

JSP 763



THE MOD HARASSMENT COMPLAINTS PROCEDURES

A guide for all MoD Service and civilian personnel about making, responding to, advising on, investigating, and deciding on, complaints of harassment.

MINISTRY OF DEFENCE

**Director Service Personnel Policy Service Conditions
Director General Civilian Personnel Employment Framework**

CONTENTS

Chapter 1 – Introduction

Scope	1.1. – 1.3.
MoD Policy	1.4. – 1.9
The Law	1.10.
Sanctions	1.11.
Victimisation	1.12.
Malicious or Vexatious Complaints	1.13.
Complaints Involving Non-MoD Personnel	1.14 – 1.16.

Chapter 2 – Advice, Support and Options for Complaint Resolution

Introduction	2.1.
Sources of Advice and Support	2.2. – 2.5.
Options for Complaint Resolution	2.6. – 2.7.

Chapter 3 – Informal Resolution

Introduction	3.1. – 3.3.
Suitability of Informal Resolution	3.4. – 3.6.
Informal Resolution	3.7.
Outcome of Informal Resolution	3.8. – 3.10.
Unsuitability of Informal Resolution	3.11.
Cessation of Informal Action	3.12.

Chapter 4 – Making a Formal Complaint

Introduction	4.1. – 4.4.
Making a Formal Complaint	4.5. – 4.9.
Reassurance to a Complainant	4.10. – 4.11.
Assisting Officers	4.12. – 4.16.

Chapter 5 – Actions for the Deciding Officer in the Event of a Formal Complaint

Introduction	5.1.
Acknowledging the Complaint	5.2.
Meeting the Complainant	5.3. – 5.4.
Meeting the Respondent(s)	5.5. – 5.8.
Possible Criminal/Service Disciplinary Offences	5.9. – 5.10.
Acting on an Admission	5.11.
Acting on a Denial	5.12.
Informing the Parties	5.13.
Separating the Parties	5.14.
Role and Responsibilities	5.15.

Chapter 6 – Investigating a Formal Complaint

Introduction	6.1.
Commissioning an Investigation	6.2. – 6.7.
Conducting the Investigation	6.8. – 6.9.

Chapter 7 – The Outcome of a Formal Investigation

Introduction	7.1.
Reaching a Decision	7.2. – 7.4.
Content of the Deciding Officer's Decision	7.5. – 7.10.
Appealing against the Decision	7.11. – 7.12.

Chapter 8 – Recording Service Complaints

Introduction	8.1. – 8.3.
Armed Forces Unit Equality and Diversity Logs	8.4.
Retention/Disposal of Records	8.5.

Annexes

- A. Definitions of Harassment and Bullying.
- B. Complainants and Respondents – Expectations and Responsibilities.
- C. Harassment and the Law.
- D. Role and Responsibilities of the Service Equality and Diversity Adviser (EDA).
- E. Role and Responsibilities of the Assisting Officer (AO).
- F. Harassment Complaints Process Flowcharts.
- G. Suggested Format for Informal Resolution Letter.
- H. Mediation.
- I. Formal Complaint of Harassment – Template.
- J. Notification to a Respondent of a Formal Complaint of Harassment – Template.
- K. Notification of Action to be taken in response to a Formal Complaint of Harassment – Template.
- L. Guidance for the Deciding Officer (DO).
- M. Letter of appointment to a Harassment Investigation Officer (HIO) – Template.
- N. Duties and Responsibilities of, and Guidance for, the Harassment Investigation Officer (HIO).
- O. Considering the Final Investigation Report – Guidance for the Deciding Officer (DO).
- P. Armed Forces Unit Equality and Diversity Logs.
- Q. List of Abbreviations.

Chapter 1

INTRODUCTION

UNDERLYING PRINCIPLE ON WHICH THIS CHAPTER IS BASED

All MoD personnel have a right to be treated with dignity in the workplace, and a responsibility to help ensure a working environment in which the dignity of others is respected.

SCOPE

1.1. Service redress or civilian grievance procedures¹ are the framework for dealing with complaints from MoD Service or civilian personnel relating to their service or employment. The procedures set out in this publication supplement that framework but cover only complaints of harassment² by MoD Service or civilian personnel³ against other MoD Service or civilian personnel. Complaints of 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 1.14 – 1.16.

1.2. In practice, Complainants usually offer their own definition of harassment and their complaint will be dealt with in accordance with the procedures in this publication regardless of whether it conforms to any particular definition. Working definitions of harassment are at Annex A.

1.3. These procedures are for:

- a. **Complainants** – i.e. those who believe they have experienced harassment.
- b. **Respondents** – i.e. those personnel against whom allegations of harassment have been made.
- c. **Equality and Diversity Advisers** – i.e. those whose role⁴ within units is to provide impartial advice with regard to Equality and Diversity issues, including alleged harassment and the MoD complaints procedures. Further guidance about their role is in Chapter 2.
- d. **Assisting Officers** – i.e. 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. Further guidance about their role is

¹ This publication refers throughout to current Service and civilian procedures. In due course it will be amended to take account of the implementation of relevant provisions of the Armed Forces Act 2006, including provision for the appointment of a Service Complaints Commissioner.

² Throughout this publication, the term “harassment” should be taken to include non-criminal bullying and victimisation. The definition of victimisation is at Annex A.

³ The term ‘civilian personnel’ includes Royal Fleet Auxiliary personnel.

⁴ For civilian staff, the Equality and Diversity Adviser (EDA) role in respect of these procedures will continue to be undertaken by existing civilian Equality and Diversity Officers (EDOs) until April 2007 when it will become the responsibility of People, Pay and Pensions Agency (PPPA) advisers. Throughout these procedures, the term EDA is used to represent Service EDAs, civilian EDOs and PPPA advisers.

in Chapter 4. Complainants and Respondents may also turn to MoD friends and colleagues for moral support and/or ask them to be in attendance at any stage in the complaints process.

e. **Harassment Investigation Officers** – i.e. those appointed to investigate Formal Complaints of harassment. Further guidance about their role is in Chapter 6.

f. **Deciding Officers** – i.e. those empowered to take action in respect of Formal Complaints of harassment. Further guidance about their role is in Chapter 5.

MOD POLICY

1.4. It is MoD policy⁵ that all Service and civilian personnel, regardless of rank or grade, have a right to be treated with dignity, and a responsibility to do all they can to ensure that the working environment is free from all forms of harassment and that the dignity of others is respected. All personnel must therefore:

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

1.5. The Chain of Command and Line Managers 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 harassment from occurring within their units or establishments (rather than waiting for complaints to arise) and, 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.

1.6. Harassment, of any kind, is in no one's interest. 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; and,

⁵ This policy is encapsulated in the MoD Unified Diversity Strategy issued in 2004.

- 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 harassment a "troublemaker", or retaliating against/victimising them; and,
- h. pressurising someone into not making a complaint.

1.7. If possible, and appropriate, early Informal resolution of harassment allegations should be attempted in the first instance and at the lowest possible level. However, all personnel have a right to make a Formal Complaint if they feel they have been harassed. For Service personnel, this is part of their statutory right of complaint under single-Service redress procedures. For civilian personnel, it is part of their contractual entitlement to raise a grievance relating to their employment under civilian grievance procedures.

1.8. Formal Complaints under Service redress 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 Tribunal⁶ are at Annex C, para 6.

1.9. 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 B.

THE LAW

1.10. Harassment is against the law. Failure by the Chain of Command and Line Managers to prevent harassment from occurring may lead to the MoD being held responsible for the 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 C.

⁶ 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.

SANCTIONS

1.11. Personnel whose behaviour constitutes harassment are liable to have appropriate administrative or disciplinary 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 harassment). Disciplinary action may be taken in respect of offences under the Service Discipline Acts.⁷ 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 concerns the individual's continued employability. The two forms of action are not mutually exclusive.
- b. Under civilian disciplinary procedures, minor disciplinary action in the form of a warning may be taken in respect of minor misconduct (including less serious cases of harassment), while major disciplinary action, involving a range of penalties up to dismissal, may be taken for more serious and gross misconduct (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

1.12. It is a fundamental responsibility of the Command/Line Management chain to protect personnel from victimisation. Administrative or disciplinary action, as appropriate, 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 action if found culpable.

