



THE COURT MARTIAL AND THE SUMMARY APPEAL COURT GUIDANCE

Volume 1: Guide to Procedure

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Section 1: Definitions & Introduction

1.1 Definitions

| | |
|--|--|
| Judge Advocate: | is the statutory term for a judge who has been specified by the Judge Advocate General to preside over proceedings in the Court Martial, the Summary Appeal Court or any other Service court. |
| The court: | means the Court Martial or the Summary Appeal Court in the appropriate sections of this guide. The court can comprise <i>either</i> the Judge Advocate and the board <i>or</i> the Judge Advocate sitting alone, depending on the type of proceedings. |
| The board: | means the group of Service (or sometimes civilian) persons who have been specified as lay members of the court and who may also be referred to collectively as the “members”. |
| The President of the Board: | means the most senior of the lay members of a Service board. |
| The Military Court Service: | is an independent branch of the Ministry of Defence whose role is to administer the Service courts. |
| The Court Administration Officer: | is usually the Director of the Military Court Service who is responsible, by his staff, for the administration of the court and for specifying the board members. |
| The Court Officer: | is an official of the Military Court Service responsible for running day-to-day operations at a Military Court Centre. |
| The accused: | is a person accused of an offence which may or may not be taken to the Court Martial. |
| The defendant: | is a person prosecuted in the Court Martial for an offence of which he may or may not be guilty. |
| The offender: | is a person who has pleaded guilty or been found guilty of an offence. |
| The appellant: | is a person who makes an appeal to the Summary Appeal Court |
| He / him / his: | are masculine gender terms, used for simplicity to include the feminine gender terms ‘she / her / hers’. All court appointments are gender neutral and must be treated as such in practice. |

Introduction

1.2 This Guide is issued under the authority of the Judge Advocate General and the Director of the Military Court Service jointly as an aid to those who practise in the military criminal justice system, and it is to be used in all hearings. Volume 1 provides information about procedure generally and it deals with all types of proceedings in the Court Martial as well as in the Summary Appeal Court. Volume 2 provides information specifically for members of boards. Neither volume deals with preparations for trials, or events away from the Military Court Centre.

1.3 Where there are discrepancies between this Guide and other documents which purport to describe order of procedure, the Guide has precedence over all apart from the statutory court rules. The Guide is provided to all defence representatives as a matter of course. Its contents are not confidential or classified.

1.4 The court procedures used by the Royal Navy, the Army and the Royal Air Force are founded on the Armed Forces Act 2006 and are substantially the same. Thus, this Guide has been produced to cater for the needs of all Services with the few differences being indicated in the Guide.

Section 2: The Court Martial

Ceremony

2.1 All proceedings in the Court Martial are formal occasions which, in addition to the normal courtesy of a court, include a certain amount of military or naval ceremony as befits the traditions of the Armed Forces and the unique nature of Service life. Nevertheless it is the fairness of the trial process which is the most important factor and not the strict adherence to military or naval drill.

Presence of Judge Advocate

2.2 In the case of *Cooper v UK*¹ the European Court of Human Rights ruled that the presence in a Court Martial of a civilian Judge Advocate, with legal qualifications, judicial independence, and a pivotal role in conducting the proceedings, constitutes not only an important safeguard but one of the most significant guarantees of the independence of the Court Martial proceedings. This ruling explains and reinforces the rationale that proceedings in the Court Martial should be and are presided over by the Judge Advocate.

Responsibility of Judge Advocate

2.3 This Guide does not provide guidance on the law, as sole responsibility for the law lies with the Judge Advocate who presides in each trial in the Court Martial. It is the responsibility of the trial judge to give directions on questions of law including questions of procedure and practice² and only the judge has the authority to vary the procedures in the Guide in individual trials. All the participants in the court process thus receive all direction on the law including legal procedure and practice from the judge. The judge is empowered³ to follow the procedures of the Crown Court, or procedures analogous to those of the Crown Court, where appropriate.

¹ [2003] ECHR 48843/99 at paragraph 117

² Armed Forces Act 2006 s 159

³ Armed Forces (Court Martial) Rules 2009 r 26

Role of Board Members

2.4 In trial proceedings in the Court Martial the board members alone are required to make a finding of fact based on the evidence that the judge determines is admissible for them to hear and see, presented to them by the prosecution and the defence. The judge guides the board through the trial at all stages, leaving members to concentrate on the task of listening to, assessing and analysing the facts and evidence presented to them in court. Any questions the members may have can only be raised through the judge who will decide whether the question may be asked. In the event of a finding of guilt and consequent sentencing proceedings, the members of an all Service or a mixed Service and civilian board take part in deciding the sentence together with the judge. If the board is all civilian, the members take no part in sentencing.

Interests of Justice

2.5 All trials must be conducted in a way that is, and is seen to be, absolutely impartial and fair. At a trial the interests of justice must take priority over all other considerations. As in any other criminal court, defendants are presumed to be innocent until such time as they may plead guilty or be found guilty of an offence.

2.6 Members must therefore pay particular attention to any directions given by the judge. Failure to follow judicial directions could result in dissolution of the court, or a finding of guilty being quashed later which could have the added impact of being perceived as unfair to a victim. The requirements imposed on members are set out in detail in Volume 2 of the Guide. The Guide may be taken into court.

