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Defence Committee

Armed Forces (Service Complaints and Financial Assistance) Bill

Fifth Report of Session 2014–15

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to the report*

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The Defence Committee

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Summary

The new Service Complaints Ombudsman will improve the service complaints process. The Bill will strengthen independent oversight and streamline the complaints process. But it does not go far enough.

More steps must be taken to ensure that the Ombudsman is independent and clearly seen to be independent. Improvements are needed to the appointment process, and to the powers they are given to set their own agenda and to identify and highlight shortcomings. A strong independent Service Complaints Ombudsman will not undermine the chain of command, as some Service Chiefs have argued. Instead, it will build confidence in the chain of command as Service personnel see that their commanders take seriously their duty of care and are willing to rectify mistakes.

We have proposed a set of amendments to the Bill as follows:

1. Reinforcing the independence of the Ombudsman by excluding recently retired members of the Armed Forces;
2. Introducing a non-renewable term of appointment of between five and seven years;
3. Ensuring independent scrutiny and input into the regulations for making a complaint;
4. Coordinating the complaints procedures of the three armed services and improving the complaints record system;
5. Expanding the powers of the Ombudsman to investigate not simply 'maladministration' and injustice but also the substance of the complaint;
6. Clarifying the Ombudsman's powers over procedural rules in investigations;
7. Limiting the power of the Secretary of State to keep conclusions of complaints confidential;
8. Making the Ombudsman's recommendations binding on the Defence Council; and
9. Allowing the Ombudsman to investigate thematic issues.

We have also called for clarification of structures for independent oversight of the Service Police.

These amendments will strengthen the Ombudsman and increase transparency, accountability and predictability throughout the complaints system. They will further enshrine the independence of the Ombudsman, rebuild the confidence of Armed Forces personnel in the system, and equip the Ombudsman with a suite of powers to ensure that they could act as a custodian of a complaints system, which is truly efficient, effective and fair. The UK's Armed Forces deserve no less.

1 Introduction

1. In 2005, the Defence Committee recommended the establishment of an independent military commission for the consideration of Service complaints.¹ The Ministry of Defence (MoD) consistently resisted this recommendation on the grounds that independent oversight and regulatory powers could undermine confidence in the chain of command and, therefore, operational effectiveness. But the Armed Forces Act 2006 (which came into effect on 1 January 2008) eventually accepted the argument for external oversight and established the office of the Service Complaints Commissioner. This introduced for the first time an independent element to the process and a point of contact outside the chain of command. This replaced the previously separate single Service legislation and processes.

2. The 2006 Act allowed any serving or former member of the Armed Forces to contact the Commissioner independently. Dr Susan Atkins took up her post as the first Service Complaints Commissioner on 1 January 2008. The Commissioner has two functions:

- To provide an alternative point of contact for Service personnel, or someone acting on their behalf, to raise allegations of bullying, harassment, discrimination or other improper behaviour directly with the chain of command; and
- To provide independent assurance on the fairness, effectiveness and efficiency of the service complaints system.

3. Since, 2008, there have been persistent criticisms of the system, most notably from the Service Complaints Commissioner herself. Dr Atkins has refused in each of her subsequent Annual Reports to give the Secretary of State for Defence and Parliament “an assurance that the Service complaints system is working efficiently, effectively or fairly”.²

4. The Defence Committee’s latest report on the work of the Service Complaints Commissioner, published in February 2013,³ supported the criticism made by the Commissioner. The report argued that the role fell far short of what was required and called for it to be strengthened to one of an Armed Forces Ombudsman and for the Service complaints system itself to be simplified.

5. In its response to our report in 2013, the MoD accepted that the complaints system was not working consistently well, and said it was open to ideas for further reform which “would promote a system which is fair, effective, efficient and quicker to operate”.⁴ It

1 Defence Committee, Third Report of Session 2004-05, [Duty of Care](#), HC 63, paras 423-427

2 Service Complaints Commissioner for the Armed Forces, [Annual Report 2013](#), March 2014, p 4

3 Defence Committee, Eighth Report of Session 2012-13, [The work of the Service Complaints Commissioner for the Armed Forces](#), HC 720

4 Defence Committee, Fourth Special Report of Session 2013-14, [The work of the Service Complaints Commissioner for the Armed Forces: Government’s and Commissioner’s Responses to the Committee’s Eighth Report of Session 2012-13](#), HC 505, p 8

remained concerned, however, to maintain the primacy of the chain of command which it saw as fundamental to Armed Forces morale and discipline.⁵

6. In March 2014, the Government announced plans to establish a new Service Complaints Ombudsman in place of the Service Complaints Commissioner and to reform the complaints system.⁶ On 5 June 2014, the Armed Forces (Service Complaints and Financial Assistance) Bill was introduced in the House of Lords to provide the legal basis for these proposed changes.⁷

7. On 26 June 2014, we announced a short inquiry to examine the proposals. We were particularly interested in:

- The method of appointment of the proposed Service Complaints Ombudsman;
- The proposed powers of the Service Complaints Ombudsman and whether these were adequate;
- The effectiveness of the proposed changes to the Service Complaints system; and
- What additional measures should be included in the Bill.

8. We took oral evidence on the Bill from Lieutenant Colonel (ret'd) Jeremy Field and Reverend Nicholas Mercer, both former Army Officers with experience of the Service complaints system, Sara Ogilvie, Policy Officer, Liberty, Anna Soubry MP, Minister for Defence Personnel, Welfare and Veterans, Gavin Barlow, the MoD's Director of Service Personnel Policy, representatives from each of the Services, and the Service Complaints Commissioner. We are grateful to all those who gave oral evidence and submitted written evidence, particularly given the tight timescales for our inquiry. As a result of our inquiry, we have proposed a number of amendments to the Bill which we set out in an Annex to this Report.

5 Defence Committee, Fourth Special Report of Session 2013-14, [The work of the Service Complaints Commissioner for the Armed Forces: Government's and Commissioner's Responses to the Committee's Eighth Report of Session 2012-13](#), HC 505, p 8

6 HC Deb, 13 March 2014, [cols 35-36WS](#)

7 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords] [Bill 003 (2014-15)]

2 The Bill's provisions

Overview of the Bill

9. Clause 1 of the Bill creates the office of the Service Complaints Ombudsman, and sets out the eligibility criteria and method of appointment.⁸ Clause 2 sets out the framework for the redress of Service complaints, and introduces a revised and shortened appeals process. It also sets out the Ombudsman's powers.⁹ The detail of the complaints procedure will be largely set out in subsequent regulations made by the Defence Council and the Secretary of State for Defence.

10. The Bill, however, has created a complaints system which still falls short of best practice in other European Countries.¹⁰ And it leaves significant uncertainty over the relationship between the power of the Ombudsman and that of the Military commanders.¹¹ The Service Complaints Commissioner has argued that these are reasonable compromises—providing greater transparency and accountability, while leaving a constructive role for Commanders in addressing complaints,¹² and ensuring that the proposed system had the support of the Service Chiefs.¹³ However, she also warned that if the Services failed “to rise to the challenge” stronger powers might need to be granted to the Ombudsman “to investigate the substance of individual complaints”.¹⁴

11. Our report proposes a number of amendments to the Bill which we believe will improve the Service complaints system while still preserving the integrity of the chain of command.

