



MEMORANDUM 3

Better Case Management in the Court Martial - BCM(CM)

Practice Memorandum

This Memorandum amends “Practice in the Service Courts Collected Memoranda” Version 6 dated 1 September 2016. In that document Memorandum 3 (PCMH and Listing Practice) and Memorandum 13 (BCM(CM)) are to be removed and replaced with this new Memorandum 3. Version 7 of the Collected Memoranda will be issued in due course incorporating this change.

1. Introduction

- 1.1 Better Case Management in the Court Martial was introduced on 1 September 2016. This Memorandum updates the practices and procedures and is to be followed by all parties and stakeholders in the Service Justice System (SJS) from 1 July 2020.
- 1.2 BCM(CM) applies to all straightforward cases. A serious case such as a rape where consent is the sole issue will often be straightforward. Complex cases and cases where forensic or expert evidence is required as part of the initial investigation are likely to require a bespoke approach.
- 1.3 The aim of BCM(CM) is to ensure that cases in the Court Martial are dealt with as expeditiously as possible. This is best achieved by getting a case into court at the earliest opportunity in order that the defendant can enter their plea(s). If the defendant pleads guilty, little or no further work on investigating the case is required. If the defendant pleads not guilty, the judge, assisted by prosecution and defence legal representatives, will establish the issues in the case and a timetable will be set to ensure the case can be properly prepared for trial. Even in complex cases, the fundamental principles of BCM(CM) should apply and cases are to be brought to court at the earliest opportunity. Time will be given for further necessary enquiries once pleas have been entered and the issues identified.
- 1.4 Delay in bringing cases to court can reduce the quality of evidence, undermine the morale of individuals and units, distract Service personnel from their duties and impact on operational effectiveness. All stakeholders in the SJS must do their utmost to reduce delay in bringing cases to a final conclusion.
- 1.5 The following targets should be met in all BCM(CM) wherever possible, acknowledging legal and policy requirements. Service legal advisors and COs should comply with targets set by individual Services.
 - Service Police (SP) - report/detection of offence to referral to SPA/CO – 21 days

- Commanding Officer (CO) – apply single service targets ensuring no delay from receipt of case, taking legal advice and referral to the SPA. This should not exceed 21 days.
 - Service Prosecuting Authority (SPA) – from receipt of referral to direction – 21 days (7 days in AWOL cases)
 - Military Courts Service (MCS) – from receipt of direction to PTPH – 28 days.
 - AWOL cases – custody cases - 14 days from receipt of papers by MCS to plea and sentence hearing; non-custody cases 28 days.
- 1.6 Statistics must be kept by SPA and the Military Courts Service (MCS) to enable these targets to be monitored.
- 1.7 Digital files should be used where possible.

2. Police Investigation

- 2.1 The Service Police must ensure that case files are built according to the needs of the case. One interview for each defendant should be sufficient in most cases. Second interviews cause delay and should be avoided unless absolutely necessary. If a second interview is conducted it should concentrate on dealing with new evidence and not rehearse all that was said in the first interview. As soon as sufficient evidence exists to refer a suspect, a report should be sent forthwith to the CO or SPA as appropriate, together with the Initial Detail of the Prosecution Case (IDPC).
- 2.2 The target in straightforward cases for the Service Police to submit the IDPC is 21 days after the offence being detected or reported.
- 2.3 The IDPC must include:
- The Service Police Case Referral (SPCR) which will include a summary of the circumstances of the offence and any account given by the defendant in interview, whether contained in that summary or in another document,
 - Any available supporting statements,
 - Previous convictions and disciplinary record,
 - CCTV if available, and
 - Any other documents which are then available upon which the prosecution intend to rely.
- 2.4 Submission of the IDPC to the CO or SPA should NOT be delayed for:
- a. Full transcripts of ABE interviews to be prepared. Handwritten summaries written by the monitoring officer during the interview will suffice at this stage.
 - b. Full transcripts of interviews under caution to be prepared. A summary reflecting the defendant's account will suffice at this stage. Legible handwritten witness statements are acceptable.
 - c. Continuity statements or statements producing interviews, exhibits or dealing with arrest, photographs etc.

d. Medical evidence (unless crucial to deciding the level of charge). An indication of likely medical evidence will be contained in the SPCR.

