



**ANNUAL REPORT OF THE OFFICE OF  
THE JUDGE ADVOCATE GENERAL**

**2020 – 2021**

## Introduction

This is my first report as Judge Advocate General and I intend to produce it annually. It will be brief but it aims to provide an insight into events during the legal year and a taste of some of what I hope to achieve in the year ahead. I would welcome any feedback.

Over the last 12 months my primary aim has been to continue to provide safe, effective and efficient justice in the Court Martial, Summary Appeal Court and Service Civilian Court (the “Service Courts”), thereby supporting the operational effectiveness of the Armed Forces. I can confidently report that that aim has been achieved.

All those who have worked in or used the Service Courts during the last year have had to adapt to very challenging circumstances, and I am grateful to the staff of the Military Court Service, members of the legal profession and my judicial colleagues for their patience, perseverance and pragmatism.

I want to take this opportunity publicly to note the contribution of my predecessor Jeff Blackett, who retired 30 September 2020 after 16 years as Judge Advocate General. During his time in office he played a major role in transforming the Service Justice System, primarily through the implementation of the Armed Forces Act 2006, which reformed almost every element of the Service Justice System. Thereafter, he ensured that the service courts remained effective and efficient, and he retired leaving a system of justice which was modern and fit for purpose. His is a very hard act to follow.

A handwritten signature in black ink, appearing to read 'Alan Large', with a stylized flourish at the end.

HHJ Alan Large  
Judge Advocate General to Her Majesty’s Armed Forces

30 September 2021

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## 1. The Impact of the Pandemic

As with the civilian criminal courts, the suspension and subsequent reduction in the operation of the Service Courts due to the pandemic caused a considerable backlog of work. Careful thought was given to the order in which cases should be re-listed, with priority given to those with vulnerable complainants. The impact of a 4-week high-profile trial at Bulford requiring the use of both court rooms to maintain social distancing added to the problem. In order to reduce the backlog at Bulford, a “Nightingale” court will sit for five weeks between October and December in the Garrison Theatre in Tidworth. The co-operation and support of the Army in providing this facility is very much appreciated.

During the period of restrictions, the Service Courts continued to operate remotely, hearing plea and trial preparation hearings, further case management hearings and other similar matters over video link. It is inevitable that greater use of video link will continue in the future.

A number of sentencing hearings were held with all parties, including the sentencing board members, appearing over video link. This process only worked effectively due to the co-operation of all involved. As soon as it was possible, sentencing hearings were conducted with the sentencing board members and judge in court, but with other parties appearing over video link, which was an improved procedure. It is expected that this procedure will continue to be used where appropriate, at the discretion of the sentencing judge.

Despite considerable pressure over a number of years, there was a reluctance to move to digital case files in the SJS. A positive effect of the pandemic was a rapid move from paper to digital files on grounds of public safety. Further progress is required, but the introduction of the current interim system has improved efficiency and demonstrated the ability of the SJS to embrace change.

Full health and safety assessments of the court facilities were conducted, and appropriate measures introduced to protect the safety of court staff and users. Numbers in court were limited in order to preserve social distancing, and in a high-profile case which attracted significant press interest a remote video broadcast facility was arranged for those unable to attend in the court room. On occasion, members of the public with a particular interest in cases (for example victims at sentencing hearings or close relatives of defendants) have, with judicial leave, attended proceedings remotely over video link. Arrangements have been made to maintain public access to all hearings, including the fully remote sentencing hearings mentioned above.

## 2. Personnel

### Judicial

A recruitment process through the independent Judicial Appointments Commission for two new Assistant Judge Advocate Generals concluded with the appointments this month of Andrew Smith MBE TD and Darren Reed. Judge Advocate Smith is a Recorder and a tribunal judge in the Immigration and Asylum Chamber. He has a distinguished service background as a reserve officer in the Army. Judge Advocate Smith will be based primarily in the Military Court Centre in Catterick. Judge Advocate Reed was the Deputy Director of the Service Prosecuting Authority, before which he had a full and successful career as a lawyer and logistics officer in the Royal Navy, with experience in every aspect of the Service Justice System. He also has significant operational legal expertise. Judge Advocate Reed is a Recorder and will be based primarily at the Military Court Centre in Bulford. However, as the Court Martial is portable, all Judge Advocates could be posted worldwide as is deemed necessary in the interests of justice.

