



House of Commons
Defence Committee

**Armed Forces Bill:
proposal for a Service
Complaints Commissioner**

Fourteenth Report of Session 2005–06

Report, together with formal minutes

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The Defence Committee

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

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Mr David Crausby MP (*Labour, Bolton North East*)
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Mr Desmond Swayne MP (*Conservative, New Forest West*)

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Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at:

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Committee staff

The current staff of the Committee are Philippa Helme (Clerk), Eliot Wilson (Second Clerk), Ian Rogers (Audit Adviser), Stephen Jones (Committee Specialist), Adrian Jenner (Inquiry Manager), Richard Dawson (Committee Assistant), Sheryl Dinsdale (Secretary) and Stewart McIlvenna (Senior Office Clerk).

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Summary

The Armed Forces Bill has been considered by both Houses and is awaiting consideration of Lords Amendments in the House of Commons.

The Bill as introduced provided for a service complaint panel, to which the Secretary of State for Defence might in certain cases appoint an independent member. The Defence Committee published a report before Second Reading arguing that the Government's proposals did not provide a mechanism to deal with complaints which was sufficiently independent of the chain of command.

In response to the Deepcut Review, the Government tabled amendments in the House of Lords providing for a Service Complaints Commissioner.

We welcome the proposal to create a Service Complaints Commissioner, as an alternative route for complaints to the chain of command. But the role proposed for the Commissioner falls a long way short of the investigatory body proposed by the Defence Committee in 2005.

Much of the detail of the new complaints mechanism remains to be established by secondary legislation. The Committee will be monitoring the secondary legislation closely and will, if necessary, report further concerns to the House.

Report

1. The Armed Forces Bill was introduced in the House of Commons on 30 November 2005, and has now been considered by both Houses of Parliament. The House of Commons will be asked to consider Lords Amendments later today, Tuesday 7 November 2006.

2. Before Second Reading in the House of Commons, we published a report highlighting two concerns: the degree of independence in the complaints process proposed by the Government; and the Government's proposal to remove the requirement for annual renewal of the legislation.¹

3. **In respect of the annual renewal of Service law, our concern has been met.** The Bill as introduced restated the requirement for quinquennial renewal of the Acts by primary legislation, but did not continue the current practice of annual renewal in the intervening years by Order in Council approved in draft by both Houses of Parliament.² In response to concerns expressed at Second Reading, in the Select Committee on the Bill, and by this Committee, the Government introduced an amendment during the Select Committee stage reinstating annual renewal.³ **We commend the Government for responding promptly to parliamentary pressure to reinstate the requirement for annual renewal of Service law.**

4. **In respect of the degree of independence in the complaints procedure, our concerns have only been partially met.** The Bill as introduced provided for a service complaint panel, to which the Secretary of State for Defence might in certain cases appoint an independent member.⁴ We argued that the Government's proposals did not provide a mechanism to deal with complaints which was sufficiently independent of the chain of command.⁵ And we urged the Government to table amendments to strengthen the degree of independence in the complaints mechanism, as recommended by our predecessor Committee's 2005 report on the *Duty of Care*.⁶

5. The report of the Deepcut Review, conducted by Sir Nicholas Blake QC, in March 2006 recommended that there should be an independent "Commissioner of Military Complaints" or Armed Forces Ombudsman, with the ability to receive unresolved complaints from Service personnel or their families; supervise the investigation of such complaints, and supervise the response to a complaint including providing advice on any disciplinary or administrative action to be taken. The Review—also known as the Blake

1 Defence Committee, First Report of Session 2005–06, *Armed Forces Bill*, HC 747

2 Bill 94 (2005–06), clause 371

3 See HL Bill 113-I (2005–06), clause 374. See also report of the Select Committee on the Armed Forces Bill, HC 828-I, paras 150–154

4 Bill 94 (2005–06), clauses 331 and 332

5 HC 747 (2005–06), paras 10–11

6 Defence Committee, Third Report of Session 2004–05, *Duty of Care*, HC 63-I, paras 411–427

Report—recommended that the Commissioner make publicly available an annual report on issues relating to the welfare of soldiers.⁷