Section 3: Roles

Appointment and Specification of Judges

3.1 Her Majesty the Queen appoints the Judge Advocate General, and the Lord Chancellor appoints individuals to the judicial offices of Vice Judge Advocate General or Assistant Judge Advocate General. The Judge Advocate General specifies individual judges to fulfil the role of judge advocate for each type of proceedings. Those offices and roles are defined by law. Deputy (part-time) Judge Advocates have likewise been appointed by the Lord Chancellor and are specified by the Judge Advocate General to preside over particular proceedings; whilst they are sitting they have the same status, and are addressed and treated in the same way, as the full-time judges.

Terms of Address

3.2 In court the judge advocate is addressed as “Your Honour”, and referred to as “His Honour the Judge”. On the rare occasion when a High Court Judge presides he is addressed as “My Lord” and referred to as “His Lordship”.

Board

3.3 A Service board comprises the President of the Board and at least two other lay members, who are the Service members of the court referred to in this guide as “members”, and who are both qualified and eligible to serve. Officers and warrant officers who are appointed to perform their duties as members of a board must do so independently and impartially in accordance with the evidence and the law. They are specified by the Court Administration Officer. If the defendant is a civilian who is not being tried for offences allegedly committed when he was a serviceman, the board is usually composed wholly of civilians.

President of the Board

3.4 The President of the Board is shown as such in the notice summoning members to attend the Court Martial, except that an all-civilian board chooses a foreman from among their number. The judge, however, presides over the court which means that the judge conducts the proceedings and gives directions to the board. The role of the President of the Board is not dissimilar to that of the foreman of a jury in the Crown Court during the trial proceedings stage after a Not Guilty plea. Under no circumstances may the President of the Board use rank to influence other members of the board concerning either finding or sentence.

***Morris* Direction**

3.5 Early in trial proceedings the judge gives specific directions, in open court on the record (known as the *Morris* direction), which ensure the board understands its duties in respect of the trial. It is helpful if the President of the Board has an understanding of the procedures, especially the means by which fairness and the appearance of fairness are maintained. The functions of the President of the Board are set out in detail in Volume 2 of the Guide at paragraphs 3.7 to 3.9.

3.6 If there is concern that the correct uniform, drill and forms of address are not being properly observed, subject to the judge's responsibility for conducting the trial, the President of the Board is a suitable interlocutor to raise these matters. If the President of the Board is concerned that best traditions are not being maintained, he may take action by issuing direction through the Court Usher, having first cleared such action with the judge by means of a written note. This must always be done in open court, with the expectation that the contents of the written note to the judge will be disclosed to the prosecution and defence representatives.

Contrasting Roles of the Judge Advocate and Board Members

3.7 The roles and functions of the judge and the members are entirely different, but taken together they contribute directly to a just outcome of each trial. As such they are complementary and both functions are indispensable. Where there is a plea of Not Guilty in the Court Martial, the members exclusively decide the guilt or otherwise of the defendant, based on the evidence presented to them. The judge takes no part in this decision (except where he decides that there is no case to answer at the close of the prosecution case and directs the board to find the defendant not guilty). The members hear, assess, deliberate on, and (if applicable) arrive at a finding on the facts of the case. During the trial proceedings they are acting in a similar way to a jury, and all members of the board have an equal vote and voice; there is no casting vote at this stage. The President of the Board chairs the discussion and reports the outcome to the court. If there is equality of votes, the court must acquit the defendant.

3.8 The judge, in addition to being aware of the evidence before the court, will have seen the trial papers and may have heard legal arguments in the absence of the board. The function of the judge is to ensure the trial is conducted fairly, decide what evidence the members hear and see, and ensure the correct interpretation and application of the law and procedures. The judge's role is exactly the same as the role of the judge presiding over a jury trial in the Crown Court until it comes to the sentencing stages.

Legal Rulings

3.9 Sometimes the judge may need to rule upon lengthy legal arguments about issues which can take hours or days to resolve. Before trial proceedings start the judge sometimes conducts a preliminary hearing with prosecution and defence counsel in the judge's chambers or in the

courtroom. This may delay the start of a trial. Such a ‘trial within a trial’ is a normal and fundamental part of the trial process in both military and civilian courts, and it is essential that members must have no knowledge of what is being discussed unless and until the judge tells them. Members should never speculate or try to ascertain what is occurring in court in their absence, and those who find themselves in this situation should be patient. Legal arguments can take some time during which board members must wait until called back into court. They may not leave without the judge’s permission, but they may do other non-case related work while waiting.

***Newton* Hearings**

3.10 Sometimes following a Guilty plea there is a dispute about the factual basis of the plea, which may affect subsequent sentencing considerations and which needs a hearing to resolve (known as a *Newton* hearing) as part of the sentencing proceedings. Under these circumstances the judge and the members all take full part in the hearing to decide the issue. The finding is by a majority of votes (judge and members combined). If there is equality of votes, the court must decide the issue in favour of the offender.

Sentencing

3.11 If a Guilty finding has been recorded in the Court Martial, the members and the judge sit on the bench together to hear submissions and stay together to determine the appropriate sentence for the offence. The worth or value of the opinion and vote of every member is equal, irrespective of their Service rank, subject to the casting vote of the judge in the event of an equality of votes. Members must accept the judge’s directions on what sentencing options are available in law, and on the legal principles of sentencing.

3.12 Where there are applicable guidelines issued by the Sentencing Council, as there usually are for serious offences, the guidelines are taken into account by judges when giving directions on sentence to the members. The Court Martial may depart from Sentencing Council guidelines if the departure is justified by any features of Service life or of the Service disciplinary system that are relevant (Armed Forces Act 2006 s 259(2)). Relevant factors are contained in the publication *Guidance on Sentencing in the Court Martial* issued by the Judge Advocate General which contains judicial guidance on appropriate sentencing tariffs taking into account uniquely Service offences and punishments, and reflecting Service discipline policy.