The AJAG recruitment process took longer than anticipated and, in order to keep all courts sitting, authority was obtained for former Judge Advocate General HH Jeff Blackett, former Vice Judge Advocate General Judge Michael Hunter and former Deputy Judge Advocate HHJ Jonathan Carroll to sit in the Court Martial for a number of weeks over the summer. Their assistance was much appreciated, as was the co-operation of HHJ Paul Watson QC Recorder of Teesside in releasing HHJ Jonathan Carroll.

Agreement has been reached with the North Eastern and Western Circuits for AJAGs to be included in the Recorder Appraisal Programme.

Judge Advocate Paul Camp retires on 6 October 2021 after 33 years in office. He has served in Germany and the United Kingdom and until recently was the Resident Judge at the Military Court Centre at Catterick. His contribution to service justice over so many years has been significant, and he will be long remembered.

### External Agencies

Andrew Cayley CMG QC retired in November 2020 after 7 years as Director of Service Prosecutions (DSP), during which he brought his unparalleled experience of international criminal law to bear on post-operational challenges such as the Iraq Historic Allegations Team, as well as leading the Service Prosecuting Authority (SPA) with distinction. He was succeeded by Jonathan Rees QC.

Miles Crowley retired in April 2021 after 16 years as the Director of the Military Court Service (DirMCS). He led the Service through some challenging times, including the move of the MCS from Upavon into the court centre at Bulford

and the closure of the court centres at Portsmouth and Colchester. His successor is Cleaven Faulkner JP.

As will be seen later in this report, these two new Directors have worked effectively with the Office of the Judge Advocate General (OJAG) to meet the challenges of the pandemic, as well as developing new technologies to deal with case management and management information.

### **Military Court Service Staff at the Court Centres**

The court staff at the two Military Court Centres bore the brunt of the effects of the pandemic. After a short period of working from home, a gradual return to the workplace was required to allow the business of the courts to continue. Once back in court, the staff had to deal “front of house” with court users, some of whom were in very stressful situations with social distancing not at the front of their minds, and many of whom were travelling to court from areas of the country with significantly higher infection rates. It is a testament to the work done by MCS management and staff that, until restrictions were lifted in July, no member of the MCS staff contracted Covid-19.

Staff turnover has been high, particularly in the Military Court Centre in Bulford, and the administrative hurdles placed in the way of speedy replacement of members of staff have led to the Bulford court being significantly understaffed for a prolonged period. Whilst the MCS management did what they could to recruit as quickly as possible, this is not satisfactory and places extra stress on those members of staff who remain in post. OJAG will work with DirMCS to ensure that measures which may improve staff retention are implemented (for example to allow for greater personal development of staff).

## **3. Court Facilities**

The two Military Court Centres are again fully operational after the restrictions during the height of the pandemic.

The standard of the fabric of the Military Court Centres remains first class. A review has recently been undertaken by DirMCS of the IT, video and associated technical facilities and updated equipment is being procured as a result.

Both Military Court Centres are now linked to the Defence Broadband Infrastructure which has greatly improved connectivity.

A review of physical security has been conducted at both Military Court Centres and significantly improved procedures in relation to public admission to the courts, documentary security and handing of defendants sentenced to custodial sentences are being introduced.

## 4. Management Information

As has been repeatedly identified in various reviews of the Service Justice System, there is a lack of statistical information through which to assess the effectiveness of the SJS. The Service Police, SPA and MCS have worked with OJAG to evaluate what data is currently available and what needs to be captured in future. This information is being coordinated into a template which will allow the process of collecting and evaluating data on the performance of the service courts to commence.

Work is well underway in the Service Police, SPA and MCS to develop new digital case management processes. It is essential that these developments are both mutually compatible, and compatible with the Common Platform which is being introduced by Her Majesty's Courts and Tribunal Service (HMCTS) into the Magistrates' and Crown Courts. If successful, the securing, processing and assessment of management information will be significantly enhanced, thereby allowing each part of the SJS to analyse their efficiency and effectiveness, as well as providing more information to the public.

It is right to acknowledge here the co-operation of colleagues from HMCTS who continue to provide support in developing the participation of the SJS in the Common Platform project.