2.5 Forensic evidence should be obtained using Streamlined Forensic Reports in accordance with rule 19.3 CrimPR 2015.

3. Disclosure

3.1 Participants in the SJS should adopt the same procedures for disclosure as their civilian counterparts. Judges will not expect full disclosure to have been made before the Plea and Trial Preparation Hearing (PTPH).

3.2 The disclosure obligations under the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009 are not affected by this Practice Memorandum.

4. Advice during investigation

4.1 The Service Police may need to seek legal advice. All advice must be sought and delivered expeditiously and in accordance with the aims and timescales of BCM(CM) and the SPA.

4.2 On receipt of a report from the SP, COs may wish to take legal advice. All advice must be sought as a matter of priority and delivered expeditiously.

5. Service Prosecuting Authority

5.1 Decisions to direct cases for trial in the CM should be made on the basis of the IDPC and any available statements. The SPA should direct cases within 21 days, in the knowledge that time is built into the BCM(CM) process in which to undertake further enquiries and obtain further evidence as the case progresses towards trial.

5.2 AWOL cases should be directed within 7 days, or sooner if possible. The only case papers required are those in 2.3 above and, if the defendant was interviewed, a brief summary of that interview.

5.3 When directing a case for trial the SPA should provide the charge sheet for the CO to sign and the IDPC, together with any available statements, defendant's antecedents, CCTV and other documents which are then available, upon which they intend to rely.

5.4 Direction should NOT be delayed for:

a. Full transcripts of ABE interviews to be prepared. Handwritten summaries written by the monitoring officer during the interview will suffice at this stage.

b. Full transcripts of interviews under caution to be prepared. A summary reflecting the defendant's account will suffice at this stage. Legible handwritten witness statements are acceptable.

c. Continuity statements or statements producing interviews, exhibits or dealing with arrest, photographs etc.

d. Medical evidence (unless crucial to deciding the level of charge). An indication of likely medical evidence will be contained in the SPCR.

- 5.5 If any of the above are required for PTPH, they can be prepared during the 28 days between direction and PTPH. BCM(CM) envisages that the full transcript of the ABE will be served as part of the Stage 1 directions, which is likely to be ordered at least 28 days after the PTPH.

6. Advice before the PTPH

6.1 In order for the PTPH to be effective:

- The SPA and defence must have fully completed the PTPH form prior to the court hearing. This should be done electronically and forwarded to MCS in advance of the hearing.
- The SPA must have provided the IDPC (see 2.1 above) and any disclosable unused material in their possession. In the event that the prosecution has not served all the materials listed prior to the PTPH, the court will usually expect to proceed with the hearing rather than adjourn it.
- Contact should be made between the parties to proceedings in line with the Duty of Direct Engagement.

7. The Pre-Trial and Preparation Hearing

7.1 The PTPH is normally to be listed within 28 days of the case papers being received at the Military Court Service (MCS). This may exceptionally be extended by the Resident Judge. It is imperative that the defendant is informed by his CO of the SPA's decision as soon as possible so the defendant can make arrangements for legal representation in good time for the PTPH, either through the Armed Forces Legal Aid Authority or privately. Judges will expect defendants to be ready to proceed with their case at PTPH.

7.2 Where the defence indicate, in advance of the PTPH, that the case is to proceed as a guilty plea, the PTPH can be replaced by a plea and sentence hearing if no PSR is required. In all but the clearest cases, it will usually be appropriate for a defendant's guilty plea(s) to be entered and any basis of plea agreed before a PSR is directed.

7.3 All AWOL cases where the defendant is in custody are to be listed for plea and sentence within 14 days of receipt of papers. All other AWOL cases are to be listed within 28 days.

7.4 The presumption is that parties may attend the PTPH by VTC provided, in the case of the defence, a full conference has already been held. This does not apply to unrepresented defendants who will generally be expected to attend court with their DAO. Procedures for attendance at court may be affected by Covid-19 and all court users should ensure they are aware of the latest protocols, which will be published on the MCS website.

7.5 An effective PTPH will:

- See the arraignment of the defendant.
- Set the trial date.
- Identify, so far as possible at that stage, the issues for trial.
- Provide a timetable for the necessary pre-trial preparation.
- Give appropriate directions for an effective trial, and
- Make provision for any FCMH that is required.

7.6 In most cases, the court will be able to set just four dates for the parties to complete their pre-trial preparation and therefore the judge will need only to insert the dates for the four stages and delete any orders that are not required. The draft orders have been grouped in a way intended to facilitate such an approach. Where necessary individual dates can be set.