MALICIOUS OR VEXATIOUS COMPLAINTS

1.13. Complaints of harassment will be assumed to have been made in good faith⁸ and Complainants have a right to be protected against victimisation for making such a complaint, even if it is not upheld. Complainants must be satisfied that their complaint is based on objective fact. In the event of a malicious⁹ or vexatious¹⁰ complaint (which may in itself constitute harassment), administrative or disciplinary action, as appropriate, may be taken against the Complainant.

⁷ i.e. the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 which will be aligned with the Armed Forces Act 2006.

⁸ The fact that a complaint is not upheld does not mean that it was made in bad faith. A complaint has only been made in bad faith where there is evidence that the Complainant has been dishonest, rather than, for example, because they were emotionally confused and upset.

⁹ i.e. a complaint motivated by malice, spite or ill-will, which is intended to cause harm to a Respondent, or others.

¹⁰ i.e. an unmeritorious and/or recurring complaint which seeks only to annoy or distress a Respondent, or cause unnecessary administrative effort.

COMPLAINTS INVOLVING NON-MOD PERSONNEL

1.14. Non-MoD personnel should address a complaint against MoD personnel to the Respondent's Commanding Officer/Senior Line Manager¹¹ for action.

1.15. MoD personnel should address a complaint against non-MoD personnel, including personnel from other government departments or personnel from other nation's armed forces (including US visiting forces), to their own Commanding Officer/Senior Line Manager¹². The MoD will make clear to 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.

1.16. The MoD will make contractors and agency staff aware of its Equality and Diversity policies and procedures, including those detailed in this JSP. Harassment of contractors or agency staff by MoD personnel is unlawful and both MoD and individual harassers may be held responsible for this.

¹¹ Throughout these procedures the terms Commanding Officer/Senior Line Manager are taken to include, for example, Station Commanders and Heads of Establishment (including RAF Commanders at USAF bases).

¹² Personnel with non-MoD line managers should refer their complaint to the first MoD Service or civilian person in their Command/Line Management chain.

Chapter 2

ADVICE, SUPPORT AND OPTIONS FOR COMPLAINT RESOLUTION

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

The MoD is committed to providing advice and support from a variety of sources to Complainants and Respondents.

Complainants and Respondents are strongly urged to seek advice and guidance at the earliest opportunity.

INTRODUCTION

2.1. This Chapter describes the sources of advice and support on 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.** The nominated **Equality and Diversity Adviser (EDA)** is the Command/Establishment/Station/Unit primary source of impartial advice and support to all personnel on any Equality and Diversity (E&D) issue, including alleged harassment and MoD complaints procedures. Their role is also to assist the Commanding Officer/Senior Line Manager in implementing MoD E&D policies and initiatives ensuring that they are being followed and monitoring their effectiveness. They must have completed a Joint Equality and Diversity Training Centre (JEDTC)/db Learning training course. Information about the role and responsibilities of EDAs is at Annex D¹³.

2.4 **Practical Assistance.** Help with resolving 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 line manager, 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 Commanding Officer/Senior Line Manager 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 line manager is the alleged Respondent, advice on how to proceed should be sought from the EDA in the first instance.**

¹³ For civilian staff, the Equality and Diversity Adviser (EDA) role in respect of these procedures will continue to be undertaken by existing civilian Equality and Diversity Officers (EDOs) until April 2007 when it will become the responsibility of People, Pay and Pensions Agency (PPPA) advisers (see Footnote 4).

b. **Assisting Officers (AO).** AOs may be assigned or invited to provide help 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. Complainants and Respondents may also turn to MoD friends and colleagues for moral support and/or ask them to be in attendance at any stage in the complaints process.

2.5. **Counselling.** Counselling 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), social workers 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. **Civilian Occupational Welfare Officers.** Civilian Welfare Officers are trained to give advice and support as harassment counsellors, but the choice of action will be left to the client. Welfare Officers cannot accompany, or represent, clients at investigation interviews or any subsequent disciplinary hearings and therefore cannot act as an Assisting Officer.

d. **Trade Union Officials.** Civilian personnel may seek guidance from qualified trade union representatives.

e. **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.

f. **Help Lines.** Personnel may also seek guidance from the following confidential support lines:

- Service Personnel

UK:	0800 731 4880	(freephone)
Overseas:	+44 (0) 1980 630854	(call back option) ¹⁴
Germany:	0800 1827 395	(freephone)
Cyprus:	0809 1065	(freephone)
Falklands:	#6111	(freephone)
Operations:	Paradigm *201	(freephone)

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

¹⁴ Whilst this is not a 'Freephone' number, the service-provider will always immediately call back (so call costs will be minimal).

- Civilian Personnel

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

UK 0800 345 7047 (93345 7047)
Overseas +44 (0)1225 882424.
E-mail welfare@pppa.mod.uk
 Opening hours are 0830-1630 Mon to Fri.
 In out of hours emergencies contact the MOD Resident Clerk on 0207 218 6002

People Service's Centre (for general queries on MoD policy and the complaints procedures)

UK 0800 345 7772 (93345 7772)
Overseas +44 (0)1225 829572.
E-mail peopleservices@pppa.mod.uk
 Opening hours are 0700-1900 Mon to Fri

e. **External Agencies.** 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 COMPLAINANT

2.6. Having obtained advice, a Complainant may decide:

- not to take the matter further;
- to try to resolve the matter informally (see Chapter 3); or,
- to make a Formal Complaint of harassment using these procedures (see Chapter 4).

2.7. A series of flowcharts, illustrating the various stages in the Informal and Formal procedures, is at Annex F.

Chapter 3

INFORMAL RESOLUTION

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

If possible, and appropriate, early Informal resolution of harassment allegations should be attempted in the first instance and at the lowest possible level.

Personnel have the right to make a Formal Complaint of harassment at any time and will receive the appropriate advice and support if they do so.

INTRODUCTION

3.1. This Chapter gives guidance to Complainants, Respondents, Commanding Officers/Line Managers¹⁵ on the Informal process for resolving harassment allegations.

3.2. In general, where an allegation of harassment has been made, the Complainant and Respondent(s) should make every effort to try and resolve the allegation informally. However, every allegation of 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 (see also 3.7). 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.

SUITABILITY OF INFORMAL RESOLUTION

3.4. A Complainant should seek early advice from an Equality and Diversity Adviser (EDA)¹⁶ before deciding whether to attempt Informal resolution.

3.5. Even if the Complainant wishes to attempt Informal resolution, their Commanding Officer/Senior Line Manager, if aware of the alleged harassment, may decide that such an attempt would be inappropriate and to invoke the Formal procedure. For example, there is little to be gained from initiating Informal resolution if the Respondent is unlikely to respond positively to it. The Commanding Officer/Senior Line Manager may also initiate Formal action if they become aware of allegations which they consider to be sufficiently serious.

3.6. The decision whether to follow the Formal or Informal procedure may also depend on:

¹⁵ This Chapter also applies to Assisting Officers (AOs) appointed in support of civilian Complainants or Respondents at this stage.

¹⁶ For civilian staff, the Equality and Diversity Adviser (EDA) role in respect of these procedures will continue to be undertaken by existing civilian Equality and Diversity Officers (EDOs) until April 2007 when it will become the responsibility of People, Pay and Pensions Agency (PPPA) advisers (see Footnote 4).

- a. 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;
- b. the seriousness, nature and extent of the allegation(s);
- c. the attitude of the Respondent;
- d. whether it is a repeat incident;
- e. whether the Respondent has been the subject of similar allegations in the past;
- f. whether the Respondent is in a position of superior responsibility; and,
- g. what remedy or redress is sought by the Complainant.

INFORMAL RESOLUTION

3.7. 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 be either unassisted or assisted:

- a. **Unassisted Action.** Unassisted action can take one of 2 forms:

(1) The Complainant may speak to the Respondent(s) directly. They 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.

(2) The Complainant may choose to write to the Respondent(s) 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.

- b. **Assisted Action.** Assisted action can take one of 3 forms:

(1) 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/Line Managers 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.

(2) Using a MoD Friend or Colleague. The Complainant may speak to the Respondent(s) in the presence of a MoD friend or colleague, or ask them to speak to the Respondent(s) on their behalf. In either case, the Respondent(s) may also have their own MoD friend or colleague present. However, all parties must understand that they cannot pass on responsibility for resolving the matter to their respective MoD friends or colleagues.

(3) Using Mediation. If all parties agree, they may try to resolve any dispute between them through mediation. Guidance on the use of mediation is at Annex H.

