



# **GUIDANCE ON SENTENCING IN THE SERVICE COURTS**

Version 6

**PART 1 – GENERAL PRINCIPLES**

**PART 2 – CRIMINAL CONDUCT OFFENCES**

**PART 3 – SERVICE DISCIPLINARY OFFENCES**

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# GUIDANCE ON SENTENCING IN THE SERVICE COURTS – PART 1 GENERAL PRINCIPLES

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## 1 INTRODUCTION

1.1 This document provides guidance on the approach to sentencing and appropriate sentencing tariffs in the Court Martial, Service Civilian Court and the Summary Appeal Court.

1.2 Sentencing is a complex and difficult exercise and whilst it must not be reduced to a rigid or mechanistic process, consistency of approach is essential to maintain public confidence. Those who sentence reflect the gravity of the offence, the effect on the victim, the circumstances of the offender, and the public and Service, interest. This Guidance is designed not to be prescriptive but to provide an aid to consistency.

1.3 The Guidance has been updated following consultation with the Services, Service Prosecuting Authority and Association of Military Court Advocates and after consideration of Overarching and individual Sentencing Council Guidelines and relevant decisions of the Court Martial Appeal Court and Court of Appeal Criminal Division. As with all previous versions of this guidance, whilst it is issued by the Judge Advocate General and does not carry the statutory authority of guidance issued by the Sentencing Council, the Court Martial Appeal Court has consistently given it due regard<sup>1</sup>. As with all such guidance, there may be occasions when it is appropriate to depart from the guidance, and Judge Advocates should explain the reasons for so doing in their sentencing remarks.

1.4 This Guidance is in three parts. This document (Part 1) contains an overview of the sentencing process in the Service Courts and explains the sentences available. Parts 2 and 3 address the sentencing approach to be undertaken when sentencing defendants for specific offences. Part 2 deals with sentencing defendants for criminal conduct offences, i.e. offences which would amount to a criminal offence under the law of England and Wales. Part 2 should be used in conjunction with the relevant civilian sentencing guidelines issued by the Sentencing Council for the relevant offence. Part 3 addresses sentencing defendants for more commonly encountered Service disciplinary offences (e.g. absence without leave, disobedience to lawful commands).

1.5 Service personnel may be lawfully ordered to apply extreme force which is intended to cause death and injury, or to expose themselves to the risk of death or injury. Accordingly the maintenance of discipline, which includes the just and appropriate punishment of offenders, is crucial and may lead to sentences being imposed which differ from those that may be imposed for the same offence in a civilian environment.

1.6 I am indebted to Assistant Judge Advocate General Darren Reed for his immense patience and assistance in drafting this Guide.

1.7 Links are generally to [legislation.gov.uk](https://legislation.gov.uk). Users should ensure legislation is up to date.

**His Honour Judge Alan Large**  
**Judge Advocate General of His Majesty's Armed Forces**

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<sup>1</sup> [R v Coleman \[2017\] EWCA Crim 2346](#) per Macur LJ at paragraph 10



## 2. THE SERVICE JUSTICE SYSTEM

### 2.1 The Legislation

2.1.1 Since the 1950s, an Armed Forces Act has been required every five years to continue in force the legislation enabling the armed forces to be recruited and maintained as disciplined bodies. The Armed Forces Act 2006, which came into force in October 2009, replaced the separate disciplinary regimes for the Royal Navy, Army and Royal Air Force. In so doing it introduced a single system of Service law that provides for the command, discipline and regulation of HM Armed Forces, through a unified Service Justice System, which applies to both Service Personnel (known as Persons Subject to Service Law<sup>2</sup>) and, in limited circumstances, civilians (known as Civilians Subject to Service Discipline<sup>3</sup>). It also established the Court Martial, the Service Civilian Court and the Summary Appeal Court as standing, permanent courts when it came into force in October 2009.

2.1.2 The Armed Forces Act 2006 creates disciplinary offences (e.g. absence without leave) and, by the operation of the gateway at section 42 thereof, “imports” civilian criminal conduct (e.g. theft) offences into the Service Justice System. Both disciplinary offences and criminal conduct offences are known as “Service offences”<sup>4</sup>. All Persons Subject to Service Law and Civilians Subject to Service Discipline may be tried for all criminal conduct offences. Persons Subject to Service Law may also be tried for all disciplinary offences, but Civilians Subject to Service Discipline may be tried only for a restricted list of disciplinary offences.

2.1.3 The Act also provides for the powers of the three Service Police Forces and the Defence Serious Crime Unit, and the jurisdiction and powers of Commanding Officers and of the Service Courts. Further, it contains a substantial number of other important provisions for the armed forces, such as those for enlistment, pay and Service complaints.

2.1.4 The Armed Forces Act 2006 has been amended by subsequent legislation, in particular, Armed Forces Act 2011 and 2016. The most recent Armed Forces Act 2021 makes a number of important and significant amendments, not all of which are, at the time of publication, in force. Furthermore, there is a significant layer of subordinate legislation which governs the operation of the Service Justice System and includes:

#### The Armed Forces (Court Martial) Rules 2009

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<sup>2</sup> section 367 Armed Forces Act 2006

<sup>3</sup> section 370 Armed Forces Act 2006

<sup>4</sup> section 50 Armed Forces Act 2006



The Armed Forces (Service Civilian Court) Rules 2009  
The Armed Forces (Summary Appeal Court) Rules 2009  
The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009  
The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009

## **2.2 The Operation of the System**

2.2.1 The Service Justice System is designed to operate efficiently and justly. In a similar way to the Civilian Justice System, allegations should be dealt with before the most appropriate tribunal. There is no equivalent of the Magistrates' Court in the Service Justice System but in cases of minor offending by Persons Subject to Service Law, the accused's Commanding Officer has a limited jurisdiction at a Summary Hearing. Minor offending by Civilians Subject to Service Discipline can be dealt with by the Service Civilian Court. However, given the unfettered right to elect trial by Court Martial from both a Summary Hearing and the Service Civilian Court, the Court Martial deals with offences which would be dealt with in a Magistrates' Court as well as those offences which can only be tried on indictment in the Crown Court.

## **2.3 Summary Hearings**

2.3.1 The vast majority of Service offences are dealt with at Summary Hearing by the Commanding Officer of the accused or officers with delegated or subordinate powers. The Commanding Officer can only deal with certain ranks of Persons Subject to Service Law and only for certain Service offences<sup>5</sup> and their powers of punishment are limited (e.g. the Commanding Officer cannot impose a sentence of imprisonment or dismissal). Separate guidance regarding sentencing at a Summary Hearing can be found in the Manual of Service Law issued by the Ministry of Defence.

2.3.2 When a charge is allocated for Summary Hearing, the accused in every case has an unrestricted right to elect for trial in the Court Martial<sup>6</sup>; where they do so, the Court Martial is restricted to the Commanding Officer's powers of punishment.<sup>7</sup> In such trials the Court Martial is entitled to take into account the Commanding Officers' Guide to Sentencing contained in the Manual of Service Law (Chapters 13 and 14), although it is not bound by that Guide. For detention<sup>8</sup>, forfeiture of seniority<sup>9</sup>, reduction in rank<sup>10</sup>, and

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<sup>5</sup> sections 52 and 53 Armed Forces Act 2006

<sup>6</sup> section 129 Armed Forces Act 2006

<sup>7</sup> section 165 Armed Forces Act 2006 and Sch 3A para 16. See also MSL Ch 9 para 119b.

<sup>8</sup> section 133 Armed Forces Act 2006

<sup>9</sup> section 134 Armed Forces Act 2006

<sup>10</sup> section 135 Armed Forces Act 2006



finer<sup>11</sup>, the Commanding Officer's basic powers may have been extended if a Higher Authority has granted extended powers.

## **2.4 The Summary Appeal Court**

2.4.1 All persons dealt with at a Summary Hearing have a right of appeal to the Summary Appeal Court<sup>12</sup>, which consists of a Judge Advocate sitting with two lay members<sup>13</sup> and resembles the Crown Court dealing with an appeal from a Magistrates' Court. If the appeal is against finding, then the Court will conduct a de novo hearing<sup>14</sup>. Whether the appeal is against punishment, the Summary Appeal Court's sentencing powers are capped at what the Commanding Officer awarded at the Summary Hearing.<sup>15</sup>

## **2.5 The Service Civilian Court**

2.5.1 The Service Civilian Court consists of a Judge Advocate sitting alone, not dissimilar to a District Judge sitting in a Magistrates' Court. The Service Civilian Court may try any Service offence committed outside the British Islands by a Civilian Subject to Service Discipline at the time of the offence, unless a listed exception applies<sup>16</sup>. The most significant exception in relation to an adult is any offence which under the law of England and Wales can be tried only on indictment. However, in relation to juveniles the Service Civilian Court has the power, akin to that of a Youth Court in England and Wales, to try offences that in relation to an adult would be indictable only, apart from the listed homicide and firearms offences. There is an unfettered right to elect trial by Court Martial from the Service Civilian Court<sup>17</sup>. The punishments available to the Service Civilian Court are limited<sup>18</sup>; the maximum term of imprisonment is 6 months for one offence or 12 months for two or more offences when the terms are consecutive<sup>19</sup>.

## **2.6 The Court Martial**

2.6.1 The Court Martial may sit anywhere, within or outside the United Kingdom, and has the jurisdiction to try any Service offence<sup>20</sup>. The Court Martial is not the Crown Court

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<sup>11</sup> [section 136 Armed Forces Act 2006](#)

<sup>12</sup> [section 141 Armed Forces Act 2006](#)

<sup>13</sup> [section 142 Armed Forces Act 2006](#)

<sup>14</sup> [section 146 Armed Forces Act 2006](#)

<sup>15</sup> [section 147 Armed Forces Act 2006](#)

<sup>16</sup> [section 51 Armed Forces Act 2006](#)

<sup>17</sup> [section 280 Armed Forces Act 2006](#)

<sup>18</sup> [section 282 Armed Forces Act 2006](#)

<sup>19</sup> [section 283 Armed Forces Act 2006](#)

<sup>20</sup> [section 50 Armed Forces Act 2006](#)



sitting in uniform, but its practices and procedures in contested trials resemble those in the Crown Court except where Parliament has determined otherwise.

2.6.2 The Court Martial consists of a Judge Advocate and, in almost all cases, three or six lay members.<sup>21</sup> Judge Advocates are selected by the Judicial Appointments Commission; they are experienced in sentencing practice in the civilian courts and have attended Judicial College training and annual Circuit sentencing seminars provided for Recorders and Judges of the Crown Court; they also sit in the Crown Court as Judge Advocates in their own right when not required by the Service Justice System. In addition, they are experienced in the general sentencing practices and policies of the Armed Forces.

2.6.3 The lay members of the Court Martial board fulfil the functions and have the duties of a jury in contested trials (including the obligation to abide by judicial directions) but have additional responsibilities, reflecting the Service nature of the Court. In particular the President of the board is more than a jury foreman in that they are responsible for maintaining the integrity of the deliberative process. At the sentencing stage the lay members determine sentence together with the Judge Advocate and assist by bringing their collective Service experience and knowledge to bear in deciding the appropriate sentence.

2.6.4 The size of the board at trial depends on the gravity of the case. If sentence follows a trial, all the board members will be part of the sentencing process. If sentence follows a guilty plea, three board members will be required in all cases.

2.6.5 If the defendant is a Civilian Subject to Service Discipline (e.g. a contractor deployed abroad or an accompanying family member serving overseas) the Judge Advocate will sentence alone, whether after a trial or a guilty plea, as in the Crown Court.

2.6.6 If the defendant is an ex-Service person, the board may comprise Service and/or civilian members, depending on the circumstances of the case. Where the defendant has been informed in writing prior to entering his plea that, if trial proceedings were required, none of the lay members would be subject to Service law then the Judge Advocate will sentence alone<sup>22</sup>.

2.6.7 In a joint trial of a Service person and a civilian, where the board is a mixture of Service and civilian lay members, all the lay members assist the Judge Advocate in sentencing.

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<sup>21</sup> section 155 Armed Forces Act 2006 – NB section 2 Armed Forces Act 2021 makes significant changes to the number (and rank) of lay members and majority findings, but this section is not yet in force.

<sup>22</sup> Rules 27 and 33 Armed Forces (Court Martial) Rules 2009





2.6.8 The Court Martial may sit for sentencing hearings with all parties appearing remotely, including the defendant and Board members, if it is in the interests of justice to do so.

2.6.9 Counsel may submit sentencing notes, which are particularly useful in serious or complex cases. The Judge Advocate may order sentencing notes to be provided.

## 2.7 Disciplinary offences recorded on the Police National Computer

2.7.1 A disciplinary offence is recordable if it is listed in the table at para 1 of Schedule 1 to The Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 below.

Section of the Armed Forces Act 2006	Offence	Restriction
<a href="#">s. 11(1)</a>	Misconduct towards a superior officer	
<a href="#">s. 14</a>	Using force against a sentry	
<a href="#">s. 24(1)</a>	Damage to or loss of public or Service property	
<a href="#">s. 27</a>	Obstructing or failing to assist a Service policeman	
<a href="#">s. 28</a>	Resistance to arrest etc	In the case of an offence under <a href="#">section 28(1)</a> , only where the conviction is for conduct within <a href="#">section 28(1)(b) or (c)</a>
<a href="#">s. 29</a>	Offences in relation to Service custody	
<a href="#">s. 30</a>	Allowing escape or unlawful release of prisoners	Only where the conviction is for conduct within <a href="#">section 30(4)(a)</a>
<a href="#">s. 39</a>	Attempts to commit any offence specified above in this schedule	
<a href="#">s. 40</a>	Encouraging or assisting the commission of any offence specified above in this Schedule	



### 3. SENTENCING IN THE SERVICE COURTS

#### 3.1 Principles of Sentencing in the Service Courts

3.1.1 The Service Courts are required to pass a sentence that is in accordance with and proportionate to the following sentencing principles<sup>23</sup>:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

For offenders aged under 18 the court must also have regard to their welfare.

3.1.2 In considering the sentencing principle of the “maintenance of discipline”, the Service Courts must take into account what is necessary to support the operational effectiveness of the Armed Forces. This often makes the sentencing exercise different from that in the civilian courts. The close-knit structure of the Armed Forces means that sentences of the Service Courts are more widely disseminated than sentences in civilian courts, and thus deterrence is a more important factor in sentencing.

3.1.3 The unique nature of the Service Courts has been acknowledged by the Court Martial Appeal Court which has regularly referred to the Court Martial as a “specialist tribunal”. In R v Lingard and Kirk [2009] EWCA Crim 1745 (at para 12) Scott Baker LJ said:

“It is, in our judgment, extremely important that due deference should be given by the courts to decisions of the military authorities in sentence in cases of this kind (in this case theft and criminal damage in barracks). They, and they alone, are best placed to appreciate the significance of an offence such as this in relation to questions of morale and maintenance of appropriate behaviour in their units.”

3.1.4 The Armed Forces Act 2006, in addition to requiring sentencers in the Service Courts to have regard to the purposes of sentencing listed, sets out considerations in deciding the seriousness of an offence<sup>24</sup>. The Act requires the Service Courts to treat racial or religious aggravation<sup>25</sup> of an offence, or hostility related to victims’ disability, sexual

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<sup>23</sup> section 237 Armed Forces Act 2006

<sup>24</sup> section 238 Armed Forces Act 2006

<sup>25</sup> section 240 Armed Forces Act 2006



orientation or transgender identity<sup>26</sup>, as aggravating factors in deciding the seriousness of the offence. The Act also provides for mandatory sentences in certain circumstances<sup>27</sup>.

