Does the person consider that they belong to a minority group? (Y/N) N
Respondent*	Name, Service and number Joe Granger	Rank/Rate LLogs(Pers)	Gender Male	Does the person consider that they belong to a minority group? (Y/N) N
Witness(es) (if applicable)	Name, Service and numbers Slater Blacklock Symonds Williams	Rank/rate CPOLogs(Pers) ABLogs(Pers) AB Logs(Pers) ET(ME)		
Nature of Complaint and Summary	(g) A female logistician reported that she was suffering sexual harassment and humiliation. This took the form of vindictive remarks, and innuendo derogatory to women. She was the target of personal, abusive remarks and sexually explicit gestures (quote actual words spoken and specific actions that offended).			
Redress sought by Complainant	(h) ABLogs Parks wants the sexual harassment to cease and the Respondent to know that what he has done is wrong, and be educated regarding the proper standards of behaviour. She would like him to know the damage he has caused and show remorse for his actions but understands that the CO cannot compel the Respondent to apologise.			



Advice given:	<p>(i)          ABLogs Parks was advised on the procedures and given an explanation of how to lodge a formal complaint. Advice was offered on what she might ask for as a redress, based on a satisfactory outcome to the complaint. She was referred to her Divisional Officer for assistance in compiling her complaint.          Need to outline all options available to Complainant in every case, including redress and advice on who to go to for help with formulating complaint if necessary.</p>					
Action /Conclusion:	<p>(j)          ABLogs Parks opted for the formal route. An EO investigation was initiated. During the EO investigation a likely breach of the NDA was discovered. The EO investigation was suspended while a disciplinary investigation was conducted.</p>					
Signatures: (k)						
EDA	D Cantello Lt Cdr, RN	Complainant:	Andrea Parks AB Logs(Pers)	Superior officer (if Applicable)	DB Harrie Lt, RN DLSSO	
Date:	23 03 05	Date:	23 03 05	Date:	23 03 05	
Mediator(s)				Date:		

**APPENDIX 2 TO ANNEX P**

PROTECT STAFF WHEN COMPLETE

**ARMED FORCES EQUALITY AND DIVERSITY COMPLAINT/INCIDENT RECORD –  
BLANK COPY**

Serial No:	(a)				
Type of Complaint:	(b)			Code:	
Date of Interview:	(c)				
Date of Complaint:	(d)			Date of Incident (If different):	(e)
Complainant(f):	Name, Service and number	Rank/Rate/DOB	Gender	Does the person consider that they belong to a minority group? (Y/N)	
Respondent*	Name, Service and number	Rank/Rate	Gender	Does the person consider that they belong to a minority group? (Y/N)	
Witness(es) (if applicable)	Name, Service and numbers	Rank/rate			
Nature of Complaint and Summary	(g)				
Redress sought by Complainant	(h)				
Advice given:	(i)				
	<i>Need to outline all options available to Complainant in every case, including redress and advice on who to go to for help with formulating complaint if necessary.</i>				
Action /Conclusion:	(j)				
Signatures: (k)					
EDA:		Complainant:		Superior officer (if Applicable)	
Date:		Date:		Date:	
Mediator(s)				Date:	

## **APPENDIX 3 TO ANNEX P**

### PROTECT STAFF WHEN COMPLETE

#### **COMPLAINT/INCIDENT FOLLOW-UP REPORT**

To be completed 4 weeks after informally resolving the complaint or, in the case of a formal complaint, communicating the outcome to the Complainant.

Serial:

Type of Complaint:

Code:

Date of Follow-up Interview:

Is the Complainant satisfied with the outcome of the complaint and if not, why not? (If the Complainant has been bullied or harassed again, or victimised, what has been, or is being done about it?)

What administrative or disciplinary/misconduct action was taken against the Respondent(s) and when; or, if no action was taken, why?

All Incidents:

What lessons have been identified by the unit, and in which category (e.g. training, leadership, process, etc) have these been placed? (If something could have been done to prevent the harassment or bullying from occurring in the first place, why was this not done?)

Formal Complaints Only:

Who investigated the complaint? Why?

How long did it take to process the complaint? (If the target turnaround time was exceeded, what were the reasons for the delay, could any delay have been prevented and, if so, how?)

Signatures:

Designated Officer:

Date:

Complainant:

Date:

**APPENDIX 4 TO ANNEX P**

PROTECT STAFF WHEN COMPLETE

**ARMED FORCES UNIT EQUALITY AND DIVERSITY LOG – EXECUTIVE SUMMARY SHEET**

To be completed by the EDA and submitted to the Commanding Officer/Head of Establishment monthly. Names and identifying details of parties to the complaint are not to be recorded on this form.

Serial No.		Type of Complaint		Code	
Brief outline of incident:					
Current Status					
Follow-up	(date)				
Mediation	yes/no				

Serial No.		Type of Complaint		Code	
Brief outline of incident:					
Current Status					
Follow-up	(date)				
Mediation	yes/no				

Serial No.		Type of Complaint		Code	
Brief outline of incident:					
Current Status					
Follow-up	(date)				
Mediation	yes/no				

Serial No.		Type of Complaint		Code	
Brief outline of incident:					
Current Status					
Follow-up	(date)				
Mediation	yes/no				

Signed.....Rank/Rate.....EDA/Unit.....  
 Signed.....Rank.....CO/Unit.....

**LIST OF ABBREVIATIONS**

AF	Armed Forces
AO	Assisting Officer
AWS	Army Welfare Service
CCM	Civilian Chaplain to the Military
CO	Commanding Officer
CofC	Chain of Command
DBS	Defence Business Services
DCP	Director Civilian Personnel
DO	Deciding Officer
E&D	Equality and Diversity
EDA	Equality and Diversity Adviser
EDO	Equality and Diversity Officer
EOA	Equal Opportunities Adviser (superseded by EDA)
EOIT	Equal Opportunities Investigation Team
EWS	Employee Wellbeing Service
GP	General Practitioner
HIO	Harassment Investigation Officer
HRMS	Human Resources Management System
JEDTC	Joint Equality and Diversity Training Centre
JPA	Joint Personnel Administration
JSP	Joint Service Publication
LM	Line Manager
MOD	Ministry of Defence
MDP	Ministry of Defence Police
NFA	No Further Action
NPFS	Naval Personal Family Service
NS	Naval Service [RN, RM & QARNNS]
OCF	Officiating Chaplain to the Forces
PPPA	People, Pay and Pensions Agency
RMW	Royal Marines Welfare Service
SCC	Service Complaints Commissioner
SCP	Service Complaints Panel
SSAFA	Soldiers' Sailors' and Airmen's Families' Association