Clause 1: Creation of the office of the Service Complaints Ombudsman

Method of appointment and eligibility

12. Clause 1 of the Bill deals with who can become the Service Complaints Ombudsman and how he or she would be appointed.¹⁵ This is vital because institutional and operational independence are the key criteria for an Ombudsman.¹⁶ As Reverend Nicholas Mercer argued the test of institutional independence should include who made the appointment,

8 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 1 [Bill 003 (2014–15)]

9 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 2 [Bill 003 (2014–15)]

10 Q1, Q41 and Q65

11 Q2

12 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

13 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

14 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

15 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 1

16 The Ombudsman Association ([ARM003](#)) paras 7–8; Q4

and whether they were regarded as institutionally independent from the chain of command.¹⁷

13. The Bill provides for the new Service Complaints Ombudsman to be appointed by the Queen on the recommendation of the Secretary of State.¹⁸ Serving members of the regular or reserve forces and current civil servants are excluded from appointment to the post.¹⁹ During the Bill's committee stage in the House of Lords, Lord Astor, Parliamentary Under-Secretary of State, Ministry of Defence (MoD), accepted that the principles of impartiality and professionalism were characteristics that everyone would expect of the postholder.²⁰ He argued that the Ombudsman "must also be demonstrably independent of those whom they seek to hold to account for the way in which complaints have been handled".²¹ But he felt that this was adequately achieved through four features of the current system.

- i) The Ombudsman is outside the chain of command and has access to Ministers when the Ombudsman considers its necessary.
- ii) The Ombudsman will also be able to approach the chain of command at any level and on any issue, should there be a need to do so.
- iii) The Ombudsman will continue to be accommodated outside the defence estate to reinforce the independence of the role and the Ombudsman will recruit its own staff in line with prevailing Civil Service recruitment guidelines.
- iv) The Bill includes a new provision as a further mark of the role's independence and security of the postholder's tenure, in that the postholder's appointment will be subject to appointment by Her Majesty.²²

14. Lord Astor also clarified that, as with the current post of Service Complaints Commissioner, the candidate for Ombudsman selected by the interview panel and approved by the Secretary of State would appear before the Defence Committee for a pre-appointment hearing.²³ Anna Soubry MP, Minister for Defence Personnel, Welfare and Veterans, MoD, noted that, if the Committee had serious concerns about the candidate, Ministers would take these into account.²⁴

15. Lord Astor also argued against an amendment proposed in the House of Lords to exclude candidates for the post of Ombudsman who had been in the military in the previous five years. He argued that:

17 Q4

18 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 1

19 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 1

20 HoL Deb, 9 July 2014, [col 225](#)

21 HoL Deb, 9 July 2014, [col 225](#)

22 HoL Deb, 9 July 2014, [col 225](#)

23 HoL Deb, 9 July 2014, [col 226](#)

24 Q103

To put in an arbitrary bar would disqualify otherwise excellent candidates with potentially relevant and recent experience [...]. The period since a potential candidate left the service might not necessarily be an issue. What may be of relevance is the role and function they carried out and the length of time they were in the service.²⁵

16. Dr Susan Atkins, Service Complaints Commissioner, seemed to agree that such an exclusion was unnecessary. She told us that the main focus should be on “getting the right person and looking at their bundle of competences when they apply” and trusting the checks and balances in, and independent elements of, the appointment process rather than “putting a restriction on who can apply”.²⁶ However, she added that, from her experience of the UK’s Service complaints system and those of other countries, she still had the view that “having somebody who has not been a member of the armed forces is really helpful to the Armed Forces, because they come with a different viewpoint”.²⁷

17. A number of witnesses before the Committee argued powerfully that the terms of the current clause were insufficient. Reverend Nicholas Mercer emphasised that the involvement of the Secretary of State in the appointment process meant that “it [did] not look as separated as it might otherwise do”.²⁸ Sara Ogilvie, Policy Officer, Liberty suggested that some form of parliamentary involvement, perhaps of the Defence Committee, in the process would be desirable to ensure independence.²⁹ She added that appointing recent members of the Armed Forces to the post, would undermine the confidence of complainants in the process:

If I was in their position and the person at the top of the system was someone who had previously been really involved in the armed forces, I would not have that confidence, even though they were not part of it at that time.³⁰

18. The Service Complaints Ombudsman must be clearly independent from the Armed Forces. This is essential for maintaining confidence in the Service complaints system. We welcome the MoD’s confirmation that the preferred candidate will in future be subject to a pre-appointment hearing with this Committee; the independence of the preferred candidate will be one of the criteria that we will look to assess during the hearing.

19. We recommend that the Bill be amended to state that a person should not be eligible to be appointed as Ombudsman for a period of five years after leaving the regular or reserve forces. Such a stipulation would assist in underlining the independence of the Ombudsman and reduce the possibility that someone taking up the post could be known to parties involved in a complaint or have been involved

25 HoL Deb, 9 July 2014, [cols 226-227](#)

26 Q238

27 Q238

28 Q4

29 Qq3-4

30 Q10

themselves with a complaint. We propose amendments to this effect, set out as amendment group A in the Annex to this report.

Length of appointment

20. Clause 1 does not set out the duration of the post holder's term of office, instead stating that this would be in accordance with the terms and conditions of appointment. We understand that the post will be full time (the current Commissioner works 3 days a week) and for a period of five years, but it was unclear whether the appointment would be renewable or whether the Ombudsman could reapply for the position at the end of their tenure.

21. Sara Ogilvie, Liberty, told us that a seven year non-renewable term would be preferable, adding:

If you are having a five-year term and you can then renew it, you have to be really clear about the processes for that renewal. [...] it is really important that we get this right, because that possibility for renewal could completely undermine the way the Ombudsman makes her decisions or seeks to make recommendations to the Defence Council and others.³¹

22. The Ombudsman Association agreed with Liberty's position. They told us "the term of office should be of sufficient duration not to undermine independence. The appointment should be for a minimum of five years".³² They added that this was also recognised internationally as best practice to avoid the perception that an Ombudsman's decisions might be influenced by their employment position. They also recommended that the fixed term should be set out in legislation.³³

23. Reverend Nicholas Mercer, former Army Legal Adviser and Lieutenant Colonel (retd) Jeremy Field, former Head of Army Service Complaints Wing, were concerned at the possibility that the Ombudsman could be reappointed for a further period of five years. Reverend Mercer thought there was a danger that the Secretary of State would be tempted to reappoint an Ombudsman who was seen to have good relations with the chain of command.³⁴ Lieutenant Colonel Field told us that 10 years in an Ombudsman's position was too long. He advocated a term of five years initially, with perhaps an option to extend it by a year or two.³⁵

24. During the Bill's Committee Stage in the House of Lords on 9 July 2014, Lord Astor told the House that in deciding the terms that would apply to the post, the MoD had considered the length of tenure of other Ombudsmen posts and had concluded that five

31 Q6

32 The Ombudsman Association ([ARM003](#)) para 11

33 The Ombudsman Association ([ARM003](#)) para 12

34 Q6

35 Q9

years was appropriate and that the position was not renewable.³⁶ He argued that five years would give the Ombudsman “sufficient time to familiarise themselves in the role and then become fully effective, which would not necessarily be the case if the term was shorter” and that “by keeping this aspect of the Ombudsman appointment in the terms of appointment rather than in the Bill, we retain the flexibility to increase it in the future if experience shows that that might be beneficial”.³⁷

25. We agree with the MoD and our witnesses that the Service Complaints Ombudsman should be appointed for a minimum of five years. It is essential that there is sufficient time for the Ombudsman to familiarise themselves with the role and to become fully effective. We welcome the Minister’s statement that the Ombudsman appointment cannot be renewed and agree with several of our witnesses that it would be inappropriate for the Ombudsman to be eligible for reappointment. We believe that these elements of the appointment need to be included on the face of the Bill. Our draft amendment, set out as amendment B in the Annex to this report, provides for the Ombudsman to be appointed for a period of between five and seven years and specifies that they should not be eligible for reappointment.