**3.1.5 Sentencing Council Guidelines** The Armed Forces Act 2006 requires the Service Courts to “have regard to” any guidelines issued by the Sentencing Council that are relevant to the offender’s case<sup>28</sup>. However, it also permits the court to depart from those guidelines if in its opinion the departure is justified by any features of Service life or of the Service disciplinary system that are relevant to the case. The Sentencing Council Guidelines are designed for use in the Civilian Justice System; they neither take account of the different sentencing principles in or requirements of the Service Justice System, nor do they consider the different and greater range of sentencing options available to the Service Courts.

**3.1.6** Part 2 of this Guide, The Service Courts Sentencing Guideline (Criminal Conduct Offences), supplements the specific guidelines issued by the Sentencing Council in relation to criminal conduct offences. When explaining the court’s reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justify any departure.

**3.1.7** There are no Sentencing Council Guidelines in relation to disciplinary offences, therefore Service Courts should consider Part 3 of this Guide, The Service Courts Sentencing Guideline (Disciplinary Offences).

**3.1.8 Reduction in Sentence for a Guilty Plea** Where an offender has pleaded guilty, the Armed Forces Act 2006 requires the Service Courts to take into account the stage in the proceedings when an offender first indicated his intention to plead guilty, and the circumstances in which the indication or the plea was given<sup>29</sup>.

**3.1.9** For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the Sentencing Council’s Definitive Guideline on Reduction in Sentence for a Guilty Plea.

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<sup>26</sup> section 241 Armed Forces Act 2006

<sup>27</sup> sections 217 to 228 Armed Forces Act 2006

<sup>28</sup> section 259 Armed Forces Act 2006

<sup>29</sup> section 239 Armed Forces Act 2006



3.1.10 For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

3.1.11 **Service Policy Considerations** The Service Courts are independent, but they are also an essential part of the process which maintains discipline within the Armed Forces. Therefore it is appropriate for the Service Courts, when deciding on sentence, to take into account Service policies, while not being bound by them. Such policies include circumstances when an individual's continued service would no longer be appropriate (see section on dismissal).

3.1.12 **Consideration of Rank or Rate** When sentencing, the Service Courts will always take account of the rank of an offender; normally the higher the rank the greater the degree of culpability. Reduction in rank (available for Warrant Officers and below) normally has significant financial effects and the court must take into consideration the amount of pay lost and the length of time it may take for the offender to recover their rank. A reduction in rank is also a reduction in responsibility and status which remains a visible indication of conviction, and may include changes in messing and accommodation arrangements. When determining if the offence(s) is serious enough to warrant reduction in rank, the court will consider whether the offender, by committing this offence(s), has demonstrated that they are unfit to hold their present rank. Whether the offender is reduced to the ranks or allowed to retain some intermediate rank will depend on how seriously the court views the conduct concerned.

3.1.13 If the court does not also pass a sentence of reduction to the lowest possible rank when sentencing a Warrant Officer or Non Commissioned Officer or Senior Rating to Service detention, the offender is automatically treated as an able seaman or equivalent while in custody serving the sentence but regains the former rank (or the rank to which the court did reduce them) on release<sup>30</sup>. This does not apply if the offender is also dismissed from the Service in which case their rank is automatically forfeit. Certain categories, branches and professions within the Services rely on special professional or technical qualifications which are aligned to ranks and for some trades the persons qualified to practise them cannot be reduced below a specified rank. When this arises the court should always ascertain the effect of any proposed sentence on the offender's special qualification and take that into account.

3.1.14 **Concurrent and Consecutive Sentences** When sentencing an offender for a number of offences, the Service Courts must always consider whether custodial sentences are to be served concurrently or consecutively. Where the sentences are consecutive the Service Courts should review the aggregate and consider whether the whole sentence is just (the totality principle). If the aggregate is too high, the Court Martial

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<sup>30</sup> section 294 Armed Forces Act 2006



should adjust the series of sentences in one of two ways; it may make one sentence of full proportionate length and then make all others concurrent (provided none is out of proportion to the offence to which it refers). Or it may make such adjustments to the lengths of individual sentences as to ensure that the total sentence is proportionate. In all circumstances the Judge Advocate must explain precisely how the overall sentence has been determined. In the case of R v Ingram [2010] EWCA Crim 1645, Leveson LJ said:

“In order to succeed in an appeal against sentence it is not, in our judgment, sufficient to cherry pick the single offence to which the sentence has been attached even though the Act requires a sentence for each offence. Rather it is necessary to look at the overall picture and determine whether the sentence for the offending was, in the round, wrong in principle or manifestly excessive.”

**3.1.15 Goodyear Indications** The procedure for indications of sentence (“Goodyear indication”) is the same as in the Crown Court. A Judge Advocate has the power to give an indication of sentence (“Goodyear indication”) under r28 Armed Forces (Court Martial) Rules 2009 because, when they do so, they are not “sentencing an offender”. Indications are likely to be given less frequently in the Court Martial because the maximum sentence indicated by the Judge Advocate is binding on the lay members of the board at the subsequent sentencing hearing. For this reason, the Judge Advocate who gave the indication should deal with the sentencing hearing unless exceptional circumstances apply.

## **3.2 Sentencing Powers in the Court Martial**

**3.2.1** The range of sentences available to the Court Martial is wider than in the civilian courts: it has most of the powers of the Crown Court but in addition may impose several Service-only sanctions. The sentences available to the Court Martial<sup>31</sup> depend upon whether the individual to be sentenced is a Person Subject to Service Law, a former Person Subject to Service Law (i.e. someone who was subject to Service Law at the time the offence was committed but who is no longer so subject, i.e. because they have subsequently left the Service) or a Civilian Subject to Service Discipline.

**3.2.2** The following sentences are available when sentencing a **Person Subject to Service Law**:

[Imprisonment](#) (including custody for young offenders)

[Suspended Sentence Order](#)

[Dismissal with disgrace from His Majesty's Service](#)

[Dismissal from His Majesty's Service](#)

[Service Detention for a term not exceeding two years](#)

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<sup>31</sup> section 164 Armed Forces Act 2006



[Forfeiture of a specified term of seniority or all seniority](#) (officers only)  
[Reduction in rank or disrating](#)  
[Fine](#)  
[Service Community Order](#)  
[Severe Reprimand or Reprimand](#)  
[Service Supervision and Punishment Order](#)  
[Such minor punishments as authorised by regulations made by the Defence Council. The current minor punishments are:](#)  
    [stoppage of leave](#)  
    [restrictions of privileges](#)  
    [admonition](#)  
[Service Compensation Order](#)  
[Sexual Harm Prevention Order](#)  
[Service Restraining Order](#)  
[Driving Disqualification Order](#)  
Orders for forfeiture and destruction of property (applying legislation applicable to the Crown Court)

3.2.3 The following sentences are available when sentencing a **former Person Subject to Service Law**<sup>32</sup>:

[Imprisonment](#) (including custody for young offenders)  
[Suspended Sentence Order](#)  
[Dismissal with disgrace from His Majesty's Service](#)  
[Dismissal from His Majesty's Service](#)  
[Service Detention for a term not exceeding two years](#)  
[Reduction in rank or disrating](#)  
[Fine](#)  
[Service Community Order](#)  
[Severe Reprimand or Reprimand](#)  
Order for an absolute discharge  
[Service Compensation Order](#)  
[Sexual Harm Prevention Order](#)  
[Disqualification from Driving Order](#)  
Orders for forfeiture and deprivation of property (applying legislation applicable to the Crown Court). The power to impose a deprivation order under the Armed Forces Act 2006 is not in force at the time of publication.

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<sup>32</sup> [Schedule 3 Part 2 Armed Forces Act 2006](#)



3.2.4 The following sentences are available (to the Court Martial and Service Civilian Court (with limitations noted at 2.5.1) when sentencing a **Civilian Subject to Service Discipline**<sup>33</sup>:

[Imprisonment](#)

[Suspended Sentence Order](#)

[Fine](#)

[Service Community Order](#)

[Overseas Community Order](#)

[Service Compensation Order](#)

[Driving Disqualification Order](#)

Order for a conditional discharge

Order for an absolute discharge

3.2.5 In addition the Court Martial may impose any of the following Orders:

Hospital Order<sup>34</sup> (but only if offender has been found unfit to stand trial)

Service Supervision Order<sup>35</sup> (but only if offender has been found unfit to stand trial)

[Sexual Harm Prevention Order](#)<sup>36</sup>

[Service Restraining Order](#)<sup>37</sup> (if offender is PSSL or CSSD)

3.2.6 Sentences of Service detention of eight days or more are usually served in the Military Corrective Training Centre (MCTC) at Colchester, where the regime is designed to rehabilitate Service personnel and either make them fit for further duty in the Services or prepare them for transition to a useful role in civilian society after dismissal or discharge.

### 3.3 The Sentencing Process in the Court Martial

3.3.1 Sentencing deliberations, over which the Judge Advocate presides, necessarily take place in closed court, or in a retirement room, and may not be disclosed. The Judge Advocate and lay members often achieve consensus, but if it is necessary for them to vote on sentence only a simple majority is required with the Judge Advocate having the casting vote<sup>38</sup>. There is no public indication whether the decision was unanimous or by majority. The Judge Advocate explains in open court the reasons for sentence and the

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<sup>33</sup> [Schedule 3 Part 1 Armed Forces Act 2006](#)

<sup>34</sup> [section 169\(2\) Armed Forces Act 2006](#)

<sup>35</sup> [section 170 Armed Forces Act 2006](#)

<sup>36</sup> [section 232A Armed Forces Act 2006](#) and [section 137\(2\) Sexual Offences Act 2003](#)

<sup>37</sup> [section 229 Armed Forces Act 2006](#)

<sup>38</sup> [section 160 Armed Forces Act 2006](#)



president of the board then formally announces it<sup>39</sup>. In very exceptional circumstances the president of the board may also address the offender, but only having first sought and obtained the Judge Advocate's permission.

**3.3.2 Pre-Sentence Reports** The court must obtain and consider a pre-sentence report<sup>40</sup> before passing:

- a sentence of imprisonment
- a sentence of detention
- a sentence of dismissal or dismissal with disgrace
- a community sentence
- a sentence in respect of a dangerous offender; or
- a sentence in respect of violent or sexual offences.

**3.3.3** However, the court may proceed if it is of the opinion that it is unnecessary to obtain and consider a Pre-Sentence Report.<sup>41</sup> For cases of Absence Without Leave (AWOL), where a period of detention is normally awarded, the court is likely to dispense with a Pre-Sentence Report if there are no special circumstances, provided the defendant has legal representation and has had the opportunity to request a report.

**3.3.4** The court must obtain and consider a medical report before passing a custodial sentence on an offender who is or appears to be mentally disordered<sup>42</sup>.

**3.3.5 Separate sentence for each offence** The Court Martial is required to pass a separate sentence in respect of each offence<sup>43</sup>, except where the trial was at the election of the defendant, in which case one global sentence for all offences is passed<sup>44</sup>. Where the court considers that the totality of the offending should be marked by a disciplinary sanction (such as dismissal, reduction in rank etc) the relevant sentence may either be attached to each charge or to the most serious charge with "No Separate Penalty" recorded against the others.

**3.3.6. Giving Reasons** The Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language<sup>45</sup>.

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<sup>39</sup> [section 252 Armed Forces Act 2006](#)

<sup>40</sup> [section 256 Armed Forces Act 2006](#)

<sup>41</sup> [section 256\(2\) Armed Forces Act 2006](#)

<sup>42</sup> [section 258 Armed Forces Act 2006](#)

<sup>43</sup> [section 255 Armed Forces Act 2006](#)

<sup>44</sup> [sections 131 and 165 Armed Forces Act 2006](#)

<sup>45</sup> [section 252 Armed Forces Act 2006](#)





### 3.4 Activation of Suspended Sentences

3.4.1 The Court Martial has a power<sup>46</sup> to activate a sentence of Service detention suspended by the Court Martial or at a Summary Hearing, where a new offence was committed during the operational period of the suspension. Any activation is always in addition to the sentence for the new offence, and if appropriate may be served consecutively. The court may activate the full original term of detention or any lesser term it considers appropriate. The new offence does not necessarily have to have been dealt with in the Court Martial; the offender may have been dealt with elsewhere and be brought before the Court Martial solely for activation of the suspended sentence to be considered (known as 'Activation Proceedings'). If the offender has repeated the same or a similar offence without extenuating circumstances, activation of the whole sentence would be appropriate. If the new offence is wholly unrelated to the original offence, or of a minor nature, the court should consider activation only in part, or not activating at all. The overall maximum of two years' Service detention may not be exceeded by the combination of the activated and new sentences. Where a defendant has elected for trial in the Court Martial, the aggregate of two sentences may not exceed 28 days detention (or 90 if the commanding officer had extended powers)<sup>47</sup>.

### 3.5 Variation Proceedings

3.5.1 The Court Martial may vary any sentence awarded up to 56 days after so doing. Variation proceedings may take place of the Judge Advocate's own motion, or on the application of the prosecution or defence<sup>48</sup>. The court comprises the same judge as at the sentencing proceedings and all the same lay members, or as many of them as can practicably attend in person or by live video link. The purpose of the variation proceedings is to correct legal errors in sentencing (such as a longer period of custody than the maximum for that offence, or a sentence which is not available for a person of that rank). It is not intended to be used so that discretion can be exercised differently, or because opinions have changed. An offender wishing to seek a variation should write to the Judge Advocate General giving reasons for the application. The Judge Advocate General will forward the application to the Judge Advocate who sat in the sentencing proceedings for a decision as to whether to list the case for variation proceedings. There is no appeal against a Judge Advocate's decision not to proceed, but the sentence whether varied or not is still subject to appeal to the Court Martial Appeal Court.

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<sup>46</sup> rr130 to 138 Armed Forces (Court Martial) Rules 2009

<sup>47</sup> paragraph 12 Schedule 3A Armed Forces Act 2006

<sup>48</sup> rules 118 to 124 Armed Forces (Court Martial) Rules 2009



## 4. SENTENCES OF THE COURT MARTIAL

### 4.1 Custodial Sentences

4.1.1 Within the Armed Forces Act 2006, sentences of imprisonment and detention in a Young Offender Institution (and other similar sentences) are referred to as “custodial sentences”.<sup>49</sup> The Act refers separately to sentences of Service detention (usually served in the Military Corrective Training Centre (MCTC)).

4.1.2 The differences between sentences of imprisonment/detention in a Young Offender Institution and Service detention in MCTC are set out at 4.4.5 of this Guide.

4.1.3 **The test that must be satisfied** The Court Martial and Service Civilian Court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that no less severe sentence can be justified for the offence.<sup>50</sup>

4.1.4 **Sentences of Imprisonment/Detention in a Young Offenders Institution and Dismissal from His Majesty’s Service** As matter of law, sentences of imprisonment/detention in a Young Offender Institution do not automatically require the offender to be dismissed at the same time, and the decision to dismiss should be separately considered<sup>51</sup>. However, noting in particular the different statutory tests for each sentence, it is likely in all but the most exceptional of cases that an offence which is so serious that no less severe sentence than custody can be justified will also be serious enough to warrant dismissal. This applies whether the sentence is to be served immediately or to be suspended. Sentencing remarks should include the reason(s) why dismissal is or is not being imposed.<sup>52</sup>

### 4.2 Imprisonment and Detention in a Young Offenders Institution – Immediate Sentences

4.2.1 Custodial sentences of imprisonment and detention in a Young Offenders Institution should not normally be imposed by the Court Martial for a criminal conduct offence unless, applying the appropriate Sentencing Council Guidelines, a like offence (e.g. similar circumstances, including an assessment of culpability and harm) would attract a custodial sentence in the civilian courts. Exceptionally, if the conduct is more serious within a Service context, imprisonment/detention in a Young Offenders Institution might be appropriate. The same principles apply when determining the length

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<sup>49</sup> [section 374\(1\) Armed Forces Act 2006](#)

<sup>50</sup> [section 260\(2\) Armed Forces Act 2006](#)

<sup>51</sup> [R v Townshend \[2018\] EWCA Crim 430](#)

<sup>52</sup> [R v Townshend \[2018\] EWCA Crim 430](#)



of the sentence; this should follow the appropriate Sentencing Council Guidelines unless there is some Service justification for departure.

