



GRÚPA ATHBHREITHNITHE NEAMHSPLEÁCH - COSAINT
INDEPENDENT REVIEW GROUP - DEFENCE
DÍNIT DAOINE, DIGNITY OF PEOPLE

APPENDICES

FINAL REPORT TO THE MINISTER FOR DEFENCE

INDEPENDENT REVIEW GROUP – DEFENCE (IRG-DF)

Appendices

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Appendix 1: Report on the IRG- DF Perceptions and Experiences Survey (2022) Results



GRÚPA ATHBHREITHNITHE NEAMHSPLEÁCH - COSAINT
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DÍNIT DAOINE, DIGNITY OF PEOPLE

PERCEPTIONS AND EXPERIENCES SURVEY

INDEPENDENT REVIEW GROUP – DEFENCE (IRG-DF)

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Introduction

The terms of reference (ToR) of the Independent Review Group – Defence (IRG-DF) published on the 1st February 2022, included at item number 5, a request by the Minister for Defence, Mr. Simon Coveney T.D. to:

‘Undertake a benchmarking exercise against the quantitative research, undertaken as part of the External Advisory Group 2002 Report. ‘The Challenge in the Workplace’. And include a review of how female members of the Defence Forces perceive themselves within the Organisation and additionally how female members are perceived by the Organisation.’

- Research design including agreeing the research objectives, designing the tool for capturing the data, setting up the survey, hosting or distributing the Questionnaire; analysis of the findings and reporting.

Following a competitive process, independent market research experts Fresh Perspectives were engaged to undertake this work in April 2022.

The IRG-DF prepared a specification for the work required to fulfil its obligations under ToR number 5 and this included

- A Benchmark of female Defence Forces personnel on their perceptions of themselves within the Organisation and how female members are perceived by the Organisation.
- A survey of how the members of the organisation perceive the aspects of the organization of relevance to the ToR e.g. Incidence of unacceptable behaviour; confidence in complaints procedure; intimidation to deter complaints; human capability to identify, address, and resolve incidence of unacceptable behaviour; members perceptions of culture and its role in countering or facilitating unacceptable behaviours.

Survey Methodology

The methodology for conducting the survey was an online survey programmed using Qualtrics software.

Fieldwork dates

The survey went live on the 1st of June and remained open for completion by Respondents until the 11th of July 2022.

Respondents

Current serving members of the Irish Defence Forces who were made aware of the survey via multiple information campaigns prepared by the IRG-DF and distributed through a variety of channels (mail shots, social media, word of mouth etc.) by Defence Forces representative organisations.

Eligibility/Data Quality

Screen Criteria were inserted at the beginning of the survey to exclude anyone who did not fit the eligibility criteria of the research e.g. younger than 18 years, not a member of Defence Forces. Data was checked for quality and a small number of Respondents were excluded from some or all of the analysis based on their responses being incongruent with expectations for legitimate responses.

This survey was primarily based on a previous piece of research conducted in 2002 by Dr Eileen Doyle. Questions and response options were designed to remain as close as possible to the original. A number of components were amended to better reflect terminology and technology that has become more widely available since the previous wave of research was conducted (e.g. smartphones etc).

THE IRG-DF would in particular thank the Defence Forces representative organisations, PDFORRA, RACO, RDFRA and the Defence Forces Women's Network who assisted with the distribution of this survey.

Summary of key findings

Key Findings Harassment

1. Approximately 1/3rd of respondents experienced Harassment while serving in the Defence Forces.
2. The majority of these experienced more than one instance
3. Female DF members were much more likely to report experiencing harassment (76% vs 27% for Males)
4. Members of the Naval Service also reported higher levels of harassment compared to other services (54% versus a total of 33%)
5. Younger members of the Defence Forces were less likely to report experiencing Harassment
6. Over half of the instances of Harassment occurred 5 or more years ago. 7% reported that the harassment was ongoing.
7. Harassment occurred in a range of environments but 50% occurred during routine work.
8. 80% of Harassment was perpetrated by one or more members of a higher rank to the victim and the majority of perpetrators were male.
9. The impact of the harassment on individuals ranged from minimal to 'much worse than other stressful situations experienced'. One third of respondents who experienced Harassment reported this most severe level
10. ¾ of instances were not reported - the main reason given for this was there being 'no point' in doing so.
11. Of the 23% who did report it, most found the process to be complex and most (80%) were dissatisfied with the outcome.
12. 20% of the cases reported are still under investigation
13. 71% of those experiencing Harassment were aware of the reporting procedures in place – whether they chose to report the issue or not.
14. 92% of victims discussed the harassment with colleagues – either of the same or senior rank to them
15. Approximately half of those experiencing Harassment considered leaving the defence forces.
16. Of those where the harassment has been within the past 2 years, 1/5th have decided to leave the Defence Forces
17. In terms of what can be done to prevent harassment the main element was an 'Attitude change within the Defence forces'.

Key Findings Bullying

1. 35% reported at least one instance of bullying.
2. Levels were slightly higher among females, Naval and Air Services
3. Lower levels seen in younger respondents
4. Most instances were historical – 60% were 5 or more years ago
5. 13% were ongoing or within the past 6 months.
6. Bullying was most commonly committed by higher ranks (83%).
7. One quarter of respondents considered it 'much worse' than other stressful situations they had experienced.
8. 1/3rd report that the upset caused by the Bullying was still ongoing.
9. In most cases, Bullying occurred in the presence of other Defence force service personnel.
10. The Bullying behaviour was actively discussed with others – 90% discussed it with colleagues of

the same, lower or higher rank; 35% discussed it with family members.

11. 55% considered or took steps to leave the Defence Forces as a consequence of the bullying received.
12. In cases that had occurred within the past 2 years, 31% had decided to leave the Defence Forces.
13. The incidents of bullying were reported in only 23% of cases in this research.
14. Most (65%) of those who reported found the reporting process to be simple
15. However most reported being dissatisfied with the outcome of the reporting process
16. 12% of cases were still under investigation
17. For those that did not report, the most common reason given was that there was 'no point'.

Key Findings Discrimination

1. 27% of all respondents reported experiencing some form of discrimination while in the Defence forces.
2. Females were much more likely to report being discriminated against than males (67% vs 22%).
3. The most common forms of discrimination overall were:
 - a. Gender 15%
 - b. Family status 6%
 - c. Age 6%

Key Findings Sexual Harassment

1. One quarter (25%) of respondents reported experiencing Sexual Harassment (as defined in the study) at some point during their time in the Defence Forces.
2. 88% of females reported experiencing one or more forms of sexual harassment – the comparable number for males was 17%. 46% of females reported experiencing 'unwanted physical contact / sexual assault'
3. The most common forms were: Offensive Jokes / stories 15%, Sexist remarks 12%, Offensive comments about physical appearance 10%

Key Findings Observing Harassment/Discrimination in the Defence Forces

1. 61% of respondents stated that they had observed harassment / discriminatory behaviour during their time in the Defence Forces.
2. Females more likely to have observed these behaviours compared to men (92% vs 57%).
3. Members of Naval service slightly more likely (73%).
4. Younger members less likely (38%).
5. A large proportion of respondents were willing to either provide support to the victim (35%) or directly intervene (31%)
6. Approx. half of those surveyed feel that perpetrators of bullying, discrimination etc. can 'get away' with such behaviours and that there is a level of tolerance towards such things within the Defence Forces.

Key Findings Serious Unwanted Physical Contact/Sexual Assault

1. 7% of all respondents had experienced one or more counts of unwanted physical contact / sexual assault.
2. Of the 7% who reported experiencing one or more counts of unwanted physical contact/sexual assault, 5% were female and 2% were male.
3. While most instances of unwanted physical contact / sexual assault are historical in nature, 12% occurred within the past 6 months.
4. Only ¼ of victims reported the incident(s). Those who did found the experience to be a complex process.
5. There were zero instances of these reports being resolved to the victim's satisfaction.

Key Findings Observing Harassment/Discriminatory Behaviour

1. 61% of respondents stated that they had observed harassment / discriminatory behaviour during their time in the Defence Forces
 - a. Females more likely to have observed these behaviours compared to men (92% vs 57%)
 - b. Members of Naval service slightly more likely (73%)

- c. Younger members less likely (38%)
- 2. A large proportion of respondents were willing to either provide support to the victim (35%) or directly intervene (31%)
- 3. Approx. half of those surveyed feel that perpetrators of bullying, discrimination etc. can 'get away' with such behaviours and that there is a level of tolerance towards such things within the Defence Forces.

Key Findings Attitudes and Perception in Irish Defence Forces

1. Strong agreement with respondents' own value to the Defence Forces and the camaraderie between comrades.
2. Less certain of their attitudes towards their futures and the Defence Forces' ability to effectively utilise the talents of individuals.
3. Males are less positive on likelihood of receiving feedback for work done well.
4. Fewer females positive about their futures within the DF and the use of their talents.
5. When it came to gender specific questions relating to life and membership of the defence forces there was considerable difference between males and females on all factors measured.
6. DF members generally feeling capable of making decisions and feel they are 'playing a useful part' in what they do.
7. Approx. 2/3rds of respondents expressed satisfaction with their relationships with DF colleagues and their work. Half were dissatisfied with senior ranks, their work conditions and their prospects for the future.

Chapter 1 Profile of Respondents

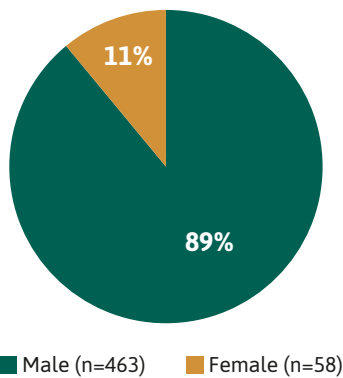
1.1 Number of Respondents

- A total of 527 serving members of the Defence Forces responded to the survey. This is a representation of approximately 6% of total Defence Force members.

1.2 Gender of Respondents

- Of the 527 Respondents the majority of Respondents were male, 463, (89%) compared with 58 (11%) female

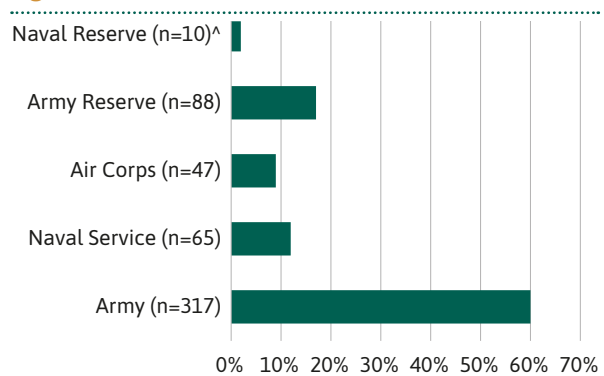
Fig.1 Gender of Respondents



1.3 Area of service of Respondents

- The majority of Respondents 60 % were serving within the Army Service, followed by the Army Reserve at 17% and the Naval Service at 12%.
- The Air Corps and Naval Reserve had the lowest number of Respondents at 9% and 2% respectively

Fig.2 Area of Service



1.4 Time in service

- The largest cohort of Respondents had over 20 years' service in the Defence Forces (45%) and Reserve Defence Forces (48%).

Fig.3a Time in Service: Permanent Defence Forces

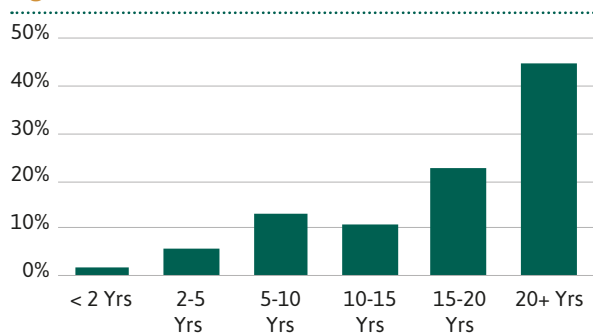
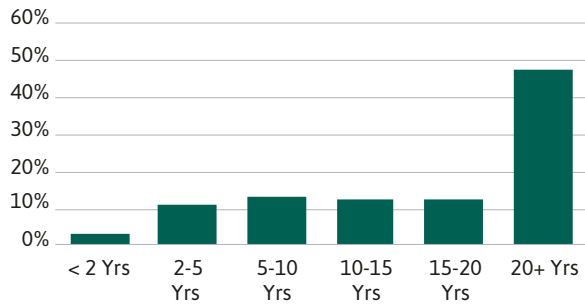


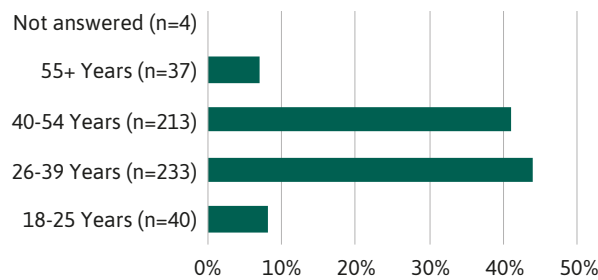
Fig.3b Time in Service: Reserve Defence Forces



1.5 Age of Respondents

- 44% of Respondents were aged between 26 and 39 years followed by 41% in the 40-54 age category.
- 8 % of Respondents were aged between 18 to 25 years of age and the lowest representative age category were those aged 55+.
- Less than 1% of Respondents declined to answer this question

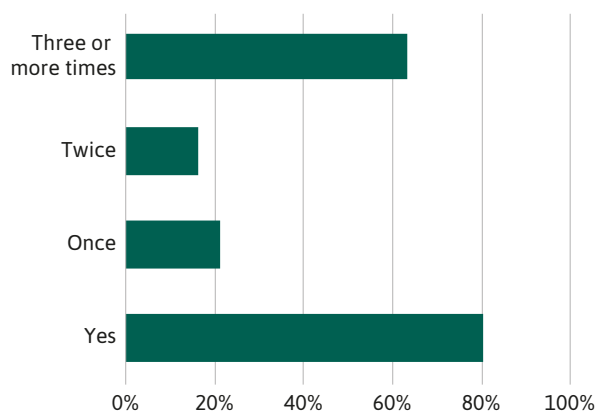
Fig.4 Time in Service: Reserve Defence Forces



1.6 Served Overseas

- 80% of Respondents had served overseas 63% having served on three or more occasions.

Fig.5 Time in Service: Reserve Defence Forces

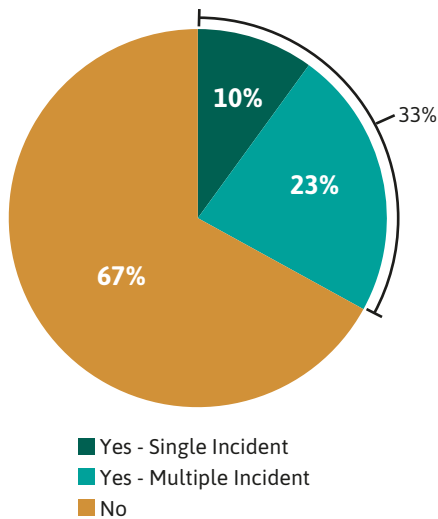


Chapter 2 Harassment

2.1 Number of Respondents who reported experiencing Harassment

- One third of Respondents, 33%, reported experiencing harassment at some point whilst serving in the Defence Forces.
- 23% reported experiencing multiple incidents of harassment and a further 10% reporting experiencing a single incident.
- 67% of respondents reported that they had not experienced harassment

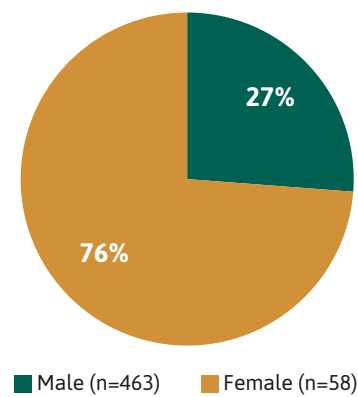
Fig.6 Experienced Harassment Q.8



2.2 Gender of those who have experienced Harassment

- Of the Respondents that reported experiencing single or multiple incidents of harassment, 76% were female compared with 27% of males.

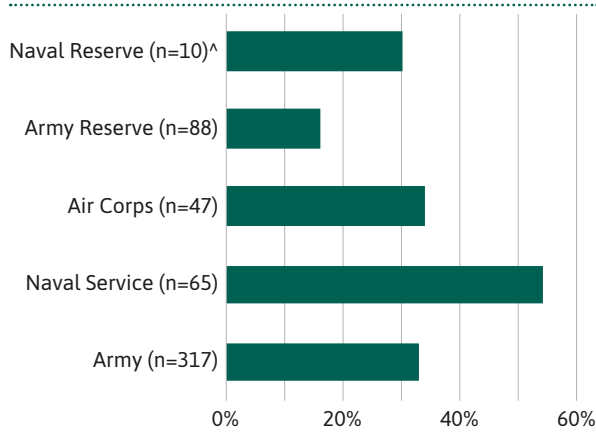
Fig.7 Gender of those who experienced Harassment



2.3 Experience by Area of Service

- Harassment was most commonly experienced by those members serving within the Naval Service 54%.
- The second highest area was in the Air Corps with 34% of Respondents reporting experiencing Harassment followed closely by the Army at 33% and the Naval Reserve at 30%.
- The Army Reserve accounted for the lowest area of service reporting experiencing Harassment at 16%.

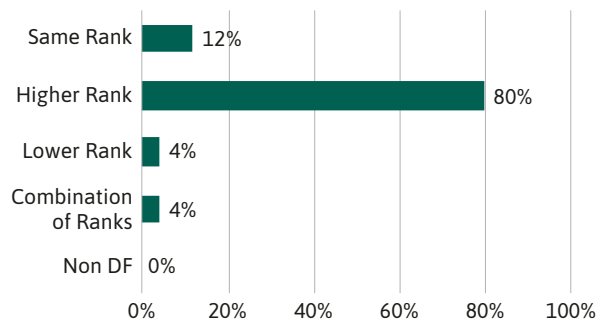
Fig.8 Harrasment Area of Service



2.4 Rank of Person Responsible

- The overwhelming number of persons experiencing Harassment reported that it was carried out by a member of a higher rank to them, 80% of Respondents.
- 12% reported the rank of the person responsible as being of the same rank and only 4% reported that the person responsible was of a lower or combination of ranks.

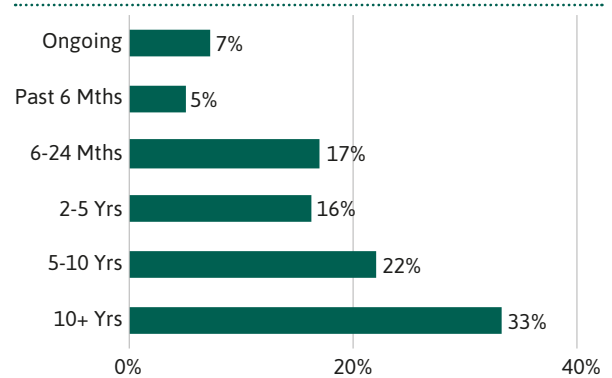
Fig.9 Rank of Person Responsible Q.5



2.5 Timing of Harassment

- In terms of the timing of harassment 33% of Respondents reported that the incident occurred 10+ years ago, 22 % within the 5-10+ years.
- 16% within the last 2-5 years and 17% within 6-24 months.

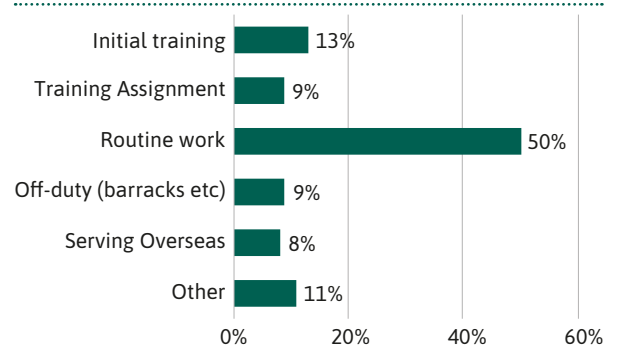
Fig.10 When incident Occured Q.10



2.6 Location of Incidents of Harassment

- Half of Respondents reported experiencing Harassment during routine work -50%.
- 13% had experienced Harassment during their initial training in the Defence Forces and 9% at other training events.
- 9% were off duty at the time of the incident and 11% reported the location as being other than locations described in the survey

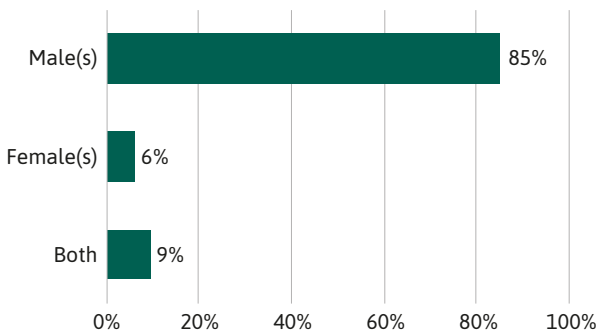
Fig.11 Where incidents occurred Q.11



2.7 Gender of Person Responsible

- The large majority of persons reporting experiencing Harassment stated that it was perpetrated by a male 85%.
- 6% reported experiencing Harassment by a female member of the Defence Forces and 9% reported experiencing harassment from both genders.

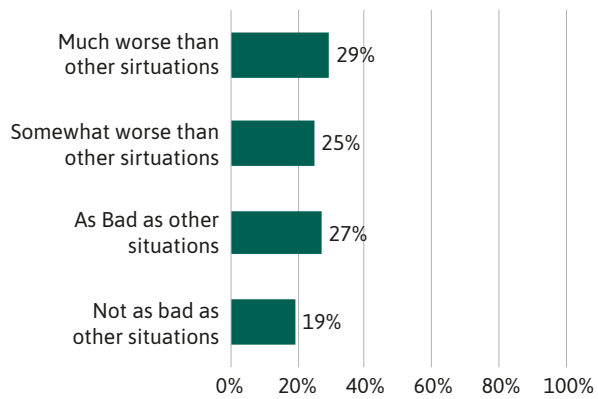
Fig.12 Gender of Person Responsible Q.13



2.8 Levels of Upset Caused Owing to Harassment

- The majority of Respondents reported their level of upset as being worse than other situations they had faced in life 54%.
- 27% reported the experience as being as bad as other situations and 19% said it was not as bad as other situations they had faced.

Fig.13 Level of upset caused



2.9 Reported Effects of Harassment

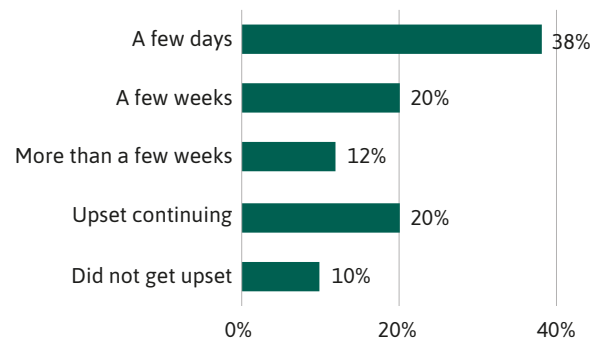
Respondents reported the following in terms of how the effects of Harassment were worse than other situations they had faced in life.

Reported Effects of Harassment
I didn't know how to deal with the behaviour and feared I would be removed from the course
I had suicidal thoughts
Affected my sleeping, my daily work/life routine, it affected my reputation professionally, it undermined me
I hated that with (many years of) experience, with rank, i was still expected to endure this indignity and harassment in silence. And worse, i hate myself for being so weak and not fighting back
I was humiliated and shocked that this was deemed an appropriate comment to make, considering I was in a room with people who were under my command
His appraisals would have a direct impact on my career and future

2.10 Duration of upset after the incident

- The majority of Respondents reported being upset after the incident 90%.
- 38 % reported feeling upset for a few days after the incident and 20% for a few weeks.
- 12% said the effects lasted more than a few weeks and 20% reported that the upset is still ongoing.

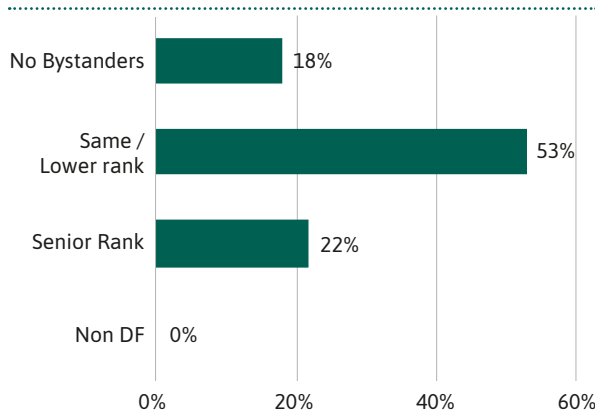
Fig.14 Duration of Upset after Incident Q.17



2.11 Bystanders present during the incident

- 75% of reported incidents had bystanders present
- 53% of bystanders were of the same or lower rank and 22% were of a rank more senior to the person experiencing the harassment.

Fig.15 Bystanders Present Q.14



2.12 Examples of Harassment

- The following are examples given by Respondents of the type of harassment they experienced while serving in the Defence Forces.

Examples of Harassment
During training the language used towards females by certain staff members was atrocious. "Cunts" was regularly used. Females were belittled if unable maintain the same physical training standards as male counterparts but same critique was not aimed at male counterparts when they under performed academically
A senior member just lost total control in a conversation relating to a work matter that he was not qualified to comment on! As a senior member of staff unfortunately rank takes preference over safe work procedures
A senior officer made unwanted sexual advances, I rejected her and she retaliated by treating me differently than she did previously. My work was criticized, others were given preferential treatment, she turned people against me and made my work life miserable
Being intimidated by a senior NCO
Being reprimanded in front of peers and junior ranks by highlighting an issue brought to me by a peer to try to resolve

Constantly threatened to ruin your career if you don't do certain things. Unwanted screaming outside of training, assault by having things thrown at you

Daily there is always some comment about my sex. Or accusations on how I have achieved positively in my career. It must of course be because I have breasts or performed some sort of sexual act

Given tasks not relevant or productive so the Super showed 'who was boss

Not willing to divulge for fear of repercussion

Inappropriate comments which in my opinion were designed to cause offence or discomfort to me as the only female in certain setting

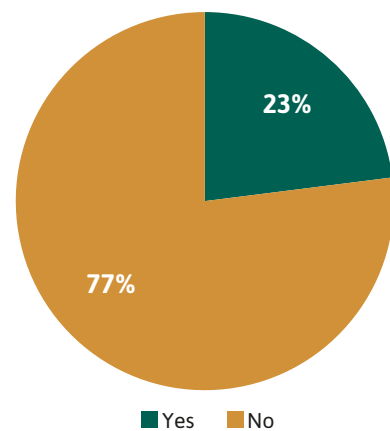
On camp shortly after passing recruit training I was on armed guard duty, while letting members of the [.....]into the compound to drop off supplies to the store two individuals decided to shoulder into me, spit on my boots and call me 'a fucking useless sandbagger

When reaching up to a shelf to get [.....], a Sergeant made a comment about the size of my rear, in a room containing 2 subordinates

2.13 Reporting of Harassment

- 77% of Respondents did not report the incident of harassment
- 23% of Respondents did report the incident. All Respondents reporting Harassment (n=171)

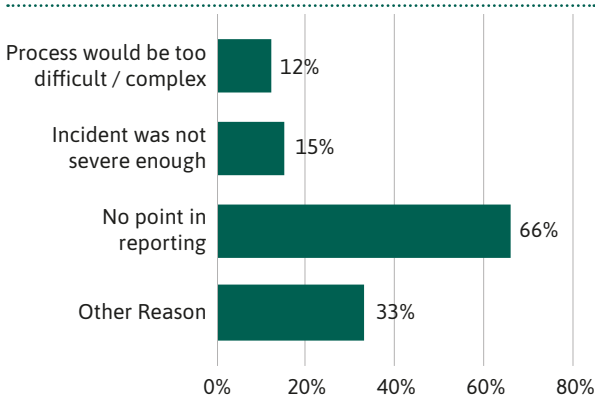
Fig.16 Reported Incident Q.19



2.13.1 Reason for not reporting

- The top reason given for not reporting it was that the Respondent felt there was no point 66%.
- 33% of Respondents gave reasons for not reporting under the other category. A list of reasons for not reporting is given at the end of this section
- 15% felt that the incident was not severe enough and 12% said that the process would be too difficult/complex.

Fig.17 Reason for not Reporting Q.24



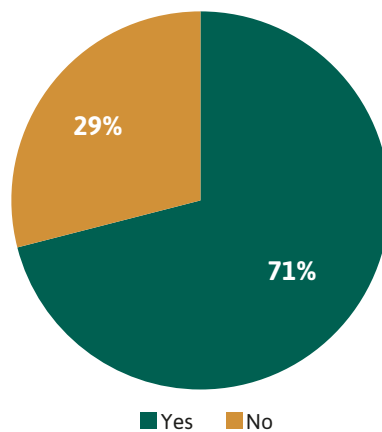
Reasons for not reporting Harassment incidents
No point in reporting or redressing anything. Normally the officer that come to investigate is 'buddys' with the officer they are investigating. Literally officers investigating officers. Needs to be someone external from the defence forces
Prior to DVPs and current instructions so no available process
General Staff member intervned thankfully
Felt I would bring unnecessary attention on myself and would be punished for reporting an instructor
Embarrassment! I did not want to distract from the career course I was on
I spoke to our unit commander, a [Senior Rank]. There was never a repeat of the incident.
I felt it as harassment but it doesn't fall within the scope of illegal harassment, it is so endemic in the Organisation's culture that it would be seen as complaining about the way the world works
It happened to everybody and was 'accepted' behaviour

I was manipulated by the perpetrator and believed if I let it go the behaviour would stop..
Unless the individual in question is dismissed the threat of harassment will continue and that officers of the same rank or above would move to protect the individual in question.
The complaints procedure is unjust and biased.
Didn't want to get a bad reputation (a Rat, Always Complaining, Trouble maker). i was young and nieve

2.13.2 Prior awareness of reporting procedure

- 71% of Respondents were aware of the reporting procedure in place in the Defence Forces with 29% stating that they were not aware of the reporting procedure.

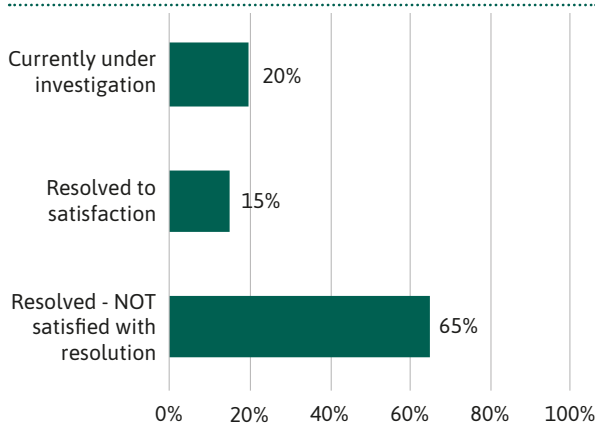
Fig.18 Prior Awareness of reporting procedure



2.13.3 Outcome of Reporting Procedure

- Of the 23% who had reported the incident:
 - » 65% said the issue was resolved but they were not satisfied with the outcome
 - » 20% said the incident was currently under investigation and
- 15% said that the incident had been resolved to their satisfaction

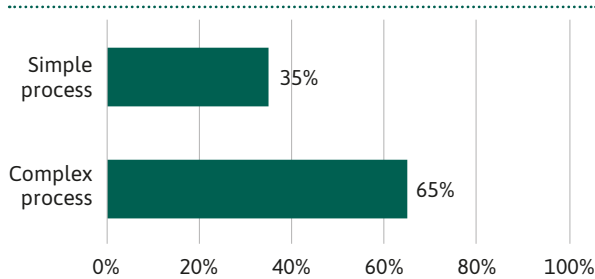
Fig.19 Outcome of Reporting Procedure Q.23



2.13.4 Perception of Reporting Procedure

- 65% of Respondents reported that they found the reporting process complex.

Fig.20 Perceptions of Prior Reporting Procedure Q.22

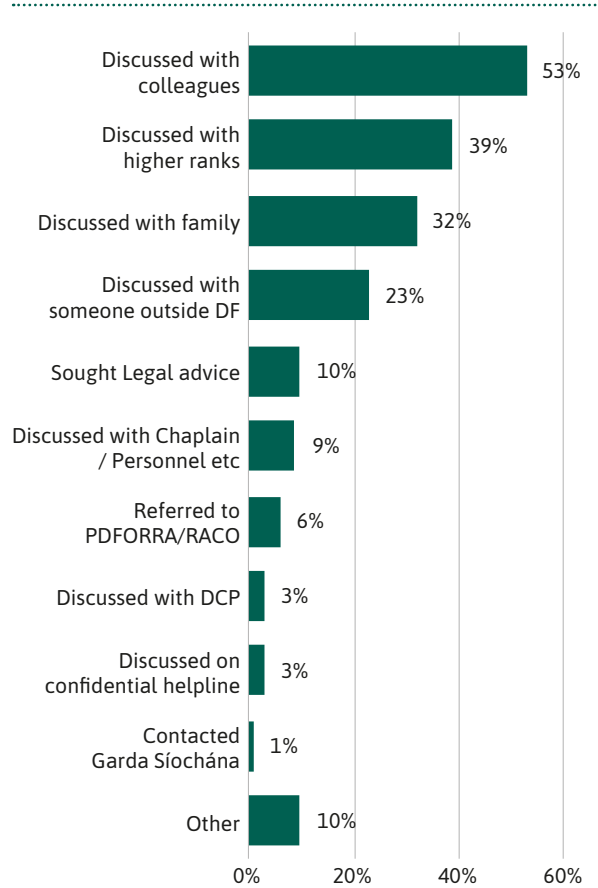


2.13.5 Actions taken after the Incident

In this question, Respondents were allowed to select multiple options in terms of actions taken after the incident

- In terms of actions taken after the incident 55%, discussed the incident with colleagues and 39% with a member of a higher rank to themselves.
- Other actions taken included:
 - » Discussion with family 32%
 - » Discussion with someone outside the Defence Forces 23%
 - » 10% sought legal advice
 - » 9% sought the services of the chaplain and 3% discussed the incident with DCP and the confidential helpline respectively.
 - » Only 1% reported the matter to An Garda Síochána

Fig.21 Actions taken after the Incident Q.18



2.14 Consequences of Harassment

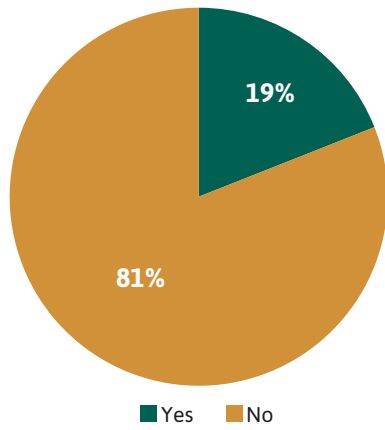
- In terms of the consequences of Harassment 19% considered leaving the Defence Forces for a long time
- 18% are still considering leaving the Defence Forces and 14% briefly considered leaving
- 6% transferred to another unit and 2% took steps to leave

Fig.22 Consequences of Harassment Q.25



- An additional question was asked of those who had experienced Harassment in the last 2 years (Number = 32) if they had decided to leave the Defence Forces owing to their experience of Harassment.
- 81% responded that they had not decided to leave the Defence Forces and 19% reported that they have decided to leave the Defence Forces

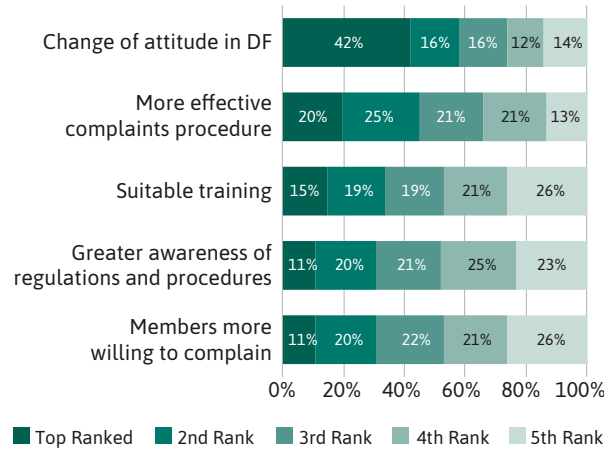
Fig.23 Decided to Leave the Defence Forces due to Harassment



2.15 Preventing Harassment

- In this section Respondents were asked to rank in order of value the ways in which Harassment might be prevented.
- A change in attitude in the Defence Forces was the overall top ranked 42% way in which Harassment could be prevented.
- This was followed by a more effective complaints procedure at 20%.

Fig.24 Decided to Leave the Defence Forces due to Harassment

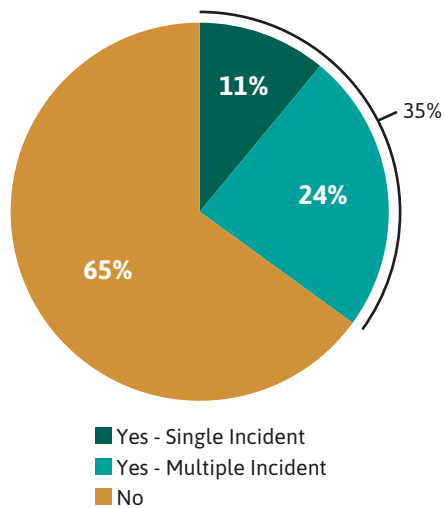


Chapter 3 Bullying

3.1 Number of Respondents who reported experiencing Bullying

- Of the 527 Respondents to the survey, 35% reported experiencing Bullying whilst serving in the Defence Forces.
- 24% reported experiencing multiple incidents of bullying and 11% reporting a singular incident.
- 65% of the remaining Respondents reported that they had not experienced Bullying whilst serving in the Defence Forces.

Fig.25 % of Defence Force Members that experienced Bullying



3.2 Gender of those reporting experiencing Bullying

- Of the females who completed the survey, 50% of them experienced Bullying of some form, this can be contrasted with 34% of males.

Gender	Yes*
Male	34%
Female	50%

* Experienced single OR multiple incidents of Bullying

3.3 Age of those reporting experiencing Bullying

- The largest cohort of Respondents who reported experiencing Bullying were aged between 40 – 55 years+.
- Bullying was less likely to be experienced by younger members, those aged between 18-25 years, of the Defence Forces

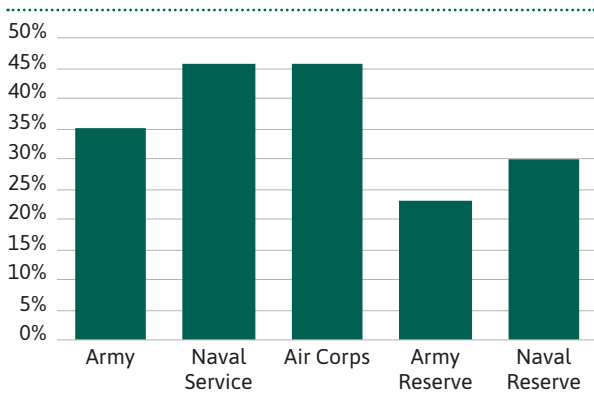
Age	Yes*
18-25 Years	16%
26-39 Years	34%
40-54 Years	40%
55+ Years	41%

* Experienced single OR multiple incidents of Bullying

3.4 Area of Service of those reporting experiencing Bullying

- The Naval Service and the Air Corps reported the highest levels of bullying 46% respectively.
- This was followed by the Army 35% and the Naval Reserve 30%
- The lowest level was recorded in the Army Reserve 23%

Fig.26 Area of Service



3.5 Examples of Bullying Experienced

The following is an extract of examples provided by Respondents of their experiences of Bullying

Examples of Bullying
Career progression and application to complete courses rejected on several occasions on little to no basis
As a Cadet I was bullied by a Sergeant. At the time it was accepted as the rough and tumble of military training but on reflection it amounted to bullying of a number of Cadets
As a cadet I was repeatedly and unfairly targeted by a member of the directing staff. Incidents that went unpunished by in other cadets ended up resulting in severe disciplinary action on me. I was often unfairly targeted by two instructors. This issue was supported by the cadet captain and other cadets but was ignored by the class Officer
I prefer not to explain
I personally have been told by higher rank that they have called each other at night time to discuss how they would treat my the next morning and what they would conjure up to try and make me leave the DF
I can recall multiple incidents of being singled out for adverse treatment and 'special scrutiny' by a former officer on one occasion, during a rotation in Beirut he told me that I was lucky he wasn't staying for my trip as he would have made my life miserable
Constant bullying until I transferred unit

Constant slagging off and jeering
An enlisted subordinate continually undermined my authority by performing tasks in ways that he had been directed not to, cancelling arrangements that I had organised without my knowledge, performing tasks in ways that he felt were best without consulting with others, all the while purposely spreading false rumours about me
Women are the worst bullies in the military
It was one Sgt when i was a cadet and there was too many incidents to mention. I was saved by one particular CS who intervned when necessary. All the other staff were excellent and were extremely professional during a very formative experience for me
Abuse of rank. Excluding victims of bullying from conversations. Inappropriate corrective actions
Lies written and spread about me by officers to cover up their own and other officers neglect/ incompetence and unacceptable behaviour
Hundreds of incidents of extreme bullying by fellow soldiers and NCO's
Followed, mocked, threatened with violence, violence, assaulted
Career progression and application to complete courses rejected on several occasions on little to no basis

3.6 Timing of Incidents of Bullying

- In terms of the timing of the incidents of Bullying, 44% took place 10+ years ago.
- 16% between 5-10 years ago and 15% between 2 and 5 years ago
- 12% reported the incidents took place between 6 and 24 months ago and 5% in the last 6 months.
- 8% of Respondents reported experiencing Bullying on an ongoing basis.

Fig.27 When the Incidents Occured Q.30

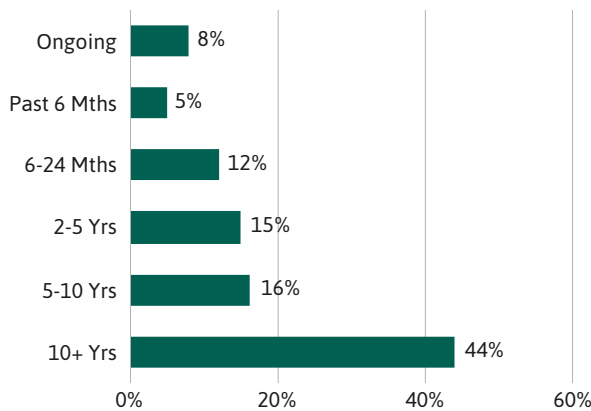
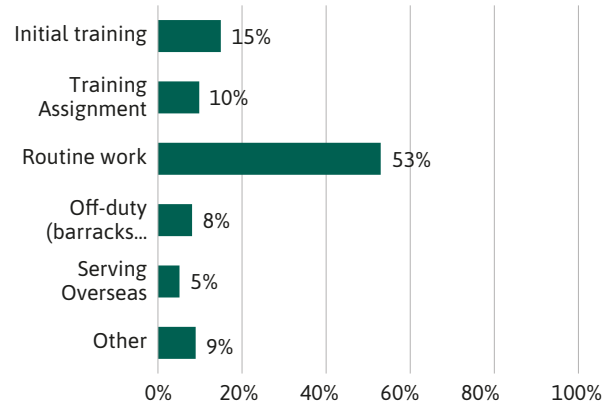


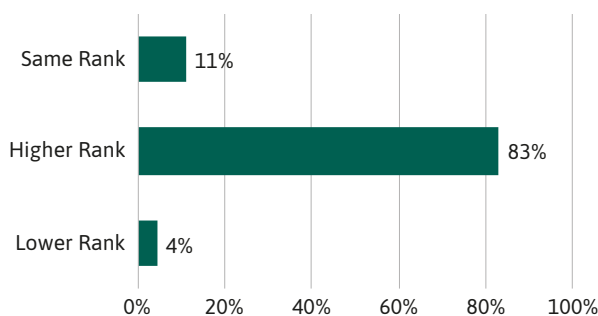
Fig.29 Where the Incidents occurred ? Q.31



3.6 Rank of person responsible

- The overwhelming number of Respondents reported experiencing Bullying a person of a higher rank to them 83%
- 11% reported experiencing Bullying by a person of the same rank and just 4% reported experiencing Bullying by a person of a lower rank.

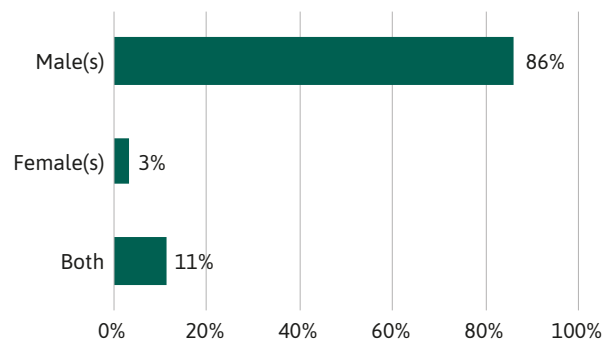
Fig.28 Rank of person responsible Q.32



3.8 Gender of Person Responsible

- 86% of alleged perpetrators were reported as being male.
- 3% were reported as being female and
- 11% of Respondents reported experiencing harassment by both genders

Fig.30 Gender of Person Responsible Q.33



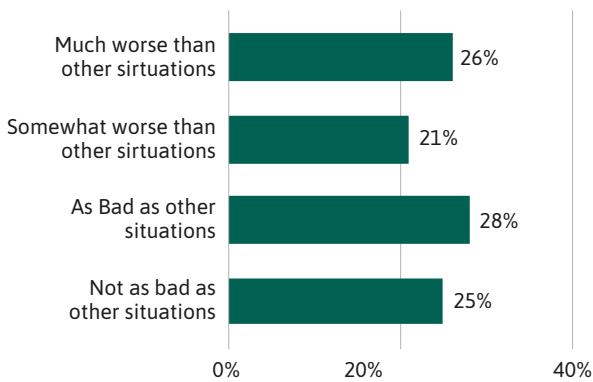
3.7 Location of Incident

- 53% of incidents happened during routine work
- 15% of incidents happened during the members initial training and 10% while on a training assignment
- 8% of incidents occurred while the Respondent was off duty and 5% when overseas
- 9% reported that the incident took place in a location other than those provided within the survey.

3.9 Level of upset caused by owing to Bullying

- The majority of Respondents reported their level of upset as being worse than other situations they had faced in life 47%.
- 28% reported the experience as being as bad as other situations and 25% said it was not as bad as other situations they had faced.

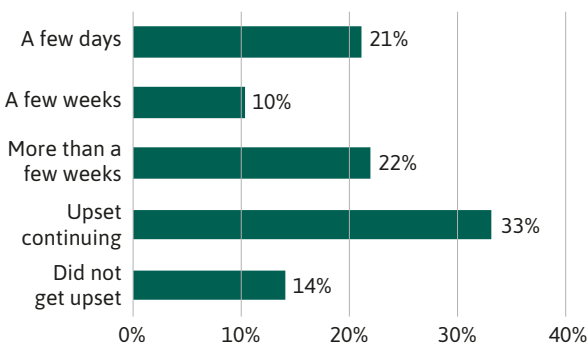
Fig.31 Level of Upset Caused Q.35



3.10 Duration of upset caused by owing to Bullying

- The majority of Respondents reported being upset after the incident 86%
- 38 % reported feeling upset for a few days after the incident and 20% for a few weeks.
- 22% said the effects lasted more than a few weeks and 33% reported that the upset is still ongoing.
- 14% of Respondents reported that they did not experience upset after the incident.

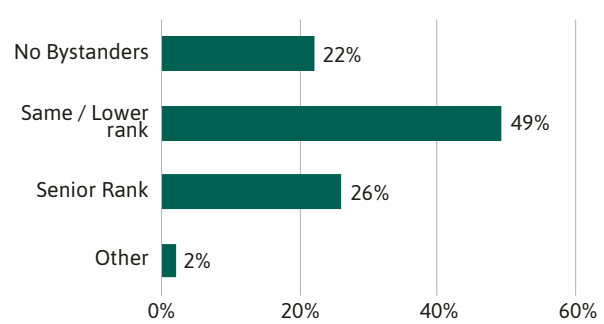
Fig.32 Duration of upset after incident Q.36



3.11 Bystanders present during the incident

- 75% of reported incidents had bystanders present
- 49% of bystanders were of the same or lower rank and 26% were of a rank more senior to the person experiencing the harassment.

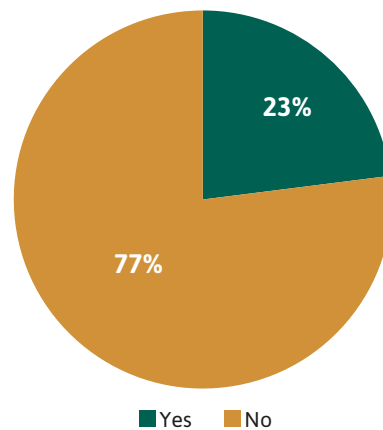
Fig.33 Bystanders Present Q.34



3.12 Number of people who made a formal complaint in relation to incident/s of Bullying

- 77% of Respondents did not report incidents of Bullying

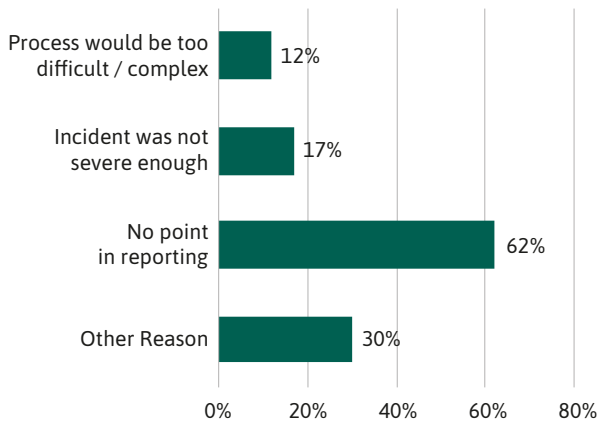
Fig.34 Reported Incident Q.28



3.12.1 Reason for not making a complaint

- The top reason given for not reporting it was that the Respondent felt there was no point 62%.
- 30% of Respondents gave reasons for not reporting under the other category. A list of reasons for not reporting is given at the end of this section
- 17% felt that the incident was not severe enough and 12% said that the process would be too difficult/complex.

Fig.35 Bystanders Present Q.34



Reasons for not reporting Harassment incidents

I was afraid I would have lost my cadetship if i said anything

Didn't know I could report it

Can you imagine being the guy who reported a fella for a bit of joking around? Your career and reputation would never recover

Did not report due to fear of retribution"

Knowledge of experience of others who had made complaints

Complaints process is inadequate

Felt there would be a belief/confirmation in people's minds that women couldn't hack the pressure and shouldn't be in the Defence Forces which a lot of the men at the time believed and sadly still do to this day

I brought the issue to my unit commander and discussed it with them but they were dismissive of it and no action has been taken

I didn't understand how the DF worked and what the system was

I was embarrassed and was made to believe it was my fault and I was lucky to 'get away with it

I was a trainee and barely knew the procedures at the time. Also similar things were done to other people and I didn't want to highlight myself or face repercussions for my actions

It was being done to everybody and I didn't want to highlight myself in fear of the instructors getting back at me at a later date in a different manner

Knew nothing would happen as he is a officer

No complaint procedure available

Past lessons have shown me that reporting it only adds to my stress and isolation, and nothing positive comes from reporting it

Repercussions....no confidence with complaints procedures. No protection. Higher ranks always win

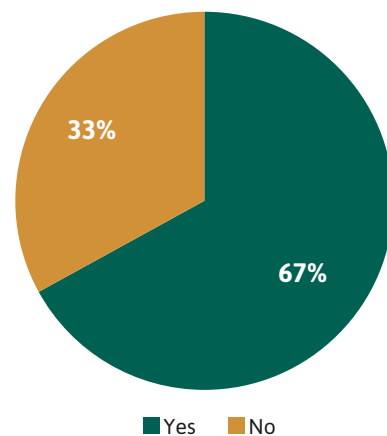
Reporting incidents get females labelled as 'difficult'

I didn't understand how the DF worked and what the system was

13.12.2 Prior Awareness of Complaint Procedure

- 67% of Respondents were aware of the reporting procedure in place in the Defence Forces with 33% stating that they were not aware of the reporting procedure.

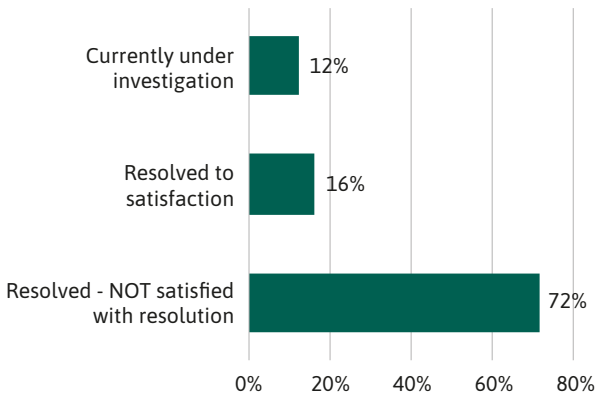
Fig.36 Prior awareness of reporting procedure? Q.39



13.12.3 Outcome of Reporting Procedure

- Of the 23% who had reported the incident:
 - » 72% said the issue was resolved but they were not satisfied with the outcome
 - » 12% said the incident was currently under investigation and
 - » 16% said that the incident had been resolved to their satisfaction

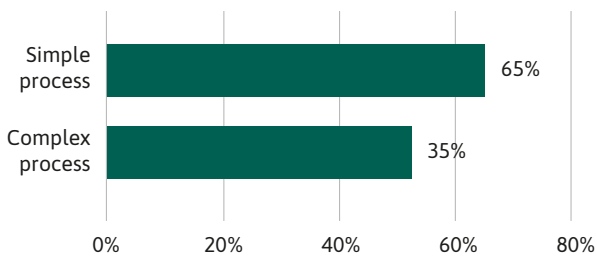
Fig.37 Outcome of Reporting Procedure Q.43



13.12.4 Perceptions of Reporting Procedure

- 65% of Respondents who had reported Bullying believed it was a simple process while 35% believed it was complex.

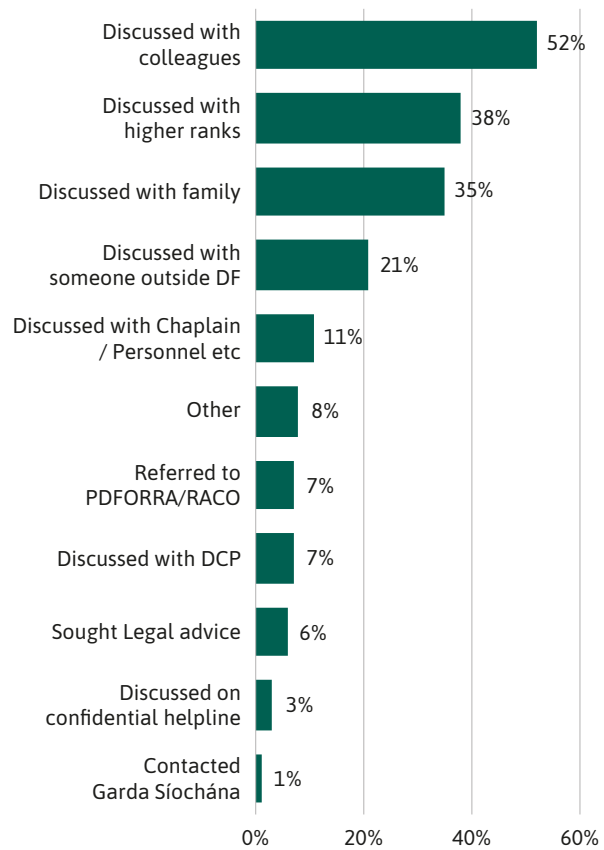
Fig.38 Perceptions of Reporting Procedure Q.42



13.12.5 Actions taken after the incident

- In terms of actions taken after the incident 52%, discussed the incident with colleagues and 38% with a member of a higher rank to themselves.
- Other actions taken included:
 - » Discussion with family 35%
 - » Discussion with someone outside the Defence Forces 21%
 - » 6% sought legal advice
 - » 11% sought the services of the chaplain and 7% discussed the incident with DCP and the confidential helpline respectively.
 - » Only 1% reported the matter to An Garda Síochána

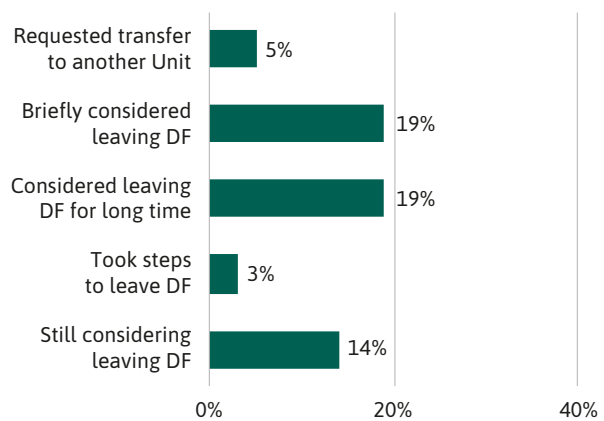
Fig.39 Actions taken after the incident Q.37



3.13 Consequences of Bullying

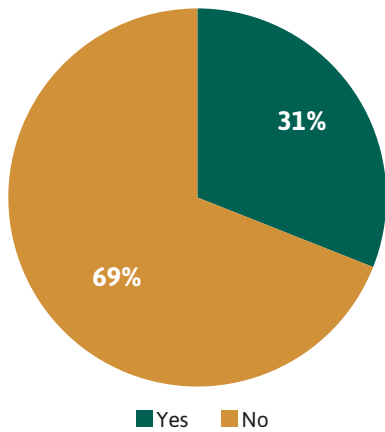
- In terms of the consequences of Harassment 19% considered leaving the Defence Forces for a long time
- 18% are still considering leaving the Defence Forces and 19% briefly considered leaving
- 5% transferred to another unit and 3% took steps to leave

Fig.40 Consequences of Bullying Q.45



- An additional question was asked of those who had experienced Harassment in the last 2 years (Number = 31) if they had decided to leave the Defence Forces owing to their experience of Bullying.
- 69% responded that they had not decided to leave the Defence Forces and 31% reported that they have decided to leave the Defence Forces

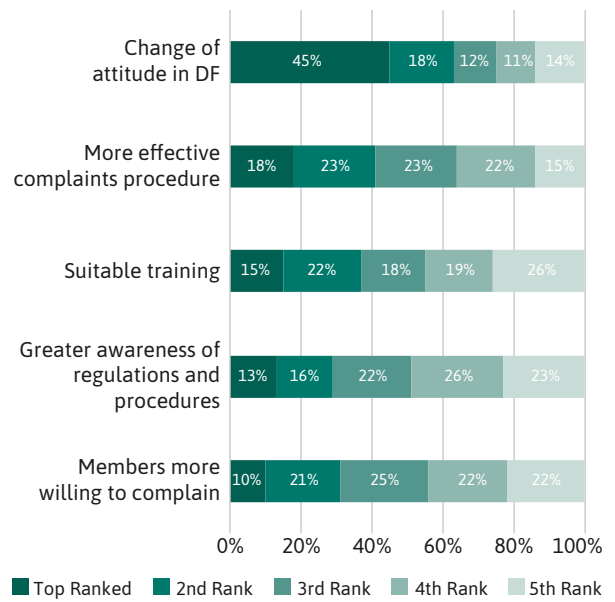
Fig.41 Decided to leave DF due to Bullying Q.46



3.14 Preventing Bullying

- In this section Respondents were asked to rank in order of value the ways in which Bullying might be prevented.
- A change in attitude in the Defence Forces was the overall top ranked 45% way in which Bullying could be prevented.
- This was followed by a more effective complaints procedure at 18%.

Fig.42 Rank in terms of how valuable each would be in preventing Bullying. Q.47



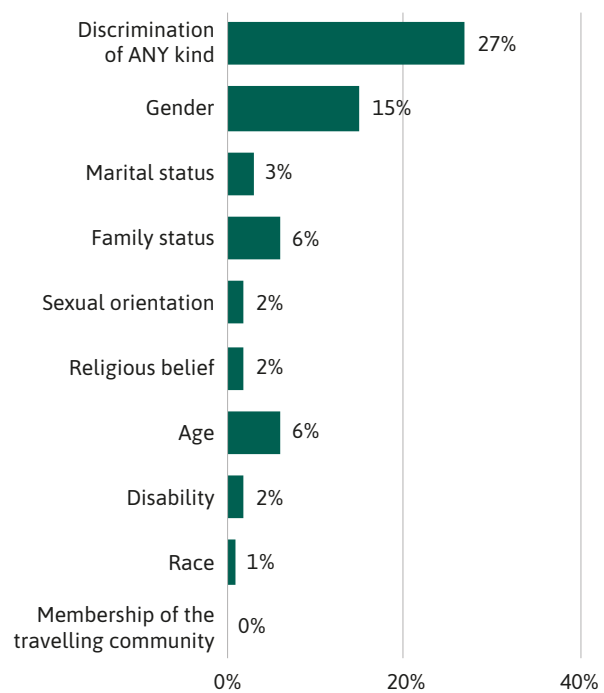
Chapter 4 Discrimination

4.1 Number of Respondents who reported experiencing Discrimination

In this section Respondents were asked if they had experienced Discrimination in the Defence Forces on any of the following grounds:

- Age
- Disability
- Family Status
- Gender
- Marital Status
- Membership of the Travelling Community
- Race
- Religious Belief
- Sexual Orientation
- Discrimination of any kind
- Of those who responded that they had experienced Discrimination, 27% reported experiencing discrimination of any kind.
- 15% reported experiencing Discrimination owing to their Gender and 6% reported experiencing Discrimination owing to their Family Status and Age respectively.

Fig.43 Experienced Discrimination in the form of...