7.7 The four stages are set out in detail on the PTPH Form. In summary they are:

- Stage 1 – for the service of the bulk of prosecution materials including evidence and disclosure of unused material. This date will be no more than 42 days after the PTPH and will generally be less in simple cases.
- Stage 2 – for the service of the defence response including Defence Statement. This date will ordinarily be 14 days after Stage 1.
- Stage 3 – for the prosecution response to the Defence Statement and other defence items. This date will ordinarily be 14 days after Stage 2 depending on the anticipated date of trial.
- Stage 4 - for the defence to provide final materials or make applications that will commonly arise out of prosecution disclosure. This date will ordinarily be 14 days after Stage 3 depending on the anticipated date of trial.

7.8 In most cases it will be possible for the defence to provide details of witness requirements at the PTPH and they should expect to do so. Stage 2 refers to a “Final list of prosecution witnesses required to give live evidence” and the defence can “fine tune” their requirements at that stage.

7.9 If a guilty plea is entered at the PTPH then the matter should proceed to sentence as soon as possible. If a Board is available at short notice, a stand down PSR should be obtained if possible. A PSR is required for all defendants who are unrepresented.

8. PTPH Form

8.1 The SJS will use the current version of the BCM(CM) form.

8.2 After the hearing the court should make copies available to the parties.

8.3 The BCM (CM) form is not required in guilty plea cases.

9. Further Case Management Hearing (FCMH)

9.1 A FCMH can be ordered if required.

9.2 The defendant will not usually be required to attend a FCMH. Counsel may attend the FCMH by VTC unless good reason requires attendance in person.

10. Compliance with Orders Given at PTPH

10.1 Parties are expected to comply with the timetables set and to monitor compliance by the other party. If a party cannot comply with direction they must, before expiry of the deadline:

- a. Liaise with the other party/parties, agreeing proposed revised dates for the “staged” court orders, and
- b. Apply to the court for an extension, using the Application to Extend/Vary Court Orders Form at Annex A, setting out the reasons for the extension and the proposed revised dates.

- 10.2 Each party must monitor the compliance of the other party and, in the event of non-compliance, notify the court.
- 10.3 The MCS will also monitor compliance with orders for service of Defence Statements and Trial Readiness Forms. This does not absolve the parties of their duty to monitor and comply with these orders.

11. Trial Readiness Forms and Hearings

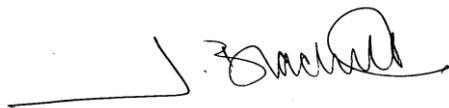
- 11.1 Dates will be set at PTPH for both service of the Trial Readiness Form and for a Trial Readiness Hearing in the event of a party not being ready for trial or non-service of a form. If parties submit forms and are trial-ready, the Trial Readiness Hearing will be vacated.
- 11.2 Trial Readiness Hearings will be held in all cases where the trial judge did not conduct the PTPH, unless otherwise ordered.
- 11.3 Trial counsel should attend Trial Readiness Hearings unless otherwise ordered. Attendance by VTC will usually be acceptable.

12. Pre-Sentence Reports

- 12.1 It is often possible to obtain stand-down reports which will enable sentence to take place at the earliest opportunity.

13. Statistics

- 13.1 The compilation of statistics helps monitor the effectiveness of the SJS and identify areas where improvements might be made. The SPA and MCS will liaise and produce appropriate and regular statistics.



HHJ Blackett
Judge Advocate General

Dated: 17th June 2020

To: Military Court Centre Bulford / Catterick

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E-mail to be copied to all parties.

APPLICATION TO EXTEND/VARY COURT ORDERS IN THE COURT MARTIAL

This form is to be used in all cases where application is made to amend court orders. It should be submitted prior to the expiry of the relevant order and after liaison with all parties in the case

Case Name			
Trial Date			
Name of Applicant			
Dates of Staged Directions		Proposed Dates of Staged Directions (following consultation with other parties)	
Stage 1		Stage 1	
Stage 2		Stage 2	
Stage 3		Stage 3	
Stage 4		Stage 4	
Trial Readiness Form		Trial Readiness Form	
Trial Readiness Hearing		Trial Readiness Hearing	
Details of application:			
Dates agreed by other party/parties – YES/NO If not agreed, give reasons:			
Judge's decision:			

Judge.....

Date.....