4.2.2 Where the criminal conduct offence is so serious that it would inevitably warrant a sentence of imprisonment in a civilian court of two years or greater, Service considerations become less significant and the appropriate Sentencing Council Guidelines should be followed unless there are Service-related circumstances that justify a departure.

4.2.3 In the Crown Court, the only form of custodial sentence available is imprisonment or detention in a Young Offender Institution. The Court Martial has the additional option of the sentence of Service detention at MCTC and this should be considered in all cases where (a) the person to be sentenced is of the rank of Warrant Officer or below (noting that detention cannot be imposed on a Commissioned Officer) and (b) the custodial threshold for Service detention (see 4.4.1) has been crossed but the overall sentence is two years or less (see 4.4.5).

4.2.4 **Dangerous Offenders** The provisions of the Sentencing Act 2020 relating to life sentences and sentences for dangerous offenders and offenders of particular concern apply equally in the Court Martial<sup>53</sup>. The provisions relating to these sentences are detailed and are not rehearsed in this Guide. When dealing with dangerous offenders, judges and practitioners should refer to the relevant sections of the Act, the Sentencing Code and the Crown Court Compendium Part II, as well as commentaries on equivalent sentences in the civilian justice system.

4.2.5 **Custody prior to sentence** The Court Martial is informed whether an offender has been held in custody prior to trial. If so, this period automatically counts towards the time the offender will serve<sup>54</sup>.

4.2.6 **Commencement of sentence of imprisonment** A sentence of imprisonment generally runs from the date it is passed but where the offender is already serving a custodial sentence, the court may order that the new custodial sentence shall run consecutively from the expiry of the earlier sentence<sup>55</sup>.

4.2.7 **Length of discretionary custodial sentence** Custodial sentences must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the Service Court is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it.<sup>56</sup>

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<sup>53</sup> sections 217 to 224B Armed Forces Act 2006

<sup>54</sup> section 246 Armed Forces Act 2006

<sup>55</sup> section 188(3)(b) Armed Forces Act 2006

<sup>56</sup> section 261(2) Armed Forces Act 2006



### 4.3 Suspended Sentence Orders (of Imprisonment/Detention in a Young Offender Institution)

4.3.1 The Service Courts (with the exception of the Summary Appeal Court) may impose a Suspended Sentence Order where it imposes a sentence of imprisonment provided that sentence of imprisonment is more than 14 days but not more than two years. It may impose a Suspended Sentence Order where it imposes a sentence of detention in a Young Offender Institution provided that sentence of detention is not more than two years<sup>57</sup>.

4.3.2 **Factors to consider when imposing a Suspended Sentence Order** The decision to suspend a sentence of imprisonment or detention in a Young Offender Institution must be made by reference to the Sentencing Council Guideline for the Imposition of Community and Custodial Sentences<sup>58</sup> and in particular the factors that need to be weighed in considering whether it is possible to suspend the sentence. The Court Martial has the option of the sentence of Service detention at MCTC and this should be considered as an alternative to a Suspended Sentence Order, particularly where consideration is being given not to dismiss the offender.

4.3.3 **Suspended Sentence Order and Dismissal** See 4.1.4 of this Guide.

4.3.4 **Imposing a Suspended Sentence Order with Community Requirements** A suspended sentence order imposed by a Service Court **may** also specify that the offender must comply with available community requirements during the supervision period. The Service Courts' power to impose a community requirement is subject to the provisions in Schedule 9 SA 20 (as amended by AFA 06).

4.3.5 The community requirements that a Service Court may attach to a Suspended Sentence Order are as follows<sup>59</sup> (NB a drug rehabilitation requirement cannot be imposed by a Service Court):

- PART 1 Unpaid work requirement
- PART 2 Rehabilitation activity requirement
- PART 3 Programme requirement
- PART 4 Prohibited activity requirement
- PART 5 Curfew requirement
- PART 6 Exclusion requirement
- PART 7 Residence requirement

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<sup>57</sup> [section 200\(1\) Armed Forces Act 2006](#)

<sup>58</sup> [Imposition of community and custodial sentences – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/)

<sup>59</sup> i.e. those requirements listed at [Schedule 9 SA 20](#) as amended by [section 200\(1\)\(d\)](#) (disapplying para 21 and 22) and [section 202 AFA 06](#) (disapplying para 17(2)(c)).



PART 8 Foreign travel prohibition requirement  
PART 9 Mental health treatment requirement (but NB slight amendment at [para 17\(2\)\(c\)](#))  
~~PART 10 Drug rehabilitation requirement~~<sup>60</sup>  
PART 11 Alcohol treatment requirement  
PART 12 Alcohol abstinence and monitoring requirement  
PART 13 Attendance centre requirement  
PART 14 Electronic monitoring

4.3.6 **Review of community requirements** [section 203 AFA 06](#), which amends [section 293 SA 20](#), has the effect that all reviews of community requirements imposed by a Service Court are reserved to the Crown Court.<sup>61</sup>

4.3.7 **Breach or amendment of a Suspended Sentence Order / Effect of Further Conviction** [Schedule 16 SA 20](#) (breach or amendment of suspended sentence order, and effect of further conviction) applies to a Suspended Sentence Order made by a Service Court but as modified by [Schedule 7 AFA 06](#).

4.3.8 **Breach of a community requirement** Enforcement officers,<sup>62</sup> i.e. those charged with ensuring compliance with the requirements of the Suspended Sentence Order, can only lay information (concerning an offender's breach of a Suspended Sentence Order imposed by a Service Court) before the Crown Court.<sup>63</sup> There is no power for an enforcement officer to provide information to the Service Courts. The Crown Court may issue a summons or a warrant for arrest in order to secure the offender's attendance if it appears to the Crown Court that the offender has breached any community requirement of the order.<sup>64</sup>

4.3.9 **Action on Breach of a Community Requirement by the Crown Court** Where the offender is before the Crown Court for a proven breach of a community requirement, the Crown Court must deal with the case in accordance with [paragraph 13 Schedule 16 Sentencing Act 2020](#).<sup>65</sup>

4.3.10 **Conviction for a Subsequent Offence by a Magistrates' Court** If the offender is convicted by a Magistrates' Court of any offence which occurred within the operational period of a Suspended Sentence Order imposed by a Service Court, the Magistrates' Court must notify an officer of the Court Martial and may commit the offender to the Crown

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<sup>60</sup> A drug rehabilitation requirement cannot be imposed by a Service Court

<sup>61</sup> [section 293\(4\) Sentencing Act 2020](#)

<sup>62</sup> as defined at [para 2\(1\) Schedule 16 Sentencing Act 2020](#)

<sup>63</sup> [para 7\(b\) Schedule 16 Sentencing Act 2020](#)

<sup>64</sup> [para 9\(1\) Schedule 16 Sentencing Act 2020](#)

<sup>65</sup> [Para 12\(1\) Schedule 16 Sentencing Act 2020](#)



Court.<sup>66</sup> There is no power for a Magistrates' Court to commit the offender to a Service Court.

**4.3.11 Conviction for a Subsequent Offence by the Crown Court, Court Martial or Service Civilian Court** Where an offender is convicted of a subsequent offence within the operational period of the Suspended Sentence Order by the Crown Court, or the Court Martial or the Service Civilian Court<sup>67</sup>, or has been convicted at a Summary Hearing and subsequently appears before the Court Martial for the breach of the Suspended Sentence Order<sup>68</sup>, pursuant to a summons or warrant for arrest issued by the Court Martial<sup>69</sup>, that Court must also deal with the offender in accordance with paragraph 13. Paragraph 13 requires the Court before whom the offender appears to deal with them in one of the following ways<sup>70</sup>:

- a. make an activation order that the suspended sentence is to take effect in full with its original term unaltered;
- b. make an activation order that the suspended sentence is to take effect in part;
- c. if the court dealing with the offender is the Crown Court, fine the offender an amount not exceeding £2,500;
- d. if the Suspended Sentence Order imposes one or more community requirements, the court may:
  - (i) impose more onerous community requirements (which the original sentencing court could have imposed)
  - (ii) extend the supervision period (but not more than two years beginning with the date on which the Suspended Sentence Order was made)<sup>71</sup>
  - (iii) extend the operational period (but not more than two years beginning with the date on which the Suspended Sentence Order was made)<sup>72</sup>

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<sup>66</sup> [Para 11\(2\) Schedule 16 Sentencing Act 2020](#)

<sup>67</sup> [Para 12\(3\) Schedule 16 Sentencing Act 2020](#)

<sup>68</sup> [Para 12\(3A\) Schedule 16 Sentencing Act 2020](#)

<sup>69</sup> [Para 19 Schedule 16 Sentencing Act 2020](#)

<sup>70</sup> [Para 13\(1\) Schedule 16 Sentencing Act 2020](#)

<sup>71</sup> [section 288\(3\) Sentencing Act 2020](#)

<sup>72</sup> [section 288\(2\) Sentencing Act 2020](#)



e. if the Suspended Sentence Order does not impose any community requirement, the court may extend the operational period (but not more than two years beginning with the date on which the Suspended Sentence Order was made).<sup>73</sup>

4.3.12 Where the Crown Court, the Court Martial or the Service Civilian Court deals with the case under paragraph 13, it must make an activation order unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the extent to which the offender has complied with any community requirements of the Suspended Sentence Order, and, if a further offence has been committed, the facts of that offence.<sup>74</sup> If the Court Martial or Service Civilian Court makes an activation order, it can order the custodial sentence to begin immediately or on completion of the expiry of another custodial sentence passed on the offender.<sup>75</sup> The Sentencing Council Guideline for Breach of a Suspended Sentence Order<sup>76</sup> provides useful information and should be considered by a Service Court considering making an activation order.

4.3.13 **Activation proceedings in the Court Martial** Activation proceedings in the Court Martial are governed by Part 17 of the Armed Forces (Court Martial) Rules 2009. Rule 131 applies when the Court Administration Officer (CAO) is informed<sup>77</sup> of a further offence being committed. The CAO should inform the Director Service Prosecutions (DSP) and forward any material not already in DSP's possession.<sup>78</sup> DSP should, within 28 days of being so informed, then give written notice to the CAO as to whether they require activation proceedings to be held. If so, the Judge Advocate General (or a Judge Advocate nominated by him) then issues a summons for the offender to appear or a warrant for the offender's arrest.<sup>79</sup> Once the offender so appears, they can be ordered into Service custody if the Judge Advocate is "satisfied that there are substantial grounds for believing that, if released from Service custody, the person would fail to attend the court as required"<sup>80</sup> for up to 8 days (at a time).

4.3.14 **Procedure at an activation hearing in the Court Martial** The procedure at an activation hearing in the Court Martial is laid out at rule 138 Armed Forces (Court Martial) Rules 2009. The Judge Advocate should ask the offender if they admit the relevant facts (i.e. that they have been convicted in the British Islands of an offence committed during the operational period of a suspended sentence order passed by a relevant Service court,

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<sup>73</sup> section 288(2) Sentencing Act 2020

<sup>74</sup> Para 14(1) Schedule 16 Sentencing Act 2020

<sup>75</sup> Para 15A(2) Schedule 16 Sentencing Act 2020

<sup>76</sup> [Breach of a suspended sentence order – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/breach-of-a-suspended-sentence-order)

<sup>77</sup> per para 19(1) Schedule 16 Sentencing Act 2020, as modified by para 12 Schedule 7 AFA 06

<sup>78</sup> in accordance with rule 134(2) Armed Forces (Court Martial) Rules 2009

<sup>79</sup> see rule 134(3)-(7) Armed Forces (Court Martial) Rules 2009, and, for warrants, rule 135

<sup>80</sup> rule 136 Armed Forces (Court Martial) Rules 2009





or has been convicted of a Service offence committed during that period, and has not been dealt with in respect of the suspended sentence)<sup>81</sup>. If they do not, the Service Prosecuting Authority adduces evidence of the relevant facts, which can be challenged by the offender, who can also give evidence or call witnesses. If the offender admits the relevant facts or the Judge Advocate determines that they are proved<sup>82</sup>, the Service Prosecuting Authority provides information on the original offence and the new offence, the offender mitigates and the court (Judge Advocate plus lay members) decides, by majority, whether to make a relevant order<sup>83</sup> and if so to what extent, pronounced in the normal way; the Judge Advocate provides the usual explanation and the President pronounces the decision.

## 4.4 Service Detention

**4.4.1 The test that must be satisfied** A court may not pass a sentence of Service detention in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.<sup>84</sup>

**4.4.2 Availability** Service detention is available only for Warrant Officers and below. An offender sentenced to detention in the Court Martial may also be reduced in rank or disrated. If the detainee is not reduced or disrated by the court, they will be treated as an able seaman or equivalent for the duration of the sentence of detention. On completion of the sentence they will regain their original rank or, if the Court has also imposed a sentence of reduction in rank or disrating, any lower rank specified by the Court.

**4.4.3 Maximum sentence of Service detention** The maximum sentence of Service detention that can be imposed by a Court Martial is two years; the maximum sentence the Summary Appeal Court can impose is limited to that which that Commanding Officer could have imposed when originally dealing with the offender.

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<sup>81</sup> para 19(1)(a) and (b) Schedule 16 Sentencing Act 2020, as modified by para 12 Schedule 7 AFA 06

<sup>82</sup> if the offender does not admit the relevant facts, the Judge Advocate decides this alone (rule 29(3)(c)) and then the Board makes a decision whether to activate, as the Judge Advocate alone does not have the power to make an activation order in the Court Martial (see Rule 28). Rule 27 (proceedings without lay members) only applies to activation proceedings if the original sentence was imposed by the court sitting without lay members (see rule 27(5)),

<sup>83</sup> per para 13(1) Schedule 16 Sentencing Act 2020

<sup>84</sup> section 242(1) Armed Forces Act 2006





**4.4.4 Remission** The remission rules for Service detention are different from those that apply to sentences of imprisonment. Automatic remission of one-third of the sentence is given to all offenders sentenced to over 36 days detention, and sentences of between 25 and 35 days detention attract remission on a sliding scale to ensure the detainee actually serves for 24 days detention. There is no remission for detainees sentenced to 24 days detention or less. Additional remission can be earned on sentences of over 90 days detention at the discretion of the Commandant of the Military Corrective Training Centre (MCTC), up to a maximum remission of one-sixth of the portion in excess of 90 days. Where consecutive sentences are being served, it is the total period in aggregate that counts for purposes of earning additional remission. A sentence of detention ends when the offender is released from the Service Custody premises; there is no period of licence, no probation requirement nor any recall provisions.

**4.4.5 Calculating Credit for Time Spent in Pre-trial Custody** As part of the sentencing process the court will record the period of time spent in pre-trial custody (or on remand). This will then be deducted by MCTC from the sentence to be served. The Judge Advocate should announce the full length of the sentence of Service detention without deductions and explain that the offender may be released after they have served 2/3 of the sentence of detention less the time already served in custody, subject to paragraph 4.4.4 above.