Section 4: Courtroom, Officials & Dress

Court Usher

4.1 The Court Usher is a key court official, who is responsible to the Court Officer for ensuring the smooth running of the court. The Court Usher is given written instructions and a detailed briefing on his duties from the Court Officer which will reflect the specific needs of the location, the proceedings due to take place there, and the directions of the judge. Once a trial has begun, the Court Officer and the Court Usher (and other members of the court staff and the court administrative party as authorised by the Court Officer) are the only contacts permitted between the members and anyone else involved with the trial. It is essential that the Court Usher does not reveal to any member anything which has occurred while the board is outside the courtroom.

Layout of the Court Martial

4.2 A schematic layout of a typical courtroom for the Court Martial is shown at **Annex A**. The presiding Judge Advocate in all Service trials sits at the front and centre facing the courtroom behind the judge’s bench, which in most courts is on a dais. The prosecution team and the defence team

including the defendant normally sit side by side facing the judge, with the Verbatim Court Recorder placed between the legal teams and the bench or to one side. Witnesses give evidence from a witness box positioned near the bench at one side of the courtroom facing the board. At the rear of the courtroom there is seating for the general public including the media; all types of proceedings are open to the public unless the judge rules otherwise. The Court Usher sits in front of the public seating and towards the middle of the courtroom, or near the door of the court. The members have no need to go anywhere within the Military Court Centre other than to the courtroom, to their retiring room suite, and to use the directly associated facilities. To that end, the Military Court Centre layout ensures that the judge and the members are segregated from other participants throughout the trial. Access to and movement within the Military Court Centre is controlled overall by the Court Officer assisted by the Court Usher while proceedings are in progress, and the safety and security of all participants are maintained.

Seating Arrangements

4.3 In the Court Martial the board sits in different places during the course of a case. During the trial proceedings, when the board's role is analogous to that of a jury, the board sits separately in the members' box, usually at right angles to the judge's bench. These seating arrangements are designed to make clear the board's complete separation from the judge. During the later sentencing proceedings (the determination and passing of sentence where a defendant has pleaded guilty or been found guilty), the board moves onto the bench and the members sit each side of the judge, to signify their participation in the sentencing process. Exceptionally if the courtroom does not permit the standard layout, the judge may authorise different arrangements.

Dress: Uniform

4.4 Units are responsible for ensuring that all personnel attending court are correctly dressed. Service personnel (including the defendant if still serving, and including members of the Special Investigation Branch) normally wear formal dress uniform in the Court Martial, including preliminary and arraignment proceedings. The Services have directed that the following are worn:

- Royal Navy:** No 1C.
- Royal Marines:** Lovats (without medals and gloves).
- Army:** Officers: Service Dress with No 1 Dress hat or equivalent (without medals, gloves, cane or Sam Browne).
Soldiers: No 2 Dress (without medals).
- RAF:** No 1 (without medals or gloves).

The Service personnel of the court administrative party may wear working dress, as appropriate to their assigned tasks. The President of the Board checks that all military personnel in the court maintain a proper standard of dress, and addresses any comments about this via the judge. However it is not appropriate to make direct comments on the turn-out or dress of the defendant; any issues on this subject are handled by the Court Officer via the defendant's unit. In hot weather the President of the Board may permit shirt-sleeve order to be worn. Challenges to the fairness of trials based purely on differences in standard uniforms supposedly reflecting inequality of arms are usually without merit: it is wholly appropriate for Service personnel on duty to wear formal uniforms.

Head-dress

4.5 Head-dress is worn by all Service personnel, male and female, in the courtroom at the beginning of the hearing until the oaths are taken. The judge gives instructions as to removal and replacing of head-dress when required. Head-dress is replaced and worn during the announcement of findings, during the passing of sentences, and at the conclusion of a case when the judge and the members leave the courtroom. It is not necessary to replace and remove head-dress every time the court rises or resumes. The Court Usher uniquely keeps head-dress on throughout.

Service Witnesses

4.6 Service witnesses wear head-dress, and salute on entering the court. They remove head-dress for the swearing of the oath and whilst giving evidence. Before leaving the courtroom they replace head-dress and salute. Service personnel appearing as witnesses who would normally be required to wear uniform may be authorised exceptionally by the Court Officer to attend court in civilian clothes where justified by operational, travel or other practical considerations. Persons attending to give evidence (except character witnesses) are not allowed to observe proceedings in court before they are called. After witnesses have completed their evidence they may be asked to remain available for recall, or may be released.

Legal and Civilian Dress

4.7 Legal representatives such as barristers and solicitors appear in the Court Martial robed as if appearing in the Crown Court, as appropriate for their qualification. Otherwise civilians dress as they choose, provided styles adopted are not likely to cause offence. If asked, the Court Officer advises civilian attendees to wear clothing which is neat, tidy, restrained and commensurate with the dignity of the court.

Section 5: Procedure

Order of Procedure in the Court Martial

5.1 The detailed order of procedure is set out in the table at **Annex B**. The judge may depart from the standard procedures exceptionally in particular cases, in which event he will give directions.

Entry of Judge Advocate and Board

5.2 The time at which the Court Usher is to open the court is directed by the judge and notified to the board and the Court Officer. The Court Usher warns others as necessary. After the prosecution, defence, and other participants are assembled in the courtroom, the judge enters and takes his place on the bench. When ready, the judge instructs the Court Usher to ask the board to enter. Thus the board always enters the courtroom last. Head-dress is worn by all Service personnel when the judge and members enter the courtroom at the commencement of a case, for the verdict and for sentencing. The judge remains seated when the board enters so as not to throw into doubt the appearance of his independence, or be seen to show deference or appear to be subordinate to the board. Under the direction of the Court Usher all others stand, and all Service personnel salute the President of the Board who returns the compliment. The judge invites them to take their seats.