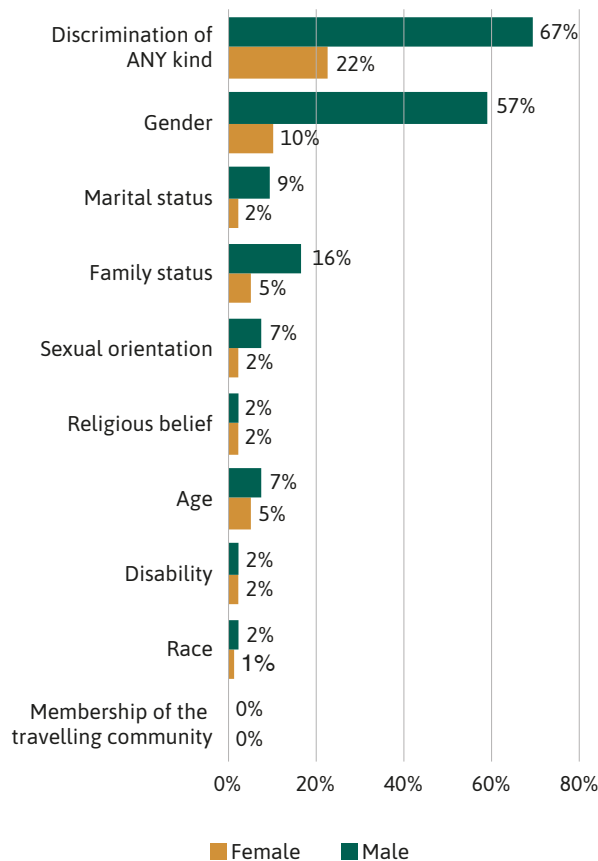
4.2 Gender of those experiencing Discrimination

In the main females were more likely to report experiencing Discrimination than males.

- 67% of females reported experiencing Discrimination of any kind as opposed to 22% of males
- 57% of females reported experiencing Discrimination owing to Gender as opposed to 10% of males
- 16% of females reported experiencing Discrimination owing to Family Status as opposed to 5% of males

- 16% of females reported experiencing Discrimination owing to Family Status as opposed to 5% of males
- 9% of females reported experiencing Discrimination owing to Marital Status as opposed to 2% of males.
- 7% of females reported experiencing Discrimination owing to Sexual Orientation as opposed to 2% of males
- 7% of females reported experiencing Discrimination owing to Age as opposed to 5% of males.
- Both male and female Respondents reported experiencing equal amounts of Discrimination owing to Disability 2%
- The lowest number of Respondents reported experiencing Discrimination owing to race 2% of females as opposed to 1% of males.

Fig.44 Gender of those experiencing Discrimination



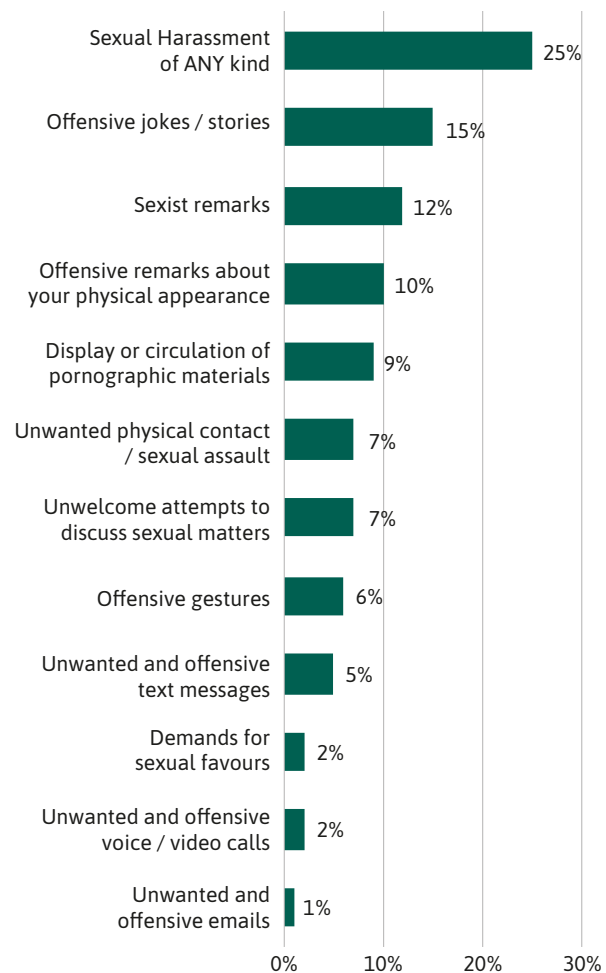
Chapter 5 Sexual Harassment

5.1 Number of Respondents who reported experiencing Sexual Harassment

One quarter of all Respondents experienced some form of Sexual Harassment.

- 25% of Respondents reported experiencing Sexual Harassment of any kind
- 15% reported experiencing Sexual Harassment in the form of offensive jokes/stories
- 12% reported experiencing Sexual Harassment in the form of sexist remarks
- 10% reported experiencing Sexual Harassment in the form of offensive remarks about physical appearance
- 7% reported experiencing Sexual Harassment in the form of unwanted physical contact/sexual assault or unwelcome attempts to discuss sexual matters
- Other forms of Sexual Harassment experienced included offensive gestures 6%, unwanted and offensive text messages 5% and demands for sexual favours and unwanted voice and video calls 2%.
- Only 1% of respondents reported experiencing Sexual Harassment through unwanted and offensive emails.

Fig.45 Experienced Sexual Harassment in the form of...

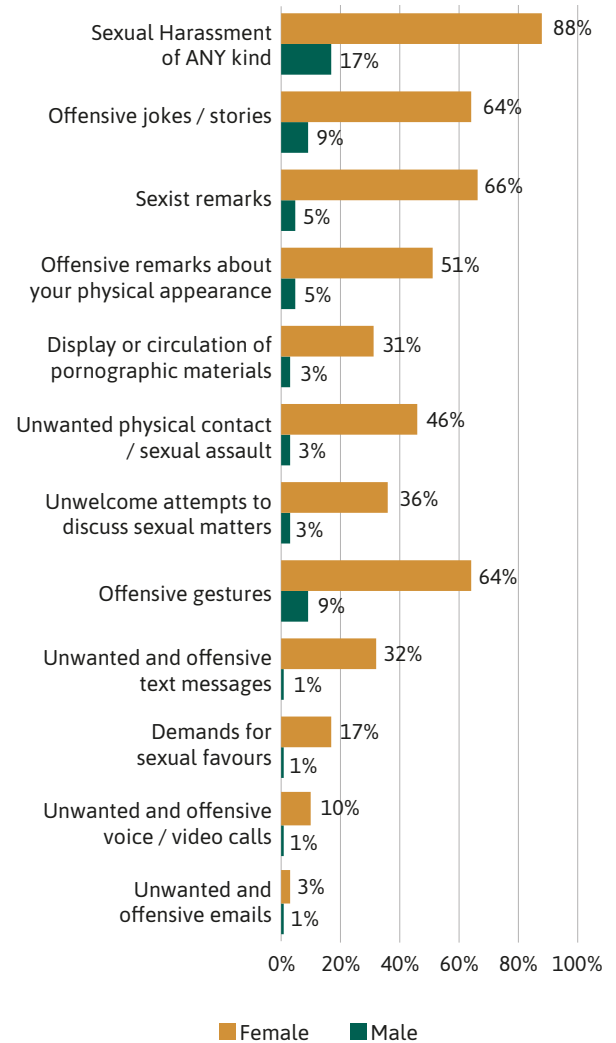


5.2 Gender of those who reported experiencing Sexual Harassment

The vast majority of respondents who reported experiencing Sexual Harassment were female with almost 9 out of 10 of females reporting that they had experienced some form of sexual harassment.

- 88% of females reported experiencing Sexual Harassment of any kind as opposed to 17% of males
- 66% of females reported experiencing Sexual Harassment owing to sexist remarks as opposed to 5% of males
- 64% of females reported experiencing Sexual Harassment owing to offensive gestures as opposed to 9% of males.
- 64% of females reported experiencing Sexual Harassment owing to offensive jokes/stories as opposed to 9% of males
- 51% of females reported experiencing Sexual Harassment owing to offensive remarks about physical appearance as opposed to 5% of males
- 31% of females reported experiencing Sexual Harassment owing to display or circulation of pornographic material as opposed to 3% of males.
- 46% of females reported experiencing Sexual Harassment owing to unwanted physical contact/sexual assault as opposed to 3% of males.
- 32% of females reported experiencing Sexual Harassment owing to unwanted and offensive text messages as opposed to 1% of males.
- 17% of females reported experiencing Sexual Harassment owing to demands for sexual favours as opposed to 1% of males.
- 10% of females reported experiencing Sexual Harassment owing to unwanted voice and video calls as opposed to 1% of males and
- 3% of females reported experiencing Sexual Harassment owing to unwanted and offensive emails as opposed to 1% of males.

Fig.46 Gender of those experiencing Sexual Harassment



5.3 Note on the decision to exclude a number of responses to this question from analysis

Note:

- 3 Respondents were excluded from the analysis for this question.
- When asked to provide details of the sexual harassment in the 'Unwanted physical contact / sexual assault' follow on questions they specifically stated they had seen or heard of sexual harassment, rather than experienced it first-hand.

“Female soldiers do as they like - they are never held accountable or to the same standards as men. Lesbian bullying and sexual assault is a very serious issue, which is never addressed.”

“As a male officer I witnessed many incidents of sexual harassment in the DF”

“Did not experience the incidents personally but have investigated them as a member of the Military Police. Misunderstood the previous question and cannot amend. Also note that ‘discussed the matter with MPs’ not an option for ‘after the incident below’”

- Whatever the reason for these answers – error, misplaced desire to highlight an issue or misunderstanding the question we felt it appropriate to exclude these responses from this question only.
- A small number of other male Respondents stated they experienced sexual harassment of some sort but did not provide specific details. In this instance we felt it appropriate to NOT exclude these.

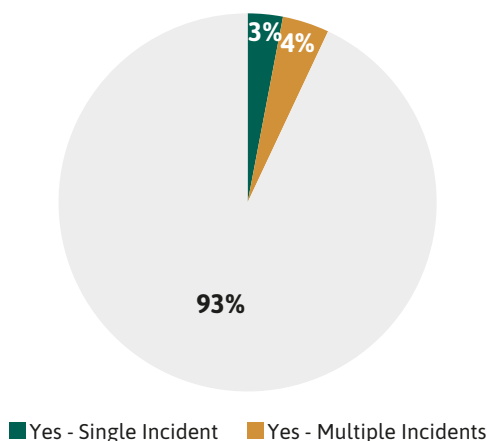
Chapter 6 Unwanted Physical Contact / Sexual Assault

6.1 Number of Respondents who reported experiencing a single incident or multiple incidents of unwanted physical contact/sexual assault.

In this section Respondents were asked did you experience a single incident or multiple incidents of unwanted physical contact / sexual assault.

- A total of 7% of all respondents reported experiencing one or more counts of unwanted physical contact / sexual assault.
- Of this 7%:
 - » 4% reported experiencing multiple incidents and 3% reported experiencing a single incident.

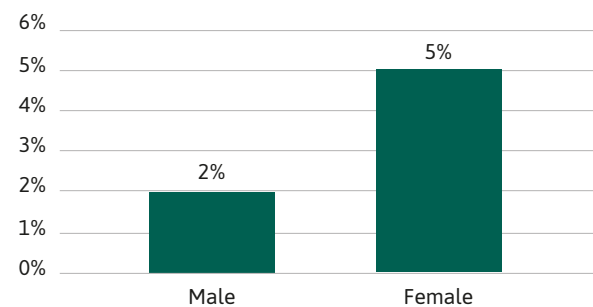
Fig.47 % of respondents reporting experiencing a single or incident or multiple incident of unwanted physical contact/sexual assault



6.2 Gender of those who have reported experiencing unwanted physical contact/sexual assault.

- Of the Respondents that reported experiencing single or multiple incidents of unwanted physical contact/sexual assault, 5 % were female compared with 2% of males.

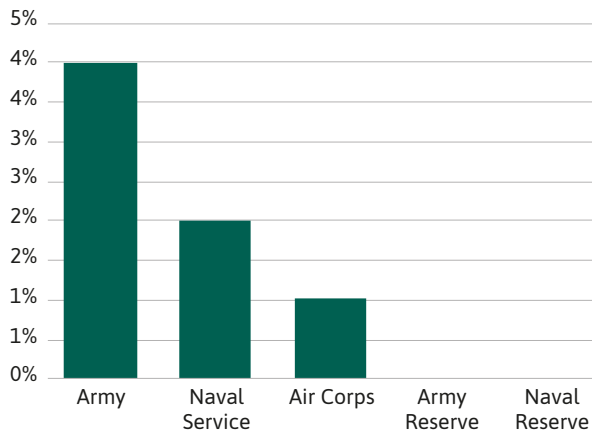
Fig.48 Experience by Gender



6.3 Area of service of Respondents

- The majority of Respondents 4% were serving within the Army Service, followed by the Naval Service at 2% and the Air Corps at 1%.
- The Army Reserve and Naval Reserve did not report experiencing incidents of unwanted physical contact/sexual assault.

Fig.49 By Area of Service



6.4 Age of Respondents

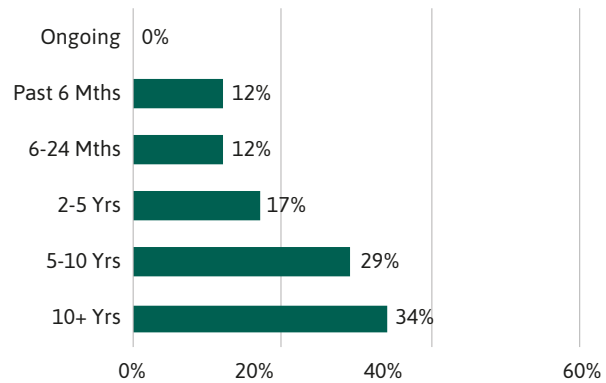
- 4% of Respondents were aged between 26 and 39 years followed by 2% in the 40-54 age category.
- Less than 1% of Respondents in the age categories 18-25 and 55 years + reported experiencing single or multiple incidents of unwanted physical contact/sexual assault

Age	Yes*
18-25 Years	<1%
26-39 Years	4%
40-54 Years	2%
55+ Years	<1%

6.5 Timing of Incidents of unwanted physical contact/sexual assault.

- In terms of the timing of the incidents of unwanted physical contact/sexual assault 34% took place 10+ years ago.
- 29% between 5-10 years ago and 17% between 2 and 5 years ago
- 12% reported the incidents took place between 6 and 24 months ago and 12% in the last 6 months.

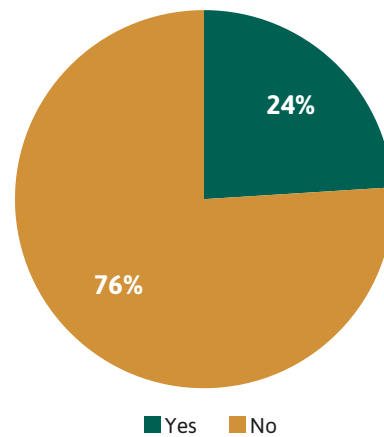
Fig.50 Timing of Incidents



6.6 Reporting of incidents of unwanted physical contact/sexual assault.

- 76% of Respondents did not report the incident of unwanted physical contact/sexual assault.
- 24% of Respondents did report of unwanted physical contact/sexual assault.

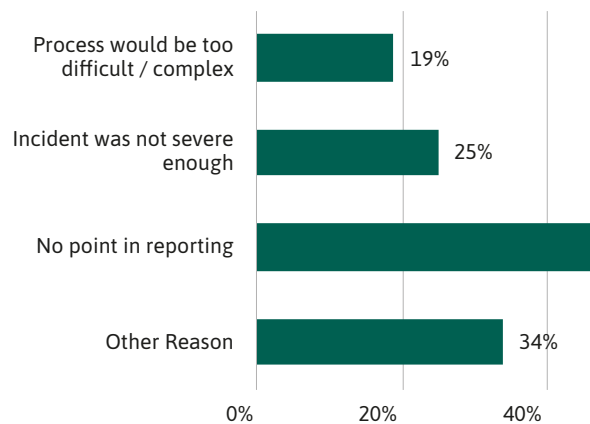
Fig.51 Reported Incident? Q.171



6.6.1 Reason for not reporting

- The top reason given for not reporting it was that the Respondent felt there was no point 47%.
- 34% of Respondents gave reasons for not reporting under the other category
- 25% felt that the incident was not severe enough and 19% said that the process would be too difficult/complex.

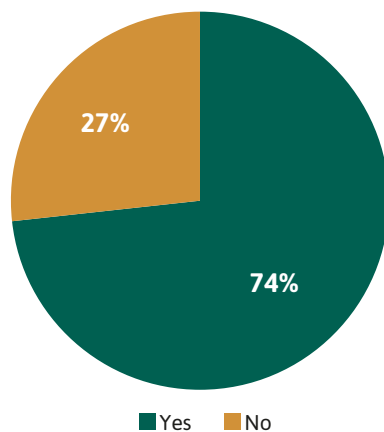
Fig.52 Perceptions of reporting procedure Q.174



6.6.2 Prior Awareness of Reporting Procedure

- 67% of Respondents were aware of the reporting procedure in place in the Defence Forces with 33% stating that they were not aware of the reporting procedure.

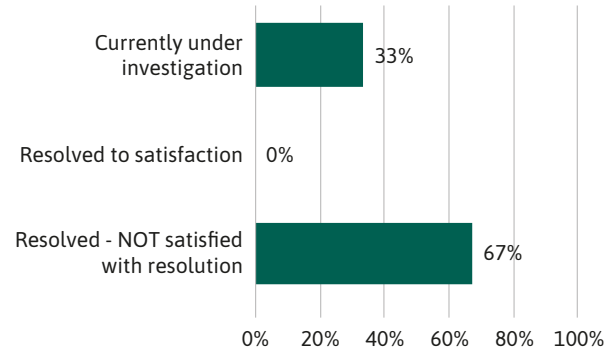
Fig.53 Prior awareness of reporting procedure Q.174



6.6.3 Outcome of Reporting Procedure

- Of those(76%) who had reported the incident:
 - » Two thirds (67%) said the issue was resolved but they were not satisfied with the outcome
 - » One third (33%) said the incident was currently under investigation and
 - » None (0 %) said that the incident had been resolved to their satisfaction

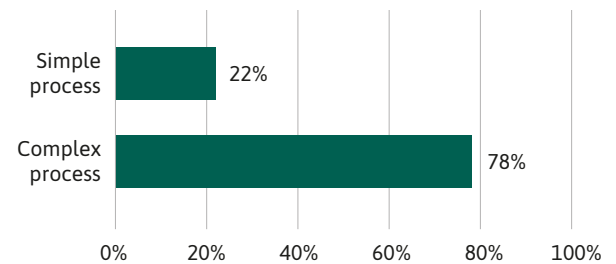
Fig.54 Outcome of Reporting Procedure Q.175



6.6.4 Perceptions of Reporting Procedure

- 78% of Respondents who had reported incidents of unwanted physical contact/sexual assault believed it was a complex process while 22% believed it was simple.

Fig.55 Perception of Reporting Procedure Q.174



6.6.5 Actions taken after the Incident

In this question, Respondents were allowed to select multiple options in terms of actions taken after the incident

- In terms of actions taken after the incident 45%, discussed the incident with colleagues and 17% with a member of a higher rank to themselves.
- Other actions taken included:
 - » Discussion with family 12%
 - » Discussion with someone outside the Defence Forces 19%
 - » 7% sought legal advice
 - » 10% sought the services of the chaplain
 - » 2% referred the matter to PDFORRA/RACO
 - » 17% reported taking action under the other category
 - » 0% contacted An Garda Síochána

Fig.56 Actions taken after the Incident Q.170

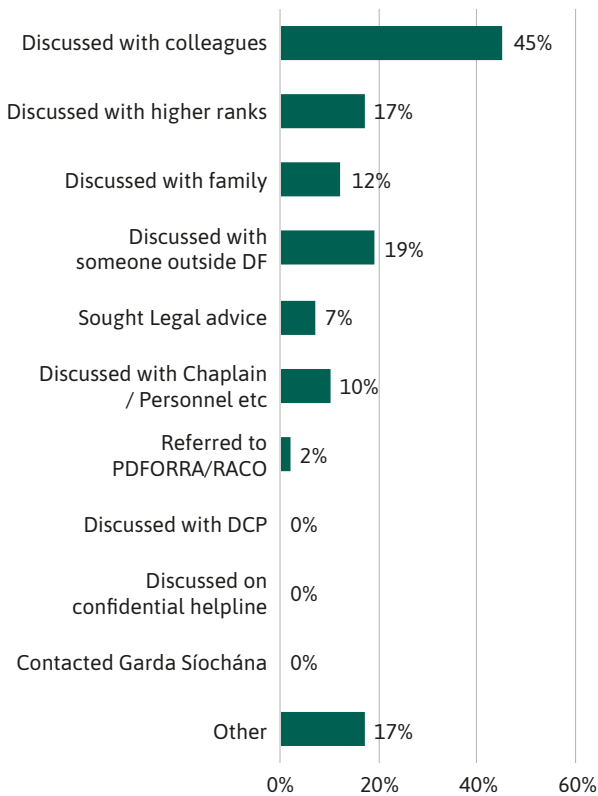
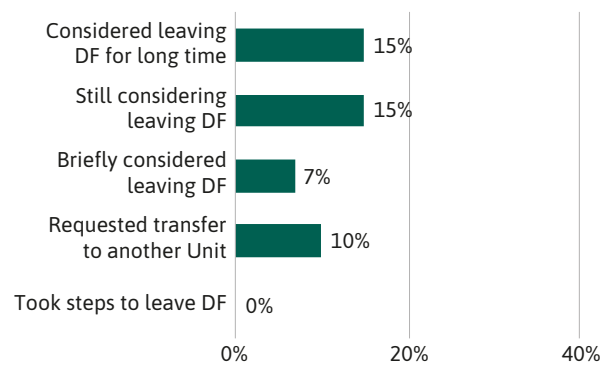
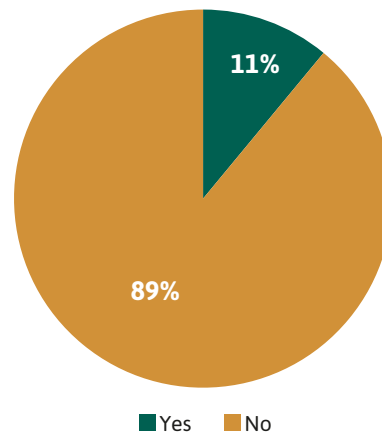


Fig.57 Consequences of Harrasment Q.177



- In terms of deciding to leave the Defence Forces, only respondents who reported experiencing Unwanted Physical Contact/Sexual Assault in the last 2 years were asked this question:
 - » 11% of persons who reported experiencing Unwanted Physical Contact/Sexual Assault in the past 2 years had taken the decision to leave the Defence Forces.

Fig.58 Decided to leave the Defence Forces? Q.178



6.7 Consequences of Unwanted Physical Contact/Sexual Assault

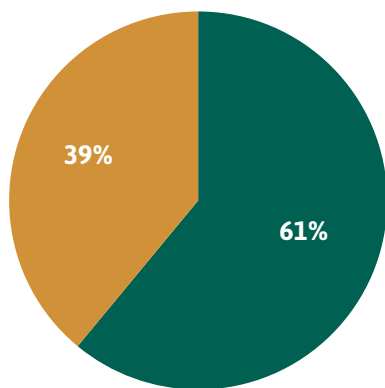
- In terms of the consequences of unwanted physical contact/sexual assault 15% considered leaving the Defence Forces for a long time
- 15% are still considering leaving the Defence Forces and 14% briefly considered leaving
- 10% requested transfer to another unit

Chapter 7 Observing Harassment / Discriminatory Behavior

7.1 Number of Respondents who reported Observing Harassment/ Discriminatory Behaviour

- Of the 527 Respondents to the survey, 61% reported Observing Harassment /Discriminatory Behaviour whilst serving in the Defence Forces while 39% reported that they had not observed such behaviours.

Fig.59 Defence Force Members who have observed Harassment / Discriminatory Behaviour? Q.310



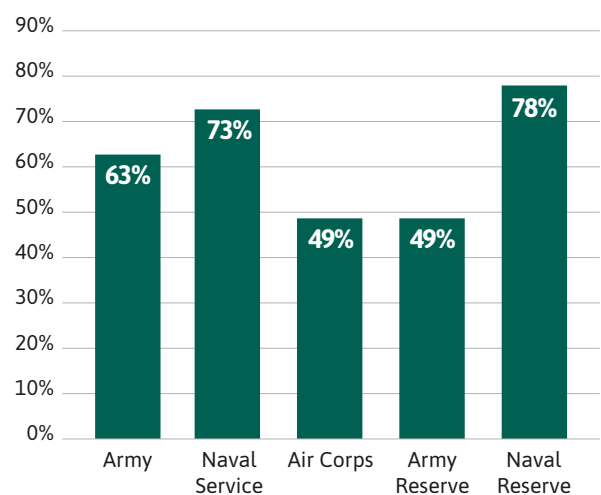
■ Have observed discrimination / harassment
 ■ Have NOT observed discrimination / harassment

7.2 Observation by Area of Service

- The Naval Reserve Service reported the highest levels of observation of Harassment / Discriminatory Behaviour at 78%.¹
- This was followed by the Naval Service at 73% and the Army Service at 63%
- The Air Corps and the Army Reserve accounted for 49% respectively.

¹ This was a small base size

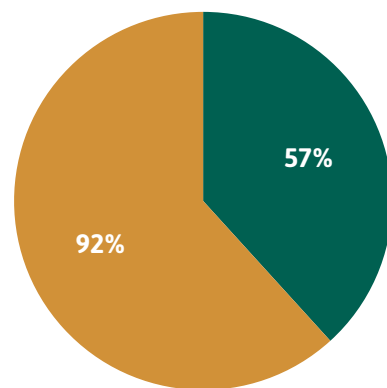
Fig.60 Observation by Area of Service



7.3 Observation by Gender

- Of the females who completed the survey, 92% of them reported observing Bullying/Discriminatory behaviour, this can be contrasted with 57% of males.

Fig.61 Gender of those who have observed Harassment/Discriminatory Behaviour

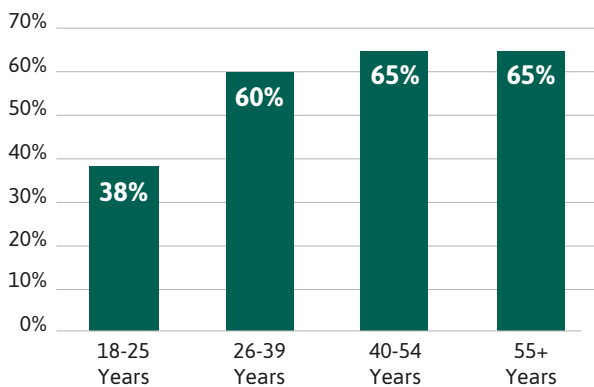


■ Male ■ Female

7.3 Observation by Age

- The largest cohort of Respondents who reported observing Harassment/Discriminatory Behaviour were aged between 40 – 55 years+. (65% respectively)
- This was followed closely by those aged between 26-39 years 60%
- Harassment/Discriminatory Behaviour was less likely to be experienced by younger members, those aged between 18-25 years, of the Defence Forces 38%

Fig.62 Age of those who have observed Harassment/Discriminatory Behaviour



7.4 Examples of types of Harassment/Discriminatory Behaviour Observed

The following is an extract of examples provided by Respondents of their experiences of observing Harassment/Discriminatory Behaviour.

Types of Behaviour Observed
Sexual harassment of female officers by other male officers. Matters reported correctly but senior individuals refused/ failed to act
In training female trainees were often criticised by one member of staff if they could not physically perform to the same level as male trainees
Witnessed some things that may have been perceived at the time to have been acceptable but looking back were probably not such as lewd comments and inappropriate comments
Discriminating language behind the back of a certain individual

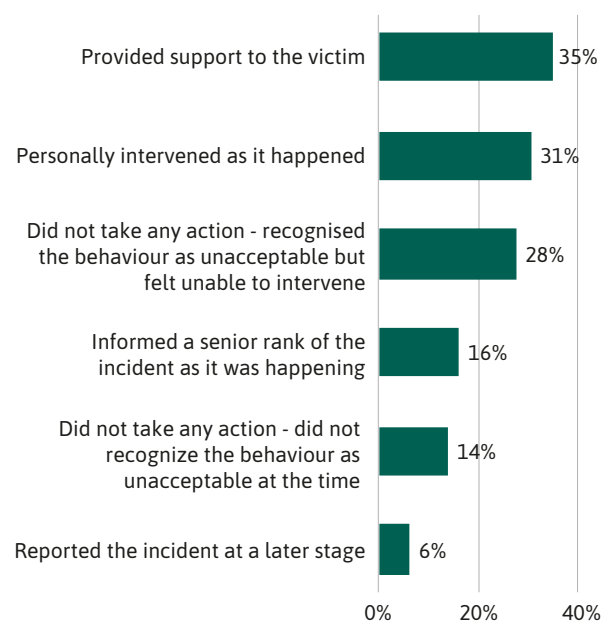
Someone slagging a member of the travelling community
Sexual and race specific comments
have observed senior officers engaging in "ill treatment of inferiors" through the use of degrading language to subordinates
Many instances of people being punished for going sick when genuinely ill, favouritism, bullying and physical abuse of same rank colleagues
Males knocking on doors in the middle of the night with drink taken, unwanted sexual advances on female personnel with drink taken, comments
People being humiliated in front of you, gossiped about, intimidating behaviour, verbally abused

7.5 Consequences of Harassment/Discriminatory Behaviour Observed

In terms of what happened after observing Harassment/Discriminatory Behaviour.

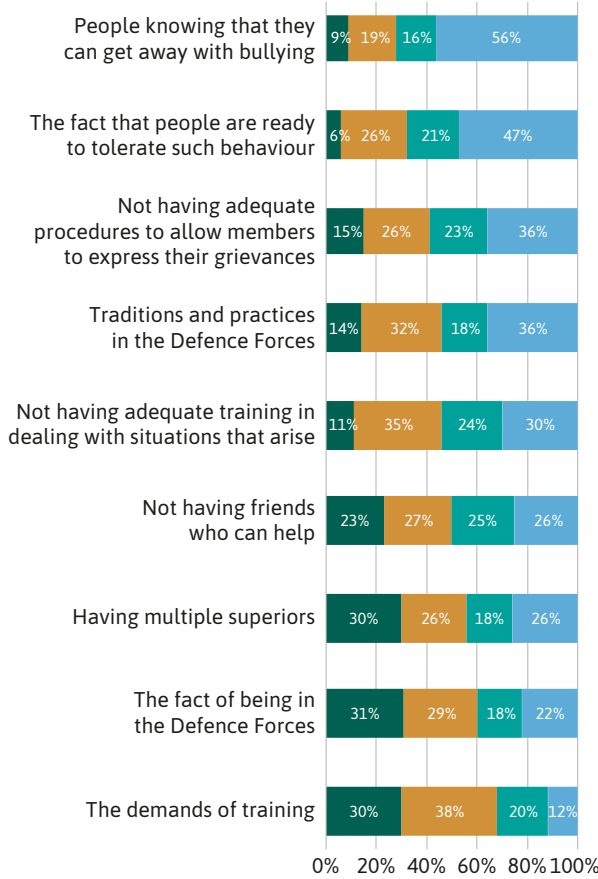
- 35% offered support to the victim
- 31% personally intervened when it happened
- 28% did not take any action though they recognised the behaviour as unacceptable, they felt unable to intervene.
- 18% informed a senior rank as it happened
- 18% did not take action and did not recognise the behaviour as unacceptable at the time
- Only 6% reported the incident at a later time

Fig.63 What occurred after Observing Behaviour?



7.6 Consequences of Harassment/ Discriminatory Behaviour Observed

Fig.64



- Does not contribute at all
- About the same as most people
- Contributes a little
- Contributes a fair amount

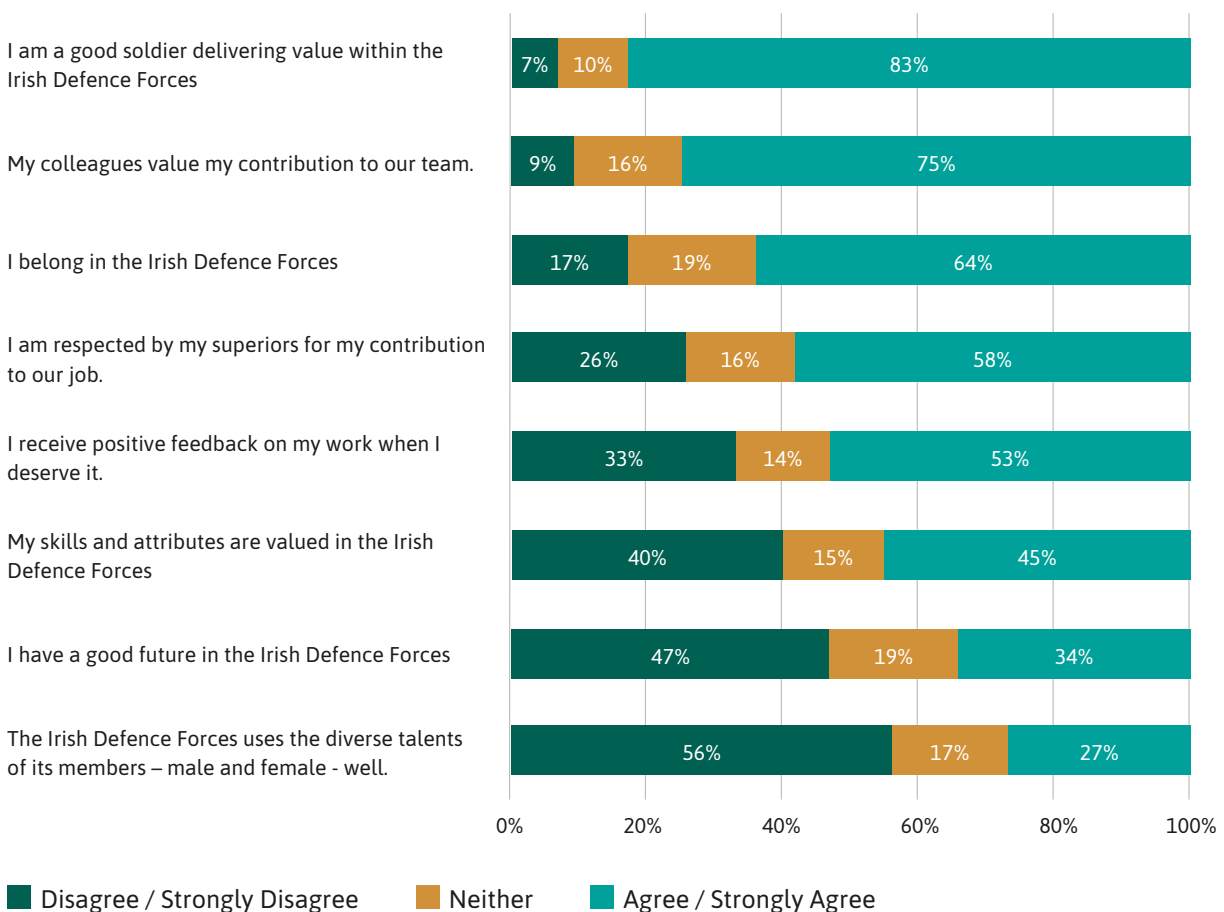
	Female	Male
Contributes a fair amount		
People knowing that they can get away with bullying	84%	52%
The fact that people are ready to tolerate such behaviour	77%	43%
Not having adequate procedures to allow members to express their grievances	48%	34%
Traditions and practices in the Defence Forces	68%	31%
Not having adequate training in dealing with situations that arise	47%	28%
Not having friends who can help	26%	26%
Having multiple superiors	35%	25%
The fact of being in the Defence Forces	46%	19%
The demands of training	20%	11%

Chapter 8 Attitudes and Perceptions of Defence Forces Members

8.1 Attitude and Perception of life as a serving member of the Defence Forces

For this question, Respondents were asked to indicate their experiences as compared to other people they know.

Fig.65



8.2 Attitude and Perception of life as a serving member of the Defence Forces by Gender

Agree / Strongly Agree	Female	Male
I am a good soldier delivering value within the Irish Defence Forces	88%	83%
My colleagues value my contribution to our team.	76%	75%
I belong in the Irish Defence Forces	58%	65%
I am respected by my superiors for my contribution to our job.	60%	58%
I receive positive feedback on my work when I deserve it.	64%	53%
My skills and attributes are valued in the Irish Defence Forces.	46%	45%
I have a good future in the Irish Defence Forces.	28%	44%
The Irish Defence Forces uses the diverse talents of its members – male and female - well.	6%	30%

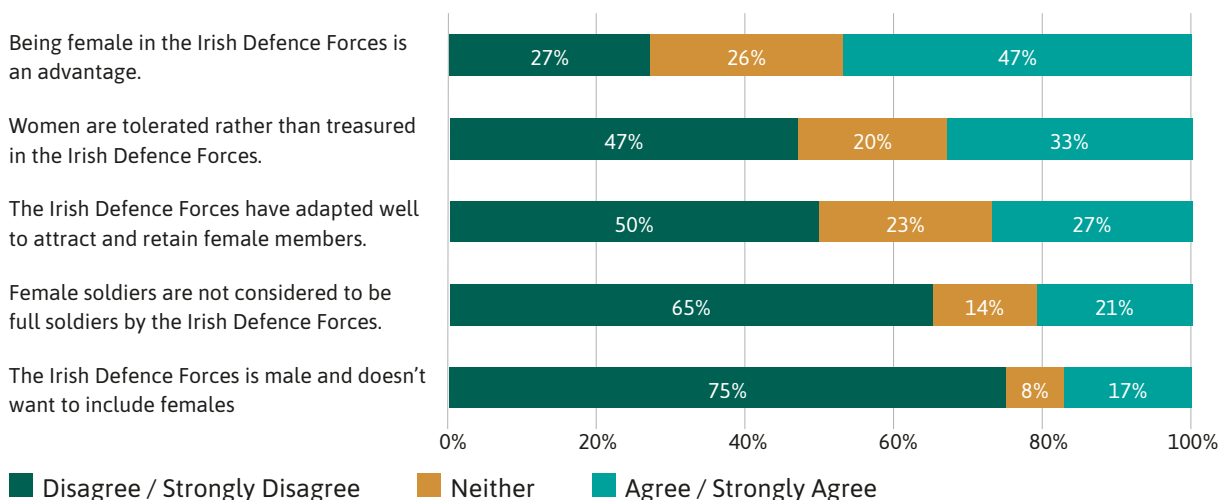
8.3.1 Attitude and Perception of Females by Gender

Agree / Strongly Agree	Female	Male
Being female in the Irish Defence Forces is an advantage.	4%	53%
Women are tolerated rather than treasured in the Irish Defence Forces.	78%	28%
The Irish Defence Forces have adapted well to attract and retain female members.	14%	28%
Female soldiers are not considered to be full soldiers by the Irish Defence Forces.	54%	17%
The Irish Defence Forces is male and doesn't want to include females	58%	12%

8.3 Attitude and Perception of Females in the Irish Defence Forces

For each of these statements Respondents were asked to indicate their experiences as compared to other people they know.

Fig.66

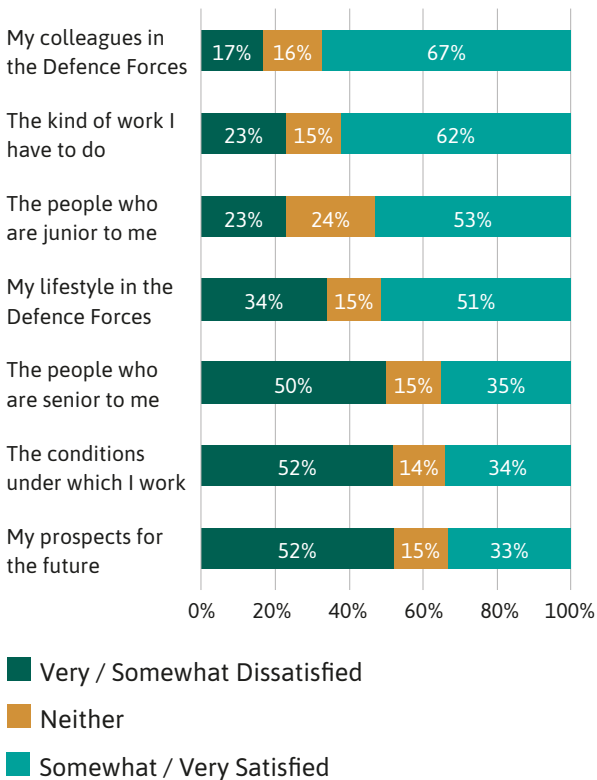


Disagree / Strongly Disagree	Female	Male
Being female in the Irish Defence Forces is an advantage.	74%	22%
Women are tolerated rather than treasured in the Irish Defence Forces.	51%	12%
The Irish Defence Forces have adapted well to attract and retain female members.	78%	47%
Female soldiers are not considered to be full soldiers by the Irish Defence Forces.	30%	70%
The Irish Defence Forces is male and doesn't want to include females	28%	80%

8.4 Levels of Satisfaction with Life in the Defence Forces

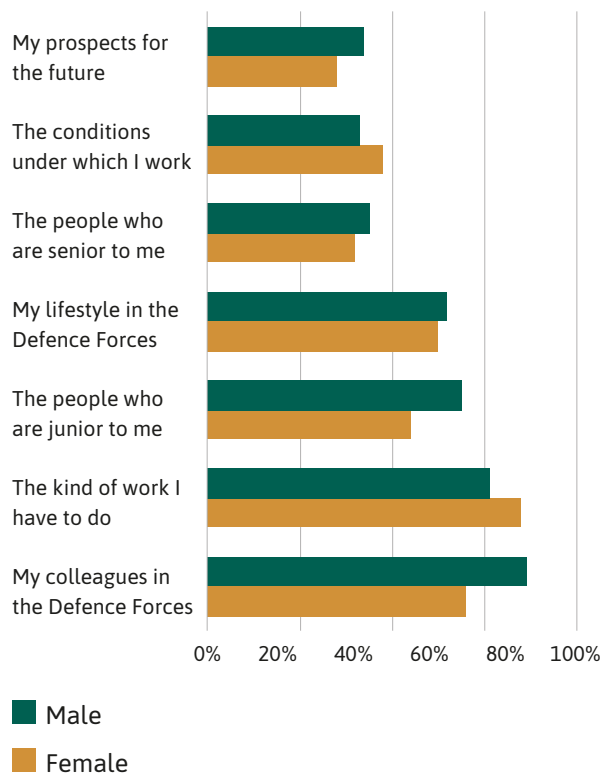
In this question Respondents were asked how satisfied they were with each aspect of their life as set out below:

Fig.67



8.4.1 Levels of Satisfaction with Life by Gender

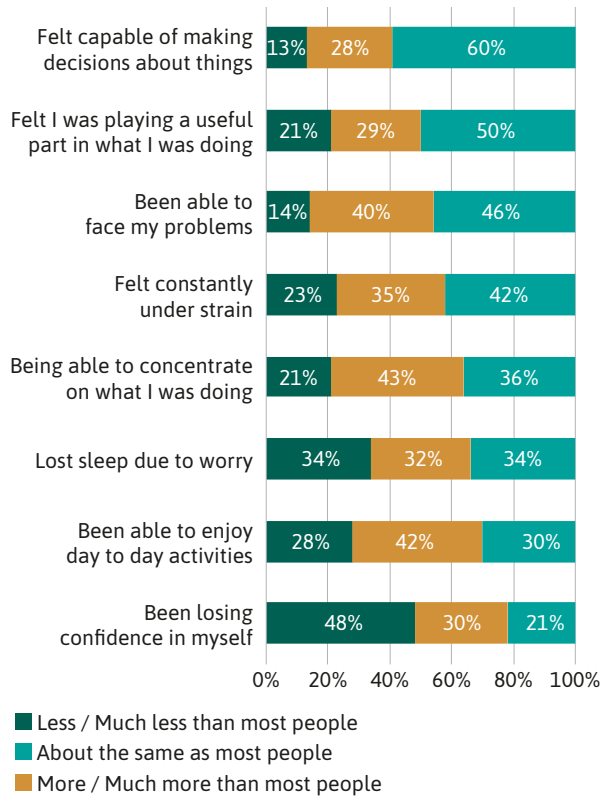
Fig.68 Somewhat / Very Satisfied



8.5 Feelings over the past 12 months

In this question Respondents were given the following descriptions of the way they have been feeling over the last year. For each of these they were asked to indicate their experiences as compared to other people they know

Fig.69



8.5.1 Feelings over the past 12 months by Gender

More / Much more than most people	Female	Male
Felt capable of making decisions about things	50%	61%
Felt I was playing a useful part in what I was doing	44%	51%
Been able to face my problems	38%	47%
Felt constantly under strain	44%	42%
Being able to concentrate on what I was doing	28%	37%
Lost sleep due to worry	50%	33%
Been able to enjoy day to day activities	32%	30%
Been losing confidence in myself	38%	20%



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INDEPENDENT REVIEW GROUP - DEFENCE
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Appendix 2: Report on the
Benchmarking Survey
(2022 vs. 2002)



GRÚPA ATHBHREITHNITHE NEAMHSPLEÁCH - COSAINT
INDEPENDENT REVIEW GROUP - DEFENCE
DÍNIT DAOINE, DIGNITY OF PEOPLE

PERCEPTIONS AND EXPERIENCES SURVEY

Benchmarking Report 2022

INDEPENDENT REVIEW GROUP – DEFENCE (IRG-DF)

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Introduction

The terms of reference (ToR) of the Independent Review Group – Defence (IRG-DF) published on the 1st February 2022, included at item number 5, a request by the Minister for Defence, Mr. Simon Coveney T.D. to:

‘Undertake a benchmarking exercise against the quantitative research, undertaken as part of the External Advisory Group 2002 Report. ‘The Challenge in the Workplace’. And include a review of how female members of the Defence Forces perceive themselves within the Organisation and additionally how female members are perceived by the Organisation.’

- Research design including agreeing the research objectives, designing the tool for capturing the data, setting up the survey, hosting or distributing the Questionnaire; analysis of the findings and reporting.

Following a competitive process, independent market research experts Fresh Perspectives were engaged to undertake this work in April 2022.

The IRG-DF Perceptions and Experiences survey went live on the 1st of June and remained open for completion by Respondents until the 11th of July 2022.

In furtherance of ToR number 5, the following report provides the results of the benchmarking exercise against the 2002 survey by making comparisons with the 2022 survey results detailed across five chapters.

The IRG-DF prepared a specification for the work required to fulfil its obligations under ToR number 5 and this included

- A Benchmark of female Defence Forces personnel on their perceptions of themselves within the Organisation and how female members are perceived by the Organisation.
- A survey of how the members of the organisation perceive the aspects of the organization of relevance to the ToR e.g. Incidence of unacceptable behaviour; confidence in complaints procedure; intimidation to deter complaints; human capability to identify, address, and resolve incidence of unacceptable behaviour; members perceptions of culture and its role in countering or facilitating unacceptable behaviours.

Survey Methodology 2022 v 2002

	2002	2022
Survey Distribution Method	Paper based survey distributed via post.	<p>Online survey compatible with all mobile devices and designed using Qualtrics software.</p> <p>Survey was distributed to all members of the Defence Forces via representative organisations:</p> <p>PDFORRA, RACO, RDFRA.</p> <p>A combination of promotional emails and social media campaigns were used to distribute the survey.</p>
Sample Size	<p>A 10% sample of the total members of the Defence Forces which as of 30 September stood at 10,745</p> <p>to a 10% sample of the total over Defence Forces which as of 30 September stood at 10,745</p> <p>In addition, questionnaires were sent to all female members (453) as well as to the people who were currently in training to ensure a breadth of response.</p>	The survey was open to all current serving members of the Defence Forces as of 1st June 2022.
Questionnaire Development	<p>The questionnaire was devised in line with the objectives of the study so that it would focus on harassment, bullying, discrimination and sexual harassment.</p> <p>Following an examination of questionnaires used in similar studies especially the <i>Report of the Task Force on Workplace Bullying</i> (2001), the Committee considered drafts of a questionnaire before the final version was agreed.</p>	<p>This survey was primarily based on a previous piece of research conducted in 2002 by Dr Eileen Doyle.</p> <p>Questions and response options were designed to remain as close as possible to the original.</p> <p>A number of components were amended to better reflect terminology and technology that has become more widely available since the previous wave of research was conducted (e.g. smartphones etc).</p> <p>The final version of the survey was approved by the IRG-DF before dissemination.</p>

	2002	2022
Procedure	The questionnaires were mailed in early December 2001 with an instruction that they should be returned within ten days. For convenience a stamped addressed envelope was enclosed. By the end of January about 35% of the respondents had replied. As a result, another copy of the questionnaire was sent to each member with instructions that they were to ignore it if they had already returned the questionnaire	The online survey went live on the 1st June 2022 and remained open for completion and submission until the 11th July 2022.
Number of Respondents	n=(817)	N=(527)
Number of Respondents by Gender	Not available	N=(463) Male N= (58) Females

Summary Findings

The following are the summary findings from comparisons made between the two data sets from the 2022, Perceptions and Experiences Survey and the 2002, Challenge of a Workplace Survey.

Full results on all comparative data sets are contained in the chapters which follow.

1. Bullying

- 8% increase in the number of people reporting experiencing Bullying in 2022
- While there was a reduction in the number of people reporting experiencing Bullying within the last 6-24 months when 2002, there was an increase of 29% of people reporting having experienced Bullying in the past 5 years.

2. Harassment

- 3% increase in people reporting experiencing Harassment in 2022 than did in 2002.
- There was a 41% increase in the number of females reporting Harassment in 2002 than did in 2002.
- While there was a reduction in the number of people experiencing Harassment over the past 6 months to 2 years, there was a 30% increase in people reporting experiencing Harassment in the past 5 years.

3. Discrimination

- Females reported an increase in experience of Discrimination in 8 of the 9 grounds surveyed, when compared with 2002. The largest increase being on grounds of Gender (+16%) and Family Status (+13%).

4. Sexual Harassment

- Females reported an increase in 10 of the 11 types of Sexual Harassment surveyed in 2022 when compared with 2002. The largest increase being Offensive Gestures (42%) followed by Sexist Remarks (34%), Unwanted and offensive text messages (29%), Offensive remarks about physical appearance (26%).
- There was a 23% increase in the number of Females reporting Sexual Harassment in the form of unwanted physical contact / sexual assault¹.

5. Satisfaction with Aspects of the Defence Forces

- In the 7 aspects that were measured in this part of the survey, satisfaction levels have fallen and dissatisfaction levels have risen across all 7 aspects in 2022.
- The largest fall off in satisfaction levels was with people more junior to them (-30%) followed by lifestyle in the Defence Forces (-27%) and people more senior to me (-25%) and the conditions under which I work (-25%).
- The largest increase in dissatisfaction rates was seen in my prospects for my future in the Defence Forces (41%), the conditions under which I work (33%) and the people more senior to me (31%).

¹ This item changed in 2022 to include (sexual assault) 2002 version described as unwanted physical contact only.

Chapter 1: Bullying

1.1 Experienced Bullying

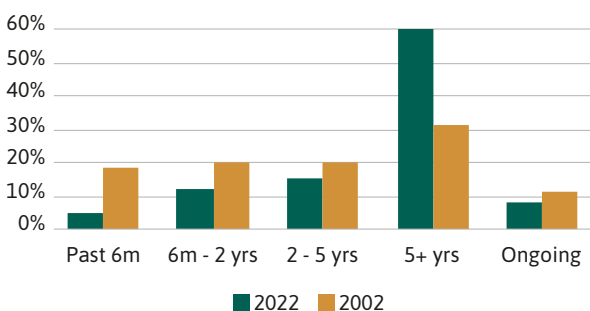
- 8 % more people reported experiencing Bullying in 2022 when compared with 2002.
- It was not possible to compare gender breakdown with 2002 data as this was not available.

	2022	2002
Total reporting	35%	27%
Males	34%	Not available
Females	50%	Not available

1.2 When Bullying Occurred

- In terms of when Bullying occurred:
 - » 13 % less people reported experiencing bullying in the past 6 months in 2022 than in 2002
 - » 8 % less people reported experiencing harassment in the past 6 months to 2 years in 2022 than in 2002
 - » 5 % less people reported experiencing harassment in the past 2 to 5 years in 2022 than in 2002
 - » 29 % more people reported experiencing harassment in the past 5 years in 2022 than in 2002
 - » 3% less people reported experiencing harassment as ongoing in 2022 when compared 2002.

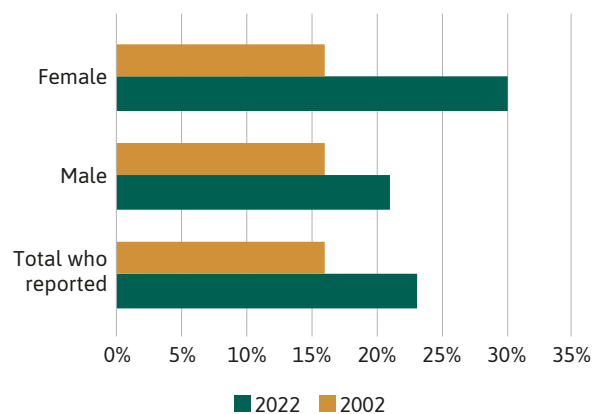
Fig.1 When Bullying Occurred



1.3 Made a Complaint in relation to Bullying

- The total number of people who made a complaint in relation to Bullying increased by +7% 2022 when compared with 2002.
- The number of males who made a complaint in relation to Bullying increased by +5% 2022 when compared with 2002.
- The number of females who made a complaint in relation to Bullying increased by +14% 2022 when compared with 2002.

Fig.2 Reported Bullying

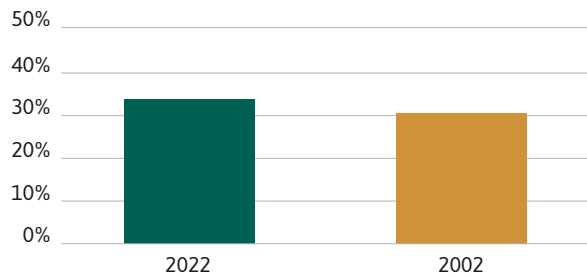


Chapter 2: Harassment

2.1 Experienced Harassment

- 3% more people reported experiencing Harassment in 2022 when compared with 2002.

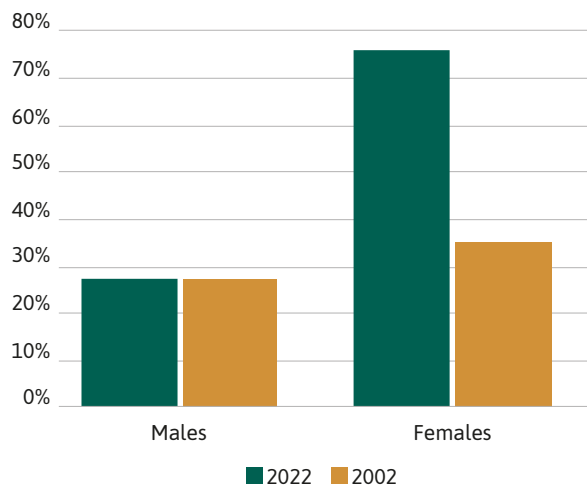
Fig.3 2022 v 2002 % Experiencing Harassment



2.2 Experienced Harassment by Gender

- The % of males reporting experiencing harassment remains at 27% in 2022
- The % of females reporting experiencing harassment has risen by 41% between 2002 and 2022.

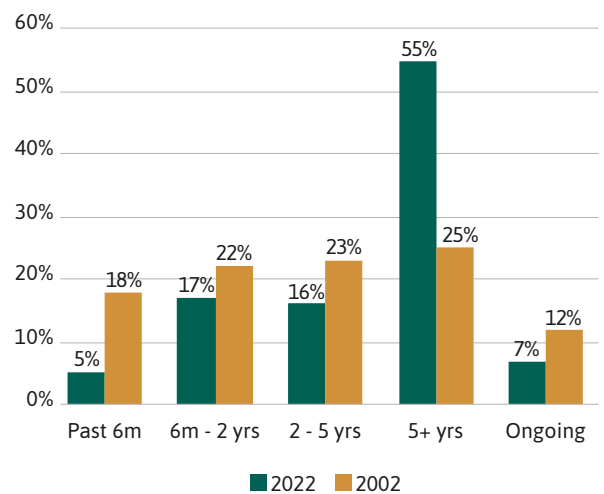
Fig.4 Experienced Harassment by Gender



2.3 When Harassment Occurred

- In terms of when Harassment occurred:
 - » 13% less people reported experiencing harassment in the past 6 months in 2022 than in 2002
 - » 5% less people reported experiencing harassment in the past 6 months to 2 years in 2022 than in 2002
 - » 7% less people reported experiencing harassment in the past 2 to 5 years in 2022 than in 2002
 - » 30 % more people reported experiencing harassment in the past 5 years in 2022 than in 2002
 - » 5% less people reported experiencing harassment as ongoing in 2022 when compared 2002.

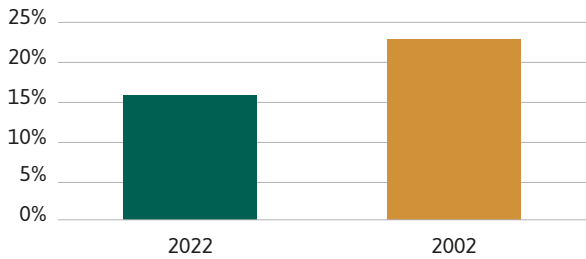
Fig.5 When Harassment Occurred?



2.4 Complained about Harassment

- 7% less people made a complaint in relation to experiencing Harassment in 2022 when compared with 2002

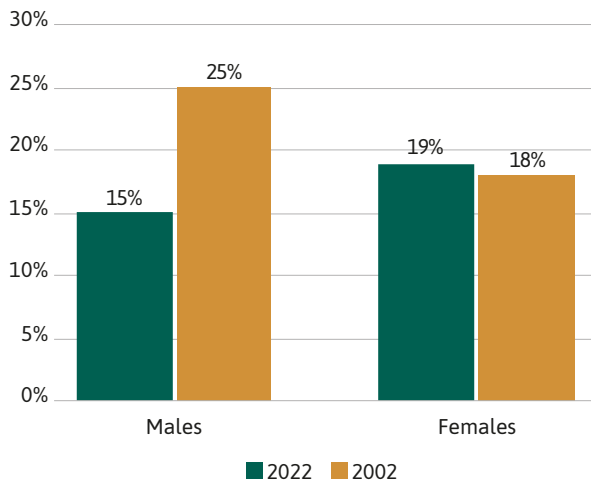
Fig.6 Made a Complaint about Harassment



2.5 Complained about Harassment by Gender

- There was a decrease of 5% of the number of males making a complaint in relation to Harassment in 2022 when compared with 2002 figures.
- There was a 1% increase in the number of females making a complaint in relation to Harassment in 2022 when compared with 2002.

Fig.7 Made a complaint - Gender



Chapter 3: Discrimination

3.1 Experienced Discrimination of any kind

- In 2022, 27% of respondents reported experiencing Discrimination of any kind.
- The 2002 survey did not example Discrimination of any kind as a metric

3.2 Experienced Discrimination of any kind by Gender

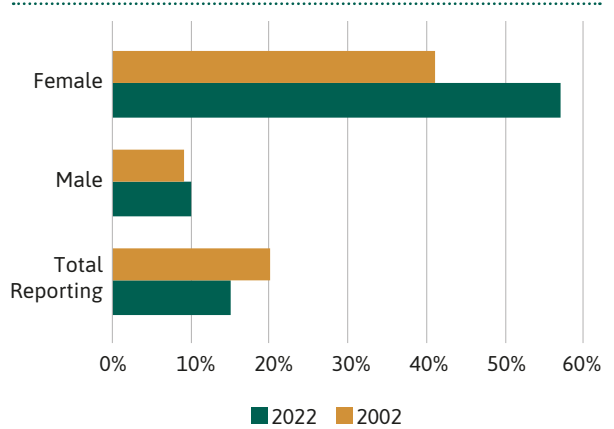
- In 2022 the number of Females experiencing Discrimination was 67% compared with 22% of males.
- The 2002 survey did not example Discrimination of any kind as a metric, the gender breakdown was not available.

3.3 Grounds for Discrimination

3.3.1 Gender

- Overall, 5% less people reported experiencing Discrimination on grounds of Gender in 2022 than those in 2002.
- However, there was an increase of 16% in the number of females reporting having experienced discrimination on grounds of gender from the 2002 survey.
- There was practically no change, 1%, in the number of males reporting having experienced Discrimination on grounds of Gender in 2022 when compared with 2002.

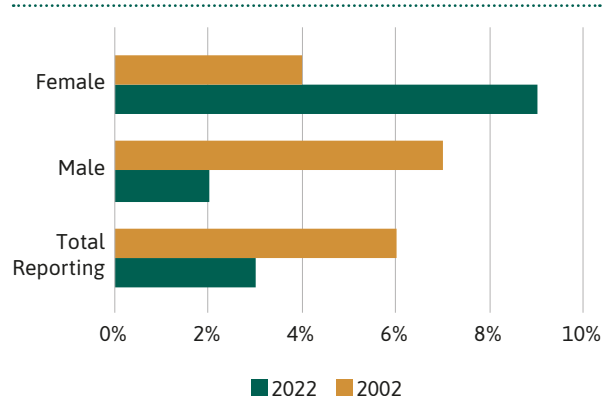
Fig.8 Discrimination on grounds of Gender



3.3.2 Marital Status

- There was a slight decrease of 4% decrease in the total number of people reporting Discrimination on grounds of Marital Status between the 2022 and 2002 survey.
- There was a 5% increase in the number of females reporting Discrimination on grounds of Marital Status in 2022 compared to 2002.
- By contrast there was a 5% decrease in the number of males reporting Discrimination on grounds of Marital Status in 2022 compared to 2002.