**4.4.6 Financial impact of Service detention** Service personnel are not paid any salary whilst serving a sentence of Service detention; they are provided with a small allowance to meet their immediate needs. An allowance may also be paid to help meet the needs of their family. The time in detention does not count towards service or pension entitlement.

**4.4.7 Welfare Support in detention** MCTC enables and encourages detainees to plan financially during their sentence :

- a. For all detainees with dependants, MCTC Welfare will liaise with their home unit welfare team to consider eligibility for Military Families' Grant and/or Service Families' Accommodation support if required. Similar approaches can be taken for detainees in private accommodation.
- b. Barnardo's meet all detainees with children and can provide support with state benefit applications, liaison with local support charities and other relevant support services.

**4.4.8** MCTC arranges for weekend visits, video calls and emails to allow detainees to remain in contact with family and friends. MCTC also liaises with other department to



make arrangements for detainees to visit critically ill relatives or attend funerals if required.

4.4.9 For detainees being discharged or dismissed, MCTC will liaise with the Defence Transitions Services (DTS) and SSAFA Mentoring Services, both of which may offer housing, financial, employment and well-being support for up to two years after discharge and longer if necessary.

4.4.10 **Offenders sentenced to Service detention when not also sentenced to dismissal** Offenders who are not sentenced also to dismissal serve sentences in A Company MCTC where the regime is not dissimilar to basic military training. The aim is to return re-trained Service personnel to their Service to continue their career. Rates of recidivism among those who have served sentences of Service detention at MCTC are very low, with many former detainees going on to have highly successful careers including subsequent promotion.

4.4.11 **Offenders sentenced to Service detention and dismissal** Offenders who are also sentenced to dismissal (or who are to be discharged administratively by their employer) serve sentences in D Company MCTC where the regime has less military training and contains a significant element of pre-release training aimed at rehabilitation and resettlement, thereby assisting the Service person to make a successful transition to civilian life.

4.4.12 **Offenders convicted of serious criminal offences** The regime at MCTC is not primarily intended for those who have been convicted of serious criminal offences. However, even for a fairly serious offence an offender might be ordered to serve a period of detention where the Court considers there is a better chance of rehabilitation for them in the Service environment than in a civilian penal institution. Such a course is not usual but it is available to the Court Martial as an alternative to imprisonment in appropriate cases.

4.4.13 **Sex offenders** Whilst the full range of accredited sex offender programmes are not available at MCTC, cognitive behavioural therapy is provided through the Choices programme (up to 8 sessions) and a bespoke version of the Horizon programme for sex offenders is available, delivered by a qualified probation officer on an individual basis. Offenders are not released from MCTC under supervision on licence and cannot be recalled after release. However, sex offenders subject to the Sex Offender Register notification requirements are dealt with under Multi-Agency Public Protection Arrangements (MAPPA) and MCTC liaises with the MOSOVO (Management of Sexual or Violent Offenders) local police contact before an offender is released into the community. A sentence of Service detention may therefore be appropriate for some offenders convicted of sexual offences. Sentences of Service detention are not likely to be



appropriate when risk of reoffending is raised and/or post-sentence supervision is required.

4.4.14 A Pre-Sentence Report must be ordered in all cases involving sexual offences in order to ensure the court has all relevant information to determine the appropriate sentence and any agencies dealing with the offender subsequently are fully informed in relation to risk and other relevant matters.

4.4.15 **Suspending Sentences of Service Detention** The Court Martial may suspend a sentence of Service detention for between 3 and 24 months, the Summary Appeal Court for between 3 and 12 months.<sup>85</sup> As a matter of law, a suspended sentence of Service detention may be passed on an offender who is being dismissed or who has left the Service. If the offender is then dealt with for an offence in the civilian courts during the operational period the Court Martial may activate the suspended sentence of Service detention in whole or in part, provided:

- a. The civilian court has notified the Court Administration Officer (CAO);
- b. The CAO informs the DSP;
- c. The DSP decides he requires activation proceedings; and
- d. The Judge Advocate General issues a summons or warrant for the offender's arrest<sup>86</sup>.

4.4.16 When considering a suspended sentence, a Court will have regard to the Sentencing Council's Guideline on Community and Custodial Sentences. Additional Service factors that a Court may wish to take into account when considering whether to suspend a sentence of Service detention include:

- a. The disciplinary record of the offender.
- b. In cases where there has been a significant delay between the date of the offence and date of sentence which is not due to the defendant, the behaviour and attitude of the offender since the offence.
- c. Genuine remorse and voluntary reparations.
- d. The offence is an isolated incident.
- e. The offence did not have a highly corrosive effect on Service discipline.

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<sup>85</sup> section 190(2), (2A), (2B) Armed Forces Act 2006

<sup>86</sup> rule 134 Armed Forces (Court Martial) Rules 2009



- f. The age and experience of the offender.
- g. The offender is required for operational duties and their Commanding Officer indicates that action can be taken to rehabilitate them in the unit.

**4.4.17 Historic Cases** Care needs to be exercised because the 24 month operational period is only available if the offence was committed after 1 July 2019.<sup>87</sup> Prior to that, the operational period was between 3 and 12 months.

**4.4.18 Activation of suspended sentence of detention** If there is a conviction before the Court Martial for a further offence committed during the operational period of any suspended sentence of detention, whether imposed by the Court Martial or at a Summary Hearing, the Court Martial may order that the suspended sentence take effect for the full original term or for a lesser term. The new offence does not necessarily have to have been dealt with in the Court Martial; the offender may have been dealt with elsewhere and be brought before the Court Martial solely for activation of the suspended sentence to be considered (known as 'Activation Proceedings', which follow a similar pattern to those for activating SSOs). The court may activate the full original term of detention or any lesser term it considers appropriate. The "activated" term may be served concurrently or consecutively to another term of Service detention. The overall maximum of two years' Service detention may not be exceeded by the combination of the activated and new sentences. Where a defendant has elected for trial in the Court Martial, the aggregate of two sentences may not exceed 28 days detention (or 90 if the commanding officer had extended powers).<sup>88</sup>

## 4.5 Comparison between Service detention and imprisonment

Imprisonment/detention in YOI	Service detention
For all determinate sentences under 4 years the offender is released having served half the sentence.	The offender will not be guaranteed release until they have served two thirds of the sentence (although remission of up to 1/6 of the sentence for good behaviour can and often is obtained).
All offenders released from prison will spend at least one year on licence during which they are subject to recall to prison and may be subject to conditions.	Offenders are released without any licence requirement.

<sup>87</sup> regulation 2(2) Armed Forces Act 2016 (Commencement No3) Regulations

<sup>88</sup> paragraph 12 Schedule 3A Armed Forces Act 2006



Conditions in prison are more punitive than MCTC.	MCTC, whilst involving deprivation of liberty and pay, is generally a more constructive regime than prison, particularly for shorter sentences.
For a prison sentence of up to 6 months, the rehabilitation period is 2 years. For a sentence between 6 months and 2 years 6 months it is 4 years.	Rehabilitation period is 12 months

4.5.1 The Court Martial Appeal Court in *R v Ball & Rugg* (1998) Times 17 February stated:

It would be wrong to consider a sentence of Service detention to be a more severe punishment than a sentence of imprisonment of the same length on the grounds that remission in a sentence of detention is one-third (unless the detainee earns extra remission) whereas for a determinate sentence of imprisonment of the same length it is one-half. Detention does not carry the stigma of a sentence of imprisonment, and when released from detention an offender is not subject to supervision on licence. Detainees at MCTC routinely sleep in barrack rooms, and can earn a half-day's leave per week at a certain stage of their sentence. However, there is a greater loss of liberty than normally encountered in service life. This position has been accepted by the Court Martial Appeal Court in *R v Sadole* [2019] EWCA Crim 915, at para 20, per Hallett LJ...'

and in *R v Sadole* [2019] EWCA Crim 915, at para 20, per Hallett LJ:

"A period of Service detention is not the same as a period of imprisonment: it does not carry the same stigma and if the serviceman or woman is to be retained in the Service, as this appellant is, it means that they will receive training to assist them in their future career. The regime at an MCTC is akin to general military training and not to a term of imprisonment. Furthermore, if he serves at most 4 months, he will not be liable to serve the remaining 2 months on licence and he will not be subject to recall."

4.5.2 When a sentence of Service detention is imposed as an alternative to a prison sentence, it is generally appropriate to apply an increase to the length of the sentence of Service detention to reflect the difference in regimes. Whilst the extent of any increase will depend on the circumstances of the case, an increase of more than 25% is unlikely to be appropriate.

4.5.3 Where an offender is being sentenced for a summary-only criminal conduct offence (eg battery), the court, whilst not constrained by law, should generally not impose a sentence of more than 6 months Service detention for a single offence unless



there are justifiable Service reasons for doing so. These should be clearly explained in the sentencing remarks.

#### **4.6 Deciding whether to impose a sentence of imprisonment, a Service Community Order or Service detention.**

4.6.1 If an offender appearing in a civilian criminal court, in the same circumstances and with the same characteristics as the defendant, would have received an immediate prison sentence, an immediate prison sentence is also likely to be appropriate in the Court Martial. However, where it is in the Service interest and the interests of justice to do so, the court may consider imposing an immediate sentence of Service detention as a direct alternative to an immediate prison sentence.

4.6.2 If an offender appearing in a civilian criminal court, in the same circumstances and with the same characteristics as the defendant, would have received a Suspended Sentence Order, the same Order may well be appropriate in the Court Martial. If so, dismissal will be appropriate in all but the most exceptional case (see further detailed guidance in Part 1 4.1.4). However, depending on the circumstances, it may be appropriate to impose an immediate sentence of detention as an alternative sentence. Dismissal will be an option and then should consider whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant dismissal.

4.6.3 If an offender appearing in a civilian criminal court, in the same circumstances and with the same characteristics as the defendant, would have received a Community Order, a Service Community Order may be appropriate. Such a sentence cannot be imposed on serving personnel unless they are also dismissed. Dismissal will only be appropriate if the offence, or the combination of the offence and one or more offences associated with it, is serious enough to warrant it. Accordingly a Service Community Order should only be imposed if the offence(s) is serious enough to warrant dismissal. Alternatively, a sentence of Service detention may be appropriate.

4.6.4 The table below offers broad guidance as to how a Service Community Order and a sentence of Service detention may be compared.

Service Community Order	Service Detention
Low level	10 weeks (within a range of 5-15 weeks)
Medium level	20 weeks (within a range of 15-25 weeks)
High level	30 weeks (within a range of 25-35 weeks)



## 4.7 Service Community Orders

4.7.1 A Service Community Order<sup>89</sup> is an order which provides the Court Martial and the Service Civilian Court with almost the full range of the community requirements contained within the Sentencing Code.<sup>90</sup> It can be imposed on ex-Service personnel and Civilians Subject to Service Discipline. In all cases the offender must be over 18 and will reside in the United Kingdom.<sup>91</sup> The powers of the Court Martial and Service Civilian Court in relation to sentencing offenders under 18 are limited – eg they cannot impose a Youth Rehabilitation Order or a Referral Order. Courts sentencing offenders under 18 should take particular care to check the relevant legislation.

4.7.2 **Requirement for Dismissal** A Service Community order can be only imposed on a Service person who is currently serving if they are, at the same time, sentenced to dismissal or dismissal with disgrace. The court will have to consider whether the case is serious enough to warrant dismissal (See 4.7 of this Guide).

4.7.3 **Further restrictions / requirements concerning the imposition of a Service Community Order** A Service Community Order cannot be passed if a Suspended Sentence Order of Imprisonment or Detention in a Young Offender Institution is being imposed for the offence or any other which is before the court.<sup>92</sup> A Service Community Order must include at least one community order requirement imposed for the purpose of punishment<sup>93</sup> unless the court also imposes a fine or it is unjust in all the circumstances to do so.<sup>94</sup> If imposing more than one Service Community Order they will need to be compatible with each other.<sup>95</sup> Furthermore, any requirement must ensure, so far as reasonably practicable that it avoids conflict with the offender's beliefs, work or education, or any other court order. The Service Community Order must specify an end date by which all requirements should be met,<sup>96</sup> must specify the local justice area (in which offender resides/will reside)<sup>97</sup> and must be served on a number of persons.<sup>98</sup>

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<sup>89</sup> [section 178 Armed Forces Act 2006](#)

<sup>90</sup> [section 201 Sentencing Act 2020](#)

<sup>91</sup> [section 164\(5\) Armed Forces Act 2006](#)

<sup>92</sup> [section 203 Sentencing Act 2020](#)

<sup>93</sup> [section 208\(10\) Sentencing Act 2020](#)

<sup>94</sup> [section 208\(11\) Sentencing Act 2020](#)

<sup>95</sup> [section 208\(12\) Sentencing Act 2020](#)

<sup>96</sup> [section 209 Sentencing Act 2020](#)

<sup>97</sup> [section 210 Sentencing Act 2020](#)

<sup>98</sup> detailed at [section 212 Sentencing Act 2020](#)





**4.7.4 Available Requirements** The available requirements are contained at column 1 of section 201 Sentencing Act 2020 (and Schedule 9), namely:

- unpaid work requirement
- rehabilitation activity requirement
- programme requirement
- prohibited activity requirement
- curfew requirement
- exclusion requirement
- residence requirement
- foreign travel prohibition requirement
- mental health treatment requirement
- drug rehabilitation requirement
- alcohol treatment requirement
- alcohol abstinence and monitoring requirement
- attendance centre requirement
- electronic compliance monitoring requirement
- electronic whereabouts monitoring requirement

**4.7.5** Pre-Sentence Report (PSR) must be obtained and considered before a Service Community Order is made, unless the Court Martial is of the opinion that it is unnecessary to obtain one. In many cases where an unpaid work requirement is being considered for an offender who is obviously fit and well, an oral report, which can be prepared at short notice, will suffice. Before a court imposes an order, it must be satisfied that arrangements are in place for the supervision to be carried out. It is, therefore, helpful for the judge to give an early indication to the PSR writer that dismissal and a Service Community Order is a possible sentence, so that the writer can undertake the necessary checks before making any recommendation.

**4.7.6** Breach, revocation or amendment of Service Community Order are a matter for the Crown Court, following section 218 and Schedule 10 Sentencing Act 2020 as modified by section 181 Armed Forces Act 2006.

## **4.8 Overseas Community Orders**

**4.8.1** An Overseas Community Order<sup>99</sup> is unique to the Service Justice System and is designed to enable the Service Courts to impose community requirements on an offender who is not intending to live in the United Kingdom. Consequently, it is generally equivalent to a Service Community Order, and thus the considerations at 4.5 are equally applicable when considering imposing an Overseas Community Order, with four key differences.

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<sup>99</sup> section 182 Armed Forces Act 2006





4.8.2 Firstly, an Overseas Community Order can only be imposed on a civilian offender living overseas. This requires the court to consider where the offender intends to reside post sentence. Secondly, given that any requirements will have to be enforced outside of the United Kingdom, the Service Court must be satisfied not only that the offender will be able to comply with the requirement but that arrangements will be made for supervision of their compliance.<sup>100</sup>

4.8.3 Thirdly, while an Overseas Community Order provides the Court Martial and the Service Civilian Court with a broad range of the community requirements contained within the Sentencing Code,<sup>101</sup> it may not include:

- a foreign travel prohibition requirement;
- an alcohol abstinence and monitoring requirement;
- an electronic compliance monitoring requirement, or
- an electronic whereabouts monitoring requirement.