Clause 2: Reform of system of redress of individual complaints

26. Clause 2 inserts into the Armed Forces Act 2006 new Part 14A consisting of new sections 340A to 340O.³⁸ These new sections provide the framework for the new system for dealing with the redress of Service complaints and are designed to streamline the complaints process.

New section 340B: Procedure for making a complaint and determining admissibility

27. Under new Section 340B the Defence Council will make regulations about the procedure for making and dealing with a service complaint. These draft regulations were published in draft by the MoD on 9 July 2014.³⁹

28. Reverend Nicholas Mercer argued that the Defence Council was not sufficiently independent (either organisationally or institutionally) to make the regulations on its own.⁴⁰ Sara Ogilvie, Liberty, argued that civilian best practice also suggested that processes for internal grievances and employment tribunals could not be defined solely by the employers. She agreed, therefore, that there should be an independent element in offering advice and views to the Defence Council on the regulations.⁴¹

36 HoL Deb, 9 July 2014, [col 226](#)

37 HoL Deb, 9 July 2014, [col 226](#)

38 [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords], Clause 2

39 [Draft Armed Forces \(Service Complaints\) Regulations](#)

40 Q28

41 Qq25–26

29. **We are convinced that there should be a degree of independent scrutiny and input into the content of the regulations for the procedure for making a complaint and determining the admissibility of Service complaints. We recommend that the Bill should be amended to require the Defence Council to consult the Service Complaints Ombudsman, when appointed, before making regulations under this section of the Bill. We propose an amendment to the Bill to this effect, which is set out as amendment C in the Annex to this report. We welcome the publication of draft regulations by the MoD. However, we believe it would be helpful if more detailed draft regulations were published in advance of the Bill's Second Reading in the House of Commons and for this Committee to be consulted on them.**

30. Concerns were also raised over inconsistencies in the approach to complaints between the three Services. Brigadier Donnelly, Personal Services (Army), conceded that due to structural differences between the Services, such as different authorities being held at different ranks, decisions would often be made at different levels.⁴² But he insisted that the single Services followed the same broad process. Gavin Barlow, Director, Service Personnel Policy, MoD, told us that the department was trying to “set a generally applicable framework, but allow a little bit of variation to take account of culture and practice in the individual Services”.⁴³ The Service Complaints Commissioner told us that, in her experience, there was not a different process in each of the Services, but that there were different ways of going about the process.⁴⁴

31. Lieutenant Colonel Field insisted, however, that problems continued to arise from the fact that the individual services had different processes for dealing with complaints. He suggested that a central tri-Service complaints unit, with representatives from each of the Services, should be established which would both resolve some of the inconsistencies and make the process more efficient.⁴⁵

32. The Commissioner has also expressed concerns in her annual reports regarding the inability of the MoD and the Services to provide accurate and timely information on the number of complaints.⁴⁶ She told us that the MoD had agreed to another audit by Defence Internal Audit to find out whether the Department's and Services' systems for recording were being carried out accurately.⁴⁷ The Commissioner also thought that it would be helpful to provide her and in future the Ombudsman with the details of the number of complaints withdrawn, the nature of those complaints and the reasons for withdrawal.⁴⁸ At present, the information provided to her is aggregated with information on complaints that are resolved informally.⁴⁹

42 Q123

43 Q122

44 Q201

45 Q27

46 Service Complaints Commissioner for the Armed Forces, [Annual Report 2012](#), March 2013, p 28–29

47 Q203

48 Q204

49 Q204

33. While we recognise the differences between, and the uniqueness of, each of the Services, we call on the MoD to consult the Ombudsman, when appointed, on the establishment of a central tri-service Service complaints unit and to inform this Committee of the outcome of the consultations.

34. We call on the MoD to provide us with the findings of the Defence Internal Audit on the accuracy of the Department's and Services' systems for recording Service complaints. We also agree with the Commissioner that the details of the number of complaints withdrawn, the nature of those complaints and the reasons for withdrawal should be provided to the Ombudsman and this should be in a form that disaggregates withdrawn complaints from those informally resolved.

New Section: 340H Ombudsman investigations

35. New Section 340H provides for a complainant to go to the Ombudsman over "maladministration" in the handling of their complaint. The Ombudsman would be able to investigate the allegations, once the Service's internal process has been completed. The Ombudsman could decide whether there had been maladministration, and whether that maladministration could have caused injustice. However they would not be able to revisit the original complaint.⁵⁰

36. Much of debate over the new Bill focused on whether the Ombudsman should or should not be given the power to investigate the original complaint. Anna Soubry MP, Minister for Defence Personnel, Welfare and Veterans MoD, defended the Bill's focus only on 'maladministration'.⁵¹ She argued that this was a broader remit than it might appear—and not simply an assessment of whether the appropriate procedures and processes had been followed. She told us that it would be wrong to interpret maladministration as a failure to "tick the right boxes". It could include looking at

whether or not those people that have considered the evidence have given the right weight to it.[...] It is almost like a judicial review, and I think that is good and it satisfies us.⁵²

37. Reverend Nicholas Mercer, however, did not believe that this aspect of the new system was an improvement, nor that it would improve confidence in the system. He told us:

You have changed "Commissioner" for "Ombudsman", and the Ombudsman can now look at maladministration. Well, you could do that under the old system, because you could redress the investigation within the redress itself, so nothing really has changed, [...]. I don't think this will command any greater confidence than the last one did.⁵³

50 [Explanatory Notes to the Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords] [Bill 003 (2014–15)–EN], paras 16–17

51 Q68

52 Q68

53 Q41

38. Liberty described this limitation to ‘maladministration’ as the “fundamental omission from the proposed system”.⁵⁴ They were concerned that although the Ombudsman might find that the complaint had been handled in a procedurally correct way, he or she might be unable to report in circumstances where the substantive conclusion of the investigation was in error. Liberty thought that it was “just as important to establish that a complaint was resolved correctly as it is to establish that it was conducted in a fair manner”.⁵⁵

39. The Service Complaints Commissioner agreed with the Minister that “maladministration and injustice [was] not about reviewing whether the procedure has been followed. It [was] about whether you have been dealt with properly”.⁵⁶ Although the Commissioner was confident that the proposed system was a “real step change for Service personnel”, she would not rule out the need for the Ombudsman to have powers to investigate the substance of individual complaints, in future, if the Services failed to rise to the challenge and there were still problems with the handling of Service complaints.⁵⁷

40. After giving oral evidence to us, the Service Complaints Commissioner wrote to us with concerns regarding the stipulation in new Section 340H that the Ombudsman may only investigate “whether the alleged maladministration has occurred”.⁵⁸ According to the Commissioner this limited interpretation does not reflect the policy agreed with the MoD in discussions on the new Ombudsman model.⁵⁹ The Commissioner suggested that the Bill should be amended so that it was explicit that the Ombudsman could investigate and report on “any maladministration” in the handling of a Service complaint rather than just the “alleged maladministration” raised by the complainant.⁶⁰

41. We agree with the Commissioner that the Ombudsman should be able to investigate and report on “any maladministration” that might have taken place during the handling of a Service complaint, not just that alleged in the application to the Ombudsman. We also welcome the clarification by the MoD and the Service Complaints Commissioner that examining maladministration in the handling of a Service complaint would include consideration of whether an injustice had resulted or could have resulted from the way the complaint was handled.