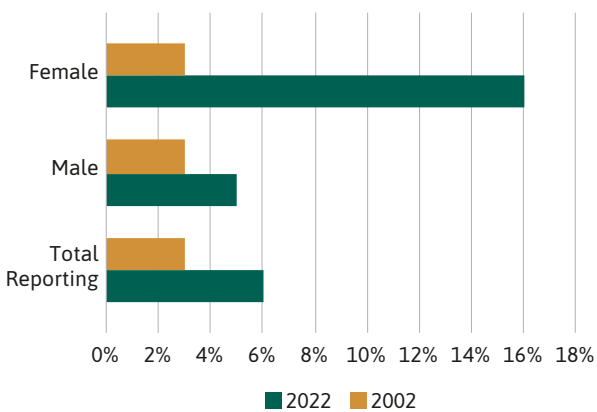
Fig.9 Experienced Discrimination on grounds of Marital Status



3.3.3 Family Status

- There was a 6% increase in the total number of people reporting Discrimination on grounds of Family Status between the 2022 and 2002 survey.
- There was a 13% increase in the number of females reporting Discrimination on grounds of Marital Status in 2022 compared to 2002.
- The number of males reporting Discrimination on grounds of Marital Status decreased by 2% in 2022 compared to 2002.

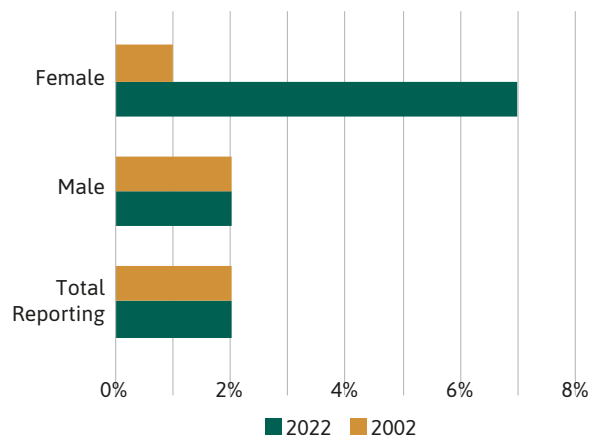
Fig.10 Experienced Discrimination on grounds of Family Status



3.3.4 Sexual Orientation

- The total number of people reporting Discrimination on grounds of Sexual Orientation remained at 2% between the 2022 and 2002 survey.
- There was a 6% increase in the number of females reporting Discrimination on grounds of Sexual Orientation in 2022 compared to 2002.
- The number of males reporting Discrimination on grounds of Sexual Orientation remained at 2%.

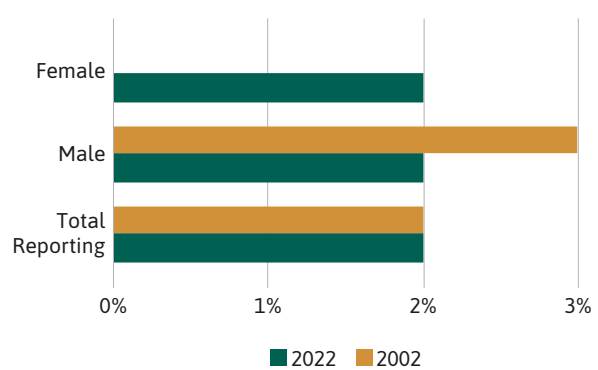
Fig.11 Discrimination on grounds of Sexual Orientation



3.3.5 Religious Belief

- The total number of people reporting Discrimination on grounds of Religious Belief remained at 2% between the 2022 and 2002 survey.
- There was a 1% decrease in the number of males reporting Discrimination on grounds of Religious Belief in 2022 compared to 2002.
- The number of females reporting Discrimination on grounds of Religious Belief increased by 2%.

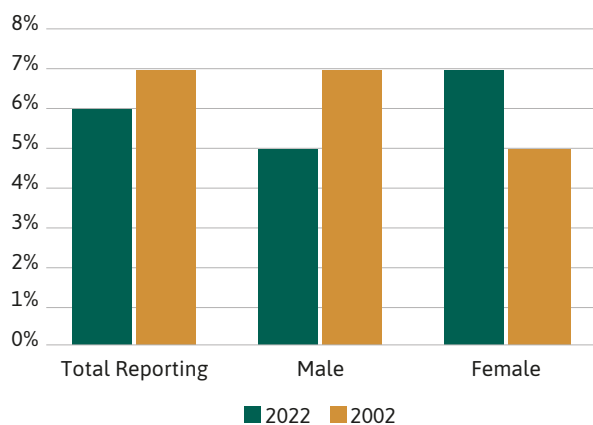
Fig.12 Experienced Discrimination on grounds of Religious Belief



3.3.6 Age

- The total number of people reporting Discrimination on grounds of Age decreased by 1% between the 2022 and 2002 survey.
- There was a 2% decrease in the number of males reporting Discrimination on grounds of Age in 2022 compared to 2002.
- The number of females reporting Discrimination on grounds of Age increased by 2%.

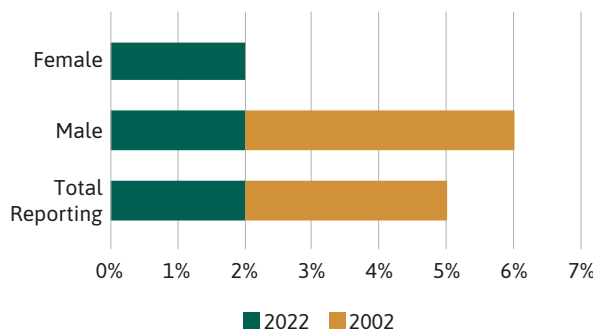
Fig.13 Experienced Discrimination on grounds of Age



3.3.7 Disability

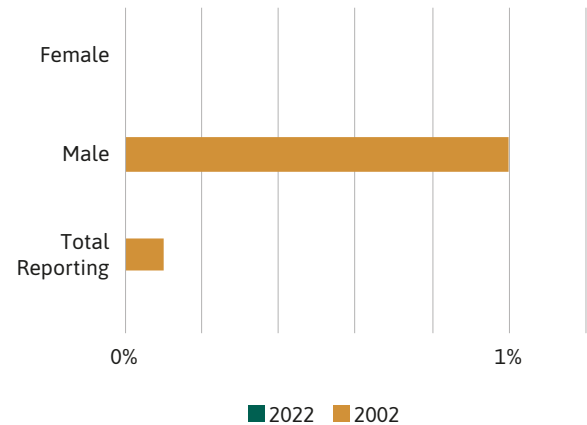
- The total number of people reporting Discrimination on grounds of Disability decreased by 1% between the 2022 and 2002 survey.
- There was a 2% decrease in the number of males reporting Discrimination on grounds of Disability in 2022 compared to 2002.
- The number of females reporting Discrimination on grounds of Disability increased by 2%.

Fig.14 Experienced Discrimination on grounds of Disability



- The number of males reporting Discrimination on grounds of Membership of Travelling Community decreased by 1%.
- The number of females reporting Discrimination on grounds of Membership of Travelling Community remained at 0%.

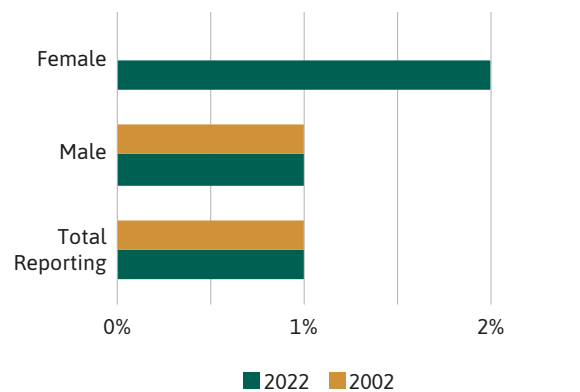
Fig.16 Discrimination on grounds of Membership of Travelling Community



3.3.8 Race

- The total number of people reporting Discrimination on grounds of Race remained at 1%.
- The number of males reporting Discrimination on grounds of Race remained at 1%.
- The number of females reporting Discrimination on grounds of Race increased by 2%.

Fig.15 Experienced Discrimination on grounds of Race



3.3.9 Membership of Travelling Community

- The total number of people reporting Discrimination on grounds of Membership of Travelling Community remained at <1%.

Chapter 4: Sexual Harassment

4.1 Experienced Sexual Harassment

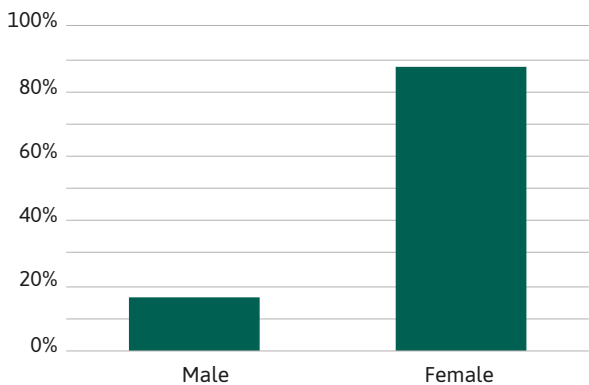
- In 2022, 25% of respondents reported experiencing Sexual Harassment.
- A total figure for those experiencing Sexual Harassment in 2002 was not available from the 2002 survey data.

- There was a 4% increase in the number of males reporting that they experienced Sexual Harassment in the form of offensive jokes/stories.
- The total number of people reporting that they experienced Sexual Harassment in the form of offensive jokes/stories, decreased by 1%.

4.2 Experienced Sexual Harassment by Gender

- In 2022 survey, of those reporting to have experienced Sexual Harassment, 88% were female and 17% male.

Fig.17 Experienced Sexual Harassment by Gender 2022

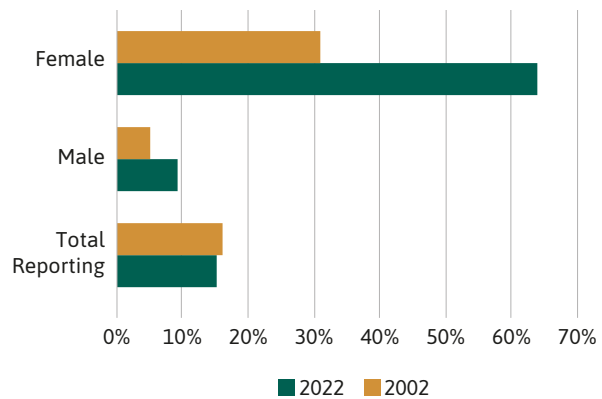


4.3 Type of Sexual Harassment Experienced

4.3.1 Offensive Jokes/Stories

- There was a 33% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of offensive jokes/stories.

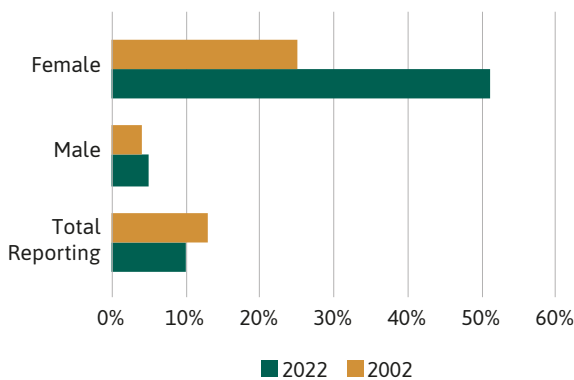
Fig.18 Offensive Jokes/Stories



4.3.2 Offensive remarks about your physical appearance

- There was a 26% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form remarks about your physical appearance.
- There was a 1% increase in the number of males reporting that they experienced Sexual Harassment in the form remarks about your physical appearance.
- The total number of people reporting that they experienced Sexual Harassment in the form of remarks about your physical appearance decreased by 3%.

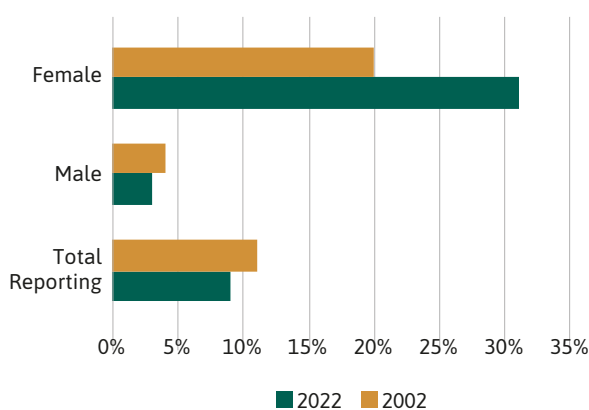
Fig.19 Offensive remarks about your physical appearance



4.3.3 Display or circulation of pornographic materials

- There was a 11% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of display or circulation of pornographic materials
- There was a 1% decrease in the number of males reporting that they experienced Sexual Harassment in the form of display or circulation of pornographic materials
- The total number of people reporting that they experienced Sexual Harassment in the form of remarks about your physical appearance decreased by 2%.

Fig.20 Display or circulation of pornographic materials



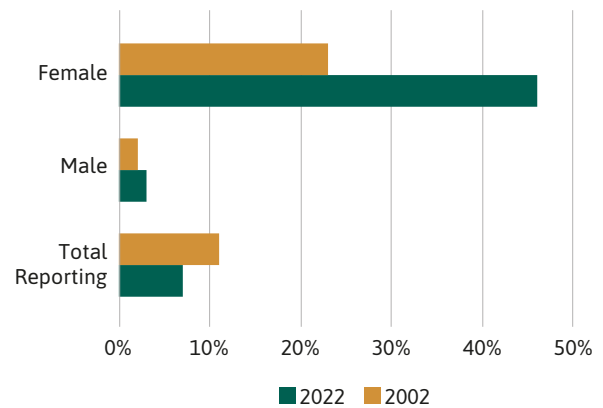
4.3.4 Unwanted physical contact/sexual assault

- There was a 23% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of unwanted physical contact/sexual assault
- There was a 1% increase in the number of males reporting that they experienced Sexual

Harassment in the form of unwanted physical contact/sexual assault

- The total number of people reporting that they experienced Sexual Harassment in the form of unwanted physical contact/sexual assault decreased by 4%.

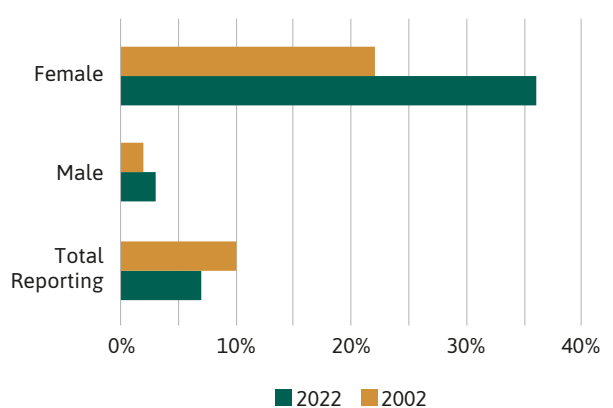
Fig.21 Unwanted physical contact / sexual assault



4.3.5 Unwanted attempts to discuss sexual matters

- There was a 14% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of unwelcome attempts to discuss sexual matters
- There was a 1% increase in the number of males reporting that they experienced Sexual Harassment in the form of unwanted attempts to discuss sexual matters
- The total number of people reporting that they experienced Sexual Harassment in the form of unwanted attempts to discuss sexual matters decreased by 3%.

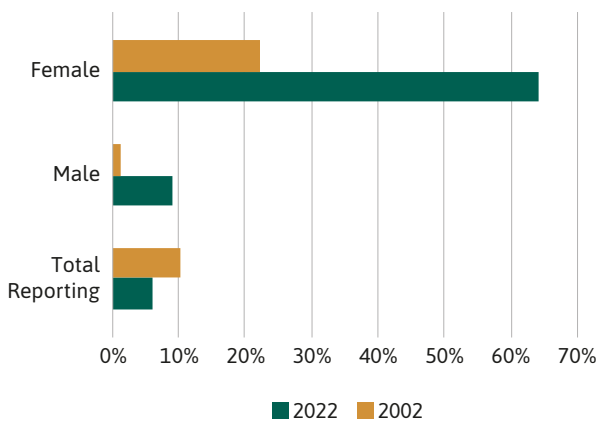
Fig.22 Unwelcome attempts to discuss sexual matters



4.3.6 Offensive Gestures

- There was a 42% increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of offensive gestures
- There was a 8% increase in the number of males reporting that they experienced Sexual Harassment in the form of offensive gestures
- The total number of people reporting that they experienced Sexual Harassment in the form of offensive gestures decreased by 4%.

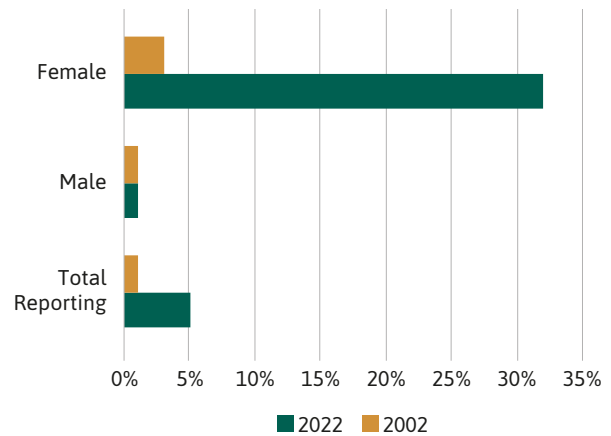
Fig.23 Offensive gestures



4.3.7 Unwanted and offensive text messages

- There was a 29 % increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of unwanted and offensive text messages
- The number of males reporting that they experienced Sexual Harassment in the form of unwanted and offensive text messages remained at 1%.
- The total number of people reporting that they experienced Sexual Harassment in the form of unwanted and offensive text messages increased by 4%.

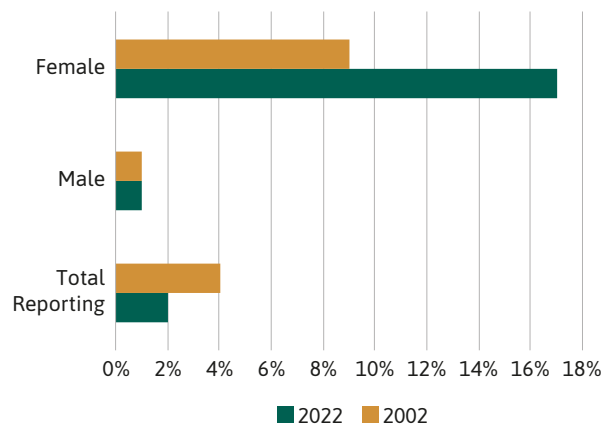
Fig.24 Unwanted and offensive text messages



4.3.8 Demands for Sexual Favours

- There was a 8 % increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of demands for sexual favours
- The number of males reporting that they experienced Sexual Harassment in the form of demands for sexual favours remained at 1%.
- The total number of people reporting that they experienced Sexual Harassment in the form of demands for sexual favours increased by 2%.

Fig.25 Demands for sexual favours

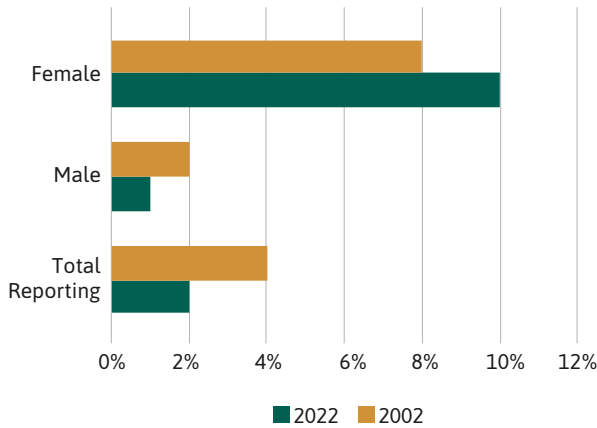


4.3.9 Unwanted and Offensive Voice/Video Calls

- There was a 2 % increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of unwanted and offensive voice/video calls
- The number of males reporting that they experienced Sexual Harassment in the form of unwanted and offensive voice/video calls decreased by 1%.

- The total number of people reporting that they experienced Sexual Harassment in the form of unwanted and offensive voice/video calls decreased by 2%.

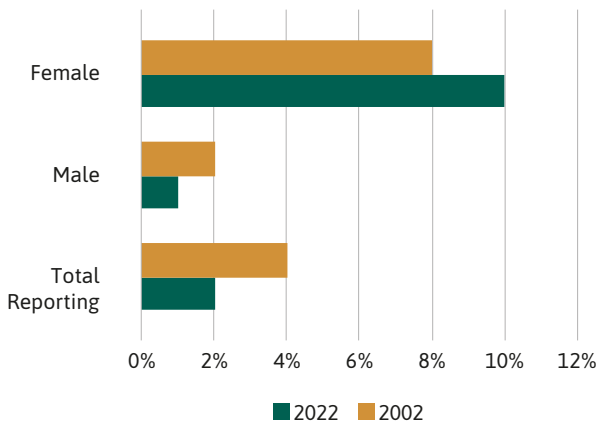
Fig.26 Unwanted and offensive voice / video calls



4.3.10 Unwanted and Offensive Emails

- There was a 2 % increase in 2022 from 2002 in the number of females reporting that they experienced Sexual Harassment in the form of unwanted and offensive emails
- The number of males reporting that they experienced Sexual Harassment in the form of unwanted and offensive emails decreased by 1%.
- The total number of people reporting that they experienced Sexual Harassment in the form of unwanted and offensive emails decreased by 2%.

Fig.27 Unwanted and offensive emails



Chapter 5: Satisfaction with Aspects of the Defence Forces

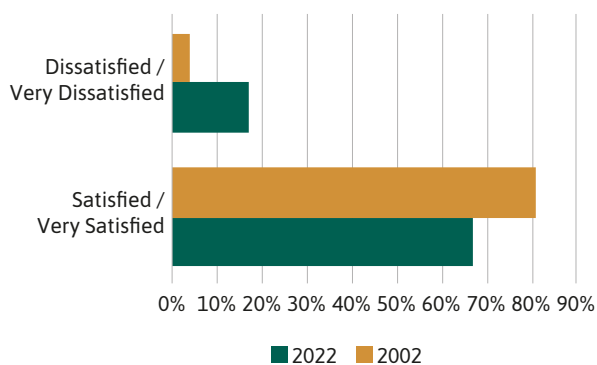
In both survey's respondents were asked to rate their satisfaction with aspects of the Defence Forces.

Under each category listed below, they were asked to state whether they were satisfied/very satisfied or dissatisfied/very dissatisfied.

5.1 Satisfaction with Colleagues in the Defence Forces

- In both surveys the majority of respondents reported that they were satisfied/very satisfied with their colleagues as opposed to dissatisfied/very dissatisfied.
- However, in 2022 there was a decrease of 14% in the number of people reporting that they were satisfied/very satisfied with their colleagues.
- In 2022, there was also an increase of 13% in the number of people reporting that they were dissatisfied/very dissatisfied with their colleagues.

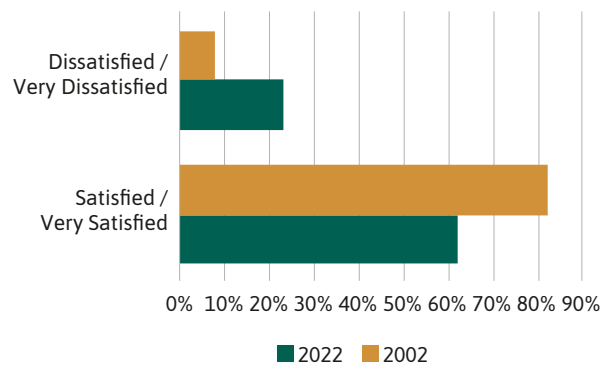
Fig.28 My colleagues in the Defence Forces



5.2 Satisfaction with The Kind of Work I have to do

- In both surveys the majority of respondents reported that they were satisfied/very satisfied with the kind of work that they have to do as opposed to dissatisfied/very dissatisfied.
- However, in 2022, there was a decrease of 20% in the number of people reporting that they were satisfied/very satisfied with the kind of work that they have to do.
- In 2022, there was also an increase of 13% in the number of people reporting that they were dissatisfied/very dissatisfied with the kind of work that they have to do.

Fig.29 The kind of work I have to do



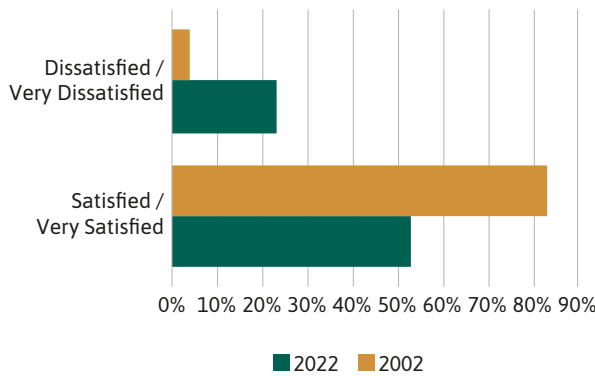
5.3 Satisfaction with The People who are Junior to me

- In both surveys the majority of respondents reported that they were satisfied/very satisfied with the people who are junior to them as opposed to dissatisfied/very dissatisfied.
- However, in 2022, there was a decrease of 30% in the number of people reporting that they were

satisfied/very satisfied with the people who are junior to them.

- In 2022, there was also an increase of 19% in the number of people reporting that they were dissatisfied/very dissatisfied with the people who are junior to them.

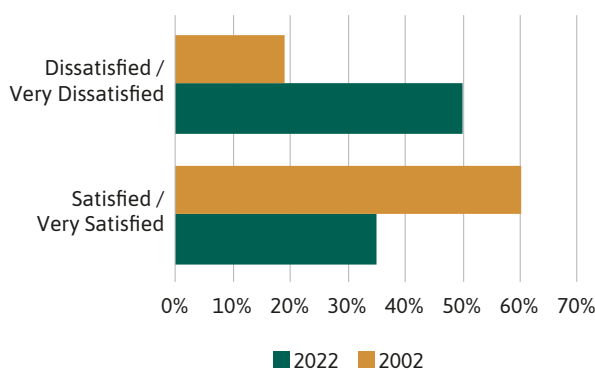
Fig.30 The people who are junior to me



5.4 Satisfaction with The People who are Senior to me

- In relation to satisfaction with people senior to them there was a noticeable decrease, 25%, in the numbers of people reporting that they were satisfied/very satisfied with the people senior to them in 2022. This is a departure from 2002 when the majority of people 60%, reported being satisfied/very satisfied with the people senior to them.
- In 2022, there was a noticeable increase of 31% in the numbers reporting that they were dissatisfied/very dissatisfied with the people senior to them.

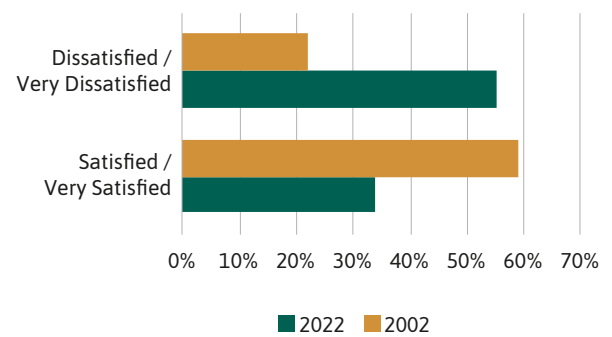
Fig.31 The people who are senior to me



5.5 Satisfaction with the conditions under which I work

- In relation to satisfaction with the conditions under which people work, there was a noticeable decrease, 25%, in the numbers of people reporting that they were satisfied/very satisfied in 2022. This is a departure from 2002 when the majority of people 59%, reported being satisfied/very satisfied with the conditions under which they work.
- In 2022, there was a noticeable increase of 33% in the numbers reporting that they were dissatisfied/very dissatisfied with the conditions under which they work.

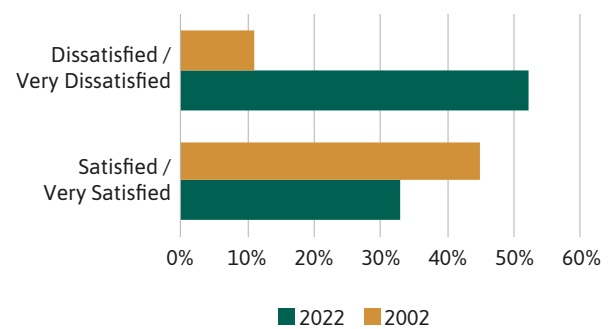
Fig.32 The conditions under which I work



5.6 Satisfaction with my prospects for the future

- The numbers of people reporting that they were dissatisfied/very dissatisfied with their prospects for the future increased by 41% in 2022 when compared with 2002.
- There was a decrease in the numbers of people reporting that they were satisfied/very satisfied with their prospects for the future in 2022, 12%, when compared with 2002.

Fig.33 My prospects for the future





GRÚPA ATHBHREITHNITHE NEAMHSPLÉÁCH - COSÁINT
INDEPENDENT REVIEW GROUP - DEFENCE
DÍNIT DAOINE, DIGNITY OF PEOPLE

Independent Review Group - Defence
Grúpa Athbheithnithe Neamhspleách - Cosaint

27 Fitzwilliam Street Upper Dublin 2 D02TP23
27 Sráid Mhic Liam Uachtarach, Baile Átha Cliath 2, D02TP23

Appendix 3: Reports prepared by Voltedge Management Ltd.



Review of Administration of Redress of Wrongs Application Ref A: Admin Instruction A7 Chapter 2 – Complaints under Section 114 (1) and (2) of the Defence Act 1954 (as amended).

Contents

Scope of service requested	1
Methodology and approach	1
Overview of findings	1
Further details on review findings:	2

Scope of service requested

Voltedge Management have been requested to provide an objective review Administration of Redress of Wrongs Application. Ref A: Admin Instruction A7 Chapter 2 – Complaints under Section 114 (1) and (2) of the Defence Act 1954 (as amended).

This document relates to a similar document (also reviewed) called, ADMINISTRATIVE INSTRUCTION A 7 CHAPTER 2 COMPLAINTS UNDER SECTION 114 (1) & (2) OF THE DEFENCE ACT 1954. And should be reviewed together.

The review is based on assessing if the policy meets the following criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

This policy document was reviewed and considered by colleagues within the Voltedge Management team based on our knowledge and experience of how grievances or complains within the workplace should be addressed.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of this policy:

- Compliance with employment legislation and best practice
- The Code of Practice on Grievances and Disciplinary Procedures issued in May 2010
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided, and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority
- Good practice principles and guidance set out in the various Codes of Practice available from WRC and government bodies
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal

Overview of findings

The details in this document are reviewed and recommendations made are set out in the table below. Overall our recommendation is that this section should be integrated into the overall General Guidelines for Investigation of a Redress of Wrongs by an Investigating Officer as well as combining

the DJ1 policy Guidelines for RoW Investigations - July 2015 so that there is a single comprehensive policy in place for all employee and stakeholders within the Defence Forces.

Naturally as legislation is updated and best practice guidelines continue to evolve, all updates and additional amendments, should be contained in the single policy document instead of separate amendment documents.

The intention of a policy document for any organisation is that it is available to all relevant stakeholders, that it is updated and maintained on a regular basis and that it is comprehensive and compliant in its guidelines and structure.

Further details on review findings:

Section	HR Consultants Comments
Cover Note	Consider removing the covering update and placing the purpose of this section into the scope of the policy.
Policy	<p>Including the administration / timeline processes in the investigation / redress of wrongs policy would be beneficial to all parties as clarity would be available on every step of the process and expectations on same.</p> <p>Clear expectations on administrative functions / processes outlined in this document which would support the investigation process as a whole. Consider including the process in the policy & removing the need for a specific admin document</p> <p>The timelines mentioned in this section of the policy are very tight and provision should be made for an individual who may be absent due to annual leave or illness, as well as some timelines provided for when the ODF will respond with their findings. This will avoid a complaint getting held up or stalled at the various steps in the process.</p>



Review of ADMINISTRATIVE
INSTRUCTION A 7 CHAPTER 2
COMPLAINTS UNDER SECTION 114 (1) &
(2) OF THE DEFENCE ACT 1954.

Contents

Scope of service requested	1
Methodology and approach	1
Overview of findings	1
Further details on review findings:	2

Scope of service requested

Voltedge Management have been requested to provide an objective review ADMINISTRATIVE INSTRUCTION A 7 CHAPTER 2 COMPLAINTS UNDER SECTION 114 (1) & (2) OF THE DEFENCE ACT 1954

This document relates to a similar document (also reviewed) called, Defence Forces DJ1 – Guidelines for RoW Investigation issued by Human Resource Branch (J1). And should be reviewed together.

This review is based on assessing if the policy meets the following criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

This policy document was reviewed and considered by colleagues within the Voltedge Management team based on our knowledge and experience of how complaints and investigations are carried out within the workplace.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of this policy:

- Compliance with employment legislation and best practice
- The Code of Practice on Grievances and Disciplinary Procedures issued in May 2010
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided, and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority
- Good practice principles and guidance set out in the various Codes of Practice available from WRC and government bodies
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal

Overview of findings

The details in this document are reviewed and recommendations made are set out in the table below. Overall our recommendation is that this chapter of the wider policy is well documented, and provides well structured guidance. There are a number of suggested recommendations listed below, however many of them are in relation to the appointment of an investigator and the role they perform. It is very important that the person performing the role of investigator is independent in

relation to any complaint that they may be reviewing and that they are free from any conflict of interest. Generally it is difficult for any internal person to meet this standard of objectivity and therefore organisations often use the services of an external investigator to establish the facts of the case – and that is clearly defined in their remit and Terms of Reference for the investigation process. Any appointed investigator should not be tasked with seeking to find redress or resolve the complaint as part of their role. The task of deciding on the appropriate redress or sanction rests with the person who is managing the complaint ie the reporting officer or the person who is appointed to review the complaint, in other words the adjudicating person.

This adjudicating person is required to make an informed decision based on the evidence available to them from the investigators report and any other evidence that is relevant to the case.

Therefore, in my professional opinion this policy document has significant room for improvement, is not up to date with changes in best practice, and does not currently reflect a “fit for purpose” status for a large modern-day organisation.

Further details on review findings:

POLICY SECTION	HR CONSULTANTS COMMENTS
RECORD OF AMENDMENTS	<p>This would seem to indicate the full list of amendments made between 2006 and 2013.</p> <p>This log of amendments is not necessary to form part of the policy document.</p> <p>All policies should have a log and registration number such as used in a Document Control system.</p>
ADMINISTRATIVE INSTRUCTIONS A7 CHAPTER 2 CONTENTS Complaints under Section 114 of the Defence Act 1954	<p>The table of content should be revised and structured differently.</p> <p>The scope and purpose of the policy, should be set out clearly at the start of the policy document, clearly indicating who this policy applies to and what the process is for raising a complaint.</p> <p>The details of what should happen at the various ranks should form part of this policy and should be included in the process so that there is a consistent standard and approach to all complaints irrespective of rank or position.</p>
SECTION 1 COMPLAINTS UNDER SECTION 114 (1) OF THE DEFENCE ACT, 1954 COMPLAINTS PROCEDURES - OFFICERS	
202	It is not clear as to what the officer should do if the complaint is in relation to the conduct or actions of their commanding officer. Who should they go to in this instance to address their complaint.

203	Recommend that any individual engage to conduct an investigation, is suitably trained and skilled to do so. And that there is always a check in relation to conflict of interest in relation to the subject matter or the parties involved to ensure fairness and objectivity.
204	it is advisable that the role of the investigator and the role of the individual who will try to resolve the matter are separate. It is not good practice for the investigating officer to be tasked with also resolve it. The investigator should provide a report and issue it to the officer who appointed him/her. The notes and files associated with this investigation and complaint should be retained on the employees file in line with GDPR guidelines on retention of information.
205 b	if the complaint is not resolved at the first level to the satisfaction of the complainant, then referral upwards should be done on the basis that the report and supporting documents are shared with this next level individual. Their role is to review the investigation report and reach a judgement on what course of action is appropriate. The previous reviewing officer should not influence the judgement or role of this next level individual appointed to review the matter. this will ensure fairness and objectivity.
205 c	this section is suggesting a further investigation. It is not clear as to why this is necessary. If a suitably skilled individual has conducted the initial investigation and the parties are in agreement with the report, then the sanction or redress is the only remaining matter that needs to be agreed.
SECTION 2 COMPLAINTS UNDER SECTION 114 (2) OF THE DEFENCE ACT, 1954 COMPLAINTS PROCEDURES - ENLISTED PERSONNEL	
214	recommend that anyone tasked with conducting an investigation into any matter are suitably trained and skilled to do so in a fair and objective manner. They should not feel pressurised, compromised or undermined in the duties of their role – irrespective of rank or position of the parties involved.
215	same observations as section 204
SECTION 3 COMPLAINTS PROCEDURES – REFERRAL TO THE OMBUDSMAN	if an investigation is required, then the investigator should be selected from a panel of suitable skilled and trained investigators and they should not be involved with the redress of the matter.
SECTION 4 REFERRAL OF COMPLAINTS TO THE MINISTER – SECTION 114 (3B) DEFENCE ACT 1954	
223	this section should be gender balanced. It should also be clearer on what grounds the Ombudsman would decide not to have an investigation carried out or to discontinue an investigation.

224	<p>this section is confusing as it states that the ombudsman will refer a case to COF which is in contradiction to section 223 above.</p> <p>If the complainant wishes for the complaint to be referred to the Minister for review, this section states that the COF will send all of the documentation to the Minister with their recommendations. This implies that the process the Minister is now being asked to review is compromised as the Minister is no longer in a position to objectively assess the case independently of the COF's views or recommendations.</p>
225	if the Ombudsman has decided against conducting an investigation, it is not clear as to what the Minister will base his/her review or decision on if there is no independent report from an investigator.
SECTION 5 COMPLAINTS UNDER SECTION 114(1) OR 114(2) OF THE DEFENCE ACT, 1954 THE COMPLAINTS INQUIRY OFFICER	the selection of the Complaints Inquiry Officer should be clarified to ensure transparency and fairness of process
SECTION 6 ADDITIONAL PROVISIONS MATTERS AFFECTING THE REPUTATION/CHARACTER OF PERSONS	no comment
231	this list is very limited in the examples that it provides and should be broader so that personnel understand better the extend of what can be considered urgent matters. it does not mention the health safety and welfare of others in this listing.
SECTION 7 COMPLAINTS OUTSIDE THE SCOPE OF SECTION 114 (1) OR 114 (2) OF THE DEFENCE ACT, 1954 AND WHERE ACTION PRE- DATES 1/12/05	no comment
ADMINISTRATIVE INSTRUCTION A7 CHAPTER 2 COMPLAINTS PROCEDURE	<p>the sections in this document that relate to the updated policy memo issued in 2005 should be combined into one single policy.</p> <p>The memo should not form part of the policy.</p> <p>The message can be the basis for the policy to be updated but it should not be included in the policy document.</p>
ADMINISTRATIVE INSTRUCTION A7 CHAPTER 2 COMPLAINTS PROCEDURE	This should form part of the start of the policy and not as shown as Annex c



Review of Defence Force Regulations A7 Discipline. Fifth Reprint 1984

Fredericka Sheppard

29th September 2022

Voltedge Management

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Overview of findings	1

Scope of service requested

Voltedge Management have been requested to provide an objective review Defence Force Regulations A7 Discipline, Fifth Reprint 1984.

The review is based on assessing if the policy meets the following criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

This policy document was reviewed and considered by colleagues within the Voltedge Management team based on our knowledge and experience of how complaints and investigations are carried out within the workplace.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of this policy:

- Compliance with employment legislation and best practice
- The Code of Practice on Grievances and Disciplinary Procedures issued in May 2010
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided, and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority
- Good practice principles and guidance set out in the various Codes of Practice available from WRC and government bodies
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal, and how disciplinary matters will be decided, and associated action taken or how the officers with authority will handled situations and matters that arise from time to time with members of the Defence Forces.

Overview of findings

On review of this ninety-page document, which is dated October 1984 (almost 40 years ago) the details provided, and the sections listed are completely out of date in almost every aspect under review. The language used makes no reference to females within the Defence Forces and only mentions men and matters associated to men, on many occasions. Refernece to legislation in most cases, does not mention updated Act's and in one section of this document, it is acknowledged by Frank Aiken, Minister for Defence whose term of office was from 1932 – 1939.

In one section the Protective Disclosure Act 2014 is referenced but it is in isolation to all of the other sections and therefore it is difficult to understand its relevance. However, this would seem to indicate that at some time over the past number of years, this policy was reviewed and intended to be updated and to take account of this piece of legislation, but as there is no other relevant updates made in the document, it adds no real value for the stakeholders who are covered by the policy as to how this policy will be operated, how parties should operate or use it, or how they can engage with the policy at the various stages.

Overall it is hard to find supporting evidence that this policy has been updated in any meaningful or progressive manner within the last forty years.

The structure and sections in the policy do not take account of the more updated sections that have been reviewed separately as part of this external review process. This policy while termed Discipline, also explores areas relating to grievances and complaints. Overall, this is very confusing and very difficult to follow or comprehend.

The disciplinary and grievance policies within an organisation remain two of the most critical policies that all employees and managers should have a full understanding of as well as a good working knowledge of how they operate. This policy does not meet this requirement. It is confusing, disjointed, most definitely out of date and shows no relevance to current day best practice or management practices.

Therefore, in my professional opinion this policy document must be rewritten in its entirety and is not up to date with changes in best practice or current legislation. It does not reflect a "fit for purpose" status for a large modern-day organisation.



Review of Defence Forces Equality, Diversity and Equal Status Policies

Fredericka Sheppard

9th September 2022

Voltedge Management

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Scope of service requested

Voltedge Management have been requested to provide an objective review of the Defence Forces Equality, Diversity and Equal Status Policies issued by Human Resource Management Section on behalf of the Deputy Chief of Staff (Support).

The review is based on assessing if both policies meet the criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

The policy documents were reviewed, and aspects considered by colleagues within the Voltedge Management team based on similar assignments that we have worked on in recent months. The updated legislation and codes of practice were also taken into account in this review.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of these policies:

- Compliance with Employment Legislation
- Compliance with Health and Safety Legislation
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority and other stakeholders outside the organisation
- Good practice principles and guidance set out in the various Codes of Practice
- Terminology used with regards to equality, diversity and inclusion principles
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal

Files, policies and documents reviewed

- Foreword: Deputy Chief of Staff (Support) Defence Forces Equality, Diversity and Equal Status Policies
- Defence Forces Equality and Diversity Policies (Dates November 2007) 10 chapters
- Defence Forces Equal Status Policy – (not dated) Chapter 1 – 4 including 3 appendices

Overview of findings

Over the past number of years there has been significant cultural and legislative changes in Ireland in relation to Equality, Diversity and Inclusion. All aspects of society have become more aware and knowledgeable on what is considered appropriate and the importance of transparent processes, fairness in how individuals are treated and how information is managed.

The two policies reviewed in this assignment concentrate on Equality and Diversity in one policy and Equal Status in the second policy. It is not clear as to why there is a need to split these two topics into different policies, when they are all governed by the same pieces of legislation and should be consistent and easy to follow policies and processes, applicable to all stakeholders within the organisation – internally and externally.

The various pieces of legislation mentioned in both policies are out of date and therefore the terminology used is not in line with the current practices and principles as set out in the current legislation and codes of practices.

The structure of the policies is complex and could be developed differently so that it is easy to follow, and the sections are comprehensive, instead of topics being covered in different sections and therefore confusing and difficult to comprehend in some instances.

Overall, the Equality and Diversity Policy is out of date and not in keeping with the changes to legislation as well as the terminology and language used. It seems to view this topic through a limited lens and therefore the sections and overall structure of the policy is not comprehensive to deal with all aspects that the legislation and Codes of Practice now in place within the workplace.

While the Equal Status policy seems to have been updated more recently, it does however mention out of date organisations and out of date legislation and makes no reference to the new Codes of Practice on Harassment, Sexual Harassment and Bullying. The current codes replaced the LRC Codes that were in place since 2006, however they are not referenced in this policy either.

The role and responsibility of the organisation in relation to the Equality, Diversity and Inclusion needs to be updated and more comprehensive. The policies need to demonstrate the commitment the organisation has to embedding EDI across the organisation and into its culture.

It is my assessment that on many occasions, the information provided is out of date and not as inclusive as it needs to be. Therefore, in my professional opinion these two policy documents have significant room for improvement, are not up to date with current legislation or practices and therefore do not reflect a “fit for purpose” status for a large modern-day organisation.

Further details on review findings.

POLICY SECTION	EXTRACT FROM THE POLICY	HR CONSULTANT’S COMMENTS
Foreword: Deputy Chief of Staff (Support)	The Defence Forces Equality and Diversity Policies	This forward refers to the organisations first Equality policy and Equal Status policy which was introduced in December 2006, almost 16 years ago. It refers to the European Year of Equal Opportunities 2007 and therefore implies that the foreword as well as the policies it introduces were written at that time, and therefore are out of date and not in line with current legislation or workplace practices.

		<p>It also refers to the recommendations of Brigade and Formation Commanders which was taken into account for the revision of these policies. This report was not reviewed as part of our process.</p> <p>This foreword is no longer require.</p>
Contents	outline of chapter 1 – 10.	<p>The index and structure of the policy should be improved, and the chapters reclassified to refer to Dignity in the Workplace with a focus on Equality, Diversity and Inclusion. Gender, Diversity and Anti-Racism should form part of this policy.</p> <p>Gender, Diversity and Racism do not on their own meet the criterial needed across the 9 grounds set out in the current legislation.</p>
Chapter 1	Defence Forces Equality and Diversity Statement	<p>The legislation and references in this chapter is out of date and does not reflect an organisation that has policies or practices in place to meet the current legislative requirements or the practices and processes that are considered good practice for an inclusive and diverse workplace.</p> <p>The section repeatedly references to out of date legislation and only recognises 7 grounds for equality whereas the legislation that has been in place since 2004 increased the number of included grounds to 9.</p> <p>The Equality Act 2010 has replaced the Equal Pay Act 1970, Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006.</p> <p>This policy does not reflect these changes.</p> <p>Reference should also be made to the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work introduced in 2020 and Code of Practice on Sexual Harassment and Harassment at Work which was published in March 2022 by the Irish Human Rights and Equality Commission.</p> <p>The policy should clearly clarify who the policy applies to and ensure that it is appliable to all positions across the organisation irrespective of grades, roles, or workplace.</p>

Chapter 2	Gender Diversity and Anti-Racism	<p>This should be inclusive of all 9 grounds listed in the legislation. Changes should also be made to the reference of female and male only to ensure broader inclusion.</p> <p>The policy should also set out how it will embed the principles and practices of Equality, Diversity and Inclusion (EDI) in the organisation so that it is experienced and witnessed in all aspects from recruitment through the full life cycle of the employee all the way to retirement or resignation from the organisation.</p> <p>The suggested processes in relation to recruitment should be explained further to demonstrate that the outcomes from their review will be implemented and the process improved and the associated timeframes that will be considered appropriate for these changes.</p> <p>The policy should also consider how it will monitor and report on the metrics and data captured in the various processes mentioned in the policy as well as indicate the provision of necessary training for all parties involved in decision making within the organisation. There is a very definite need for all employees across the organisation to attend Dignity in the Workplace training at least once a year to ensure culturally EDI is prioritised and valued at all levels in the organisation. This training should form part of the onboarding and induction of all new recruits into the organisation, irrespective of their role or location or rank.</p>
Chapter 3	Organisation for Equality within the Defence Forces	<p>Legislation referenced is out of date and only refers to 7 grounds instead of 9 grounds. It should be applicable to all levels in the organisation and additional information provided on how the legislative changes and need for cultural transformation will be driven and embedded in the organisation.</p>
Chapter 4	Equality of Opportunity in Recruitment and Advertising of jobs	<p>Reference should be made to current data privacy and the GDPR legislation and governance associated with the gathering and protection of data.</p> <p>The legislation referenced in this document regarding Data Protection is out of date therefore all aspects of GDPR legislation and guidelines need to be applied to this policy and the underlying practices and processes.</p>
Chapter 5	Equality of Opportunity in the Interview Process	<p>The policy should set out the need for EDI in all aspects of this process, and the need for regular interview training and unconscious bias training for all parties involved in the decision-making process. Details about how Interview</p>

		Boards will be compiled, the range of profiles that will make up an Interview Board
Chapter 6	Equality of Opportunity in Job Orientation and Job Induction	Reference to EDI and the need for training at the entry stage for all levels and roles, irrespective of where they will be based or what the job function will be. This will help build a culture of EDI.
Chapter 7	Equality of Opportunity in Daily Routine, Overseas Service, Career Promotion and Progression	This section should be updated to reference the 9 grounds, deal with GDPR and the necessary reporting such as gender pay gap reporting and the positive action the organisation will take to embed this culturally. The family friendly section should also include care givers needs. Details should be provided on the role of the Equality Officer, how many roles are required across the organisation, how they are selected and appointed, who they report to, what their remit is as well as their reporting requirements of their findings.
Chapter 8	Interpersonal relationships in the Defence Forces	Reference is given to The Defence Forces Administrative Instruction A7, but it is not attached to this document, so it is not clear as to what it relates to or if its scope is of relevance to this review. Reference should be made to consenting relationships and what that means. Reference should also be made to the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work introduced in 2020 and Code of Practice on Sexual Harassment and Harassment at Work which was published in March 2022 by the Irish Human Rights and Equality Commission. Training should be provided to all parties and stakeholders in the organisation as part of Orientation/Induction as well as annually on these critically important policies and practices in the organisation.
Chapter 9	Redress and Protection	The details in this section are very minimal. Greater information should be provided, or reference given to a comprehensive grievance policy which maps out how complaints or grievances relating to EDI will be handled. It should be clear as to how complaints will be managed, the provision of GDPR in this process and also clearly set out an appeal process with associate time frames as well as time limit for raising an issue

		<p>The reference to the Equality Authority needs to be updated as this organisation is no longer in existence since 2014</p> <p>The Irish Human Rights and Equality Commission is an independent body set up under the Irish Human Rights and Equality Commission Act 2014. Under the Act, the Equality Authority and the Irish Human Rights Commission were dissolved, and their functions transferred to the Irish Human Rights and Equality Commission.</p>
Chapter 10	Human Rights, Gender Based Violence (GBV)	no comments to add to this section
Appendix 1	Definitions.	This should be broader and include the 9 grounds in the legislation and reference made to the new Codes of Conduct and Practice, and clear definitions provided on what Bullying, Harassment and Sexual Harassment is.
Appendix 3	Sources of Further advice	<p>The Equality Authority is no longer in existence since 2014. For further information on where to direct employees for advice, consider:</p> <p>https://www.workplacereactions.ie/en/ https://www.ihrec.ie/ (Irish Human Rights and Equality Commission)</p>
Defence Forces Equal Status Policy		This should be combined into an Equality, Diversity and Inclusion policy that relates to Dignity in the Workplace
Chapter 1	Background	Legislation referenced is out of date however reference is made to the 9 grounds
Chapter 2	Actions	<p>Recommend a shift in terminology to Equality, Diversity and Inclusion.</p> <p>Reference to Official Languages legislation is out of date and should stage Official Languages Act (Amendment) 2021</p>
Chapter 3	Responsibility	It is not clear if the complaints procedure referenced is for all complaints as per the grievance policy or just for this policy.
Appendix 1	Defence Forces Customers	<p>Reference is made to a Strategy Statement 2005 – 2007, however there is no mention of an updated strategy document.</p> <p>There is reference to the organisation FÁS which no longer exists and is now SOLAS since 2011</p>



Review of Interpersonal Relationships in the Defence Forces Sexual Harassment, Harassment & Bullying

Fredericka Sheppard

29th September 2022

Voltedge Management

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Scope of service requested

Voltedge Management have been requested to provide an objective review of Interpersonal Relationships in the Defence Forces 2013 - The Defence Forces Policy and Procedures dealing with Sexual Harassment, Harassment and Bullying. (Administrative Instruction A7, Chapter 1)

The review is based on assessing if the policy meets the following criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

This policy document was reviewed and considered by colleagues within the Voltedge Management team based on our knowledge and experience of the changes that have taken place in relation to recent legislative updates and the introduction of the new codes of practice applicable to this policy.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of this policy:

- Compliance with employment legislation and best practice
- The update of recent Codes of Practice in relation to Bullying, Harassment and Sexual Harassment
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided, and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority and other stakeholders outside the organisation
- Good practice principles and guidance set out in the various Codes of Practice available from WRC and government bodies
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal

Overview of findings

For any organisation, a well-documented and comprehensive policy on the prevention of harassment, sexual harassment and bullying in the workplace is essential. The recently updated Codes of Practice which not only provide definitions on what harassment, sexual harassment and bullying in the workplace mean, they also map out in detail, how complaints of this nature should be handled, what policies should be in place and what good practice looks like so that employee can be afforded a workplace that looks after their safety and wellbeing within the organisation, irrespective of gender,

age, rank or status or any of the nine grounds set out in the equality legislation and ensures they are free from any form of harassment, sexual harassment and bullying.

Our review and analysis of this policy is based on the process and guidelines that must be clearly communicated to all Defence Forces members and stakeholders to ensure a workplace that meets these codes of practice.

Our findings indicate that while the layout and index of this policy is clear and well presented, there are a number of areas that need particular attention throughout the policy document and in its current state, it is not compliant with legislation requirements.

The various references to the relevant legislation and codes of conduct are all out of date and do not reflect the most recent guidelines and practices set out in the current legislation and codes of practices listed in the table below. Therefore, this policy is out of date and does not meet the current responsibilities of an employer.

The specific areas that we believe should be amended are set out in the overview table below. In addition to this, it is important to draw particular attention to a number of aspects listed within the procedure itself:

- The section that covers details of the role of the Contact Person DCP (14 pages) is exceptionally detailed and while it is very good to see that there is a Contact Person in place and recognising that it is a key stage in the process, it should be documented in a more concise manner so that individuals can understand its meaning in full. The various Contact Persons should be selected in a transparent manner and suitably trained and skilled to perform this very important role. For such a large organisation, there should be a number of Contact Persons and their contact details should be easily accessible for all stakeholders and employees.
- The section on mediation is provided in considerable detail also (7 pages). However, it does not reference the Mediation Act 2017 which should be the basis of the process within this procedure, therefore the suggested process is not in line with the guidelines set out in the legislation.
- Procedure for Making and Dealing with Complaints of Unacceptable Behaviour should be merged into the main body of the policy instead of how it is presented currently as a subsection.

Overall, the policy attempts to be comprehensive in the information and guidelines it provides, however there is a degree of repetition which should be modified to reduce the size of the policy document, currently 57 pages, to ensure that it is easy to follow and comprehend. Given the circumstances of someone needing to use this policy to have a matter resolved, it is likely that they will be experiencing considerable stress and anxiety as a result of their experience within the workplace and therefore the policy should be a very manageable and comprehensive policy with a step-by-step guide as to what an individual should do in order to resolve the workplace situation.

When policies are extensive in the detail they provide – often repeated in various sections, it makes it challenging for an individual to review and comprehend exactly what they should do, the options open to them, and what they can expect should they proceed either formally or informally to use the mechanisms of the policy to have their matter addressed fairly.

We recommend that this policy is modified in its layout and detail, so that it is more accessible for parties who may need to use it. Therefore, in my professional opinion this policy document has significant room for improvement, is not up to date with changes in best practice or compliant with

legislation, and therefore does not currently reflect a “fit for purpose” status for a large modern-day organisation.

Further details on review findings:

Policy Section	HR Consultant's Comments
Contents	Content's page is clear & well laid out
Chapter 1 Interpersonal relationships	
Preface	Legislation section requires updating to include Employment Equality Acts 1998 – 2015 which includes a wider range of legislation in relation to harassment & sexual harassment. This section should also include reference to the new Code of Practice on Sexual Harassment & Harassment at Work (March 2022) The Irish Human Rights & Equality Commission may be included as a body which offers legal assistance to people wishing to bring a claim Health Safety & Welfare Act unchanged
Employment Equality Acts	Update to include 2015 amendments to the Act referenced Update to the code of practice 2022 highlighted in this section Defence Forces are permitted to treat employees differently based on age and disability due to the nature of the role
Safety Health & Welfare at Work	Bullying Code of Practice updated 2021 which provides guidance on identifying, managing and preventing bullying in the workplace. There are also guidelines on the procedure which should be followed and how to deal with issues in a sensitive manner.
Industrial Relations Act 1990	Industrial Relations Act (Amendment) 2015 should be reflected in this section. This provides framework for staff looking to improve their terms and conditions of employment, where collective bargaining is not recognised by their employer.
Section 1 – General Statement	
105	The policy states that an issue will be dealt with by Legal /disciplinary process or through administrative action depending on the seriousness of the matter. It is recommended that details are provided on these options so that it is clear as to the scope of what forum will be used for the different types of non compliance.
109 Charter	Reviewed this – Annex A
110	Clarity on what types of complaints should be made under which policy would be of benefit here
Summary	This section is clear and outlines that behaviour which is deemed to be inappropriate is unacceptable in any area of the organisation. Good outline of responsibility & seriousness of any unacceptable behaviour
Section 2 – Superior / Subordinate Relations	
115	Suggest including that this list is not considered to be exhaustive and other unacceptable behaviours, if they arise, will be treated on a case-by-case basis
Summary	Overall, this section is clear and outlines the boundaries of superior / subordinate relationships well, placing more responsibility on the superior in the situation
Section 3 – Sexual Behaviour of Members of the Defence Forces	
118	Suggest including that this list is not considered to be exhaustive

Summary	Clear outlines of unacceptable sexual behaviour with inclusive language used throughout
Section 4 – Discrimination	
Addition	Recommend detailing the 9 grounds in this section as it refers to them in a number of subsections
122	Specific subsection on racism & reference to the Dignity Charter – consider adding additional grounds (gender / family status etc). Highlighting one ground over the others would not be considered best practice
Section 5 – Sexual Harassment & Harassment	
123	Update legislation that needs to be referenced and new definitions applied
127	There is no process of making a complaint mapped out or referenced here – just a statement that such complaints can be stressful for both parties.
Summary	Clear outlines of the definitions / examples of unacceptable behaviour
Section 6 – Bullying	
132	Update references to the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work
139	Reference to DF Social Media & IT / Email / IKON / Intranet / Acceptable Usage Policy
Summary	Clear outlines on definitions & what is considered bullying
Section 7 – Procedures for Making and Dealing with Complaints of Unacceptable Behaviour	
142	Updates in line with the Code of Practice should include first informal, second informal and then formal procedure. There is also the addition of mediation through this Code of Practice as a stage in the process. This section should be updated to the Code of Practice guidelines
144	Third Party / DCP – is this considered the appropriate contact person - Suggest including the appropriate contact person details or reference to who that person would be in terms of rank / relationship - Include the section 2 of Annex D in the main body of the report
145 - 152	Clarity on is this the formal process or the role of the contact person? There is potential for confusion as to which stage of the process you are in. Clarity on the role of the third party could be under one heading and the process then to follow from point 154.
154 - 155	Formal process is outlined clearly however there is more information detailed in 145-152, consider reordering / clarifying
156	Suggest including the right to representation / right to be accompanied to the complainant Clarify when the person complained of will be given a copy of the complaint – This is outlined in section 161 b however for clarity would be useful to address here
161 c	May this include suspension of one of the parties? If so, consider making reference to the relevant policy / instruction on how suspensions will be dealt with
162 b	This appears in contradiction to 161 a- investigation will take place within 7 days, person complained of will be given up to 14 days to respond – clarity on 161a required – is this that the investigation will be started within 7 days?
162	Consider including the rules of natural justice as a reference

163	Will the commander be considered the investigator and also the potential disciplinarian? Consider passing the investigation to another independent party for decision on the administrative sanction required, taking the commander's recommendations into account.
166	Consider including appeal to any outcome, not just an administrative sanction. This should include an appeal for the complainant as well as the person in receipt of the sanction
167	Ref to 165 – consider reviewing as 165 does not reference disposal
Flowchart	This flowchart is very clear References Mediation – consider including this in the body of the policy as outlined in 142
<p>Procedure for Making and Dealing with Complaints of Unacceptable Behaviour</p> <ul style="list-style-type: none"> - Consider merging this section into the main body of the policy as this exists as a subsection - This subsection is clear however there is a significant amount of repetition in this section - Consider, when updating in line with Code of Practice / Legislative updates, removing this section and including it in the main body of the document. - Parameters and Boundaries repeats some of the information outlined in the main policy, consider including this in the main body - Include Mediation as part of the process outlined in 142 	



Review of Defence Forces DJ1 – Guidelines for RoW Investigation

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Scope of service requested

Voltedge Management have been requested to provide an objective review of the Defence Forces DJ1 – Guidelines for RoW Investigation issued by Human Resource Branch (J1).

This document relates to a similar document (also reviewed) called, review Administration of Redress of Wrongs Application. Ref A: Admin Instruction A7 Chapter 2 – Complaints under Section 114 (1) and (2) of the Defence Act 1954 (as amended). And should be reviewed together.

The review is based on assessing if the policy meets the following criteria:

- Is the policy and procedures good or very good
- Is the policy fit for purpose in a large modern-day organisation

Methodology and approach

This policy document was reviewed and considered by colleagues within the Voltedge Management team based on our knowledge and experience of carrying out investigations for our clients. Understanding the critical aspects such as fairness, transparency, representation for all parties involved, the notification and invitation to parties to attend a meeting as part of the investigation and generally the sensitivity and specific skills needed by an investigator in conducting such assignments.