4.8.4 Fourthly, breach, revocation or amendment of an Overseas Community Order are a matter for the Service Courts, following Schedule 6A Armed Forces Act 2006 and Schedule 10 Sentencing Act 2020.

## 4.9 Dismissal / Dismissal with Disgrace

4.9.1 **Availability of the sentence of dismissal or dismissal with disgrace** Any Service person who is currently serving may be sentenced to dismissal or dismissal with disgrace. A commissioned officer who has left the Service by the time of sentence (for example on retirement) may be dismissed or dismissed with disgrace, which will mean they forfeit their commission. An offender who is a member of the reserve forces may be dismissed or dismissed with disgrace. There is no power to dismiss a non-commissioned officer who has already left the Service by the time of sentence. The Summary Appeal Court, the Service Civilian Court and the Commanding Officer at a Summary Hearing cannot impose a sentence of dismissal. A suggested approach to considering a sentence of dismissal is at [Annex A](#).

4.9.2 **Requirement to dismiss if passing a Service Community Order** A Service Community Order can only be imposed if the person being sentenced is on the same occasion sentenced to dismissal or dismissal with disgrace.<sup>102</sup>

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<sup>100</sup> section 182(2) Armed Forces Act 2006

<sup>101</sup> section 201 Sentencing Act 2020

<sup>102</sup> section 164(1) Armed Forces Act 2006



**4.9.3 The test that must be satisfied** A Service Court may not pass a sentence of dismissal or dismissal with disgrace in respect of an offence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.<sup>103</sup> In forming any such opinion, a court must take into account all such information as is available to it about the circumstances of the offence and any associated offence, including any aggravating or mitigating factors.<sup>104</sup> The Court Martial must not pass a sentence of dismissal or dismissal with disgrace on an offender who is not legally represented in that court unless having been informed of their right to apply for legal representation and having had the opportunity to do so, they have refused or failed to apply.<sup>105</sup>

**4.9.4 Dismissal with disgrace** Dismissal with disgrace is an exceptional form of punishment for use when the nature and circumstances of the offence make a sentence of dismissal inadequate to reflect the displeasure with which the court regards the defendant's conduct. It marks the fact that the defendant's conduct has disgraced the Service in the sense that it has been dishonoured, shamed, discredited or brought the Service into disrepute. The offence itself need not necessarily be disgraceful. It is used sparingly to avoid diluting its effect, and when the offending conduct is such that the court wishes to draw attention to its gravity.

**4.9.5** When considering whether dismissal with disgrace is appropriate the Court Martial should consider all the factors including the Service record of the offender prior to the offence<sup>106</sup> and then go on to consider whether this exceptional sentence is necessary in the interests of the Service.

**4.9.6** The Court Martial should always consider dismissal with disgrace where an offender is sentenced for a serious offence committed on operations where the offence is likely to tarnish the reputation of other members of the HM Armed Forces involved in that operation, including whether the offence is likely to act as a recruiting tool for opposing forces and thus increase the risk of death and/or injury to others.

**4.9.7 Automatic Consequences of the Sentence of Dismissal / Dismissal with Disgrace** An offender who is dismissed from the Service will, if a Commissioned Officer, forfeit their commission<sup>107</sup> and, if a Warrant Officer or Non-Commissioned Officer be reduced to the ranks.<sup>108</sup> Although these are automatic consequences, the Court Martial should always refer to them in their sentencing remarks. An officer who has left the

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<sup>103</sup> [section 265\(1\) Armed Forces Act 2006](#)

<sup>104</sup> [section 265\(2\) Armed Forces Act 2006](#)

<sup>105</sup> [section 265\(3\) to \(5\) Armed Forces Act 2006](#)

<sup>106</sup> *R v Blackman* [2017] EWCA Crim 325

<sup>107</sup> [section 295\(2\) Armed Forces Act 2006](#)

<sup>108</sup> [section 295\(3\) Armed Forces Act 2006](#)



Armed Forces may nonetheless be sentenced to dismissal or dismissal with disgrace, which will lead to the forfeit of their commission.

**4.9.8 Other Consequences** There are other consequences to dismissal / dismissal with disgrace which affect both the offender and, potentially their dependants. Firstly, the offender will have no right to a resettlement courses or terminal leave. Secondly, the offender (and any dependants who live with them) will lose the right to be accommodated by the Services. Thirdly, there is inevitably a financial effect of loss of employment.

**4.9.9 Effect on Pension Entitlements** The dismissed individual retains a deferred pension which fully reflects the years already served, but they may lose the opportunity to qualify for a Resettlement Grant lump sum, or an immediate pension (Armed Forces Pension Scheme 75) or Early Departure Payment (Armed Forces Pension Scheme 05 or Armed Forces Pension Scheme 15). This may be particularly significant if the offender is dismissed shortly before they would have been otherwise entitled to that immediate pension or payment. Annex B contains a short explanation of the three pension schemes to which dependants may belong. Entitlement to a pension or Early Departure Payment (EDP), without having to wait until scheme pension age, is a valuable benefit. Early departure as a result of dismissal from the Armed Forces before the member reaches their entitlement point will cause the member to lose this benefit and instead leave with a deferred pension and, if they have served long enough, potentially a resettlement grant. Personnel who leave after passing their entitlement point will receive an immediate pension or EDP, based on service up to the last day of reckonable or qualifying service in the Armed Forces.

4.9.10 Those who are susceptible to the greatest financial loss are those with higher ranks or those who have been in the Services for a long time. It is necessary to consider the financial implications of sentences passed on such Service personnel, and the fact that pensions and associated payments are designed to reward Service personnel for their past service and to assist with the transition into civilian life. However, it would be wrong to sentence a high-ranking offender to a significantly lower sentence than a junior or low-ranking offender for the same offence solely in order to preserve their financial advantages. Sentencers should also bear in mind that in civilian life, offenders will often lose their employment as a result of their actions, with the consequential impact on them and their families.

4.9.11 The Service Prosecution Authority will provide details to the sentencing Service Court as to the financial consequences of dismissal in the section detailing the offender's pay, terminal benefits and future pension entitlements in the Information for Service Courts.<sup>109</sup>

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<sup>109</sup> which they are required to provide by r114 Armed Forces (Court Martial) Rules



4.9.12 The Court Martial must take into account the effect of the sentence of dismissal – see Annex C for the correct stepped approach to be taken.

4.9.13 **The importance of the view of the lay members** In R v Downing [2010] EWCA Crim 739 at para 13 Judge LCJ said:

“The question whether the criminal activities of a member of the military require dismissal from the Service is pre-eminently, although not exclusively, a decision for the Court Martial. For this purpose, for the assessment of the impact of the applicant’s convictions on his ability to continue to serve in the relevant force, the Court Martial must be regarded as an expert tribunal, entitled to the same level of respect to which any such tribunal is entitled when an appeal court is considering its decision.”

4.9.14 The Court Martial Appeal Court has provided significant helpful guidance as to the factors that the Court Martial should consider before imposing a sentence of dismissal. That guidance has been incorporated into the approach the Court Martial should take when considering a sentence of dismissal or dismissal with disgrace, which follows at Annex C.

4.9.15 **Administrative Discharge** The Services are able to take administrative action to discharge a service person following a conviction in the CM even when the Court Martial had not sentenced the individual to dismissal. The likelihood and consequences of administrative action are generally not a matter for the court to consider when sentencing.

4.9.16 The key differences between dismissal and administrative discharge (following conviction) are set out in the table below.

The Sentence of Dismissal and Dismissal with Disgrace	Administrative Discharge (post sentence of a court)
Cannot be imposed unless the Court “is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was <b>serious enough</b> to warrant such a sentence” ( <a href="#">section 265(1) AFA 06</a> ).	The Services may discharge individuals whose conduct following a conviction in the Court Martial has been found to constitute Gross Misconduct or a breach of zero-tolerance policy.  Tri-Service policies on relevant issues include:  <a href="#">Zero Tolerance to Sexual Offences and Sexual Relationships between Instructors and Trainees</a>



The Sentence of Dismissal and Administrative Discharge (post sentence of a court)	
Dismissal with Disgrace	
	<a href="#">Zero Tolerance to Unacceptable Sexual Behaviour: A Victim/Survivor Focused Approach</a>  Sentencing courts should note that the decision to discharge will not be made by the offender's Commanding Officer but by an officer of at least 2* rank
Commission forfeit or reduced to the ranks	Commission may not be forfeit / Not reduced to the ranks
A sentence of the court	Not a sentence of a Court
Appeal against sentence of dismissal must be made to the Court Martial Appeal Court (for which leave must be granted)	Appeal against discharge by way of Service Complaint as of right and under review procedures
Subject to <u>Rehabilitation of Offenders Act 1974</u> – 12 months rehabilitation period (or 6 months if under 18) <sup>110</sup>	Not subject to <u>Rehabilitation of Offenders Act 1974</u> but the sanction is retained for the equivalent ROA period on CR book
No right to resettlement / termination leave	Right to resettlement leave. Termination leave is not normally granted to personnel whose service is terminated for misconduct
Not subject to views of CO	Subject to views of CO
Has an effect on pension	Has a similar effect on pension

4.9.17 **The decision not to dismiss** Dismissal should not be imposed as a matter of mere expediency either for the unit or the offender. It would be wrong in principle to dismiss purely because the offender is, for some extraneous reason, not fitted for Service life, or an administrative burden, or states that they do not wish to remain in the Service. In those circumstances administrative discharge may be appropriate, which is a matter for the Chain of Command and not the court.

4.9.18 **Evidence from the Commanding Officer** The court may hear evidence called by the defence that the Commanding Officer wishes to retain the individual in the Service. The Board should treat such evidence with care, since the Commanding Officer will not be the deciding officer for administrative action following conviction. The appropriate authority will make the decision guided by relevant tri-Service and single Service policy.

<sup>110</sup> section 5(1) Rehabilitation of Offenders Act 1974



**4.9.19 Sentencing Remarks** Where dismissal is an option, particularly in cases where the Services' policy in relation to the particular type of offending is that it is incompatible with further Service, but the court decides not to dismiss, it should give its reasons fully. The court should state that the decision not to dismiss is made on the basis of all the information before it. It is important for the court's reasons for not dismissing to be clear to the Services when they subsequently consider whether to discharge the offender, not least because the court may have imposed a heavier punishment to reflect the fact that dismissal was not being imposed. The court cannot constrain or prevent the Services from discharging a Service person.

**4.9.20** A suggested approach to considering a sentence of dismissal is at Annex A.

## **4.10 Reduction in Rank / Disrating**

**4.10.1 Availability and Effect** This sentence is available only for Warrant Officers and below. It involves loss of status and income, and it may also involve a reduction in pension entitlement. Because of the loss of income, it is rarely appropriate to impose a further financial penalty (except a Service Compensation Order). If a Warrant Officer or non-commissioned officer is dismissed, they must also be reduced to the ranks, the rationale being that if their misconduct was so severe as to merit dismissal, they must necessarily be unfit to hold any position of authority.

**4.10.2** It would be wrong to consider this punishment in purely financial terms. A reduction in rank is mainly a reduction in responsibility and status which remains a visible indication of conviction, and may include changes in messing and accommodation arrangements. In some cases it can impact on employability in the offender's role (eg Service police) and the suitability for particular appointments or promotion. The important question is whether the offender by committing this offence has demonstrated that they are unfit to hold their present rank. Whether they are reduced to the ranks or allowed to retain some intermediate rank will depend on how seriously the court views their conduct, and on the mitigating factors.

**4.10.3 In combination with detention** If a Warrant Officer or non-commissioned officer is sentenced to detention the court may also reduce them in rank by one or more ranks. If the court decides not to reduce in rank when sentencing a WO/NCO to detention, they will nevertheless be treated as an able seaman or equivalent while serving a sentence of detention<sup>111</sup> even if the Court Martial did not reduce them to that rank. When they are released, they regain their original rank (or the rank to which the court reduced him).

**4.10.4 Time to regain rank/rate** The three Services differ in the time taken for someone who has been disrated or reduced in rank to be promoted back to their original rank, and

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<sup>111</sup> section 294(1) Armed Forces Act 2006



different specialisations and branches re-promote at different rates. Obtaining accurate information about when an offender may be eligible to be promoted can, in some cases, be difficult, and in many cases the court will be able to proceed without detailed information, bearing in mind that the Court does not know how the offender will perform or what recommendations they may receive from their Commanding Officer. If, in a particular case, further information is required, the court may invite the prosecution to seek assistance from the Joint Personnel Administration Centre in Glasgow.

**4.10.5 Reasons for sentence** The court should give reasons for reducing an offender in rank or, in appropriate cases, for not doing so.

## **4.11 Forfeiture of Seniority**

**4.11.1 Availability** This punishment applies only to commissioned officers. An officer's seniority date is the day upon which they were promoted to the rank held, including for pay purposes an acting rank – this is the Incremental Base Date (IBD). From that date they build up seniority. Annual increments of pay (Incremental Levels (IL)) are applied on each anniversary of the IBD up to a specified maximum level. Promotion to the next rank will normally depend partly on achieving a minimum amount of seniority in the current substantive rank. Forfeiture of seniority for an officer can, in some respects be equivalent to reduction in rank or disrating for other ranks. Although it does not carry the same visible stigma, the impacts on pay, pension and promotion prospects can be significant.

**4.11.2** The court may order that an officer forfeits either all seniority in the present rank or some specified lesser amount of seniority (given in years and months). The effect of the punishment is that the officer's IBD is set back by the period of the forfeiture. For example: a Captain is sentenced in the Court Martial on 1 November 2009. Their seniority IBD for promotion to Captain was 1 January 2003 and they are sentenced to forfeit 3 years' seniority. Their new adjusted IBD is 1 January 2006 from which date eligibility for further promotion is assessed. In this example the officer's pay will reduce from the current IL (IL6) to IL3. Loss of seniority or time forfeited may involve loss of reckonable service for retired pay, pension entitlement or gratuity purposes. Consequently, before making an order for forfeiture of seniority the Court Martial should be informed of and take into consideration all the effects in terms of pay and promotion prospects. It is essential the information provided to the court is complete and accurate.

**4.11.3** Forfeiture of seniority is a sentence which is immediately spent. Consequently, the Services cannot take it into account for any administrative or employment purpose (such as suitability for certain posts or promotion generally).





## 4.12 Fines

**4.12.1 Maximum Amounts** The court may award a fine up to the maximum prescribed by statute for the offence. There is no limit on the level of fine to be awarded for a Service disciplinary offence, except where the defendant elected trial and the court is therefore limited to the powers of a commanding officer. In those circumstances the maximum fine for a Service offence is a sum equivalent to 28 days' pay<sup>112</sup>. Pay for these purposes means basic pay, not including allowances. A fine should be expressed as an amount of money, rather than numbers of days' pay

**4.12.2** The Court Martial and Service Civilian Court can make a Financial Statement Order requiring an offender to give details of their financial circumstances to the Court. Failure to comply is an offence carrying a fine.<sup>113</sup>

**4.12.3** The Service Courts should have regard to the means of the offender when assessing the level of a fine and is provided with details of the offender's gross pay.<sup>114</sup> The court may allow time for the fine to be paid, or direct that it be paid in instalments<sup>115</sup> but there are administrative instructions capping deductions from pay which are designed to ensure that every Service person has sufficient money left each month for living expenses.