OUTCOME OF INFORMAL RESOLUTION

3.8. **Monitoring**. The outcome of Informal resolution may be an agreement or reconciliation between the parties. However, where Commanders/Line Managers 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.

3.9. **Administrative/Disciplinary Action**. Administrative or disciplinary action, as appropriate, may be taken against a Respondent regardless of the outcome of Informal resolution. Alternatively, it may be appropriate for Commanders/Line Managers to remind a Respondent of MoD policy, to require them to attend refresher Equality and Diversity training and/or to inform them that they may face administrative or disciplinary action if the behaviour in question is repeated.

3.10. **Record Keeping**. Record keeping requirements for incidents/complaints involving Service personnel are set out in Chapter 8. Advice on record keeping for cases involving civilian personnel will be issued separately.

UNSUITABILITY OF INFORMAL RESOLUTION

3.11. Despite best efforts, Informal resolution may not succeed or be appropriate because, for example:

- a. the Complainant believes that Informal resolution is inappropriate, e.g. if the allegation arose after a previous incident involving the same Respondent(s);
- b. either the Complainant or Respondent is on long term sickness absence as a result of the harassment allegation;
- c. it becomes apparent that the behaviour is too serious an issue for Informal resolution;
- d. it is impossible to find common ground between the parties;
- e. one, or both, parties withdraw their co-operation; or,
- f. the complaint involves many other parties and/or is very complex.

CESSATION OF INFORMAL ACTION

3.12. 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.

Chapter 4

MAKING A FORMAL COMPLAINT

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

Personnel have a right to make a Formal Complaint of harassment at any time and will receive the appropriate advice and support if they do so.

Formal Complaints must provide sufficient information about the incident(s) complained about, the Respondent(s) and any witnesses, and the redress which the Complainant seeks.

INTRODUCTION

4.1. This Chapter describes the procedure for making a Formal Complaint.

4.2. A Formal Complaint of harassment may be submitted at any time although an attempt at Informal resolution should, whenever possible and appropriate, be made in the first instance.

4.3. 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 which case, the entire series or pattern of incidents will be considered.

4.4. 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 early advice from higher authority.

MAKING A FORMAL COMPLAINT

4.5. Before submitting a Formal Complaint, the Complainant is strongly advised to consult their EDA at the earliest possible opportunity. As well as providing general advice on complaints procedures the EDA can help in identifying an Assisting Officer (AO).

4.6. A Formal Complaint must be submitted in writing (it may be type-written, but must be signed by the Complainant). A suggested letter format is at Annex I.

4.7 A Formal Complaint must be submitted to the person who is empowered to consider it and, where appropriate, to commission an investigation and act on its outcome. This person is the Deciding Officer (DO). For Service personnel this is usually the Complainant's Commanding Officer. For civilian personnel this is usually the Complainant's Senior Line Manager. Generally, complaints should be considered by a DO of minimum Band B2 level and at least 2 pay bands/grades/ranks above the Respondent. If the Commanding Officer/Senior Line Manager is the Respondent, then the Formal Complaint should not be submitted to them and the EDA should seek advice from higher authority.

4.8 Joint complaints by 2 or more Complainants are not permitted. Each Complainant must submit an individual Formal Complaint.

4.9. 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. For example, a Respondent cannot be ordered to apologise¹⁷, although they may be invited to do so. Similarly, any expectation of some form of public apology is also unrealistic; and,
- 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

A template for a Formal Complaint of harassment is at Annex I.

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.

ASSISTING OFFICERS

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, made¹⁸. If appropriate (see 4.14/4.15), they could be a MoD friend or colleague who has

¹⁷ 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.

¹⁸ In some circumstances it might be appropriate for an AO to be in place 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.

already been providing moral support. (Complainants and Respondents may also ask a MoD friend or colleague to be attendance at any stage during the complaints process). 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 Padre/Chaplain, OCF, CCM, or civilian Welfare Officer 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.

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

- a. an MoD Service person or another civilian who works for the MoD (including an agency worker); or,
- b. a Trade Union official.

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 disciplinary 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.

Chapter 5

ACTIONS FOR THE DECIDING OFFICER IN THE EVENT OF A FORMAL COMPLAINT

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

The action to be taken by the Deciding Officer in the event of a Formal Complaint will depend on the seriousness of the complaint and on whether the alleged harassment is admitted by the Respondent(s) or not.

Deciding Officers should take prompt advice from an Equality and Diversity Adviser or E&D Policy Staffs, or from Personnel and Legal Staffs, as appropriate.

INTRODUCTION

5.1. This Chapter describes the Deciding Officer's (DO) 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 Service Complaints).

ACKNOWLEDGING THE COMPLAINT

5.2. Within 24 hours of receiving a Formal Complaint the DO must acknowledge the complaint in writing and invite the Complainant to attend a meeting, as soon as possible, to discuss it. This is so that the DO can make an initial assessment and decide what subsequent action it is appropriate to take. The purpose of the interview is to understand fully the basis of the complaint; they do not form part of any subsequent Formal harassment complaint investigation (see Chapter 6).

MEETING THE COMPLAINANT

5.3. Complainants must take all reasonable steps to attend the meeting, at which they are entitled to be accompanied by an Assisting Officer (AO) having first sought advice from the EDA.

5.4. 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 and that any welfare/pastoral needs which they may have are being catered for.

MEETING THE RESPONDENT(S)

5.5. 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 Commanding

Officer/Senior Line Manager, 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.

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

5.7. 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.

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

POSSIBLE CRIMINAL/SERVICE DISCIPLINARY OFFENCES

5.9. 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 Commanding Officer/Senior Line Manager that this is considered necessary).

5.10. If **at any stage** in the complaints process it appears that the alleged harassment might constitute a criminal or Service disciplinary offence the DO should immediately refer the complaint to the MDP or Service Police¹⁹ (or inform the Respondent's Commanding Officer/Senior Line Manager 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

5.11. Where a Respondent admits to behaviour that amounts to harassment but does not constitute a criminal or Service disciplinary offence, the DO (or the Respondent's Commanding Officer/Senior Line Manager if not the DO) may proceed to take appropriate administrative or disciplinary action against the Respondent, following relevant Service or civilian procedures as appropriate. The Complainant should be informed promptly of the nature of any such action and when it was implemented.

ACTING ON A DENIAL

5.12. Where a Respondent denies 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

5.13. 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.

¹⁹ 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.

SEPARATING THE PARTIES

5.14. 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.²⁰ Such a decision may depend, for example, on: the seriousness of the allegation(s), or incident(s); the risk of the alleged harassment being repeated; the risk of interference with, or compromise of, the investigation or witnesses, or of anyone else being victimised. Every effort must be made to ensure that any separation is implemented fairly taking into account individual and environmental circumstances. Service DOs should always consult with their higher authority before taking such action.

ROLE AND RESPONSIBILITIES

5.15. Guidance for the DOs is at Annex L.

²⁰ It may also be appropriate (e.g. in training establishments) for a Respondent to be temporarily removed from contact with trainees (or other specific groups) who might otherwise be put at risk.

Chapter 6

INVESTIGATING A FORMAL COMPLAINT

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

The Deciding Officer is responsible for initiating any Formal Complaint investigation.

Wherever possible, the investigation will be conducted by suitably trained and skilled personnel who are unconnected with the complaint, Complainant or Respondent(s).

The complaint must be investigated without undue delay but also impartially, thoroughly, sensitively and confidentially.

The Initial Investigation Report will be disclosed to the Complainant and Respondent(s) for comment before being submitted to the Deciding Officer.

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. Having decided that an investigation of a Formal Complaint is required, the DO must appoint a suitable person or team to conduct that investigation.

6.3. The investigation may be conducted by:

a. A **Harassment Investigation Officer (HIO)**.²¹ HIOs 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 should, 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);
- (3) have sufficient Service or wider Departmental experience, and personal qualities/competences appropriate to the task;

²¹ 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. Until April 2007 the DGCP EF Conduct Team will maintain a list of civilians trained as HIOs who can be approached by them to undertake investigations. From April 2007 this responsibility moves to the PPPA Conduct Team.

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

(5) have undertaken HIO training or, if not possible, then at least E&D awareness training.

b. **A Service Equal Opportunities Investigation Team (EOIT)** for complex cases²² involving only members of that Service.

c. **A Joint HIO Team** for complaints that cross Service boundaries²³.

d. Other available personnel of appropriate rank and experience in unavoidable circumstances²⁴.