The summary of the findings is based on the overall assessment of these and accompanying details attached.

The following dimensions were considered in the review of this policy:

- Compliance with employment legislation and best practice
- Structure of the policy in relation to sub sections, the language used, the descriptions used, the information provided and the additional reference material noted
- Comprehensive in the information it provides for the employee, personnel in positions of authority and other stakeholders outside the organisation
- Good practice principles and guidance set out in the various Codes of Practice available from WRC and government bodies
- GDPR and overall data privacy and confidentiality
- Standard practice and procedures in relation to raising a complaint and dealing with an appeal

Overview of findings

While this policy aims to structure the role of the investigating officer and the sequence of events in responding to a complaint, the process of carrying out the investigation and the completion of the

investigation report are fundamental areas that are not clarified or set out in sufficient detail in this policy and therefore provides limited visibility on the possible fairness and objectivity of the process.

In relation to the selection of the investigating officer, it should be clearly stated that only suitable qualified and skilled individuals will be engaged to conduct an investigation. A policy document can be in place to support them in how they carry out that investigation in relation to the steps, however the skills and ability of the individual should be determined by the fact that they have received specific training in this area. It is normal practice for many organisations, to seek an external party to conduct the investigation to ensure the process and report from the investigation is objective, and thorough in its methodology and in establishing the facts of what happened.

An early stage in any investigation that is very important is agreeing the Terms of Reference. This should be agreed by the investigator with the complainant, and it should be on that basis that the investigation is conducted. This is not clearly set out in this policy.

This policy outlines that the complainant must identify the redress that they are seeking from the process, this would not be a normal part of a complaint or grievance process. The process should be structured in such a manner that the investigating officer has the opportunity to focus on the investigation as per the terms of reference agreed, and that their findings are set out in the report. The officer or panel/board who review the outcome of the investigation should then consider what appropriate sanction if any is needed. This decision should be based on the organisations other policies, practices and acceptable ways of working.

It is my assessment that while this policy attempts to provide guidelines for the parties involved, it is not in line with current best practice and therefore risks being unable to meet the test of objectivity and fairness.

Therefore, in my professional opinion this policy document has significant room for improvement, is not up to date with changes in best practice does not currently reflect a “fit for purpose” status for a large modern-day organisation.

Further details on review findings.

POLICY SECTION	HR CONSULTANT’S COMMENTS
Policy Guidelines	Reference to data protection requires updating to most recent Data Protection Act 2018 & update reference to General Guidelines which also require updating (comments in separate document) Reference to multiple documents through the introduction and guidelines. Combining these documents may provide more clarity to those utilising the policy.
General Guidelines 1. General	Should the individual have a complaint in relation to their Commanding Officer, this policy could provide clarity on how the individual could progress that complaint. There is an indication that this policy is a form of appeal ie the complaint has been heard by a CO and the complainant is not satisfied with the outcome. It is not clear based on the information in this policy if this is in fact the case.



2. Redress of Wrongs	this is clear
3. The Redress Application	This appears particularly onerous on the complainant, consider reviewing and making changes so that the complainant is not expected to decide at the outset of them raising the grievance/complaint – as to what the sanction should be. This should be considered by an independent board/group to ensure objectivity and fairness
4 Role of IO	Clarity required on the role of the IO – this section outlines both attempts at resolving the issue and suggestion of remedies to the GOC. This blurs the lines between investigator and decision maker therefore placing them in a position where it is impossible to remain objective or reach a judgement that could be considered fair and reasonable
5. Investigation	Reference to GDPR should be updated in line with legislation Introduction of BDE Adj to the process – this is not explained. It is important that there is clarity on the scope of the investigators role and where their responsibilities begin / end Certificate of urgency introduced – however it is not clear as to where this can be obtained and who is responsible for providing it. Reference to Representation – this should also be clearly outlined and scoped as to who can attend as a representative.
6. IO Report	Conflicting elements of the IO report listed – investigation of the matter but also redress, resolutions and outcome pre approved by GOC – Complainant should be offered visibility of the report before it is finalised to ensure there are no inconsistencies or errors. The policy outlines verbal communication only. It is unclear as to why the GOC must approve the report first before it is made available to the complainant. This does raise concerns about transparency and due process in relation to the role of the investigation and the person writing the report.
7. Points to Note	Point 6 outlines pre approval by GOC, point 7 indicates approval by GOC after informing complainant
8. Forwarding a complaint	This section should outline the appeals procedure more clearly in line with the Rules of Natural Justice
Documents & Guidelines for reports	Documents and guidelines for reports are clearly outlined in the template documentation, the suggestions in relation to the amendments to the investigation processes should be considered when updating the relevant documentation.

Appendix 4: *Review of Best Practices on Training of Defence Force Members on Workplace Misbehaviour*, prepared by Professor Thomas Garavan on behalf of TIO Consulting Ltd.



Review of Best Practices on Training of Defence Force Members on Workplace Misbehaviour in the Workplace and the Role of Structured Training Interventions

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Review of Best Practices on Training of Defence Force Members on Workplace Misbehaviour in the Workplace and the Role of Structured Training Interventions

Executive Summary

Methodology

- The scientific evidence presented in this report is based on two sources of data: data and insights derived from a systematic review of the literature on various forms of misbehaviours training and a meta-analysis of the misbehaviour, job specific training and general skills training and eight categories of learning outcomes.
- In conducting the review of the scientific evidence, we utilised an open systems model that conceptualised the training process as consisting of inputs, training processes and outcomes.
- We sought to answer the following overarching questions: 1) what is known in the scientific literature on the antecedents, training processes and outcomes of different forms of training focused on workplace behaviour in organisations? 2) how do the learning outcomes of misbehaviour training compare with job specific and general skills training?

Antecedents of Misbehaviour Training

- The most important antecedents of the effectiveness of misbehaviour training are the organisational culture and climate, the role of supportive leadership, the role of organisational HR and diversity and inclusion practices, and organisational approaches to designing misbehaviour training. Each of these factors, depending on whether they are positive or negative, can accentuate or dampen the effects of misbehaviour training on learning outcomes.
- The characteristics of employees are also important including their job demands and stress, role clarity and work autonomy, and demographic characteristics.

Characteristics of Misbehaviour Training

- The review highlights that longer duration training is more effective, that classroom or blended methods training is more effective, that experimental and case-based training is more effective and that training that is part of a distinct organisational approach is more effective.

Outcomes of Misbehaviour Training

- The evidence indicates that misbehaviour training significantly enhances employee reactions to the training, their knowledge of principles and rules, their attitudes to misbehaviour, and their knowledge of what to do when they experience misbehaviour.
- Misbehaviour training is less effective in terms of training transfer to the actual workplace and changes in day-to-day work behaviour.

Making the Case for Investment in Various Forms of Misbehaviour Training

- The learning outcomes of misbehaviour training are comparable to those achieved for general skills training but less favourable compared to job specific training.
- The Defence Forces can make the case that, based on the results of the meta-analysis findings, investments in misbehaviour training will yield significant returns in learning outcomes that are comparable with investments in soft skills training, leadership development, communication, and interpersonal skills training
- It is important that the Defence Forces focus on a wide spectrum of misbehaviour and not focus solely on sexual harassment training.

Introduction

Various forms of workplace misbehaviour are increasingly common in the workplace and particularly in the military across the world (Goldberg et al., 2019; Buchanan et al., 2014; Breslin et al., 2022). It is estimated, for example, that between 5-10% of employees experience serious bullying and between 10-35% occasional bullying (Barends et al., 2022). When it comes to sexual harassment the evidence suggests that between 7-12% of female employees are exposed to some form of sexual harassment (Roehling et al., 2022) and in the context of the military the estimates of sexual assault range from 9.5 to 43% of women and 1-12% of men (Castro et al., 2015; Pang et al., 2021). Data also suggests that various forms of workplace incivility are also commonplace including low intensity acts such as rude and discourteous behaviour, e.g., social undermining, abusive supervision, and interpersonal conflict (Agotnes et al., 2018). These various data sources suggest that various forms of workplace misbehaviour are indeed commonplace in both military and non-military contexts. It is therefore not surprising that organisations have sought a variety of solutions to address this problem, including HR practices, diversity and inclusion initiatives, culture change and a focus on leadership (Williams et al., 1999; Sadler et al., 2018; Breslin et al., 2022). Training is one solution that has become the focus of many organisations efforts to reduce these workplace misbehaviours (Roehling & Huang, 2018). These training initiatives are defined as ***systematic and targeted instruction designed to change or enhance knowledge, skills, attitudes, and behaviours with the express purposes of (a) preventing workplace misbehaviour from occurring, (b) promoting effective responses to workplace misbehaviour when it occurs, and (c) providing employers with protection from legal liability.*** For the purposes of this systematic review (S-R) and meta-analysis (M-A) we have taken a broad view of misbehaviour as set out in Table 1. This allowed us to capture the complexity of workplace misbehaviour in organisations and therefore provide more robust evidence of the impact of training to eliminate or reduce these misbehaviours.

This review presents an overview of the evidence on the antecedents, design features and outcomes of different forms of workplace misbehaviour training in organisations. It utilises the best available scientific evidence and synthesises this evidence using two types of review: (1) a systematic review of the literature and (2) a meta-analysis of the key findings from studies that have investigated the outcomes of these different types of systematic training. In addition, it reports the results of a content analysis of current training in these areas within the Irish Defence Forces and using the framework developed as part of the meta-analysis identifies gaps in current provision. In reporting the results of the systematic review and meta-analysis, we make use of an **Open Systems Framework** that focuses on **INPUTS** (organisational-level, leadership-level, and employee-level), **TRAINING PROCESSES** (training settings, training characteristics, and training design and delivery), and **OUTPUTS** (overall effectiveness of training, development of employee knowledge, development of procedural or how-to-do knowledge, changes in attitudes, and impact on job behaviour in the form of transfer of learning (Garavan et al., 2021 a,b) .

Main Question: What does this Review Answer?

The review sets out to answer the following questions:

- (1) What is known in the scientific literature on the antecedents, training processes and outcomes of different forms of training focused on workplace behaviour in organisations?**
- (2) How do the learning outcomes of misbehaviour training compare with job specific and general skills training?**

In addition to addressing this question, we inevitably address a number of other issues as follows:

1. What constitutes workplace misbehaviour?
2. What are the antecedents of workplace misbehaviour that are important in the context of understanding the effectiveness of structured or systematic training targeting various forms of workplace misbehaviour?
3. What are the most impactful antecedents and training design characteristics when it comes to explaining the effectiveness of training directed at workplace misbehaviour?
4. What is the hierarchy of learning outcomes that systematic training on workplace misbehaviour can realise?

What is Workplace Misbehaviour?

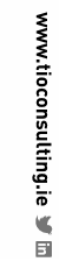
The literature that investigates workplace misbehaviour makes use of so many terms that it is sometimes difficult to achieve any consensus on the best term to use. For example, the following terms are used with great frequency: bullying, harassment, sexual harassment, social undermining, mobbing, workplace aggression, emotional abuse, interpersonal conflict, counterproductive work behaviours, abusive supervision, retaliation, and interpersonal deviance. While some of these types of workplace misbehaviour have not been investigated in the context of the use of systematic training, they are all slightly different conceptually. Each concept has important distinctions in terms of their impact on the victim. Therefore, we provide an overview of the most widely researched constructs where studies have reported the role of training in reducing this type of misbehaviour and provided employees with the tools to deal with it.

Table 1: The Spectrum of Workplace Misbehaviour in Organisations

Key Concept	Definition
Harassment	Generally defined as unwanted conduct that violates the dignity of individuals and/or creates an intimidating, hostile, degrading, humiliating or offensive work environment.
Sexual Harassment	It involves unwanted or unwelcome conduct that is sexual in nature and that has the purpose or effect of intimidating, degrading, humiliating, offending, or violating the dignity of an individual. It involves behaviour that derogate, demean, or humiliate an individual based on that individual's sex and includes behaviours that are seemingly sex neutral acts in the sense that the behaviours are not driven by sexual desire.
Bullying	Bullying involves situations where a person repeatedly and over a period of time is exposed to negative acts such as constant abuse, offensive remarks or teasing, ridicule or social exclusion and is perpetrated by supervisors, co-workers, and direct reports.
Abusive Supervision	Abusive supervision can be defined as subordinates' perceived sustained hostile verbal and non-verbal supervisory behaviours, excluding physical contact. Abusive supervision to be a four-dimensional construct where yelling, belittling behaviour, scapegoating and credit stealing are described as the dimensions of abusive supervision.
Interpersonal Conflict	Interpersonal conflict refers to any type of conflict involving two or more people. It is different from an intrapersonal conflict, which refers to an internal conflict with yourself. Mild or severe, interpersonal conflict is a natural outcome of human interaction.
Workplace Incivility	Workplace incivility is defined as low-intensity deviant behaviour with ambiguous intent to harm the target. Uncivil behaviours are stressors that can lead to negative health consequences (e.g., depression, physical symptoms)
Social Undermining	Undermining is a behaviour that involves undermining someone's authority, power, or status. It can be seen in a variety of ways, including making fun of someone, talking badly about them behind their back, refusing to cooperate with them or deliberately doing things to make their job more difficult.
Workplace Aggression	Aggression in the workplace can be defined as 'any incident in which employees and other people are abused, threatened or assaulted at work'. Within this definition, threat means any statement or behaviour that leads a person to believe they are in danger of being physically attacked.
Mobbing	Sometimes known as "group bullying," mobbing in the workplace involves groups of people targeting a co-worker for isolation, humiliation, and aggression. The impact on mobbing targets, as well as the business itself, can be serious.
Counterproductive Work Behaviours	A counterproductive work behaviour, or CWB, is any employee behaviour that undermines the goals and interests of a business. Counterproductive work behaviours come in many different forms, but can include tardiness, theft, fraud, sexual harassment, workplace bullying, absenteeism, substance abuse, workplace aggression, or sabotage. These types

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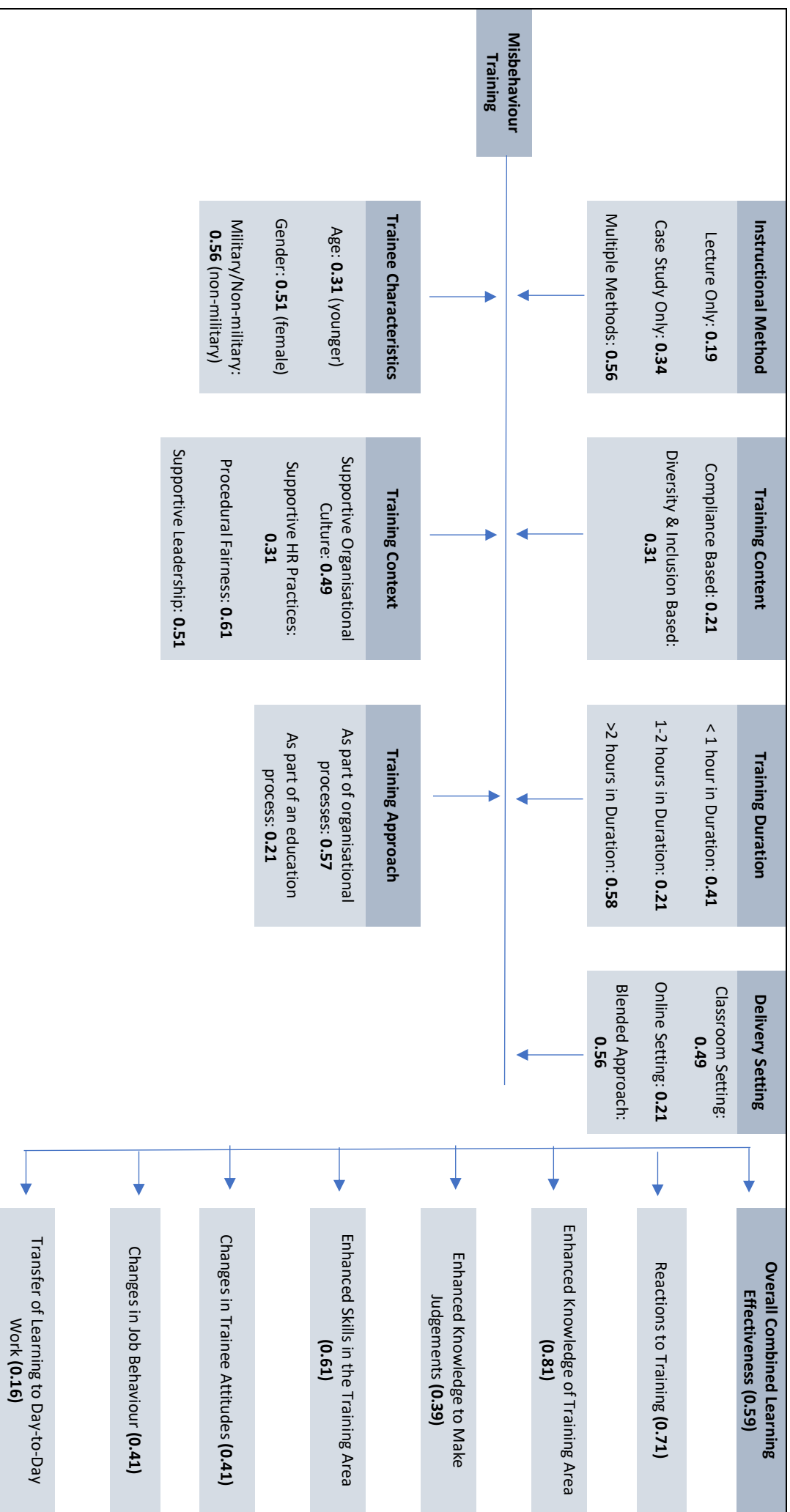
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	of behaviour not only impact the quality of work produced by the employee engaging in CWBs but also can negatively affect the productivity of other employees in the company and create undesirable risks for the employer.
Interpersonal Deviance	Interpersonal deviance is a specific form of voluntary workplace behavior that violates significant organizational norms and is harmful to the well-being of employees.
Emotional abuse	Emotional abuse involves nonphysical behaviour that belittles another person and can include insults, put downs, verbal threats or other tactics that make the victim feel threatened, inferior, ashamed, or degraded
Retaliation	Retaliation, in general, means any act of harm in response to an actual or perceived harm. Retaliatory actions are broadly defined to harassing behaviour, significant changes to job duties or working conditions, and even threats to take personnel actions.

When it comes to the role of training and its impact on this spectrum of workplace misbehaviours the scientific evidence is imbalanced. The majority of the research has focused on the impacts of training on sexual harassment (72 studies), followed by harassment (9 studies), bullying (6 studies), and 10 studies spread over abusive supervision, workplace aggression, workplace incivility, counterproductive work behaviours and interpersonal deviance. This important issue needs to be kept in mind as we interpret the findings of both the systematic review and the meta-analysis. Strategies to address all of these styles of workplace misbehaviours are imperative given their indisputable negative influence on employees, teams, and the organisation as a whole. The scientific evidence highlights many attitudinal, behavioural, and health-related employee outcomes including high levels of anxiety, depression, burnout, reduced self-esteem, lower levels of job satisfaction and performance, significant absenteeism, presenteeism and employee turnover. There is also evidence that employees will respond to these misbehaviours by also engaging in deviance whereby they violate workplace norms and threaten the overall functioning of the organisation (Trudel & Reio, 2011; Park & Choi, 2019; Courtright et al., 2016).

Figure 1: Meta-Analytic Results for Various Types of Workplace Misbehaviour Training Learning Outcomes (N=97)



Training as a Solution to Address Workplace Misbehaviour: The Key Antecedents

Organisational Level Influences

The Role of Organisational Culture and Climate

S-R Evidence: The available scientific evidence highlights that organisational culture and climate are important predictors or antecedents of misbehaviour training effectiveness. Research makes an important distinction between organisational culture and organisational climate. Organisational culture is the collection of values, expectations, and practices that guide and inform the actions of all team members. In contrast, organisational climate refers to an employee's long-lasting perception of the working environment and culture of the business they work for. The small amount of evidence indicates that both organisational culture and climate interact with trainee attitudes to impact motivation to learn during misbehaviour training and self-confidence to learn (Walsh et al., 2012). Both culture and climate are somewhat invisible features of an organisation yet their impact on trainees is pervasive and subtle. For example, they can make the difference between effective and ineffective training (Best et al., 2010; Fried et al., 2012). In the context of research on military organisations, the evidence suggests that organisational climate had the most significant impact on the occurrence of sexual harassment and its eradication or reduction (Willness et al., 2007; Buchanan et al., 2014). A positive organisational climate decreases many of the dimensions of sexual harassment, including retaliation against those who confront and report harassment, and it improves the work and psychological outcome for victims. One feature of culture and climate that has achieved prominence concerns organisational tolerance of various forms of misbehaviour. This tolerance is manifest in the punishment of those who report or complain, the unwillingness of the organisation to punish perpetrators, and a situation where complaints are not taken seriously (Fitzgerald et al., 1997; Hulin et al., 1996).

M-A Evidence: When it comes to the meta-analytic evidence on the impact of culture on the effectiveness of misbehaviour training, we were somewhat restricted by the number of studies that included this variable. However, based on small sample of studies we found that a supportive organisational culture was particularly beneficial in terms of overall effectiveness of such training ($r=0.49$). It had its greatest impact on two proximal learning outcomes: changes in attitudes to misbehaviour ($r=0.55$) and transfer of the learning to the job in terms of changed behaviour ($r=.42$). This latter finding is significant because while various forms of misbehaviour training are less impactful when it comes to transfer of learning to the job ($r=.16$) a supportive organisation culture enhances or elevates that relationship.

The Role of Organisational Fairness

S-R Evidence: The available evidence highlights that perceived fairness is one of the strongest drivers of the impact of misbehaviour training on learning outcomes. Of particular salience is the notion of procedural fairness, which is defined as acting fairly in administrative decision

making. It relates to the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision (Buchanan et al., 2014; Sadler et al., 2018). The implementation of procedural fairness will be manifest in three different ways: (1) establishing procedures where employees can make a complaint concerning misbehaviour; (2) promptly and thoroughly investigating complaints; and (3) initiating prompt corrective action when the complaint is substantiated. The research also points to the value of both formal and informal implementation of processes to ensure procedural fairness. These informal components can include conflict resolution, training interventions and some form of negotiation (Cortina & Berdahl, 2008; Magley, 2002). Issues relating to distributive fairness may also arise which is defined as the perceived fairness of how rewards and costs are shared by (distributed across) group members. In the case of misbehaviour, it may involve questions concerning the fairness of outcomes, which is then manifested in different forms of aggressive misbehaviour. Where both forms of organisational fairness are at issue, they will likely diminish the effectiveness of misbehaviour training.

M-A Evidence: In the meta-analysis we were able to investigate the impact of procedural fairness on the overall effectiveness of misbehaviour training. We found that it was a significant amplifier of the relationship between training and both changes in attitudes post training ($r=0.73$) and transfer of skills to the job ($r=0.51$). This suggests that where there are positive perceptions of formal and informal procedural fairness it will be beneficial in influencing the types of learning outcomes derived from misbehaviour training.

The Role of Organisational HR Practices including Diversity and Inclusion

S-R Evidence: The scientific evidence points to the important role of aligned HR policies and practice including the implementation of diversity and inclusion policies (Paludi & Paludi, 2003). The research in the non-military context highlights that these aligned HR policies and practices in the form of written policies around diversity and inclusion and policies related to hr process us such as performance management and rewards. In the military context, Williams et al. (1999) points to the importance of practice implementation and enforcement in influencing the impact of sexual harassment training. Other research in the military context points to the importance of having written policies that are clearly communicated (Casellas & Hill, 2006) and be placed prominently throughout the organisation to ensure that employees are exposed to the policy content.

M-A Evidence: We were able to identify the positive impact of supportive or aligned HR policy and practices on the effectiveness of misbehaviour training. This showed that the existence of supportive or aligned HR practices and policies was beneficial to the transfer of training to workplace behaviour ($r=0.37$) and increased procedural knowledge of misbehaviour and its consequences ($r=0.47$). Overall, however the evidence is suggestive that where organisations develop HR policies and practices that align with systematic training activities around workplace misbehaviour there will be additional benefits in terms of learning outcomes.

Organisational Approaches to Designing Training to Addressing Misbehaviour

S-R Evidence: The scientific evidence highlights two approaches that organisations can take to using training to address workplace misbehaviour. The compliance-based approach gives emphasis to employees and managers following rules that are mandated by law or organisation policy (Tippett, 2017). Using the compliance-based approach organisations will address issues such as definitions of different types of misbehaviour, the consequences of engaging in these misbehaviours, the rights and responsibilities of the employee and the complaint processes used by the organisation (Feldblum & Lipnic, 2016).

Some organisations are making use of a much broader approach, which is labelled a diversity-oriented approach to training and misbehaviour (Morgan et al., 2013). Using this approach, the purposes of training are to enhance the knowledge of employees about diversity related topics, to improve or enhance their attitudes about diversity, to develop diversity skills and promote behaviours that are positive when it comes to dissimilar individuals within an organisation (Kulik & Roberson, 2008).

The scientific evidence highlights that the compliance-based approach is too narrow and is less impactful in changing employee behaviours and attitudes (Tinkler, 2012). It is essentially focused on legal protection and therefore it does not do a good job in addressing workplace misbehaviours. Therefore, the evidence is pointing to the need for broad compliance-based approaches to incorporate diversity issues including the development of skills to promote positive behaviours and attitudes.

The evidence points to the limitations of a compliance approach when it comes to positioning the training intervention. There is evidence that employees have higher levels of motivation to attend training that is diversity and inclusion focused and that they are more likely to transfer the learning (Salas & Cannon-Bowers, 2001). Employees are more likely to perceive compliance focused misbehaviour training as controlling, with too much emphasis on rules and regulations. It may result in negative reactions and diminish motivation to transfer (Tinkler, 2012).

M-A Evidence: The meta-analytic evidence highlights that the diversity and inclusion approach is better than the compliance-based approach which it comes to overall effectiveness (**$r=0.31$ versus $r=0.21$**). A diversity and inclusion approach is considered particularly effective when it comes to changes in attitudes (**$r=0.45$ versus $r=0.14$**) and the transfer of learning to the job (**$r=0.31$ versus $r=0.11$**). This highlights the significant superiority of the diversity and inclusion approach when it comes to two learning outcomes that can make a difference in organisations: changing the attitudes of employees and changing their job behaviours.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- Organisation culture is of paramount importance in enhancing the effectiveness of training focused on different types of misbehaviour in organisations. Therefore, develop an understanding of the key components of your organisation culture and collect survey data and personal accounts from the workplace.
- Focus on climate, which is more tangible than organisation culture. Develop dynamic measures of climate that provide regular data points on how it is currently operating. Communicate results and make employees aware of what will be done to address gaps in the current climate.
- Develop an understanding of the dynamics of fairness within the organisation. This dimension goes hand-in-hand with organisation culture. Understand how employee currently perceive fairness issues and develop robust processes that demonstrate a commitment to organisational fairness.
- HR processes and practices play a supportive role in elevating the effectiveness of systematic training. The key finding from the evidence is the importance of alignment of these practices. They must communicate the same messages when it comes to content, and they should elevate the value of participation in training.
- There is strong persuasive evidence that a compliance-based approach to training focused on misbehaviour is suboptimal. The organisation should adopt a diversity and inclusion approach because this has the potential to penetrate into changed attitudes and employee day-to-day behaviour.

Leadership-Level Influences

S-R Evidence: The scientific evidence highlights that leaders and managers play a crucial role in the context of the effectiveness of systematic training aimed at workplace misbehaviour. The role of leadership is given particular salience in the military literature (Sadler et al., 2018). Three-dimensions of effective leadership are highlighted in the evidence: (1) perceptions of fair leadership; (2) the people management skills of leaders; and (3) the stress levels of leaders and managers, which exacerbate misbehaviour in organisations.

Employee perceptions of fair leadership are a strong feature of the evidence base. This dimension focuses on how leaders are expected to perform in organisations. The evidence from the military literature highlights that leadership should be viewed as a key leverage point in supporting positive learning outcomes from systematic training (Samuels et al., 2010). The research evidence highlights that authoritarian leadership styles, which are prevalent in

military organisations, are not conducive to achieving positive outcomes from training (Wong et al., 2003). There is an expectation that leadership should give flexibility in the use of leadership styles and above all they must be perceived as fair in dealing with misbehaviour issues. Evidence from the incivility and abusive supervision literature highlights that constructive and fair leadership approaches are more likely to elevate the effectiveness of training focused on misbehaviour (Eissa & Lester, 2017; Escartin, 2016).

The skills that leaders possess is also highlighted as important. The evidence base highlights that military leadership are frequently deficient in the skills and competence to be effective people managers (Van Winkle et al., 2017). Effective people management skills are considered very valuable in helping the effects of training to transfer to day-to-day workplace behaviour. They are also important in preventing workplace bullying, abusive supervision, and harassment. The lack of such skills frequently leads to authoritarian approaches and failures to address misbehaviours when it arises.

The final dimension of leadership concerns the stresses that leaders experience and their potential to spill over and trickle down the organisation. The evidence is persuasive in highlighting that managers and leaders who are themselves stressed will impact the experiences of employees and reinforce perceptions of unfair treatment (Fiset et al., 2019; Zhang et al., 2019). High levels of stress are likely to lead managers and leaders to mistreat their staff because they experience role overload and negative emotions. In contrast the evidence indicates that where leaders are less stressed, they feel more in control and are much less likely to engage in uncivil behaviours, bullying and harassment of employees. They are also more likely to be attuned to the need to support the implementation of key learnings from misbehaviour training.

M-A Evidence: The meta-analytic evidence on the role of leadership in enhancing or inhibiting the impact of misbehaviour training is based on a small number of studies (N=9) and therefore must be interpreted with caution. It does however show the value of positive and supportive leadership in explaining overall effectiveness ($r=0.61$); however, it has its greatest impact on the development of attitudes around misbehaviour ($r=0.77$) and the transfer of learning to workplace behaviour ($r=0.44$). Relative to the small modest direct impact of misbehaviour training on transfer to the workplace ($r=0.16$), supportive leadership does make a very significant difference.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- It is important that the organisation prioritise behavioural dimension and style when selecting and developing leaders. This can include a focus on measuring values, attitudes, and personality when recruiting and promoting officers to leadership positions.
- Understand that leadership style matters when it comes to perceptions of organisational fairness and the impact of misbehaviour training on the most important learning outcome: changes day-to-day behaviour. Therefore, in officer and leadership development processes greater attention should be given to style issues.
- It is important that the organisation understands the role that stress plays in the behaviour of managers and leaders and its centrality to positive and healthy relationships with officers. Interventions to address stress issues will allow managers and leaders to focus more on ensuring that they support the transfer of learning to the job.
- The scientific evidence points to the need for systematic leadership development. An important part of this leadership development process will involve educating officers on the importance of diversity and inclusion, ensuring the appropriate climate to ensure effective functioning and behaviour, and how the actions and inactions of leaders have lasting consequences for workplace misbehaviour.

Employee-Level Influences

S-R Evidence: What becomes clear from the existing evidence is that employee behaviour is an important part of the wider system that will influence the effectiveness of misbehaviour training. Research points to a number of important dimensions: (1) job demand and stress that employees experience; (2) issues related to role clarity and autonomy and (3) personality types and demographic factors.

Officers within military organisations are subjected to very significant job demands, job stress, work overload that will impact on their attitudes and affective states (Harris et al., 2017). There is evidence in the non-military context that where employees reported higher levels of job demands they were four times more likely to engage in insulting behaviours (Salin, 2015). The characteristics of the roles that officers perform are also important in explaining misbehaviour and important issue related to motivation to participate in training and self-confidence for training. For example, role ambiguity, which is characterised by feelings of uncertainty concerning roles, and role conflict where there are incompatible expectations and demands within a role greatly impact harassment and bullying behaviours. Bowling & Beehr,

(2006) found that where employees experienced role ambiguity and role conflict, these characteristics predicted more than one fifth of workplace harassment cases. It is frequently the case that many officers work within significant work constraints, including a lack of resources and scope to make changes. These characteristics often spill over into frustration and potential aggression. In addition, their impact on workplace incivility and bullying may be greater than that due to role conflict or ambiguity. In these situations, investments in training will be wasted and of little value.

There is a small amount of evidence that personality traits are important in explaining workplace misbehaviour and how particular employees view training processes. There is some evidence in the military context that 'trait anger' or a predisposition to respond to situations in a hostile or bullying way is linked to misbehaviour. These individuals are also less likely to be receptive to training interventions and HR practices. There is a small amount of evidence indicating gender differences with women in the military more likely to experience bullying than men. In addition, men are more likely to see bullying behaviour as part-and-parcel of management whereas women will more likely interpret it as threatening (Breslin et al., 2022). We were unable to include this dimension in the meta-analysis due to the lack of studies linking them to training outcomes.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- **There is a need to be continually aware that employees experience stress and this potentially leads to misbehaviour. Officers who experience work overload in their role are more likely to experience negative emotions leading to aggression, harassment, sexual harassment, and bullying.**
- **There is a major job design task to ensure that the jobs that officers perform are well defined and that there is an effective match between abilities and demands. Where there is mismatch, this will affect the implementation of training in the workplace.**
- **The Defence Forces should create an environment and climate where officers have sufficient self-management and control over their working life by providing them with autonomy to decide how, when and where they work.**
- **Make use of appropriate selection methods to ensure that officers with the right traits are promoted to job roles and that there is a good personality-job fit.**

Training as a Solution to Address Workplace Misbehaviour: The Key Training Design Features

Training Design and Delivery

S-R Evidence: The scientific evidence highlights a number of important dimensions of training design that are important in explaining the effectiveness of workplace misbehaviour structured training interventions. The first dimension focuses on whether the training is delivered as part of a suite of organisational training approaches that are branded and emphasise diversity and inclusion or are delivered as part of an education process such as entry-level programmes to the military. The organisation setting appears to be much more effective than including it as part of a wider or broader educational approach.

The second dimension of training design and delivery focuses on the types of learning objectives set out for the training. In general, the existing studies highlight a significant emphasis on knowledge objectives, with much less focus on skills development and experiential learning. The third training design dimension focuses on training duration. The evidence suggests that longer duration training will be more effective in impacting learners' perceptions of the value of the training, and their motivation to transfer it to the workplace. In addition, longer training provides opportunities for skill, practice and the development of skills and attitudes (Lacerenza et al., 2017). The evidence in general is supportive of the view that training which is longer in duration is more effective and that bite size interventions will not work when it comes to skills and attitudinal outcomes (Bezrukova et al., 2014). The fourth dimension focuses on the instructional methods used and here the evidence is conclusive. Formation based approaches are significantly less effective than skill building, and the use of multiple experiential methods (Burke et al., 2006) is conducive to ensuring that learners actively engage with the content and develop the skills to transfer learning to the job. The fifth dimension focuses on the overall delivery approach, and whether it is classroom based, online, or a blend of both. In-class delivery or face-to-face approaches appear to be considerably more effective when it comes to learning transfer and the development of skills and attitudes (Roehling & Haung, 2018). Online approaches tend to be less effective whereas there are advantages from using a blend of online and classroom.

M-A Evidence: The meta-analysis evidence indicates some important and decisive results. For example, when it comes to delivering training as a distinct organisational approach rather than embedding it in an education process, the organisational approach is significantly superior to the educational approach (**$r=0.51$ versus $r=0.21$**). The findings are also conclusive on the training method. Lectures are significantly less effective compared to case study approaches and the use of multiple methods (**$r=0.19$ versus $r=0.34$ versus $r=0.56$**). Training programmes of longer duration are significantly more effective than shorter duration courses and the classroom setting, and blended approaches are significantly more effective than online (**$r=0.49$ versus $r=0.56$ versus $r=0.21$**).

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- Deliver training focused on addressing workplace misbehaviours as part of distinct suite of organisationally branded training programmes rather than as part of a wider education process. Training provided in the latter context is likely to get lost and be of significantly less impact.
- The classroom is a very effective setting in which to deliver training. This setting allows for the development of skills and attitude formation. Basic knowledge components can be delivered using an online strategy, however the use of both methods as a blended approach can be particularly impactful.
- Short duration training can be useful for basic knowledge objectives; however, the development of skills and attitudes requires training of significantly longer duration.

Trainee Characteristics

S-R Evidence: A small body of evidence exists suggesting that gender and age of participants are important variables in the context of explaining training effectiveness. For example, some evidence suggests that misbehaviour training will be more effective with women than with men (Walsh et al., 2014). However, the evidence is not conclusive. In addition, there is some suggestion that younger employees will be more receptive to such training than is the case for older employees, however the evidence is again not very persuasive.

M-A Evidence: We were able to conduct a meta-analysis that focused on three trainee characteristics. First, we found that female trainees reported more positive learning outcomes ($r=0.51$) compared to men ($r=0.31$). Second, we found that younger employees marginally reported more positive outcomes compared to older employees ($r=0.31$ versus $r=0.22$). Third, we found that employees in military settings reported more positive outcomes compared to employees in non-military settings ($r=0.51$ versus $r=0.42$).

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- The organisation will gain more benefits from misbehaviour training when it is targeted a younger employee however training targeted at older employees will also be beneficial.
- Military organisations will need to take greater effort and intensity of training when focused on male officers to ensure that they achieve a good return on investment.
- The military context appears to be a good one in which to conduct training on misbehaviour because employees in these settings will report more positive outcomes compared to employee in non-military settings.

Training as a Solution to Address Workplace Misbehaviour: The Key Learning Outcomes

Proximal Learning Outcomes

S-R Evidence: The scientific evidence highlights important proximal learning outcomes including reactions, knowledge, skills, attitudes, and transfer of behaviours to day-to-day work. Reactions refer to trainee's subjective evaluations of the extent to which they enjoyed training, its relevance and perceived usefulness (Magley et al., 2013). Reactions to various forms of misbehaviour training are generally positive. Knowledge outcomes focus on a number of dimensions including key concepts, definitions, knowledge of rules and regulations and knowledge of organisational policies and processes. Skills refer to changes in the behaviour of trainees because of training. These include increased coping skills, skills to identify misbehaviour situations, increased behavioural sensitivity to misconduct, and skills to report instances of misbehaviour including assertiveness and confidence to communicate effectively. Attitudes focus on issues such as intolerance of misbehaviour, positive attitudes towards reporting misbehaviour and positive attitudes and empathy towards victims of misbehaviour. Transfer outcomes focus on the willingness of trainees to transfer the behaviours to day-to-day work activities and job performance. It includes behaviours to intervene when misbehaviour is observed and refraining from behaviours that may constitute misbehaviour.

M-A Evidence: We focused on five categories of proximal learning outcome when conducting the meta-analysis. We first found that misbehaviour training led to a significant impact on

overall effectiveness which combines reactions, knowledge, skills, and behaviour ($r=0.59$). Various forms of misbehaviour training generally elicited positive trainee reactions ($r=0.71$) and led to enhanced knowledge of misbehaviour issues ($r=0.81$). It also resulted in significant changes in attitudes ($r=0.41$), the ability to make judgments about misbehaviour issues ($r=0.39$) and enhanced skills ($r=0.61$). These different types of misbehaviour training are less effective in changing behaviour on the job through training transfer ($r=0.16$) but are more effective in terms of self-reported job behaviour change ($r=0.41$). The meta-analysis data does however reveal that investment in these types of training is a worthwhile investment from the perspective of enhanced learning and awareness of misbehaviour issues.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- It is important to measure reactions to misbehaviour training because reactions are important to achieve other outcomes. When measuring reactions, it is important to measure enjoyment of the training, perceived relevance and utility of the training, intentions to transfer the training and perceptions of overall effectiveness.
- The evaluation of different forms of misbehaviour training should focus on an important causal chain: impacts on knowledge of rules and principles, then knowledge to make judgments about observed behaviours, then changes in attitudes, the development of skills, and finally intention to transfer (motivation to transfer and actual transfer behaviour).
- The organisation should give particular attention to facilitating actual transfer of training. This will include ensuring that managers and supervisors are supportive of transfer and that there is peer support for transfer. These are the two most important determinants of actual transfer.

Intermediate Outcomes

S-R Evidence: The scientific evidence highlights a number of impacts of various forms of misbehaviour training on intermediate outcomes which we define here as the incidence of misbehaviour, the internal reporting of misbehaviour and the responses of the organisation to the reporting of misbehaviour. The data on the incidence of misbehaviour is scarce, however the small number of studies highlight that it leads to a decrease in the focal behaviour (Antecol & Cobb-Clark, 2003; Coker et al., 2016). The data on responses to the victims of misbehaviour by the organisation does indicate that the provision of such training does lead to a more rigorous approach and a willingness to listen to complaints and give them priority. In addition, there is some evidence that organisations and in particular, leaders and

supervisors focus more on the victims of such misbehaviour and ensure that they are supported. Of most significance is the impact of misbehaviour training on the internal reporting of misbehaviour. Here the scientific evidence indicates that there is a greater willingness to report internally and a general positive attitude towards internal reporting (Meloni & Austin, 2011; Goldberg, 2007). We could not conduct a meta-analysis of these dimensions due to the lack of studies that reported the required variables.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- In order for the Defence Forces to show how misbehaviour training makes a difference, it is important that they maintain complete and accurate records on the incidence of reporting and link these to particular training initiatives. These data should be published and disseminated throughout the Defence Forces.
- The internal reporting of misbehaviours is an important metric that should be tracked by the Defence Forces. This data should be sufficiently granular to show month-to-month rates of reporting. It may then be possible to link this reporting to specific training initiatives.
- The Defence Forces should collect data on the ways in which those who report incidents of misbehaviours are treated by colleagues, peers, supervisors, leaders, and HR. This is a vital component in terms of measuring whether the culture of the Defence Forces has changed and in what ways it has changed.

Distal Organisational Outcomes

S-R Evidence: The scientific evidence does not yet present a convincing case for the effects of misbehaviour training on organisational outcomes. Here the small number of studies point to three potential organisational outcomes: litigation levels, employee turnover and productivity, and return on investment. These are described as a distal organisational outcome, and they are very difficult to measure. There is some evidence that investment in various forms of misbehaviour training leads to a decrease in litigation, simply because the issue is addressed sufficiently within the organisation. Research points out that this type of training will reduce employee turnover (Hill & Phillips, 1997) and that may increase employee productivity. The data on return on investment is very unconvincing because of the challenge in developing a research design that can measure bottom-line effects. There are many articles that make the claim that various forms of misbehaviours training will impact the bottom-line (Chapman, 2003), however the scientific evidence on these issues does not exist. Needless to say, due to the absence of studies it was not possible to conduct a meta-analysis.

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- It is recommended that as a long-term project the Defence Forces should invest in research that reveals the long-term impacts of investment in various forms of misbehaviour training on organisational level outcomes such as employee turnover, productivity, intention to stay with the organisation and the reputation of the Defence Forces.

Comparing the Impacts of Misbehaviour Training Versus other forms of Training in Organisations

A fundamental question that arises in the context of investment by organisations in misbehaviours training concerns its effectiveness on learning outcomes compared to other forms of training. To address this question, we conducted a meta-analysis of three categories of training: different forms of misbehaviours training; job related training or specific skills training and general training including leadership training and soft-skills training. Table 2 summarises the results

The data reveals some interesting trends. At an overall level, investment in misbehaviour training is more effective in impacts on eight dimension of learning outcomes compared to soft-skills training. It is however less effective that investment in job-specific training. For example, on combined learning outcomes the data reveals the following trends: misbehaviour training (**$r=0.51$**), job specific training (**$r=0.78$**) and general skills training (**$r=0.41$**). The most interesting gaps on terms of effectiveness are revealed for change sin job behaviour and transfer of learning to day-to-day work. For example, in the case of changes in job behaviour the data reveals the following coefficients: misbehaviour training (**$r=0.41$**), job specific training (**$r=0.71$**) and general skills training (**$r=0.29$**). There are also significant differences for transfer of learning to day-to-day work behaviour and performance: misbehaviours training (**$r=0.16$**), job specific training (**$r=0.51$**) and general skills training (**$r=0.23$**). Overall, investments in misbehaviour training are as effective as investments in general skills training but less effective that job specific training.

Table 2: Meta-analytic Comparisons of Learning Outcomes of Misbehaviour Training and other types of Training in Organisations

Key Learning Outcome Dimension	Misbehaviour Training (N=97)	Job Specific Training (N=42)	General Skills Training (N=61)
Overall Combined Learning Effectiveness	0.59	0.78	0.41
Reactions to Training	0.71	0.56	0.61
Enhanced Knowledge of Training Area	0.81	0.81	0.48
Enhanced Knowledge to make Judgments	0.39	0.61	0.30
Enhanced Skills in the Training Area	0.61	0.81	0.41
Changes in Trainee Attitudes	0.41	0.61	0.32
Changes in Job Behaviour	0.41	0.71	0.29
Transfer of Learning to Day-To-Day Work	0.16	0.51	0.23

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- The Defence Forces can make a strong case for investment in training focused on misbehaviour. The scientific evidence reveals this this type of training generates outcomes comparable with soft or generic skills such as communication, leadership, working with others, handling conflict, and presentation and instructional skills.
- The Defence Forces should ensure that it makes a case for a broad approach to misbehaviour training and that it covers the full spectrum of misbehaviours as outlined in Table 1. A narrow focus on sexual harassment will only capture a small amount of the misbehaviour that occurs in organisations.

An Analysis of Selected Misbehaviour Training Currently provided by the Defence Forces

We conducted an analysis of a selection of general and specific training courses currently provided by the Defence Forces. Table 3 provides a summary of sample of these programmes. The majority of the training course were general in focus and did not give particular priority to misbehaviour issues. We also observed the following features of current programmes

- The majority of the current provision is driven by an educational ethos. Its primary focus on in developing the technical capabilities of soldiers and their physical fitness for army life. The development of soft skills and issues around behaviour and culture are clearly secondary based on the content we reviewed.
- While programmes address behaviours and values around leadership there is very little explicit content across the majority of programmes that addresses misbehaviour and calls out different types of misbehaviour
- The majority of programmes are strongly knowledge rather than skills focused, with a major didactic and instructional type of delivery approach emphasised across the different programmes.
- What becomes very clear is the lack of joined up thinking across programmes and the explicit articulation of clear linkages across programmes. It is not clear how these programmes synergise with each other to produce a modern soldier.
- There is strong technical underpinning to all to the programmes reviewed. What becomes clear is that the soft skills take a secondary position to the technical hard management and leadership skills.
- We found evidence of very few programmes that were explicitly tailored to address different forms of misbehaviour. Therefore, the Defence Forces does not have a strong suite of programmes driven by a diversity and inclusion ethos that address misconduct and moves behind knowledge objectives.
- The analysis indicates that there is significant scope to broaden the suite of programmes that are focused on misbehaviour, sexual harassment, dignity, and respect. The research evidence suggest that these programmes should be targeted and customised to the needs of different categories of DF employees and managers,

Table 3: A Content Analysis of selected Defence Forces Misbehaviour Training Programmes

Key Dimension/Key Programme	TS INF 65/2014	TS INF 02/2017	HMI -PARTS 1 & 2	JC&S Course 2018/2019	AC Senior NCO Course - TS AC 55/2021	TS INF 051/2019	TS INF 052/2019
Training Content Focus	Broad general programme not targeted on misbehaviour specifically	Instructional skill set of officers and NCOs	Broad and deep focus on learning processes; assessment and quality of training	Strong focus on preparing students for national and international appointments	Strong focus on soft skills and the skills to manage people including leadership	Strong focus on developing cadet's values, leadership, and competence to contribute to DF	Emphasis on technical, leadership, management, and personal skills development
Focus of Learning Objectives	Leadership Skills	Instructional skills but some emphasis on ethics, culture, and climate	Learning processes and effective instruction	Context specific knowledge to DF including project management	Multiple soft skills and hard management skills such as problem-solving	A major emphasis on soft skills including appropriate models of leadership	A strong knowledge focus with emphasis on technical and contextual knowledge
Linkages with Other Training Programmes	Not given explicit attention to linkages	No explicit linkages highlighted	Resource to support other training and education	Stand alone in the way it is described	Linkages are not made explicit	Not articulated or explained	Not articulated
Delivery Setting for Training	Classroom and Outward Bound	Classroom-focused	Self-space learning and support for other classroom-based programmes	Strong traditional instructional focus: Jug and mug	Classroom	Classroom	Classroom and outward bound
Use of Learning Methods	Formal instruction and experiential learning	Lecture, reflective diary, personality assessment and experiential methods	Text in manual form	Narrow use of learning methods: didactic	Multiple including lectures, projects, presentations, and experiential exercises	Multiple combining lectures, skill building, experiential and cases studies	Strong focus on use of didactic methods with particular emphasis on lectures
Anticipated Learning Outcomes	Strong focus on generic as well as technical skills	Leadership and Instructional Skills	Multiple with focus on soft skills	Technical and military in focus	A variety of soft skills including communication, motivation, and leadership in addition to decision making and problem solving	Self-awareness, mental resilience, leadership, and utilising staff effectively	Learning outcomes are technical and field-based with strong focus on the practice of military work

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Training Duration	26 weeks	2-weeks	Not specified	1,845 Hours	10 weeks	98 hours	8 Weeks
Focus on Skills linked to Behaviour/Misbehaviour in Defence Forces	Some elements of soft skills but misbehaviour elements not addressed explicitly	Some emphasis on leadership behaviours	Soft skills which are useful to handle behaviour and misbehaviour	Very little explicit content on behaviours. Very strong focus on macro and policy issues. Soft skills given much less coverage.	This component is not explicit in the content	Some explicit content that deals with appropriate behaviours	Very little explicit content on misbehaviour issues
Context of Programme	Part of a wider education programme	A training rather than an educational programme	Educational and training focus	Strong education focus with external accreditation	A hybrid of education and training	Training focused rather than education	Training focused

Recommendations for Practice

Based on the scientific evidence to date, we suggest the following practice-based recommendations:

- **Current education provision prioritises technical over soft skill components. These education programmes must contain more explicit learning objectives around leadership behaviours, appropriate and inappropriate behaviours, culture and climate, and the role of the leader in fostering diversity and inclusion.**
- **The Defence Forces must as a matter of urgency develop a branded suite of training programmes, informed by a diversity and inclusion perspective that addresses misbehaviour in all its forms. A compliance approach will not bring about the cultural change required in the Defence Forces.**
- **The Defence Forces should implement a broad spectrum of short programmes that focus on issues such as dignity and respect, misbehaviour, and sexual harassment. It is important that these programmes are based on a systematic analysis of training needs and utilise blended forms of delivery.**
- **These new programmes should be mandatory rather than voluntary and they need to be extensively marketed within the organisation. The senior leadership need to demonstrate that they are committed to cultural change and view targeted training as one important strategy to achieve this goal. Without senior leadership commitment, attendance on these courses will be sub-optimal.**

Appendix 1 - Methods

Search Strategy: How was the research evidence sought?

We consulted four databases to identify relevant literature: ABI/INFORM Global, Business Source Premier, Emerald and PsycINFO. The following generic research filters were applied during the search

1. Scholarly journals, peer reviewed literature and reports
2. Published in the period 2000 to 2022
3. Articles in English

We conducted the search using combinations of various search terms including 'sexual harassment', 'sexual harassment training', 'harassment' bullying', 'workplace incivility', 'workplace aggression', 'abusive supervision', and 'workplace mobbing'. We conducted eight different search queries and screened the titles and abstracts of 140 papers.

Selection Process: How were studies selected?

The selection of papers took place in three phases. First, we screened the titles, and abstracts of each publication to determine its relevance. Where the publication was of poor methodological quality, and where it lacked information, we excluded it from the reviews. We also removed any duplicates. This first phase yielded 159 publications. In the second phase, we reviewed studies based on the full text of the article using the following inclusion criteria:

1. The type of publication: review, empirical qualitative, and empirical quantitative.
2. Context: we only included studies related to a workplace or military setting.
3. Measurement: for the purposes of the meta-analysis, we only included studies that measured a relationship between different types of misbehaviour training and learning outcomes.
4. Exclusion Criteria: we applied the following exclusion criteria: (a) studies that focused on occupational aggression and harassment such as clients, patients and passengers; (b) studies that involved online bullying or harassment; (c) studies in non-Western contexts where perceptions of misbehaviour may differ from western countries due to cultural differences; and (d) in the case of the meta-analysis we excluded any study that did not report a correlation between training and learning outcomes.

Analysis Process: How did we analyse the literature?

To conduct the systematic review of the literature we made use of content analysis, and we structured this content analysis around the open systems framework as used previously by Garavan et al. (2021b). We were therefore able to identify antecedents, training processes and outcomes of various forms of misbehaviour training. We conducted two meta-analyses. The first meta-analysis consisted of an analysis of the impacts of misbehaviour training on learning outcomes. This involved the meta-analysis of 97 studies. To conduct the second

meta-analysis, we analysed studies that investigated the relationship between job specific and general skills training and learning outcomes. The number of studies was 42 and 61 respectively. To conduct the analysis, we used the Metafor Package in R. For each meta-analysis, we reported the sample size (N), the number of effect sizes (k), Cohen's D, and the heterogeneity of the effect sizes.

Critical Appraisal? What is the quality of the literature included in the analyses?

The overall quality of the research and publications is satisfactory. Using the Hierarchy of Evidence guidelines, the majority of the studies included in the meta-analyses are cross-sectional and are therefore graded D. We found only a small number of studies that were graded B because they were longitudinal, consisted of systematic reviews or meta-analysis. We also note that many of the studies in the military context suffered from significant methodological weaknesses, which impacts the trustworthiness of their findings.

Note: Effect sizes. The effect sizes reported in Figure 1 and Table 1 should be interpreted as follows: up to $r=0.30$ = small effect size; between $r=0.30$ and 0.70 =medium effect size; over $r=0.70$ = large effect size.

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Appendix 5: Legal research papers by Alison Fynes BL

Spec for Legal Research on behalf of Judge Bronagh O’Hanlon – Chair of IRG

ToR	Research Sought
<i>“to advise the Minister whether further work is required to examine issues of an historical nature and to make any recommendations regarding how this might best be pursued”</i>	A follow up to research paper submitted on 15 th July. Bronagh has requested more detail on this as per conversation with Alison
<i>“to examine the legislative frameworks in place within the Defence Forces to address discrimination, bullying, harassment, sexual harassment and any form of sexual misconduct in the workplace”</i>	To prepare follow up on research brief submitted on 8th July re-checking paper to ensure all derogations in favour of the Defence Forces from civil legislation are listed.
<i>“To examine the statutory role of the Minister/department in the systems and procedures for dealing with complaints”</i>	Research paper on Ministerial powers, the history of the Minister for Defence and his or her use of their power, whether under used and/or overused and in what way used in the past.
<i>Other</i>	Prepare a paper on recommissioning principles and the use of pardons within the Defence Forces
<i>Other</i>	Review the rules governing the monitoring and supervision of sex offenders, post conviction, in Ireland as set out in the Sex Offenders Act 2001 and the legislation as it pertains to military convictions versus civilian convictions. There appears to be a divergence between the two with regard to the need to register as a sex offender once convicted of an offence. From the period 2008 to present there were no soldiers subject to the provisions of the Act.

Prepare follow up on research brief submitted on 8th July re-checking paper to ensure all derogations in favour of the Defence Forces from civil legislation are listed.

**All additions to this paper are underlined and in bold*

A. Identify and briefly summarise the statutory provisions in relevant legislation that pertain to Dignity at Work, e.g. Safety Health and Welfare at Work Act 2005, Employment Equality Acts and any relevant statutory codes of practice (whether issued under the 2005 Act or by the Workplace Relations Commission pursuant to the Industrial Relations Acts). The research may note that under the Employment Equality Acts, aspects of the law pertaining to special leave may be relevant (Maternity, Adoptive, Parental leave etc.) but the primary focus is as set out above

1. The primary legislative provisions concerned with dignity at work are the Employment Equality Acts 1998 - 2021 and the Safety Health and Welfare at Work Act 2005. The relevant provisions of same insofar as they relate to dignity at work are set out below.

(i) Employment Equality Acts 1998 – 2021

2. The Employment Equality Acts 1998 - 2021 (“EEA”) ensure dignity in the workplace by prohibiting discrimination in a range of employment and employment-related areas including recruitment, promotion, equal pay, working conditions, dismissal and harassment.

3. Section 6(1) of the EEA provides that discrimination for the purpose of the Act occurs where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the 9 discriminatory grounds specified in section 6(2). The discriminatory grounds are:

- (i) gender,
- (ii) civil status,
- (iii) family status,
- (iv) sexual orientation,
- (v) religion,
- (vi) age,

- (vii) disability,
- (viii) race,
- (ix) traveller community.

4. Section 8 of the EEA prohibits an employer from discriminating against an employee or prospective employee in relation to access to employment, conditions of employment, training or experience for or in relation to employment, promotion or re-grading or classification of posts. The EEA also prohibits discrimination in relation to advertising, vocational training, remuneration, collective agreements and dismissal.
5. Section 14A of the EEA is concerned with harassment and sexual harassment. Section 14A(7) defines harassment as “*any form of unwanted conduct related to any of the discriminatory grounds.*” Sexual harassment is defined as “*any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, being conduct which in either case has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.*” Unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.
6. Section 14A(1) provides that harassment in the workplace constitutes discrimination. The section provides:

“(1) For the purposes of this Act, where —

(a) an employee (in this section referred to as ‘the victim’) is harassed or sexually harassed either at a place where the employee is employed (in this section referred to as ‘the workplace’) or otherwise in the course of his or her employment by a person who is —

(i) employed at that place or by the same employer,

(ii) the victim’s employer, or

(iii) a client, customer or other business contact of the victim's employer and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it,

or

(b) without prejudice to the generality of paragraph (a) —

(i) such harassment has occurred, and

(ii) either —

(I) the victim is treated differently in the workplace or otherwise in the course of his or her employment by reason of rejecting or accepting the harassment, or

(II) it could reasonably be anticipated that he or she would be so treated,

the harassment or sexual harassment constitutes discrimination by the victim's employer in relation to the victim's conditions of employment."

7. It is a defence for the employer to prove that the employer took such steps as are reasonably practicable to prevent the person from harassing or sexually harassing the victim or any class of persons which includes the victim or to prevent the victim from being treated differently in the workplace or otherwise in the course of the victim's employment and, if and so far as any such treatment has occurred, to reverse its effects as the case may be.

8. Section 77(1) of the EEA provides that a person who claims:

- (i) to have been discriminated against or subjected to victimisation,
- (ii) to have been dismissed in circumstances amounting to discrimination or victimisation,
- (iii) not to be receiving remuneration in accordance with an equal remuneration term, or
- (iv) to be receiving a benefit under an equality clause,

in contravention of the EEA may, subject to subsections (3) to (9), seek redress by referring the case to the Director General of the Workplace Relations Commission (“WRC”). If the ground of claim arise under Part III of the Act (Specific Provisions as to Equality Between Men and Women) or in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or Equal Treatment Directive is relevant the person making the claim may seek redress by referring the case to the Circuit Court rather than the Director General of the WRC.

(ii) Organisation of Working Time Act 1997

9. The Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. In summary, the 1997 Act imposes minimum standards in the employment relationship in respect of *inter alia* daily rest periods, weekly rest periods, compensation for working on Sundays, maximum hours of work per week and annual leave.

(iii) Safety Health and Welfare at Work Act 2005

10. Section 8(1) of the Safety Health and Welfare at Work Act 2005 (“the 2005 Act”) requires every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

11. Sections 8(2)(a) and (b) of the 2005 Act provides that without prejudice to the generality of subsection (1), the employer’s duty extends, in particular, to managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees and managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk.

12. Section 12 of the 2005 Act makes provision for the general duties of employers to persons other than their employees. It provides that every employer shall manage and conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that in the course of the work being carried on, individuals at the place of

work (not being his or her employees) are not exposed to risks to their safety, health or welfare.

13. Section 13 of the 2005 Act imposes a number of obligations on employees including to refrain from engaging in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person.
14. Part 3 of the 2005 Act is entitled "*protective and preventative measures*." It requires an employer to carry out a risk assessment under section 19 and to prepare a safety statement under section 20 so as to identify and assess hazards in the work place. Section 26 of the 2005 Act requires employers to consult with employees for the purpose of promoting and developing measures to ensure the safety, health and welfare at work of his or her employees and in order to ascertain the effectiveness of those measures.
15. Section 27 of the 2005 Act provides protection against dismissal and penalisation. Penalisation is defined as "*any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.*" Section 27(3) provides that an employer shall not penalise or threaten penalisation against an employee for *inter alia* making a complaint or representation to his or her safety representative or employer or the Authority, as regards any matter relating to safety, health or welfare at work.
16. Section 58(1)(a) of the 2005 Act provides that the Minister may make regulations under section 58 for or in respect of any matters including the management and conduct of work activities including the prevention of improper conduct or behaviour. No regulations relating to the management and conduct of work activities including the prevention of improper conduct or behaviour have been made as of yet.
17. Section 60 of the 2005 Act empowers the Health and Safety Authority ("HSA") to prepare and publish Codes of Practice or any part of a Code of Practice with respect to safety, health and welfare at work for the purposes of providing practical guidance to employers and employees.

(iv) Maternity Protection Acts 1994 and 2004

18. Section 8 of the Maternity Protection Acts 1994 provides that a pregnant employee shall be entitled to maternity leave for a period of 26 consecutive weeks or 26 weeks,

part of which is postponed in accordance with section 14B of the Act. Section 2(2) of the 1994 Act provides that a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service.

19. Section 15A of the 1994 Act provides for the entitlement to time off work for both the mother and the father to attend ante-natal classes. Section 15A(3) provides that this entitlement shall not apply to *inter alia* a member of the Defence Forces who is—

- (i) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
- (ii) engaged in operational duties at sea,
- (iii) engaged in operations in aid of the civil power,
- (iv) engaged in training that is directly associated with any of the activities referred to in subparagraphs (i), (ii) and (iii), or
- (v) engaged in any other duty outside the State.