**4.12.4 Imprisonment for default** Where the Court Martial imposes a fine on a person aged 18 or over, the Court must make an order fixing a term of imprisonment if the fine is not duly paid and a Financial Penalty Enforcement Order is made<sup>116</sup>. The table in Section 129(4) of the Sentencing Code sets out the maximum periods of imprisonment that may be imposed:

Amount of sum		Maximum term
More than	Not more than	
	£200	7 days
£200	£500	14 days
£500	£1,000	28 days
£1,000	£2,500	45 days
£2,500	£5,000	3 months
£5,000	£10,000	6 months
£10,000	£20,000	12 months
£20,000	£50,000	18 months

<sup>112</sup> [section 136 Armed Forces Act 2006](#)

<sup>113</sup> Section 266 Armed Forces Act 2006.

<sup>114</sup> [rule 114\(2\)\(g\) Armed Forces \(Court Martial\) Rules 2009](#)

<sup>115</sup> [section 251 Armed Forces Act 2006](#)

<sup>116</sup> Section 269A Armed Forces Act 2006





£50,000	£100,000	2 years
£100,000	£250,000	3 years
£250,000	£1,000,000	5 years
£1,000,000		10 years

4.12.5 If an offender is retained in the Service, a fine will normally be recovered through the offender's pay account and the court should specify the time by which the fine should be recovered. The court may order the fine to be paid by instalments; in that event, given that Service pay is paid monthly at the end of each month, the court should specify the dates of the instalments correspondingly.

4.12.6 The position is more complicated if the offender has been dismissed or discharged from the Service. In such a situation a fine (or a Service Compensation Order) can be enforced through the use of a Financial Penalty Enforcement Order<sup>117</sup>. Financial Penalty Enforcement Orders are also used where the person against whom the financial penalty was awarded is neither subject to Service law nor subject to Service discipline.<sup>118</sup> Financial Penalty Enforcement Orders are made by the Defence Council or person authorised on their behalf and are enforced by the civilian courts.<sup>119</sup>

4.12.7 **Combination of Fines with Other Sentences** Normally a financial penalty should not be imposed where other elements of the sentence (such as dismissal, detention or reduction in rank) carry significant financial consequences and reduce the offender's means. In exceptional cases a financial penalty can be added to these punishments, for example if the offender is leaving the Service immediately after trial and the reduction in rank would have no practical effect.

### 4.13 Severe Reprimand and Reprimand

4.13.1 These punishments are available only where the offender is an officer, Warrant Officer or non-commissioned officer. They have no direct financial consequences but are a mark of disapproval. They are frequently coupled with a financial penalty. With effect from 1 May 2022 the rehabilitation periods for both severe reprimand and reprimand is 12 months (or, if the offender is under 18, 6 months). Consequently, the Services can take them into account for any administrative or employment purpose (such as suitability for certain posts or promotion generally) during the rehabilitation period.<sup>120</sup>

### 4.14 Service Supervision and Punishment Order (SSPO)

<sup>117</sup> [section 322 Armed Forces Act 2006](#)

<sup>118</sup> [section 309\(3\) Armed Forces Act 2006](#)

<sup>119</sup> see [The Armed Forces \(Financial Penalty Enforcement Orders\) Regulations 2009](#)

<sup>120</sup> following the commencement of [section 18 Armed Forces Act 2021](#) prior to this, these sentences were immediately spent.



4.14.1. This is an order which provides an alternative to Service detention, placing restrictions on an offender whilst leaving them available to their unit for normal duties. Its implementation is supervised by the Commanding Officer of the unit.

4.14.2 A SSPO may be awarded only to an able seaman or equivalent. The order must specify its length as 30, 60 or 90 days.<sup>121</sup> In each of these periods there is an initial period of 14, 18 and 21 days respectively in which the offender may be required to undertake extra work or drill up to a maximum of 5½ hours per day. After the initial period has expired, the remainder of the order is the secondary period. Throughout the duration of the order the offender forfeits one sixth of their gross pay<sup>122</sup>, and for the initial period they may not take leave<sup>123</sup> without their Commanding Officer's permission (leave entitlement is deferred but not lost).

4.14.3 The SSPO also contains a number of discretionary elements, one or more of which may be imposed in addition to the mandatory element of the punishment<sup>124</sup>. The Court may set the requirements of the Order itself or authorise the Commanding Officer to set the requirements on their behalf, which include:

- extra duties up to 1 hour per day during the secondary period;
- not to leave a relevant place without the permission of their Commanding Officer;
- subject to such conditions as may be specified in the SSPO, not to enter specified places in a relevant place without the permission of their Commanding Officer.

## 4.15 Minor Punishments

4.15.1 Minor punishments<sup>125</sup> are usually awarded by a Commanding Officer at Summary Hearing, but may be awarded by the Court Martial for minor offences, or where a defendant has elected trial. They are: i) Stoppage of Leave, ii) Restriction of Privileges, and iii) Admonition. Where the Court Martial awards stoppage of leave, the Commanding Officer determines when the stoppage is to take effect. Where the Court Martial awards restriction of privileges, the Commanding Officer specifies when and how the restrictions are to apply. The court explains the role of the Commanding Officer to the offender.

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<sup>121</sup> [section 173\(2\) Armed Forces Act 2006](#)

<sup>122</sup> [section 173\(1\)\(b\) Armed Forces Act 2006](#)

<sup>123</sup> [section 173\(3\)\(b\) Armed Forces Act 2006](#)

<sup>124</sup> [regulation 3 The Armed Forces \(Service Supervision and Punishment Orders\) Regulations 2009](#)

<sup>125</sup> [The Armed Forces \(Minor Punishments and Limitation on Power to Reduce in Rank\) Regulations 2009](#)



4.15.2 **Stoppage of leave** is available up to a maximum of 14 days and only if the offender is below the rank of warrant officer. This does not remove an offender's entitlement to part of their annual leave entirely, but has the effect of preventing them from leaving their ship, establishment or station during the period of the stoppage. If the punishment commences when the offender was expecting to proceed on annual leave it has the effect of deferring that leave. The commencement of this punishment may be delayed for up to 28 days for compassionate or operational reasons.

4.15.3 **Restriction of Privileges** is available for up to a maximum of 14 days and only if the offender is an able rate, marine, private soldier, Air Specialist 1 (AS1) or military officer cadet. This requires the offender to undertake extra duties including work, training or any other Service duty up to a maximum of 5½ hours per day. These extra duties must take place during the period from two hours before the start of the offender's working day to six hours after completion of their working day. They may also be required to muster or parade at a particular place on the ship, establishment or station as one of their extra duties up to a maximum of six times a day.

4.15.4 **Admonition** When an offence is proved but of itself or because of the mitigating circumstances it is very minor, the offender may be admonished. It is equivalent to an absolute discharge in the civilian system although it may be awarded in combination with a Service Compensation Order.

## 4.16 Service Compensation Order

4.16.1 This is an order requiring the offender to pay compensation for any personal injury, loss or damage to a victim as a result of their substantive offence or another offence which they have asked to be taken into consideration.<sup>126</sup> The Court Martial must consider making a Service Compensation Order in any case where it has power to do so.<sup>127</sup> The Court Martial may award any sum it considers appropriate after hearing representations from the offender and the prosecutor.<sup>128</sup> The awarding of a Service Compensation Order in favour of a victim does not prevent the victim from pursuing a claim for damages, but may mean they are spared from needing to do so. A Service Compensation Order cannot be made in respect of bereavement, funeral expenses or other loss suffered by dependants of a person as a consequence of their death.<sup>129</sup> There are restrictions on the circumstances in which compensation may be awarded in road traffic accident cases<sup>130</sup>.

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<sup>126</sup> [section 175 Armed Forces Act 2006](#)

<sup>127</sup> [section 175\(7A\) Armed Forces Act 2006](#)

<sup>128</sup> [section 175\(2\) Armed Forces Act 2006](#)

<sup>129</sup> [section 175\(4\) Armed Forces Act 2006](#)

<sup>130</sup> [section 175\(5\) Armed Forces Act 2006](#)



4.16.2 Where the court considers it appropriate both to award a fine and to make a Service Compensation Order, but the offender would have insufficient means to pay both, the court should give preference to the Service Compensation Order in the interests of the victim. The court may still impose a (smaller) fine as well if appropriate.

4.16.3 When making a Service Compensation Order the Court should set a period of imprisonment which the offender would serve if the compensation is not paid and a Financial Penalty Enforcement Order is made<sup>131</sup>. The usual period in default is the period which would be ordered for non-payment of a fine of the same amount in the Magistrates' Court. This is found in Schedule 4 to the Magistrates' Courts Act 1980:

An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months.
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000	12 months

If the Court considers that the usual period in default is insufficient, it may specify a longer period as the maximum term to which the person is liable to be sent to prison for default if a Financial Penalty Enforcement Order is made<sup>132</sup>. This period can be found in the Table in section 129(4) of the Sentencing Code which sets out periods in default for fines imposed by the Crown Court.

4.16.4 If the offender has been dismissed or discharged from the Service, or the offender is a civilian, the recovery of compensation can be enforced through the use of a Financial Penalty Enforcement Order.<sup>133</sup>

<sup>131</sup> section 269B Armed Forces Act 2006

<sup>132</sup> section 269B Armed Forces Act 2006

<sup>133</sup> section 322 Armed Forces Act 2006



4.16.5 The Court must give reasons, on passing sentence, if it does not make a Service Compensation Order in a case where it has power to do so.<sup>134</sup>

4.16.6 Further guidance is available in the Sentencing Council's guidance on Compensation for the Magistrates' Court, and a table of suggested starting points for mental and physical injuries is given.

#### 4.17 **Driving Disqualification Order**

4.17.1 The Court Martial and Service Civilian Court may impose a driving disqualification order on any offender for an offence committed after 1 April 2023. The courts do not have power to impose penalty points and the requirement for obligatory disqualification for certain offences is not replicated in the legislation and regulations<sup>135</sup>. An offender may be required to produce their driving licence to the court.<sup>136</sup> The regulations contain procedures for suspension of disqualification pending appeal and for application to be made for removal of the disqualification which replicate procedures in the civilian courts. The Military Court Service will inform DVLA of the disqualification in accordance with agreed procedures. Sentencers should follow the practice of the civilian courts when imposing a Driving Disqualification Order together with an immediate custodial sentence or sentence of detention to ensure the time served in custody is reflected in the length of the disqualification.

#### 4.18 **Service Restraining Orders**

4.18.1 [Section 229 Armed Forces Act 2006](#) enables the Service Courts to make an order similar to a restraining order under the Protection from Harassment Act 1997, on convicting or acquitting a person of an offence. Particular care should be taken when considering an order following an acquittal and guidance sought from equivalent cases in the civilian jurisdiction. The order prohibits the defendant from doing specified things for a fixed period or until further order. It can only be made for the purpose of protecting a person from harassment. Breach of the order (without reasonable excuse) is a Service offence punishable with five years' imprisonment. Only Persons Subject to Service Law/Civilians Subject to Service Discipline can be punished for breaching a Service Restraining Order. An offender who has left the armed forces and is no longer subject to Service Law cannot be punished for breaching the order.

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<sup>134</sup> [section 175\(8\) Armed Forces Act 2006](#)

<sup>135</sup> S177G et seq Armed Forces Act 2006; The Armed Forces (Driving Disqualification Orders) Regulations 2023

<sup>136</sup> S177L Armed Forces Act 2006



4.18.2 When setting the length of an order, Courts should bear in mind that a sentence remains unspent during the currency of the order, which may have implications upon the defendant's future employability. Indefinite orders should only be imposed if absolutely necessary.

#### 4.19 Sexual Harm Prevention Orders

4.19.1 The Court Martial has power to impose a Sexual Harm Prevention Order in the same way as the Crown Court and guidance in the civilian jurisdiction should be followed. A draft of the order should be supplied to the court and to the defendant by the prosecution not less than two days before the hearing. Any order must be tailored to meet the harm the defendant represents and made in terms that are enforceable. Sentencers should bear in mind that a sentence remains unspent during the currency of the order. A total prohibition on internet access would not be appropriate in anything other than exceptional cases. In all other cases, a blanket ban would be unrealistic, oppressive and disproportionate as it would cut the offender off from too much of every day, legitimate living.

### **5 CHILDREN, YOUNG PERSONS and OFFENDERS UNDER 21**

5.1 **Non-custodial sentences** The Court Martial and Service Civilian Court have limited powers when imposing non-custodial sentences on offenders under 18 (for example a Youth Rehabilitation Order or Referral Order cannot be imposed). Sentencers should check carefully what sentences are available and not rely solely on the pre-sentence report.

5.2 **Custodial sentences** The Court Martial may impose the full range of custodial sentences for children, young offenders and offenders under 21, including detention for a specified period, detention in a Young Offender Institution and detention and training orders<sup>137</sup>. The Service Civilian Court may also deal with young offenders, but has limited powers. The legal provisions for custodial sentences for young offenders and offenders under 21 are the same as for the civilian courts and judges and practitioners should refer to the Sentencing Code, the Sentencing Council's overarching guideline on Sentencing Children and Young People and the Crown Court Compendium Part II.

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<sup>137</sup> sections 208 to 216 Armed Forces Act 2006



### **Annexes:**

- a) The Approach of the Court Martial when considering a sentence of dismissal or dismissal with disgrace.
- b) Suspended Sentence Orders – Relevant Sections of Sentencing Act 2020 as amended by Armed Forces Act 2020.
- c) The Service Pension Regimes.