Exit of Judge Advocate and Board

5.3 Each time the trial is adjourned, or when it has concluded, the judge and the board leave the courtroom. The board leave the courtroom first. Under the direction of the Court Usher, all (apart

from the judge) stand. At the conclusion of the case Service personnel replace head-dress and salute the President of the Board, who returns the compliment, and civilians present may bow. The judge leaves the courtroom last. Unless there has been a guilty plea or a finding, the judge pauses before leaving the court to ensure that he has no inadvertent contact with the members. Once the members and the judge have left, the Court Usher clears and closes the courtroom (if appropriate), advising all present when the court will be re-opened. If a defendant has been sentenced, in appropriate trials he is marched out of the courtroom before the judge and board leave.

Use of Video Live Link

5.4 Either prosecution or defence may apply for live link to be used in proceedings, and the judge may give leave for an advocate, a defendant or a witness to appear at any type of proceedings by means of a live link to a remote location. The judge may also give leave of his own motion.

5.5 Any application giving reasons must be submitted either to the Court Administration Officer or to the Court Officer for consideration by the judge, and copied to the other party to the proceedings. For witnesses required at trial proceedings, application should be made at least 14 days before the trial is due to commence; for preliminary proceedings, it should be made at least 2 working days ahead. The judge then gives directions on the application, or may hold a brief “for mention” hearing by live link to hear reasons why live link should be permitted in forthcoming proceedings. The time limits may be varied by the judge if the circumstances of the case so require. If the judge allows a participant to attend proceedings by live link, the expectation is that all matters in those proceedings will be dealt with as if that participant were present in court, and will be on the record.

5.6 When a live link is used, the Court Officer establishes the two-way video connection and verifies it is working a few minutes before it is required. The judge and the advocates (and the board, if any) must be able to see and hear the remote participant clearly, and the remote participant must be able to see and hear clearly those in court who are speaking to him (judge and/or advocates). Adjustments are to be made to the angle and focus of the cameras or the lighting if required, and the Court Officer ensures that there are members of staff on hand at both ends of the link to attend to this.

5.7 If the participant at the remote location is a witness or defendant, they are not to be left alone in the video link room (this does not apply to advocates). The Court Officer ensures that a member of staff is present who has the following duties:

- to ensure the participant is comfortable and has drinking water etc;
- to ensure there is no-one present off-camera coaching, monitoring or intimidating them;
- to administer an oath or affirmation if required;
- to take action if the live link connection fails; and
- to pass papers to or from the participant, if necessary by fax, during the proceedings.

The member of staff may himself be required to swear an oath or affirm to carry out these duties faithfully.

Section 6: Other Types of Hearings

Custody Hearings, Applications for Search Warrants and Arrest Warrants

6.1 All participants wear whatever dress they have on at the time. Service personnel attending are on duty and are therefore normally in uniform. Proceedings are informal, at the discretion of the judge.

Plea and Case Management Hearings

6.2 Plea and Case Management Hearings are preliminary proceedings and arraignment proceedings held in advance of trial proceedings in the Court Martial. The judge sits alone. All participants are robed and uniformed and wear head-dress as for trial proceedings. Procedure is similar to trial proceedings but omitting the role of the board. The judge may direct that robes should not be worn if that is appropriate. If, exceptionally, a Plea and Case Management Hearing is held in a civilian setting (such as the Royal Courts of Justice), it is acceptable for the defendant and all other participants to appear wearing civilian clothing unless the judge directs otherwise.

Service Civilian Court Hearings (adult)

6.3 The judge sits alone, and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. If any Service personnel attend, they may appear either in uniform or in civilian clothing. The procedures maintain the dignity befitting a court, but being characteristically civilian they avoid the drill typical of a Service court.

Service Civilian Court Hearings (juvenile)

6.4 The judge sits alone, and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. Service personnel, including the prosecutor, wear civilian clothing. The procedure is informal, and it is most important to avoid intimidating or confusing the juvenile defendant. The judge gives instructions concerning any special arrangements which need to be put in place.

Section 7: The Summary Appeal Court (SAC)

Origins of the SAC

7.1 The SAC was established under provisions of the Armed Forces Discipline Act 2000 and is now constituted under the Armed Forces Act 2006 s 140 et seq. Summary hearings by Commanding Officers are not of themselves compliant with the European Convention of Human Rights. It is the opportunity to appeal to the SAC together with the unfettered right to elect trial in the Court Martial, both of which are European Convention of Human Rights compliant courts, which makes the summary hearing process as a whole compliant. Everyone who is dealt with summarily has an automatic right to appeal to the SAC. A person may appeal against both finding and punishment, or against the punishment only.

Constitution of the SAC

7.2 The SAC comprises a Judge Advocate, specified by the Judge Advocate General to conduct the hearing; and two ‘lay members’ (referred to below as members), who are officers or warrant officers qualified and eligible to sit, specified by the Court Administration Officer. The duties and responsibilities of the members of the SAC are set out in detail in Volume 2 of the guide at paragraphs 4.1 to 4.10. The members sit on the bench alongside the judge throughout. All participants are robed and uniformed and wear head-dress as in the Court Martial. Procedure is broadly similar to the Court Martial except that the judge and members enter and exit the courtroom together.