42. However, we believe the Ombudsman should also be able to investigate the substance of the original complaint, once the Service’s internal process has been completed, and see no reason to believe that this would undermine the chain of command. We have drafted amendments to address both these points, which can be found as amendment group D in the annex to this report.

54 [Liberty’s briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 25–26

55 [Liberty’s briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 26

56 Q247

57 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

58 Service Complaints Commissioner for the Armed Forces ([ARM0015](#))

59 Service Complaints Commissioner for the Armed Forces ([ARM0015](#))

60 Service Complaints Commissioner for the Armed Forces ([ARM0015](#))

43. During our inquiry we heard from the Service Complaints Commissioner that one of the main reasons for a finding of maladministration could be delays in the system, which she had highlighted in her Annual Reports as the main reason for unfairness in the complaints process.⁶¹ In her written evidence she told us:

As part of my proposal on the role of an Ombudsman in 2011, and included in my written evidence to this committee in 2011, I set out that an Ombudsman whose role was to investigate complaints and make a recommendation to the Defence Council, should also have the ability to step in during a ‘live’ complaint, because of the link between delay and injustice. As the agreed model is now for a fully independent external review, with findings that are binding on the Defence Council, this is no longer appropriate. However there are other means, such as the red and yellow card system which has been in place since 2011 to provide information about delay, which will enable the SCO to provide a warning whilst a complaint is still ‘live’ that if delay is not remedied satisfactorily it may lead to a finding of maladministration and injustice.⁶²

The Commissioner thought it was reasonable for the Services to resolve complaints within six months.⁶³

44. We also heard from the Commissioner that another matter that could give rise to a potential finding of maladministration was if Service personnel were deliberately not being allowed to make complaints about wrongs that had been done to them because they were being ruled out of time without the individual circumstances being examined, or there was delay, or people were not being told about their rights. She told us that this “is an abuse [...] that goes to the efficiency, effectiveness and fairness of the service complaints system”.⁶⁴

45. We note the Commissioner’s evidence to us that delays in dealing with complaints are the main reason for unfairness in the system and that such delays could give rise to a finding of maladministration by the Ombudsman. We also note her comments that it would be unjust and an abuse of the system if Service personnel were deliberately not being allowed to make complaints about wrongs that had been done to them because they were being ruled out of time without the individual circumstances being looked at, or there was delay, or people were not being told about their rights and that again this could lead to a potential finding of maladministration. The chain of command have a duty to their personnel to deal with complaints in a timely and fair manner. We consider these matters sufficiently important to be included on the face of the Bill as matters that the Ombudsman can investigate. We have drafted amendments to address these points which can also be found in amendment group D in the annex to this report.

61 Service Complaints Commissioner for the Armed Forces, [Annual Report 2013](#), March 2014, p 4

62 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

63 Q233

64 Q210

46. Lieutenant Colonel Field was concerned about the number of allegations of maladministration that the new Ombudsman might receive. In his opinion it was not possible to follow exactly the current processes for dealing with Service complaints as set out in the relevant Joint Service Publications. He told us:

There is no way that anybody can follow 300 pages of process exactly, all the time. [...] the number of complaints that will then be maladministered and appealed will get more and more. The worry will be that the Ombudsman will not be able to cope with the volume of complaints coming in [...].⁶⁵

47. We call on the MoD to ensure that the processes set out in the Joint Service Publication for the new Service complaints system are as straightforward as possible. The new Ombudsman should be consulted during this process and this Committee informed of the outcome.

New Section 340I: Procedure on Ombudsman investigations

48. New Section 340I delegates powers to the Secretary of State to make regulations in respect of Ombudsman's investigative procedures. The Government's draft regulations cover areas such as the information to be provided in an application to the Ombudsman; the withdrawal of an application; time limits in respect of applications; the Ombudsman's powers to request information, documents and evidence; action following the receipt of an application; the investigation procedure; and the preparation and confidentiality of the Ombudsman's reports on investigations.⁶⁶

49. There is a substantial question as to whether it is appropriate for the Secretary of State to make regulations regarding the investigative procedures to be followed by an independent Ombudsman. There is a risk that future Secretaries of State could use this broad provision to set limits on the way in which the Ombudsman could operate so as to impede or even negate the effective operation of the system.⁶⁷ Liberty thought it appropriate for the Secretary of State to have broader powers to make provision on how the internal Service complaints system operated. But they considered it important that there was a distinction between these powers and those in relation to the independent Ombudsman.⁶⁸

50. The Minister, Anna Soubry MP, disagreed that the Secretary of State's powers to make regulations on the procedure for Ombudsman's investigations potentially undermined the independence of the Ombudsman. She thought it was important that it was the Secretary of State, having consulted appropriately, who set down how the Ombudsman would

65 Q44

66 [Draft Armed Forces \(Service Complaints Ombudsman Investigations\) Regulations](#)

67 [Liberty's briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 34

68 [Liberty's briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 34

operate.⁶⁹ Gavin Barlow argued it was necessary to make clear who was responsible for different elements in the process but accepted that the detailed procedural rules to be adopted by the Ombudsman would be a matter for the Ombudsman and the Department expected them to publish those independently.⁷⁰

51. The Department had decided to follow a similar structure to the existing legislation dealing with Service complaints with the overarching framework for the new system set out in primary legislation and a number of regulatory powers conferred on the Secretary of State or the Defence Council.⁷¹ The Minister added that a consideration in deciding to place procedural matters in regulations rather than on the face of the Bill was a desire for the Ombudsman to be actively involved in the formulation of the procedures. However, the MoD maintained that the regulations must not undermine the independence of the Ombudsman to decide how to carry out an investigation nor be so detailed as to limit the Ombudsman's ability to produce guidance on the practices and procedures he or she would adopt in undertaking investigations.⁷²

52. We are concerned that, as currently drafted, the Bill does not make it clear that the regulations are intended to set out the parameters for the Ombudsman's investigative process whilst the detailed procedural rules will be a matter for the Ombudsman. This has the potential to undermine the independence, or the perception of independence, of the Ombudsman. We propose amendments to clarify the position in this regard which can be found as amendment group E in the annex to this report.