6. The Report from the Select Committee on the Armed Forces Bill, published on 9 May 2006, welcomed the establishment of the Service Complaint Panel and the addition of an independent voice in appropriate circumstances. It suggested that the MoD and the Armed Forces needed to address whether the discrepancy between the level of bullying and harassment suggested by the Services' continuous attitude survey and the few cases of bullying and harassment that reach Service Board level were due to the satisfactory resolution of those complaints at lower levels in the complaints process; and if not, it recommended that the MoD look again at the problem of ensuring that Service personnel feel able to make a complaint and that it will be dealt with fairly. It also expressed concern about the level of resources provided to improve the accessibility of the complaints procedure.⁸

7. The Armed Forces Bill Committee was not convinced by the argument for a Service Ombudsman or a Commissioner to investigate complaints, but acknowledged that there was scope to deal with grievances more effectively, particularly those relating to allegations of bullying. It welcomed the proposal to establish an independent reviewer for the Armed Forces redress of complaints procedures.⁹

8. In its response to the Deepcut Review in June 2006, the Government argued that some of the functions for the Commissioner recommended by the Review—the ability to intervene in the handling of a complaint and to supervise investigations, and to institute legal proceedings against decisions not to prosecute—were inappropriate to an independent commissioner and risked undermining the chain of command and the independence of the prosecuting authorities. But the Government agreed to extend the role of the external reviewer proposed under the Bill, to change his or her title to “Service Complaints Commissioner”, and to give him or her direct access to Ministers.¹⁰

9. At Committee stage in the Lords, the Government tabled three new clauses providing for a Service Complaints Commissioner with the power to review the fairness and effectiveness of the military complaints system and to provide the Secretary of State with an annual report to be laid before Parliament.¹¹ The Lords amendments also give the Commissioner a limited role in regard to the investigation of complaints. The Commissioner is given power to refer allegations of certain types of wrongdoing—whether made by the alleged victim or by someone else—to an officer (normally the commanding officer of the alleged victim). The officer will have a duty to inform the alleged victim about the allegation and to find out whether he or she wants to make a complaint about it. The officer will have a duty to ensure that the alleged victim knows about how to make a service

7 The Deepcut Review: A review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002, 29 March 2006, HC 795

8 HC 828-I (2005–06), paras 116–121

9 HC 828-I (2005–06), paras 122–129

10 The Government's Response to the Deepcut Review, June 2006, Cm 6851, Session 2005–06, pp 14–15. See also HC Deb 13 June 2006, cols 638–653

11 See Lords Amendments 48, 49, and 55 (and related Amendment 47 and 63), in conjunction with HL Bill 113-I (2005–06). (Alternatively, see HL Bill 163-I (2005–06), clauses 338, 339 and 366)

complaint and about any time limits on this.¹² **We welcome the proposal to create a Service Complaints Commissioner. Creating an independent office to which people can make complaints should meet the key concern that Servicemen and women and their families are not always willing to raise issues with the chain of command. But the House should be aware that the role proposed for the Commissioner falls a long way short of the investigatory body proposed by our predecessor Committee.**

10. The types of allegation which the Commissioner will be able to pass on will be defined in secondary legislation. The MoD has said they will include allegations of discrimination, bullying, harassment and other forms of improper behaviour, and that these are the same circumstances in which an independent member will be appointed to a service complaints panel. The MoD has concluded that panels investigating complaints about careers and eligibility for allowances should not include an independent element.

11. Secondary legislation will also provide for the Commissioner to be informed about the progress and outcome of referred complaints.¹³

12. In September 2006, we wrote to the Secretary of State for Defence asking to be kept informed of developments in the proposals for the new complaints process and of progress with secondary legislation under the Bill more generally. The Secretary of State responded very positively, undertaking to provide us with drafts of key statutory instruments and explanatory memoranda in sufficient time for us to scrutinise them before they are laid before Parliament. He also proposed to provide an annual report on progress towards implementation of the Bill, before the Continuation Order debate each Summer. The correspondence is appended to this Report.¹⁴ **We welcome the MoD's openness in facilitating parliamentary scrutiny of developments in Service law.**

13. **We recommend that the House agree with the Lords Amendments establishing a Service Complaints Commissioner, but it should do so in the knowledge that there is concern that these amendments do not go far enough to ensure independence in the complaints process and that much of the detail remains to be established by secondary legislation. The House can be assured that this Committee will be monitoring the secondary legislation closely and will, if necessary, report any further concerns to the House.**