Nature of Hearing

7.3 To ensure compliance, an appeal against both finding and punishment is an entire re-hearing of the facts of the case. In an appeal against punishment only, the facts of the case are often undisputed

and can be read to the court on that basis before the submissions on mitigation from the appellant. On rare occasions in an appeal against punishment only, the appellant accepts that he committed the offence but disputes the alleged facts as presented at the summary hearing, so there is held a “*Newton* hearing”. A *Newton* hearing is a limited hearing of only the evidence relevant to the disputed facts of the offence, so that the court can decide upon which version of the facts the punishment should be based. The court then hears any submissions or evidence on mitigation from the appellant before considering the punishment.

Layout of the SAC

7.4 A schematic layout is shown at **Annex C** which is typical of a courtroom in which an appeal is heard. The judge sits at the centre front facing the courtroom on the bench, which is often on a raised dais. During the appeal the members sit alongside the judge on the bench throughout. This is because the judge and members together decide whether to confirm, substitute or quash a finding of guilt and the appropriate punishment. The Appellant and Respondent teams usually sit side by side facing the judge and the Verbatim Court Recorder sits to one side of the bench. Witnesses usually give their evidence from a witness box positioned near the bench, to one side. Members of the public (press and other media, family members, observers and visitors) sit at the back of the courtroom.

Dress

7.5 Dress in the SAC is the same as in the Court Martial.

Order of Procedure in the SAC

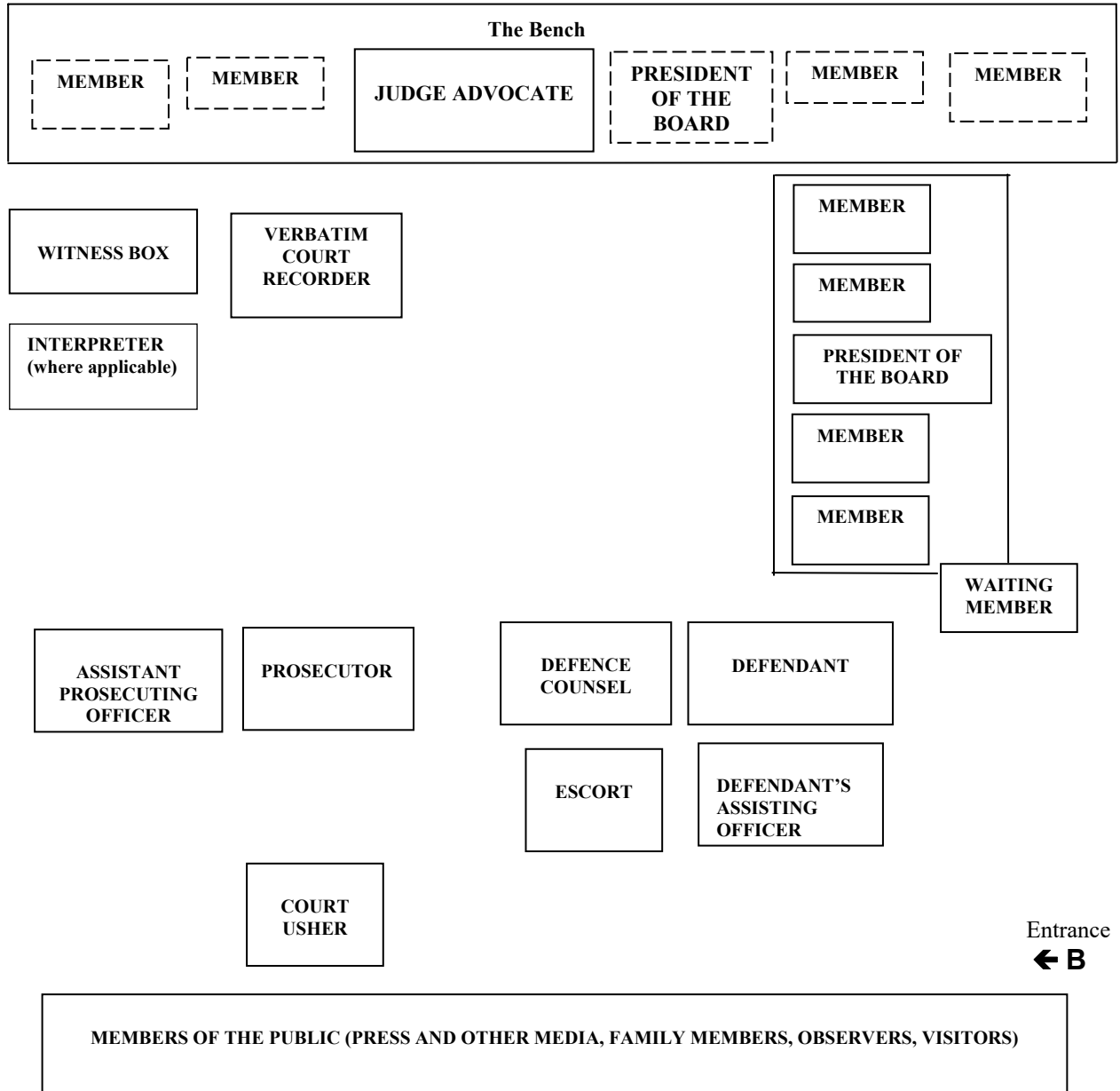
7.6 A detailed order of procedure in the SAC is set out in the table at **Annex D**.