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). 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). Respondents who are dissatisfied with the investigation may submit a redress of complaint or raise an individual grievance in accordance with Service redress or civilian grievance procedures.

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).

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:

²² For example, complaints consisting of complex or multiple allegations; complaints against or implicating the Complainant's Commanding Officer, or complaints involving personnel who are geographically dispersed.

²³ That is, complaints involving members of different Services, or both Service and civilian personnel.

Leadership of the Team should be determined by the DO on the basis of relevant experience and rank/grade.

²⁴ 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.

- 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. Also, the HIO may re-interview anyone if, for example, they need to clarify or check confusing or conflicting accounts that have been given to them.
- c. All those involved in the complaint will be interviewed separately and discreetly. The Complainant and Respondent(s) have the right to have an Assisting Officer (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 Commanding Officer/Senior Line Manager (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 will be conducted impartially and thoroughly. It is much better to carry out an even-handed and in-depth investigation than to rush to meet deadlines.
- k. The investigation will also be conducted sensitively and confidentially. 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.
- m. The report will not reach any conclusions or make any 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 what action it is appropriate to take. They will not normally re-interview the Complainant or Respondent(s) before reaching their decision.

Chapter 7

THE OUTCOME OF A FORMAL INVESTIGATION

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

The Deciding Officer must decide whether, on the balance of probabilities, the Formal Complaint is upheld.

Where the Formal Complaint is upheld, the Respondent(s) are liable to have appropriate administrative or disciplinary action taken against them.

If the Complainant is dissatisfied with the outcome, they have a right to appeal or have the complaint referred to a higher authority.

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 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 or not the Formal Complaint is upheld in full or in part. Specifically, they 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 harassment. If there is insufficient or no evidence to substantiate the complaint as a whole, the DO may decide that it was unfounded and possibly vexatious or malicious.

7.3. 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.

7.4. 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

7.5. The DO must inform the Complainant and Respondent(s) of their decision in writing 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 Commanding Officer/Senior Line Manager of their decision.

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

7.7. 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 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 them²⁵; and,
- i. reassurance that the situation will continue to be monitored for at least 3 months.

7.8. **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:

- 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 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, and that any subsequent complaints made by them (against any Respondent(s)) will be treated just as seriously;
- e. remind the parties that the situation will be monitored for at least 3 months; and,

²⁵ e.g. someone might disclose information to the HIO about their sexual orientation that they do not want to be common knowledge.

- e. remind the parties of the avenues of appeal or redress open to them if they are dissatisfied with the outcome.²⁶

7.9. Proven Complaints. If part or all of the complaint is upheld, the Respondent is liable to have appropriate administrative or disciplinary action taken against them under the applicable Service or civilian procedures. The DO (or, after consultation, the Commanding Officer/Senior Line Manager of a Respondent not under the DO's Command/Line Management) may proceed to take appropriate administrative or disciplinary 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, and when it was taken, on the clear direction that the information must not be disclosed to anybody else.

7.10. Malicious or Vexatious Complaints. Where the DO decides that the Formal Complaint is unfounded and was malicious or vexatious, they may proceed to take appropriate administrative or disciplinary action against the Complainant, following the relevant Service or civilian procedures. 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

7.11. 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 Queen's Regulations; or,
- b. Civilian personnel - to appeal, normally within 10 working days of receiving the decision to either the DO's Line Manager or the Independent Grievance Appeal Panel.

7.12 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 or warrant the referral of the complaint to a higher authority. However, the Complainant may make a fresh complaint under Service redress or civilian grievance procedures that their original complaint was not taken seriously. A Respondent who is dissatisfied with any decision to take disciplinary or administrative action against them may, if they are a civilian, appeal against that decision under civilian disciplinary procedures or, if they are a Service person, make a complaint under Service redress procedures

²⁶ Service personnel may take action through Service redress procedures.

Chapter 8

RECORDING COMPLAINTS

UNDERLYING PRINCIPLES ON WHICH THIS CHAPTER IS BASED

Nothing concerning unproven cases of harassment will appear in the Complainant's or a Respondent's personnel records.

Data will be recorded in such a way that recurring Complainants or Respondents and trends within units can be identified easily.

INTRODUCTION

8.1 This Chapter describes the action to be taken to maintain records of 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 will be held on personnel computer systems (e.g. HRMS, JPA, Casebook, 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.

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 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 or reference of the complaint to a higher authority 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 harassment complaints involving Service personnel. Instructions for this are at Annex P. Civilian complaint records will be maintained by the PPPA²⁷.

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.

²⁷ Guidance on this will be provided separately via the 'People Portal' on the Defence Intranet.

ANNEX A

DEFINITIONS OF HARASSMENT AND BULLYING

LEGAL DEFINITIONS

1. For the purposes of the anti-discrimination legislation (see Annex C) **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.¹ 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. By contrast, a complaint of harassment or sexual harassment could not be sustained if it could be shown that the Complainant willingly joined in or welcomed the conduct they complained about.
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, 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.

¹ Simply walking out of a room may be sufficient to demonstrate disapproval.

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).

VICTIMISATION

12. 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.
13. 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.

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

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

BULLYING

16. 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.

17. 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.

18. 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.

19. 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.

20. Initiation ceremonies should also be strongly discouraged. In the Armed Forces, with the exception of the 'Crossing the Line Ceremony' (participation in which is entirely voluntary) 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.

ANNEX B

COMPLAINANTS AND RESPONDENTS – EXPECTATIONS AND 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 Equality and Diversity Adviser;
- c. to have a MoD friend or colleague and/or Assisting Officer with them at any stage in the process to provide moral support;
- d. to have an Assisting Officer 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 Harassment Investigation Officer, 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 Deciding Officer;
- k. to be informed promptly of the action taken by the Deciding Officer in respect of the complaint; and,
- l. if dissatisfied with the outcome, to have the right to appeal against the Deciding Officer'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. to have access to advice and support from various sources, including an Equality and Diversity Adviser;
- c. to have a MoD friend or colleague and/or Assisting Officer with them at any stage in the process to provide moral support;
- d. to have an Assisting Officer to help with procedural matters throughout the process;
- e. 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;
- f. if unhappy with the DO's choice of Harassment Investigation officer, 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 Deciding Officer;
- i. to be informed promptly of any action intended by the Deciding Officer in respect of the complaint against them; and,
- j. if dissatisfied with any administrative or disciplinary action taken against them, to have the right to submit a redress of complaint, or to appeal against the disciplinary 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.

ANNEX C

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 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** legislation² 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.³

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.⁴ 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 personnel alike.

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

² 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) and the Employment Equality (Age) Regulations 2006 (and the Employment Equality (Age) Regulations (Northern Ireland) 2006).

³ 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.

⁴ 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'.

6. A complaint under the anti-discrimination legislation may be presented to an **employment tribunal**, but not before the Complainant has, if they are a member of the AF, made (and not withdrawn) a **redress of complaint** in respect of the act complained of under the applicable Service redress procedures or, if they are in MoD civilian employment, raised an **individual grievance** in writing under civilian grievance procedures and waited 28 days.⁵ A Service person must normally complain to an employment tribunal within 6 months of the act complained of, whereas a MoD civilian employee's complaint must normally be presented within 3 months of that act.⁶

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"⁷, 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. 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.

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 feelings⁸ 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 on the amount of compensation that could be awarded.⁹ 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 harassment awareness 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**¹⁰ 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.

⁵ A premature complaint will be struck out.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ However, only in the most exceptional case should an award for hurt feelings exceed £25,000.

¹⁰ A tort is a civil (actionable) wrong.

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.¹¹ 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**¹² are to be found in the Public Order Act 1986 as amended.

12. The **Human Rights Act** 1998¹³ 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. Harassment is also capable of constituting 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.¹⁴ 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 employees¹⁵, which includes providing them with a safe place of work and not exposing employees to unnecessary risks.¹⁶ 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.

¹¹ 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.

¹² A common element of these offences is using threatening, abusive or insulting words or behaviour.

¹³ This Act applies to a member of the AF as it applies to a civilian in MoD employment.

¹⁴ For these purposes, "employees" include Service personnel and recruits or trainees.

¹⁵ For these purposes also, "employees" include Service personnel and recruits or trainees.

¹⁶ However, no such duty of care is owed to members of the AF when they are on active duty.

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.¹⁷ 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.

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).

¹⁷ 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.