New Section 340L: Report and recommendations

53. New section 340L requires the Ombudsman to produce a report upon completion of their investigation into possible maladministration in the handling of a service complaint. Where the Ombudsman finds maladministration, the report must also include the Ombudsman's recommendations including any for remedying the maladministration and any injustice which may have been caused. The report must be sent to the Defence Council and the person who brought the complaint.⁷³

54. Liberty were concerned by the "unclear limits on the reporting powers of the Ombudsman as set out in subsection 340L(7)(c)".⁷⁴ As drafted, section 340L provides for the Secretary of State to make regulations with respect to reports, including provision about obligations (including obligations of confidentiality) that may be imposed on individuals to whom reports are sent. These regulations were published in draft by the

69 Q145

70 Q146

71 Ministry of Defence ([ARM0016](#))

72 Ministry of Defence ([ARM0016](#))

73 [Explanatory Notes to the Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords] [Bill 003 (2014–15)–EN], para 19

74 [Liberty's briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 39

MoD on 9 July 2014.⁷⁵ Liberty’s concerns were twofold. Firstly, this provision was unnecessary to protect the privacy rights of complainants which would be effectively maintained by the Data Protection Act. Secondly, they argued that the Secretary of State could seek to impose restrictions on those to whom reports are sent including using this provision to prevent complainants or others from speaking out about their experience and the outcome of an Ombudsman’s investigation.⁷⁶

55. Gavin Barlow, Director Service Personnel Policy, MoD, did not agree that subsection 340L(7)(c) would undermine the Ombudsman. He told us:

We would expect the Ombudsman, in making his or her reports, to abide by those requirements for confidentiality. But it is about confidentiality for individuals and also, in certain circumstances, to maintain the security of particular classified information. It is not intended to fetter the Ombudsman’s ability to publish judgments about what is or is not wrong with our complaints system or instances of maladministration that have been found and need to be made public[...].⁷⁷

56. Mr Barlow and Commodore Spence, Head, Naval Legal Services, added that no other obligations were envisaged and that the subsection and the associated regulations were intended for the protection of personal information and national security.⁷⁸

57. In response to our report we call on the MoD to explain whether it believes that the existing provisions of the Data Protection Act are inadequate for the purpose of maintaining the privacy of complainants. We also note that the MoD told us that it did not envisage imposing any other obligations, apart from those of confidentiality, under new Section 340(7)(c). We have drafted an amendment to limit the right of the Secretary of State to impose obligations of confidentiality, in respect of the Ombudsman’s reports, to matters of national security or where the safety of any person may be jeopardised. This is set out as amendment F in the annex to this report.

New Section 340M: Action following receipt of report

58. New section 340M provides that the Defence Council will be responsible for considering the Ombudsman’s recommendations and informing the Ombudsman what steps will be taken in response to them. The Bill’s Explanatory Notes argue that “this means that the Defence Council will not be free to ignore the Ombudsman’s recommendations, but will have some leeway in deciding what to do”.⁷⁹

75 [Draft Armed Forces \(Service Complaints Ombudsman Investigations\) Regulations](#), Regulation 9

76 [Liberty’s briefing on the Armed Forces \(Service Complaints and Financial Assistance\) Bill for Second Reading in the House of Lords](#), June 2014, paras 39

77 Q149

78 Qq150-152

79 [Explanatory Notes to the Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords] [Bill 003 (2014–15)–EN], para 19

59. Some of our witnesses expressed concern that the Bill did not make it clear that the findings of the Ombudsman were binding. Reverend Nicholas Mercer told us:

the Defence Council is not required to take account of the findings of the Ombudsman, potentially. Where does it leave the complainant if that happens [...]? Does it have to go to judicial review?⁸⁰

60. However the Service Complaints Commissioner understood that the Ombudsman's findings would be binding:

By agreeing to be bound by the Ombudsman's findings, the whole chain of command will be held to account for its treatment of its people. It is right that the chain of command retain responsibility for handling Service complaints, which for the most part are workplace grievances—but with increased transparency and accountability. Service personnel trust their commanders with their lives; they must be able to trust them with their complaints.⁸¹

61. Other concerns were also expressed regarding the Defence Council's power under new section 340M(1)(c) to reject the Ombudsman's recommendations. When the then Secretary of State for Defence announced the new system in March 2014, he said that the Defence Council remaining responsible for the decisions taken in response to the Ombudsman's recommendations would maintain the authority of the chain of command.⁸²

62. Gavin Barlow, MoD, thought that it was important to distinguish between the Ombudsman's findings and recommendations. He confirmed that where the Ombudsman found that maladministration had occurred this would be binding on the Department.⁸³ However the Ombudsman's recommendations for redress or procedural change were not binding. He argued that the Ombudsman might make recommendations "that simply cannot be implemented within the powers of the Department, or that for some other reason might be inappropriate to meet".⁸⁴ Mr Barlow added that any decision the Department made on how to interpret and implement a recommendation could ultimately be subject to court proceedings. The Department's position was that "it would be very unusual simply to ignore or disagree with the Ombudsman's recommendations without very good reasons, which we would normally communicate, to the Ombudsman in the first instance".⁸⁵

63. We welcome the MoD's clarification that any findings of the Ombudsman relating to maladministration or injustice are binding on the Department. However, we are

80 Q46

81 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

82 HC Deb, 13 March 2014, [cols 35WS](#)

83 Q154

84 Q154

85 Q154

concerned that, as currently drafted, new section 340M does not adequately reflect this intention. We also recommend that the Ombudsman’s recommendations should be binding on the Defence Council. We are confident that the Ombudsman will be ready to consult to identify what is feasible when framing his or her recommendations and we are therefore not convinced by the MoD’s objections in this respect. We propose amendments to clarify both these points, which can be found as amendment group G in the annex to this report.

Section 340O Annual report on system for dealing with Service complaints

Thematic reports

64. Section 339 of the Armed Forces Act 2006 provides for the Secretary of State to ask the Service Complaints Commissioner to report on a particular area of concern outside the Commissioner’s normal reporting cycle. The Commissioner told us that she had never been asked to do so. In our 2013 report on the work of the Service Complaints Commissioner we said that we believed that there would be value in the Commissioner being able to undertake research and report on thematic issues in addition to her Annual Reports.⁸⁶

65. New section 340O(6) of the Bill provides for the Secretary of State to require the Service Complaints Ombudsman to report on any aspect of the Service complaints system or on any matter relating to the Ombudsman’s functions. However, it is unclear whether the Bill would allow the Ombudsman to produce thematic reports on their own initiative. The Service Complaints Commissioner thought there were benefits in “Ombudsmen using their broad view of the organisations that they oversee to do research and produce thematic reports so that lessons can be learned about the issues behind complaints within a particular area”.⁸⁷ In her view the Bill provided the Ombudsman with scope to do this. She told us that the Bill

allows the Ombudsman to produce reports on the exercise of [their] functions enabling him or her to report on issues of concern arising from any review of complaints raising a specific theme or area of concern.⁸⁸

66. However, the MoD distinguished between thematic reports which could be conducted and thematic inquiries which could not:

The Ombudsman certainly can include any commentary they want on the operation of the system or the themes they have encountered during their assessment of complaints in their annual report and, if they wish, in other publications.

[...]