20. Part V of the 1994 Act sets out a procedure for the resolution of disputes arising from an entitlement of an employee to *inter alia* maternity leave. Section 30 of the 1994 Act disapplies Part V to members of the Defence Forces.

21. In ***O'Rourke v. Minister for Defence (Adj 00007375)***, the WRC considered a claim of discrimination under the EEA on the grounds of gender which centred on the classification of a member of the Defence Forces' maternity leave as sick leave. The complainant was a former member of the Defence Forces. She asserted that the respondent discriminated against her on the ground of her gender, in that it treated two lengthy absences from work, both on maternity leave, as equivalent to the sick absence of a male officer and gave her a poor performance rating which impacted her ability to go on a mandatory training course which she would have needed to advance

to the rank of commander. The complainant raised an internal grievance about the matter, which was investigated and partly found in her favour. The respondent argued that the favourable outcome of the investigation and the subsequent efforts of her superior officers to get her on the course, effectively cured the wrong she suffered. It denied discrimination. The adjudicating officer held that the respondent was incorrect to treat the complainant's absences as akin to a sick absence of a male officer. The adjudicating officer commented:

“Given how strongly and repeatedly the CJEU has stated that pregnancy- and maternity-related absences from work cannot be equated with illness or absenteeism of a man for justifying dismissal, it follows that the same applies to management decisions which negatively impact the worker who is absent on maternity leave or pregnancy-related illness.”

22. The adjudicating officer quoted from Defence Force Regulation A7, which is discussed in further detail below, and commented:

“The provisions on sexual harassment run to a full 1 ½ pages, three times the length of what it has to say on discrimination, and pregnancy related discrimination is not mentioned at all. It seems that, even though women have been serving in the Defence Forces since 1979, the possibility of sexual misconduct exercised senior commanders' minds much more than the notion that women could be disadvantaged or discriminated against because of pregnancy.”

23. He continued:

“These short paragraphs amount to the entirety of how discrimination was described to Defence Forces personnel in 2006. They were drawn up in response to the enactment of the Employment Equality Acts and Equal Status Acts and replace an earlier instruction from 1996 which predates Irish equality legislation. Most of the text is an abridged and edited version of S. 6(1) and S. 22 (1) and (1A) of the Employment Equality Acts. The nine grounds for discrimination are not even clearly identified. And not even a passing mention is made of the established anti-discrimination law in respect of pregnant service

members, even though women started serving in the Irish Defence Forces 27 years earlier.”

24. The adjudicating officer further stated:

“It beggars belief that women should have been serving in the Irish Defence Forces for decades, without the Forces' systems and instruction ever having been appropriately updated to ensure they reflect anti-discrimination law as it applies to pregnancy and maternity.”

25. Ultimately the adjudicating officer found that the complainant had been discriminated against on the ground of gender and thus ordered in addition to payment of compensation that the respondent to undertake a comprehensive review of training and information materials, instructions, and local practices within the Defence Forces to ensure their compatibility with the protections pregnant personnel enjoy under anti-discrimination law.

(v) Parental Leave Act 1998

26. Section 6 of the Parental Leave Act 1998 provides that an employee who is a relevant parent in respect of a child shall be entitled to parental leave for a period of 26 working weeks from his or her employment to enable him or her to take care of the child.

27. A relevant parent in relation to a child is defined as the parent, the adoptive parent or the adopting parent in respect of the child, or acting in *loco parentis* to the child. Members of the Defence Forces are deemed to be employees employed by the head of the body in which he or she is employed for the purposes of the Parental Leave Act 1998.

28. In addition to the legislative basis for the protection of dignity in the workplace, there are a number of relevant statutory codes of practice. In this respect section 42 of the Industrial Relations Act 1990 provides that the Labour Relations Commission, now the WRC, shall prepare draft codes of practice concerning industrial relations for submission to the Minister for Labour, either on its own initiative or at the request of the Minister. Further, section 31 of the Irish Human Rights and Equality Commission Act 2014 (“the 2014 Act”) provides that the Irish Human Rights and Equality Commission (“IHREC”) may draft codes of practice in furtherance of the protection of

human rights, the elimination of discrimination the promotion of equality of opportunity in employment and the promotion of equality of opportunity in relation to those matters to which the Equal Status Act 2000 applies. The relevant codes are discussed below.

(vi) Code of Practice for employers and employees on the prevention and resolution of bullying at work (S.I. No 674/2020)

29. The Code of Practice for employers and employees on the prevention and resolution of bullying at work (S.I. No 674/2020) came into effect on 23rd December 2020 and replaced the Code of Practice entitled “Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work” which was issued by the HSA in March 2007 in accordance with the 2005 Act and the “Code of Practice Detailing Procedures for Addressing Bullying in the Workplace” issued by the then Labour Relations Commission LRC (now WRC) in 2002 in accordance with section 42 of the Industrial Relations Act 1990. It is a single joint code encompasses both the HSA and the WRC’s remit and responsibilities in respect of the provision of codes concerning the prevention and resolution of bullying in the workplace.

30. The Code is stated to apply to *“all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile.”* It does not contain an specific reference to the Defence Forces.

31. The aim of the code is addressed in section 1.2 of Schedule 1 and is stated to be to provide guidance for employers, employees and their representatives on good practice and procedures for addressing and resolving issues around workplace bullying.

32. Section 3.1.1 of Schedule 1 of this code is entitled *“Role of Employers”*. It provides that each employer should:

- (i) Uphold the duty to manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to put at risk an employee’s safety, health or welfare at work. This duty on employers means that they must act reasonably to prevent workplace bullying patterns developing and where there are complaints, the employer must react reasonably, assess a complaint, record actions and put in place a suitable response based on each case arising.

(ii) Prepare a Safety Statement under section 20 of the 2005 Act, based on an identification of the hazards to safety, health and welfare at the place of work, an assessment of the risks involved and setting down the preventive measures necessary to protect safety, health and welfare.

(iii) Develop a proper workplace anti-bullying policy, in consultation with employees, to ensure a system is in place for dealing with complaints and that disciplinary action may follow where bullying is found to have occurred.

33. Section 3.1.2 of Schedule 1 of this code is concerned with the role of employees and provides that employees are required to create a co-operative relational climate within the workplace by their own behaviour.

34. “*Organisational culture*” is addressed in section 3.1.3 of Schedule 1 of this code. It provides:

“The culture of an organisation is an important factor in creating, establishing and maintaining a positive workplace environment free from bullying, intimidation or any on-going negative behaviour which might lay the foundation stone for a bullying culture. There are several elements important to a positive workplace including good leadership (leading by example), a culture of involvement and a proper flow of communication, intolerance of inappropriate behaviour, training of staff on acceptable behaviour or conduct, an open and transparent pattern of relating based on mutual respect and dignity for all. A positive culture is one in which employees are comfortable raising issues of concern to them, especially of inappropriate behaviours and where there are supportive, effective and fair processes underpinning this in place.”

35. The remaining sections of Schedule 1 set out a recommended process to be followed when an employer is addressing a complaint of bullying from informal to formal and including an appeal.

36. It is noted that while failure to follow a Code prepared under the Industrial Relations Act, 1990 is not an offence in itself, Section 42(4) of the 1990 Act provides that in any proceedings before a Court, the Labour Court or the WRC, a code of practice shall be

admissible in evidence and any provision of the Code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

(vii) S.I. No. 106/2022 - Irish Human Rights and Equality Commission Act 2014 (Code of Practice on Sexual Harassment and Harassment at Work) Order 2022

37. The Irish Human Rights and Equality Commission Act 2014 (Code of Practice on Sexual Harassment and Harassment at Work) Order 2022 is an approved code of practice for the purposes of the Irish Human Rights and Equality Commission Act 2014. It provides under the heading scope contained in the schedule: *“the code seeks to promote the development and implementation of policies and procedures that establish working environments free of harassment in which the dignity of everyone is respected.”*

38. Section 8 of the schedule provides that the code is:

“intended to be applicable to all employments. Employers are encouraged to follow the recommendations in a way appropriate to the size and structure of the organisation. Small and medium sized enterprises may need to adapt some of the proposed measures. Any adaptations that are made however, should be fully consistent with the code’s general intentions. The rights of complainants and alleged perpetrators must be respected at all times and all parties must be treated fairly and impartially.”

39. This code does not make any specific reference to the Defence Forces.

40. Section 5 of the schedule provides that the aim of the code is to give practical guidance to employers, organisations, trade unions and employees on:

- (i) what is meant by employment-related sexual harassment and harassment;
- (ii) how it can be prevented; and
- (iii) what steps ensure that adequate procedures are readily available to deal with the problem and to prevent its recurrence.

41. This code makes detailed reference to the various provisions of the EEA discussed above. It then addresses the need for a policy in section 72 of the schedule. It provides:

“Prevention by means of a comprehensive, effective and accessible policy, and a strong commitment to implementing it, is the best way to minimise sexual harassment and harassment in the workplace. The purpose of a policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur. A policy is likely to be more effective if linked to a broader equality policy.”

42. The following sections detail the desired content of the policy, definitions and allocated responsibilities. The code also addresses complaints procedures and recommended steps in respect of same.

(viii) Code of Practice on Victimisation (S.I. No. 463 of 2015)

43. The *Code of Practice on Victimisation (S.I. No. 463 of 2015)* was prepared by the WRC and is a code of practice for the purposes of the Industrial Relations Act 1990. The purpose of this Code of Practice is stated to be to outline, for the guidance of employers, employees and trade unions, the different types of practice which would constitute victimisation. Victimisation in the context of this Code of Practice refers to victimisation arising from an employees membership or non-membership, activity or non-activity on behalf of a trade union, or a manager discharging his or her managerial functions, or any other employee in situations where negotiating arrangements are not in place and where collective bargaining fails to take place (and where the procedures under the Code of Practice on Voluntary Dispute Resolution have been invoked or steps have been taken to invoke such procedures). For the purposes of this Code an employer, employee, or a trade union shall not victimise an employee or (as the case may be) another employee in the employment concerned on account of:

- (i) the employee being or not being a member of a trade union, or
- (ii) the employee engaging or not engaging in any activities on behalf of a trade union, or
- (iii) the employee exercising his/her managerial duties, where applicable, to which the employment relates on behalf of the employer.

44. This code does not address application, referring simply to employers, employees and trade unions. It does not contain any reference to the Defence Forces.

(ix) Code of Practice on Grievance and Disciplinary Procedures (S.I. No. 146 of 2000)

45. The Code of Practice on Grievance and Disciplinary Procedures (S.I. No. 146 of 2000) provides guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures. This Code of Practice contains general guidelines on the application of grievance and disciplinary procedures and the promotion of best practice in giving effect to such procedures.

46. This code does not address application, referring simply to employers, employees and trade unions. It does not contain any reference to the Defence Forces.

(x) The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012

47. The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 is declared to be an approved code of practice for the purposes of EEA. Its stated objective is seeking to promote the development and implementation of policies and procedures which establish working environments free of sexual harassment and harassment and in which the dignity of everyone is respected.

48. Section 31 of the 2014 Act provides that any code of practice under section 56 of the EEA 1998 in operation prior to the commencement of section 31 of the 2014 Act shall remain in operation and be deemed an approved code of practice for the purposes of section 31. The Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 was the only code of practice in operation under section 56 of the EEA 1998, immediately before the commencement of section 31 of the 2014 Act.

49. In terms of applicability the code is stated to apply to *“all employments, employment agencies and trade unions, employer bodies and professional bodies that are covered by the EEA.”* It makes no specific reference to the Defence Forces.

50. The code provides that it is essential that employers have in place accessible and effective policies and procedures to deal with sexual harassment and harassment which should be agreed by the employers with the relevant trade union or employee representatives. The components of the policy are then addressed as is the complaints procedure.

B. EXAMINE THE RELEVANT PROVISIONS AS THEY APPLY IN THE DEFENCE FORCES. THIS WILL INCLUDE CONSIDERATION OF THE PROVISIONS OF THE DEFENCE ACT, 1954, DEALING WITH REDRESS OF WRONGS (SECTION 114) BUT ALSO IDENTIFY AND BRIEFLY SUMMARISE THE CORE ELEMENTS OF THE RELEVANT POLICIES AND PROCEDURES.

(i) *Employment Equality Acts 1998 – 2021*

51. Section 37 of the EEA provides for a number of profession based exemptions. In relation to the Defence Forces section 37(5) of the EEA provides in relation to discrimination on the age ground or disability ground, nothing in Part II or IV of the Act applies in relation to employment in the Defence Forces.

52. **Part II comprises sections 6 – 17 of the EEA and prohibits discrimination in specific areas including by employers in relation to access to or conditions or employment, training or experience, promotion or access to posts. Part IV comprises sections 28 – 37. Section 29 makes provision for equal remuneration for like work irrespective of *inter alia* age or disability. As a result of section 37(5) of the EEA members of the Defence Forces are not entitled to protection under the EEA in respect of discrimination on the grounds of age or disability in relation to *inter alia* access to or conditions of employment or equality of pay.**

53. Section 104 of the EEA makes special provision in respect of the Defence Forces. It provides that, save as provided for by section 77(10), nothing in Part VII of the EEA shall enable a member of the Defence Forces to refer any case relating to employment as a member of the Defence Forces to the Director General of the WRC or the Circuit Court or to exercise any other power conferred by the preceding provisions of that Part.

54. Section 77(9) provides that where a claim for redress under the EEA other than on the age or disability ground relates to employment in the Defence Forces, and is made by

a member thereof, the claim shall, in the first instance, be referred for redress under the procedure set out in section 104 of the EEA.

55. Section 77(10) provides that where subsection (9) applies to a claim for redress, the complainant shall not refer a case under subsection (1) or (3) unless a period of 12 months has elapsed after the referral under section 104 to which the claim relates and the procedures under section 104(2)(a) have not been requested or have not been completed, or the complainant is not satisfied with the recommendation given under section 104(2)(b) on the claim.

56. Section 104(2) of the EEA provides that if requested to do so by an officer, within the meaning of the 1954 Act, who is authorised in that behalf, the Director General of the WRC shall investigate any matter which has been complained of in accordance with section 114 of that Act and which, apart from this section, would be a matter within the scope of an investigation by the Director General of the WRC under this Part or of proceedings before the Circuit Court under section 77(3), and make a recommendation in respect of that matter to the officer concerned.

57. Section 114 of the 1954 Act is entitled "*redress of wrongs*" and provides for the specific procedure to be followed when an officer thinks himself wronged in any matter by any superior or other officer. Subsection (1) of section 114 provides if an officer thinks himself wronged in any matter by any superior or other officer, including his commanding officer, he may complain thereof to his commanding officer and if, but only if, his commanding officer does not deal with the complaint to such officer's satisfaction, he may complain in the prescribed manner to the Chief of Staff who shall inquire into the complaint and give his directions thereon.

58. Subsection (2) of section 114 provides that if any man thinks himself wronged in any matter by any officer, other than his company commander, or by any man he may complain thereof to his company commander, and if he thinks himself wronged by his company commander either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof in the prescribed manner to the Chief of Staff, who shall inquire into the complaint and give his directions thereon.

59. Subsection (3) provides:

“(3) Every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of, and shall in every case inform the complainant in the prescribed manner as to what action has been taken in respect of the matter complained of.”

60. Subsection (3A) was inserted by the Ombudsman (Defence Forces) Act 2004. Subsection (3A) requires the Chief of Staff to cause every complaint seeking redress of wrongs under section 114 that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

61. **Section 26 of the Defence Act 1954 provides for a general regulation making power. Defence Force Regulation A7 was made pursuant to this section as noted by Noonan J. in *Maher v. The Minister for Defence*.¹**

62. Chapter 2 of Defence Force Regulation A7 is concerned with complaints under section 114 of the 1954 Act. **Regulation 10 and 11 elaborate on the manner in which complaints made by officers and men are to be submitted. Regulation 11A is concerned with the transmission of complaints. Regulation 11D is concerned with complaints to the Ombudsman for the Defence Forces.**

63. **Regulation 65A provides that:**

“65A . Administrative Instructions not inconsistent with the provisions of these regulations may be issued from time to time by the Deputy Chief of Staff (Support) by direction of the Minister and published for the general information and guidance of members of the Defence Forces.”

64. **The administrative instruction entitled Defence Forces Policy and Procedures dealing with Sexual Harassment, Harassment and Bullying (Administrative Instruction A7, Chapter 1) was made pursuant to Defence Force Regulation A7 and sets out in detail the procedures to be followed in the context of complaints**

¹ [2016] IEHC 53

of sexual harassment, harassment and bullying. It provides that an officer of the Permanent Defence Force may complain orally or in writing to his/her Commanding Officer stating specifically the nature of the complaint and the redress sought. The Commanding Officer on receipt of the complaint shall acknowledge its receipt in writing and inquire into it. This inquiry may involve discussion with the complainant and the officer who is the subject of the complaint. The Commanding Officer shall, within a time guideline of seven days, either redress the complaint to the satisfaction of the complainant or refer it to the General Officer Commanding (“GOC”).

65. Paragraph 203 of chapter 2 provides that the GOC, on receipt of the complaint, shall promptly either redress the complaint or appoint an officer not below the rank of the complainant to investigate and report on it. This officer shall not have any direct interest or prior involvement in the subject matter of the complaint and shall not be a member of the same unit as the complainant or the officer who is the subject of the complaint.
66. Paragraph 204 of chapter 2 provides that the investigating officer shall conduct an investigation into the complaint (including an interview with the complainant and the officer who is the subject of the complaint). A serving member of the Permanent Defence Force may attend with the complainant and the officer who is the subject of the complaint at these interviews in a non – participatory capacity. The investigating officer shall not only investigate the complaint but shall also endeavour to resolve it. Where such resolution is not possible, he/she shall make a report to the GOC containing such recommendations, as he/she considers appropriate.
67. Chapter 2 provides that the Chief of Staff shall, within a guideline of seven days consider the complaint and if he/she is satisfied as to its justice take, without delay, such steps as lie within his/her power, and as may be necessary for giving full redress to the complainant. If he/she is unable to redress the complaint to the satisfaction of the complainant, the complainant shall be informed in writing and given the basis for his/her inability to redress the complaint.
68. Paragraph 205 of chapter 2 provides that the GOC shall, within a time guideline of fourteen days of receipt of the complaint, consider the report of the investigating officer and take action as follows:
 - (i) if he/she is satisfied as to the justice of the complaint, take, without delay, such steps as lie within his/her power, and as may be necessary for giving full

redress to the complainant. If, in such cases, the GOC is unable to provide redress, he/she shall forward the complaint to the Chief of Staff together with his/her recommendations unless otherwise requested by the complainant.

- (ii) if he/she is not satisfied that the complaint is justified and is unable to redress the matter to the satisfaction of the complainant, the complainant shall be informed in writing and given the basis for the inability to redress the complaint. He/she shall also be informed of his/her right to have the complaint forwarded to the Chief of Staff. If so requested by the complainant, the GOC shall forward the complaint together with his/her recommendations thereon to the Chief of Staff.

69. In relation to enlisted personnel, paragraph 211 of chapter 2 provides that an enlisted member may complain orally or in writing to his/her Company Commander stating specifically the nature of the complaint and the redress sought. The Company Commander shall on receipt of the complaint acknowledge its receipt in writing and inquire into it and within a time guideline of two days, either redress the complaint to the satisfaction of the complainant or forward it to the Commanding Officer. The complainant and the subject of the complaint shall be informed in writing of the action taken.

70. Chapter 2 provides that if the complaint is against the Company Commander, the complainant shall submit the complaint orally or in writing to the Commanding Officer and at the same time inform the Company Commander of the submission. The submission shall state specifically the nature of the complaint and the redress sought. The Commanding Officer on receipt of the complaint shall acknowledge its receipt in writing and inquire into it. This inquiry may involve discussion with the complainant and the subject of the complaint. The Commanding Officer shall, within a time guideline of five days, either redress the complaint to the satisfaction of the complainant or refer it to the GOC. The complainant and the subject of the complaint shall be informed in writing of the action taken.

71. Paragraph 214 of chapter 2 provides that the GOC, on receipt of the complaint, shall promptly either redress the complaint or appoint an officer not below the rank of Commandant to investigate and report on it. This officer shall not have any direct interest or prior involvement in the subject matter of the complaint and shall not be a member of the same unit as the complainant or the subject of the complaint.

72. Paragraph 215 of chapter 2 provides that the investigating officer shall conduct an investigation into the complaint (including an interview with the complainant and the subject of the complaint). A serving member of the Permanent Defence Force may attend with the complainant and the subject of the complaint at these interviews in a non-participatory capacity. The investigating officer shall not only investigate the complaint but shall also endeavour to resolve it. Where such resolution is not possible, he/she shall make a report to the GOC containing such recommendations as he/she considers appropriate.

73. Paragraph 216 of chapter 2 provides that the GOC shall, within a time guideline of 14 days of receipt of the complaint consider the report of the investigating officer and take action as follows:

- i. if he/she is satisfied as to the justice of the complaint, take, without delay, such steps as lie within his/her power, and as may be necessary for giving full redress to the complainant. If, in such cases, the GOC is unable to provide redress, he/she shall forward the complaint to the Chief of Staff together with his/her recommendations unless otherwise requested by the complainant.
- ii. if he/she is not satisfied that the complaint is justified and is unable to redress the matter to the satisfaction of the complainant, the complainant shall be informed in writing and given the basis for the inability to redress the complaint. He shall also be informed of his/her right to have the complaint forwarded to the Chief of Staff. If so requested by the complainant, the GOC shall forward the complaint together with his/her recommendations thereon to the Chief of Staff.

74. Paragraph 217 of chapter 2 provides that the Chief of Staff shall, within a guideline of seven days consider the complaint and if he/she is satisfied as to its justice take, without delay, such steps as lie within his/her power, and as may be necessary for giving full redress to the complainant. If he/she is unable to redress the complaint to the satisfaction of the complainant, the complainant shall be informed in writing and given the basis for his/her inability to redress the complaint.

75. Complaints to the Ombudsman for the Defence Forces are provided for in Section 114 of the 1954 Act and Section 6 of the Ombudsman (Defence Forces) Act, 2004. The Ombudsman Act provides that in the case of serving members, the Ombudsman may only investigate actions where the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of 1954 Act.

(ii) **Organisation of Working Time Act 1997**

76. **As set out above the Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. Section 3 of the 1997 Act provides that the provisions of the 1997 Act do not apply to members of An Garda Síochána or members of the Defence Forces.**

77. **In response to a parliamentary question concerning the exclusion of the Defence Forces from the provisions of the 1997 Act the Minister for Defence said:**

“The EU Working Time Directive has been transposed into national legislation by way of the Organisation of Working Time Act, 1997. The Defence Forces are currently excluded from the provisions of the Organisation of Working Time Act 1997. The Government, however, has committed to amending this Act and bringing both the Defence Forces and An Garda Síochána within the scope of its provisions, where appropriate.

Responsibility for preparing an appropriate legislative framework in this regard transferred to the Department of Enterprise, Trade and Employment (DETE) in October 2020. My Department is working closely with DETE to progress the regulatory amendment required to remove the blanket exclusion and bring the Defence Forces within the parameters of the Act whilst having regard to the unique nature of some of their activities which may require exemption or derogation from the provisions of the Act.

The Working Time Directive recognises the unique nature of certain military activities and allows for derogations and exemptions of such activities. A significant amount of work has been undertaken by civil and military management in determining the military activities that fall within the scope of the Directive. I have been advised that a high percentage of the normal

everyday work of the Defence Forces is already in compliance with the Working Time Directive and that a range of activities also qualify for exemption. Deliberations on these matters are continuing between civilian and military management and will feed into amendments to the legislative framework.

A subcommittee of the Defence Conciliation and Arbitration Council (comprising of the Representative Associations, military and civil management) has been established to discuss matters relating to implementation of the Working Time Directive, where appropriate. Arising from those discussions, amended practices regarding compensatory rest have been introduced. This builds upon existing work practices relating to compensatory rest which comply with the Directive. Further discussions with the Defence Forces Representative Associations will be undertaken, through this forum, as the current work evolves.

My Department and the Defence Forces remain fully committed to ensuring that the provisions of the Working Directive are applied throughout the Defence Forces and I can assure the Deputy that the health and safety of personnel in the Defence Forces remains a priority for myself and the Chief of Staff.’²

(iii) Safety, Health and Welfare at Work Act 2005

78. Section 6(2) of the Safety, Health and Welfare at Work Act 2005 provides:

“Subject to section 11, the relevant statutory provisions apply to members of the Defence Forces except when they are—

(a) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960,

² Dail Debate, 21st March 2021, <https://www.oireachtas.ie/en/debates/question/2021-03-24/813/> (accessed 31/08/2022)

(b) engaged in action in the course of operational duties at sea,

(c) engaged in operations in aid to the civil power, or

(d) engaged in training directly associated with any of the activities specified in paragraph (a) to (c).”

79. Section 11 of the 2005 Act is concerned with emergencies and serious and imminent dangers. It provides that every employer shall, in preparing and revising as necessary adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger. Subsection (5) provides that section 11 does not apply to the *inter alia* members of the Defence Forces when they are engaged in activities relating to civil emergencies, public order, security or an act of war where any such activity prevents compliance with section 11.

(i) Maternity Protection Acts 1994 and 2004

80. As noted above the Maternity Protection Acts makes specific reference to members of Defence Forces are deemed to be employees employed by the State or Government, as the case may be, under a contract of service.

(ii) Parental Leave Act 1998

81. As noted above the Parental Leave Act 1998 makes specific reference to members of the Defence Forces in providing that members of the Defence Forces are deemed to be employees employed by the head of the body in which he or she is employed for the purposes of the Parental Leave Act 1998.

(iii) Codes

82. None of the codes discussed above specifically refer to the Defence Forces. However, the broad references to “*all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile*” in Code of Practice for employers and employees on the prevention and resolution of bullying at work (S.I. No 674/2020) and “*all employments*” in the Irish Human Rights and Equality Commission Act 2014 (Code of Practice on Sexual Harassment and Harassment at Work) Order 2022 can be read so as to include the Defence Forces.

(iv) Defence Force Regulation A7

83. Defence Force Regulation A7, additionally provides a regulatory framework for dealing with allegations of inappropriate behaviour in the workplace for serving members, in both a formal and informal way through a trained Designated Contact Person (“DCP”) network. Chapter 2 of **the administrative instruction entitled Defence Forces Policy and Procedures dealing with Sexual Harassment, Harassment and Bullying (Administrative Instruction A7) made pursuant to regulation A7** is discussed above.
84. Chapter 1 **of the administrative instruction** is entitled “*Interpersonal Relationships in the Defence Forces.*” Section 4 of chapter 1 is entitled “*Discrimination.*” It defines direct and indirect discrimination and provides that “[c]omplaints of discrimination that have nothing to do with sexual harassment, harassment or bullying will be dealt with under Section 114 of the Defence Act 1954 as amended (Redress of Wrongs).”
85. Section 5 of chapter 1 is entitled “*Sexual Harassment and Harassment.*” It provides definitions and examples. Section 6 is entitled “*Bullying*” and follows a similar structure. Section 7 sets out the procedures that are to be followed when both making and dealing with a complaint of unacceptable behaviour. There is a time limit imposed in respect of the bringing of complaints in chapter 1 under the procedures set out in Regulation A7. A complaint must normally be submitted within six months from the date of the most recent occurrence of the alleged act complained of, before it can be dealt with under these procedures. Only in cases where “reasonable cause” can be shown should complaints be brought after six months and complaints brought after 1 year will not be considered. Complaints under section 7 of chapter 1 can be dealt with formally or informally.
86. An informal approach to a complaint occurs where the complainant approaches the person complained of directly, or with the assistance of a third party or a DCP. A formal complaint is made by of written complaint and dealt with by the chain of command, either through the legal/disciplinary process or by administrative action.

87. The role of the DCP in the context of both an informal and formal complaint is dealt with in Annex D of **the administrative instruction**. The purpose of the DCP is stated as follows:

“The service aims to provide a voluntary informal resource for any individual who wishes to discuss any incidence of alleged sexual harassment, harassment or bullying in the workplace as provided for in paragraph 139a”

88. Paragraph 146 of chapter 1 provides in respect of a formal complaint:

“A written formal complaint will be submitted by a complainant directly to his/her Commander. In the case of DFHQ or a Bde/Svc HQ the Commander shall be the Head of the Staff Section. In a Battalion/Regiment size unit this will be the Company/Battery Commander, who may have to refer it on to the Unit Commander to be dealt with depending on the rank and appointment of the complainant and/or the person complained of and whether or not the company/battery commander is debarred from dealing with it due to prior involvement with the complaint at an informal level. In the case of such a referral, the Unit Commander shall deal with the complaint as if it were referred to him/her in the first instance. Unit or staff section standing orders or SOPs will indicate the particular commander/head of section to whom a written formal complaint is directly submitted by members of that unit or staff section.”

89. Paragraph 150 of section 7 of chapter 1 provides:

“Personnel shall be protected from intimidation or victimisation for making a complaint or assisting in an investigation. Retaliation against a person for making a complaint or for coming forward as a witness will be treated as a disciplinary offence.”

90. Annex A to chapter 1 contains the “Dignity Charter for the Defence Forces”. The Charter provides:

“We the Defence Forces of Ireland commit ourselves to working together

to maintain a service environment, whether within the State or when deployed overseas, that encourages and supports the right to dignity at work.

All personnel of the Defence Forces are expected to respect the right of each individual to dignity in their work environment and in all activities of their service.

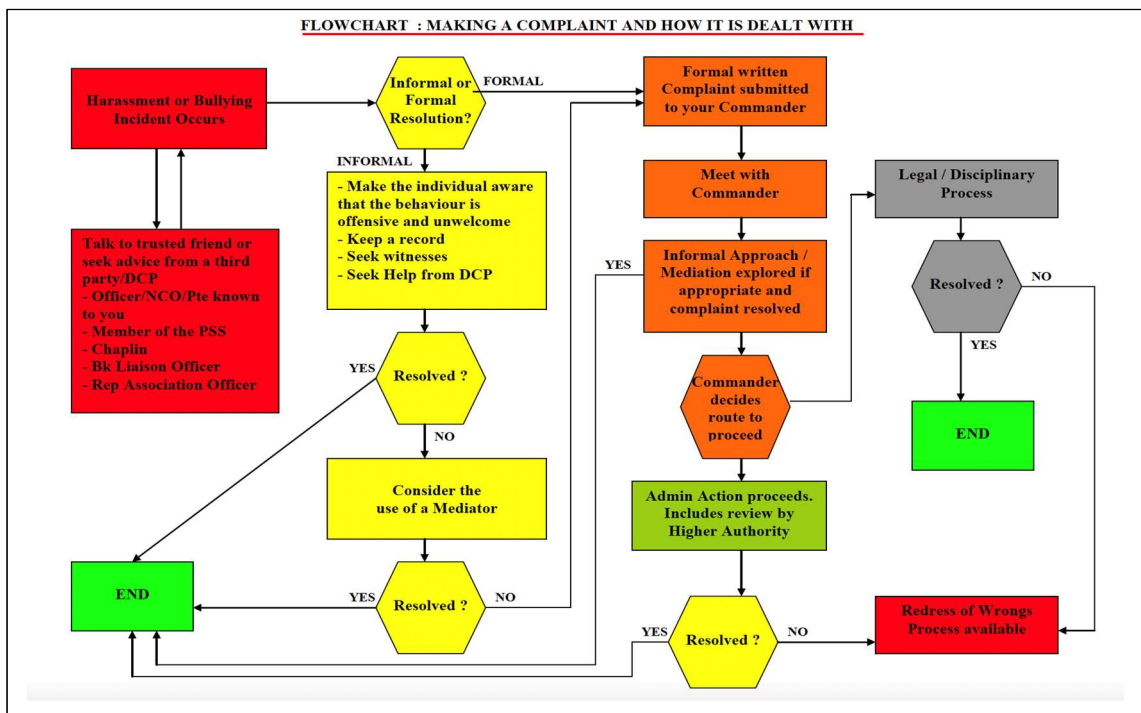
Command and authority will be exercised in such a manner that all personnel are respected for their individuality and diversity.

Bullying, sexual harassment or harassment in any form is NOT accepted by us and will NOT be tolerated. Our policies, procedures and actions will underpin the principles and objectives of this Charter.

All service personnel and civilians employed by us have a duty and a responsibility to uphold this Charter.

Commanders at all levels have a specific responsibility to promote the provisions of this Charter.

91. A flowchart of the manner in which a complaint is dealt with is included in Annex C to **the administrative instruction:**



92. In ***O'Rourke v. Minister for Defence*** the adjudicating officer cited from Regulation A7 and commented:

“These short paragraphs amount to the entirety of how discrimination was described to Defence Forces personnel in 2006. They were drawn up in response to the enactment of the Employment Equality Acts and Equal Status Acts and replace an earlier instruction from 1996 which predates Irish equality legislation. Most of the text is an abridged and edited version of S. 6(1) and S. 22 (1) and (1A) of the Employment Equality Acts. The nine grounds for discrimination are not even clearly identified. And not even a passing mention is made of the established anti-discrimination law in respect of pregnant service members, even though women started serving in the Irish Defence Forces 27 years earlier.”

FINALLY, THE RESEARCH SHOULD IDENTIFY IF THERE ARE DIFFERENCES OR APPARENT DEFICIENCIES IN THE TREATMENT OF THE SUBJECT MATTER WITHIN THE DEFENCE FORCES WHEN COMPARED/CONTRASTED WITH THE RELEVANT LEGISLATION/CODES OF PRACTICE

(i) Employment Equality Acts 1998 – 2021

93. The protections afforded to employees by virtue of the EEA extend to members of the Defence Forces **with the exception of discrimination on the age ground or disability ground. As discussed above, section 37(5) of the EEA provides that in relation to discrimination on the age ground or disability ground, nothing in Part II or IV of the Act applies in relation to employment in the Defence Forces. As a result of section 37(5) of the EEA members of the Defence Forces are not entitled to protection under the EEA in respect of discrimination on the grounds of age or disability in relation to *inter alia* access to or conditions of employment or equality of pay.**

94. **Furthermore, procedurally the manner** in which members of the Defence Forces may initiate a complaint in respect of an alleged breach of the EEA differs to other employees. As set out above, section 77(9) of the EEA provides that a complaint shall not be referred to the Directorate General of the WRC/Circuit Court in respect of an

alleged breach of the EEA unless a period of 12 months has elapsed from a referral being made under section 104 of the 1954 Act and the procedures under section 104(2)(a) have not been requested or completed or the complainant is not satisfied with the recommendation given under section 104(2)(b) on the claim.

95. In essence, members of the Defence Forces have separate complaints procedure to other employees. However, they are entitled to proceed with the matter before the WRC/Circuit Court as appropriate in the same fashion as any other employee, **with the exception of age and disability based claims arising from Part II or Part IV of the EEA**, if they are not satisfied with the recommendation made under section 104(2)(b) of the Defence Forces.

96. In *Byrne v. Minister for Defence, Ireland and The Attorney General* [2019] IECA 338 Donnelly J. considered the interaction between section 114 of the 1954 Act and section 77 of the EEA. The applicant contended *inter alia* that she had been discriminated against on the ground of pregnancy/maternity leave as she had not been told of the convening of an Interview Board while she was on maternity leave. Donnelly J. commented:

“Having considered the relevant sections of the 1998 Act together with s.114 of the 1954 Act, I consider that they do not represent the finest example of parliamentary drafting. The interpretation requires moving between one Act to another Act, from one section to another section and from one sub-section to another sub-section. These preliminary remarks do not imply that the interpretation of the legislative provisions is therefore other than clear; rather, the point is made that the particular drafting style requires those seeking to understand the legislation to make a determined and sustained effort to ensure that they remain on the right path within the legislative labyrinth. It is not too much to ask that Acts of the Oireachtas be readily accessible to all without the need for multiple cross-referencing.”

97. The Judge continued to remark:

“53. In my view, the plain intention of the Oireachtas in enacting the 1998 Act as amended by the 2005 Act, was that a member of the PDF, who had a complaint covered by the scope of the 1998 Act and who wished to claim redress under the Act, was obliged to make a claim under s.114 of the 1954 Act. If the authorised

officer did not make the referral under the 1998 Act or the referral was not complete, the member of the PDF had a right to make her own complaint after a period of 12 months elapsed from the date she made her s.114 complaint or, if she is not satisfied with the recommendation, she can make a complaint within 28 days from that recommendation.

54. It is also of some importance that even if the ordinary principles of statutory interpretation do not permit the interpretation I have given to these provisions, the principle of conforming legislation under EU law requires an interpretation of national law in the light of the wording and the purpose of the Directive to achieve the result envisaged by the Directive. This conforming interpretation must be made as far as possible, but a conforming interpretation cannot be given if it breached the principle of legal certainty or if it would be contra legem to so interpret the national legal provisions. Thus, if the construction of the Act does not bear any such conforming interpretation, it cannot be so construed. I am of the view that where I have identified the issue as to whether the phrase in s.77(9) "be referred for redress under the procedure set out in section 104" can be interpreted as meaning the claim under s.114, I am satisfied there is nothing in the 1998 Act which prohibits such an interpretation. For the reasons set out above, I am satisfied that a construction of the Act which is in conformity with the objectives of the Equal Treatment and Equality Directives, namely the provision of redress for those persons including members of the armed forces, whose rights under the said Directives are violated, means that a complainant member of the PDF who has made a complaint under s.114, is entitled to claim redress under the Act in her own right provided certain procedural rights are met."

(ii) Organisation of Working Time Act 1997

98. As set out above the Organisation of Working Time Act 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. Section 3 of the 1997 Act provides that the provisions of the 1997 Act do not apply to members of the Defence Forces. The Government has committed to extending the 1997 Act to the Defence Forces. This has not occurred as of yet.

(iii) Safety Health and Welfare at Work Act 2005

99. The 2005 Act applies equally to members of the Defence Forces and other employees save in emergencies and serious and imminent dangerous situations as provided for in section 11 of the 2005 Act.

100. There is thus no apparent deficiency in the treatment of other employees and members of the Defence Forces.

(iv) Maternity Protection Acts 1994 and 2004

101. The Maternity Protection Acts 1994 and 2004 afford equal protection to members of the Defence Forces when compared with other employees, save in respect of disputes that arise in respect of maternity leave. However, the language of section 114 of the 1954 Act appears to be broad enough to encompass a complaint in respect of maternity leave.

102. There is thus no apparent deficiency in the treatment of other employees and members of the Defence Forces.

(v) Parental Leave Act 1998

103. The Parental Leave Act 1998 affords equal protection to members of the Defence Forces when compared with other employees.

104. There is thus no apparent deficiency in the treatment of other employees and members of the Defence Forces.

Appendix 6: Legal research papers by Patrick O'Dwyer BL

DF Independent Review

Date: 8th November, 2022

Subject

Independent Review Group – Defence Forces.

Issues

Topic 3: To outline the statutory role/powers of the Minister/Department of Defence in respect of the Defence Forces.

Background [*as instructed*]

The brief is to outline the statutory role/powers of the Minister/Department of Defence in respect of the Defence Forces. The analysis and outline which follows is conducted in the context of the analysis of the previous two Topics, eg the analysis of s114 and s169 of the 1954 Act.

Questions

1. What is the statutory role/powers of the Minister/Department of Defence in respect of the Defence Forces?

Textbook(s)

1. *Military Law in Ireland*, Gerard Humphreys & Ciaran Craven, Round Hall Sweet & Maxwell, 1997

Military Law in Ireland, Gerard Humphreys & Ciaran Craven, Round Hall Sweet & Maxwell, 1997

Humphreys and Craven write at pages 9 and 10,

“Extensive powers relating to the Defence Forces, administrative in nature, and exercisable by regulation, are conferred on the Minister for Defence. They [...] include:

- (a) Special powers in relation to the defence of the State, including a defence and armament works,^[41]*
- (b) Acquisition of lands^[42] and rights of entry,^[43] whether compulsorily or otherwise,^[44]*
- (c) User of lands,^[45]*
- (d) Maintenance of apparatus on^[46] and restriction on use of lands^[47] in vicinity of service aerodromes, and*
- (e) Billeting in periods of emergency^[48] and peacetime^[49].*

^[41] *Defence Act 1954, s30. A civilian employed with the Defence Forces or in an arms or munitions factory, or one producing service stores, established by the Minister are excusable from jury service as of right on a certificate from the secretary of the Department that “it would be contrary to the public interest to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed”.*

^[42] *ibid. s32*

^[43] *ibid. s31*

^[44] *ibid. s33*

[45] *ibid.* s34

[46] *Defence Act 1954*, s35

[47] *ibid.* s36

[48] *ibid.* s37

[49] *ibid.* s38”

[...]

“The Minister of Defence may, by order, authorise the holding of military manoeuvres in a particular place and a particular time...”^[50]

[50] *ibid.* s.269(1)”

[...]

Compensation is payable by the Minister for any damage to person or property or interference with rights or privileges, including all expenses reasonably incurred in their protection, and damage caused by excessive weight or extraordinary on any road...”^[54]

[54] *ibid.* s.27(1). *Whether or not caused by the military forces engaged on the manoeuvres.”*

At page 11,

“The Minister may make bye-laws relating to the use of lands for defence purposes and in relation to the use of roads crossing or adjacent to such lands...”

[...]

“The Minister must publish all such bye-laws made by him in such a manner as he deems necessary to make them known to all persons in the relevant area...”^[61]

[61] *ibid.* s.280.”

At page 14,

*“The Constitution in 1937 vested supreme command^[84] of the Defence Forces, its exercise to be regulated by law,^[85] in the President.^[86] [...] Following consolidation of the legislation governing the Defence Forces, military command, under the direction of the President, **is exercisable by the Government and through and by the Minister (for Defence).**^[90]*

[Emphasis added]

[84] Curiously, in the declaration of war, which function is reserved exclusively to Dáil Éireann, no function is allotted by the constitution to the President under Art. 28.3.

[85] Art. 13.5.1°

[86] Art. 13.4.

[...]

[90] Subject to the provisions of the Defence Act 1954. See *Defence Act 1954*, 217(1). *Delegation to the Minister is subject to such exceptions and limitations as the Government may from time to time determine.”*

Constitution of Ireland / Bunreacht na hÉireann

Article 13 The President

Article 13.4,

“The supreme command of the defence forces is hereby vested in the President.”

Article 13.5.1°,

“The exercise of the supreme command of the defence forces shall be regulated by law.”

Article 13.5.2°,

“All commissioned officers of the defence forces shall hold a commission from the President”.

Article 15 Constitution and Powers

Article 15.6.1°

“The right to raise and maintain military or armed forces is vested exclusively in the Oireachtas.”

Article 15.6.2°

“No military or armed force, other than a military or armed force raised and maintained by the Oireachtas, shall be raised or maintained for any purpose whatsoever.”

Article 28 The Government

Article 28.2,

“The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the government.”

Article 28 3.1°,

“War shall not be declared on the state to not participate in any war say with the ascent of Dáil Éireann.”

Article 28.3.2°,

“In the case of actual invasion, however, the government may take whatever steps they may consider necessary for the protection of the state, and Dáil Éireann if not sitting should be summonsed to meet at the earliest practicable date.”

Article 28.3.3°,

“Nothing in this Constitution other than Article 15.5.2° shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this subsection “time of war” includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and “time of war or armed rebellion” includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist.”

Article 28.12,

“The following matters shall be regulated in accordance with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the Government to be the Ministers in charge of the said Departments, the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity, and the remuneration of the members of the Government.”

Legislation

The legislation which applies in relation to this matter is as follows:

1. Defence Act, 1954 (as amended)
 2. Defence Amendment (No.2) Act, 1979
- **The Defence Act, 1954 (as amended) (‘the 1954 Act’ / ‘the Principal Act’)**

Section 2(1) provides as follows:

“the expression “the Minister” means the Minister for Defence”

Section 7 provides for the prosecution of certain offences by the Minister:

“An offence which under this Act is punishable on summary conviction by the District Court may be prosecuted by the Minister as prosecutor.”

Section 8(2) makes provision in relation to the making of regulations:

*(2) In making regulations under this Act, **the Minister may make different regulations in relation to the Permanent Defence Force, the Reserve Defence Force and different classes of the Reserve Defence Force.***

[Emphasis added]

Section 11 makes provision for the Council of Defence:

(1) There shall stand established a body to be called the Council of Defence (in this section referred to as the Council) to aid and counsel the Minister on all matters in relation to the business of the Department of Defence on which the Minister may consult the Council.

[...]

(4) The Council shall meet whenever summoned by the Minister.

[Emphasis added]

Section 13, as substituted by s4 of the Defence (Amendment) Act 1998, makes provision for military branches of the Department of Defence:

“

[...]

*(2) Subject to the Defence Acts, 1954 to 1998, there shall be assigned to the Chief of Staff such duties in connection with the business of the Department of Defence as **the Minister may from time to time determine.***

(3) The Chief of Staff shall be directly responsible to the Minister for the performance of such duties as may from time to time be assigned to him or her under subsection (2).

(4) The Chief of Staff may, subject to the approval of the Minister, delegate such duties assigned to him or her under subsection (2) as he or she considers appropriate to the Deputy Chief of Staff (Operations) or the Deputy Chief of Staff (Support).

[Emphasis added]

Section 17 provides for the mode and exercise of military command:

“(1) Under the direction of the President, and subject to the provisions of this Act, the military command of, and all executive and administrative powers in relation to, the Defence Forces, including the power to delegate command and authority, shall be exercisable by the Government and, subject to such exceptions and limitations as the Government may from time to time determine, through and by the Minister.

(2) (a) The delegation of command and authority by the Minister—

(i) may be made subject to such exceptions and limitations as he may from time to time determine,

(ii) may be in relation to any area, place or State ship or any military body organised under section 22 and may embrace different components of the Defence Forces,

(iii) may, during a period of emergency, be in relation to the whole of the Defence Forces.

*(b) For the purposes of subparagraph (ii) of paragraph (a) of this subsection and for administrative purposes, **the Minister may divide the State into such and so many areas as he thinks fit.***

(3) The Minister may make regulations, applying to officers, as to the persons to be invested, as officers, with military command over the Defence Forces or any part thereof or any person belonging thereto and as to the mode in which such command is to be exercised.

[Emphasis added]

Section 26(1) as inserted by s7(a) of the Defence (Amendment) Act, 2007 provides for general regulations in relation to the Defence Forces,

“(1) The Minister may make regulations, not inconsistent with this Act, in relation to all or any of the matters mentioned in the Fourth Schedule to this Act....”

[Emphasis added]

Regulation 32 of the Fourth Schedule provides for the making of regulations in respect of,

“32. The establishment, conduct and control of messes, canteens and institutions for providing recreation and refreshment for members of the Defence Forces, and the accounting for and the control and disposal of the funds of such messes, canteens and institutions.”

[Emphasis added]

Section 27 provides for the establishment of educational institutions,

“(1) The Minister may establish a Military College and so many other institutions as he thinks necessary for the training and instruction of members of the Defence Forces.

(2) The Minister may make regulations in relation to all or any of the following matters—
(a) the staff of institutions established under this section,

[...]

(f) the management, control and good government of such institutions.”

[Emphasis added]

Section 28 provides for the making of other educational arrangements,

“(1) The Minister may, with the consent of the Minister for Finance, arrange for the instruction of members of the Defence Forces—

(a) outside the State, or

(b) at institutions other than those established under section 27”

[...]

[Emphasis added]

Section 37 provides for billeting during a period of emergency,

“(1) (a) The Minister may, from time to time and at any time, make such regulations as he thinks fit—

(i) requiring the occupiers of premises to provide, during a period of emergency, lodging, attendance and food for members of the Defence Forces;

[...]

(vi) providing for any matter or thing ancillary to the matters aforesaid.”

[...]

“(2) If any person contravenes (by act or omission) any regulation made under this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding 200 pounds” [€253.95]

[...]

[Emphasis added]

Section 38 provides for billeting in peace time,

[...]

“(2) The Minister may make such regulations as he thinks fit—

(a) requiring the occupiers of victualling houses to provide lodging, attendance and food for members of the Defence Forces;”

[...]

“(d) conferring on such persons as the Minister thinks proper such powers and authorities for the carrying out and enforcement of the regulations as he thinks proper;”

[...]

“(3) If any person contravenes (by act or omission) any regulation made under this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding 200 pounds [€253.95]

(4) No member of the Defence Forces shall in pursuance of any regulation made under this section be billeted in any private house or in any premises occupied by women only.”

[...]

[Emphasis added]

Section 114 provides for the redress of wrongs,

Section 114(1) as amended by s13(a) of the Ombudsman (Defence Forces) Act 2004,

“(1) If an officer thinks himself wronged in any matter by any superior or other officer, including his commanding officer, he may complain thereof to his commanding officer and if, but only if, his commanding officer does not deal with the complaint to such officer’s satisfaction, he may complain in the prescribed manner to the Chief of Staff who shall inquire into the complaint and give his directions thereon.”

Section 114(2) as amended by s6 of the Defence (Amendment) Act 1998 (31/1998) and s13(b) of the Ombudsman (Defence Forces) Act 2004

“(2) If any man thinks himself wronged in any matter by any officer, other than his company commander, or by any man he may complain thereof to his company commander, and if he thinks himself wronged by his company commander either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof in the prescribed manner to the Chief of Staff, who shall inquire into the complaint and give his directions thereon.

(3) Every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of, and shall in every case inform the complainant in the prescribed manner as to what action has been taken in respect of the matter complained of.”

Section 114(3A), (3B), & (3C) as inserted by s13(c) of the Ombudsman (Defence Forces) Act 2004

“(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

(3B) Where the Ombudsman for the Defence Forces has made a notification in writing in accordance with section 7 of the Ombudsman (Defence Forces) Act 2004, that section 5(1)(c), section 5(1)(d)(ii), section 5(1)(e)(ii) or section 5(1)(g) of the Ombudsman (Defence Forces) Act 2004 applies to a complaint made under that Act by an officer or a man, the officer or the man, as the case may be, may submit that complaint to the Minister for determination by him or her.

(3C) The Minister may make regulations concerning the manner in which a notification referred to in subsection (3A) of this section and a report on such notification are to be made

and the manner in which a complaint is to be submitted under subsection (3B) and without prejudice to the generality of the foregoing, the regulations may—

(a) specify a period or periods within which such reports are to be submitted and complaints referred, and

(b) the form and content of such notifications, reports and submissions.

(4) The Minister shall make regulations providing for the personal submission, by any person subject to this Act, of any grievance to such officer and on such occasions as may be prescribed by such regulations.”

Section 114(5) as inserted by section 9 of the Defence (Amendment) Act 2007 provides that,

“(5) This section shall not apply to—

(a) any determination made, punishment awarded or compensation order made under section 177C, 178C or 179C, or

(b) the decision of a summary court-martial under section 178G following an appeal under section 178E.”

Section 184, as substituted by s31 Defence (Amendment) Act 2007 provides for regulations in relation to investigation and summary disposal of charges,

“(1) For the purposes of this Chapter, the Minister may make regulations, not inconsistent with this Act, in relation to all or any of the following matters:

(a) the investigation and summary disposal under this Chapter of charges against persons subject to military law, including the exercise of the right to elect for trial by court-martial, which regulations may include:

(i) the practice and procedure to be followed;

(ii) the form of notices and the giving of such notices under this Chapter;

(iii) the summoning of witnesses and the production of relevant documents and other things;

(iv) evidence;

(v) the administration of oaths or solemn declarations to witnesses in a case where the person charged is subject to military law and demands that the witnesses be sworn;

(b) where a person is remanded for trial by court-martial pursuant to this Chapter, the appointment of an officer to take a written summary of evidence in the case;

(c) the officers in whom are to be vested the powers and duties of authorised officers and commanding officers and the officers in whom may be vested by delegation the powers and duties of subordinate officers;

(d) the delegation to a subordinate officer of power to deal summarily with a case;

(e) the making of an application to the Director to deal summarily with a charge against a person for an offence specified in Part II of the Eleventh Schedule to this Act;

(f) the referral of charges for summary investigation to an authorised officer under section 177(2);

(g) the reference back by the Director of charges for summary disposal;

(h) the making and retention of records of proceedings and determinations made in respect of the investigation and summary disposal of charges;”

[...]

*“(m) any person, matter or thing referred to as prescribed or to be prescribed;
(n) any other matter or thing necessary for carrying this Chapter into effect.”*

[...]

[Emphasis added]

Section 184L, as inserted by s34 of the Defence (Amendment) Act 2007 provides for the terms and conditions of appointment of military judges,

“(1) Subject to this Chapter, a military judge shall hold and vacate office on and subject to the terms and conditions (including terms and conditions relating to remuneration and superannuation) determined by the Minister with the consent of the Minister for Finance.”

[...]

[Emphasis added]

Section 184 LA, as inserted by s7 of the Defence (Amendment) Act, 2011, provides that a circuit judge can perform functions of military judge in certain circumstances,

“(1) The Minister may, having consulted with the Minister for Justice and Equality, request the President of the Circuit Court to temporarily designate, under section 11A of the Act of 1947, one, or more than one, Circuit Judge to perform the functions of a military judge in all or any of the following circumstances:

- (a) where there is a vacancy for the position of military judge and no person has been appointed, under section 184J(1), as military judge;*
- (b) where a military judge, appointed under section 184J(1), is ill, absent or otherwise unable to carry out his or her functions;*
- (c) where a military judge appointed under section 184J cannot properly deal with any matter before him or her by reason of the fact that he or she has a personal interest in the matter or personal knowledge of the facts or the parties as might prejudice the hearing and determination of the matter;*
- (d) without prejudice to paragraphs (a) to (c), any other circumstance in respect of which the Minister is satisfied that such temporary designation is necessary or appropriate.”*

[...]

[Emphasis added]

Section 192(4)(a) provides for the role of the Minister to make regulations as to jurisdiction of courts-martial,

“[...]

(4) (a) The Minister, with the concurrence of the Minister for Justice, may make regulations with regard to the exercise of the jurisdiction conferred on courts-martial by section 169 and

may in particular by the regulations provide that the exercise of such jurisdiction shall depend on the consent of such civil authority as may be specified in the regulations

[...]

[Emphasis added]

Section 214 provides for the restoration of seniority lost and service forfeited by sentence of a court-martial,

“The Minister may restore the whole or any part of any seniority of rank or service forfeited by sentence of a court-martial in the case of an officer or man who may perform good and faithful service or who may otherwise be deemed by the Minister to merit such restoration.”

[Emphasis added]

Section 240 provides for the making of rules of procedure.

Sections 240(1)(a)-(t) provide that,

“(1) The Minister may make rules (in this Act referred to as "rules of procedure") in relation to all or any of the following matters:

- (a) the assembly and procedure of courts of inquiry and boards;*
- (b) the form of oath to be taken by the military judge before entering upon his duties under this Act;*
- (c) in the case of a person remanded for trial by court-martial, the procedures (other than procedures of a court-martial which are the subject of court-martial rules) to be followed in bringing the person to trial, including the taking of a written summary of evidence in the case;*
- (d) the functions of the Court-Martial Administrator relating to the management and control generally of the administration and business of courts-martial;*
- (e) the procedure for convening courts-martial;*

[...]

- (g) the procedure for referring matters to the summary court-martial;*
- (h) the procedure for selecting members of a court-martial board;*
- (i) the procedure in relation to representation for the purposes of section 211A;*
- (j) the promulgation of the findings and sentence of a court-martial;*
- (k) the carrying into effect of sentences of courts-martial;*
- (l) the carrying into effect of decisions made and punishments awarded by the summary court-martial under section 178G;*

[...]

- (n) the retention and preservation of records of proceedings of a court-martial;*

- (o) the supply of copies of such records, including provision in respect of any fee payable for the supply of copies;*
- (p) the officers who are to be prescribed officers for the purposes of section 121;*
- (q) the functions of the Chief Military Judge (if any);*
- (r) the judicial functions, other than those with respect to courts-martial, which may be performed by a military judge;*

[...]

(t) any other matter which the Minister considers necessary or expedient for the proper administration of this Part (other than Chapters IV and X and any matter referred to in this Part as the subject of court-martial rules)."

[Emphasis added]

Section 246 provides for the making of regulations for purposes of Chapter X (Miscellaneous Offences by Members of the Reserve Defence Force) of Part V (Discipline),

"The Minister may make regulations in relation to any person, matter or thing referred to in this Chapter as prescribed."

Department of Defence

Section 13, as substituted by s4 of the Defence (Amendment) Act 1998, provides for military branches of the Department of Defence,

"(1) There shall stand established in the Department of Defence a military element (which shall be known, and is referred to in this Act, as "Defence Forces Headquarters"), the head of which shall be the Chief of Staff.

(2) Subject to the Defence Acts, 1954 to 1998, there shall be assigned to the Chief of Staff such duties in connection with the business of the Department of Defence as the Minister may from time to time determine..."

[...]

[Emphasis added]

- **Defence Amendment (No.2) Act, 1979 ('the 1979' Act')**

"Application of Defence Acts, 1954 to 1979, to women

2.—

The provisions of the Defence Acts, 1954 to 1979, and of any statutory instruments made thereunder shall apply to women members of the Defence Forces holding commissioned or non-commissioned rank and accordingly all words in those Acts and those instruments importing a reference to persons of the male sex shall be construed

as importing a reference to persons of either sex”

[Emphasis added]

Conclusion

Question 1: What is the statutory role/powers of the Minister/Department of Defence in respect of the Defence Forces?

It is clear that the Minister of Defence has a wide range of powers within the Act of 1954 as to the Defence Forces. The above-cited provisions relate to the role/powers of the Minister as they extend to / affect personnel within the context of the overall Brief (ie Topics 1-3).

Section 7 provides for the role of the Minister as prosecutor as to offences under the Act which are punishable which under this Act is punishable on summary conviction by the District Court.

Section 8(2) provides the Minister with powers to make regulations in respect of Permanent Defence Force, the Reserve Defence Force and different classes of the Reserve Defence Force.

Section 11(4) provides for the Council of Defence to meet as and when the Minister summons.

Section 13(2) provides that the Chief of Staff may be assigned such duties in connection with the business of the Department of Defence as the Minister may from time to time determine, for which the Chief of Staff “*shall be directly responsible to the Minister for the performance of such duties*”.

Section 17(1) provides for the mode and exercise of military command which resides, “*Under the direction of the President*”, but which “*subject to the provisions of this Act*”, “*shall be exercisable by the Government [...] through and by the Minister*”.

This would appear to be in line with Constitutional provisions which provide *inter alia* that,

“*Article 13.4,*

The supreme command of the defence forces is hereby vested in the President.

Article 13.5.1°,

“The exercise of the supreme command of the defence forces shall be regulated by law.”

And,

“*Article 28.12,*

The following matters shall be regulated in accordance with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the Government to be the Ministers in charge of the said Departments, the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity, and the remuneration of the members of the Government.”

In addition, the Minister, via **section 17(2)** is empowered to delegate such command from time to time as the Minister may see fit.

Section 26(1) provides for the making of regulations in relation to the Defence Forces, which the Minister may make, once consistent with the Act, in relation to all matters in the Fourth Schedule. **Regulation 32 of the Fourth Schedule** provides for the making of regulations in respect of,

“The establishment, conduct and control of messes, canteens and institutions for providing recreation and refreshment for members of the Defence Forces, and the accounting for and the control and disposal of the funds of such messes, canteens and institutions.”

It is clear that the Minister may have a role, by way of the making of regulations, in the type of conduct which may be expected and monitored in “*messes, canteens and institutions for providing recreation and refreshment for members of the Defence Forces*”. In other words, where personnel of the Defence Forces may congregate for recreation and refreshment purposes, the Minister has the power to regulate the expected conduct in such relevant locales.

Sections 27 and 28 provides for the power of the Minister to establish institutions of education for military personnel, both in this jurisdiction and out of the jurisdiction. **Section 27(2)** in particular is noted in that the Minister “*may*” make regulations in relation to “*(a) the staff of institutions established under this section*” and “*(f) the management, control and good government of such institutions.*” It is noted is that the exercise of the powers of the Minister to regulate such institutions as particularised under the Act appears to be discretionary, rather than mandatory.

Sections 37 and 38 provide for billeting in respectively, an emergency and, peace time and the powers of the Minister to make regulations requiring occupiers of premises to provide, “*lodging, attendance and food*” for military personnel / members of the Defence Forces. It is noted that **section 38(4)** provides in particular that,

“No member of the Defence Forces shall in pursuance of any regulation made under this section be billeted in any private house or in any premises occupied by women only”.

This provision appears to be the only mandatory condition on the making of regulations as to billeting, and, it would appear that this provision relates to civilian women, rather than women who are military personnel. This understanding also appears to accord with the amendment of the 1954 Act by **section 2 of the Defence Amendment (No.2) Act, 1979**, which introduces women as constituting military personnel thereafter. The amendment provides that,

“The provisions of the Defence Acts, 1954 to 1979, and of any statutory instruments made thereunder shall apply to women members of the Defence Forces holding commissioned or non-commissioned rank and accordingly all words in those Acts and those instruments importing a reference to persons of the male sex shall be construed as importing a reference to persons of either sex”.

Section 114 provides for the redress of wrongs. First, a wrong may be complained of by an officer to their commanding officer (s114(1)) or by a man [enlisted personnel] to their company commander (s114(2)). If the complaint is not dealt with to the satisfaction of the complainant, they may complain *in the prescribed manner*’ to the Chief of Staff.

The Chief of Staff shall inquire into the complaint and give his directions thereon. Thereafter, the Chief of Staff is obliged (‘shall cause’) per **section 114(3A)** “*every complaint...that is made in writing*” to be

notified to the Minister and the Ombudsman for the Defence Forces “*as soon as is practicable*” following the making of a complaint seeking redress of wrongs.

Section 114(3B) provides that where the Ombudsman for the Defence Forces has made a notification in line with the obligations under s7 of the 2004 Act that the exclusionary provisions s5(1)(c); (1)(d)(ii); (1)(e)(ii); or (1)(g) of the 2004 Act apply to the complaint, such complaint may be submitted to the Minister.