ANNEX D

ROLE AND RESPONSIBILITIES OF THE SERVICE EQUALITY AND DIVERSITY ADVISER (EDA)

INTRODUCTION

1. This Annex sets out the roles and responsibilities of the EDA. The nominated EDA is the Command/Establishment/Station/Unit focal point for impartial advice and support to all personnel on any E&D issue, including alleged harassment and the MoD harassment complaints procedures. They should have completed the JEdTC/dBLeaning EDA training course and should always be regarded as the primary source of advice and support to all personnel in resolving a harassment complaint. Their role is also to assist the Commanding Officer/Senior Line Manager in implementing MoD E&D policies, initiatives, and training/awareness-raising, ensuring they are being followed, and monitoring their effectiveness. It is preferable to have at least 2 EDAs in a unit or establishment and the appointment of a network of Assistant EDAs at a variety of rank/grade levels, wherever possible, is strongly recommended. EDAs should ensure that their (and their Assistants') identity, position and availability is widely publicised within their area of responsibility.

COMPLAINT HANDLING

2. The Commanding Officer/Senior Line Manager, retains overall responsibility for complaint handling. The EDA's role is to **assist and support** the Commanding Officer to ensure that:

- a. every effort is made to resolve personal differences as early, fairly and amicably as possible;
- b. impartial advice and support is available to both the Complainant and the Respondent(s), including, where appropriate, the provision of Assisting Officers; and,
- c. a follow-up report is raised 4 weeks after any Formal Complaint investigation.

OTHER DUTIES

3. EDAs are also responsible to the Commanding Officer/Senior Line Manager for:

- a. ensuring that the Unit Equality and Diversity Log (Unit E&D Log), records all complaints of harassment, whether Formal or Informal. Ideally, records of all informal approaches to the EDA for advice should, where possible, be maintained for audit purposes;
- b. raising the monthly Unit E&D Log based executive summary sheets for the Commanding Officer/Senior Line Manager'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 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. 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. constantly monitoring the E&D 'climate' within the unit/establishment to assess the effectiveness of training and information provision, taking remedial action as necessary.

ANNEX E

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 may be 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. This Annex sets out their roles and responsibilities.
2. Ideally the person chosen as the AO should be well known to the Complainant or Respondent whom they are assisting, who may ask for a specific person to help them. The AO's role is to provide help and support during the complaints procedures, not legal or some other expertise.
3. An AO should not be assigned or invited if they have had even the slightest involvement in the complaint, or if there is any likelihood that they may be involved in any subsequent or related investigation.

ROLE AND RESPONSIBILITIES

4. The Assisting Officer should:
 - a. be briefed by the unit EDA on assignment (Service cases);
 - b. read the MoD harassment complaints procedures (JSP 763);¹⁸
 - 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. 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;

¹⁸ This includes the mediation process at Annex H.

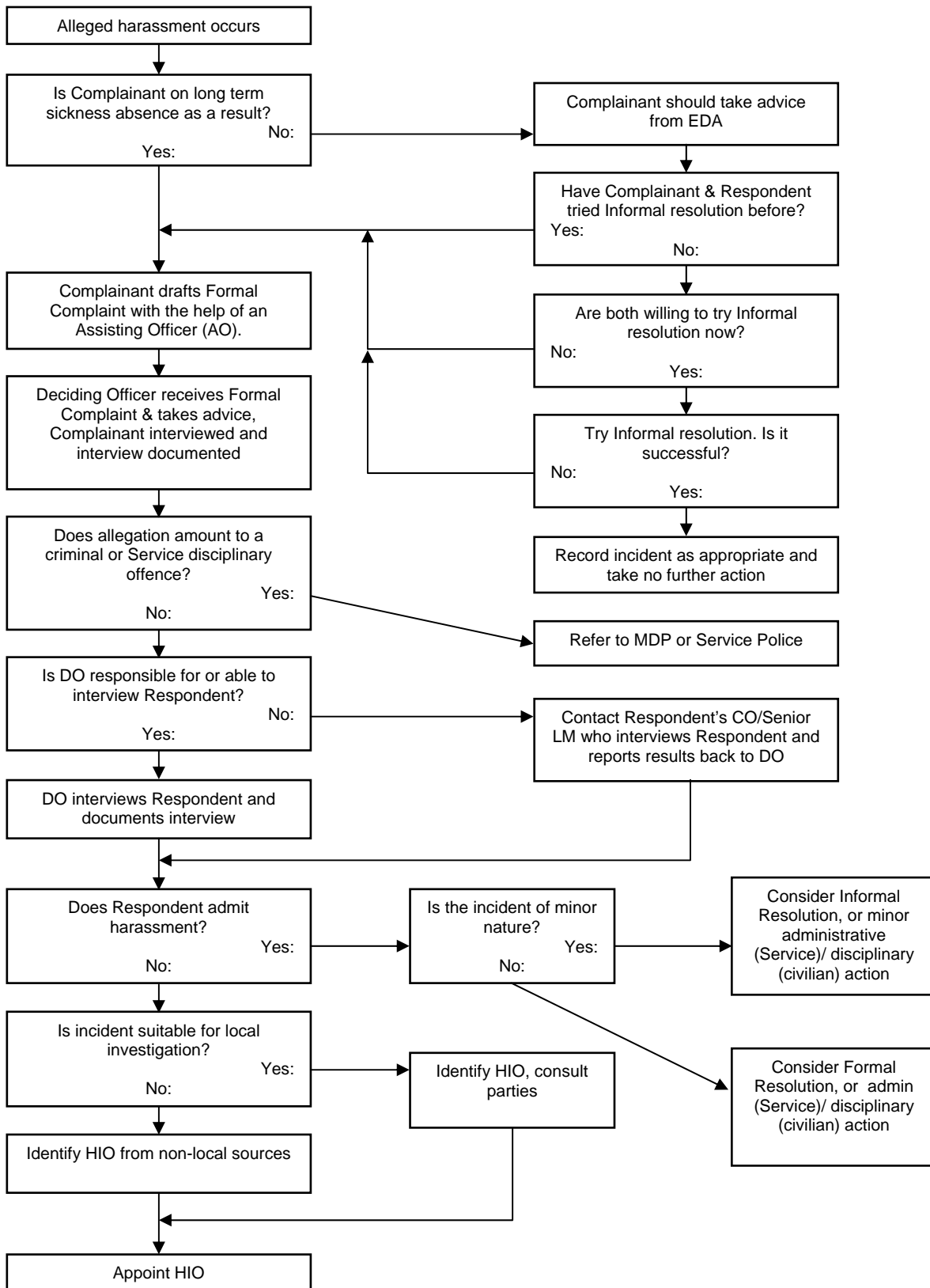
- (3) when supporting a Respondent, assist them in making any written response to the complaint so that it is succinct, accurate, coherent and relevant;
- (4) accompany the Complainant/Respondent, if called for initial interview by the Deciding Officer, prior to a decision being taken as regards the investigation of the complaint;
- (5) accompany the Complainant/Respondent(s) when interviewed by the Harassment Investigation Officer as part of a formal investigation; and,
- (6) accompany the Complainant/Respondent(s) if called for interview by the Deciding Officer after the investigation has been completed.