86 Defence Committee, Eighth Report of Session 2012-13, [The work of the Service Complaints Commissioner for the Armed Forces](#), HC 720, para 69

87 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

88 Service Complaints Commissioner for the Armed Forces ([ARM0004](#))

The Ombudsman is supplied with information via the Department about the operation of the complaints system. They will encounter a wide range of different complaints and will have a lot of contact with members of the armed forces and the Department as they go about their business. From that, as we have seen with the existing Commissioner, we would expect them to comment widely on the operation of the system and, if they wish, to identify specific themes of concern to them. We are talking about a thematic report—I think that would be that. Within their report they might include some analysis of the statistics they get that would enable them to comment on what is going on in the complaints system. They will not have the power to pursue witnesses and documentation in the way they would for dealing with maladministration in the context of a complaint.⁸⁹

67. Anna Soubry MP, Minister for Defence Personnel, Ministry of Defence, MoD, explained that the Ombudsman would not be able to initiate an inquiry but that she did not think that this would preclude the Ombudsman “from highlighting and bringing to everybody’s attention any suspicions or concerns that they have, based on their work, that there is something that requires others to make some sort of inquiry”.⁹⁰ The Minister thought there was a big distinction between a thematic inquiry and a thematic report. She thought that if the Ombudsman believed that something untoward was happening in a particular unit it would be inconceivable that they would not highlight the problem and demand meetings with ministers or other appropriate persons. She believed that the current system had the necessary rigour, but that did not mean that the Ombudsman should have the power to initiate their own inquiry and call witnesses and summon documents.⁹¹

68. The MoD’s intention was that the new Service complaints system should strike the right balance between maintaining the authority of the chain of command and the powers of the Ombudsman. Gavin Barlow told us:

If you move from a system that is fundamentally about an approach to dealing with individual workplace complaints to something that is more like an inspectorate that has its own powers to conduct inquiries into the matters that it chooses, that will have a fundamental impact on the operation of the armed forces and the chain of command.⁹²

69. Mr Barlow added that it should be the chain of command who are responsible for the welfare of their personnel; it should not be an external body such as an Ombudsman that should take on this role.⁹³ He outlined the MoD’s concerns that an Ombudsman with a power to conduct thematic inquiries would represent a fundamentally different approach to the Service complaints system:

89 Qq161–162

90 Q162

91 Q162

92 Q185

93 Q187

What scope would it have? How far might they go in looking at whether the Department's operations work or not? What sort of impact would that role have on the confidence of commanders at all levels to make decisions about how best to act? It is clearly possible for other countries to adopt such systems, but our position is that that has a cost. It has an economic cost in terms of the burden of administrative effort involved in setting up those systems. It also has an operational cost in terms of the ability of the armed forces to act efficiently and effectively. That is why it has not been pursued.⁹⁴

70. During her oral evidence, the Service Complaints Commissioner called for the question of whether the Bill provided for the Ombudsman to undertake a thematic review to be clarified. She told us:

it seems to me that if the Ombudsman became aware that people are deliberately not being allowed to make complaints about wrongs that have been done to them because they are being ruled out of time without the individual circumstances being looked at, or there is delay, or people are not being told about their rights, that is an abuse of the system that goes to the efficiency, effectiveness and fairness of the service complaints system. It seems to me, from the interpretation of that provision in the Bill that was confirmed to you, that the Ombudsman would be able to do an inquiry and a report into that. That would be a thematic review.⁹⁵

71. The Commissioner informed us that she had asked the Army to carry out a review into serious bullying. Although the Army did carry out the review, the Commissioner wanted the Ombudsman to have the power under the Bill to say "I'm not satisfied, from the evidence I have seen, that the handling of complaints about serious bullying is being dealt with properly" and do a thematic report on the matter.⁹⁶ She added:

My understanding of the current provision is that [...] if I am concerned about delay in any case, or if cases are badly delayed, I can make a report on my own volition to the Secretary of State. It is on the basis of exactly the same-worded provision in the current legislation, and both my lawyers and the MoD lawyers agree that that gives me the power to do so. I am assuming, therefore, that it moves on to the Ombudsman having the powers to do so, but given that it is an interpretation, it may be helpful to clarify that.⁹⁷

72. The Commissioner said that thematic reports, where the Ombudsman gathered information and produced a report on their own volition, would be useful if there were patterns of complaints that are poorly handled or types of complaints that are not being handled properly.⁹⁸

94 Q188

95 Q210

96 Q210

97 Q226

98 Q227

73. We are disappointed that the MoD has so far rejected our recommendation that the Service Complaints Commissioner should be able to research thematic issues and produce reports. We believe that the Ombudsman would on many occasions be best placed to identify patterns of complaints that are poorly handled or types of complaints that are not being handled properly. Rather than undermining it, the identification and resolution of these matters would increase confidence in the chain of command.

74. We accept the Ombudsman will have powers to draw attention to thematic problems with the system in their Annual Report or in communication with Ministers. Whilst these options would be appropriate in many cases they may not be sufficient in all. We believe it is inappropriate that the Secretary of State will have the power to ask the Ombudsman to report on a thematic issue but that the Ombudsman will not be able to do so of their own volition. We do not envisage the establishment of a bureaucratic inspectorate for the Armed Forces, but do believe there are benefits to be gained by giving the Ombudsman the authority to undertake thematic reviews. These could contribute to identifying potential areas to be improved in the MoD's and the chain of command's responsibility of a duty of care towards Service personnel. We propose an amendment to this effect, set out as amendment H in the annex to this report.

Matter not included in the Bill

Service Police

75. Each of the single Services has its own police force (the Service Police)—the Royal Military Police for the British Army; the Royal Navy Police and the RAF Police. The Service Police forces all have similar powers to those of local police forces, such as powers of arrest and stop and search. Concerns have been expressed by the Service Complaints Commissioner⁹⁹ and Liberty¹⁰⁰ that after an investigation by the Service Police an individual with a complaint has no independent body with whom to make their complaints. This contrasts with the Ministry of Defence Police, a civilian police force which protects defence assets, which comes under the auspices of the Independent Police Complaints Commission's system. The Service Complaints Commissioner saw a distinction between complaints that Service personnel might make about employment matters, such as accommodation and pay, and complaints about services such as those provided by Service Police and has recommended in her annual reports that the Service Police should be subject to the same oversight as civilian police forces.¹⁰¹ She told us:

Complaints about the military police, in the execution of police duties, are in a different category. I am on record as saying that I think those should be

99 Service Complaints Commissioner for the Armed Forces, [Annual Report 2013](#), March 2014, p 8 & p 64, Service Complaints Commissioner for Armed Forces, [Annual Report 2012](#), March 2013, p 57

100 Liberty, [Military Justice: Proposals for a fair and independent Military Justice system](#), June 2014, paras 49–54; Q63

101 Service Complaints Commissioner for the Armed Forces, [Annual Report 2013](#), March 2014, p 8 & p 64

independently investigated and that they should be brought under the same oversight bodies as the civilian police services.¹⁰²

76. Reverend Nicholas Mercer also expressed concerns to us that the Service Police are “only answerable to the same chain of command who were often ultimately responsible for very issues the Service Police are investigating”.¹⁰³ He told us the Ombudsman must, therefore, have expert assistance from qualified professionals to review cases that are either wholly or entwined what are essentially ‘complaints against the police’.¹⁰⁴

77. We note the concerns expressed by witnesses concerning the investigation of complaints against the Service Police. We have serious concerns that complaints regarding the Service Police are made to the chain of command which could lead complainants to have a lack of confidence in making such a complaint and in the independence and fairness of its investigation. We recommend that the chain of command should be required to notify the Ombudsman when it receives a complaint regarding the Service Police and that it should specify the nature of such a complaint. We agree that there is an anomaly in the Ministry of Defence Police coming under the Independent Police Complaints Commission’s (IPCC) system while Service Police do not. In response to our report, we call on the MoD to set out a timescale for when it is intended that the Service Police should come under the auspices of the IPCC system. We also call on the MoD to ensure that where complaints are made to the Ombudsman about the Service Police, that he or she has expert assistance from qualified professionals to review such cases.