Section 114(3C) provides that the Minister ‘*may*’ make regulations in relation to the manner in which a notification in writing per s114(3A) – ie to the Minister and to the Ombudsman for the Defence Forces – may be made; how a report on such notification may be made; and the manner in which a complaint may be submitted per **section 114(3B)**. Such regulations ‘*may*’ specify time periods within which reports are to be submitted and complaints referred, and the form and content of such notifications, reports and submissions.

S114(4) places an obligation on the Minister who ‘*shall*’ make regulations providing for the ‘*personal submission*’ by any person subject to the Act of ‘*any grievance to such officer*’ and on such occasions ‘*as may be prescribed by such regulations*’.

Section 184(1) provides that “*the Minister may make regulations*” in relation to *inter alia* “*the investigation and summary disposal under this Chapter of charges against persons subject to military law, including the exercise of the right to elect for trial by court-martial*”.

In addition, **section 184L** provides that a military judge shall hold and vacate office on such terms and conditions as determined by the Minister “*with the consent of the Minister for Finance*”. So it is clear that in this regard, the role and power of the Minister to set such relevant terms and conditions is on consent – ie subject to the agreement of the Minister for Finance.

Further, per **section 184LA(1)**, the Minister may, having consulted with the Minister for Justice and Equality, “*request the President of the Circuit Court to temporarily designate, [...] one, or more than one, Circuit Judge to perform the functions of a military judge*” in specified circumstances. In addition, with “*the concurrence of the Minister for Justice*”, **section 192(4)(a)** provides for the role of the Minister to make regulations as to jurisdiction of courts-martial.

The Minister may restore seniority lost and service forfeited by sentence of a court-martial, per **section 214**.

Section 240 provides that the Minister may make rules of procedure which include as follows:

- “(a) the assembly and procedure of courts of inquiry and boards;*
- (b) the form of oath to be taken by the military judge before entering upon his duties under this Act;*
- (c) in the case of a person remanded for trial by court-martial, the procedures (other than procedures of a court-martial which are the subject of court-martial rules) to be followed in bringing the person to trial, including the taking of a written summary of evidence in the case;*
- (d) the functions of the Court-Martial Administrator relating to the management and control generally of the administration and business of courts-martial;*

(e) the procedure for convening courts-martial;

[...]

(g) the procedure for referring matters to the summary court-martial;

(h) the procedure for selecting members of a court-martial board;

(i) the procedure in relation to representation for the purposes of section 211A;

(j) the promulgation of the findings and sentence of a court-martial;

(k) the carrying into effect of sentences of courts-martial;

(l) the carrying into effect of decisions made and punishments awarded by the summary court-martial under section 178G;

[...]

(n) the retention and preservation of records of proceedings of a court-martial;

(o) the supply of copies of such records, including provision in respect of any fee payable for the supply of copies;

(p) the officers who are to be prescribed officers for the purposes of section 121;

(q) the functions of the Chief Military Judge (if any);

(r) the judicial functions, other than those with respect to courts-martial, which may be performed by a military judge;

[...]

Section 240(1)(t) provides that the Minister, generally, may make rules of procedure relating to, “*any other matter which the Minister considers necessary or expedient for the proper administration of this Part (other than Chapters IV and X and any matter referred to in this Part as the subject of court-martial rules)*” [ie Part V of the Act which relates to Discipline].

It is clear that the Minister has a range of discretionary powers, most frequently related to the discretionary making of regulations. Such regulations may govern an array of contexts, including the discretionary making of certain rules of procedure relating to discipline within the Defence Forces.

In relation to the subject matter of this brief, notably, discretionary powers of regulation afforded to the Minister appear to arise in particular at **sections 26, 27 and 28**, and where, it appears, the Minister may regulate in relation to the conduct of military personnel, both in the context of recreation and refreshment whilst serving members of the Defence Forces, and, where the Minister establishes certain institutions of military education. The Minister is empowered to regulate conduct in these settings.

Pat O’Dwyer BL

DF Independent Review

Memorandum

Pat O'Dwyer BL

Date: 17th October, 2019

Subject

Independent Review Group – Defence Forces.

Issues

Topic 1: Re: Consideration of S114 Defence Act, 1954 (as amended) and Defence Forces Administrative Instruction 7 Chapter 2 (Complaints Procedure).

Background [*as instructed*]

Redress of Wrongs s114 Defence Act 1954 as amended and Defence Forces Administrative Instruction 7 Chapter (Complaints Procedure).

Redress of Wrongs under s.114 is the method by which one member of the Defence Forces make a complaint against another member. The section gives an outline of the procedure to be followed which commences with a complaint to the Commanding Officer (for officers making) and to the Company Commander (for enlisted personnel). Admin Instruction 7 Ch.2 sets out the procedure to be followed in detail with time limits etc.

The brief is to set out the legal relationship between s.114 and Admin Instruction 7, including the legal status of Admin Instruction 7. Thereafter to investigate whether and by what legal steps the section 114 procedure could be replaced by an alternative HR system not dependant on the military command structure.

Pending the introduction of that, outline the legal options by Ministerial Order or otherwise to (a) either remove the system from military control or (b) to introduce monitoring of the existing Admin Instruction system by a suitable qualified non-military person.

Questions

1. *What does S114 provide?*
2. *Inter alia, S114 provides for regulations to be made by the Minister – have such regulations been made?*
3. *What is the interaction of the regulations (if any) with the existing procedure?*
4. *What is the legal relationship between s114 and Admin Instruction 7 Chapter 2 (Complaints Procedure)?*
5. *What is the legal status of Admin Instruction 7 Chapter 2 (Complaints Procedure)?*
6. *Could the s114 procedure be replaced by an alternative HR system not dependant on the military command structure?*
7. *What legal steps would it involve? What would be the legal options (Ministerial Order / otherwise) to remove the system from military control? OR, What would be the legal options (Ministerial Order / otherwise) to introduce monitoring of the existing Admin Instruction 7 system by a suitable qualified non-military person?*

Textbook(s)

1. *Statutory Interpretation in Ireland*, David Dodd & Michael Cush, Eds, Bloomsbury Professional, 2008.

Legislation

The legislation which applies in relation to this matter is as follows:-

1. Statutory Instruments Act, 1947
2. Defence Act, 1954 (as amended)
3. Amending Acts / to the Defence Act, 1954, relating in particular to s114 as follows:
 - Defence Amendment (No.2) Act, 1979;
 - Defence (Amendment) Act, 1998;
 - Ombudsman (Defence Forces) Act, 2004; and,
 - Defence (Amendment) Act, 2007.
4. Interpretation Act, 2005 (as amended)
5. Statutory Instruments

1. Statutory Instruments Act, 1947

Section 1(1) provides for a definition of ‘statutory instrument’ as follows:

“1.—

(1) *In this Act—*

[...]

the expression “statutory instrument” means an order, regulation, rule, scheme or bye-law made in exercise of a power conferred by statute”.

2. The Defence Act, 1954 (as amended) (‘the 1954 Act’ / ‘the Principal Act’)

Section 9 of the Principal Act provides for the repeal of previous defence forces enactments (temporary provisions and otherwise), as set out in the First Schedule of the Principal Act.

Part IV of the Principal Act provides generally for ‘Personnel of the Defence Forces’

Chapter VI of Part IV provides for ‘Miscellaneous Provisions’, of which **Section 114**, Redress of Wrongs provides as follows:

“Redress of wrongs.

114.—

(1) If an officer thinks himself wronged in any matter by any superior or other officer, including his commanding officer, he may complain thereof to his commanding officer and if, but only if, his commanding officer does not deal with the complaint to such officer's satisfaction, he may complain in the prescribed manner to the Minister who shall inquire into the complaint and give his directions thereon.

(2) *If any man thinks himself wronged in any matter by any officer, other than his company commander, or by any man he may complain thereof to his company commander, and if he thinks himself wronged by his company commander either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof in the prescribed manner to the Adjutant-General, who, if so required by the man, shall report on the matter of the complaint to the Minister who shall inquire into the complaint and give his directions thereon.*

(3) *Every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of, and shall in every case inform the complainant in the prescribed manner as to what action has been taken in respect of the matter complained of.*

(4) *The Minister shall make regulations providing for the personal submission, by any person subject to this Act, of any grievance to such officer and on such occasions as may be prescribed by such regulations*”

[Emphasis added]

[...]

Chapter VI of Part IV provides for ‘Miscellaneous Provisions’, of which **Section 117** provides for the power of the Minister to make Regulations for the purposes of Part IV.

117.—

The Minister may make regulations in relation to all or any of the following—

(a) *the assignment, whether by appointment, transfer or otherwise, of members of the Defence Forces to or within service corps, staffs, units or other elements of the Defence Forces,*

(b) *the manner in which recruits are to be appointed to service corps,*

(c) *the transfer of a man from one service corps to another,*

(d) any person, matter or thing referred to in this Part as prescribed,

(e) any other matter or thing which is referred to in this Part as the subject of regulations and in respect of which express power is not conferred on the Minister to make regulations.

2. Amending Acts:

It is noted that *inter alia* s2 of the 1979 Act amends the Principal Acts (and subsequent related other, Acts) to include the application of meaning to women members of Defence Forces.

1. **Defence Amendment (No.2) Act, 1979 ('the 1979' Act')**

"Application of Defence Acts, 1954 to 1979, to women

2.—

The provisions of the Defence Acts, 1954 to 1979, and of any statutory instruments made thereunder shall apply to women members of the Defence Forces holding commissioned or non-commissioned rank and accordingly all words in those Acts and those instruments importing a reference to persons of the male sex shall be construed as importing a reference to persons of either sex"

[Emphasis added]

In addition, s114 has been amended by numerous amending provisions which include as follows:

2. **Defence (Amendment) Act, 1998 ('the 1998 Act')**

Amendment of section 114 of the Principal Act

Section 6 of the 1998 Act provides,

"Section 114(2) of the Principal Act is hereby amended by the substitution of "the Chief of Staff" for "the Adjutant-General"

3. **Ombudsman (Defence Forces) Act, 2004 ('the 2004 Act')**

Amendment of section 114 of Principal Act

Section 4 of the 2004 Act provides for the 'Functions of Ombudsman', of which s4(2)(d) provides,

4.—

(1) The Ombudsman shall be independent in the performance of his or her functions, and shall at all times have due regard to the operational requirements of the Defence Forces.

(2) Subject to this Act, the Ombudsman may investigate any action that is the subject of a complaint made by a person affected by the action if, having carried out a preliminary examination of the matter, it appears to the Ombudsman that—

(a) the action has or may have adversely affected the complainant,

(b) the action was or may have been—

(i) taken without proper authority,

(ii) taken on irrelevant grounds,

(iii) the result of negligence or carelessness,

(iv) based on erroneous or incomplete information,

(v) improperly discriminatory,

(vi) unreasonable, notwithstanding consideration of the context of the military environment,

(vii) based on undesirable administrative practice, or

(viii) otherwise contrary to fair or sound administration,

(c) the action was not an order issued in the course of a military operation, and

(d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.

[Emphasis added]

[...]

Section 5 of the 2004 Act provides for certain exclusions including *inter alia*,

“5.—

(1) The Ombudsman shall not investigate any complaint concerning an action referred to in section 6(1) or 6(2)—

[...]

(c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,

(d) if the action concerns—

[...]

(ii) any matter concerning the organisation, structure and deployment of the Defence Forces,

(e) if the action is one—

[...]

(ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,

[...]

(g) if the action is taken before the commencement of this Act...”

Section 6 of the 2004 Act provides that a member of the Defence Forces *inter alia* may make a complaint to the Ombudsman.

Section 7 of the 2004 Act provides that,

“(1) Where, following the making of a complaint, the Ombudsman decides not to carry out an investigation or to discontinue an investigation, **he or she shall notify the complainant and any person concerned with the complaint, stating the reasons, in writing, for the decision.**

(2) Where the Ombudsman conducts an investigation under this Act into an action that is the subject of a complaint, **he or she shall send a statement in writing of the results of the investigation to—**

(a) the Minister and to all persons concerned with the complaint, and
(b) any other person to whom he or she considers it appropriate to send the statement’.

[...]

Section 13 of the 2004 Act provides for the amendment of section 114 of the Principal Act

13.—

Section 114 of the Act of 1954 is amended—

(a) in subsection (1), **by the substitution of “Chief of Staff” for “Minister”,**

(b) in subsection (2), **by the deletion of “who, if so required by the man, shall report on the matter of complaint to the Minister”, and**

(c) by the **insertion after subsection (3)** of the following subsections:

“(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

“(3B) Where the Ombudsman for the Defence Forces has made a notification in writing in accordance with section 7 of the Ombudsman (Defence Forces) Act 2004, that section 5 (1)(c), section 5 (1)(d)(ii), section 5 (1)(e)(ii) or section 5 (1)(g) of the Ombudsman (Defence Forces) Act 2004 applies to a complaint made under that Act by an officer or a man, the officer or the man, as the case may be, may submit that complaint to the Minister for determination by him or her.

“(3C) The Minister may make regulations concerning the manner in which a notification referred to in subsection (3A) of this section and a report on such notification are to be made and the manner in which a complaint is to be submitted under subsection (3B) and without prejudice to the generality of the foregoing, the regulations may—

(a) specify a period or periods within which such reports are to be submitted and complaints referred, and

(b) the form and content of such notifications, reports and submissions”

[Emphasis added]

[...]

1. Defence (Amendment) Act, 2007 (‘the 2007 Act’)

Amendment of s2 of the Principal Act by s6(e) of the 2007 Act which provides,

“(e) by substituting the following for the definition of “superior officer”:

“ ‘superior officer’ includes—

(a) when used in relation to a member of the Permanent Defence Force, an officer or non-commissioned officer of the Permanent Defence Force of equal or higher rank who is authorised, in relation to that member, by or under this Act or by custom of the service, to exercise authority over that member,

(b) when used in relation to a member of the Reserve Defence Force, an officer or non-commissioned officer of the Permanent Defence Force or of the Reserve Defence Force, of equal or higher rank, who is authorised, in relation to that member, by or under this Act or by custom of the service, to exercise authority over that member;...”

Amendment of s114 of the Principal Act by s9 of the 2007 Act which provides,

9.—

Section 114 of the Principal Act is amended by inserting the following after subsection (4):

“(5) This section shall not apply to—

(a) any determination made, punishment awarded or compensation order made under section 177C, 178C or 179C, or

(b) the decision of a summary court-martial under section 178G following an appeal under section 178E.

[Emphasis added]

The Fourth Schedule: 1954 Act

Section 26 of the Principal Act (as amended) provides for the making of General Regulations in relation to the Defence Forces, and the power to make same as by the Minister. Section 26(1) provides that the Minister may,

“make regulations, not inconsistent with this Act, in relation to all or any of the matters mentioned in the Fourth Schedule to this Act”.

Section 26 was amended by s7 of the 2007 Act and includes the insertion of a subsection (2), which provides that,

“(2) Regulations under this section may—

(a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations or for giving full effect to this Act,

(b) apply either generally or by reference to a specified category or categories of persons.”.

The Fourth Schedule of the Principal Act provides for ‘Matters in respect of which regulations may be made under section 26’. *Inter alia*, the Fourth Schedule provides that regulations may be made in relation to as follows,

“1. The precedence of the respective defence forces forming the Defence Forces and the various service corps, staffs, units and elements thereof.

2. The seniority of officers.

3. *The persons to be invested as officers or otherwise with command over the Defence Forces or any part thereof and as to the mode in which such command is to be exercised, so however that command shall not be exercised by any person over a person holding a higher rank than himself.*

4. *The appointment to, promotion in, and tenure of commissioned rank in the Defence Forces.*

[...]

34. *The conditions and terms of service of civilian employees.*

[...]

36. *Any matter or thing referred to in Part III of this Act as prescribed or as the subject of regulations made by the Minister.*

37. *Any other matter or thing which is not otherwise expressly provided for by or under this Act and which, in the opinion of the Minister, is necessary for securing the good government, efficiency and internal control and management of the Defence Forces or for carrying out and giving effect to this Act.”*

3. Interpretation Act, 2005

Section 2(1) provides for the interpretation inter alia of the term ‘repeal’, as follows:

“2.—

(1) *In this Act—*

[...]

“repeal” includes revoke, rescind, abrogate or cancel;

[...]

(2) *For the purposes of this Act, an enactment which has been replaced or has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed”.*

4. Statutory Instruments:

Statutory Instruments emanating directly from the 1954 Act (as amended) relate to the following provisions:

- S. 183 Defence Forces (Summoning of Civilian Witnesses) Regulations, 1954 (S.I. No. 297 of 1954)
- S. 184 *Rules of Procedure (Defence forces) 2008* (S.I. No. 204 of 2008)
 Defence Forces (Summoning of Civilian Witnesses) Regulations, 1954 (S.I. No. 297 of 1954)

- S. 184L(7) *Defence Act 1954 (Military Judge) (Form of Oath and Solemn Declaration) Rules 2012* (S.I. No. 345 of 2012)
- S. 192 Defence (Civil Authority With Respect To Courts-Martial) Regulations, 1954 (S.I. No. 250 of 1954)
- S. 233 Rules for Military Prisons and Detention Barracks 1983 (S.I. No. 203 of 1983)
Defence Act, 1954. Rules For Military Prisons and Detention Barracks, 1954 (S.I. No. 291 of 1954)
- S. 240 Rules of Procedure (Defence Forces) 2019 (S.I. No. 555 of 2019)
Defence Act 1954 (Military Judge) (Form of Oath and Solemn Declaration) Rules 2012 (S.I. No. 345 of 2012)
Rules of Procedure (Defence Forces) (Amendment) Rules 2012 (S.I. No. 344 of 2012)
Rules of Procedure (Defence Forces) 2011 (S.I. No. 581 of 2011)
Rules of Procedure (Defence forces) 2008 (S.I. No. 204 of 2008)
Rules of Procedure (Defence forces) (form of Oath of Military Judge) 2007 (S.I. No. 661 of 2007)
Rules of Procedure (Defence Forces) 1991 (S.I. No. 27 of 1991)
Rules of Procedure (Defence Forces) 1987 (S.I. No. 245 of 1987)
Rules of Procedure (No. 3) (Defence Forces) 1983 (S.I. No. 202 of 1983)
Rules of Procedure (No. 2) (Defence Forces) 1983 (S.I. No. 72 of 1983)
Rules of Procedure (Defence Forces) 1983 (S.I. No. 22 of 1983)
Rules of Procedure (Defence Forces), 1954 (Amendment) Rules, 1955 (S.I. No. 58 of 1955)
Defence Act, 1954. Rules of Procedure (Defence Forces), 1954 (S.I. No. 243 of 1954)
- S. 240B Court-Martial Rules 2011 (S.I. No. 580 of 2011)
Court-Martial Rules 2009 (S.I. No. 273 of 2009)
Court-Martial Rules 2008 (S.I. No. 205 of 2008)
- S. 279 Defence Act, 1954 (Control of Roads At Gormanston Aerodrome) Bye-Laws, 1959 (S.I. No. 37 of 1959)

It appears that no SI emanating from subsequent amending Acts relates to S114. The above-listed Rules of Procedure relate primarily (*inter alia*) to the organisation and procedural operation of court-martials. It is noted that overall, no SI appears to emanate for the purposes of the operation of s114.

Documents Provided:

1. 'Defence Force Regulations. A7. Discipline', Fifth Reprint, October 1984, Dublin, the Stationery Office (also dated 31st March, 1937, at page 10 of document);
2. 'Defence Forces Administrative Instruction A7, Chapter 2, Complaints under Section 114(1) & (2) of the Defence Act 1954', accompanied *inter alia* by statement of the 23rd November, 2005, signed by Major General D. Earley, Deputy Chief of Staff (Support), Defence Forces Ireland, titled, 'Administrative Instruction A7 Chapter 2, Complaints Procedure';
3. Statement of the 27th May, 2013, signed by Colonel Kieran Brennan, Director Human Resources Branch (J1), Defence Forces Ireland, titled, 'Administration of Redress of Wrongs Applications', including document titled 'Annex A Administration of Redress of Wrongs';
4. Statement of the 24th July, 2015, signed by Colonel Tom Aherne, Director Human Resources Branch (J1), Defence Forces Ireland titled, 'DJ 1 Policy Guidelines for the Investigation of a

Redress of Wrongs, including *inter alia* document titled ‘*General Guidelines for the Investigation of a Redress of Wrongs by Investigating Officers (IOs)*’

1. Document 1: Defence Forces Regulations A7: Discipline (‘the Regulations’)

It is noted that the first page of the Regulations as published notes that the copy provided is a ‘restatement’ of the Regulations and if copy of the Regulations is required for submission to a Court or to the WRC (Workplace Relations Commission), Legislation Branch is to be contacted for a ‘*signed copy of the Principal Regulations or any amendment(s)*’. Another such copy may shed further light on the interpretation of such document. The within analysis is made with reference to the copy provided.

It is noted in the first instance that the document titled ‘*Defence Forces Regulations. A7. Discipline*’, (‘the Regulations’) states on page 2 that it is dated ‘*October, 1984*’, and at page 10, a date of ‘*31st March, 1937*’. It is not clear which date is preferred, however it is noted that prior to the 1954 Act, there was no s114 providing for ‘Redress of Wrongs’.

On page 10 of the Regulations an overarching list of contents under the heading ‘Discipline’ is provided, including at Part II, ‘Redress of Wrongs’. At page 11, ‘Part II. - Redress of Wrongs’ is provided for within the ‘Contents’ section, indicating that that Part refers at paragraphs 9-12 (between pages 20-22 of the document).

Paragraph 9, ‘Scope of section 114 of the Act’, provides that for the purpose of section 114 of the Act, ‘*an officer or man shall be entitled to treat as a wrong of his commanding officer any decision which is communicated to him by his commanding officer, although such commanding officer may be acting only upon directions given to him*’.

Paragraph 10 provides for the submission of complaints by officers. Paragraph 11 provides for the submission of complaints by ‘men’ (taken to mean enlisted personnel member). Paragraph 11A, provides for the ‘*transmission of*’ complaints by both officers and men.

Paragraph 11B provides for the notification of the outcome of complaints made to a ‘company commander, a commanding officer or the Chief of Staff’.

(Paragraph 11C provides for the submission ‘*personally*’ of grievances ‘*on the occasion of a general inspection*’ of *inter alia* a unit or military installation).

Paragraph 11D, provides for complaints to the Ombudsman for the Defence Forces and Paragraph 11E provides for the relevant exclusions relating to a complaint submitted to the Ombudsman and which per s114(3B) are notified to the Minister.

Paragraph 11F provides that Paragraphs 9 – 11E ‘*shall be embodied in Unit Standing Orders and...republished quarterly in Unit Routine Orders*’.

Paragraph 12 provides for a prohibition to obtain ‘*favourable consideration*’ by the ‘*use of outside influences*’. In addition, there is a prohibition on anonymous complaints or those received ‘*through the medium of civilians*’.

2. Document 2: Defence Forces Administrative Instruction A7, Chapter 2

The document titled ‘*Defence Forces Administrative Instruction A7, Chapter 2, Complaints under Section 114(1) & (2) of the Defence Act 1954*’, provides for complaints procedures for a range of relevant persons.

Such Administrative Instruction ‘*shall have effect as and from 01 Dec 2005*’, as expressly stated in the accompanying statement of the 23rd November, 2005, signed by Major General D. Earley, Deputy Chief of Staff (Support), Defence Forces Ireland, titled, ‘*Administrative Instruction A7 Chapter 2, Complaints Procedure*’. The same accompanying statement states that the Administrative Instruction is made ‘*pursuant to Defence Force Regulation A7, is issued by direction of the Minister for Defence and published for the general information and guidance of members of the Defence Forces*’.

Section 1 provides for a complaints procedure for Officers, in line with s114(1). Section 2 provides for a complaints procedure for Enlisted Personnel, in line with s114(2). Section 3 makes provision for the referral of a complaint to the Ombudsman for the Defence Forces in line with s114(3A). Provision is also made, at Section 4 for submission of a complaint to the Minister per s114(3B).

Section 5 provides for a ‘Complaints Inquiry Officer’. Para 226 of the document provides that the ‘*Complaints Inquiry Officer, to whom the Minister may refer a complaint in respect of actions that occur prior to 01 December 2005, shall be an independent person nominated by the Minister in agreement with the representative associations...*’. However, at ‘Annex C’, the ‘*Defence Forced Complaints Procedures Explanatory Booklet*’, states that a ‘Complaints Inquiry Officer’ is an ‘*office [which] has been established to provide for independent advice to the Minister on complaints that have been referred to the Minister*’.

3. Document 3: Annex A Administration of Redress of Wrongs

The document provided dated the 27th May, 2013, refers to the ‘*Administration of Redress of Wrongs Applications*’, and includes a document titled ‘*Annex A Administration of Redress of Wrongs*’. The Annex A document appears to be a set of guidelines to be referred to by those involved in the process of investigating a complaint received.

4. Document 4: General Guidelines for the Investigation of a Redress of Wrongs by Investigating Officers (IOs)

The document provided dated the 24th July, 2015, includes a *inter alia* document titled ‘*General Guidelines for the Investigation of a Redress of Wrongs by Investigating Officers (IOs)*’. Again, this appears to be a set of guidelines to be referred to by those Investigating Officers involved in the process of investigating a complaint received.

Conclusion

- **Question 1:** *What does S114 provide?*

Section 114 provides for the Redress of Wrongs, by which a member of the Defence Forces may make complaint if he / she believes that they have been ‘*wronged in any matter by any superior or other officer, including his [sic] commanding officer*’ (s114(1)).

Section 114(1) provides for the making of a complaint by an officer. If the complaint is not dealt with by the commanding officer to the satisfaction of the officer, the officer may complain ‘*in the prescribed manner*’ to the Chief of Staff (s114(1)).

Section 114(2) provides for the making of a complaint by a ‘man’ (taken to mean enlisted personnel member). If such person thinks themselves ‘*wronged in any matter by any officer, other than his [sic] company commander, or by any man [sic] he may complain thereof to his [sic] company commander*’. And if, per the enlisted personnel member, the company commander has not properly addressed the complaint, the complaint may be referred to their commanding officer. Equally, if this is not dealt with to the satisfaction of the enlisted personnel member, the complaint may be referred ‘*in the prescribed manner*’ to the Chief of Staff.

Section 114(3) obliges ‘Every officer’ to whom a complaint is made to inquire into same and to take such steps as may be necessary to give ‘*full redress to the complainant in respect of the matter complained of*’. In addition, there is a similar obligation to inform the complainant ‘*in the prescribed manner*’ as to the action taken in respect of the matter complained of.

Section 114(3A) (as inserted by the 2004 Act) provides for an obligation on the Chief of Staff who ‘*shall cause every complaint...that is made in writing*’ to be notified to the Minister and the Ombudsman for the Defence Forces ‘*as soon as is practicable*’ following the making of a complaint seeking redress of wrongs.

Section 114(3B) provides that where the Ombudsman for the Defence Forces has made a notification in line with the obligations under s7 of the 2004 Act that the exclusionary provisions s5(1)(c); (1)(d)(ii); (1)(e)(ii); or (1)(g) of the 2004 Act apply to the complaint, such complaint may be submitted by the complainant may be submitted to the Minister.

Section 114(3C) provides that the Minister ‘may’ make regulations in relation to the manner in which a notification in writing per s114(3A) – ie to the Minister and to the Ombudsman for the Defence Forces – may be made; how a report on such notification may be made; **and the manner in which a complaint may be submitted per s114(3B)**. Such regulations ‘*may*’ specify time periods within which reports are to be submitted and complaints referred, and the form and content of such notifications, reports and submissions.

S114(4) places an obligation on the Minister who ‘shall’ make regulations providing for the ‘*personal submission*’ by any person subject to the Act of ‘*any grievance to such officer*’ and on such occasions ‘*as may be prescribed by such regulations*’.

S114(5) provides for exclusions relating to section 177C, 178C, 179C in relation to any determination, punishment or compensation order made under such sections; and, the decision of a court-martial under s178G following an appeal under s178E.

- **Question 2:** *Inter alia*, S114 provides for regulations to be made by the Minister – have such regulations been made?

Section 1(1) of the Statutory Instruments Act, 1947, provides that, “*the expression “statutory instrument” means an order, regulation, rule, scheme or bye-law made in exercise of a power*

conferred by statute". The Act makes provision for regulations which 'may' be made by the Minister (s114(3C)), and the Minister is obliged to make regulations per s114(4).

Of the documents provided, there appear to be stated 'Regulations' published for use by the Defence Forces, by way of '*Defence Forces Regulations. A7. Discipline*', and which *inter alia* provide for a set of approaches to the procedure in s114. It is not clear that the Regulations as provided are made by the Minister. There does not appear to be a statutory instrument in effect to make such regulations. It is noted that the document(s) provided does not refer to / appear to derive from any Statutory Instrument. In contrast for example, the Garda Síochána (Discipline) Regulations 2007 are provided for by way of S.I. No. 214/2007.

So, whilst there appear to be published Regulations on which the Defence Forces rely to effect s114, such Regulations do not appear to be underpinned by Statutory Instrument.

However, the document provided, titled '*Administrative Instruction A7 Chapter 2, Complaints Procedure*' provides in its accompanying statement that the Administrative Instruction is made '*pursuant to Defence Force Regulation A7, is issued by direction of the Minister for Defence and published for the general information and guidance of members of the Defence Forces*'.

So, it appears that the procedure in the Administrative Instruction issues at '*the direction of the Minister*'.

- **Question 3:** *What is the interaction of the regulations (if any) with the existing procedure?*

The Regulations as published provide for *inter alia* the Redress of Wrongs, includes the scope of s114 and the treatment of complaints arising under that section. The Administrative Instruction also provides for the treatment of complaints under s114(1) and (2) and appears to be made '*pursuant to Defence Force Regulation A7, is issued by direction of the Minister for Defence...*'.

- **Question 4:** *What is the legal relationship between s114 and Admin Instruction 7 Chapter 2 (Complaints Procedure)?*

It appears that Administrative Instruction 7 Chapter 2 (Complaints Procedure) is made '*pursuant to Defence Force Regulation A7, is issued by direction of the Minister for Defence and published for the general information and guidance of members of the Defence Forces*'.

So, it appears that the Administrative Instruction derives from the Defence Forces Regulations A7: Discipline ('the Regulations') and '*by direction of the Minister*'.

- **Question 5:** *What is the legal status of Admin Instruction 7 Chapter 2 (Complaints Procedure)?*

It would appear, therefore, that the Administrative Instruction 7 Chapter 2 (Complaints Procedure) is non-statutory in nature insofar as the Administrative Instruction itself is not a statutory document. However, it is noted that the procedure set out in the Administrative Instruction is derived from a procedure provided for and set out in statute, that is s114 of the 1954 Act.

- **Question 6:** *Could the s114 procedure be replaced by an alternative HR system not dependant on the military command structure?*

Section 114 provides for a system rooted in military command structure and observes the hierarchies of rank within the system. For example, s114(1) provides for a complaints procedure for officers and the process by which a complaint may be reported to a commanding officer or the Chief of Staff. Section 114(2) clearly distinguishes provision for enlisted personnel to make a complaint in respect of a wrong suffered. As with the provision for officers, such persons may complain to senior personnel and bring a complaint to a company commander, or a commanding officer, or the Chief of Staff, as appropriated. It is clear that, per s114, complaints are dealt with (in particular see s114(1), (2), (3) & (3A)), within the military command structure.

In order for s114 to be replaced with an alternative HR system, not dependant on the military command system, section 114 would arguably have to be repealed or amended.

- **Question 7:** *What legal steps would it involve? What would be the legal options (Ministerial Order / otherwise) to remove the system from military control? OR, What would be the legal options (Ministerial Order / otherwise) to introduce monitoring of the existing Admin Instruction 7 system by a suitable qualified non-military person?*

As Dodd has noted at [4.38], “*To repeal enactments, as to amend them, is a legislative function and rests solely with the Oireachtas*”.

Repeal:

Per section 2(1) of the Interpretation Act, 2005, repeal ‘*includes revoke, rescind, abrogate or cancel*’.

In addition, the Supreme Court approved Bennion’s (*Statutory Interpretation* (4th edn, Butterworths, 2002, Code 178 at 429) statement of the meaning of repeal in *DPP v Gilligan* [1993] 1 IR 92, wherein it was stated *inter alia* that,

“To ‘repeal’ an enactment is to cause it to cease to be in law a part of the Act containing it. A repeal may be either express or implied. The repeal of an enactment constitutes the amendment of the Act containing it.”

In addition, as Dodd has noted at [4.37], “*all repeals are amendments, but not all amendments are repeals*”.

In order for s114 as it is currently constituted not to apply, it would require the Oireachtas to repeal the provision.

In *Duggan v An Taoiseach* [1989] ILRM 710, a unilateral act by a Minister for Finance, who, in his budget speech sought to repeal the Farm Tax Act, 1985, was held to be invalid. Only the Oireachtas can repeal an Act / provision of statute.

Amendment:

Dodd has noted at [4.24] that, “*To amend a statutory provision means to alter its legal meaning*”. This definition, also attributed to Bennion, was approved in *DPP v Gilligan* [1993] 1 IR 92, by the Supreme Court (O’Flaherty J).

Amending a law will mean making a change to a law that exists already whilst retaining a portion of the law. Where a law is amended, careful consideration has to be given to the amending provision(s), as the meaning of the retained part may be / will be altered. In *Mathieson v Burton* (1971) 124 CLR 1 (Aus) an amendment which added words to a statute, had the effect of limiting those persons who were entitled to claim statutory benefit, including the respondent.

Consideration:

It is noted above that at first instance, complaints as received are processed through the military command structure (s114(1)-(3A)). Section 114(3A) provides that the Chief of Staff is obliged to “*cause every complaint seeking redress of wrongs*” made in writing, to be notified to the Minister and the Ombudsman for the Defence Forces ‘*as soon as practicable*’ following the making of such complaint. It is clear that at an early stage of the making of a complaint, the Minister and Ombudsman are notified of the receipt of same.

Arguably, there is room for amendment of s114 at ss(1) and (2). Whilst a complaint received in writing is required to be notified by the Chief of Staff to the Minister and Ombudsman, it is possible that a complainant (be it an officer or enlisted personnel member), could initiate a complaint at first instance within a separate HR system. It could be that provision is made for such system to be engaged with at an early stage of complaint, through a dedicated HR personnel structure, rather than via military command.

It is noted, at this juncture, that the above analysis may benefit from some further consideration.

DF Independent Review

Memorandum

To: Simon Boyle S.C.

Date: 26th October, 2019

Subject

Independent Review Group – Defence Forces.

Issues

Topic 2: Re: Consideration of S169 Defence Act, 1954 (as amended) and in particular Rape offences.

Background [as instructed]

Section 169 of the 1954 Act provides for non-military type offences committed by persons who are subject to military law (s118-123) to be dealt with under the military law system ie by court-martial.

Two of the offences referred to are Rape and Aggravated Sexual Assault as defined in the Criminal Law (Rape) Amendment Act, 1990. Sub-section 3(g) refers to other unspecified offences in the ordinary law of the State, which would include, for example, serious assault.

The brief is to determine whether the provisions of this section confer an exclusive jurisdiction for these offences ousting investigation by An Garda Síochána and prosecution by the DPP, or whether they remain punishable by the ordinary law system and, if the section does confer exclusivity to military law, how the Rape offences in particular could be removed from the section. Outline the legal steps necessary to achieve this.

Questions

1. *What does S169 provide?*
2. *Do the provisions of this section confer an exclusive jurisdiction for these offences on military law?*
3. *Does this exclusivity (if any) oust investigation by An Garda Síochána and prosecution by the DPP? OR,*
4. *Do such offences remain punishable by the ordinary law system?*
5. *If the section does confer exclusivity to military law, how could Rape offences in particular be removed from the section?*
6. *What legal steps would it involve?*

Textbook(s)

1. *Military Law in Ireland*, Gerard Humphreys & Ciaran Craven, Round Hall Sweet & Maxwell, 1997
2. *Statutory Interpretation in Ireland*, David Dodd & Michael Cush, Eds, Bloomsbury Professional, 2008
3. *Sentencing Law and Practice*, Thomas O'Malley, 3rd Ed, Round Hall, 2016

1. *Military Law in Ireland*, Gerard Humphreys & Ciaran Craven, Round Hall Sweet & Maxwell, 1997

Humphreys and Craven write at page 25,

“It is noted that being “on active service” is not synonymous with participation in a war in the conventional context and may involve operations against armed elements, of whatever description”.

And at page 96,

“A member of the Defence Forces, whether an officer, non-commissioned officer, or soldier, does not cease to be a citizen of the State nor does he lose the benefit of rights guaranteed under the Constitution. While remaining subject to the ordinary laws of the State he also becomes subordinate to a further, and entirely distinct code of military law”.

And at page 97, citing the Supreme Court decision of *Scariff v Taylor* [1996] 1 IR 242,

“The strict disciplinary code of the army includes elements which have no equivalent in civilian life but it should be remembered that a recruit on joining submits voluntarily to this code”.

In addition, Humphrey and Craven write at page 97,

*“Article 38.4 of the Constitution provides for the establishment of military tribunals for trial of offence against military law alleged to have been committed by persons subject to military law.^[...] It further provides that **a member of the Defence Forces not on active service^[...] is not to be tried by any court-martial or other military tribunal for an offence cognisable by the civilian courts unless that offence is within the jurisdiction of any court-martial or other military tribunal under law for the enforcement of military discipline.**^[...] Although the establishment of military tribunals is not delimited “by law”, the nature of offences against military law,^[...] the categories of persons subject thereto [...] are codified as are the circumstances in which offence punishable by ordinary law are triable by court-martial.^[...]*

[...]

*Recognition of the particular constitutional position of the Defence Forces as a disciplined body, coupled with a certain reluctance to interfere in their procedures, is found in *C v Court-Martial and others*^[18] where the Supreme Court was asked, for the first time, to intervene by way of prohibition with regard to court-martial proceedings...”*

^[18] *Unreported, Supreme Court ex tempore, Finlay CJ, O’Flaherty, Egan, Blayney JJ nem diss, February 15, 1994. Per Finlay CJ for the court quoted with approval in *Scariff v Taylor* [1996] 1 IR 242 at 252 (SC) per Hamilton CJ and Denham J”*

At page 99, Humphreys and Craven write,

“Clearly, members of the Defence Forces are liable to military law. Officers and men of the Permanent Defence Force are subject to military law at all times. However, in the Reserve Defence Force liability to military law is conditional....”

[Emphasis added]

Humphreys and Craven also write at page 100,

“Certain activities are deemed to constitute offences against military law, the constituent ingredients and the penalties, for both officers and men^[32], upon conviction by court-martial being clearly defined.^[33] Offences punishable by ordinary law are also deemed to be offences against military law, and the scale of punishment upon conviction by court-martial is similarly prescribed.^[34] Although generally, but not exclusively, of a criminal or quasi-criminal nature, offences against military law simpliciter, may be categorised according to how they may be disposed of”.

“^[32] Officers, non-commissioned officers and private soldiers (men) differ in relation to the nature, as distinct from the severity, of the punishment which may be awarded. Whereas an officer may be punished by imprisonment, there is no provision for an officer’s detention, as in the case of soldiers.

^[33] Defence Act 1954, ss. 124 to 169 inclusive, as amended by s.7 of the Criminal Justice Act 1990.

^[34] Defence Act 1954, s.169, as amended by s7 of the Criminal Justice Act, 1990. However, s.192(3) and (4) limit the jurisdiction of courts-martial in respect of certain offences committed by a person not on active service and envisages the making of regulations to confer jurisdiction on courts-martial, with the consent of the civil authority, to deal with certain civil offences. See: Defence (Civil Authority with Respect to Courts-Martial) Regulations 1954 (S.I. No. 250 of 1954)”.

Constitution of Ireland / Bunreacht na hÉireann

Article 38.4 of the Constitution provides as follows:

“4 1° Military tribunals may be established for the trial of offences against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion.

2° A member of the Defence Forces **not on active service shall not be tried by any courtmartial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any courtmartial or other military tribunal under any law for the enforcement of military discipline**”.

[Emphasis added]

Legislation

The legislation which applies in relation to this matter is as follows:

1. Defence Act, 1954 (as amended)
 - 1.1 Amending Acts / to the Defence Act, 1954, relating in particular to 169 as follows:
 - Criminal Justice Act, 1964
 - Genocide Act, 1973
 - Criminal Justice Act, 1990

- Criminal Law (Rape) (Amendment) Act, 1990
 - Criminal Law Act, 1997
 - Criminal Justice (United Nations Convention Against Torture) Act, 2000
 - Criminal Justice (Safety of United Nations Workers) Act, 2000
 - Criminal Justice (Terrorist Offences) Act, 2005
 - International Criminal Court Act, 2006
 - Defence (Amendment) Act, 2007
2. Interpretation Act, 2005 (as amended)
 3. Statutory Instruments

1. The Defence Act, 1954 (as amended) ('the 1954 Act' / 'the Principal Act')

Section 2(1) provides as follows:

"...Director" means the Director of Military Prosecutions appointed under Chapter IVB of Part V of this Act

[...]

the expression "civil court" means any court established under Article 34 of the Constitution, and includes the courts established under the Courts of Justice Act, 1924 (No. 10 of 1924), and any Special Criminal Court established under the Offences against the State Act, 1939 (No. 13 of 1939);

[...]

the expression "civil offence" has the meaning assigned to it by section 169

[...]

references to a person subject to military law shall be construed as references to a person who is, by virtue of section 118 or 119, subject to military law"

Section 5 provides as follows:

"Active service.

5.—

(1) A person subject to military law shall, for the purposes of this Act, be on active service—

(a) during any period during which an order made under subsection (2) of this section is in force, or

(b) whenever he is attached to or forms part of a force which is engaged in operations against an enemy, or

(c) whenever he is engaged in military operations in a place wholly or mainly occupied by an enemy,

and the expression “on active service” when used in this Act in relation to a person subject to military law shall be construed accordingly.

(2) The Government, during a period of emergency, may, whenever they consider the circumstances are of such a nature as to warrant their so doing, by order under this subsection declare the Defence Forces to be on active service.

(3) An order under subsection (2) of this section shall, if not previously revoked under subsection (4) of this section, cease to be in force on the expiration of the period of emergency current at the time the order was made.

(4) The Government may by order under this subsection revoke any order made under subsection (2) of this section”.

Part V of the 1954 Act provides for ‘Discipline’, comprising sections 118-251. Of this Part, Chapter 1 makes provision for ‘Liability to Military Law’ *inter alia* including those subject to military law, both officers and men [enlisted personnel].

Section 118 provides as follows:

“Persons subject to military law as officers.

118.—

(1) **Each of the persons mentioned in this section shall, for the purposes of this Act, be a person subject to military law as an officer—**

(a) an officer of the Permanent Defence Force **at all times,**

(b) an officer of the Reserve Defence Force **when—**

(i) **he is ordered or employed on service or duty for which as an officer of the Reserve Defence Force he is liable, or**

(ii) **he is in uniform,**

(c) **an officer of the Reserve Defence Force (whether in receipt of pay or otherwise) during and in respect of a time when—**

(i) he is, with his own consent, attached to or doing duty with any body of troops for the time being subject to military law or ordered on duty by the military authorities, or

(ii) he is voluntarily attending training, or

(iii) he is undergoing treatment F81 [in a military hospital, or

(iv) he is deployed on military service under section 86A,

(d) subject to any general or special exemption made by the Minister (the proof whereof shall lie on the person claiming exemption), any person not otherwise subject to military law who, under the general or special orders of the Minister, accompanies in an official capacity equivalent to that of an officer any portion of the Defence Forces which is on active service,

(e) any person not otherwise subject to military law, accompanying a portion of the Defence Forces which is on active service, who holds from the commanding officer of that portion a pass, revocable at the pleasure of such commanding officer, entitling him to be treated on the footing of an officer.

(2) For the purposes of this section and section 119, a portion of the Defence Forces shall be on active service—

(a) during a period during which an order under subsection (2) of section 5 is in force, or

(b) whenever that portion is engaged in operations against an enemy, or

(c) whenever that portion is engaged in military operations in a place wholly or mainly occupied by an enemy.”

Section 119 provides as follows:

“Persons subject to military law as men.

119.—Each of the persons mentioned in this section shall, for the purposes of this Act, **be a person subject to military law as a man**—

(a) **a man of the Permanent Defence Force at all times,**

(b) **a reservist when**—

(i) he is called out on permanent service or in aid of the civil power, or

(ii) he is called out for training, exercise or other duty under this Act, or

(iii) he is voluntarily attending training, or

(iv) he is undergoing treatment in a military hospital, or

(v) he is employed on military service under the orders of an officer, who is himself subject to military law, or

(vi) he is in uniform, or

(vii) he is deployed on military service under section 91A,

(c) subject to any general or special exemption made by the Minister (the proof whereof shall lie on the person claiming exemption), any person not otherwise subject to military law who is employed by or is in the service of any portion of the Defence Force which is on active service,

(d) any person, not otherwise subject to military law, who is a follower of or accompanies any portion of the Defence Forces which is on active service.”

Section 120 provides for ‘Liability to military law in respect of status’ including *inter alia* as follows:

“120.—

(1) *Where an offence against military law has been committed by any person while subject to military law, such person may, subject to subsection (2) of this section, be taken into and kept in service custody and tried and punished for such offence, although he or the unit to which he belongs has ceased to be subject to military law, in like manner as he might have been taken into and kept in service custody, tried or punished, if he or such unit had continued to be so subject.*

(2) *Where—*

(a) **an offence** (other than that of mutiny, desertion, fraudulent enlistment or a civil offence committed by a person subject to military law while he was on active service outside the State or while he was despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006) **against military law triable by court-martial under this Act has been committed by any person while subject to military law, and**

(b) **such person has since commission of the offence ceased to be subject to military law, that person may not be tried for the offence unless he is charged with the offence in accordance with this Act within six months beginning on the date on which he ceased to be so subject, but nothing in this subsection shall be construed as affecting the jurisdiction of a civil court where the offence is triable by that court as well as by court-martial...**”

Section 169, provides for ‘Offences punishable by ordinary law’, as follows:

“169.—

(1) *Subject to the provisions of this Act, every person who, **while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law and, if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial.***

(2) *Where a person charged under this section is convicted by a court-martial of treason or murder, he shall be sentenced to imprisonment for life.*

(3) *Where a person charged under this section is convicted by a court-martial of an offence other than treason or murder, he shall be liable to be punished as follows:*

(a) *if he is convicted of manslaughter, be liable to imprisonment for life or any lesser punishment awardable by a court-martial;*

(b) **if he is convicted of rape, rape under section 4** (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) **or aggravated sexual assault** (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), **be liable to imprisonment for life or any lesser punishment awardable by a court-martial;**

[...]

(g) if he is convicted of any offence not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State, be liable, whether the offence is committed in the State or elsewhere, either to suffer any punishment assigned for such offence by law of the State or to suffer—

(i) if he is subject to military law as an officer, dismissal with disgrace from the Defence Forces or any lesser punishment awardable by a court-martial, or

(ii) if he is subject to military law as a man, imprisonment for any term not exceeding two years or any lesser punishment awardable by a court-martial.”

Section 186 provides for three classes of courts-martial, which includes ‘*namely, general courts-martial, limited courts-martial and the summary court-martial*’.

Section 187A provides for a summary court-martial. A summary court-martial is presided over by a military judge,

“Every military judge is authorised to preside at a summary court-martial and a military judge who does so constitutes the summary court-martial...” (s187A(2)).

Section 188 provides for a general court-martial. A general court-martial *inter alia* consists of,

“(a) a military judge, and

(b) save in the case of a general court-martial convened pursuant to subsection (8) or (11) of section 212A, a court-martial board of not less than five members specified by or on behalf of the Court-Martial Administrator...” (s188(1)).

Section 188(2) and (3) provides for the make-up of the court-martial board depending on whether the person is an officer or not an officer.

Section 189 provides for a limited court-martial. A limited court-martial *inter alia* consists of,

“(a) a military judge, and

(b) save in the case of a limited court-martial convened pursuant to subsection (8) or (11) of section 212A, a court-martial board of not less than three members specified by or on behalf of the Court-Martial Administrator...” (s189(1)).

Section 192(1) & (1A) provide as follows:

“Jurisdiction of courts-martial.

192—

(1) Subject to and in accordance with the provisions of this Act, a general court-martial, limited court-martial or summary court-martial shall, in addition to any other powers conferred on it by this Act, have jurisdiction to try and punish any person for an offence against military law committed by the person while subject to military law as an officer or as a man.

(1A) In this section "relevant offence" means—

[...]

(c) manslaughter, rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990)."

(1B) A summary court-martial shall not have jurisdiction—

(a) to try any person who is for the time being an officer holding the army rank of lieutenant colonel or the equivalent naval rank or higher commissioned rank,

(b) to try any person for a relevant offence,

(c) to award to any person any sentence greater than imprisonment for a term of six months, or

(d) in the case of an appeal under section 178E, to award any punishment greater than that awardable on summary disposal of the matter under section 177C or 178C, as appropriate.

(2) A limited court-martial shall not have jurisdiction—

(a) to try any person for any offence against military law committed by the person while subject to military law as an officer,

(b) to try any person who is for the time being an officer or a man of the army rank of battalion quarter-master sergeant or the equivalent naval rank or of any higher non-commissioned rank,

(c) to try any person for a relevant offence, or

(d) to award to any person any sentence greater than imprisonment for a term of two years.

(3) Subject to subsection (3A) of this section, a general court-martial shall not have jurisdiction to try any person subject to military law for a relevant offence unless the offence was committed while the person was on active service or while the person was despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006."

(3A) In the case of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), where the offence was committed by a person subject to military law who was neither on active service nor despatched for service outside the State for any purpose specified in section 3 of the Defence (Amendment) Act 2006 when the offence was committed, a general court-martial may try any person subject to military law on a charge of having committed that offence where—

(a) the person in respect of whom the offence was committed is, or was when the offence was committed, subject to military law, and has consented in writing to the trial of the offence by court-martial, and

(b) the Director of Public Prosecutions has given his prior consent".

Section 192(4) provides:

“(4)

(a) *The Minister, with the concurrence of the Minister for Justice, may make regulations with regard to the exercise of the jurisdiction conferred on courts-martial by section 169 and may in particular by the regulations provide that the exercise of such jurisdiction shall depend on the consent of such civil authority as may be specified in the regulations.*

(b) *A certificate under the hand of the Director certifying that as respects the trial of a civil offence the consent referred to in paragraph (a) of this subsection has been obtained shall be prima facie evidence of that fact.*

Part V of the 1954 Act includes Chapter VI which provides for “*Punishments awardable by Courts-martial for Offences against Military Law*”.

Section 209(1) provides for *inter alia* a Scale of punishment to be considered “*in respect of offences against military law committed by persons subject to military law as officers and convicted by court-martial*”.

For example, the Scale as provided at s209 outlines as follows:

“SCALE.

A. Imprisonment for life or any specified period.

B. Dismissal with disgrace from the Defence Forces.

C. Dismissal from the Defence Forces.

D. Where the person convicted is an officer, reduction to any lower commissioned rank.

E. Forfeiture of all seniority of rank or of a specified term of seniority.

F. Reduction to any lower point on the scale of pay for the rank held.

G. (a) In the case of a person subject to military law as an officer under section 118(1)(a), (b) or (c), a fine not exceeding fourteen days' pay of the person at the most recent rate payable.

(b) In the case of a person subject to military law as an officer under section 118(1)(d) or (e), a fine not exceeding the maximum fine awardable for the time being by a court-martial to an officer holding the rank of second lieutenant who is in receipt of the maximum pay applicable to that rank.

(c) In the case of a person who is not a member of the Defence Forces but who was an officer when the offence was committed, a fine not exceeding an amount equal to fourteen days' pay at the most recent rate applicable to his former rank.

H. Severe reprimand.

I. Reprimand.”

Section 210(1) provides for *inter alia* a similar scale of punishment to be considered in respect of “*offences against military law committed by persons subject to military law as men and convicted by court-martial*”.

Part V, Chapter VI provides for the Rules of Procedure. **Section 240** confers power(s) on the Minister to *inter alia* make rules governing the procedure of courts-martial. Section 240(1)(j) provides in particular for the Minister to make rules in relation to,

“the promulgation of the findings and sentence of a court-martial”.

2. Amending Acts

Acts which amend the Defence Act, 1954, and relating in particular to 169, include as follows:

- Criminal Justice Act, 1964: s9
- Genocide Act, 1973: s4
- Criminal Justice Act, 1990: s7; Schedule 1, para 4
- Criminal Law (Rape) (Amendment) Act, 1990: s19 (a); s22(3)
- Criminal Law Act, 1997: s1; s14; Schedule 2, para 6
- Criminal Justice (United Nations Convention Against Torture) Act, 2000: s6(a)
- Criminal Justice (Safety of United Nations Workers) Act, 2000: s6(a)
- Criminal Justice (Terrorist Offences) Act, 2005: s56(a)
- International Criminal Court Act, 2006: s66; Schedule 3, para 1(a)
- Defence (Amendment) Act, 2007: s1(2); s4(2); Schedule 2

3. Interpretation Act, 2005 (as amended)

Section 2(1) provides for the interpretation *inter alia* of the term ‘repeal’, as follows:

“2.—

(1) *In this Act—*

[...]

“repeal” includes revoke, rescind, abrogate or cancel;

[...]

(2) *For the purposes of this Act, an enactment which has been replaced or has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed”.*

4. Statutory Instruments:

Relevant statutory instrument for the purposes of this enquiry include as follows:

1. S.I. No. 243/1954 - Defence Act, 1954. Rules of Procedure (Defence Forces), 1954 (**now repealed**)
 2. S.I. No. 555/2019 - Rules of Procedure (Defence Forces) 2019
- S.I. No. 243/1954 - Defence Act, 1954. Rules of Procedure (Defence Forces), 1954

It is noted that SI 243/1954, made provision at Rule 52(1) for the following procedure on conviction,

“If the finding on any charge is " Guilty " then, for the guidance of the court in determining their sentence and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, shall take evidence (if available) of and record the character, age, service, rank and any recognised act of gallantry or distinguished conduct of the accused, and whether he is married and the number (if any) in his family, and the length of time he has been in arrest or in confinement on any previous sentence, and the period (if any) he has been in civil or service custody awaiting trial, and any additional flying or deferred pay, any military decoration or military reward of which he may be in possession or to which he is entitled and which the court can sentence him to forfeit or which is liable to forfeiture as a result of the sentence of the court...”

SI 243/1954 was repealed by SI 204/2008, and with it the above sentencing / guideline. It is noted that no similar guideline issued in the Rules under SI 204/2008, which has now been replaced by SI 555/2019.

- S.I. No. 555/2019 - Rules of Procedure (Defence Forces) 2019

The Rules of Procedure (Defence Forces) 2019 provides for the Rules governing *inter alia* the course and conduct of courts-martial. In particular, it is noted that the 2019 iteration of the Rules of Procedure provides at Rule 75 that, *“In any case not provided for by the Act or these Rules such course shall be adopted as appears best calculated to do justice”*. This is taken to address the degree of discretion in decision-making afforded to a court-martial, where appropriate / not prescribed by the Act or the Rules.

Conclusion

- **Question 1:** *What does S169 provide for?*

Section 169 provides for ‘*Offences punishable by ordinary law*’. ‘Ordinary law’, so-termed by the title of the section, appears to be civil / civilian law, as distinct from military law although the term ‘ordinary law’ is not further, expressly defined within the Act or the section.

The preceding provisions, from s124-168, provide expressly for ‘*Offences against Military Law*’. It appears to be the case that an offence as provided for in s169 is considered a ‘*civil offence*’ (s169(1)) for the purposes of the Act / section (see also s2(1)). Such offence is also considered by the section to be “*an offence against military law*” (s169(1)).

Therefore, it is taken to mean that ‘*ordinary law*’ offences are those offences as expressly provided for under s169; which are ordinarily not limited to the military sphere and are also offences under civilian

law; and, which are considered to also be offences against military law. Section 169 provides for specific punishments where such offences are committed and where a relevant perpetrator is convicted by a court-martial.

Section 169 provides for the punishment of the following ('civil') offences:

- Treason;
- Murder;
- Manslaughter;
- Rape;
- Rape under s4 of the Criminal Law (Rape) (Amendment) Act 1990;
- Aggravated sexual assault within the meaning of the Criminal Law (Rape) (Amendment) Act 1990;
- An offence under s3 of the Geneva Conventions Act 1962;
- An offence under s7 (genocide, crimes against humanity and war crimes) of the International Criminal Court Act 2006;
- An offence under s8 (ancillary offences) of the International Criminal Court Act 2006;
- An offence under the Criminal Justice (United Nations Convention against Torture) Act 2000;
- An offence under the Criminal Justice (Safety of United Nations Workers) Act 2000;
- An offence under the Criminal Justice (Terrorist Offences) Act 2005; and,
- Any offence '*not before in this section particularly specified which when committed in the State is punishable by the ordinary criminal law of the State*'

In addition, s169 provides that '*every person*', '*subject to military law*' who commits an offence as provided for under s169, '*shall be deemed to be guilty of an offence against military law*' (s169(1)). If such person is '*charged under this section with any such offence [they] shall be liable to be tried by court-martial*' (s169(1)), and punished in line with the provisions of s169.

In particular, per s169(3)(b), if a person is convicted of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) (hereafter 'rape offences'), he will be liable to "***imprisonment for life or any lesser punishment awardable by a court-martial***".

In order to ascertain which persons come under the remit of s169, it is necessary to identify those persons '*subject to military law*' per the Act of 1954.

Subject to Military Law

Sections 118 and 119 provide for those persons '*subject to military law*'. Section 118 provides for officers who are subject to military law. If a person is an officer and a Permanent member of the Defence Forces then he / she is subject to military law '*at all times*' (s118(1)(a)). If a person is an officer and a member of the Reserve Defence Forces then he / she is a subject to military law only on occasions as specified in s118(1)(b) and (c).

At s118(d), any person '*not otherwise subject to military law*' may be treated as being so where they accompany '*an official capacity equivalent to that of an officer any portion of the Defence Forces which is on active service*' unless they have been subject to '*any general or special exemption made by the Minister*'. The onus of proof of exemption lies with such a person.

At s118(e), any person ‘*not otherwise subject to military law*’ may be treated as being so where they accompany a ‘*portion of the Defence Forces which is on active service*’, where they hold a pass from the ‘*commanding officer of that portion*’ which pass is revocable ‘*at the pleasure of such commanding officer*’.

Section 119 provides for ‘men’ (enlisted personnel) who are subject to military law. If a member of the enlisted personnel is a member of the Permanent Defence Forces, he / she is subject to military law ‘*at all times*’ (s119(a)). If a member of the enlisted personnel is a reservist, he / she is subject to military law only on occasions as specified in s119(b). Section 119(c) provides for any person ‘*not otherwise subject to military law*’ to be so where they are ‘*employed by or in the service of any portion of the Defence Force which is on active service*’, unless they have an exemption from the Minister, of which onus of proof of such exemption lies with the person. Similarly, s119(d) provides for any person ‘*not otherwise subject to military law*’ to be so where they are a follower of or accompany any portion of the Defence Forces on active service.

So, s169(1) provides that ‘*every person who, while he is subject to military law, commits any of the offences referred to in this section shall be deemed to be guilty of an offence against military law and, if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial*’.

Whilst offences provided for under s169 are referred to as ‘civil’ offences, such offences appear also to be considered to be ‘*offences against military law*’. It appears therefore that any person, whilst subject to military law, and who commits any offence under s169 has committed an offence against military law and is therefore liable to be tried by court-martial. Where he has been tried by court-martial and convicted of rape offences in particular, there is a prescribed punishment provided for at s169(3)(b).

- **Question 2:** *Do the provisions of this section confer an exclusive jurisdiction for these offences on military law?*

Jurisdiction of Courts-Martial

Section 169(1) commences with the words “*Subject to the provisions of this Act...*”. As to jurisdiction, it is suggested that s169 must be read within the Act as a whole and specifically in conjunction with s192, which provides for the ‘*Jurisdiction of courts-martial*’. There appears to be an overlap between s169 and s192(1A); whereby the offences of “*...rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990)*” (hereafter ‘rape offences’), are considered to be offences against military law, both under s169, and, under s192.

Section 192(1) provides that ‘*a general court-martial, limited court-martial or summary court-martial*’, **shall** have jurisdiction to ‘*try and punish any person for an offence against military law committed*’ whilst an officer or a man is ‘*subject to military law*’. Section 192(1A)(c) provides that a ‘*relevant offence*’, for the purposes of the section includes rape offences.

So it initially appears that, per s192(1) & (1A), courts-martial have jurisdiction to prosecute offences against military law of which offences include rape offences, where the alleged perpetrator commits such offence whilst being a person subject to military law.

However, sections 192(1B) and (2) provide further clarity as to jurisdiction to prosecute relevant offences. Section 192(1B)(b) provides that a **summary** court-martial **shall not** have jurisdiction *inter alia*, **‘to try any person for a relevant offence’**. Further, s192(2)(c) provides that a **limited** court-martial **shall not** have jurisdiction *inter alia*, **‘to try any person for a relevant offence’**.

S192(3)

Subject to the consent provision set out in s192(3A), s192(3) provides that a **general court-martial shall not** have jurisdiction to try any person *‘subject to military law’* for a relevant offence, which includes rape offences, **‘unless the offence was committed while the person was on active service’** or **‘while the person was despatched for service outside the State’** for any purpose other than other than service with International United Nations Force(s) (s3, Defence (Amendment) Act, 2006).

So, it appears, subject to s192(3), there is no jurisdiction for military law to prosecute relevant offences by way of court-martial, which relevant offences include rape offences, unless the offence was:

- Committed by a person subject to military law;
- While the person was on active service, or,
- Despatched for service outside the State.

