



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

2021 – 2022

Introduction

This is my second report as Judge Advocate General, in which I aim to provide an insight into events during the past year and make some observations on what lies ahead.

As the country emerged from the Covid pandemic, courts across the land were assessing the implications of the significant restrictions on their normal operations, and the backlog of cases was a particular concern. I set out in the report how the Service Courts have responded to the challenges of returning to normal operations and am pleased to report that the Service Courts are operating more efficiently than before the pandemic. This is down largely to the attitude and dedication of the staff in the Military Court Service and all those who work in the Service Courts, and their willingness to embrace change.

Anyone with an interest in the Service Justice System will have noted reports in the media and elsewhere about conviction rates in sexual cases in the Court Martial. It is not appropriate for me to comment on those reports, but I do consider it important that commentators have the opportunity to consider data which is as accurate and up-to-date as possible. I therefore wish to highlight that the Ministry of Defence publishes official statistics on Murder, Manslaughter and Sexual Offences in the Service Justice System annually in March. I have delayed publishing this report because it became apparent that there were some errors in the annual statistics published in March 2022, which have now been corrected and re-published on 16 December 2022¹. These statistics provide information for 2021, including the number of referrals from the Service Police to the Service Prosecuting Authority, the number of directions for trial by the Service Prosecuting Authority, and the number of convictions in the Court Martial.



HHJ Alan Large
Judge Advocate General to His Majesty's Armed Forces

1 November 2022

¹ <https://www.gov.uk/government/statistics/murder-manslaughter-and-sexual-offences-in-the-service-justice-system-2021/murder-manslaughter-and-sexual-offences-in-the-service-justice-system-2021>

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1. The Service Courts post Covid-19

Although the Service Courts were subject to the same closures and restrictions as their civilian counterparts, careful assessment by the Director of Service Prosecutions as to whether less serious cases could properly be heard before the Commanding Officer, the enhanced use of videolink technology, a reduction in cases received from the Service Police during the periods of lockdown and working from home enabled the backlog of cases to be kept to a manageable level. Use of a Nightingale Court in Tidworth Garrison Theatre provided an extra court room for several weeks at the end of the year. The court was open to the public and press and, with a good degree of co-operation from all court users, allowed almost all cases which had been postponed because of the court closures to be heard by the end of 2021. No case where a defendant was remanded in custody pending trial was significantly affected (noting that there are few of such cases in any event).

As the restrictions eased, the advantages and disadvantages from use of videolink technology were carefully assessed. The two court centres in Bulford (Wiltshire) and Catterick (North Yorkshire) are 275 miles apart and whilst local solicitors appear regularly, there is no “local bar”. Defence barristers and prosecuting lawyers generally travel long distances to attend court hearings which is not an effective use of their time. With much improved broadband in both court centres, it has been possible to continue to hold almost all pre-trial hearings with legal representatives, defendants and assisting officers attending by videolink and judges sitting in the courts, supported by the court staff. This practice can only be sustained if legal representatives prepare properly and discuss cases with their opposite numbers before the hearing, in order that video hearings are fully effective. A small number of cases, which are particularly complex, involve litigants in person or several defendants, will still be listed in person.

In trials, key witnesses are again attending to testify in person unless there is good reason, such as when testifying from an operational location, as are defendants in most sentencing hearings. Judge Advocates will scrutinise the requirement for live attendance for other witnesses. Cases where a defendant is being held in post-charge custody in the Military Corrective Training Centre, Colchester are generally held with the defendant attending by videolink, although they may attend by being brought to court in person if they wish.

The move to digital case files which was necessitated by the pandemic has reduced the reliance on paper files and the accompanying delay and cost in postage, which is

a significant benefit. However, in comparison with the civilian courts, the Service Justice System is still lagging significantly in terms of a digital case system. Whilst a new case management system is being introduced for the Service Police and Service Prosecuting Authority, the initially promising progress towards linking that system with the HMCTS Common Platform has recently been stalled by a series of security and data protection issues. Given these issues, and well-publicised problems with the development of the Common Platform, other options to secure an upgrade in the digital case management support available to the Service courts are being explored.

2. Personnel

During the last year there has been relatively little change to the judiciary in the Service courts. We bid farewell to Judge Advocate Robert Hill at the end of this month and I would like to thank him publicly for his considerable contribution to military justice over many years and wish him a very happy retirement. A Judicial Appointment Commission competition will be launched in December to recruit a replacement.

Judge Advocates have continued to sit in the Crown Court either in their own right or as Recorders, contributing to the reduction of the backlog of cases in those courts and both gaining and sharing experience with colleagues. The support of the Circuits involved is much appreciated, particularly when commitments in the Service courts change at short notice.

Following difficulties last year, the Military Court Service has also enjoyed a period of full or almost full complement.

3. Court Facilities

The maintenance and development of the two Military Court Centres has progressed well. With the completion of a lifecycle maintenance period, they are both in excellent condition. In addition, a complete refit of screens inside and outside the courtrooms has led to a state-of-the-art facility, providing the best view of video evidence and digital evidence to all court users, with the facility to broadcast evidence outside the court in larger cases. The audio and video quality are both excellent. With the recent introduction of Section 28 of the Youth Justice and Criminal Evidence Act 1999 to the Court Martial, the latest technology is being procured to facilitate the pre-recording of cross examination in cases involving vulnerable witnesses.

The Military Court Service has introduced digital audio recording into the courtrooms, and the provision of appropriate training and customary support from the staff has meant this has been achieved with little interruption to normal service. In addition, new assisted listening technology has been fitted in all four court rooms.