POINTS TO NOTE

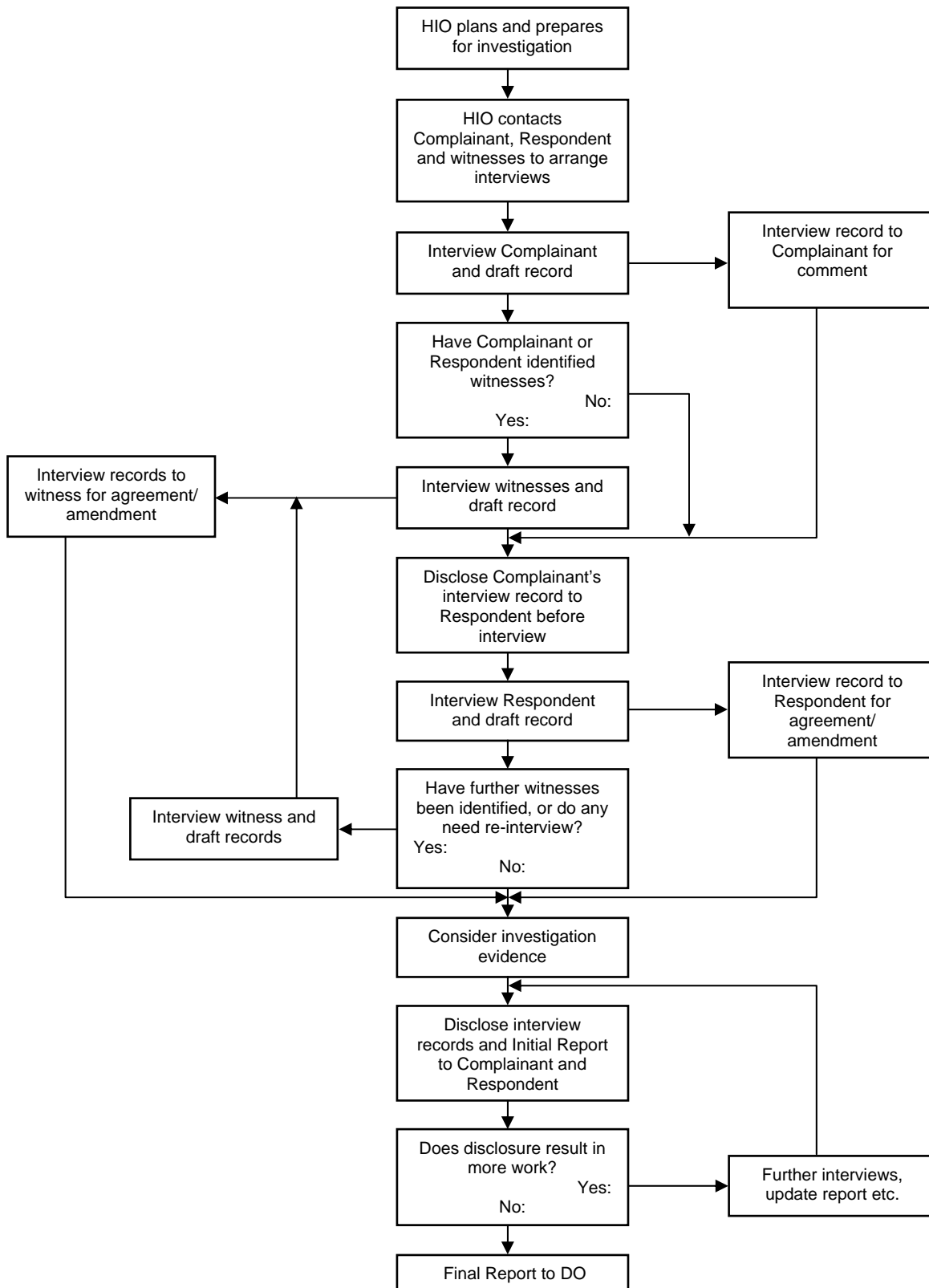
- 5. AOs should be aware of the sensitivities and emotion involved in harassment allegations. Complainants may be upset, but may also be reluctant to take action because they are afraid of reprisals or other adverse consequences. Respondent(s) may be shocked at being accused, fearful about the impact of the alleged harassment on their career, angry and emotional. Respondent(s) can often view/portray themselves as the victim.
- 6. 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.
- 7. 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.
- 8. AOs should recognise the need to seek early expert advice where appropriate.
- 9. Although their role is to provide help and support, AOs must also act with integrity and report anything of a disciplinary nature to the Chain of Command/Line Management.