12 See p 9: letter from the Secretary of State for Defence

13 See p 9: letter from the Secretary of State for Defence

14 See pp 9–10

Conclusions and recommendations

1. In respect of the annual renewal of Service law, our concern has been met... We commend the Government for responding promptly to parliamentary pressure to reinstate the requirement for annual renewal of Service law. (Paragraph 3)
2. In respect of the degree of independence in the complaints procedure, our concerns have only been partially met. (Paragraph 4)
3. We welcome the proposal to create a Service Complaints Commissioner. Creating an independent office to which people can make complaints should meet the key concern that Servicemen and women and their families are not always willing to raise issues with the chain of command. But the House should be aware that the role proposed for the Commissioner falls a long way short of the investigatory body proposed by our predecessor Committee. (Paragraph 9)
4. We welcome the MoD's openness in facilitating parliamentary scrutiny of developments in Service law. (Paragraph 12)
5. We recommend that the House agree with the Lords Amendments establishing a Service Complaints Commissioner, but it should do so in the knowledge that there is concern that these amendments do not go far enough to ensure independence in the complaints process and that much of the detail remains to be established by secondary legislation. The House can be assured that this Committee will be monitoring the secondary legislation closely and will, if necessary, report any further concerns to the House. (Paragraph 13)

Appendices

Letter from the Chairman to the Secretary of State for Defence

The Defence Committee has maintained an interest in the progress of the Armed Forces Bill for several years. As you may be aware, in the previous Parliament the Ministry of Defence provided the Committee with regular updates on the progress of the legislation.

As the Bill proceeds through the legislative process and then toward implementation, we would wish to maintain the opportunity to follow developments, and in particular the progress of statutory instruments made under the legislation which will contain much of the important detail. Given the relatively short periods of time often available for consideration of secondary legislation once it is laid before Parliament, we would appreciate the opportunity to see draft secondary legislation before it is laid, with the accompanying explanatory memoranda. In addition, we would appreciate updates on the progress towards implementation of the legislation.

We are particularly interested in the proposals for independence in the complaints mechanism. It would be helpful if we could be kept closely informed of developing policy.

15 September 2006

Letter from the Secretary of State for Defence to the Chairman

Thank you for your letter of 15 September 2006. I very much welcome your proposal for the Committee to maintain a continued interest in the Armed Forces Bill as we move toward its implementation.

I agree that it is important that the Committee has ample time to consider the key statutory instruments and explanatory memoranda. I am happy to undertake to let you have copies of these in draft in sufficient time before being laid before Parliament.

In addition, we will provide an annual report on more general progress towards Bill implementation. It might be of most value to do this in advance of the Continuation Order Debate which we envisage will, as now, be before the summer recess each year. We will, of course, expect to keep the Committee abreast of any significant developments as they occur.

I note your particular interest in the proposals for the complaints process. We have now tabled our amendments to the Armed Forces Bill to provide for a Service Complaints Commissioner, which we announced would be forthcoming in our response to the report of the Deepcut Review by Nicholas Blake QC.

These amendments will be considered at Committee stage in the Lords scheduled for 11 and 12 October. I thought it would be helpful to provide some detail about the Government amendments ahead of those debates.

You will recall that on 13 June the Government published its response to the report of the Deepcut Review by Nicholas Blake QC and that a statement was made in the House of

Commons on our intention to introduce a Service Complaints Commissioner. The amendment will provide that, in addition to reviewing the fairness and effectiveness of the military complaints system, the Commissioner will have the power to refer allegations of certain types of wrongdoing against members of the Services to an officer (usually the commanding officer of the alleged victim). That officer will have a duty to inform the alleged victim about the allegation and find out whether he wants to make a complaint about the alleged wrong. The officer will also ensure that the alleged victim knows about how to make a service complaint and about any time limits under the legislation.

The allegations must be made in a communication to the Commissioner. They may be made by anyone, such as a friend of the alleged victim or member of the same family. Secondary legislation will also provide for the Commissioner to be informed about the progress and outcome of referred complaints. Critically, the Commissioner will have direct access to Ministers and the amendment will also require the Commissioner to provide the Secretary of State with an annual report to be laid before Parliament.