## ANNEX A TO GUIDANCE ON SENTENCING IN THE SERVICE COURTS – VERSION 6

### THE APPROACH OF THE COURT MARTIAL WHEN CONSIDERING A SENTENCE OF DISMISSAL OR DISMISSAL WITH DISGRACE

**STEP 1. Is the Court of the opinion that the offence, or the combination of the offence and one or more offences associated with it, is serious enough to warrant dismissal?**<sup>138</sup> The Court should consider the following factors:

- a. The seriousness of the offence/s and the gravity of the circumstances.
- b. The impact of another form of sentence on the offender's ability to continue serving. Where an offender is sentenced to imprisonment/detention in a Young Offender Institution, whether immediate or suspended, dismissal is inevitable.
- c. Any relevant policies published by the Services

**STEP 2.** The Court should take into account the following factors which have been considered by CMAC as relevant in particular cases (and not all of which will apply in every case):

- a. The circumstances of the case demonstrate that the defendant is unfit for further service.<sup>139</sup>
- b. The defendant's offending is such that it has incurably severed the bond of mutual trust that must exist between them and their Service colleagues. Theft or fraud committed against fellow Service personnel is likely to forever break that bond.<sup>140</sup> Historically, dismissal has been inevitable in cases of serious sexual assault in all but the most exceptional cases<sup>141</sup> and, given the prevalence of such offending<sup>142</sup>, its effect on operational effectiveness and the need for deterrent sentences, must be considered in every case, no matter how minor. More recently, policy issued by the Ministry of Defence<sup>143</sup> makes it clear that those found guilty of sexual offences are to be administratively discharged from service. A

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<sup>138</sup> [s265\(1\) Armed Forces Act 2006](#)

<sup>139</sup> [R v Townshend \[2018\] EWCA Crim 430](#) at para 44

<sup>140</sup> [R v Cupid \[2014\] EWCA Crim 1068](#) at para 13

<sup>141</sup> [Attorney General's Reference \(No.122 of 2014\) \[2015\] EWCA Crim 257](#) at para 28

<sup>142</sup> [House of Commons Defence Committee - Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life Second Report of Session 2021-22](#)

<sup>143</sup> [Zero Tolerance to Sexual Offences and Sexual Relationships between Instructors and Trainees](#)



sexual assault, even an otherwise minor one, committed against another Service person in their accommodation is an example of such an offence which forever severs that bond, such that the defendant's continued service is untenable. Current detailed guidance on sentencing for sexual offences can be found in Part 2 to this Guide.

c. The extent to which the defendant's actions had breached the principles of trust and integrity that are essential to the maintenance of discipline and the functioning of the Services.<sup>144</sup>

d. The reputational damage to HM Armed Forces caused by the defendant.<sup>145</sup>

e. The risk of reoffending, which will include, but is not limited to, consideration of defendant's criminal and disciplinary record and any Pre Sentence Report.

f. The rank and rate of the defendant. The greater the rank the defendant has, the more instrumental they are in maintaining discipline and the less effective they will be at doing that due to the offence they have committed. Noting in particular that a single offence of minor dishonesty committed by a Commissioned Officer of hitherto good character will make it highly unlikely that they can realistically serve on.<sup>146</sup>

g. The defendant's Service record, whether they have given previous distinguished service, including their disciplinary record, in particular whether they was, before the offence was committed, a person of good character.<sup>147</sup>

h. The defendant's behaviour subsequent to the offending, particularly where there has been a significant delay between the date of the offending and the date of sentence.<sup>148</sup>

i. The non-financial effect (such as continued access to Service Families Accommodation or Continuity of Education Allowance) on the defendant and their immediate dependants of dismissal.<sup>149</sup>

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<sup>144</sup> [R v Bailey \[2019\] EWCA Crim 372](#) at para 11

<sup>145</sup> [R v Blackman \[2017\] EWCA Crim 325](#) at para 20(ii)

<sup>146</sup> [R v Bailey \[2019\] EWCA Crim 372](#) at para 22

<sup>147</sup> [R v Coleman \[2017\] EWCA Crim 2346](#) at para 5

<sup>148</sup> [R v Coleman \[2017\] EWCA Crim 2346](#) at para 12

<sup>149</sup> [R v Ndi \[2019\] EWCA Crim 79](#) at para 18



- j. The financial effects of dismissal on the defendant and their immediate dependants. Depending upon the years served, this may also require consideration of the closeness to a pension or Early Departure Payments point. However, the first question which the Court Martial should address is the appropriate sentence for the offending with which it has to deal; the employment consequences which follow should not drive the determination of sentence.<sup>150</sup> The impact of loss of income is readily susceptible to overstatement, proceeding often on the hypothetical basis that the defendant is not going to be employed elsewhere.<sup>151</sup> Clearly a dismissed Service person's future employability will depend on their age, skills and the offence for which they have been convicted, but it would be rare that they would never be employed again, albeit in some potentially more limited capacity.
- k. Whether the defendant has valuable service to give to the Service in the future<sup>152</sup> and their future employability<sup>153</sup>. While the views of the defendant's current Commanding Officer will be of interest, they are not determinative; a Commanding Officer does not have the power to dismiss a Service person and therefore does not have that responsibility – that responsibility belongs to the Court Martial. Furthermore, a Commanding Officer can only give their personal view and cannot be said to speak for the Services, nor is a Commanding Officer in a position to say what the defendant's future duties/tasks/postings will be.
- l. Whether any lesser form of Service sanction short of dismissal, which are available to the court, would be sufficient in the circumstances of the case.<sup>154</sup>
- m. Courts should be cautious when drawing comparisons with employment sanctions in civilian life.<sup>155</sup>

### STEP 3 – SENTENCING REMARKS

#### **Example**

*The circumstances of such a finding will be unique to each case and thus examples are not given. However, sentencing remarks should at least include the following:*

<sup>150</sup> [Attorney General's Reference \(No.122 of 2014\) \[2015\] EWCA Crim 257](#) at para 28

<sup>151</sup> [R v Birch \[2011\] EWCA Crim 46](#)

<sup>152</sup> [R v Townsend \[2018\] EWCA Crim 430](#) at para 44

<sup>153</sup> [R v Bywater \[2010\] EWCA Crim 483](#) at para 20

<sup>154</sup> [R v Townsend \[2018\] EWCA Crim 430](#) at para 47

<sup>155</sup> [R v Robinson \[2014\] EWCA Crim 1601](#) at para 14



The offence/s that you have been convicted of [*alone or in combination with other offences*] is/are serious enough to warrant dismissal for the following reasons [*set out here*]. We have considered your financial and other circumstances and the financial effect upon you of dismissal [*set out briefly*]. We understand the effects that dismissal will have on you/your family [*briefly detail them here*]. We have taken into account all mitigating factors and given you appropriate credit for your guilty plea (if appropriate) [*set out mitigating factors and credit here if not detailed elsewhere in sentence remarks*]. Notwithstanding those matters, we do not consider that any lesser form of sentence short of dismissal would be sufficient in the circumstances of this case and accordingly [*in addition to any other sentence – if applicable*] you will be dismissed from His Majesty's Service.

As a consequence of this sentence you will be reduced to the ranks/forfeit your commission.

### **SENTENCING REMARKS WHERE DISMISSAL WAS AN OPTION BUT NOT IMPOSED**

The Services may administratively discharge an offender who has not been dismissed. It is important that sentencing remarks include the reasons why an offender has not been dismissed in a particular case. Judges should also explain if, having determined not to impose dismissal, the Court took a different approach in other aspects of sentencing (i.e. gave a greater sentence of detention or a more significant reduction in rank).

Sentencing remarks should include reference to the fact that administrative action may follow the sentence imposed by the court, which may include termination of service. Phrases like "you will return to your unit and continue to serve" or "you will soldier on" should not be used. Only in exceptional cases should sentencing remarks seek to influence the decision of the chain of command in relation to subsequent administrative action.

#### **Example**

Whilst the decision of this Court is not to impose a sentence of dismissal, this does not preclude your Service from considering subsequent Administrative Action. This is a decision for your chain of command and could include termination of your service.



**SUSPENDED SENTENCE ORDERS – RELEVANT SECTIONS OF SENTENCING ACT 2020 AS  
AMENDED BY ARMED FORCES ACT 2020**

**s264 Suspended sentence order for offender under 21: availability**

- (1) This section applies where, in dealing with an offender for an offence, the court (which includes a relevant service court) imposes a sentence of detention in a young offender institution.
- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of detention in a young offender institution is not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
  - (a) the sentence of detention in a young offender institution is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
  - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences see Chapter 5.

**s277 Suspended sentence order for person aged 21 or over: availability**

- (1) This section applies where, in dealing with an offender for an offence, a court (which includes a relevant service court) passes a sentence of imprisonment.
- (2) A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of imprisonment is—
  - (a) at least 14 days, but
  - (b) not more than 2 years.
- (3) But a suspended sentence order is not available in relation to that sentence if—
  - (a) the sentence of imprisonment is one of two or more sentences imposed on the same occasion which are to be served consecutively, and
  - (b) the terms of those sentences are in aggregate more than 2 years.
- (4) For provision about suspended sentences, see Chapter 5.

**s286 Suspended sentence order**



(1) A suspended sentence order is an order providing that a sentence of imprisonment or detention in a young offender institution in respect of an offence is not to take effect unless—

- (a) an activation event occurs, and
- (b) a court (which includes a relevant service court) having power to do so subsequently orders under paragraph 13 of Schedule 16 that the sentence is to take effect.

(2) A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.

(2A) But a court may not specify a requirement to be complied with outside the United Kingdom.

(3) An activation event occurs if the offender—

~~(a) commits another offence in the United Kingdom during the operational period (whether or not punishable with imprisonment),~~

(a) commits during the operational period—

(i) another service offence (within the meaning of the Armed Forces Act 2006), or

(ii) an offence under the law of any part of the British Islands, or

(b) during the supervision period, contravenes any community requirement imposed by the order.

(4) The community requirements are listed in column 1 of the community requirements table (see section 287).

(5) Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

(6) In this Code—

"suspended sentence order" has the meaning given by subsection (1);

"suspended sentence" means a sentence to which a suspended sentence order relates.

(7) In this Code, references to a community requirement of, or imposed by, a suspended sentence order are to a requirement specified in the order under subsection (2).

## **s292 Suspended sentence order: exercise of power to impose requirements**

(1) This section applies where a court (which includes a relevant service court) makes a suspended sentence order which imposes community requirements.

(2) The power to impose a particular community requirement is subject to the provisions of the Part of Schedule 9 relating to requirements of that kind (see column 2 of the table in section 287).

(3) If the suspended sentence order imposes two or more different community requirements, the court (which includes a relevant service court) must, before making



the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.

(4) The court (which includes a relevant service court) must also ensure, so far as practicable, that any community requirement imposed by a suspended sentence order is such as to avoid—

- (a) any conflict with the offender's religious beliefs,
- (b) any conflict with any other court order to which the offender may be subject, and
- (c) any interference with the times, if any, at which the offender normally—
  - (i) works, or
  - (ii) attends any educational establishment,

and satisfies any additional restrictions that the Secretary of State may specify in regulations.

(5) Regulations under subsection (4) are subject to the negative resolution procedure.

### **s293 Power to provide for review of suspended sentence order**

(1) A suspended sentence order which imposes one or more community requirements may make provision for the order to be reviewed periodically ("provision for review"). This is subject to subsection (3).

(2) Where an order contains provision for review, it must—

- (a) specify the intervals at which the order is to be reviewed,
- (b) provide for each review to be made, subject to section 295, at a hearing held for the purpose by the responsible court (a "review hearing"),
- (c) require the offender to attend each review hearing, and
- (d) provide for a report by an officer of a provider of probation services on the offender's progress in complying with the community requirements of the order ("a progress report") to be made to the responsible court before each review.

(3) If the suspended sentence order—

- (a) imposes a drug rehabilitation requirement, and
- (b) contains provision for review under this section,

the provision for review must not include provision relating to that requirement (but see paragraph 22 of Schedule 9 for separate provision about review of such a requirement).

~~(4) In this section "the responsible court" in relation to a suspended sentence order means—~~

- ~~(a) if a court is specified in the order in accordance with subsection (5), that court;~~
- ~~(b) otherwise, the court by which the order is made.~~

~~(5) Where—~~

- ~~(a) a suspended sentence order is made by a magistrates' court, and~~
- ~~(b) the offender's home local justice area is not the area in which the court acts,~~





~~the order may specify that the responsible court is to be a magistrates' court which acts in the offender's home local justice area.~~

~~(6) A suspended sentence order made on an appeal from—~~

~~(a) the Crown Court, or~~

~~(b) the Court of Appeal,~~

~~is to be taken for the purposes of subsection (4)(b) to have been made by the Crown Court.~~

(4) In this section "the responsible court" in relation to a suspended sentence order means the Crown Court.

## **SCHEDULE 9 Community orders and suspended sentence orders: requirements**

PART 1 Unpaid work requirement

PART 2 Rehabilitation activity requirement

PART 3 Programme requirement

PART 4 Prohibited activity requirement

PART 5 Curfew requirement

PART 6 Exclusion requirement

PART 7 Residence requirement

PART 8 Foreign travel prohibition requirement

PART 9 Mental health treatment requirement

*amended as follows*

para 17(1)A court may not include a mental health treatment requirement in a relevant order unless the following conditions are met—

(a) the need for treatment condition,

(b) the arrangements condition, and

(c) the consent condition.

(2) The need for treatment condition is that the court is satisfied that the mental condition of the offender—

(a) requires treatment,

(b) may be susceptible to treatment, and

~~(c) does not warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983.~~

(3) The arrangements condition is that the court is satisfied that arrangements—

(a) have been made, or

(b) can be made,

for the treatment intended to be specified in the order. Those arrangements include arrangements for the reception of the offender, where the offender is to be required to submit to in-patient treatment (see paragraph 16(2)).

(4) The consent condition is that the offender has expressed willingness to comply with the requirement.

~~PART 10 Drug rehabilitation requirement~~



PART 11 Alcohol treatment requirement  
PART 12 Alcohol abstinence and monitoring requirement  
PART 13 Attendance centre requirement  
PART 14 Electronic monitoring

## **PART 1        PRELIMINARY**

### **Interpretation: general**

1(1) In this Schedule, in relation to a suspended sentence order—

“activation order” has the meaning given by paragraph 14(1);

~~“the appropriate court” means—~~

~~(a) in the case of a suspended sentence order which is subject to review, the court responsible for the order,~~

~~(b) in the case of a Crown Court order, the Crown Court, and~~

~~(c) in any other case, a magistrates' court acting in the local justice area for the time being specified in the order.~~

“the appropriate court” means the Crown Court

“relevant service court” has the same meaning as in Chapter 4 of Part 8 of the Armed Forces Act 2006 (see section 207 of that Act);

“service offence” has the same meaning as in the Armed Forces Act 2006 (see section 50 of that Act)."

(2) In this Schedule, in relation to a community order, any reference (however expressed) to breach of a requirement of the order is a reference to any failure of the offender to comply with a requirement imposed by the order.

### **Enforcement officers**

2(1) In this Schedule “enforcement officer” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

(2) An enforcement officer must be an officer of a provider of probation services that is a public sector provider.

(3) For this purpose, “public sector provider” means—

(a) a probation trust or other public body, or

(b) the Secretary of State.

~~3. “Order subject to magistrates' court supervision” and “Crown Court order” entire para deleted~~

~~4. Orders and community requirements which are subject to review entire para deleted~~



~~5 Orders made on appeal entire para deleted~~

## **PART 2 BREACH OF COMMUNITY REQUIREMENT OR CONVICTION OF FURTHER OFFENCE**

### **Breach of community requirement: duty to give warning or refer to enforcement officer**

- 6 (1) This paragraph applies where the responsible officer is of the opinion that the offender has without reasonable excuse breached a community requirement of a suspended sentence order.
- (2) If the offender has been given a warning under this paragraph within the previous 12 months in relation to a breach of any community requirement of the order, the officer must refer the matter to an enforcement officer.
- (3) Otherwise the officer must either—
- (a) give the offender a warning under this paragraph, or
  - (b) refer the matter to an enforcement officer.
- (4) A warning under this paragraph must—
- (a) describe the circumstances of the breach,
  - (b) state that the breach is unacceptable, and
  - (c) inform the offender that if the offender again breaches a requirement of the order within the next 12 months, the offender will be liable to be brought before ~~a court~~ the Crown Court.
- (5) As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

### **Role of enforcement officer**

- 7 Where a matter is referred to an enforcement officer under paragraph 6, the enforcement officer must—
- (a) consider the case, and
  - ~~(b) where appropriate, cause an information to be laid in respect of the offender's breach of the requirement—~~
    - ~~(i) in the case of an order subject to magistrates' court supervision, before a justice of the peace;~~
    - ~~(ii) in the case of a Crown Court order, before the Crown Court~~
  - (b) where appropriate, cause an information to be laid before the Crown Court in respect of the offender's breach of the requirement

~~8. Order subject to magistrates' court supervision: issue of summons or warrant by justice entire para deleted~~



### **Crown Court order: issue of summons or warrant by Crown Court**

9(1) This paragraph applies where, during the supervision period of a ~~Crown Court order~~ suspended sentence order made by a relevant service court, it appears on information to the Crown Court that the offender has breached any community requirement of the order.

(2) The Crown Court may—

(a) issue a summons requiring the offender to appear at the place and time specified in it, or

(b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

(4) Where—

(a) a summons issued under this paragraph requires the offender to appear before the Crown Court, and

(b) the offender does not appear in answer to the summons,  
the Crown Court may issue a warrant for the arrest of the offender.