ANNEX F

HARASSMENT COMPLAINT PROCESS FLOWCHART – INITIAL ACTION

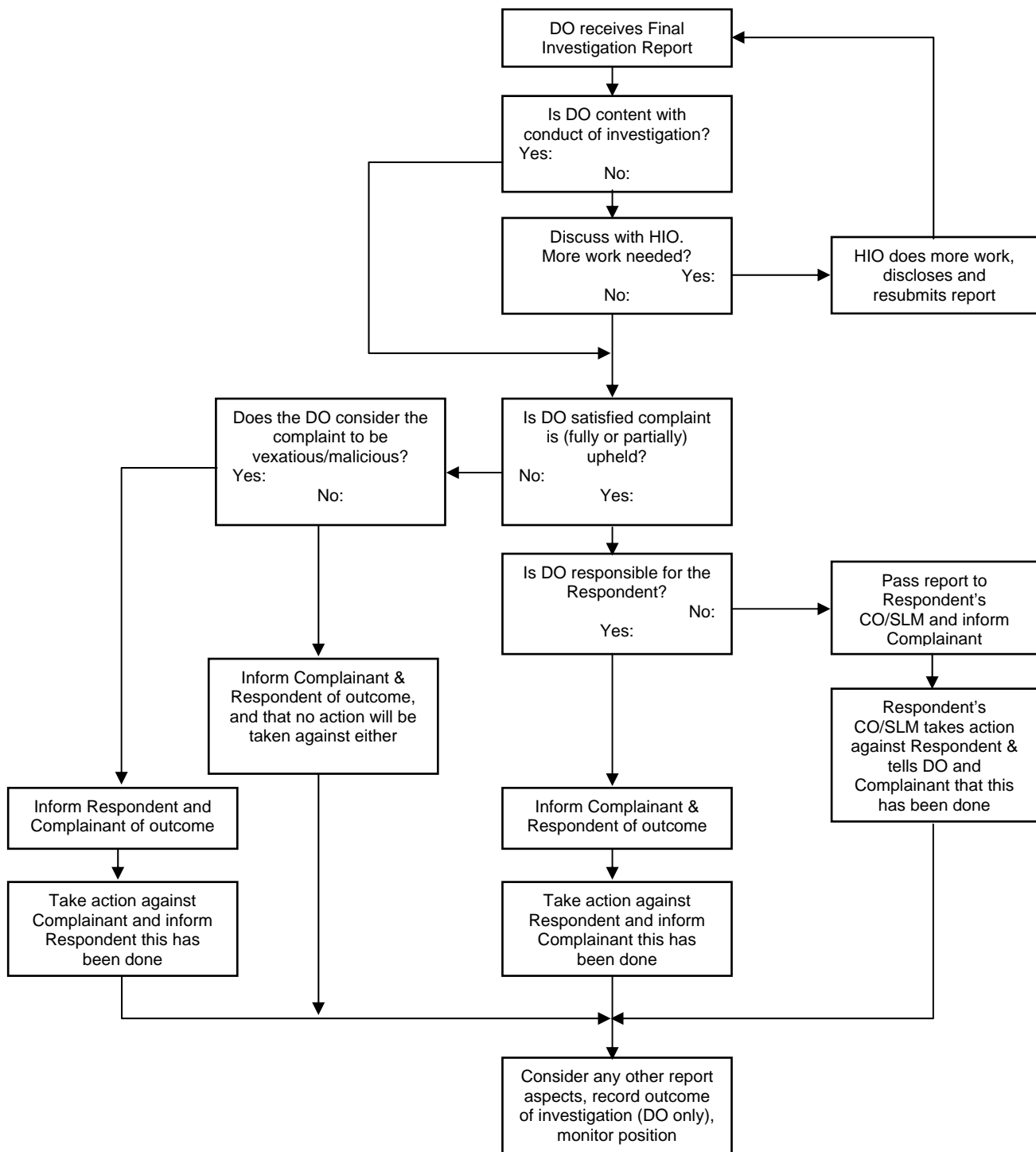


HARASSMENT COMPLAINT PROCESS FLOWCHART – THE INVESTIGATION

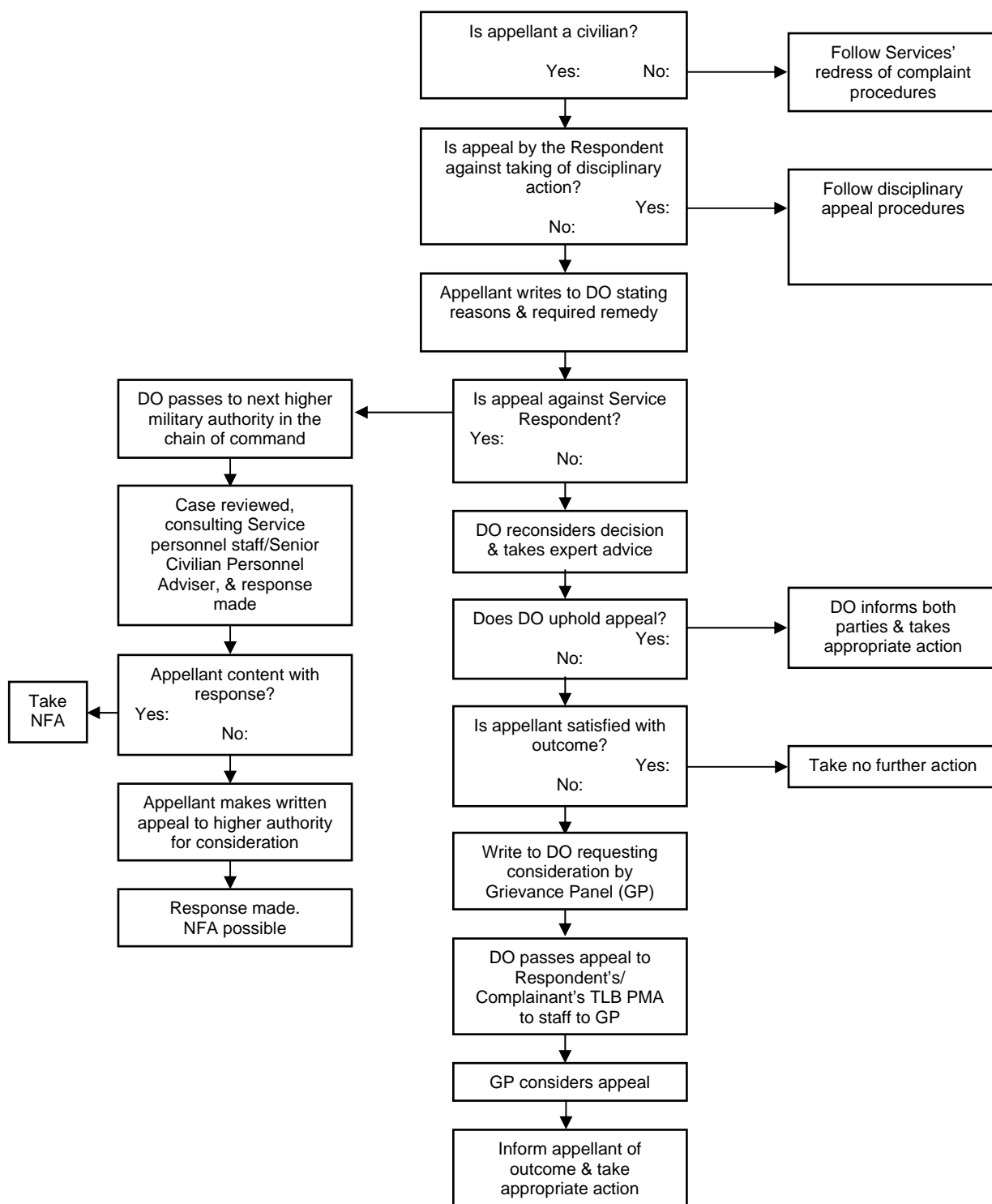


The HIO may exercise discretion when deciding on the order of the interviews: they should interview the Complainant first, but may choose to interview either the Respondent or witnesses afterwards.

HARASSMENT COMPLAINT PROCESS FLOWCHART – ACTING ON THE INVESTIGATION REPORT



HARASSMENT COMPLAINT PROCESS FLOWCHART – HANDLING OF APPEALS/FURTHER REDRESS



ANNEX G

SUGGESTED FORMAT FOR INFORMAL RESOLUTION LETTER

Date

Dear (*Respondent's name*)

ATTEMPT AT INFORMAL RESOLUTION OF HARASSMENT ALLEGATION

1. I am writing to you about your behaviour which I believe amounts to 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 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*)

ANNEX H

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, and restore communication. More Formal options, like administrative/disciplinary, redress/grievance or 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 PPPA 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 is inappropriate if, for example:

- a. there is a difference of greater than 2 ranks/grades between the Complainant and Respondent(s);
- b. the nature of the relationship between the Complainant and Respondent(s) is such that one or more feel it is unsafe to participate;
- c. formal external procedures need to be applied – for example if criminal activity is suspected/involved;
- d. internal administrative/disciplinary or restoring efficiency procedures need to be applied – for example if serious misconduct or unsatisfactory performance is involved;
or,
- e. the dispute is long-standing and complex, and the parties have become so embittered and entrenched that progress is very unlikely.

ANNEX I

FORMAL COMPLAINT OF HARASSMENT - TEMPLATE

INTRODUCTION

1. Before submitting a Formal Complaint, the guidance in Chapter 4 of this publication should be read carefully and early advice sought from the unit EDA who can arrange for/advise on finding an Assisting Officer.
2. If there are several aspects to the complaint, it may be preferable to complete a separate form for each incident and/or Respondent involved. If the complaint involves a number of similar incidents, involving the same Respondent(s), then it may be preferable to cover all in a single Formal Complaint letter.

TEMPLATE

1. Details of person making the complaint (the Complainant):

Name:

Rank/Grade:

Contact details (unit name, address, telephone, email etc):

2. Details of person(s) against whom the complaint is made (the Respondent(s)):

Name:

Rank/Grade:

Unit:

3. Give as much detail as you can about:

- a. the date(s), time(s) and location(s) of the incident(s);
- b. the incident itself or, if there was more than one, each of them;
- c. details of anyone who witnessed the incident(s);
- d. the effect that the incident(s) had on you; and

4. EITHER: if you have tried to resolve the complaint informally, **please state the outcome, OR:** if no attempt was made to resolve the complaint informally **please state why.**

5. What outcome or redress do you seek from this complaint? (i.e. the action you expect the Respondent(s) to take or any other reasonable and feasible action you wish to be taken)

I understand, and agree, that this complaint will be disclosed to the named Respondent(s).

Signed: Dated:

ANNEX J

NOTIFICATION TO A RESPONDENT OF A FORMAL COMPLAINT OF HARASSMENT - TEMPLATE

To: (*Respondent's name*)

1. I have received a written Formal Complaint of harassment in relation to an 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) 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 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 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.....

ANNEX K

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

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

1. Having received a Formal Complaint of 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*) 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*) 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*) 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)
The PPPA - for civilians only

ANNEX L

GUIDANCE FOR THE DECIDING OFFICER (DO)

INTRODUCTION

1. The role of the Deciding Officer (DO) is fundamental to the success of the MoD's policy on combating 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 harassment. 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 harassment made by a member of the Armed Forces or a civilian in MoD employment¹⁹ 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**. 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 an 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. Depending on the circumstances of each complaint, DOs may appoint a suitably qualified subordinate (usually their immediate deputy) 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, in the event of any such delegation, any actions taken will carry the full authority of the DO.
4. The DO's 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

¹⁹ Irrespective of their employment status i.e. whether permanent, casual, an agency temp or a contractor.

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 Harassment Investigation Officer (HIO);
- f. to ensure that the investigation is done 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) 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. 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 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;
- 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 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. to initiate appropriate administrative/disciplinary 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 – e.g. 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); and,

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.

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, 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.

ANNEX M

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 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 harassment 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 the Initial Report will be disclosed to both the Complainant and Respondent(s) before it is finalised and submitted as the Final Report to the Deciding Officer.
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 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 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 Report and had the opportunity to comment on its contents, it is to be submitted to me, as a Final Report, in the format shown in JSP 763. You are to ensure that the report is restricted to fact and does not make, or imply, recommendations that may potentially influence my decision in any way.
12. You are to submit your Final 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:.....

ANNEX N

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 Commanding Officer/Senior Line Manager, to investigate Formal Complaints of harassment made by MoD Service or civilian personnel, (Complainants) about other MoD Service or civilian personnel (Respondent(s))¹. HIOs should be trained in, and have a good understanding of, discrimination 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 should, therefore, be of at least Warrant Officer (WO) or Commissioned rank², 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 PPPA staff.
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;
 - 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;

¹ This applies irrespective of the party's employment status.

² No lower than OF2.

- g. submit to the DO a Final Report of the investigation's findings, analysing the evidence supporting, or otherwise, each aspect of the complaint; and,
- 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.

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; and,
 - 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 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. 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 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,
- 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 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 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 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,
- 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 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 Line Managers, 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,

supporting or otherwise, identified. For each alleged incident, it will be necessary to identify:

- a. aspects which are fully supported by reliable evidence;
- b. aspects that are supported by circumstantial evidence (i.e. a disputed point that can be reasonably established by inference);
- c. aspects not corroborated sufficiently by the evidence, or supported by circumstantial evidence or contradicted by the evidence; or
- d. aspects that cannot be corroborated, as no evidence exists.