Security within the courts is now at the appropriate level, and the final details of arrangements to improve the transport of defendants to the Military Corrective Training Centre (MCTC) are being implemented. The Military Court Centres do not have secure docks. Cases where a risk is identified are conducted by consent over video link from MCTC. If there is a need to produce a defendant who is considered a risk to themselves, or others at court, the Military Provost Service now supports these hearings at the court centres.

4. Management Information

The need for improved management information in the Service Justice System is now well recognised. As part of the work considering the recommendations of the Service Justice System Review, a working group has been established to take this forward. Much reliance is being placed on the introduction of a new computer system into the Service Police with additional functionality for the Service Prosecuting Authority and Military Court Service which will produce significant amounts of data when it goes live next year. The co-ordination and scope of this multi-agency IT project has caused some concern, and a firm grip at the centre will be required to ensure that the needs of the whole Service Justice System are met.

Action is required, as a matter of some urgency, to coordinate the data which is already produced by the Services and to produce an acceptable level of management information to aid the deliberations of the Service Justice Executive Group and Service Justice Board. Whilst it is acknowledged that resources are limited, this is an issue of fundamental importance and deserves appropriate priority.

5. Legislation

Parts of the Armed Forces Act 2021 came into force at the end of last year. It contained provisions changing the composition of Boards in the Court Martial in more serious cases, increasing the number of lay members to 6 and enabling Senior Non-Commissioned Officers of Staff Sergeant or equivalent rank to be selected. A 6-person Board will be able to reach a verdict either unanimously or by a majority of 5-1. This system replaces the previous simple majority. Provisions are also due to come into force requiring at least one male and female member on every Court Martial board.

Additional powers of sentencing have been made available – in particular, the power to disqualify from driving. This deals with the previously unsatisfactory situation where a defendant convicted of a serious driving offence could not be disqualified from driving.

During the passage of the Bill there was a challenge to the jurisdiction of the Court Martial to try offences of murder, manslaughter and serious sexual offences, which was ultimately unsuccessful. The Act includes a provision that the Director of Service Prosecutions will agree protocols with the Directors of Public Prosecutions of England and Wales, and of Northern Ireland, and the Lord Advocate in Scotland. When completed, these will provide a clear guide to the appropriate jurisdiction in which cases should be tried and the mechanisms by which any issues as to jurisdiction are resolved.

Decisions on the jurisdiction of the Court Martial to try such serious offences are, properly, for ministers. However, the decision to keep the jurisdiction to try rape and other serious offences in the Service Justice System requires that opportunities are taken both to ensure and demonstrate that Service Justice is professional, efficient, fit for purpose and can deal appropriately with such cases.

Looking ahead, consideration is already being given to the next Armed Forces Bill in 2026. This will be a valuable opportunity to make further improvements to the Service Justice System. The nature of those improvements will be influenced by decisions on the scope of the legislation, the policy and legal resource allocated, and the amount of parliamentary time made available. Responsibility for these decisions, of course, lies elsewhere.

6. Improving Efficiency

Following a direction from the Judge Advocate General, all cases involving rape and serious sexual offences are to be listed for trial within eight weeks of the conclusion of the case preparation dates which are given at the Plea and Trial Preparation Hearing, resulting in the trial generally being heard within 6 months of the case being directed by the Service Prosecuting Authority. Except for two cases, where longer timescales were unavoidable, all cases have been listed within this target and this will now form standard procedure. A pilot will now take place for all cases involving sexual offences (including all sexual assaults) to be listed within the same timescale. If, as is anticipated, this is successful, it will ensure that these sensitive cases are listed as soon as possible, thereby reducing the stress on victims, witnesses and defendants, improving the quality of evidence and limiting disruption to the operational effectiveness of the Armed Forces. Other measures which may improve the current procedures and effectiveness of the court are also under consideration.

In the continuing effort to improve the efficiency and effectiveness of the Service Justice System, and in particular the progress of cases to the Court Martial, senior representatives of the Service Police, Service Prosecuting Authority, Military Court Service and the judiciary met last month to consider better case management in the Court Martial. They were joined by two Circuit Judges, a District Judge (Magistrates' Court), the Chief Crown Prosecutor of Wessex, civilian police officers who also serve as Reserve Royal Military Police and two Army management consultancy experts. This was widely regarded as a successful exercise, which both demonstrated and reinforced a particular strength of the Service Justice System, namely the willingness to share views and work together to develop ways in which the overriding objectives of the System can be achieved.

7. Commonwealth matters

The Judge Advocate General has continued to be involved with military justice matters in the Commonwealth. He gave a presentation at the Commonwealth Magistrates and Judges Association conference in Accra Ghana and had a fruitful meeting with the Ghanaian Judge Advocate General. He has advised the Commonwealth Secretariat in relation to their important project to assist Commonwealth countries modernise their military justice systems.

In September the Judge Advocate General hosted a visit by Judge Advocate Generals and Senior Military Judges from Australia, Canada and New Zealand, which culminated in a conference at the Military Court Centre Bulford. The senior Judge Advocate General from the United States Navy also attended the conference. The visit facilitated the exchange of information on practice and procedure in military justice and all who attended will now consider how to improve best practice in their jurisdictions.

8. Conclusion

Anyone who is interested in how the Court Martial dispenses justice is welcome to see the court in action. The court centres at Bulford and Catterick are open to the public in the same way as civilian criminal courts. Cases involving offences of all types are tried daily and the Judge Advocate General would invite anyone who seeks a better understanding of the Court Martial to come and observe a trial.