



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 2

Progression of a Case through the Court Martial

Introduction

- 1.1 The aim of this Practice Memorandum is to provide guidance on the way in which a case progresses through the Court Martial to trial and/or sentence.

Role of the Service Prosecuting Authority (SPA)

- 2.1 The SPA receives cases either from the Service Police or a Commanding Officer. If the relevant tests are met, the SPA will direct the case for trial in the Court Martial and serve the Prosecution Papers on the defendant's Commanding Officer, the defendant's solicitor (if known) and the Military Court Service.

Role of Commanding Officer

- 3.1 It is the responsibility of the Commanding Officer to give the prosecution papers and charge sheet containing the charges to the defendant. This process equates to the charging of the defendant.
- 3.2 The defendant will be advised to seek Legal Aid from the Armed Forces Criminal Legal Aid Authority (AFCLAA) – see Practice Memorandum 8.

Role of Defendant's Assisting Officer

- 4.1 A Defendant's Assisting Officer (DAO) will be appointed. Their duties and responsibilities are summarised in Chapter 29 Part 4 as follows

Role of the DAO. The DAO's role is that of a facilitator, assisting the defendant to complete forms (eg. legal aid application), obtain legal advice and representation, attend interviews, receive supporting papers, attend charging procedures and hearings, obtain character references and referees, and generally support the defendant. The DAO will not be legally qualified and should not become involved in preparing a defence or conducting the defence, although where a defendant chooses to represent himself the DAO may assist him to prepare a statement in mitigation.

The DAO should attend CM proceedings with the defendant in a support role but is not entitled to represent the defendant in any proceedings. The defendant should be advised that the DAO has no right to speak on the defendant's behalf at any proceedings unless he is called as a character witness. Annex B provides more detailed guidance to the DAO as to his duties and responsibilities.

- 4.2 The detailed guidance in Annex B in Volume 2 of the Manual of Service Law can be found through the link below, scrolling down to Annex B:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583229/20170111-MSL-Chapter_29-Prosecution_Closing_Speeches-AL41.pdf

Legal Aid

- 5.1 Legal Aid is available subject to means assessment via the Armed Forces Criminal Legal Aid Scheme, which mirrors the civilian scheme. Further details are given in Practice Memorandum 8.

Role of the Military Court Service

- 6.1 The Military Court Service will list the case for Plea and Trial Preparation Hearing (PTPH) within 28 days of receiving the case papers from the SPA. PTPHs are generally held before the Resident Judge in the Military Court Centres at Catterick (North Yorkshire) and Bulford (Wiltshire). Army cases are held at both court centres. Royal Navy cases are held at Bulford and Royal Air Force cases at Catterick. Occasionally cases are held at other locations and overseas. Attendance by all parties is by video link unless the court orders otherwise, usually in particularly serious or complex cases, or cases with more than 2 defendants. It is a court hearing and parties should robe as appropriate and Service personnel should appear in Service Dress.
- 6.2 Prior to the PTPH the SPA will complete the Case Management Form and send it to the defence and Military Court Service. The defence will complete the form and send it to the SPA and Military Court Service. The form must be completed prior to the PTPH. The parties are expected to have discussed the case prior to the PTPH.

Role of the Court

- 7.1 At PTPH the defendant will generally be arraigned.
- 7.2 In cases where a defendant will plead guilty on a "full facts" basis, or on a basis which has been agreed with the prosecution, the defence can apply for the case to be listed for plea and sentence, thereby avoiding the need for a PTPH. The relevant form, which can be obtained from the Military Court Service, should be completed, and the Judge Advocate will determine whether a PTPH should be held and whether a Pre-Sentence Report (PSR) is required.

- 8.1 In the event of a Not Guilty plea the Judge Advocate will consider witness requirements, order “Stage Directions” to ensure that the case progresses to trial and complete the Case Management Form. A trial date will be fixed. The form will be distributed by MCS to the parties to enable them to comply with case progressions directions.
- 8.2 In most cases a Further Case Management Hearing will be held over video link before the trial judge to ensure the case will be ready for trial. Every effort is taken to avoid “cracked” trials since this is likely to mean that parties and witnesses have attended unnecessarily, sometimes from long distances and at considerable expense, and the court room will lie unused.
- 8.3 The parties will complete Trial Readiness Forms a month before trial. If there are still problems relating to trial readiness, a further hearing will be held. The trial will then take place. Parties and witnesses will attend in person unless application is made for a witness to attend by video link. Law and practice generally reflects that of the Crown Court. The Board has the same role as a jury in determining verdict.
- 8.4 In the event of a Guilty plea the case will be adjourned for sentence at the first opportunity. If a Pre-Sentence Report (PSR) is required, a standdown report may be available and the case may be able to proceed. An adjournment may be required for a written PSR to be prepared. The Probation Service will not prepare standdown reports in sexual cases.
- 8.5 At the sentencing hearing the Judge Advocate will consider sentence together with three Board members. Having heard submissions from the Prosecution and mitigation from the Defence and considered any references or other reports, the Judge Advocate and Board will retire together to decide upon sentence. The Judge Advocate has an equal vote as a Board member unless the vote is split in which case the Judge Advocate has the casting vote. The Judge Advocate and Board return to court where the Judge will give reasons for sentence. The President of the Board formally passes sentence.
- 8.6 In the event of a Guilty verdict at trial, the procedure is the same. All the Board members who sat on the trial will sit with the Judge Advocate to determine sentence.

Further Guidance

- 9.1 Further guidance on procedure in the Service Courts can be found in new Court Martial guides with links

Practice Memorandum 13 Better Case Management (BCM)CM in the Court Martial

<https://www.judiciary.uk/wp-content/uploads/2022/10/Memorandum-3-BCM-final-1-1-1.pdf>

Further guidance on sentencing can be found in the Judge Advocate General's Guide to Sentencing in the Court Martial V5

<https://www.judiciary.uk/wp-content/uploads/2022/10/sentencing-guide-v5-jan18-1.pdf>