46. The HIO must decide what evidence can reasonably be considered. A non-exhaustive list of what might be uncovered includes:

- a. Evidence of the demeanour or actions of either party immediately before or after an alleged incident may be valid, even if the witness did not actually see the incident itself.
- b. Statements from witnesses claiming that the Respondent(s) had also harassed them.
- c. Witnesses may display or imply a degree of bias in favour of a party which will need extreme care in measuring, particularly the extent to which it distorts the quality of the evidence and the credibility of the witness.
- d. There may be a reduction of credibility from a clear reluctance by the witness to give evidence, or a feeling that the witness is not being frank or is keeping something back during interview. It may be appropriate to comment in the report on the reliability of such witnesses and the quality of their evidence.
- e. Interviewees may claim to be eyewitnesses to other incidents outside the scope of the complaint under investigation, but which may have a bearing on that complaint. The HIO must take care in discounting any information from a third party, which is unrelated to the complaint under investigation. They must always bear in mind their duty to deal with any allegation of harassment.
- f. When investigating a series of incidents alleged to have taken place over an extended period, some interviewees' recollections of the exact detail of earlier events may have become somewhat unreliable over time. The HIO should be cautious about accepting evidence at face value.

47. 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.

48. 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”.

49. 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.

50. 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

51. **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.

52. 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.

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

54. 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.

55. **Disclosing the Report.** The Initial 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 outcome of the investigation, subject to comment from the parties.

56. 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.

57. **Submitting the Report to the DO.** The DO will consider the 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.

58. 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 Restricted - 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 Harassment Complaints Procedure) and further guidance may be obtained from the unit Equality and Diversity Adviser (EDA).
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.
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 Restricted - 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 Report is submitted to the Deciding Officer.
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 probabilities³ 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).
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.
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

³ Explanation of this, and other principles and processes, should be sought from your Assisting Officer.

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 Restricted – Staff)

TITLE

Reference:

A. *(initial contact letter details)*

1. Reference A advised you of my appointment as the HIO to investigate the Formal Complaint of 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 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 probabilities⁴ 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. Potential candidates for individuals to accompany you during your interview can be advised by a unit Equality and Diversity Adviser (EDA).

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

⁴ Explanation of this, and other principles and processes, should be sought from an EDA, or by reading JSP 763 thoroughly.

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.

APPENDIX 4 TO ANNEX N

LETTER TO ARRANGE INTERVIEWS WITH A WITNESS

(Classified Restricted - Staff)

TITLE

1. In accordance with JSP 763 (the MoD 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 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 probabilities⁵ 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).

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

⁵ Explanation of this, and other principles and processes, should be sought from an EDA, or by reading JSP 763 thoroughly.

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.

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 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.

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?⁶

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;

⁶ If the interviewee chooses not to be accompanied by an AO, or other person, 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 6 TO ANNEX N

INTERVIEW RECORD

(Classified Restricted – Staff)

RECORD OF AN INTERVIEW WITH (name)

NAME:

RANK/GRADE:

BRANCH/UNIT/ESTABLISHMENT:

DATE OF INTERVIEW:

PLACE OF INTERVIEW:

TIME START:

TIME FINISH:

PERSONS PRESENT/ROLE:

STATEMENT:

I understand that the information contained in this statement that directly relates to the complaint under investigation will be disclosed to the Complainant and Respondent(s) in accordance with the requirements of the Data Protection Act 1998, and may be used to support any subsequent disciplinary or administrative action. I also understand that I must not show this statement to, or discuss it (or any other aspect of this investigation) with, anyone not present at the interview.

STATEMENT SIGNED BY: **(INTERVIEWEE)**

DATE

STATEMENT SIGNED BY: **(HIO)**

DATE

APPENDIX 7 TO ANNEX N

INTERVIEW RECORD COVERING LETTER

(Classified Restricted – 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 Restricted – Management)

TITLE

BACKGROUND

The Harassment Investigating Officer's Investigation Report into a Formal Complaint of 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 opinions or recommendations.

APPENDIX 9 TO ANNEX N

REPORT DISCLOSURE

(Classified Restricted – Staff)

To:

Complainant
Respondent(s)

TITLE

1. The interviewing stage of the investigation into the Formal Complaint of harassment made *(by/against)* you *(against/by)* has been completed and the Initial 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 Officer, 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:

ANNEX O

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 advice must be sought before reaching this conclusion.

ANALYSING THE EVIDENCE

4. **Harassment Complaints.** Before considering the evidence in the report, the DO should be absolutely clear about the definitions of 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.
 - 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.

ANNEX P

ARMED FORCES UNIT EQUALITY AND DIVERSITY LOGS

1. Commanding Officers/Station Commanders/Heads of Establishment are to maintain standard records of 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 reports⁷;
- e. inform any necessary remedial action;
- f. allow Commanding Officers/Station Commanders/Heads of Establishment to monitor trends; and,
- g. ensure resources are properly targeted.

2. A unit's Equality and Diversity Adviser (EDA) should normally be the custodian of the E&D Log. The log will be used to record all reported incidents of 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 the PPPA⁸.

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.⁹ All such personnel should be aware of the requirement to record the incident in the log and pass completed log sheets to the EDA.

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

⁷ 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.

⁸ Guidance on this will be provided separately via the 'People Portal' on the Defence Intranet.

⁹ Complainants should be encouraged to report incidents of harassment to the EDA, even if the parties managed to resolve the matter themselves.

4. Information relevant to any complaint or incident of 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 'RESTRICTED 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> <u>INCIDENT</u>	<u>(2)</u> <u>FORMAL</u>	<u>(3)</u> <u>INFORMAL</u>	
		<u>Cat 1</u>	<u>Cat 2</u>
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 Commanding Officer/Senior Line Manager submitted under Service redress 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 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 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, 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, the Complainant and Respondent(s) 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 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 Commanding Officer/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 (31 Mar and 30 Sep), 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, 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;
- f. in the case of the option 'other', having been chosen, a breakdown of what the incident/complaint comprised.

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

- a. **Royal Navy.** FLEET-NLM CLM DE SO2.
- b. **Army.** DM(A)-E1 Employment
- c. **RAF.** SO1 SPC HQ STC

12. Single-Service personnel E&D policy staffs are to consolidate unit returns and provide a report to DCDS(Pers) biannually on 30 Apr and 31 Oct using the same criteria. In addition, the report should include the following details for each type of complaint/incident listed at 6(b)(1):

- a. the number of Service police investigations together with a breakdown of the nature of the offences and disciplinary action taken against offenders in cases concluded during the period,
- b. the number of Employment Tribunal Cases together with details of the outcomes of those concluded during the period.

FURTHER GUIDANCE

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

RN:	FLEET-NLM CLM DE SO1 (or SO2)	Tel: 023927 85706	Mil: 93832 5706
			Mil: 93832 5683
Army:	DM(A)SO2 Diversity	Tel: 01980 615351	Mil: 94344 5351
RAF:	PTC-SO2E&D	Tel: 01452 712612 #5049	Mil: 95471 5049

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 RESTRICTED 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 Wtr	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 LWtr	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 CPOWTR Wtr Wtr OM		
Nature of Complaint and Summary	(g) A female writer 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 (<i>quote actual words spoken and specific actions that offended</i>).			
Redress sought by Complainant	(h) Wtr 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:	(i) Wtr 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. <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) Wtr 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.				
Signatures: (k)					
EDA:	D Cantello Lt Cdr, RN	Complainant:	Andrea Parks Wtr	Superior officer (if Applicable)	DB Harrie Lt, RN DLSO
Date:	23 03 05	Date:	23 03 05	Date:	23 03 05
Mediator(s)				Date:	

APPENDIX 2 TO ANNEX P RESTRICTED 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 RESTRICTED 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 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:

Complainant:

Date:

Date:

APPENDIX 4 TO ANNEX P RESTRICTED 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.....Unit

LIST OF ABBREVIATIONS

AF	Armed Forces
AO	Assisting Officer
AWS	Army Welfare Service
CCM	Civilian Chaplain to the Military
DGCP	Director General 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
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
MoD	Ministry of Defence
MDP	Ministry of Defence Police
NFA	No Further Action
NPFS	Naval Personal Family Service
OCF	Officiating Chaplain to the Forces
PPPA	People, Pay and Pensions Agency
RMW	Royal Marines Welfare Service
SSAFA	Soldiers Sailors and Airmen's Families Association