102 Q195

103 Reverend Nicholas Mercer ([ARM0002](#)), para 8(g)

104 Reverend Nicholas Mercer ([ARM0002](#)), para 8(g)

Conclusions and recommendations

Overview of the Bill

1. Our report proposes a number of amendments to the Bill which we believe will improve the Service complaints system while still preserving the integrity of the chain of command. (Paragraph 11)

Clause 1: Creation of the office of Service Complaints Ombudsman

2. The Service Complaints Ombudsman must be clearly independent from the Armed Forces. This is essential for maintaining confidence in the Service complaints system. We welcome the MoD's confirmation that the preferred candidate will in future be subject to a pre-appointment hearing with this Committee; the independence of the preferred candidate will be one of the criteria that we will look to assess during the hearing. (Paragraph 18)
3. We recommend that the Bill be amended to state that a person should not be eligible to be appointed as Ombudsman for a period of five years after leaving the regular or reserve forces. Such a stipulation would assist in underlining the independence of the Ombudsman and reduce the possibility that someone taking up the post could be known to parties involved in a complaint or have been involved themselves with a complaint. We propose amendments to this effect, set out as amendment group A in the Annex to this report. (Paragraph 19)
4. We agree with the MoD and our witnesses that the Service Complaints Ombudsman should be appointed for a minimum of five years. It is essential that there is sufficient time for the Ombudsman to familiarise themselves with the role and to become fully effective. We welcome the Minister's statement that the Ombudsman appointment cannot be renewed and agree with several of our witnesses that it would be inappropriate for the Ombudsman to be eligible for reappointment. We believe that these elements of the appointment need to be included on the face of the Bill. Our draft amendment, set out as amendment B in the Annex to this report, provides for the Ombudsman to be appointed for a period of between five and seven years and specifies that they should not be eligible for reappointment. (Paragraph 25)

Clause 2: Reform of system of redress of individual complaints

5. We are convinced that there should be a degree of independent scrutiny and input into the content of the regulations for the procedure for making a complaint and determining the admissibility of Service complaints. We recommend that the Bill should be amended to require the Defence Council to consult the Service Complaints Ombudsman, when appointed, before making regulations under this section of the Bill. We propose an amendment to the Bill to this effect, which is set out as amendment C in the Annex to this report. We welcome the publication of draft regulations by the MoD. However, we believe it would be helpful if more detailed draft regulations were published in advance of the Bill's Second Reading in the House of Commons and for this Committee to be consulted on them. (Paragraph 29)

6. While we recognise the differences between, and the uniqueness of, each of the Services, we call on the MoD to consult the Ombudsman, when appointed, on the establishment of a central tri-service Service complaints unit and to inform this Committee of the outcome of the consultations. (Paragraph 33)
7. We call on the MoD to provide us with the findings of the Defence Internal Audit on the accuracy of the Department's and Services' systems for recording Service complaints. We also agree with the Commissioner that the details of the number of complaints withdrawn, the nature of those complaints and the reasons for withdrawal should be provided to the Ombudsman and this should be in a form that disaggregates withdrawn complaints from those informally resolved. (Paragraph 34)
8. We agree with the Commissioner that the Ombudsman should be able to investigate and report on "any maladministration" that might have taken place during the handling of a Service complaint, not just that alleged in the application to the Ombudsman. We also welcome the clarification by the MoD and the Service Complaints Commissioner that examining maladministration in the handling of a Service complaint would include consideration of whether an injustice had resulted or could have resulted from the way the complaint was handled. (Paragraph 41)
9. However, we believe the Ombudsman should also be able to investigate the substance of the original complaint, once the Service's internal process has been completed, and see no reason to believe that this would undermine the chain of command. We have drafted amendments to address both these points, which can be found as amendment group D in the annex to this report. (Paragraph 42)
10. We note the Commissioner's evidence to us that delays in dealing with complaints are the main reason for unfairness in the system and that such delays could give rise to a finding of maladministration by the Ombudsman. We also note her comments that it would be unjust and an abuse of the system if Service personnel were deliberately not being allowed to make complaints about wrongs that had been done to them because they were being ruled out of time without the individual circumstances being looked at, or there was delay, or people were not being told about their rights and that again this could lead to a potential finding of maladministration. The chain of command have a duty to their personnel to deal with complaints in a timely and fair manner. We consider these matters sufficiently important to be included on the face of the Bill as matters that the Ombudsman can investigate. We have drafted amendments to address these points which can also be found in amendment group D in the annex to this report. (Paragraph 45)
11. We call on the MoD to ensure that the processes set out in the Joint Service Publication for the new Service complaints system are as straightforward as possible. The new Ombudsman should be consulted during this process and this Committee informed of the outcome. (Paragraph 47)
12. We are concerned that, as currently drafted, the Bill does not make it clear that the regulations are intended to set out the parameters for the Ombudsman's investigative process whilst the detailed procedural rules will be a matter for the Ombudsman. This has the potential to undermine the independence, or the

perception of independence, of the Ombudsman. We propose amendments to clarify the position in this regard which can be found as amendment group E in the annex to this report. (Paragraph 52)

13. In response to our report we call on the MoD to explain whether it believes that the existing provisions of the Data Protection Act are inadequate for the purpose of maintaining the privacy of complainants. We also note that the MoD told us that it did not envisage imposing any other obligations, apart from those of confidentiality, under new Section 340(7)(c). We have drafted an amendment to limit the right of the Secretary of State to impose obligations of confidentiality, in respect of the Ombudsman's reports, to matters of national security or where the safety of any person may be jeopardised. This is set out as amendment F in the annex to this report. (Paragraph 57)
14. We welcome the MoD's clarification that any findings of the Ombudsman relating to maladministration or injustice are binding on the Department. However, we are concerned that, as currently drafted, new section 340M does not adequately reflect this intention. We also recommend that the Ombudsman's recommendations should be binding on the Defence Council. We are confident that the Ombudsman will be ready to consult to identify what is feasible when framing his or her recommendations and we are therefore not convinced by the MoD's objections in this respect. We propose amendments to clarify both these points, which can be found as amendment group G in the annex to this report. (Paragraph 63)
15. We are disappointed that the MoD has so far rejected our recommendation that the Service Complaints Commissioner should be able to research thematic issues and produce reports. We believe that the Ombudsman would on many occasions be best placed to identify patterns of complaints that are poorly handled or types of complaints that are not being handled properly. Rather than undermining it, the identification and resolution of these matters would increase confidence in the chain of command. (Paragraph 73)
16. We accept the Ombudsman will have powers to draw attention to thematic problems with the system in their Annual Report or in communication with Ministers. Whilst these options would be appropriate in many cases they may not be sufficient in all. We believe it is inappropriate that the Secretary of State will have the power to ask the Ombudsman to report on a thematic issue but that the Ombudsman will not be able to do so of their own volition. We do not envisage the establishment of a bureaucratic inspectorate for the Armed Forces, but do believe there are benefits to be gained by giving the Ombudsman the authority to undertake thematic reviews. These could contribute to identifying potential areas to be improved in the MoD's and the chain of command's responsibility of a duty of care towards Service personnel. We propose an amendment to this effect, set out as amendment H in the annex to this report. (Paragraph 74)

Matter not included in the Bill

17. We note the concerns expressed by witnesses concerning the investigation of complaints against the Service Police. We have serious concerns that complaints

regarding the Service Police are made to the chain of command which could lead complainants to have a lack of confidence in making such a complaint and in the independence and fairness of its investigation. We recommend that the chain of command should be required to notify the Ombudsman when it receives a complaint regarding the Service Police and that it should specify the nature of such a complaint. We agree that there is an anomaly in the Ministry of Defence Police coming under the Independent Police Complaints Commission's (IPCC) system while Service Police do not. In response to our report, we call on the MoD to set out a timescale for when it is intended that the Service Police should come under the auspices of the IPCC system. We also call on the MoD to ensure that where complaints are made to the Ombudsman about the Service Police, that he or she has expert assistance from qualified professionals to review such cases. (Paragraph 77)

Annex: Amendments to the Bill

These draft amendments are based on the version of the Bill as introduced into the House of Lords (HL Bill 3).¹⁰⁵

Amendment group A (see paragraph 19)

Terms of appointment of the Service Complaints Ombudsman

Clause 1, page 1, line 9, leave out “is”.