Secondary legislation will also define the types of allegation to which these provisions will apply, so that they cover ones related to discrimination, bullying, harassment or other forms of improper behaviour. These are the same circumstances as those in which an independent member of the Service complaints panel will be required. I envisage that this will be one of the statutory instruments that your Committee will be keen to see in draft.

Some of the detailed functions for a Commissioner, proposed by Nicholas Blake, could not be accepted. We do not think that the Commissioner should be able to intervene in the handling of a complaint, or to supervise the investigations of or response to a complaint. We think it essential that all complaints, whether introduced by the Commissioner or not, should operate under one system. Under that system, the aim is that complaints should, if possible, be resolved by the chain of command with reference, if necessary, to the service complaints panels. In complaints in which the Commissioner will have a role, there will be an independent member of the panel.

To do otherwise would risk undermining the chain of command and its overall responsibilities for the welfare of those under command. It would also undermine the role of the panel system. The Government amendment will seek to ensure that the Commissioner's role is complementary to, and independent of, the rest of the redress system.

Although not covered by Government amendments, you also expressed an interest in the workings of the service complaint panel, proposed in the Bill. In our considerations of complaint panels, we took as our starting point the need to maintain the service involvement, in the broadest sense, in remedying complaints. In some cases, however, the balance moves in favour of an independent element in that process; in particular where the need for transparency is paramount or where outside expertise is beneficial.

We have already identified the key areas where an independent element is needed: unlawful discrimination or harassment; bullying, which can amount to harassment in some instances; and a wrong done involving bias or other improper behaviour. There will be other instances in which expertise or independence calls for an independent element, but we concluded on balance, that those issues relating to careers and regulations, for

example on eligibility for allowances, would not benefit from an independent member. We think that in this way, we shall achieve the right balance between, on the one hand, independence and outside areas of expertise, and on the other hand, the need for the Services to respond to complaints and for complaints to be considered with an understanding of the service context.

30 September 2006

Formal minutes

Tuesday 7 November 2006

Members present:

Mr James Arbuthnot, in the Chair

Mr David S Borrow

Mr David Crausby

Linda Gilroy

Mr David Hamilton

Mr Brian Jenkins

Robert Key

Willie Rennie

John Smith

1. Armed Forces Bill: proposal for a Service Complaints Commissioner

The Committee considered this matter.

Draft Report (Armed Forces Bill: proposal for a Service Complaints Commissioner), proposed by the Chairman, brought up and read.

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

Summary agreed to.

Ordered, That the following Papers be appended to the Report: (Letter from the Chairman to the Secretary of State for Defence and Letter from the Secretary of State for Defence to the Chairman).—(*The Chairman*)

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

[Adjourned till Tuesday 21 November at Ten o'clock.]

Defence Committee Reports in this Parliament

Session 2005–06

First Report	Armed Forces Bill	HC 747 (<i>HC 1021</i>)
Second Report	Future Carrier and Joint Combat	HC 554 (<i>HC 926</i>)
Third Report	Delivering Front Line Capability to the RAF	HC 557 (<i>HC 1000</i>)
Fourth Report	Costs of peace-keeping in Iraq and Afghanistan: Spring Supplementary Estimate 2005–06	HC 980 (<i>HC 1136</i>)
Fifth Report	The UK deployment to Afghanistan	HC 558 (<i>HC 1211</i>)
Sixth Report	Ministry of Defence Annual Report and Accounts 2004–05	HC 822 (<i>HC 1293</i>)
Seventh Report	The Defence Industrial Strategy	HC 824 (<i>HC 1488</i>)
Eighth Report	The Future of the UK's Strategic Nuclear Deterrent: the Strategic Context	HC 986 (<i>HC 1558</i>)
Ninth Report	Ministry of Defence Main Estimates 2006–07	HC 1366 (<i>HC 1601</i>)
Tenth Report	The work of the Met Office	HC 823 (<i>HC 1602</i>)
Eleventh Report	Educating Service Children	HC 1054
Twelfth Report	Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny	HC 873 (<i>Cm 6954</i>)
Thirteenth Report	UK Operations in Iraq	HC 1241 (<i>HC 1603</i>)