This must be considered in the context of s192(3A) also.

S192(3A): Consent

Section 192(3A) provides that in the case of rape, rape under section 4, or aggravated sexual assault (per the Criminal Law (Rape) (Amendment) Act 1990), other considerations apply. Where the offence was committed by a person *‘subject to military law’* who was *‘neither on active service nor despatched for service outside the State’* when the offence was committed, it appears that a general court-martial may try such person on a charge of having committed that offence where consent to follow such course has been acquired from two parties:

- a) The person *‘in respect of whom the offence was committed’*, in other words, the complainant. And where such person *‘was subject to military law when the offence was committed’* – ie that the complainant was a person subject to military law at the time of commission of the offence. And where such person has consented in writing to the trial of the offence by court-martial; and,
- b) The Director of Public Prosecutions (DPP), who has given prior consent.

Does this indicate an exclusive jurisdiction on military law for the prosecution of such (rape & aggravated assault) offences?

Article 38.4. 2^o of the Constitution provides that,

“A member of the Defence Forces not on active service shall not be tried by any court-martial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any court-martial or other military tribunal under any law for the enforcement of military discipline”.

It appears that courts-martial generally have jurisdiction to prosecute offences against military law under the Act, of which ‘ordinary law’ or ‘civil’ offences are also offences against military law per s169. Such ‘ordinary law’ / ‘civil’ offences include rape offences. Per s169, it appears such offences

can be prosecuted by court-martial where the alleged perpetrator is ‘*subject to military law*’ and punished in line with the provisions of the section. Where a person is convicted by court-martial of such offences, a prescribed punishment is provided for at s169(3)(b).

The jurisdiction to prosecute by way of court-martial is provided by s192. It appears that the jurisdiction to prosecute relevant offences, which relevant offences also rape offences, is conditional on a number of factors.

Section 192(1B)(b) and (2)(c) provide, respectively, that summary courts-martial and limited courts-martial shall not have the jurisdiction to ‘*try any person for a relevant offence*’ (including rape offences).

Section 192(3) provides that there is jurisdiction for military law to prosecute relevant offences by way of court-martial, which relevant offences include rape offences, unless the offence was committed while the person was on active service, or, despatched for service outside the State.

Section 192(3A) provides specifically that where a rape offence is committed by a person subject to military law who was neither on active service nor despatched for service outside the State when the offence was committed, a **general court-martial may** try any person subject to military law on a charge of having committed that offence. Two conditions are to be fulfilled in order for such general court-martial to be held.

1. Where the ‘*person in respect of whom the offence was committed*’, ie the alleged victim / complainant, was ‘*subject to military law*’ when the offence was committed, and where such person consents in writing.
2. Where the Director of Public Prosecutions (DPP) gives prior consent. It appears that in such circumstances, and when such conditions are fulfilled, the offence can be prosecuted by way of court-martial.

So, specifically for rape offences, it appears that there is jurisdiction to prosecute by way of court-martial, if certain conditions prevail, such as: whether the person to be prosecuted is subject to military law, if they were on active service at the time of alleged commission of the offence or despatched for service outside the State. In addition, if the person in respect of the whom the rape offence was committed was subject to military law when the offence was committed, and they consent in writing to prosecution by way of court-martial, and the DPP gives prior consent, the offence can be prosecuted by way of court-martial.

Per s169(3)(b), where a person is convicted of rape offences by a court-martial, a prescribed punishment is provided for as follows:

“if he is convicted of rape, rape under section 4 (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990) or aggravated sexual assault (within the meaning of the Criminal Law (Rape) (Amendment) Act 1990), be liable to imprisonment for life or any lesser punishment awardable by a court-martial”.

Therefore, it is clear that in circumstances, limited and conditional, where a person is tried by a court-martial for a rape offence, if convicted, the deciding court-martial has discretion as to the extent of the punishment directed.

However Section 169 of the Act is ‘subject to the provisions of the Act’. Therefore, the fact that the Jurisdiction to try Rape offences under military law (in the limited circumstances provided for under the Act) is conditional on consent having been obtained from both the person ‘in respect of whom the offence was committed’ (ie the complainant), who ‘was when the offence was committed, subject to military law’, and the DPP means in effect that the section of the Act does not confer exclusive Jurisdiction for these offences on military law.

Clearly, the jurisdiction to prosecute rape offences is primarily with the civil courts. This would appear to accord with Art. 38.4. 2° of the Constitution, where primacy is given to civil courts, except in specified circumstances – i.e. if the person is “on active service” and / or “unless such offence is within the jurisdiction of any court- martial or other military tribunal under any law for the enforcement of military discipline”. Trial by court-martial for rape offences is an exception and subject to those limited and conditional circumstances as set out above.

- **Question 3:** *Does this exclusivity (if any) oust investigation by An Garda Síochána and prosecution by the DPP? OR,*

The system of prosecution of rape offences by the military does not appear to accord with an exclusivity of jurisdiction, but rather conditional, and limited jurisdiction, dependant on prevailing factors / circumstances, as outlined above.

It appears that, in circumstances where such conditions prevail, and a person is convicted by a court-martial, a deciding court-martial has discretion as to the punishment directed, within the bounds of the sentencing provision at s169(3)(b), that is, ‘liable to imprisonment for life or any lesser punishment awardable by a court-martial’.

It is submitted that the limited and conditional jurisdiction under military law to prosecute rape offences does not and cannot oust investigation by An Garda Síochána. It is not known to the writer how precisely the investigation of serious crime and in particular allegations of rape offences is carried out, but the concern is however that if Military Police ostensibly have primary responsibility / jurisdiction for the investigation of offences committed under military law (Rape and allied offences being offences under military law), the power of investigation by An Garda Síochána may de-facto operate concurrently with the power of the Military Police to investigate such offences. The power of the Gardaí to investigate such crimes, in circumstances where an offence such as rape or aggravated sexual assault has been first reported to Military Police, in practice, may be subject to delay, until the matter is reported by Military Police to the Gardaí, with all the possible consequences for the capture of forensic and other evidence.

- **Question 4:** *Do such offences remain punishable by the ordinary law system?*

There does not appear to be any bar to the punishing of rape offences by the ordinary law system. In fact, other than in the conditional and limited circumstances as outlined above, it is arguable that under the terms of Article 38.4.2 such offences must be prosecuted by the ordinary law system.

It appears that both under military law and civil law, the punishment for rape offences carries a headline / maximum sentence of life imprisonment. The severity of punishment under military law appears to be at the discretion of the court-martial. The degree of punishment that can be applied appears to be provided for *inter alia* by the relevant Scale (s209 & 210). In conjunction with Rule 75 of the Rules of Procedure, the court-martial appears to be empowered that '*such course shall be adopted as appears best calculated to do justice*'.

- **Question 5:** *If the section does confer exclusivity to military law, how could Rape offences in particular be removed from the section?*

Initially, or read in isolation, it appears that s169 confers exclusivity for the punishment of rape offences to military law, during the period that the offending person is '*subject to military law*'. However, it is submitted that s169 cannot be read in isolation and rather must be read within the context of the whole Act (as amended), which includes in particular a reading of sections 118 and 119; and s192.

Read together, arguably it becomes clear that rape offences in particular cannot be prosecuted and punished by military law / general court-martial, except in limited and conditional circumstances, as outlined above. Indeed, one of the conditions identified (s192(3A)(b)), includes the prior consent of the DPP to try by way of court-martial, which indicates at the very least, a level of cooperation between the civilian prosecutor and the military system.

Therefore, as s169 does not confer exclusive jurisdiction for the punishment of rape offences on military law, yet military law does have some limited and conditional jurisdiction, in circumstances as outlined above. If it is deemed desirable to remove the limited and conditional jurisdiction of military law in relation to the treatment of rape offences, it is necessary to remove rape and allied offences from the section, in which case as indicated below, consideration would need to be given to repeal or amendment of the provision.

- **Question 6:** *What legal steps would it involve?*

As Dodd has noted at [4.38], "*To repeal enactments, as to amend them, is a legislative function and rests solely with the Oireachtas*".

Repeal:

Per section 2(1) of the Interpretation Act, 2005, repeal '*includes revoke, rescind, abrogate or cancel*'.

In addition, the Supreme Court approved Bennion's (*Statutory Interpretation* (4th edn, Butterworths, 2002, Code 178 at 429) statement of the meaning of repeal in *DPP v Gilligan* [1993] 1 IR 92, wherein it was stated *inter alia* that,

"To 'repeal' an enactment is to cause it to cease to be in law a part of the Act containing it. A repeal may be either express or implied. The repeal of an enactment constitutes the amendment of the Act containing it."

In addition, as Dodd has noted at [4.37], "*all repeals are amendments, but not all amendments are repeals*".

In order for s169 as it is currently constituted not to apply, it would require the Oireachtas to repeal the provision.

In *Duggan v An Taoiseach* [1989] ILRM 710, a unilateral act by a Minister for Finance, who, in his budget speech sought to repeal the Farm Tax Act, 1985, was held to be invalid. Only the Oireachtas can repeal an Act / provision of statute.

Amendment:

Dodd has noted at [4.24] that, “*To amend a statutory provision means to alter its legal meaning*”. This definition, also attributed to Bennion, was approved in *DPP v Gilligan* [1993] 1 IR 92, by the Supreme Court (O’Flaherty J).

Amending a law will mean making a change to a law that exists already whilst retaining a portion of the law. Where a law is amended, careful consideration has to be given to the amending provision(s), as the meaning of the retained part may be / will be altered. In *Mathieson v Burton* (1971) 124 CLR 1 (Aus) an amendment which added words to a statute, had the effect of limiting those persons who were entitled to claim statutory benefit, including the respondent.

Appendix 7: Terms of Reference for the Independent Review Group – Defence Forces

Dignity and Equality in the Workplace.

The Defence Forces – An Independent Review

1. Overall aims of the Independent Review:

- To advise the Minister on whether the current legislative frameworks, policies, procedures and practices for addressing incidents of unacceptable behaviour in the workplace are effective.
- To independently assess whether the pervading culture in the workplace is fully aligned with the principles of dignity, equality, mutual respect, and duty of care for every member of the Defence Forces.
- To provide recommendations and guidance to the Minister on measures and strategies required to underpin a workplace based on dignity, equality, mutual respect, and duty of care for every member of the Defence Forces.

2. Definitions

Defence Forces comprises members of both the Permanent Defence Force and Reserve Defence Force.

Unacceptable behaviour comprises discrimination, intimidation, bullying, harassment, sexual harassment and sexual misconduct, including assault.

3. Specific Terms of Reference:

- 1) To examine the legislative frameworks, policies, systems and procedures currently in place within the Defence Forces to address discrimination, bullying, harassment, sexual harassment and any form of sexual misconduct in the workplace.
- 2) To assess whether the legislative framework, policies, systems and procedures are aligned with international best practice and HR norms, and are deemed fit for purpose in efficiently and effectively addressing incidents of unacceptable behaviour in the workplace and make appropriate recommendations.
- 3) To examine the end to end process for making a complaint of unacceptable behaviour and assess whether there are any barriers to serving personnel from making a complaint and fully and actively engaging in the process and make appropriate recommendations.
- 4) To examine the extent to which reprisal, or the fear of reprisal, or the existence of any culture of silence or complicity, may play as a barrier to reporting, or investigating, as well as any indication of inconsistencies or challenges in the application of policies.

- 5) To undertake a benchmarking exercise against the quantitative research, undertaken as part of the External Advisory Group 2002 Report, 'The Challenge of a Workplace.' and include a review of how female members of the Defence Forces perceive themselves within the Organisation and additionally how female members are perceived by the Organisation.
- 6) To assess the effectiveness of training syllabi and awareness programmes for all ranks within the Defence Forces, including at entry level, appointees as Military Investigating Officers and Military Police, on workplace issues pertaining to dignity and equality, duty of care, discrimination, intimidation, bullying, harassment, sexual harassment and sexual misconduct.
- 7) To review the performance evaluation, and promotion systems in the Defence Forces from the particular perspective of how leaders are selected and trained on management skills and duty of care to personnel under their command.
- 8) To establish if an appropriate culture prevails within the Defence Forces across all ranks, which robustly promotes, supports and enables, a work place based on dignity and mutual respect with a non-tolerance approach for unacceptable behaviour in the workplace.
- 9) To invite the views and experiences from both current and former DF personnel, on a voluntary and confidential basis, of their experiences of the policies, systems and procedures currently in place, both positive and negative, including workplace incidents of unacceptable behaviour, while noting that the final Report will not include any reference to, or provide any assessments or recommendations related to, any specific cases.
- 10) To invite the views and experiences of other parties who may be potentially involved in the complaints process, including Divisional and Commanding Officers who are ordinarily the first recipient of complaints; members of the Personal Support Service (PSS); Defence Forces Psychologist and Psychiatrist; members of the Defence Forces Medical Branch; and Military Investigating Officers, while noting that such engagements will be on a confidential basis.
- 11) To examine the statutory role of the Minister/Department in the systems and procedures for dealing with complaints.
- 12) While noting that the Ombudsman for the Defence Forces Act, 2004 provides a mechanism for members of the Defence Forces to submit complaints against civil servants; to consider appropriate complaint mechanisms to enable civilian personnel, civilian employees and civil servants to make complaints of unacceptable behaviour by members of the Defence Forces in the workplace.
- 13) To advise whether further work is required to examine issues of an historical nature and to make any recommendations regarding how this might best be pursued.

4. Methodology and Approach

The Review will be undertaken by independent, unbiased external experts appointed by Government. The Review Group will have access to experts, and research capability as they deem appropriate.

A Draft Review Report [within 6/9 months] and Final Review Report will be submitted to the Minister. The Final Review Report will be brought to Government by the Minister. The Final Review

Report will be made public by the Minister, but the Report will not reveal identities of complainants or any alleged perpetrators.

The Review Group will additionally provide the Minister with any interim assessments and recommendations, addressing issues for immediate action that may become apparent during the conduct of the review.

It is open to the Review Group to conduct its business through oral and/or written engagement on a group basis and/or individual basis.

The Review will include the receipt of the views and experiences from both current and former DF personnel of workplace incidents of unacceptable behaviour. The sharing of such views and experiences by interviewees will be entirely voluntary and treated in confidence.

The Independent Review Group will use detailed questions that allow the interviewees to be heard and provide a framework for gathering and analysing the information. The Independent Review Group will assess the Defence Forces culture (both past and present) in the context of dignity, mutual respect equality and duty of care at work, and additionally identify perceived or actual barriers (past and present) to reporting unacceptable behaviour. The Review Group may meet with other stakeholders in the process including Divisional and Commanding Officers who are ordinarily the first point of contact for complaints.

The Review Group may engage with personnel involved in the interim supports put in place by the Minister; Raise a concern- Confidential Contact Person (CCP) and the Dublin Rape Crisis Centre, as well as the already established, Defence Forces Personnel Support Service (PSS), Defence Forces Psychologist and Psychiatrist and medical supports within the Defence Forces Medical Branch. All such engagements will be anonymised and no details of individual complaints will be shared in accordance with confidentiality and GDPR requirements.

The Independent Review Group may invite submissions from both serving and former members of the Defence Forces and other stakeholders, including the Representative Associations.

The Review Group may meet with other Offices within the Minister's portfolio, such as the Office of the Ombudsman for the Defence Forces, which provide an external assessment for dealing with complaints from both serving and former Defence Force members and any other groups as determined by the Independent Review Group, such as structures within the Military Justice System. During the course of its engagement and in its deliberations with such independent structures, the Review Group will at all times, fully respect and acknowledge the independence of the Office of the Ombudsman for the Defence Forces and the Military Justice System.

The Review Group will perform its duties without expressing any conclusions or recommendations regarding liability or wrongdoing of any individual and will not include any reference to, or provide any assessments or recommendations related to, any specific cases of unacceptable behaviour.

The names of those who participate in the Independent Review will remain anonymous and there will be no factual or legal findings made in relation to any specific case.

Nevertheless, it is anticipated that the Independent Review, will identify what the issues are, determine the extent of the problem, and set out what steps will be required to address the historic and current issues so as to prevent them from recurring in the future.

In this context, it is open to Government, on completion of the Independent Review Group Final Report, to consider any further bodies of work that might be necessary, taking into account the findings of the Independent Review Group.

The Review Group will ensure that the independent review is conducted in a manner that is compliant with current Government Guidelines relating to COVID-19 restrictions.

Apart from correcting any factual errors or inaccuracies, neither the Department of Defence nor the Defence Forces will have any editorial control over the interim or final reports presented by the Review Group.

Such Reports may contain criticisms of systems, policies, procedures and workplace and it is accepted that such criticisms will be a necessary element of the process.

5. Deliverables and Associated Schedule

The Independent Review Group shall produce the following deliverables:

- Work plan within 30 days of the effective date of appointing the Review Group
- Monthly progress reports to be provided to the Minister;
- Any interim assessments and recommendations, in the form of a letter, addressing issues for immediate action that may become apparent during the conduct of the review;
- Draft Review Report provided to the Minister within 6 months with update to stakeholders
- Final Review Report provided to the Minister within 12 months- this may be reviewed based on outcome of draft review report
- The final report and recommendations will be brought to Government and stakeholders will be briefed.

Appendix 8: Copy of the
Independent Review Group –
Defence Forces’
call for submissions



Dignity and Equality in the Workplace The Defence Forces – An Independent Review

Request for Submissions

The Minister for Defence has established the Independent Review Group, comprised of independent external experts, to examine behaviours in the Defence Forces and to make recommendations on the measures required to underpin a workplace based on dignity and respect.

We invite all who have a view, an experience, a counter view, insights or suggestions, who have witnessed or been involved in the exemplifying good or bad behaviours, to make a submission to us as soon as possible. The closing date for receipt of submissions has been extended to Friday 22 April 2022.

You may prefer to meet with us in person rather than making a written submission. If so, please contact us by telephone on 01 539 3800, or email info@irgdf.gov.ie

If you wish to make a confidential submission to the IRG, please email info@irgdf.gov.ie using the response template below or alternatively send it by post to Independent Review Group, 27 Fitzwilliam Street Upper, Dublin 2, D02 TP23.

We will engage further with those making submissions and other parties of interest through interviews, surveys, group consultations and other means to develop a clear picture of what is wrong, right or needs change.

This is a very significant point in time for the Defence Forces. Your clear and informed input to this process will enable us to make recommendations to make the future culture of the Defence Forces a safe, attractive and accountable place to work.

Thank you for your participation in this process.

- **Bronagh O’Hanlon (Chair)**
- **Jane Williams**
- **Mark Connaughton SC**
- **Mr Daniel Hegarty**
- **Mr Simon Boyle SC**

Please note that submissions received will be subject to the provisions of the Freedom of Information Act 2014. Any personal data submitted as part of the consultation process will be treated in accordance with the requirements of the GDPR and the Data Protection Act 2018. See a copy of [the IRG Data Protection Notice](#).

Note:

Raiseaconcern, an organisation independent of the Defence Forces which specialises in the area of employee disclosure, was appointed by the Minister for Defence in October 2021 to act as Confidential Contact Person (CCP). The CCP's role was to listen to and assist serving and former members of the Defence Forces, both male and female, who had been the victims of bullying, harassment, sexual harassment or gender discrimination in the workplace in documenting their complaints. Raiseaconcern as CCP will be providing the Minister with the key themes arising from this work including anonymised summary information collected by them relating to each person who has come forward. This information will be made available to the Independent Review Group to inform their work, so it will not be necessary for those who have made submissions to the CCP to do so again. Such persons are, however, welcome to do so if they wish.

Once the IRG has reviewed the anonymised summaries, the CCP will write to all those who have come forward asking whether or not they wish the full detail of their submissions to be made available in confidence to the Independent Review Group.

Appendix 9: Australian restorative justice model

Australian Defence Force Restorative Justice Program

1 Defence Abuse Response Taskforce (DART)

In 2012, Australia founded the Defence Abuse Response Taskforce (DART), to provide redress and monetary reparations to military sexual assault survivors. Australia has had success with two innovative methods that officials there say is improving military culture and providing better care for victims of abuse.

DART, modelled after the Catholic Church's *Towards Healing* restorative justice program to address sexual abuse in the church, which ran from 2012 to 2016. Later called the Defence Reparation Scheme (DRS), the publicly funded program offered survivors counselling, confidentiality, reparation payments and restorative engagement meetings.

DART gave victims the option to report anonymously with the hope that more people would feel comfortable coming forward without involving the police.

In the DART process, a victim and senior officers met face-to-face away from the complainant's base. The participants could wear their all-dress uniform and chat, but did not need to discuss specific details of the abuse. The senior officer gave two official, unscripted apologies — one personal and one on behalf of ADF— and said: "I'm sorry."

The then Australian Defence Minister Stephen Smith's met with victims himself and required all senior one-star generals to engage on the issues and to issue, in person, an apology to the victims. The idea was to involve as many higher-profile/ ranked military members as possible in order to increase their exposure to victims, see the scope of the problem and motivate cultural change from the top down.

The DART taskforce also made detailed provision of reparation payments of up to \$50,000 to some victims, including an extra \$5,000 if Defence mismanagement was a factor.

2 DART Final Report

The final DART report¹ was published in March 2016.

The Taskforce was established on 26 November 2012 to assist complainants who had suffered sexual abuse, physical abuse, sexual harassment and workplace harassment and bullying in Defence prior to 11 April 2011. Ministers have extended the operation of the Taskforce from 1 April to 30 June 2016.

The Taskforce accepted allegations of abuse that were within scope and plausible. The Taskforce did not have any powers of investigation as they were not necessary for its purpose, that is, to provide redress to persons plausibly abused in Defence.

¹ <https://apo.org.au/node/67232>

It follows that none of the allegations accepted by the Taskforce have been established to the higher standards of proof required for administrative action or disciplinary or criminal proceedings (balance of probabilities or beyond reasonable doubt).

The Taskforce received 2,439 complaints of which 1,751 were assessed as within scope and plausible. Subject to certain conditions, complainants could access up to five outcomes which were taken up as follows:

- a reparation payment (1,723 complainants at a total cost of \$66.63 million);
- counselling (577 complainants);
- participation in the Restorative Engagement Program (715 complainants);
- referral to police for possible criminal investigation and prosecution (133 complainants); and
- referral to the Chief of the Defence Force for consideration of possible administrative or disciplinary action (132 complainants).

Because the Taskforce's purpose was to assist complainants, the selection of outcomes was entirely a matter for the individual complainant. So, for example, irrespective of the Taskforce's views about the strength of a complainant's allegations, a complaint would not be referred to police or the Chief of the Defence Force without the complainant's consent or support.

The DART Final Report also contained several *final* recommendations and observations by the DART team for the Ministers consideration.

3 Restorative Engagement Program

At the moment, The Office of the Commonwealth Ombudsman (OCO), within its Defence Force Ombudsman jurisdiction, provides an independent, external and impartial mechanism for people to report historical and contemporary serious abuse in the Australian Defence Force (ADF). One of the responses available to a reportee is participation in the OCO's Restorative Engagement Program.

The program is designed to support a reportee, to tell their personal story of abuse to a senior representative from Defence in a private, facilitated meeting – a Restorative Engagement Conference. The conference also provides the opportunity for Defence to acknowledge and respond to your personal story of abuse².

² https://www.ombudsman.gov.au/__data/assets/pdf_file/0021/46920/RE-factsheet-updated.pdf

Appendix 10: Proposed grievance model

Appendix 10 Proposed Grievance Model

Key consideration for inclusion in a reformed grievance model specific to the Defence Forces would be:

Investigations

The investigations process should have the following core elements present and clearly defined in order to ensure openness, transparency and faith in the investigative process.

- Designate Liaison person to coordinate investigation;
- Qualified investigators conducting investigations;
- Investigators being investigator only and not judge and jury or sanctioning officer;
- No biased investigators investigating friends or Officers investigating Officers;
- Strong appeals mechanism;
- Transparency;
- Terms of reference supplied to all participants;
- Defined role for complainant, witnesses, alleged perpetrator; and
- Set timelines being adhered to or enforced.

There is a conspicuous absence of the above elements in the current process. The presence of the above noted investigative elements lends confidence to any investigative decision reached and should be given credence by all parties concerned as the manner in which outcome was determined is presented in a transparent and clear manner with room for additional information or an appeal as appropriate.

Lack of Process Map and Clear Guidelines

The analysis conducted by the independent HR Company Voltedge, the benchmarking survey and the written and oral submissions from the past and present members, a discernible pattern around the lack of clarity for members in the utilisation of the grievance process was identified. The policies are difficult to get through, long and complicated in their construction and utilise technical language making them difficult for members to penetrate and understand.

There is no process map available that has been presented to the IRGDF.

Any future grievance or disciplinary policy within an organisation should be clear, concise, free from jargon and readily accessible by all staff. It should be accompanied by a clear process map which outlines the various functions and mechanisms at each stage of the process.

Timelines

Although procedural timelines are set out in the existing grievance process, it is noted through several submissions from both management and members who have engaged with the process that timelines are not reflective of a modern efficient grievance process and in addition to this, these already excessive timelines are not adhered to. There were several submissions outlining that in most cases complaints could be drawn out for years, and ultimately rarely had an effective outcome after this protracted time.

The future policy around grievances should have set timelines to resolve matters as a priority and not have excessive drawn out time scales, irrespective of logistical challenges faced in engagement with witnesses, accused or utilisation of any appeals mechanism.

Mediation

Mediation is a key component of any effective Grievance Policy and Procedure. The utilisation of external mediation would provide access to services that are completely independent of the Defence Forces and line management, and can therefore be a useful resource where issues of trust and confidence in management or the Defence Forces internal procedure make a resolution otherwise difficult. Access to mediation prevents issues from festering.

There are such mediation mechanisms built into the Admin Instruction A7 Chapter 1, but the feedback from individuals who engaged with the IRG-DF is that they are either unaware of the mediation facility, are untrustworthy of the mediation facility it as they feel that the mediators are not impartial and that this facility is not efficient. There was also feedback that mediation was often misunderstood as a definitive ruling on a matter as opposed to a proposed compromise or mutually agreed resolution.

As outlined by the Workplace Relations Commission, the benefits of mediation are:

Speed: Reaching a settlement through mediation is quicker, cheaper and less stressful for all parties.

Cost: Mediation cuts the cost for both the complainant and respondent as it reduces the amount of time and expense associated with protracted conflict.

Confidential process: Mediation is a completely voluntary and confidential process. The independent mediator discusses the issues with both parties in order to help them reach a better understanding of each other's position and underlying interests. Without taking sides the mediator will encourage the parties to come to an agreement that is acceptable to both sides.

Control: The outcome of the mediation process remains in the control of the parties therefore any agreement reached must be acceptable to both sides.

Legally binding: The Agreement reached through mediation is legally binding and can be enforced through the Courts.

Consideration should be given to examination of the existing structures within the Defence Forces and should be aligned with the proposed changes over the next 12 months. These changes could incorporate a new structure and unit to create a specialist Defence Forces Employee Relations Unit with the addition of several new HR roles, with grievance expertise, who would come under the new head of HR. This would be in line with the strategic goal of creating a modern and strategic HR function within the Defence Forces that is fit for purpose.

Recommendations

1. Creation of a Defence Forces Employee Relations Unit (ERU);
2. Create and recruit for the Head of the Defence Forces ERU;
3. Create and recruit for specialist Designated Liaison Officer Roles in the ERU;
4. The ERU should act as a central repository for all data relating to grievance and disciplinary matters including the management, coordination and reporting of same;
5. Create a new unit under the Military Police, a sub section or grievance division which would be answerable to the HR function of the ERU;
6. Develop a new grievance model with independent of chain of command oversight;
7. Train mediators within the HR function, independent of the chain of command, to manage less serious mediation issues;
8. Create a RFQ network of independent external mediators for more serious complaints;
9. Define the process map for the new grievance system;
10. Define the Appeals mechanisms;
11. Define the Timelines for the various stages of the process;
12. Define the roles and responsibilities of each participant of the grievance process e.g. complainant, investigator, witness, accused etc.;
13. Engage with key stakeholders during draft phase of policy

It should also be noted that these solutions alone would not bring about the successful eradication of inappropriate behaviours and bridging the gaps identified in the grievance process, but would benefit from support in other areas outlined in this report such as;

1. a new performance appraisal system with focus on both military and soft skills;
2. the inclusion of a promotion process under potential grievances once new promotion procedures/ competency based model in place

1 Long term Grievance Resolution Procedure

The Minister for Defence and the Defence Forces (DF) has committed to a programme of promoting and maintaining good employee relations and to treating every member of the DF with dignity and respect.

In this regard, every member of Óglaigh na hÉireann has the right to raise and pursue any grievance that might arise over the course of their service as a member of the DF. In this context, it is a fundamental principle of good workplace relations that persons who wish to raise a grievance should, in the first instance, attempt to have the grievance resolved through agreed procedures, which may include attempting to resolve the issue through (internal/ external) mediation at any stage in the process.

This Procedure sets out the steps to be followed to resolve any such grievance promptly, fairly and as close as possible to its point of origin.

This procedure would apply to every member of the DF, who feel they have a grievance in relation to any standard employment relations issue with the following being an illustrative, but not exhaustive list of issues that can be raised:

- Bullying
- Harassment
- Sexual Harassment Procedures
- Promotions
- Promotion / training course access
- Lateral appointments (e.g. “specialist” posts) and any consequent appeals
- Inter-personal issues
- Transfer applications
- Duty allocation and duty details
- Overtime allocation
- Annual leave allocation and entitlement to avail of same
- Work patterns (e.g. work sharing and shorter working year)
- Rostering
- Complaints in respect of the processing of grievances in relation to promotions
- Reprisals

These procedures would not apply to matters arising in specific arenas where the DF has in place significant policies and procedures for the appropriate management of certain employee issues that may arise from time to time such as discipline regulations or court martial proceedings. Parties to matters being dealt with under these Procedures and Processes may initiate a separate grievance in relation to how the process is being carried out (e.g. undue delays etc.).

All the above would need to be supported with a new performance appraisal system and the inclusion of promotion once new promotion procedures/ competency based model in place.

The HSA Code of Practice¹ contains guidance notes for employers and employees, which have been incorporated into the structure of this complaints process.

¹ Health and Safety Authority and Workplace Relations Commission (2021) *Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work*

2 Employee Relations Unit

While case law recognises that an employer can never be entirely independent and will always have an investment in the outcome²) it is crucial for the integrity of any aforementioned process that it has the ability to vigorously investigate any complaint of misconduct and ensuring that inappropriate transgression is detected and adequately dealt with in a timely manner.

In most organisations that is not complicated as the professional HR function will generally be charged with the management of the complaints process in any particular instance. Unfortunately at present in the Defence Forces this is not the case. Indeed this has been previously identified as a significant barrier and deterrent to the efficient utilisation of the process.

Accordingly, the model outlined below takes the investigative process out of the hands of the line managers while still allowing for the early resolution of the grievance at a local level before escalation, the investigation to be carried out internally with adequate independent expert oversight to ensure impartiality and accountability.

In order to overcome the negative connotations and historical issues relating to the existing grievance process³, and its management within the Defence Forces, a new Employee Relations Unit, with a number of key HR qualified roles would need to be considered. This unit would support the new Head of Strategic HR and would itself be staffed with HR Grievance experts while drawing on the unique internal resource of the Military Police. This model would provide appropriate, and independent of the current chain of command, oversight of the grievance process.

An outline of the proposed structure of this new Employee Relations Unit is outlined in Figure X.X below.

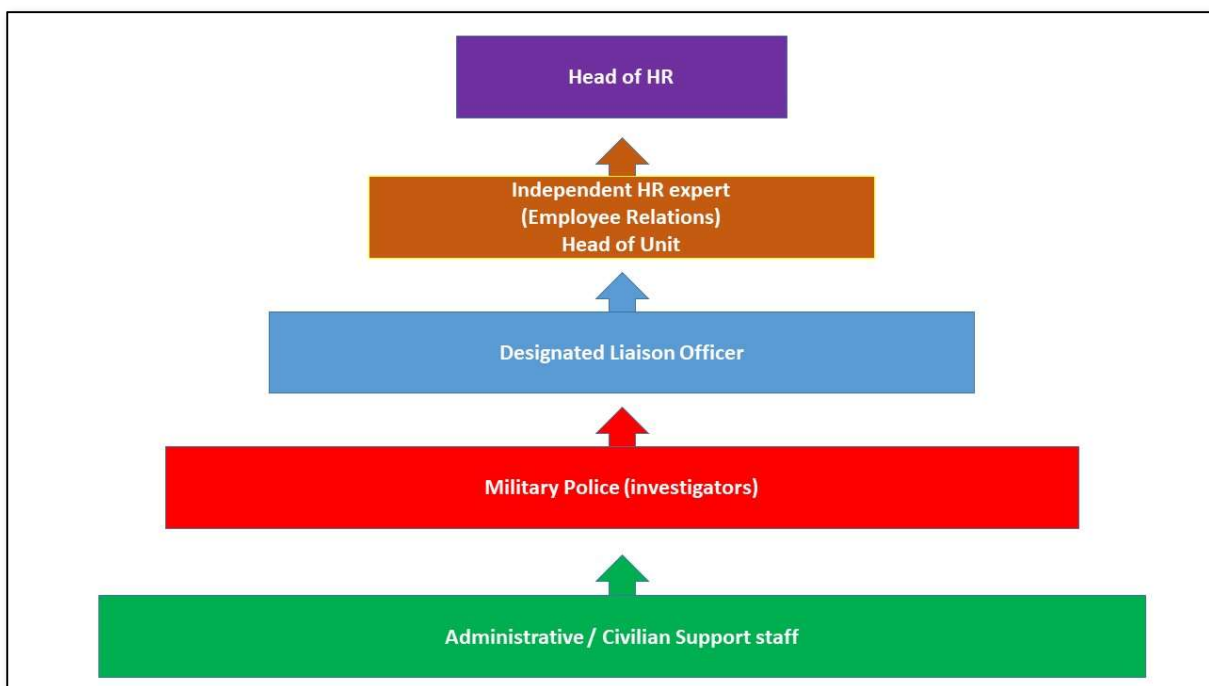


Figure X.X Proposed Structure of Employee Relations Unit

² *Mooney v. An Post* [1998] 4 IR 288.

³ Redress of Wrongs

2.1 The Designated Liaison Officer

One of the key specialist roles to be created within the new unit would be that of the Designated Liaison Officer (DLO). The DLO would be HR qualified with a specialist expertise/ experience in the area of employment investigations, industrial relations and/ or employee engagement.

The DLO would be the first point of contact for the individual and would be the liaison with the individual throughout the case. They would also oversee the investigation and determine, based upon the report / investigation from the Military Police whether there is merit to the grievance and/ or a requirement to escalate the matter for potential sanction through the disciplinary process.

The HSA Code of Practice includes the role of a '*Designated Person*', who will independently oversee each complaint which is referred to the Employee Relations Unit.

Mediation

A key function currently underutilised from the existing system is access to mediation. Mediation is a form of alternative dispute resolution in which a neutral third person helps the parties achieve a voluntary resolution of a complaint or grievance thereby avoiding the need to have the complaint adjudicated.

Access to mediation has proven to be an effective method in reducing the escalation of a complaint all the way through to adjudication. The WRC had 518 cases for mediation in 2021, of which 259 were resolved at mediation, giving a 52% successful resolution rate for 2021⁴.

There would also need to be consideration given toward having trained mediators within the Employee Relations Bureau or whether this function should be outsourced as and when required.

At any stage in the process either of the parties may consider the utilisation of mediation to resolve the matter.

The intention of this policy is to encourage the use of informal resolution methods and the use of mediation as often and as early as possible during disputes. Complaints should only proceed to formal investigation once efforts to utilise local resolution methods or mediation have been exhausted, or are considered to be unsuitable due to the nature of the complaint.

Process Map

Below is the proposed process map, Figure X.X, for the entire end to end process utilising the new Employee Relations Unit. This new model would allow for access to mediation at any time during the complaint process.

⁴ Workplace Relations Commission (2022) *Workplace Relations Commission Annual Report 2021*

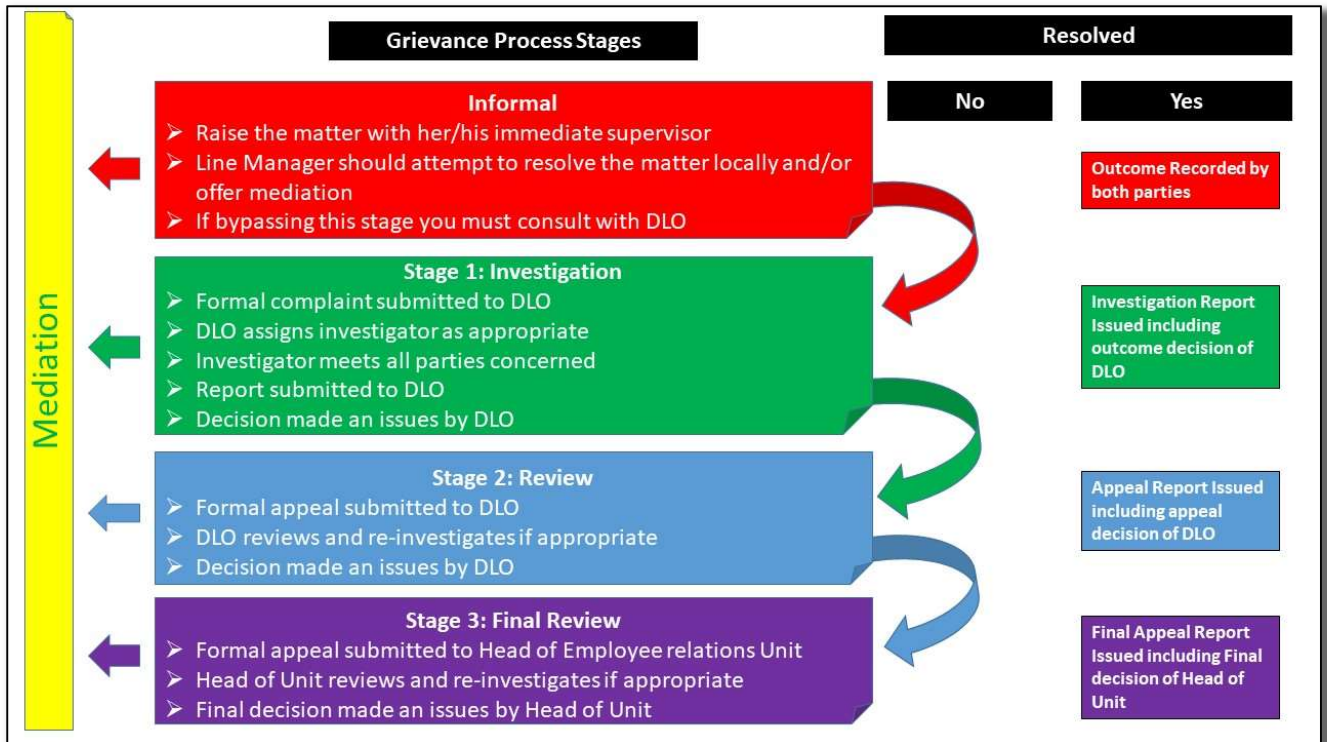


Figure X.X, Suggested *Grievance Process Map for the Defence Forces*

Timelines

For any Grievance Procedure to function properly and retain the confidence of an aggrieved person that the issue will be dealt with in a timely manner, it is critical that all parties adhere to the timelines set down in these procedures unless there is agreement between both parties to extend the timelines for particular reasons.

The time allowed for the informal stage below shall be **14 calendar days** (however, with the agreement of the parties this may be extended by a further 7 days), and the time for all subsequent stages shall be 21 calendar days. Where a grievance is not resolved within these specified time limits a member shall be free to refer the grievance to the next stage.

Steps in Process

As outlined in the process map above there are 4 stages to the grievance model

Informal: The aggrieved person shall raise the matter with her/his immediate supervisor who will consider the grievance outlined and do her/his utmost to resolve the matter informally.

Stage 1: Where the aggrieved person is of the view that the matter has not been dealt with informally to his or her satisfaction, he or she may advance the matter to Stage 1.

At this stage, the aggrieved person should document the grievance in writing and submit it to DLO. Should the allegations merit it, the DLO will appoint an investigator to investigate the grievance thoroughly and shall meet and discuss the matter with the parties involved as part of the investigation.

The investigator will complete a thorough investigation with input from all relevant parties and complete a report for the DLO. The DLO will decide, based on the investigation report, if any further action is required.

Stage 2: Where the aggrieved person disagrees with the result of the investigation at Stage 1 and wishes to pursue the matter further they may appeal within 4 days, in writing, of the decision. The DLO will then consider the information further and inform the appellant, in writing, of the outcome.

Stage 3: Where the aggrieved person disagrees with the result of the investigation at Stage 1&2 and wishes to pursue the matter further they may appeal within 4 days, in writing, of the decision. The senior ranking officer, i.e. the head of the Employee Relations Unit, will conduct an initial paper investigation, including written submission from individual who is appealing the decision and reasons for same.

This is the last stage of appeal.

Key Policy Considerations

Confidentiality

All cases dealt with under this procedure shall be conducted in the strictest confidence, unless otherwise agreed by the party(ies) involved. Breach of same may result in disciplinary action against the individual(s) who breaches this confidentiality.

Records

Details of all grievances or complaints submitted and the outcomes arrived at and the action taken (where appropriate) shall be documented (and countersigned where applicable) by all parties and in accordance with the Data Protection Act 2018. In a case of disputed or disagreed elements of the document, these areas will be noted and the discrepancy as noted by both parties will be highlighted but not signed.

Where matters are resolved informally between parties, each party shall retain an agreed record of the outcome. This record may not necessarily be required to be retained centrally.

Provision for Meeting the Parties

Except where it is apparent that a grievance can be resolved on the basis of documentation, officers investigating a grievance shall, as part of their investigation, meet all parties to a grievance and supply a copy of the complaint and any meeting notes in advance of meeting the complainant.

Roles and Responsibilities

In order to ensure transparency in the process, it is important to define the roles and responsibilities for all participants.

All parties involved in a complaint should be aware that confidentiality is of paramount importance.

All parties should engage fully with the process with the goal of resolving the dispute. They must not engage in any negative behaviour or hostility throughout the process.

Malicious complaints may be viewed as misconduct and may merit disciplinary sanction.

All parties must fully engage with the investigation in order to avoid unnecessary delays. An investigator is entitled to draw conclusions from the failure to co-operate or engage with the investigation i.e. that, on the balance of probability, the alleged incident did occur.

Failure to co-operate with the investigation may result in disciplinary procedures.

The ability to engage in an investigation will not be hampered by absences of leave i.e. sick leave, annual leave. The ability to engage is not impeded by an individual's absence on sick leave.

Members who are part of an investigation are obligated to engage in a forthright and timely manner.

All participants should be allowed to be accompanied during the investigation process by a person of their choice, such as a colleague or a member of their representative organisation.



If the decision is taken to proceed with a formal investigation, both the accused and the complainant should be supplied a terms of reference defining the scope of the investigation, including indicative timelines.

Appendix 11: *Review of Best Practice Approaches to Dignity, Respect and Culture in the Defence Forces*, prepared by Professor Thomas Garavan on behalf of TIO Consulting Ltd.



Review of Best Practice Approaches to Dignity, Respect and Culture in the Defence Forces

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Executive Summary

Methodology

- The scientific evidence presented in this report is based on two sources of data: data and insights derived from a systematic review of the literature on dignity, respect, inclusion, and culture in general and a meta-analysis of the culture literature with a specific focus on understanding antecedents, processes and outcomes and distilling what the impact of a dignity, respect and inclusion focused culture might lead to in terms of outcomes. The analysis also uses empirical data derived from both survey and structured interviews.
- In conducting the review of the scientific evidence using both empirical studies and theoretical literatures, we searched for all the relevant literature that addressed cultural issues in a general sense and also addressed domain specific organisation cultures. The findings are synthesised in Table 1 and Figure 1.
- We conducted a focused and rapid systematic review of the literature on dignity and respect culture, general culture, and the wider literature on inclusion. The wider literature is theoretically stronger and can be used to bring rigor to the analysis. What emerged as surprising is the lack of attention to dignity and respect in the military literature. To prepare the data for the meta-analysis we abstracted the key findings from empirical studies and used metanalytic techniques to compute relationships.
- To analyse the empirical data on the current organisation culture within the Defence Forces, we used an abductive methodology to surface key components of dignity, respect and inclusion culture as presented in Figure 3. We specifically analysed the qualitative comments from the survey questionnaire. The qualitative comments in this survey provided a good insight on the antecedents, content, and operationalisation of the Defence Forces culture when it came to dignity and respect and whether the current culture was supportive of these ideas. We also analysed a sample of 25-30 qualitative interviews to surface key content elements of the experiences of culture by employees.
- Taking this abductive approach, we built a model of the culture within the Defence Forces. This involved the integration of key literature findings with the empirical data. Such an approach combined the best of the empirical and the scientific evidence.
- We sought to answer the following overarching questions: Question 1: What are the key attributes relevant in a workplace based on dignity and mutual respect with a non-tolerance approach for unacceptable behaviour? Question 2: What are the relevant attributes of the current culture in the Defence forces? Question 3: What evidence is there to support or otherwise the existence of an appropriate culture in the Defence Forces

Content Dimensions of a Dignity, Respect Culture

- Dignity and respect represent two sides of the same coin and in the literature they are used interchangeably. Respect gives particular primacy to the behaviour of employees whereas dignity is concerned that they are treated as human beings.
- Dignity is of fundamental importance because it argues for the inherent, universal, and unconditional dignity of humans simply because of being human. This focus on the human is the litmus test by which an organisations culture is judged to uphold, espouse, and practice dignity. Therefore, organisations can have both dignity promoting and dignity violating features when it comes to organisation culture.
- The concepts of dignity and respect are relatively new to the literature however there is an extensive literature that addresses general culture. What emerged from the dignity and respect literature is the emphasis given to the behaviour whereas in the *dignity* literature the focus is on the importance of civility and humanity.
- The culture web frameworks highlighted that the core of such a culture or what we call the paradigm is a focus on the notion that values around dignity and respect must be part of the fabric of the culture and that it permeates right throughout the organisation. In addition, it must be supported from top to bottom and have an underpinning of progressive HR practices and policies and leadership behaviours.
- The meta-analysis findings highlight important antecedents and process dimensions that facilitate the emergence of dignity, respect, and inclusion culture. Of primary importance are the structural configurations of the organisation, its leadership processes, the implementation of supportive HR practices and the implementation of domain specific practices and policies around dignity, respect, and inclusion.

Existing Cultural Features within Defence Forces around Dignity and Respect

- The existing culture within the Defence Forces is a disabling culture when it comes to supporting dignity and respect. All of the key elements of the culture web are not aligned with the essence of such a culture which is a focus on the person.
- The existing culture web is particularly deficient when it comes to leadership role modelling, the behaviours of rank-and-file employees, the lack of a supportive set of HR practices and a set of organisational rituals and routines that promote dignity and respect. What is most remarkable from the data is the extent to which every segment of the culture web is in the negative.

Making Change Happen

- The task of changing the existing culture is a mammoth one that will require a whole system, systemic and organisation wide approach. It will also need to bring the rank and file along with this change process. Therefore, they will be an important part of the solution implemented and this solution will need to be framed in a positive way to be successful.

INTRODUCTION

The purpose of this evidence-based report is to provide a synthesis of the literature and scientific evidence on dignity and respect in the workplace with specific focus on the cultural dynamics of each one. In this context the report sets out to address three key questions as follows: **Question 1: What are the key attributes relevant in a workplace based on dignity and mutual respect with a non-tolerance approach for unacceptable behaviour?** **Question 2: What are the relevant attributes of the current culture in the Defence forces?** **Question 3: What evidence exists based on confidential and sensitive materials to support or otherwise the existence of an appropriate culture in the Defence Force?** To address these three questions the report sets out findings derived from three data sources: a review of the literature on dignity and respect in the workplace; the results of a meta-analysis of the literature to identify antecedents, processes and outcomes of dignity, respect and inclusion culture; an analysis of empirical data derived from questionnaires and structured interviews to make judgments about the existing culture within the Defence Forces in the context of dignity and respect. The report is structured as follows. We first present several definitional issues that are central to the focus of the report. We then distil the literature on dignity and respect cultures into a culture web framework and articulate the web ingredients that are required to realise such as culture. We follow this with a presentation and analysis of the findings of the meta-analysis on the antecedents, sustainers (processes) and outcomes of a dignity, respect, and inclusion culture. The final section of the report outlines the key high-level insight on the current culture within the Defence Forces around dignity and respect. Note that to conduct the meta-analysis we broadened slightly our focus to include inclusion and general culture literatures.

What is Dignity and Respect in the Workplace?

Prior to outlining the type of organisation culture that would support dignity and respect in the Defence Forces it is important to clarify some important elements of both concepts and how they are different from each other.

Workplace Dignity

Workplace dignity is an important element of an organisation's approach to minimising bullying and harassment in the workplace. In a general sense dignity is concerned with an individual's value and worth (Hicks, 2018) and it is powerfully influenced by organisational structures, leadership, and the wider culture (Lucas, 2015). In the context of this report, workplace dignity is defined as "self-recognised and other recognised worth acquired from (or injured by) engaging work activity (Lucas, 2015). Research highlights different dimensions of dignity including:

1. **Dignity at work.** Employees are treated with respect in an environment free from marginalization (e.g., discrimination, harassment, exclusion, bullying). They feel a sense of psychological safety in their ability to be themselves, voice concerns and be heard. A culture of dignity enables organizations to attract and retain diverse talent.

It is foundational for inclusion. And it helps address work-related stress at one of its sources.

2. **Dignity *in* work.** Employees find meaning and purpose in their work and understand how it contributes to the organization's broader goals. They take pride in what they do because it is valued, and they see a future where they will continue to be valued even as jobs are redefined with technological advances and other changes, and where employers prioritize reskilling and career-long learning.
3. **Dignity *from* work.** Employees feel respected because they are paid what they are worth, can sustain a suitable standard of living, are confident in their benefits to provide the security they need to provide for themselves and their dependents, and have the wellbeing to thrive now and in the future.

When it comes to the content of dignity at work Thomas & Lucas (2019) highlight six important dimensions of dignity that have important implications for the content of organisation culture.

- **Respectful Interaction.** Respectful interaction focuses in communication and interpersonal processes and includes respect in communication, respect when interacting with others and continually treated with respect.
- **Competence Contribution.** Respect for competence is also an important component of dignity and includes opportunities to build and develop competence, recognition of competence and expertise and appreciation for the application of competence in work efforts.
- **Equality.** This dimension of dignity emphasises a situation where people talk to others as equal and where everyone feels equally valued.
- **Inherent Value.** This dimension emphasises a culture where everyone is valued as a human being, people treat other as a person not just a worker and where people are genuinely valued.
- **General Dignity.** This dimension focuses on the extent to which work is a source of dignity of the employee, where there are practices and routines that emphasise dignity and they continuously experience dignity.
- **Indignity.** This refers to a negative dignity situation in an organisation is characterised by people treating others as second-class citizens, where employees are treated as less valuable than machines and objects, where dignity is undermined each day and where people are treated in unedifying ways.

Workplace Respect and Disrespect

Workplace respect refers to an evaluation by employees about how much they are valued by the organization (Fuller, Marler, Hester, Frey, & Relyea, 2006). Respect reflects how employees perceive themselves as being viewed by their employing organization (Tyler &

Blader 2001, 2002). Employees who feel they are being respected by their organization have a greater level of status and self-esteem. A respectful atmosphere creates a positive work environment which echoes the belief of employees that they are valued by the organization (De Cremers & Tyler, 2005). Workplace respect has a number of positive outcomes. It can become a source for strengthening an employee's self-esteem, is grounded in positive appraisal for employee's participation by colleagues. An employee's perception of being valued creates a strong relationship with peers which results in a stronger identification of being part of a collective organization. Workplace respect among employees can be expected to lead to the development of trust among colleagues. Employees perceive that they are respected when their work experiences and interactions suggest that they are being treated in accordance with the standards defined by the organization. In contrast, employees perceive that they are not respected when their supervisors or co-workers treat them in normatively inappropriate and non-inclusive ways (Rogers & Ashforth, 2017).

There are several dimensions of respect emphasised in the literature. *Respect as a person*, which should be shared equally with all team members. This respect is ensured by courtesy and the creation of a space where each member of the group is valuable. *Well-earned respect or respect for professional achievement* lies in the recognition of individual employees for quality tasks performed. This is how the manager can highlight to employees who have exceeded expectations. It is a confirmation that each employee has unique strengths and talents. The respect earned meets the need of each person to be judged for good performance.

Disrespectful behavior in the workplace is any behavior that is unprofessional, inappropriate, rude, unpleasant, disturbing, or offensive. This type of behavior tends to hurt others and cause stress among employees. Disrespectful behavior can fall into several categories. Uncivil behavior shows total disregard for others. Verbal abuse is harsh and insulting language. Abrasive behavior causes enough emotional distress that it disrupts the effectiveness of the organization. Bullying behavior is repeated negative actions toward specific people that results in a toxic workplace environment and a shift in power. Dimensions of disrespectful behaviour identified in organisations:

- Managers micromanage everything and everyone
- Those in charge continually change their mind without considering the impact on the rest of the team
- Everyone feels replaceable within their role
- There is a lack of transparency—only certain team members are kept in the loop
- Rumours spread throughout the workplace
- People talk about one another behind people's backs
- Smaller cliques form within the organization
- Each person's time is not valued or considered
- Very few explanations are given for why decisions are made

- Disrespectful or rude comments are made without any repercussions
- Body language which is dismissive (i.e., eye rolling)
- People take credit for other people's work or ideas
- Employees are underpaid based on industry standards
- Employees are overworked without any consideration of burnout and stress

The question therefore arises as to the differences between dignity and respect. We propose that **respect gives emphasis to the behavior whereas dignity emphasises the importance of civility and humanity**. To further elaborate on this distinction, dignity places primary focus on a state of being worthy and honourable whereas respect emphasises the admiration for someone because of their qualities and or achievements. However, it should be pointed out that a person does not require admirable qualities to be treated with dignity however this is an essential condition for respect. In essence both go hand in hand and are a necessary component a culture that is free from bullying and harassment behaviours. Treating people with dignity involves treating them with courtesy and kindness in addition to respecting their rights, giving them freedom of choice, listening and taking into consideration what they say and respecting their wishes and decisions, even if one disagrees. In this context the literature highlights the types of behaviors that can maximize both dignity and respect. These are micro behaviours that can be effective and include:

- Encouraging co-workers to share their valuable ideas. Actively listening to others. Never interrupting or putting in their two cents before they are finished. Use other people's ideas to increase productivity and efficiency.
- Do not insult people or talk behind their back. Avoid nit-picking, micromanaging, criticizing or demeaning others. Be aware of tone, body language, expression and demeanour during all interactions. Treat people the same no matter their race, religion, age, etc. All people you interact with should be treated equally.

Table 1 summarises some of the key definitions associated with dignity and respect in the workplace.

What Dimensions of Organisation Culture Support Dignity and Respect?

To address this important question, we focused on two sources of information and scientific research. We first completed a review of the literature on dignity, respect and to a lesser extent inclusion to identify common specific elements. To bring some coherence to these literatures used the Johnson and Scholes Cultural Web (2007) framework as the organising device.

Meta-Synthesis of the Literature

We first report the key findings to emerge from our meta synthesis of the literature. **Figure 1** depict the outputs of the analysis.

The Appropriate Cultural Paradigm. The literature reveals that in terms of a dominant cultural paradigm supporting dignity and respect (Allan & Blustein, 2022; Bal et al 2020). This paradigm should have a number of key elements.

- Values around dignity and respect must be part of the fabric of the culture within the organisation rather than simply be lip-service
- Dignity and respect must permeate the total organisation from top to bottom and be experienced by all employees
- The paradigm must be supported by progressive policies and practices around dignity and respect in addition to supportive HR practices
- The organisation is a continuous source of respect and dignity for everyone who works in it
- The core values of dignity and respect espoused in the culture informs leadership and employee actions and is their key reference point

Leadership Behaviours. The behaviours of leaders are central to reinforcing a culture of dignity and respect. The literature is particularly instructive (Swanson, 2005; Hartnell et al 2019) when it comes to these leadership behaviours and highlights the following priority behaviours.

- Leaders are at all times truthful and direct in communication and when it comes to dignity and respect. They are vital role models that influence the behaviour of all other employees.
- Leaders are approachable at all times irrespective of position or rank of the employee and there are no status differences when it comes to interactions
- Leaders show a willingness to solve problems around dignity and respect in a direct and straight forward way
- Leaders focus on issues not people when addressing dignity and respect issues
- Leaders continually follow through on commitments when it comes to respect and dignity

Employee Behaviours. The rank-and-file employee is also highlighted as key to respect and dignity, and they get their cues from leaders as key role models (Karlsson, 2012; Lamers et al 2022). The literature highlights key behaviours that are expected of employees to live the espoused paradigm.

- Employees continually show gratitude and acknowledge the contributions of peers and colleagues.
- Employees give credit and recognition where it due.
- Colleagues continuously follow through on commitments.
- Respect and dignity is embedded in all-work interaction.

The Centrality of the Person not the Worker. Notions of respect and dignity consistently highlight the centrality of the person (Islam, 2013; Lee, 2008; Lucas, 2015). A number of key dimensions are highlighted.

- All employees feel valued as individuals and not simply as workers.
- Behaviour within the organisation continually values employees and human beings.
- Employee competence and development are both supported and rewarded.
- Employees are spoken to as equals even where there are status differences.
- People at work genuinely value each other as persons.

Supportive Rituals and Routines for Respect and Dignity at Work. The concept of rituals and routines is central to culture in organisations. Rituals are conceptualised as formal; elements and routines are the informal processes that occur in organisation's (Schneider et al 2017; Ehrhart et al 2014). Numerous examples of these rituals and routines can be found in the dignity and respect literature (Tiwari et al 2022; Ahmed et al 2022). They include the following

- The organisation celebrates dignity and respect achievements.
- Creativity and new ideas are openly invited.
- Confidences are respected and kept.
- Diversity is accepted and acknowledged in all management and organisational actions.
- Conflicts and anger are channelled appropriately.
- There is a willingness to call out bad behaviour and address it.

Structures and HR Policies and Practices. Within culture theory and research structures, processes and policies are keyways of reinforcing the cultural paradigm and ensuring that the lived or 'in use' culture aligns with the 'espoused' culture (Schein, 2017; Katz & Kahn, 1978; Cameron & Quinn, 2011). The literature gives particular primacy to the role of HR practices and policies. These include:

- Cross-department interactions and communications are marked by respect for each other's contributions.
- HR policies and practices reinforce dignity and respect in the workplace.
- Organisational processes enable voice to occur when standards of dignity are respect are not met.
- Policies and processes facilitate win-win solutions.
- Transparent and objective processes are in place to address behavioural deviations and employee have confidence in this to work effectively.

Stories of Success. Central to culture are the stories that employee share and tell to others. These stories indicate their participation in the culture in addition to them feeling a sense of belonging to that culture (Johnson & Scholes, 2007). A number of examples of this culture are highlighted in the dignity and respect literature (Winchenbach et al 2019; Wood & Karau, 2009).

- The communication of achievements around respect and dignity externally.
- The willingness to publicise what we do around dignity and respect to all our employees and call out successes
- The willingness to publicise team and individual successes internally.

Meta-Analysis of the Culture Literature and Literature on Culture for Dignity and Respect

To further understanding the dynamics of culture and its operation in organisation, we conducted a meta-analysis of the culture literature in a general sense, and we incorporated studies that explored culture in the context of dignity, respect, and inclusion. We followed the approach taken by Hartwell et al (2019) to studies of culture to investigate the role of four antecedents of culture and in particular a respect, dignity, and inclusion culture, three process elements that reinforce the curare day by day and seven outcomes of a culture of which all seven are good for respect, dignity, and inclusion. **Figure 2** presents the outputs of the analysis.

Antecedent of Culture of Dignity, Respect, and Inclusion. We focused on four antecedents that are conceptualised as distal or ‘distant’ variables that shape the emergence of a culture of respect, dignity, and inclusion. The first antecedent focused on the *strategic posture* of the organisation. We found that where organisation had an initiative-taking approach to strategy they were more likely to have a strong diversity and inclusion culture (**0.45**). This is in stark contrast with organisations that have a reactive strategic posture (**0.14**) where they are significantly less likely to have in place a strong culture of respect, dignity, and inclusion. Organisations with a more emergent approach to strategy (**0.31**) such as SMEs and Not For Profit Organisations will take a more organic approach to strategy development and this helps the emergence of a strong culture of respect, dignity, and inclusion. The second antecedent of culture that emerged from the analysis focused on the *institutional environment*. This dimension reveals some interesting results. The existence of external regulation in the form of laws (0.21) has a modest effect on the strength of a respect, dignity, and inclusion culture. This contrasts with the strength of stakeholder expectations such as societal actors and normative influences (0.41) and in particular the customers of the organisation (0.46). The third antecedent focused on *organisation structure*. The results here are particularly illuminating. For example, centralised and top-down structures such as those found in the military are not conducive to the emergence of a strong culture of respect, dignity, and inclusion (**0.11**). This contrasts sharply with the role of decentralised structures (**0.51**) and to a lesser extent matrix structures (**0.31**). The latter form are less likely to be successful in a military context. The fourth antecedent focused on *type of organisation*. The data reveals that strong cultures of respect, dignity and inclusion are to be found in not for profits (0.55), followed by MNCs (0.47) and public sector organisations (0.31).