Clause 1, page 1, leave out line 10 and insert “(a) has been a member of the regular or reserve forces in the last 5 years ending with the day on which the appointment is to take effect, or”

Clause 1, page 1, line 11, after “(b)” insert ‘is’.

Amendment B (see paragraph 25)

Tenure of appointment of the Service Complaints Ombudsman

Clause 1, page 1, line 13, at end add:

“(4A) (a) The period for which a person is appointed shall be not less than 5 years and not more than 7 years.

(b) A person who has been appointed as Ombudsman may not be re-appointed to the office.”

Amendment C (see paragraph 29)

Section 340B: Procedure for making a complaint and determining admissibility

Clause 2, page 3, line 12 at end insert:

“(5A) Before making regulations under this section the Defence Council must consult the Service Complaints Ombudsman.”

Amendment group D (see paragraphs 42 and 45)

Section 340H: Ombudsman investigations

Clause 2, page 6, leave out lines 22 to 25 and insert:

“(1) The Service Complaints Ombudsman may investigate:

¹⁰⁵ [Armed Forces \(Service Complaints and Financial Assistance\) Bill](#) [Lords] [Bill 003 (2014–15)]

(a) a service complaint

(b) an allegation of maladministration in connection with the handling of a service complaint including an allegation that the handling of a service complaint was inappropriately delayed

(c) an allegation of inappropriate delay in relation to a person prior to that person making a formal complaint, or an allegation relating to the staying of a complaint

where the complainant makes an application to the Ombudsman.”

Clause 2, page 6, line 30, after “allegation” insert “or service complaint”

Clause 2, page 6, line 34, after “complaint” insert “or the complaint”

Clause 2, page 6, line 34, after “allegation” insert “of maladministration”

Clause 2, page 6, line 40, leave out “alleged” and insert “the service complaint referred to in subsection (1)(a) is well founded or any”

Clause 2, page 8, leave out lines 29 to 32 and insert

“(2) Where the Ombudsman finds-

(a) that the service complaint is well-founded

(b) maladministration in connection with the handling of the service complaint to which the investigation relates

the report must also set out the Ombudsman’s recommendations (if any) as a result of that finding.”

Clause 2, page 8, line 35, at end insert

“(aa) the wrong complained of,”

Clause 2, page 8, line 38, after the first “the” insert “wrong complained of or”.

Amendment group E (see paragraph 52)

Section 340I Procedure on Ombudsman investigations

Clause 2, page 7, line 17, leave out subsection (2).

Clause 2, page 7, line 19 leave out from (3) to “the”.

Clause 2, page 7, line 24, leave out subsection (5).

Amendment F (see paragraph 57)

Section 340L Report and recommendations

Clause 2, page 9, line 10, leave out paragraph (c) and insert:

(c) provision for the imposition on those to whom reports are sent of obligations of confidentiality in the interests of—

(i) national security, or

(ii) the safety of any person.”

Amendment group G (see paragraph 63)

Section 340M: Action following receipt of report

Clause 2, page 9, line 15, at end insert:

“(aa) accept the findings and recommendations of the Service Complaints Ombudsman”.

Clause 2, page 9, line 17 leave out “(if any)”.

Clause 2, page 9, leave out lines 20 to 22.

Amendment H (see paragraph 74)

Thematic Reviews

Clause 2, page 11, line 42, at end add:

“() The Ombudsman may report to the Secretary of State on any matter relating to service complaints and the procedure for the handling of service complaints as the Ombudsman considers appropriate.”

Formal Minutes

Wednesday 15 October 2014

Members present:

Rory Stewart, in the Chair

Mr James Gray
Mrs Madeleine Moon

Derek Twigg

Draft Report (*Armed Forces (Service Complaints and Financial Assistance) Bill*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 77 read and agreed to.

Annex and Summary agreed to.

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

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

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

Written evidence was reported to the House for publishing with the Report in addition to that ordered to be reported for publishing on 8, 15 and 22 July and 10 September 2014.

[Adjourned till Tuesday 21 October 2014 at 2.00 p.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/defcom.

Tuesday 8 July 2014

Question number

Lieutenant Colonel (retd) Jeremy Field MBE, former Head of Army Service Complaints Wing at HQ Army, **Reverend Nicholas Mercer**, former Command Legal Adviser for HQ 1st (UK) Armoured Division in Iraq War 2003 and **Sara Ogilvie**, Policy Officer, Liberty

[Q1-66](#)

Tuesday 15 July 2014

Anna Soubry MP, Minister for Defence Personnel, Welfare Veterans, **Gavin Barlow**, Director, Service Personnel Policy, Ministry of Defence, **Brigadier John Donnelly CBE**, Director, Personal Services (Army), and **Group Captain Mark Heffron**, Deputy Assistant Chief of Staff (Air Personnel), HQ Air Command, and **Commodore Andrei Spence**, Head, Naval Legal Services

[Q67-194](#)

Dr Susan Atkins CB, Service Complaints Commissioner for the Armed Forces

[Q195-255](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/defcom. ARM numbers are generated by the evidence processing system and so may not be complete.

- 1 D Giemza-Pipe ([ARM0006](#))
- 2 Liberty ([ARM0014](#))
- 3 Lt Col (retd) Jeremy A Field MBE ([ARM0001](#))
- 4 Lt Col (retd) Jeremy A Field MBE ([ARM0013](#))
- 5 Ministry Of Defence ([ARM0016](#))
- 6 Rev Nicholas Mercer ([ARM0002](#))
- 7 Service Complaints Commissioner ([ARM0004](#))
- 8 Service Complaints Commissioner ([ARM0011](#))
- 9 Service Complaints Commissioner ([ARM0012](#))
- 10 Service Complaints Commissioner ([ARM0015](#))
- 11 The Ombudsman Association ([ARM0003](#))
- 12 Whistleblowers UK ([ARM0010](#))

List of Reports from the Committee during the current Session

All publications from the Committee are available on the Committee's website at www.parliament.uk/defcom.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2014–2015

First Report	MoD Main Estimates 2014-15	HC 469 (HC 681)
Second Report and First Joint Report	Scrutiny of Arms Exports and Arms Controls (2014) First Joint Report of the Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees of Session 2014–15	HC 186
Third Report	Towards the next Defence and Security Review: Part Two: NATO	HC 358