ANNEX A

LAYOUT OF THE COURT MARTIAL

[Royal Coat of Arms]

Entrance



Entrance



Notes

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres, and are modified as necessary if there is more than one Defendant.
2. The Court Officer may also have a desk in the courtroom.
3. The number of board members is between a minimum of three and a maximum of seven, depending on the seriousness of the alleged offence and as directed by the judge. The diagram shows five as an example. Board members join the judge on the bench only for sentencing proceedings, as indicated in hatched lines -----
4. Arrows indicate separate entrances (A) for the judge and members; and (B) for all others.
5. This is also the courtroom layout for the Service Civilian Court, but without the President of the Board, the members and the escort.

ANNEX B**ORDER OF PROCEDURE IN THE COURT MARTIAL**

| Serial | Activity | Remarks |
|---------------|--|--|
| 1 | No later than 5 minutes before the appointed time Court Usher opens the court. | Defendant must enter the court. Defendant's Assisting Officer, legal representatives and Verbatim Court Recorder may enter the court as required. Members of the public enter and take their places. Service personnel wear head-dress. |
| 2 | Judge Advocate enters. | Counsel bow, Judge Advocate bows and sits down. All sit. |
| 3 | Judge Advocate deals with any preliminary matters. | |
| 4 | Defendant(s) stand. | |
| 5 | If the defendant has not been arraigned previously at a Plea and Case Management Hearing: Arraignment. | Arraignment takes place in the absence of the Board. Judge Advocate reads the heading of the charge sheet. Judge Advocate deals with any negative responses. |
| 6 | Arraignment. | Judge Advocate reads charges and asks each defendant how he pleads to each charge. Judge Advocate records the pleas on the Record of Proceedings (TRN1 form). |
| 7 | President of the Board and board members enter. | All stand except Judge Advocate, who remains seated. Counsel bow, Service personnel salute. President of the Board returns salute. If there has already been a guilty plea, the Judge Advocate directs the board to join him on the bench; otherwise they are directed to the members' box to the side of the courtroom. |
| 8 | On direction from Judge Advocate all sit except the Defendant(s) who remain standing. | Judge Advocate may ask the Defendant(s) to identify themselves. |
| 9 | Judge Advocate reads out the Court Martial notice. | As the name of each officer or warrant officer (or civilian) member of the board is read out he identifies himself. |
| 10 | Judge Advocate asks if there are any objections. | Judge Advocate deals with any objection. |
| 11 | Administration of oaths. | All stand and Service personnel remove head-dress. Judge Advocate administers oath to President of the Board and members in order of seniority. |
| 12 | Judge Advocate either directs the waiting member to withdraw or administers oath to him. | All sit. |

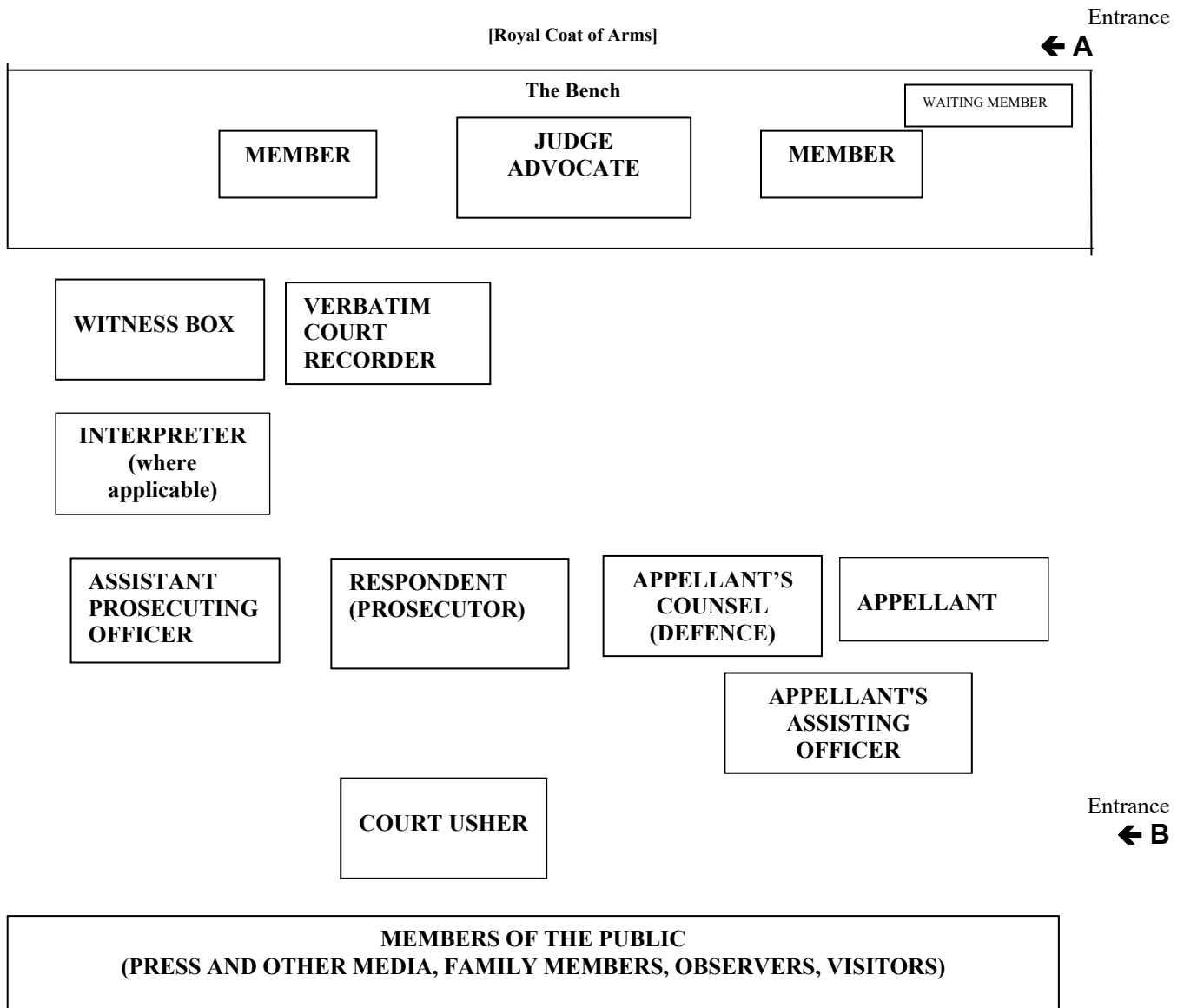
| Serial | Activity | Remarks |
|--------|---|--|
| 13 | Morris Direction. | Judge Advocate addresses the members on their duties, reminds them that they will not be reported on for their performance in court, and that they must report to the Judge Advocate any attempts to interfere with or pressurise them before or during the trial. |
| 14 | Judge Advocate directs that members be provided with copies of the charge sheet. | Unless any objections raised by counsel. |
| 15 | The defendant(s) has been arraigned previously and has entered a plea(s) | Judge Advocate tells the board how the defendant(s) pleaded. |
| 16 | No charge to be tried (Plea of guilty to all charges, or prosecution accepts pleas to sufficient charges for justice to be done). | Omit serials 17 to 33. Turn to serial 34. |
| 17 | Charges to be tried; plea of Not Guilty. | |
| 18 | Trial proceedings commence. | Defendant sits. |
| 19 | Prosecution opens its case. | |
| 20 | Prosecution witnesses called to give evidence. | See guide paragraph 4.6. Court Usher administers the oath and invites witness to sit. |
| 21 | Examination in chief; Cross-examination; Re-examination. | |
| 22 | Questions from the Board. | President of the Board or member writes question on paper and passes to Judge Advocate, who decides whether to ask it. |
| 23 | Release of witnesses. | See guide paragraph 4.6. |
| 24 | Legal submissions during the trial. | President of the Board and members retire while Judge Advocate adjudicates. If at any stage the Judge Advocate decides to withdraw the matter from the Board and directs the Board to find the defendant Not Guilty, turn to serial 31. |
| 25 | Defence case. | Same procedure as for prosecution opening and witnesses. See serial 19 – 23. |
| 26 | Defendant may give evidence. | Defendant takes the stand in the same way as any other witness. On completion, he returns to his seat. |
| 27 | Closing speeches. | Advocates address the court, with the defence having the last word. |
| 28 | Judge Advocate sums up the case. | On completion, Board retires to consider findings (verdicts). Judge Advocate leaves. Court Usher clears the court. |
| 29 | President of the Board informs Court Usher that Board has reached finding(s). | Court Usher informs Judge Advocate. |