Process Dimensions of Organisations and the Strength of a Culture of Dignity, Respect, and Inclusion

We conceptualise the process dimensions as proximate or ‘near’ factors that influence the emergence and sustainment of culture. These factors represent the levers over which the organisation has some control of and can manage and they are areas where interventions can be targeted. The first process dimension focuses on *leadership*. Task leadership is the least conducive to the emergence of a strong culture of dignity, respect, and inclusion (0.11). A change-oriented leadership is the most conducive (**0.46**) followed closely by an empowering

leadership (**0.41**). The second process dimension focuses on *HR practices*. The results here are particularly revealing in that it is not the content of these policies that is the most important but that they are administered in an equitable and fair manner (**0.69**). However, this is not to diminish the role of the content of HR practices because they also emerge as important. For example, practices that support empowerment are particularly valuable (0.55) followed by health and wellbeing-oriented practices (**0.52**) and development focused HR practices (0.47). The third process dimension that we focused on was the existence of *Respect, Dignity, and Inclusion practices*. Three important findings emerged here. First it is the visible and credible implementation of these policies that counts (**0.65**) followed by their formality (**0.51**) and employee involvement in their formulation and implementation (0.47).

Outcomes of a Dignity, Respect, and Inclusion Culture

Our meta-analysis revealed seven important outcomes of dignity, respect, and inclusion culture. Such a culture elevates or accentuates four important positive features and dampens three negative cultural features. The four positive features that are elevated are an action orientation or a culture of getting things done (**0.31**), an openness to change and new ideas (**0.61**), a focus on the individual or person and not as a worker (**0.51**), and a learning orientation or desire to rejuvenate (**0.66**). In terms of the negative dimensions this culture is important in decreasing the emphasis on hierarchy (**-0.11**), the strength of the culture which measures its resistance to change (**-0.19**) and the predominate focus on performance (**-0.21**).

Recommendations for Practice

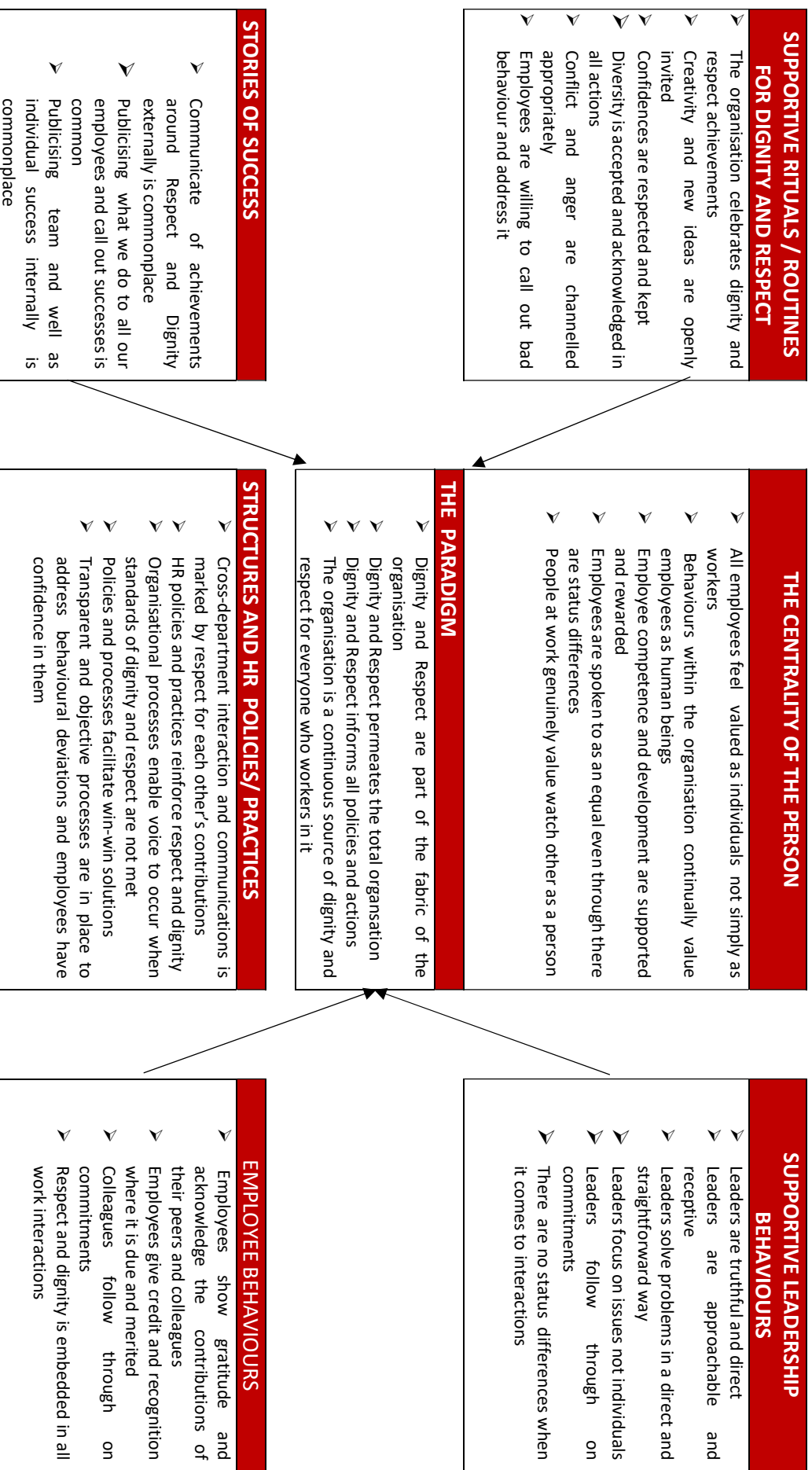
Based on the scientific evidence and to date, we suggest the following practice-based recommendations:

- A culture of dignity, and respect in the context of the Military will be challenging to realise and will require a long-term approach and focused efforts.
- Central to both dignity and respect is a focus on the individual and the first step in achieving this will be to develop awareness amongst employees of the importance of these behaviours and ideals in organisations.
- Leadership processes and HR practices emerge as the most important facilitators of a dignity and respect culture
- When it comes to leadership processes the findings indicate that task leadership is not conducive to this type of culture whereas it is recommended that change oriented and relational type leadership approaches will be more effective.
- It is recommended that an essential in terms of the Use of HR practices is that they are visible, fair, and equitable. This emerged as the most significant aspect of implementation.
- It is recommended that organisations focus on health and wellbeing focused HR practices in addition to practices that facilitate empowerment
- Specific practices focused on dignity, respect and inclusion should also be beneficial however they must be visibly and consistently implemented, have employee involvement and be formal in nature.

Table 1: The Dimensions of Dignity and Respect in the Workplace

	Definition and Dimensions of Dignity
Dignity at Work	“Dignity at work” describes how we should treat colleagues in the workplace, including respect for their values, qualities, and differences. The actions of your organisation as an employer, and how individuals behave towards each other at work, should reflect these principles.
Respectful Interaction	This component of dignity at work focuses on how people communicate with each other, the extent of respect felt when interacting with others w and being treated with respect at work
Competence and Contribution	This component of dignity refers to opportunities to build competence, to be recognised for competence and appreciation of work contribution
Inherent Value	This component of dignity focuses on the perception that the employee is valued and that the individual is valued as human being
Dignity Perceptions	This dimension refers to the extent to which an employee has dignity at work, they are treated as more valuable than objects and equipment, they do not suffer at work and not treated in an undignified way
Dignity Resilience	The implementation of individual and team resilience interventions that are anchored in dignity with resilience as a key feature of organisational interventions enhance a culture of dignity in the workplace
Definition and Dimensions of Respect	
Respect at Work	Respect is the feeling of regarding someone well for their qualities or traits, but respect can also be the action of treating people with appreciation and dignity. A respectful attitude should be standard in the workplace regardless of personal feelings.
Appraisal Respect	Appraisal respect, by contrast, is an attitude of positive appraisal, the “thinking highly of” kind of respect that we might have a great deal of for some individuals, little of for others, or lose for those whose clay feet or dirty laundry becomes apparent
Recognition Respect	Recognition-respect means the attitude of regard for other people, which is due to their being persons, and as such, worthy of being respected. Esteem-respect refers instead to the feeling of admiration and esteem which is attributed to someone by virtue of his (or her) special qualities, character, and deeds.
A Respectful Workplace	A respectful workplace is one where acts of professionalism, integrity, trust, fairness, openness, and understanding are the norm. Here is what that means in practice: Treat people the same no matter their race, religion, gender, sexual orientation, size, age, or country of origin.

Figure 1; A Culture Web Supporting Dignity and Respect in the Workplace



Attributes of Current Respect, Dignity, and Inclusion Culture in the Defence Forces

We now come to report the key findings to emerge from the empirical data on the existing culture as perceived by respondents to the survey and the study participants whose interview extracts we used. We have taken the decision to present these data at a meta level of analysis and not to report extracts to support the observations made. We use the culture web framework to provide a sense of coherence and structure to our findings.

The Dominant Paradigm

The dominant paradigm articulates the core values of the organisation around dignity and respect, and they represent what is *espoused* as values. What becomes clear from the data is that the current cultural paradigm within the Defence Forces is not aligned with the key ideas concerning dignity and respect found in the literature. Seven features of the existing culture paradigm emerge from the data:

- Current cultural paradigm negates the worth and value of persons as humans
- Absence of core values related to self-worth, contribution and flourishing
- Disrespect is the dominant element of the cultural paradigm
- Competition is reinforced in the current value system and culture paradigm
- Highly institutionalised and strong culture less amenable to change
- Strong reinforcement of hierarchy in decision making and competition in training processes
- Top-down decision-making processes and limited upward voice diminishing the individual

The data does not reveal any positive features of the existing culture suggesting that significant work will be required to change the paradigm.

The Role of Leadership

The role of leadership emerges from the data with particular clarity and intensity. Leadership within an organisation are key to making the culture live and flourish. They make the espoused real and experienced by employees. Six meta themes emerge from the data concerning leadership in the Defence Forces:

- Leaders are frequently dishonest and untruthful
- Leaders take credit for the efforts of junior employees
- Leaders fail to frequently follow through on commitments
- Poor listening by leaders to concerns and issues
- Leaders paying lip service to the need to change with actions not following words
- Poor role models when it comes to dignity, respect, and inclusion

The Behaviour of Employees

It is also clear from the data that officers below the upper echelons rank and file officers and cadets contribute to a culture that does not reinforce dignity and respect. This is manifest in a number of important ways including:

- Upsetting jokes, derogatory remarks, and gender slurs
- Comments about appearance
- Verbal abuse and threatening remarks to junior employees
- Spreading rumours about colleagues (or is this to colleagues?)
- Failing to support colleagues and follow through on commitments (Is this lack of bystander skills to interject? Because a strong sense of loyalty to ones class in Cadet school or to one's peers in rank has been noted)
- Competition rather than collaboration is reinforced

Structures and HR Practices

Organisational structures and HR practices represent primary mechanisms that make the culture 'live' or be 'in use' for employees. Here we see a scenario where current practices and approaches reinforce existing practices rather than seeking to change them. Interviewees and survey respondents highlighted numerous negative features in respect of both structures and HR practices. These include:

- Absence of respect, equal opportunity and equity in the way policies are implemented
- Too much emphasis on rules and hierarchy and lack of opportunity for employee voice
- Lack of a collegial approach to issues and desire to protect individuals
- Training processes reinforce competition, hierarchy, and authority
- Lack of clear visibility in HR practices that dignity and respect matter and drives the implementation of these practices.

What emerges for this data is that a vicious circle exists where the existing cultural paradigm plays out in how the structure of the organisation operates and HR practices are implemented.

Rituals and Routines

Rituals and routines capture the day-to-day culture as lived and experienced by employees. The interview data in particular was insightful in shedding light on some of these routines including the following:

- Employees are humiliated and reprimanded in front of others
- Pounding on the table, yelling and name calling are commonplace
- Competitive behaviours in current training and socialisation practices
- Top-down approaches to decision making that do not factor in consideration of individuals

- Dissent and difference of opinion is not tolerated

These rituals and routines are likely role modelled during training and day today operations.

The Centrality of the Person

Dignity and respect give centrality to the person and their needs within the culture. What emerges from the data is that the DF significantly deviates from this standard. Examples of this dimension that emerge from the data are as follows:

- Employees do not feel valued as individuals and are simply viewed as a worker
- Behaviours within the organisation undermine employees as human beings
- Employee competence and development are not supported and rewarded
- Employees are not spoken to as an equal, even though there are status differences
- People at work do not genuinely value each other as a person

What emerges from these insights is that the person is not front and centre in the culture. Instead, the perceptions of employees reveal that the personal needs of employees for dignity and respect are secondary

Stories Focused on Respect and Dignity

Stories give voice to what is important in the culture and to how it operates. These reflect the reality on the ground. The data reveals a number of important insights. The following emerged as important:

- Lack of visible commitment and communication about actions to support dignity, respect, and inclusion
- Perception that current actions are piecemeal and lack synergies
- Insufficient openness and acknowledgment that things need to change
- All the stories about the organisation are negative and damaging

Overall, what emerges from this analysis of the data is the existence of a culture web within the Defence Forces that is not fit for purpose when it comes to outcomes to dignity and respect as a lived experience in the workplace. At the heart of all of this is an existing cultural paradigm that is not aligned in terms of core values of what dignity and respect is all about. This paradigm is reinforcing and shaping the other elements of the web and in particular the behaviours and values of senior leadership, the behaviour of the rank-and-file employees including officers and cadets, the reinforcing nature of organisational structures and HR practices and the more intangible elements such as the dominant rituals and routines and the stories that members of the organisation believe prevail concerning dignity and respect. These features of the cultural web present those who seek change with significant challenges and highlight that cosmetic and sticking plaster type solutions are unlikely to be effective. It will require a much more systemic and comprehensive approach that needs to be driven from the top of the organisation.

Recommendations for Practice

Based on the analysis of the empirical data, we suggest the following practice-based recommendations:

- The Defence Forces must take an organisation-wide, systemic and action learning approach to addressing a culture that is not in any way aligned with a dignity and respect approach to culture.
- A key starting point in addressing culture change focused on securing real buy-in and commitment from senior leadership. They are the key role models and all other members of the organisation learn from their behaviour.
- Consistent with findings from the earlier analysis a major change approach must bring the rank and file to the table. This can be undertaken through an appreciative inquiry lens where workshops are undertaken with samples of employees to gather their views on how to move the dial cultural wise.
- There is an urgent need to review current HR practices to understand how they can move the dial on culture and communicate more positive messages and values concerning dignity and respect.
- We recommend specific interventions to raise awareness and understanding of dignity and respect and the behaviours that support it.

Figure 2 : Meta-Analytic Results for Elements of an Organisations Dignity, Respect, and Inclusion Culture (N =56)

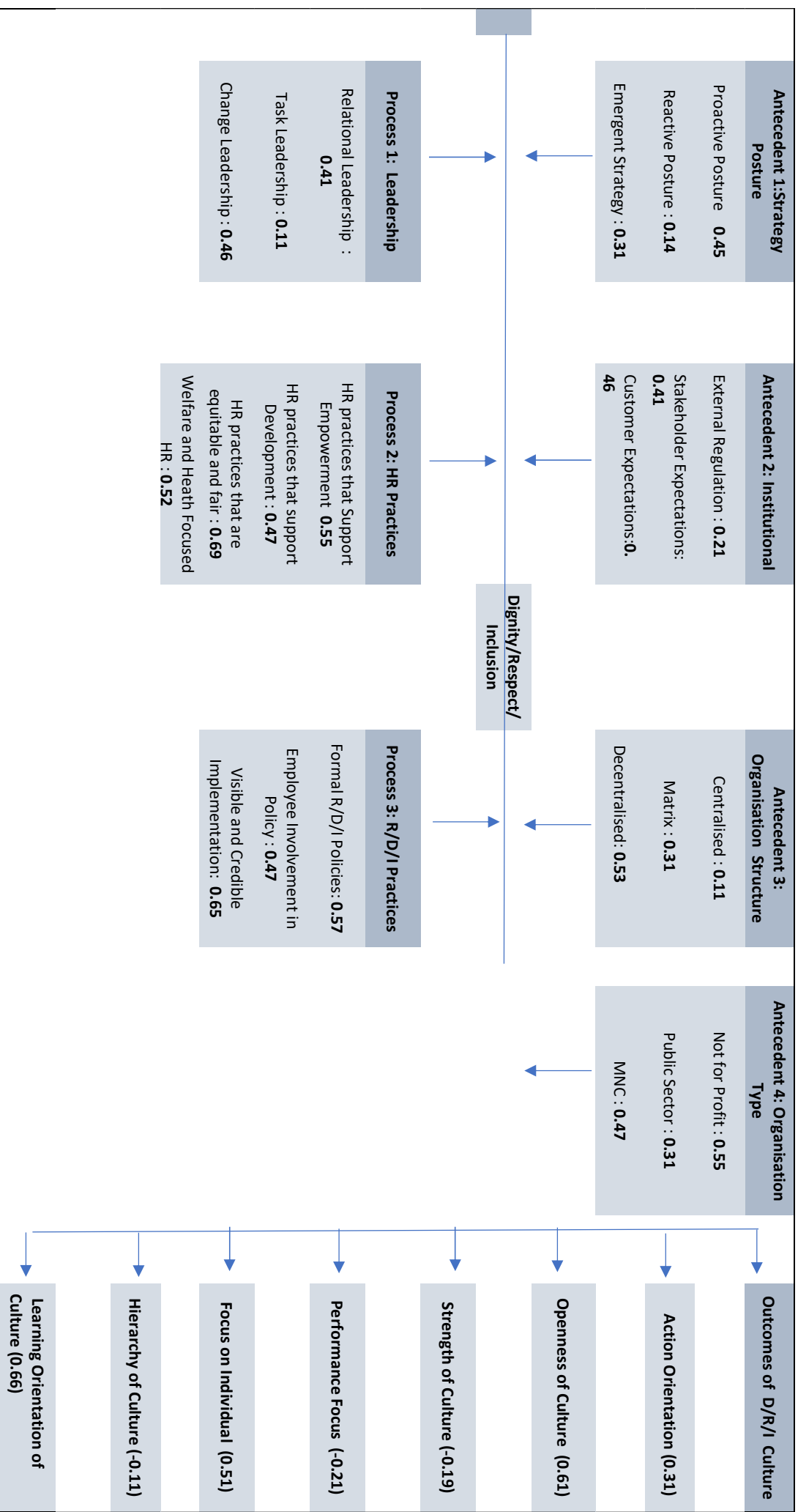
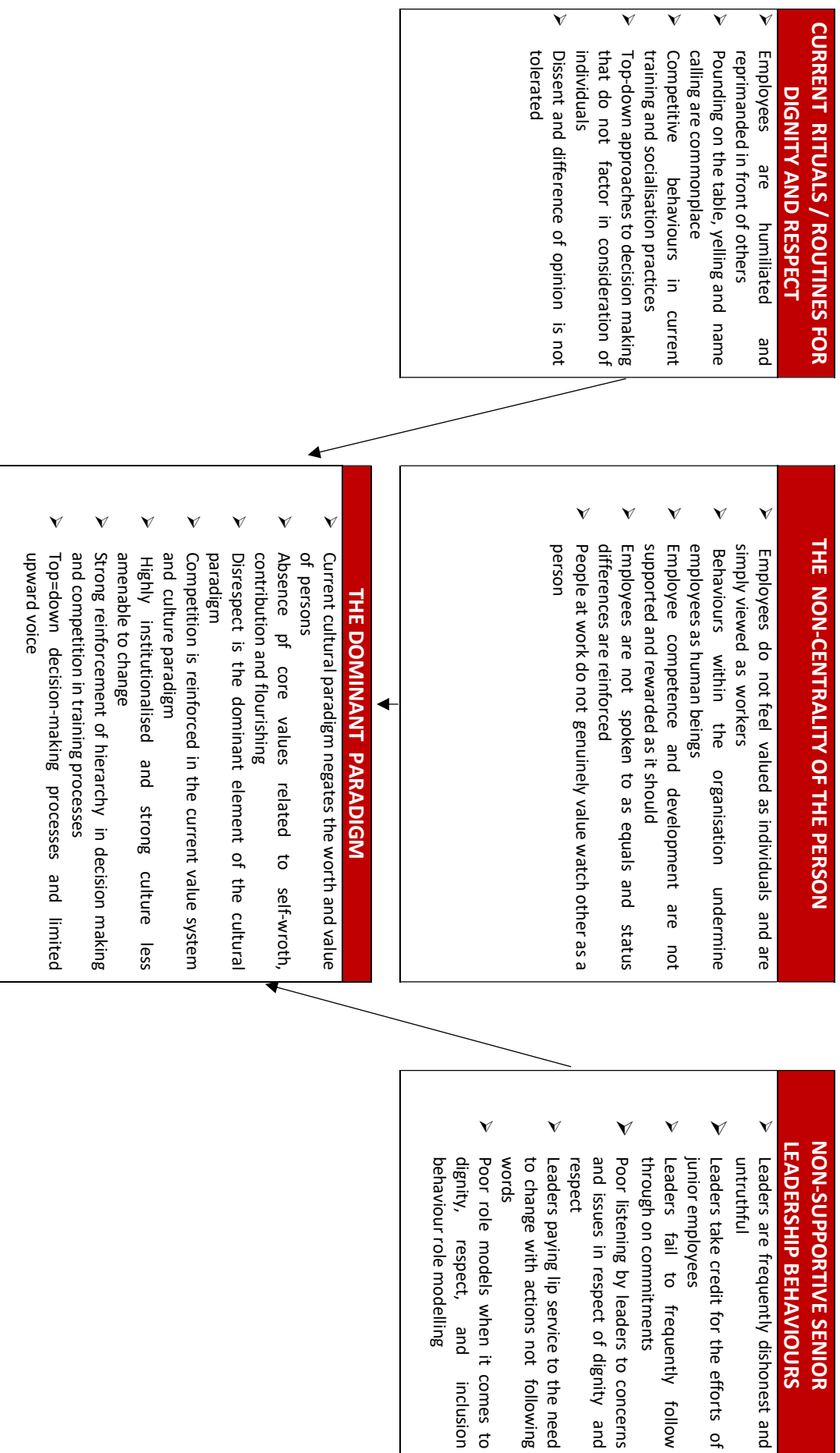


Figure 3: The Existing Culture Web Supporting Dignity, Respect and Inclusion In Defence Forces



STORIES OF LIMITED COMMITMENT TO R/D/I

- A lack of visible commitment and communication about actions to support dignity, respect, and inclusion
- Perception that current actions are piecemeal and lack synergies
- Insufficient openness and acknowledgment that things need to change
- All the stories about the organisation and negative and damaging

EXISTING STRUCTURES AND HR POLICIES

- Absence of respect, equal opportunity and equity in the way policies are implemented
- Too much emphasis on rules and hierarchy and lack of opportunity for employee voice
- Lack of a collegial approach to issues and desire to protect individuals
- Training processes reinforce competition, hierarchy, and authority

NEGATIVE OFFICER AND CADET BEHAVIOURS

- Upsetting jokes, derogatory remarks, and gender slurs
- Comments about appearance
- Verbal abuse and threatening remarks to junior employees
- Spreading rumours about colleagues
- Failing to support colleagues and follow through on commitments
- Competition rather than collaboration is reinforced


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Appendix 12: International comparisons

1 UK Military

1.1 Background

On 10 April 2019 in response to repeated instances of inappropriate and allegedly unlawful behaviour by serving members of the UK Armed Forces, the Secretary of State for Defence commissioned an urgent report into inappropriate behaviours in the Armed Forces. This report was called the Wigston Review and was published in July 2019¹. This report made 36 Recommendations, some of which will be elaborated on further below.

As part of the Defence Committees remit to examine the expenditure, administration, and policy of the Ministry of Defence, a sub-committee inquiry was established with the title of *Women in the Armed Forces: From Recruitment to Civilian Life*². This inquiry had unprecedented engagement from serving and retired members of the armed forces in the UK.

Of note are the following:

- 62% of female Service personnel and veterans who completed the survey experienced bullying, harassment and discrimination (BHD);
- These behaviours include sexual assault and other criminal sexual offences up to and including rape;
- Some of the alleged perpetrators involved are senior officers;
- Statistics show that servicewomen were nearly twice as likely to experience BHD in 2020 as servicemen;
- In 2021, servicewomen were more than 10 times as likely as servicemen to experience sexual harassment in the last 12 months;
- The systems for responding to unacceptable behaviour are failing service personnel, both male and female;
- 40% of 993 military women noted their experiences of the complaints system as “extremely poor”;
- Complaints are being brushed under the carpet;
- There is inadequate support;
- A lack of faith in the system contributes to 89% of both male and female personnel in the Regular Forces not making a formal complaint about BHD;
- 6 in 10 servicewomen and female veterans who had experienced BHD did not report it;

¹ <https://www.gov.uk/government/publications/wigston-review-into-inappropriate-behaviours>

² <https://committees.parliament.uk/publications/6959/documents/72771/default/>

- The chain of command can be a direct barrier to reporting; and
- There are also serious problems with how the Service Justice System³ handles criminal sexual offences—most of which (76% in 2020) involve female victims.

There are several other areas, specifically relating to women which have come up through this inquiry in areas such as:

- Inappropriate, ill-fitting uniform and body armour;
- Difficulty in balancing service life and family life, serving mothers, make the greatest career sacrifices and sometimes leave the military altogether;
- Among mid-ranking officers, 90% of men have children, compared to 10% of women; and
- Taboos about menstruation, the menopause and other aspects of their health.

1.2 What they are doing

In the Wigston review, and in response to the subsequent inquiry the following recommendations⁴ were made;

Wigston, 2019:

1.2	Defence should consider amending primary legislation to require the sharing of information from the civilian Criminal Justice System
1.5	Defence should better coordinate and focus the bullying, harassment and discrimination elements of continuous attitude surveys to improve understanding, reduce duplication and streamline data analysis. Use of contemporary, on-line survey formats should also be considered
1.7	Establish a MOD focal point – a Senior Responsible Owner – to own, track and inform Defence culture and behaviours.
1.8	Defence and single Service Boards should include culture and behaviours as a standing agenda item, with a single executive owner held to account by nonexecutive directors or audit committees
1.10	Single Service values and standards should be sustained but communication of the Civil Service Code should be amplified

³ The SJS supports & regulates disciplinary behaviour through the service offences set out in the Armed Forces Act 2006

⁴ This list is not exhaustive but is merely the most relevant recommendations to our work

1.11	Mandated diversity, inclusion and values training must be prioritised, irrespective of rank
1.13	Defence should investigate causes of overrepresentation of minority groups, women and junior ranks in the complaints process and implement the necessary training interventions as part of an overarching strategy to address the issue.
1.14	Defence should develop a process for measuring the impact of culture and behaviours training programmes
2.2	All recruits should receive immersive culture and behaviour training at the start of service and continued at regular intervals through their career.
2.3	Use of third-party training expertise is considered leading practice and should be resourced and exploited across Defence
2.4	Investigate, develop and implement appropriate bystander training
2.7	Induction and collective training opportunities for MOD civil servants must be reviewed, resourced and improved.
2.9	Communication on behaviours must be consistent and persistent. How we deal with inappropriate behaviour must be transparent, including the appropriate publication of outcomes.
3.2	Resource, develop and implement an anonymous tool for reporting inappropriate behaviours across Defence
3.3	Implement a clear, simple and enduring communications campaign to articulate the range and scope of inappropriate behaviours, and what to do when instances occur.
3.4	Establish an inappropriate behaviours helpline for all Defence personnel.
3.5	Defence should review and improve the provision of support offered to all parties, including appropriate training for Assisting Officers.
3.6	Defence should resource, train and deliver an effective, certified and professional mediation service, recognising and addressing the potential risks of mediation

	identified by the Service Complaints Ombudsman.
3.7	Establish a Defence Authority responsible for cultures and inappropriate behaviours.
3.8	Allocate the responsibility for the reporting and handling of all serious behavioural complaints to the Defence Authority, based on an agreed threshold and including anonymous and bystander reporting.
3.9	Consideration be given to amending primary legislation to allow civil servants to raise a grievance through the Service Complaints system
3.10	Implement a two-tier complaints system, reserving the full scope of the current system for the most complex cases including bullying, harassment and discrimination. (Tier 1 is a first attempt to resolve the complaint / Tier 2 is a second and final review of the complaint and should be conducted by a different complaint handler)

As part of the sub-committees' final, report on *Women in the Armed Forces: From Recruitment to Civilian Life, July 2021*, which came some 24 months after the 2019 Wigston Report, it was noted that the MOD and Single Services had started to act, on various recommendations in the Wigston Report on areas such as the rolling out of a 'Flexible Service', childcare schemes and a new BHD helpline. While these initiatives are applauded as they reflect an acknowledgement of the problems that exist, however, that progress is slow, with gaps between the many policy documents and practice on the ground. It was also noted that this felt like a missed opportunity to address critical issues⁵.

Accordingly, in light of the lack of progress in implementing the various recommendations, as laid out in the Wigston Report, in July 2021 the sub Committee made multiple recommendations, including:

- Establish a central Defence Authority, to provide a reporting and investigation system for bullying, harassment and discrimination, outside the Chain of Command and outside the Single Services
- Remove the chain of command entirely from complaints of a sexual nature

⁵ *Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life, Pg.5 The way forward*

- Adapt performance assessment systems to prevent the progression of Service personnel, particularly leaders, who have acted unacceptably
- Commit to tri-service sexual harassment surveys annually
- Make recommendations by the Service Complaints Ombudsman binding
- Remove Rape and Sexual Assault with penetration in the UK from the Court Martial jurisdiction, unless the Attorney General gives consent
- Publish greater data on the pathway for victims of rape and sexual assault
- Urgently roll out female-appropriate uniform and equipment
- Consider female-specific needs in health policies
- Roll out wraparound childcare to all Services by the end of 2022
- Carry out an equality analysis of the Integrated Review and Defence Command Paper
- Acknowledge and celebrate female veterans, through public memorials, blue plaques and support for female veterans' networks
- Ensure both women and men veterans can benefit fully from transition and veterans' services, by improving female representation and adapting them to the differing challenges of female veterans
- Recognise 'military sexual trauma' and fund specialist support services

1.3 Impact that it is having

At present the initiatives and recommendations outlined in the Wigston report have not been fully implemented or engaged with and change remains "glacial" and the impacts of the MOD's latest initiatives are not being felt yet. This can be attributed to the low levels of ambition adopted by the MoD and the mere *lip service* being paid to the various recommendations outlined previously.

While it is difficult to measure the impact that the current measures, that have been implemented, are having on the military, it is worth noting that the inaction and stagnation with regard to these matters by the MOD has had a very real and immediate impact. The first impact was the creation of the Sub-Committee and its subsequent reports which has changed the dynamic and oversight of the MOD and has brought these issues to the wider public's attention which in turn helps to hold those in positions of power and authority to account. The second impact is that the report of the sub-committee was deemed so stark and alarming that in response the UK Government felt that its contents necessitated a strong Governmental response in a report, *Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life: Government Response to the*

*Committee's Second Report*⁶, published in December 2021, which went much further than the sub-committees recommendations and decided that radical and wide-sweeping reforms were required. It would appear reasonable to draw the conclusion that the previous strategy adopted by the MOD of dragging ones feet with regard to reforms that are not wanted is now no longer working and has had the opposite effect to the desired outcome.

⁶ <https://committees.parliament.uk/publications/8059/documents/82951/default/>

2 New Zealand Defence Force (NZDF)

2.1 Background

In 2016 the New Zealand Defence Force (NZDF) announced Operation Respect⁷, a 44 point Action Plan to address harmful and inappropriate sexual behaviour in the NZDF. The action plan draws on several different reviews^{8&9}, with the intention of assisting the NZDF to improve its culture of dignity and respect for all personnel. The Action Plan did not set baseline measures, or measures for success. Nor did it contain an evaluation framework.

In 2019, the Ministry of Defence commissioned independent reviewers to assess the NZDF progress against its action plan.

Under the reviewers terms of reference the assessors were tasked with reporting on both NZDF's progress against its own Action Plan and an assessment of whether the work is positioned for future success. The report assessed the outcomes and impacts of the Operation Respect programme.

2.2 What they are doing

Operation Respect had six key action areas:

- 1) Establishing a strategy to change the NZDF's culture and behaviours to challenge persistent sexism and better integrate women into our Defence Force;
- 2) Increasing training including a sexual ethics and healthy relationships training package, and holding 'town halls' across camps and bases to discuss inappropriate sexual behaviour;
- 3) Implementing a restricted disclosure system by 30 June, 2016, to offer an alternative way to report sexual assault;
- 4) Introducing a dedicated, professional sexual assault response team;
- 5) Addressing issues associated with specific risk factors including facilities and alcohol; and
- 6) Increasing the percentage of women in our armed forces, and the representation of women in senior leadership roles.

In 2016, the Sexual Assault Response Team (SART) was stood up along with a two-track disclosure process. This enabled a victim of sexual assault to confidentially access support services, and to do so without notification to command or without notification to the NZ Police if desired. This coupled with the Sexual Ethics and Responsible Relationships (SERR) training, were the most effective elements of the Operation Respect Programme.

⁷ New Zealand Defence Force. (2016). Operation Respect Action Plan for ensuring an inclusive and safe environment for all personnel.

⁸ Maximising Opportunities for Military Women in the NZDF (Ministry of Defence, 2014)

⁹ Review of Air Force culture by Kim McGregor and Russell Smith (2015)

2.3 Impact that it is having

While there is indeed a detailed programme and action plan in place, there are concerns around its effectiveness. It is clear that some progress is being made but there remain a number of recurring, problematic themes about the real challenges that prevent the substantive success of Operation Respect.

The three fundamental barriers identified are:

1. A lack of transparency and accountability of the NZDF's progress in addressing and preventing the harm that continues to be experienced as a result of sexual violence and/or discrimination, bullying and harassment;
2. A 'code of silence' prevails and many personnel will not raise a complaint or report serious issues such as sexual violence because they fear the repercussions and do not trust the NZDF processes and systems; and
3. The culture of military discipline and command makes it difficult for personnel to raise concerns or speak out against the behaviour or decisions made by their immediate manager or others more senior in the hierarchy.

The authors note that in their opinion unless the issues outlined above are addressed, Operation Respect is not well positioned to succeed in enabling a '*culture of dignity and respect*'.

The 2020 review noted that the most significant changes the NZDF could make to build more trust in its organisation and its processes, and make a difference for its people and the victims of harmful behaviours, in particular in dealing with sexual violence are:

- 1) To be transparent and accountable by engaging independent oversight and monitoring of progress by a trusted body/entity;
- 2) Provide a trusted external to the chain of command and independent complaints channel (like that offered by the Defence Ombudsman in Australia) to receive, investigate and remedy cases of harmful behaviour and sexual violence;
- 3) Actively promote the 'Safe to Talk' helpline as an external and independent support channel for victims of sexual harm;
- 4) Create a comprehensive and integrated data management system to assess progress against clear outcomes measures and report on complaints and outcomes of incidents of harmful behaviour;
- 5) Engage leaders at all levels to collectively own and lead the management of harmful behaviour, including sexual violence, discrimination, bullying and harassment in the NZDF.

While the NZDF laid the foundations of a positive programme of culture change, it has not managed to maintain a consistent and thorough approach to its ongoing strategy or implementation. Momentum, visibility and focus have been lost.

3 Canadian Armed Forces (CAF)

3.1 Background

The Honourable Louise Arbour, C.C., G.O.Q., was asked to conduct an external comprehensive review of the Canadian Armed Forces (CAF) which was set up following allegations of incidents of inappropriate behaviour by senior members of the CAF, that are now the subject of investigations by the Canadian Forces National Investigation Service (CFNIS).

The allegations raise concerns regarding Department of National Defence (DND) and CAF policies, procedures, programs, practices, and culture, and may lead to a sense of betrayal by members of the Defence Team. The allegations also raise questions of complicity of inaction throughout the chain of command.

3.2 What they are doing

Arising from the extremely comprehensive review, and subsequent 429 page report¹⁰, it was concluded that the CAF was intensely impaired with regard to its culture of sexual misconduct which was born out of outmoded behaviours and practices with little effort to modernise the organisation.

While there was undoubted disturbance in the findings of the report it was noted that for all the oppression and torment that may have been caused by these behaviours that they highlighting of these issues has now presented a unique moment in time which may be an unparalleled opportunity to bring in real, tangible and lasting change in the CAF which may have seemed unimaginable in the not too distant past.

It is important to note that the report recognised two fundamental issues which would impede progress on addressing these issues. They were;

1. Assumption that issues are only attributable to a culture of misogyny, and that change will come naturally with time and more enlightened attitudes; and
2. The assumption that the CAF had the necessary resources and ability to think that it can fix its broken system alone.

The report made 48 recommendations, of which I have detailed the ones most pertinent to our work below.

¹⁰ <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/report-of-the-independent-external-comprehensive-review.html>

5.	Criminal Code – Sexual Offences	<ul style="list-style-type: none"> • Criminal Code sexual offences should be removed from the jurisdiction of the CAF. They should be prosecuted exclusively in civilian criminal courts in all cases. • Where the offence takes place in Canada, it should be investigated by civilian police forces at the earliest opportunity. • Where the offence takes place outside of Canada, the Military Police (MP) may act in the first instance to safeguard evidence and commence an investigation, but should liaise with civilian law enforcement at the earliest possible opportunity.
6.	Engagement of Director of Military Administration with External Quality Assurance Assessment	<ul style="list-style-type: none"> • The Director of Military Careers Administration (DMCA) should engage in an externally-led quality assurance assessment – similar to that conducted by the Sexual Assault Review Program (SARP) initiated by the Canadian Forces National Investigation Service (CFNIS) – of the administrative reviews conducted from 2015 to date relating to sexual misconduct, which administrative reviews resulted in retaining the member without career restrictions.
10.	Grievances related to sexual harassment	<ul style="list-style-type: none"> • Grievances related to sexual misconduct should be identified, prioritized and fast-tracked through the grievance system at both the IA and FA levels. • The VCDS or their specific delegate should manage the process for all grievances related to sexual misconduct, sexual harassment or sexual discrimination or involving an allegation of reprisal for reporting, or otherwise disclosing sexual misconduct, sexual harassment or sexual

		<p>discrimination. For such grievances, the CFGA should designate an IA with subject matter expertise, and who is outside the governor's chain of command.</p> <ul style="list-style-type: none"> • QR&O 7.21 should be amended to make it clear that grievances related to sexual misconduct, sexual harassment and sexual discrimination should be mandatorily referred to the MGERC. • The CDS should remain the FA and be required to dispose of the matter within three months.
12.	Sexual Misconduct Response Centre (SMRC)	<ul style="list-style-type: none"> • The SMRC's name should be changed to Sexual Misconduct Resource Centre.
13.	Function of SMRC	<ul style="list-style-type: none"> • The SMRC should be reinforced as primarily a resource centre, with adequate expertise and capacity, solely for complainants, victims and survivors of sexual misconduct.
14.	SMRC and access to legal assistance for victims of sexual misconduct	<ul style="list-style-type: none"> • The SMRC should ensure that it can facilitate immediate access to legal assistance to victims of sexual misconduct. • Such legal assistance must be available across the country and on the full range of issues related to sexual misconduct in the CAF, including in respect of the various processes triggered by disclosure • To do so, the SMRC should compile a roster of civilian lawyers able to provide such services and ensure that they are properly trained to do so. • The SMRC should also prepare a schedule of fees for such services, and provide for direct payment to the lawyers.

15.	Training and Prevention of Sexual Misconduct	<ul style="list-style-type: none"> • The ownership of training and prevention of sexual misconduct should be transferred to the CPCC. • The CPCC should continue to consult the SMRC on the development of program content, delivery and methods of evaluation for sexual misconduct, but the SMRC should not be engaged in actual program delivery or monitoring.
16.	Monitoring the effectiveness of Canadian Armed Forces in responding to sexual misconduct.	<ul style="list-style-type: none"> • The monitoring of the CAF's effectiveness in responding to sexual misconduct should be removed from the SMRC's mandate. • Instead, the SMRC should be required to refer concerns in that regard to the ADM(RS). • The SMRC should be empowered to direct the ADM(RS) to conduct an administrative investigation into matters relevant to its mandate.
19.	Role of the External Advisory Council (EAC) to the SMRC	<ul style="list-style-type: none"> • The EAC's role, composition and governance should be reviewed. • It should be composed of external experts and advocates for victims and survivors, with adequate representation of equity seeking and minority groups who are disproportionately affected by sexual misconduct. • It should publish an annual report to provide an external perspective on the evolution of the SMRC's role and performance.
20.	Recruitment Structure and Probation	<ul style="list-style-type: none"> • The CAF should restructure and simplify its recruitment, enrolment and basic training processes in order to significantly shorten the recruitment phase and create a probationary period in which a more fulsome assessment of the

		<p>candidates can be performed, and early release effected, if necessary.</p>
21.	Outsourcing of Recruitment	<ul style="list-style-type: none"> • The CAF should outsource some recruitment functions so as to reduce the burden on CAF recruiters, while also increasing the professional competence of recruiters.
22.	Culture and Gender Based Issues	<ul style="list-style-type: none"> • The CAF should put new processes in place to ensure that problematic attitudes on cultural and gender-based issues are both assessed and appropriately dealt with at an early stage, either pre- or post-recruitment.
23.	Canadian Armed Forces Training Schools	<ul style="list-style-type: none"> • The CAF should equip all training schools with the best possible people and instructors. Specifically, the CAF should: <ul style="list-style-type: none"> ➤ ensure appropriate screening of qualified instructors, both for competence and character.
24.	Creation of new Trainer/Educator/Instructor Role	<ul style="list-style-type: none"> • The CAF should assess the advantages and disadvantages of forming a new trainer/educator/instructor occupation within the CAF, or a specialty within one of the human resources-related occupations, in order to create a permanent cadre of skilled and professional educators and trainers.
25.	Early Termination of Probation	<ul style="list-style-type: none"> • The CAF should develop and implement a process for expedited, early release of probationary trainees at basic and early training schools, including the CFLRS and military colleges, who display a clear inability to meet the ethical and cultural expectations of the CAF.

26.	Opportunities for Secondment to Private Sector and other Government Departments	<ul style="list-style-type: none"> • The CAF should increase the number of opportunities for CAF members, particularly at the senior leadership and GOFO levels, to be seconded to the private sector, and to other government departments.
27.	Implementation of Deschamps Report recommendations on Training related to Sexual Offences & Harassment	<ul style="list-style-type: none"> • The CAF should fully implement the recommendations as described in the Deschamps Report on training related to sexual offences and harassment.
29.	Review of Military Colleges	<ul style="list-style-type: none"> • A combination of Defence Team members and external experts, led by an external education specialist, should conduct a detailed review of the benefits, disadvantages and costs, both for the CAF and more broadly, of continuing to educate ROTP cadets at the military colleges. • The review should focus on the quality of education, socialization and military training in that environment. • It should also consider and assess the different models for delivering university-level and military leadership training to naval/officer cadets, and determine whether the RMC Kingston and the RMC Saint-Jean should continue as undergraduate degree-granting institutions, or whether officer candidates should be required to attend civilian university undergraduate programs through the ROTP. • In the interim, the CPCC should engage with the RMC Kingston and the RMC St-Jean authorities to address the long-standing culture concerns unique to the military college environment, including the continuing misogynistic and discriminatory

		<p>environment and the ongoing incidence of sexual misconduct.</p> <ul style="list-style-type: none"> • Progress should be measured by metrics other than the number of hours of training given to cadets. • The Exit Survey of graduating cadets should be adapted to capture cadets' experiences with sexual misconduct or discrimination.
30.	Performance Appraisal Report (PAR)	<ul style="list-style-type: none"> • A section should be added to the PAR requiring the supervisor to certify that, to their knowledge, the CAF member being appraised is not currently subject to any investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to allegations of sexual misconduct. • If the supervisor is aware of such an investigation or proceeding, they should not reveal its existence if doing so would compromise its integrity. • Otherwise, the supervisor should provide all relevant details of the investigation or proceeding.
31.	Past Misconduct and Promotion to the rank of lieutenant colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class	<ul style="list-style-type: none"> • A past misconduct sheet should be prepared for each candidate considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, by an appropriate unit under the CMP. • The past misconduct should include anything the CAF deems to be serious misconduct, but should include at a minimum, convictions for Criminal Code sexual offences and findings of sexual harassment.

		<ul style="list-style-type: none"> • The CAF should also prepare appropriate guidance to selection boards on how to take past misconduct into account as part of their deliberations and decision-making. • Finally, the CAF should make appropriate provision in its policy for rehabilitation, including the removal of criminal convictions for which a record suspension has been granted.
32.	Role of Minister in approving promotions of General Officer and Flag Officer (GOFO) ranks	<ul style="list-style-type: none"> • In fulfilling her responsibility in approving GOFO promotions, the Minister should be assisted by a senior civilian advisor, not currently a member of the Defence Team. • In her consultation with the CDS, the Minister should examine what efforts are being made to correct the over-representation of white men in GOFO ranks
33.	Psychometric testing 360 reviews in GOFO promotions	<ul style="list-style-type: none"> • The new processes for psychometric evaluation and confirmatory 360-degree review used in the promotion of GOFOs should be carefully reviewed by an external expert on an annual basis, with a view to their progressive refinement. • The results of this annual review should be reported to the Minister
34.	Expansion of new GOFO promotion process to other ranks	<ul style="list-style-type: none"> • The new processes for GOFOs, including psychometric testing and 360-degree multi-rater assessment should, at a minimum, be expanded to candidates being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class.
35.	The Performance and Competency Evaluation System (PaCE)	<ul style="list-style-type: none"> • The PaCE system should be modified to include a self-certification requirement on the PAR for those

		<p>being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, similar to that already in place for GOFO nominations.</p> <ul style="list-style-type: none"> • The candidate would need to certify that they are not subject to any current or prior investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to sexual misconduct; and, if they are, provide all relevant details.
36.	Targets for the Promotion of Women	<ul style="list-style-type: none"> • The CAF should establish a system of progressive targets for the promotion of women in order to increase the number of women in each rank, with a view to increasing the proportion of their representation in the GOFO ranks above their level of representation in the overall CAF workforce.
37.	Review of service through GBA+ lens	<ul style="list-style-type: none"> • The CAF should review universality of service through a GBA+ lens and update it to ensure that women and sexual misconduct victims are treated fairly, taking into account their particular situation and risk factors.
39.	Succession Boards	<ul style="list-style-type: none"> • All succession boards for majors and above and master warrant officer / chief petty officer 2nd class appointment boards should include an independent civilian member from outside the Defence Team.
40.	Policy on Succession Planning	<ul style="list-style-type: none"> • The CAF should prepare a new policy on succession planning based on GBA+ that ensures women are not subject to directly and indirectly discriminatory practices in succession planning, and that provides appropriate guidance to career

		managers, succession boards and others involved in succession planning.
41.	Briefing to Minister by Assistant Deputy Minister (Review Services) ADM(RS)	<ul style="list-style-type: none"> • The Minister should be briefed by the ADM(RS) directly on all investigations related to sexual harassment, sexual misconduct and leadership culture in the Defence Team.
42.	Annual report to Minister by Assistant Deputy Minister (Review Services) ADM(RS)	<ul style="list-style-type: none"> • The ADM(RS) should report annually to the Minister on statistics and activities related to investigations under the DAOD 7026-1, in line with what is required under the PSDPA.
43.	Authority of Executive Director of Sexual Misconduct Response Centre to direct investigations	<ul style="list-style-type: none"> • The Executive Director, SMRC should be able to independently direct the ADM(RS) to conduct an administrative investigation into matters relevant to the SMRC's mandate.
45.	Chief of Professional Conduct and Culture Database and Research	<ul style="list-style-type: none"> • The CPCC should host a public online database for all internal Defence Team research and policies relating to sexual harassment and misconduct, gender, sexual orientation, race, diversity and inclusion, and culture change. • If a document cannot be made public for security reasons or otherwise, it should still be listed in the database to facilitate access by persons with the requisite clearance or approval.
47.	Notification to Parliament by Minister of decision not to implement recommendations	<ul style="list-style-type: none"> • As a first step, the Minister should inform Parliament by the end of the year of the recommendations in this Report that she does not intend to implement.
48.	Appointment of External Monitor	<ul style="list-style-type: none"> • The Minister should immediately appoint an external monitor, mandated to oversee the implementation of the recommendations in this Report and other external recommendations that she accepts.

		<ul style="list-style-type: none">• The external monitor should be assisted by a small team of their choosing that is external to the Defence Team. They should have access to all documents, information, individuals and entities they deem relevant, including ECRIC.• The external monitor should produce a monthly “monitoring assessment and advice” report directly to the Minister and publish bi-annual public reports.
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3.3 Impact that it is having

While there has been limited time since publication for implementation and update on the progress of the Arbour Report, the Canadian Defence Minister, Anita Anand, noted on June 1st, 2022 that she was in the process of appointing an independent official to oversee the implementation of recommendations and that Ottawa has already begun work on 17 of these recommendations.

To ensure her recommendations were implemented, Ms. Arbour said the government should “immediately” appoint an external monitor to track the progress of her report’s recommendations.

Despite the agreement at the time by the Defence Minister to appoint a monitor as soon as possible, several months later, no one has been given the post. On July 20th, Ms. Anand’s spokesperson¹¹ said work is “*well under way to finalize the process of establishing the position of the external monitor.*” No timeline was provided for when someone would be appointed.

Although there may be no tangible update on the specific recommendations around the 48 actions outlined in the report, there are some significant developments within the CAF and Canadian society as a result of this report.

Some cases that were going through the military system have had significant findings of culpability where in the past there may have been a military court finding of *innocent and nothing to see here*. One particular case involved a senior military commander being charged with two counts of breaching the Armed Forces’ disciplinary code after a sexual-misconduct investigation by military police and subsequent charge arising from the investigation of conduct prejudicial to good order and discipline under the National Defence Act, in connection with an inappropriate relationship with a subordinate.

¹¹ <https://www.theglobeandmail.com/politics/article-senior-canadian-military-commander-charged-under-military-law-accused/>

4 Australian Defence Force (ADF)

4.1 Background

On 11 April 2011 the Minister for Defence announced a series of reviews into aspects of Defence and Australian Defence Force (ADF) culture.

On 7 March 2012 the Minister for Defence, Secretary of Defence and the Chief of Defence Force jointly announced a strategy for cultural change and reinforcement in Defence and the ADF. This implementation strategy, Pathway to Change: Evolving Defence Culture, incorporated the recommendations made in the series of reviews into Defence and ADF culture.

Building on the initial five year implementation period, Pathway to Change: Evolving Defence Culture 2017-2022¹² was launched on 20 November 2017 by Secretary of Defence and the Chief of the Defence Force. It is underpinned by a refreshed cultural intent statement and key cultural reform priorities, including;

- leadership accountability;
- capability through inclusion;
- ethics and workplace behaviours;
- health, wellness and safety; and
- leading and developing integrated teams.

4.2 What they are doing

A core element of both the 2012-2017 & 2017-2022 strategies was that they embraced all aspects of how ADF works and how it acts, at the individual level and as a whole. The purpose of Pathway to Change was for ADF to renew its commitment to its core values and to build trust with the Government, the Australian community and, importantly, Defence people.

The 2012 report had an initial implementation period of five years with 175 cultural reform actions and recommendations. All 175 actions and recommendations are now completed including key measures such as:

- Establishment of the Sexual Misconduct and Prevention Response Office, including the introduction of a range of education programs, and the roll-out of bystander awareness

¹² <https://www.defence.gov.au/about/reviews-inquiries/pathway-change-evolving-defence-culture>

training. Between 2015 and 2017 the Sexual Misconduct Prevention and Response Office has briefed over 46,000 Defence personnel;

- Establishment of the Restorative Engagement Program, which for some has provided positive outcomes in acknowledging historical incidents of abuse;
- Addressing the treatment of women in the Australian Defence Force through strategies to ensure women's safety, promoting gender equality, and increasing the participation and advancement of women in Defence through targeted mentoring, education, training and career development. The 'Women in Defence' report is prepared annually and provides the Government, and the Australian public with a measure of progress to date;
- Implementation of a more contemporary employment model, to enable the generation and sustainment of Australian Defence Force capability through greater workplace flexibility. Six of the seven service categories in the 'Total Workforce Model', have been implemented. The wider range of employment options for the ADF workforce also has the benefit of meeting a range of individual needs;
- Improvements to Workplace Health and Safety, including the implementation of the ADF Mental Health Strategy and the introduction of the Sentinel system to better capture and monitor work, health and safety incidents;
- The introduction of a Commanders and Managers Guide to Responding to Family and Domestic Violence which provides information on: responding to victims and perpetrators; identify warning signs of violence, and Defence policies, entitlements and internal and external support services; and
- The integration of agreed values and behaviours as core foundations of Defence education and training programs.

Of key importance has been the use of data to provide invaluable and important learning as to where cultural change has been difficult and where further focus is required. This is most evident in regard to reducing the incidence of unacceptable behaviour and in implementing further improvements to how complaints of unacceptable behaviour are managed.

4.3 Impact that it is having

While there has been a decrease in the number of complaints, work-related unacceptable behaviours, particularly bullying and discrimination, continue to be the most common types experienced in the workplace and satisfaction and confidence with the complaint process remains

an area of concern. Women continue to experience unacceptable behaviour at higher rates than male counterparts and females are twice as likely to experience sexual-related unacceptable behaviour.

Where Defence has invested most effort in communicating expected standards of behaviour, demonstrable change has been seen. This is particularly evidenced in Defence's training establishments where initiatives have resulted in a reduction in incidents of unacceptable behaviour. The collaboration with the Australian Human Rights Commission, has been important in monitoring these cultural change efforts, and making recommendations on how to further improve and overcome impediments to reform.

Since 2015, through implementation of the First Principles Review of Defence, leaders were and are being held more accountable for their actions and for the workplace behaviours of their teams. This has been an important step forward, in moving from the implementation of actions and recommendations of Pathway to Change 2012–2017, to more deeply embedding positive workplace norms which support all of ADF people.

1 US Military

1. Background

Under the National defence authorisation act (NDAA) the Secretary of Defence is required to submit to the committees on the armed services and Veterans Affairs of the senate and the House of Representatives an annual report on a sexual assault involving members of the armed forces during the preceding year including apart from each of the military departments.

These reports present statistics and analysis of reports of sexual assault during the preceding year i.e. 2021. The report also discusses policy and program improvements in the Department of Defences (DoD) sexual assault prevention and response program.

The Pentagon releases a report every year on the number of sexual assaults reported by or about troops. Due to the nature of sexual assault being highly underreported crime, the DoD conducts a confidential survey every two years to get a more honest and clear picture of the issue. The 2018 survey found that more than 20,000 service members said they experienced some type of sexual assault, but only one-third of them filed a formal report.

2. What they are doing

The Pentagon and the military services have overtly stated that they are struggling, and have been for some time, to come up with programs to prevent sexual assaults and to encourage reporting. While the military has made inroads in making it easier and safer for service members to come forward, it has had far less success reducing the assaults, which have increased nearly every year since 2006.

There is a collective effort by the Secretary of Defense and senior leadership in the DoD to address the issue of sexual assault within the military and there has been a concerted effort to resource and implement an independent review commission on sexual assault in the military who provided recommendations to the Secretary.

The following recommendations, from the Independent Review Commission, are designed to build the DoD's basic foundation and infrastructure for a best-in-practice sexual assault prevention and response program with an estimated implementation date of 2027. Solutions to address the problems highlighted in this report that are already being implemented and funded under *Tier 1* in *Independent Review Commission Recommendation-Implementation Roadmap* are:

Priority Recommendations:

- 1.1: [REVISED]¹³ Establishment of Offices of Special Victims Prosecutors and removing prosecution of sexual assaults and related crimes out of the military chain of command;
- 1.2: [REVISED] Independent, trained investigators for sexual harassment and mandatory initiation of involuntary separation for all substantiated-complaints; and
- 4.3 a: Implement the No Wrong Door approach to sexual harassment, sexual assault, and domestic abuse across the Services and National Guard;
- 4.3 c: Allow survivors flexibility to take non-chargeable time off for seeking services or time for recovery from sexual assault;
- 4.3 d: Increase victim agency and control of the response process by maximizing adherence to survivor preference on reporting status, and centering survivor preferences in expedited transfers;
- Cross Cutting Recommendation 1: DoD should immediately make sexual harassment victims eligible for Sexual Assault Prevention and Response Office services and undertake a review of all policies and structures tasked with addressing elements of the military's sexual harassment response;
- Cross Cutting Recommendation 5: [REVISED] The Secretary of Defense should establish a Senior Policy Advisor for Special Victims. The Senior Policy Advisor should be supported by the new position of the DoD Special Victim Advocate.

Directed Studies:

- Recommendation 1.8: Study caseloads to attain the optimum timeline for the military justice process; and
- Recommendation 2.5 a: The Services and the NGB should institute a pilot program to link Service members with resources and support.

Actions Currently Underway:

- Recommendation 1.3: [REVISED] Study of judge-ordered Military Protective Orders for victims of sexual assault and related offenses;
- Recommendation 1.4: Professionalized career billets for military justice personnel handling special victim crimes;

¹³ [REVISED] indicates a recommendation where the Department has made a revision or slight modification to the original IRC recommendation to ensure effective implementation within the Department.

- Recommendation 1.7 f: Article 128b of the UCMJ should be amended to include dating violence;
- Recommendation 2.1 a: USD(P&R) should define the competencies leaders must have to oversee prevention;
- Recommendation 2.2 a: USD(P&R) should develop a model for a dedicated and capable prevention workforce.
- -Recommendation 3.3 c: Hold Service members appropriately accountable who engage in cyber harassment and other forms of technology-facilitated sexual harassment and sexual assault.
- Recommendation 4.2 a: Increase access to and visibility of civilian community-based care;
- Recommendation 4.3 b: Institute a "Commander's Package" from the SAPR VA with recommendations for victim care and support.
- Recommendation 4.3 e: Study the methods our allies have used to make amends to survivors, including restorative engagement to acknowledge harm, and potential victim compensation.
- Recommendation 4.4 a: Establish a Defense Sexual Assault and Sexual Harassment Centre of Excellence that administers a core curriculum of trauma and response trainings for all SAPR V As and SARCs, chaplains, and other response personnel;
- Recommendation 4.4 b: Develop training to build the capacity of SARCs and SAPR V As to provide culturally competent care to Service members from communities of colour, LGBTQ+ Service members, religious minorities, and men;
- Cross Cutting Recommendation 4.b: DoD should require the collection of data regarding sexual orientation and gender identity on the WGRA and WGR.

There are also *Tier 2* recommendations which have an implementation date of 2028 with *Tier 3 & 4* to follow by 2028 and 2030 respectively.

Congressional action has supported and funded implementation of the various approved recommendations, allowing the DoD to jump start implementation of the most impactful initiatives.

President Biden's January 2022 Executive Order made sexual harassment a named military offense.

Each of the Military Departments has at least one Office of Special Trial Counsel to prosecute alleged covered offenses occurring after December 27, 2023, and to restore trust in the military justice system.

The DoD's new prevention workforce work with leaders throughout the military to implement initiatives to reduce experiences of sexual assault, domestic violence, self-harm, and sexual harassment.

3. Impact that it is having

The DoD assesses progress with sexual assault via two primary metrics:

- 1) Prevalence (i.e., estimated total of Service members experiencing sexual assault, as measured by scientific surveys – desired state is decrease); and
- 2) Reporting rate (i.e., percentage of victimized Service members making Restricted and Unrestricted Reports – desired state is increase).

The 2021 Workplace and Gender Relations Survey of Military Members (from the Active and Reserve members) was fielded from December 2021 to March 2022.

The DoD received a total of 8,866 reports of sexual assault, which is an increase of 1,050 reports over the 7,816 received in 2020. This equates to a 13% increase on last year. The pentagon attributes this to significant increases in the number of complaints from the Army and the Navy as bases began to move out of pandemic restrictions and public venues reopened.

The 13% is broken down as Navy 9.2%; Air Force 2% and Marines 2%.

The pentagon also noted that the overall increase is largely fuelled by a nearly 26% jump in reports involving Army soldiers and is the largest increase for that service since 2013, when such reports went up by 51%.

Mirroring the increase in those reports is the disclosure that close to 36,000 service members said in the confidential survey that they had experienced unwanted sexual contact. This is a significant increase of over 44% since the 2018 survey which returned a figure of approx. 20,000.

The result from the 2021 report highlights the challenges faced by the DoD as an estimated 8.4% of active duty women and 1.5% of active-duty men have indicated that they have experienced an incident of unwanted sexual contact in the preceding year. In addition the rate of sexual harassment, gender discrimination and workplace hostility have increased for women throughout the active branches of the military.

DoD officials have argued that an increase in reported assaults is a positive trend because, as many people are reluctant to report the assaults, the increased numbers shows there is more confidence in the reporting system and an understanding that there is greater comfort and support for victims.

Commanders had sufficient evidence to take disciplinary action in 67 percent of accused members' cases. Every decision to take disciplinary action is based on evidence gathered during an independent investigation by a Military Criminal Investigative Organization and with due regard to the preferences of the victim, including the willingness of the victim to participate in the legal process. In 2021 the DoD had sufficient evidence to take disciplinary action in 2,683 cases. Data from the Defense Sexual Assault Incident Database indicated that disciplinary action was not pursued in 1,263 cases due to insufficient evidence of an offense to prosecute. About two percent of subject cases were unfounded, meaning evidence existed to find that the crime did not occur or that the accused did not commit the crime.

The 2021 report highlights the critical challenges the DoD will need to address to eliminate sexual assault and sexual harassment. Solutions to address the problems highlighted in the report are already being funded and implemented across the DoD and Military Services. These include the proactive steps to include immediate actions to enhance leaders' visibility of emerging, problematic climates, as well as preventive initiatives that provided leaders with needed staff and tools to promote safer military environments. Consistent with the Independent Review Commissions recommendations, the Secretary put into place the means to produce the massive cultural and organizational change required to improve accountability, prevention, culture and climate, and victim care and support.

The DoD is also reconfiguring the sexual assault response workforce to provide them with enhanced skills and independence required to better assist victim recovery. While cultural change of this magnitude takes time, the DoD is building accountability and transparency into this process to ensure that the reforms are enduring.



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