It is intended that the Judge Advocate General's next Annual Report in 2022-23 will include data which will demonstrate the performance of the service courts.

## 5. Legislation

The Armed Forces Bill 2021 continues to make its way through Parliament. It seeks to introduce a number of measures recommended by the Lyons Review into the Service Justice System, including revised numbers and ranks of board members in the Court Martial, additions to sentencing powers and the power to correct minor mistakes at summary level and in the Summary Appeal Court and Service Civilian Court. It also maintains the principle of concurrent jurisdiction of the service and civilian justice systems, requiring a protocol between the Director of Public Prosecutions (and equivalent office holders in Scotland and Northern Ireland) and the Director of Service Prosecutions, setting out the principles on which jurisdiction will be determined.

## 6. Reports relating to Service Justice

### **Lyons Review into the Service Justice System**

During the year, work has progressed at the Ministry of Defence implementing recommendations of the Service Justice System Review conducted by HH Shaun Lyons CBE. This review, and the contemporaneous review into policing by Sir Jon Murphy QPM DL, reported in 2019 and there remains much work to be done to implement the important recommendations which have been accepted by the Secretary of State. It is important that sufficient resources can be allocated to this work by the Ministry of Defence. If not, there is an ever-increasing risk of the benefits of this comprehensive review being lost.

### **The House of Commons Defence Sub-Committee Report: Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life.**

The Report of the Sub-Committee chaired by Sarah Atherton MP was published on 25 July 2021. Careful consideration will be required of its recommendations in relation to the SJS.

### **The Report by Sir Richard Henriques into the Policing and Prosecution of Offences on Overseas Operations**

OJAG provided input to this report. It is anticipated it will contain significant recommendations in relation to a number of areas of the SJS which will require thorough analysis and, if appropriate, implementation.

Dealing with reports and reviews generally, it is essential that sufficient resources are allocated by the Ministry of Defence to the important tasks of finalising the work on the Lyons review and of assessing and implementing the recommendations of the Atherton and Henriques reports, and that the progress is monitored by the Service Justice Executive Group, under the direction of the Service Justice Board.

### **Report of the Third Independent Review Authority into the Military Justice in Canada.**

OJAG was invited to contribute to this comprehensive review of Canada's Military Justice System. The report was published on 1 June 2021 and provides a detailed analysis of every aspect of military justice in Canada. It is of note that a number of the recommendations in the report reflect developments made in the UK following a number of rulings of the European Court of Human Rights into the UK's SJS in the 1980s and 1990s, which culminated in the major reforming legislation of the Armed Forces Act 2006. This report is likely to be of assistance to work which is being developed with the Commonwealth Secretariat and contains areas where further progress may still also be made in the UK. These matters will be considered and progressed by OJAG.



## 7. Further Improvements to Court Efficiency

OJAG is working with DirMCS and DSP to introduce backing trials into lists in the Court Martial, which will assist in filling last-minute gaps in the courts' schedule. It will be important to identify with care appropriate cases to be designated as backing trials, and to ensure they are dealt with as a priority if they are not reached when first listed.

A variety of other adjustments to current listing practices were discussed at the OJAG Summer Conference and are under further consideration, with a view to maximising court efficiency and reducing the delay in cases being heard, whilst maintaining an appropriate level of work for the court staff.

## 8. Commonwealth Issues

OJAG is well placed to have a role in relation to military justice in the Commonwealth. JAG has continued his relationship with the Commonwealth Magistrates and Judges Association and the Commonwealth Lawyers Association, both of which have expressed their support for initiatives which can assist Commonwealth nations in developing their systems of military justice. The CLA hosted a webinar at which JAG addressed current issues in military justice together with CLA colleagues from Australia, Zambia and India, which was well attended. JAG has also participated in the recent conferences of both associations, chairing sessions on military justice topics.

Some Commonwealth nations have military justice systems based on the UK's practice and procedure prior to the far-reaching reforms required by rulings of the European Court of Human Rights. Work has begun with the Commonwealth Secretariat and, following requests from a number of nations for assistance, it is hoped that the Commonwealth Secretariat will develop a project which will assist in raising the profile of military justice, including drafting model laws and a code of accepted standards for military justice systems. This project will also facilitate the sharing of knowledge and experience between judges and practitioners in military justice across the Commonwealth.