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| 30 | Court Usher re-opens the court. | See serials 1-3 & 7. |
| 31 | Finding(s): announcement(s) | Judge Advocate asks the President of the Board to announce the finding on each charge for each defendant: GUILTY or NOT GUILTY . Judge Advocate records the finding(s) on the Record of Proceedings (TRN1 form). |
| 32 | In the case of findings of NOT GUILTY to all charges | Judge Advocate and President of the Board sign the Record of Proceedings (TRN1 form). Prosecutor hands up diary of events Judge Advocate declares the proceedings concluded. |
| 33 | Board and Judge Advocate leave the court. | Service personnel salute. Board and Judge Advocate leave. Court Usher clears the court. |
| 34 | Sentence Stage. In the event of finding of GUILTY to any charges; or plea of GUILTY to any charges. | Members move from the members' box to sit alongside the Judge Advocate. After they are seated, all in court sit. |
| 35 | If plea(s) of guilty: Prosecution opens the facts of the case and lists antecedents of offender. If finding of guilty: Prosecution lists antecedents of offender if relevant. | If there is a dispute about the facts following a guilty plea, court will consider a " <i>Newton Hearing</i> ". |
| 36 | In the event of a dispute about facts affecting sentence after a guilty plea. | Procedure for <i>Newton</i> hearing follows serials 20-23 & 26, after which Judge Advocate and Board retire together to consider the facts. |
| 37 | Adjournment for Pre-Sentence Reports or other reports. | If, following submissions from defence or on the court's own motion, reports are considered necessary, the court is adjourned until some later date for sentence. Judge Advocate and Board leave. |
| 38 | Court re-opens. | Serials 1-3 & 7. |
| 39 | Plea in mitigation. | Character witnesses may be called and/or written character evidence and other reports are put before the court. |
| 40 | Court retires to consider sentence. | Judge Advocate and Board may retire together or may remain in the courtroom while they deliberate, in which event the court is cleared. |
| 41 | Judge Advocate informs Court Usher that the court is ready to deliver sentence. | Court Usher reopens the court. Serials 1-3 & 7. |

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| 42 | Judge Advocate and Board enter together if they retired to deliberate. If Court has remained in the courtroom, all other parties are readmitted. | Counsel bow, Service personnel salute. All sit except offender and escort who remain standing. |
| 43 | Judge Advocate gives reasons for sentence. | Head-dress remains on. |
| 44 | President of the Board formally announces sentence. | |
| 45 | With leave of the Judge Advocate, the President of the Board may address the offender. | Offender is addressed about the effects of his offending on the Service, and the effects of the sentence on his Service career. |
| 46 | March out. | An offender sentenced to custody is always marched out whatever his rank. If non-custodial sentence, it is at the discretion of the President of the Board depending on the rank of the offender and the sentence. Court Usher orders offender and escort to attention, to salute, and then to march out of the court. |
| 47 | Miscellaneous rulings and Diary of Events | Judge Advocate deals with costs if appropriate. He may do so before the offender is marched out. Prosecutor hands up Diary of Events. Judge Advocate and President of the Board sign the completed Record of Proceedings / Trial Result Notification (TRN1) form. |
| 48 | Judge Advocate declares the proceedings concluded. | Judge Advocate and Board leave. Court cleared. |

ANNEX C

LAYOUT OF THE SUMMARY APPEAL COURT

**Notes**

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres, and are modified as necessary if there is more than one Appellant.
2. The Court Officer may also have a desk in the courtroom.
3. Arrows indicate separate entrances (**A**) for the Judge Advocate and members; and (**B**) for all others.

ANNEX D**ORDER OF PROCEDURE IN THE SUMMARY APPEAL COURT**

| Serial | Activity | Remarks |
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| 1 | No later than 5 minutes before the appointed time Court Usher opens the court. | Appellant must enter the court. Representatives for the Appellant and Respondent and Verbatim Court Recorder may enter the court as required. Members of the public enter and take their places. Service personnel wear head-dress |
| 2 | At the appointed time Court Usher invites the Judge Advocate and Members to enter the court. | All persons in court rise. Counsel bow, all Service personnel salute. Senior Service member returns compliment. |
| 3 | Judge Advocate and Members take their places. | Members sit on the bench at each side of the Judge Advocate. |
| 4 | The Judge Advocate reads out SAC notice. | Judge Advocate invites all in the court to remove head-dress. As the name of each member is read out, he identifies himself. |
| 5 | Judge Advocate asks Appellant and Respondent if there are any objections. | Judge Advocate deals with any objections. |
| 6 | Administration of oaths. | All stand. Judge Advocate administers oath to members in order of seniority. |
| 7 | Judge Advocate either directs the waiting member to withdraw or administers oath to him. | |
| 8 | Judge Advocate reads out the charge and confirms with Appellant (or his Counsel / legal representative) whether appeal is against both finding and punishment, or punishment only. | If the appeal is against both finding and punishment this will form a complete re-hearing of all the evidence. Serials 9 to 24 apply. If the appeal is against punishment, go to serial 21 onwards. |
| 9 | Trial commences. | Appellant sits. |
| 10 | Respondent opens its case. | |
| 11 | Respondent's witnesses called to give evidence. | Court Usher calls in each witness as instructed. Witnesses entering the courtroom salute/bow as appropriate. Court Usher administers the oath/affirmation. If appropriate, Judge Advocate invites the witness to sit. |

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| 12 | Examination in chief; Cross-examination; Re-examination. | |
| 13 | Questions from the members. | The Judge Advocate and the members may ask questions of the witness. |
| 14 | Release of witnesses. | See guide paragraph 4.6. Judge Advocate gives the witness an appropriate witness warning. Witness stands, replaces head-dress, salutes/bows as appropriate, and leaves. |
| 15 | Appellant's case. Opening address, calls witnesses. | Same procedure as for Respondent serials 10-14. |
| 16 | Appellant may give evidence. | Appellant takes the witness stand in same way as any other witness. On completion, he returns to his seat. |
| 17 | Closing speeches. | Advocates address the court, with the appellant having the last word. |
| 18 | Deliberation on finding. | All except the Judge Advocate, members and Court Usher leave the court room. Court Usher receives any further instructions from the Judge Advocate before also leaving. The Judge Advocate and members deliberate the finding alone. |
| 19 | Judge Advocate calls for Court Usher to re-open the court | All persons involved in SAC return to respective places in the court room. Service personnel wear head-dress and salute on entering the courtroom. |
| 20 | Judge Advocate announces the finding | Finding either: <ul style="list-style-type: none"> • confirms the original finding, or • quashes the original finding, or • substitutes a new finding that a different offence is proved. |
| 21 | If original finding of guilt is quashed. | The conviction and punishment are reversed. Judge Advocate signs TRN2 form confirming the outcome. |
| 22 | If appeal is against punishment only | Respondent reads out the undisputed facts of the case to the court. |
| 23 | If finding of guilt is not quashed, or was not appealed: Respondent and Appellant address the court on punishment and mitigation. | Deals with reports on the appellant, antecedents, any time already spent in custody, evidence of character witnesses. |
| 24 | Judge Advocate closes the court to allow for deliberation on punishment. | All except the Judge Advocate, members and Court Usher leave the court room. Court Usher receives any further instructions from the Judge Advocate before also leaving. The Judge Advocate and members deliberate the sentence alone. |
| 25 | Judge Advocate calls for Court Usher to re-open the court | All persons involved in SAC return to respective places in the court room. Service personnel wear head-dress and salute on entering the courtroom. |

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| 26 | Judge Advocate formally announces the decision on punishment. | Judge Advocate gives reasons for the court's decision. Judge Advocate signs the TRN2 Record of Proceedings form. |
| 27 | March out | An offender who is in custody, or whose custodial sentence still stands, is always marched out of court. In other cases it is at the discretion of the senior Service member of the court. |
| 28 | Judge Advocate concludes the case. | Judge Advocate announces that the appeal hearing is concluded, directs the Court Usher to clear the court. Uniformed personnel replace head-dress and salute, civilians bow. Judge Advocate and members leave. |