### **~~Offender before magistrates' court: breach of community requirement~~**

~~10. Offender before magistrates' court: breach of community requirement entire para deleted~~

### **Offender before magistrates' court: further conviction**

~~11 (1) Where—~~

~~(a) an offender is convicted of an offence committed during the operational period of a suspended sentence order (and the suspended sentence has not already taken effect),~~

~~(b) the suspended sentence order was made by a magistrates' court, and~~

~~(c) the offender is before a magistrates' court ("the present court"), whether on conviction of that other offence or subsequently,~~

~~the present court must deal with the case under paragraph 13.~~

(2) Where an offender is convicted by a magistrates' court of any offence ("the new offence") which the court is satisfied was committed during the operational period of a suspended sentence order ~~made by the Crown Court~~ made by a relevant service court, the magistrates' court must notify the appropriate officer of the Court Martial of the conviction, the court—

(a) may commit the offender in custody or on bail to the Crown Court,  
and



(b) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

~~(3) Sub-paragraph (1) does not apply to the present court if it commits the offender to the Crown Court under section 20 (which confers power for magistrates' court to commit to Crown Court in certain circumstances in respect of the suspended sentence where it commits in respect of new offence) to be dealt with in respect of the suspended sentence order.~~

~~(4) Where a magistrates' court commits a person to the Crown Court under subparagraph (2)(a), any duty or power which, apart from this sub-paragraph, would fall to be discharged or exercised by the magistrates' court—~~

~~(a) is not to be discharged or exercised by that court, but~~

~~(b) is instead to be discharged or may instead be exercised by the Crown Court.~~

~~This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).~~

### **Offender before Crown Court, Court Martial or Service Civilian Court: breach of community requirement or further conviction**

12 (1) Where—

(a) an offender to whom a suspended sentence order relates is before the Crown Court, and

(b) sub-paragraph (2) ~~or (3)~~ applies,

the court must deal with the case under paragraph 13.

(2) This sub-paragraph applies where—

(a) the offender is before the Crown Court in relation to the order by virtue of—

(i) paragraph 9 (summons or warrant for breach of community requirement),

(ii) section 294(5) (review of order), or

~~(iii) paragraph 10(3)(b) (committal from magistrates' court), and~~

(b) it is proved to the satisfaction of the court that the offender has breached a community requirement of the order without reasonable excuse

~~(3) This sub-paragraph applies where the offender—~~

~~(a) has been convicted of an offence committed during the operational period of the suspended sentence order, and~~

~~(b) the suspended sentence has not taken effect.~~

(3) Where—

(a) an offender to whom a suspended sentence order relates is convicted of a service offence or an offence under the law of any part of the British Islands that was committed during the operational period of the order,

(b) the suspended sentence order has not taken effect, and

(c) either—



(i) the offender is so convicted by the Crown Court, the Court Martial or the Service Civilian Court, or

(ii) the offender subsequently appears or is brought before the Court Martial, the court must deal with the case under paragraph 13.

(3A) Anything that under section 376(1) and (2) of the Armed Forces Act 2006 is treated as a conviction for the purposes of that Act is also to be treated as a conviction for the purposes of sub-paragraph (3).

(4) In proceedings before the Crown Court under this paragraph—

(a) any question whether the offender has breached a community requirement of the suspended sentence order, and

(b) any question whether the offender has been convicted during the operational period of the suspended sentence,

is to be determined by the court and not by the verdict of a jury

### **Powers of court to deal with offender on breach of requirement or subsequent conviction**

13 (1) Where ~~a court~~ the Crown Court, the Court Martial or the Service Civilian Court deals with a case under this paragraph, the court must deal with the offender in one of the following ways—

(a) the court may order that the suspended sentence is to take effect with its original term unaltered;

(b) the court may order that the suspended sentence is to take effect with the substitution for the original term of a lesser term;

(c) where the court dealing with the offender is the Crown Court, the court may order the offender to pay a fine of an amount not exceeding £2,500;

(d) in the case of a suspended sentence order that imposes one or more community requirements, the court may amend the order by doing any one or more of the following—

(i) imposing more onerous community requirements which the court could include if the offender had just been convicted by or before it of the offence in respect of which the order was made and it were then making the order,

(ii) subject to section 288(4), extending the supervision period, or

(iii) subject to section 288(2), extending the operational period;

(e) in the case of a suspended sentence order that does not impose any community requirement, the court may, subject to section 288(2), amend the order by extending the operational period.

~~(2) The criminal courts charge duty (see section 46) applies where—~~

~~(a) a magistrates' court deals with an offender under this paragraph by virtue of paragraph 10 (breach of community requirement), or~~



~~(b) the Crown Court deals with an offender under this paragraph by virtue of paragraph 12(2) (breach of community requirement).~~

(3) Where a court deals with an offender under sub-paragraph (1) in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.

### **Exercise of power in paragraph 13: duty to make activation order where not unjust**

~~14 (1) Where the court~~ The Crown Court, the Court Martial or the Service Civilian Court deals with the case under paragraph 13, it must make an order under paragraph 13(1)(a) or (b) (“an activation order”) unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the matters mentioned in sub-paragraph (2). Where it is of that opinion the court must state its reasons

(2) The matters referred to in sub-paragraph (1) are—

- (a) the extent to which the offender has complied with any community requirements of the suspended sentence order, and
- (b) in a case falling within paragraph ~~11~~ or 12(3) (conviction of further offence during operational period), the facts of the subsequent offence.

### **Activation orders made by the Crown Court: further provision**

15 (1) This paragraph applies where ~~a court~~ the Crown Court makes an activation order relating to a suspended sentence.

(2) The activation order may provide for—

- (a) the sentence to take effect immediately, or
- (b) the term of the sentence to begin on the expiry of another custodial sentence passed on the offender.

This is subject to section 225 (restriction on consecutive sentences for released prisoners).

~~(3) For the purpose of any enactment conferring rights of appeal in criminal cases, each of the following orders is to be treated as a sentence passed on the offender by the court for the offence for which the suspended sentence was passed—~~

- ~~(a) the activation order;~~
- ~~(b) any order made by the court under section 46 (criminal courts charge duty) when making the activation order.~~

(3) For the purpose of any enactment conferring rights of appeal against sentence in criminal cases

- (a) the activation order is to be treated as a sentence passed on the offender by the Crown Court for the offence for which the suspended sentence was passed, and





(b) the offender is to be treated as if he or she had been convicted on indictment of that offence.

(4) In this paragraph "custodial sentence" includes a pre-Code custodial sentence (see section 222(4)) and a custodial sentence within the meaning of the Armed Forces Act 2006 (see section 374 of that Act)

**15A Activation orders made by the Court Martial or the Service Civilian Court: further provision**

(1) This paragraph applies where the Court Martial or the Service Civilian Court makes an activation order relating to a suspended sentence.

(2) The activation order may provide for—

(a) the sentence to take effect immediately, or

(b) the term of the sentence to begin on the expiry of another custodial sentence passed on the offender.

(3) The reference in sub-paragraph (2) to another custodial sentence does not include a sentence from which the offender has been released early under Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Part 2 of the Criminal Justice Act 1991.

(4) For the purposes of sections 285 to 287 of the Armed Forces Act 2006 (appeals from Service Civilian Court) or, as the case may be, the Court Martial Appeals Act 1968—

(a) an activation order made by the Court Martial or the Service Civilian Court is to be treated as a sentence passed on the offender, by the court that made the order, for the offence for which the suspended sentence was passed, and

(b) if the offender was not convicted of that offence by that court, he or she is to be treated for the purpose of enabling an appeal against the order as if he or she had been so convicted.

(5) For the purposes of any appeal against the order, references in section 16A of the Court Martial Appeals Act 1968 to passing a sentence include making an order.

(6) In this paragraph "custodial sentence" includes a pre-Code custodial sentence (see section 222(4)) and a custodial sentence within the meaning of the Armed Forces Act 2006 (see section 374 of that Act)."

### **Power under paragraph 13 to fine or amend community requirements: further provision**

16 (1) A fine imposed under paragraph 13(1)(c) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

(2) Paragraph 13(1)(d)(i) (power to impose more onerous requirements) is subject to any provision that applies to the court in making a suspended sentence order as if the court were making the order

### **Treatment requirement: reasonable refusal to undergo certain treatment**



- 17 (1) Sub-paragraph (2) applies where the offender—
- (a) is required by a treatment requirement of a suspended sentence order to submit to treatment, and
  - (b) has refused to undergo any surgical, electrical or other treatment.
- (2) The offender is not to be treated for the purposes of paragraph ~~10(1)(b)~~ or 12(2)(b) as having breached that requirement on the ground only of that refusal if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.
- (3) In this paragraph, “treatment requirement” means—
- (a) a mental health treatment requirement,
  - (b) a drug rehabilitation requirement, or
  - (c) an alcohol treatment requirement

### **Duty of court in Scotland or Northern Ireland when informed of suspended sentence**

- 18 Where—
- (a) an offender is convicted in Scotland or Northern Ireland of an offence, and
  - (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in ~~England or Wales~~ (anywhere) by a relevant service court,
- the court must give written notice of the conviction to the appropriate officer of ~~the court by which the suspended sentence was passed~~ the Court Martial.

### **Issue of summons or warrant where court convicting of further offence does not deal with suspended sentence**

- 19 (1) This paragraph applies where it appears to ~~the Crown Court~~ the Court Martial that an offender—
- (a) has been convicted in the ~~United Kingdom of an offence committed during the operational period of a suspended sentence order passed by the Crown Court~~ British Islands of an offence committed during the operational period of a suspended sentence order passed by a relevant service court, or has been convicted of a service offence committed during that period, and
  - (b) has not been dealt with in respect of the suspended sentence.
- (2) ~~The Crown Court~~ The Court Martial may issue—
- (a) a summons requiring the offender to appear at the place and time specified in it, or
  - (b) a warrant for the offender’s arrest.
- (3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before ~~the Crown Court~~ the Court Martial.



~~20 (1) This paragraph applies where it appears to a justice of the peace that an offender—~~

- ~~(a) has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence passed by a magistrates' court acting in the same local justice area as the justice, and~~
- ~~(b) has not been dealt with in respect of the suspended sentence.~~

~~(2) The justice may issue—~~

- ~~(a) a summons requiring the offender to appear at the place and time specified in it, or~~
- ~~(b) a warrant for the offender's arrest.~~

~~This is subject to sub-paragraphs (3) and (4).~~

~~(3) Unless acting in consequence of a notice under paragraph 18 (conviction in Scotland or Northern Ireland), a justice—~~

- ~~(a) may not issue a summons under this paragraph except on information, and~~
- ~~(b) may not issue a warrant under this paragraph except on information in writing and on oath.~~

~~(4) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court by which the suspended sentence was passed~~

### **PART 3**

#### **AMENDMENT OF ORDER**

##### **Application of Part**

21 This Part of this Schedule applies during the supervision period of a suspended sentence order that imposes one or more community requirements.

#### **Cancellation of community requirements of suspended sentence order**

22 (1) This paragraph applies where an application is made to the appropriate court by—

- (a) the offender, or
- (b) an officer of a provider of probation services,

for the community requirements of the suspended sentence order to be cancelled.

(2) If it appears to the court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the court may cancel the community requirements of the suspended sentence order.

(3) The circumstances in which community requirements of the order may be cancelled under sub-paragraph (2) include the offender's—

- (a) making good progress, or
- (b) responding satisfactorily to supervision.



(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending.

### **Amendment because of change of residence**

23 (1) This paragraph applies where—

- (a) the offender is given permission under section 302 to change residence, and
- (b) the local justice area in which the new residence is situated (“the new local justice area”) is different from the offender’s home local justice area.

(2) If the permission is given by a court, the court must amend the suspended sentence order to specify the new local justice area as the offender’s home local justice area.

24 (1) This paragraph applies where—

- (a) a court amends the suspended sentence order,
- (b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and
- (c) the local justice area in which that place is situated (“the new local justice area”) is different from the offender’s home local justice area.

(2) The court must amend the order to specify the new local justice area

### **Amendment of community requirements of suspended sentence order**

25 (1) The appropriate court may, on the application of the offender or an officer of a provider of probation services, amend any community requirement of the suspended sentence order—

- (a) by cancelling the requirement, or
- (b) by replacing it with a requirement of the same kind, which the court could include if the offender had just been convicted by or before it of the offence in respect of which the order was made and it were then making the order.

(2) For the purposes of sub-paragraph (1)—

- (a) a requirement falling within any entry in the table in section 287 is of the same kind as any other requirement falling within that entry, and
- (b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

(3) Sub-paragraph (1)(b) is subject to any provision that applies to the court in making a suspended sentence order as if the court were making the order.

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending, other than an application which—

- (a) relates to a treatment requirement, and
- (b) is made by an officer of a provider of probation services with the offender’s consent.



- (5) Before exercising its powers under this paragraph, the court must summon the offender to appear before the court, unless—
- (a) the application was made by the offender, or
  - (b) the order would cancel a community requirement of the suspended sentence order.
- (6) If the offender fails to appear in answer to a summons under sub-paragraph(5) the court may issue a warrant for the offender's arrest.
- (7) If the offender fails to express willingness to comply with a treatment requirement as proposed to be amended under this paragraph, the court may—
- (a) revoke—
    - (i) the suspended sentence order, and
    - (ii) the suspended sentence to which it relates, and
  - (b) re-sentence the offender for the offence in respect of which the suspended sentence was imposed.
- (8) In dealing with the offender under sub-paragraph (7)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.
- (8A) In a case where the order was made by the Service Civilian Court, a term of imprisonment or detention in a young offender institution or fine imposed under sub-paragraph (7)(b) must not exceed—
- (a) in the case of a term of imprisonment or detention in a young offender institution, 6 months;
  - (b) in the case of a fine, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980. (8B) Where a sentence is passed under sub-paragraph (7)(b), section 9 of the Criminal Appeal Act 1968 (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed.
- (8B) Where a sentence is passed under sub-paragraph (7)(b), section 9 of the Criminal Appeal Act 1968 (appeal against sentence) applies as if the offender had been convicted on indictment of the offence for which the sentence was passed
- (9) In this paragraph "treatment requirement" means—
- (a) a mental health treatment requirement,
  - (b) a drug rehabilitation requirement, or
  - (c) an alcohol treatment requirement.

### **Amendment of treatment requirement on report of practitioner**

26 (1) This paragraph applies where the suspended sentence order contains a treatment requirement under which the offender is being treated and the treatment practitioner—

- (a) is of the opinion that—



- (i) the treatment of the offender should be continued beyond the period specified in that behalf in the order,
  - (ii) the offender needs different treatment,
  - (iii) the offender is not susceptible to treatment, or
  - (iv) the offender does not require further treatment, or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender.
- (2) The treatment practitioner must make a report in writing to that effect to the responsible officer.
- (3) The responsible officer must cause an application to be made under paragraph 25 to the appropriate court for the requirement to be replaced or cancelled.
- (4) For the purposes of this paragraph—
  - (a) “treatment requirement” means—
    - (i) a mental health treatment requirement,
    - (ii) a drug rehabilitation requirement, or
    - (iii) an alcohol treatment requirement;
  - (b) the treatment practitioner is—
    - (i) the person specified in the order as the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement, or
    - (ii) in the case of a mental health treatment requirement, if no such person is specified, the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement.

### **Extension of unpaid work requirement**

- 27 (1) This paragraph applies where the suspended sentence order imposes an unpaid work requirement.
- (2) The appropriate court may, in relation to the order, extend the period of 12 months specified in paragraph 1(1) of Schedule 9.
- (3) The power in sub-paragraph (2) is exercisable only where—
  - (a) an application is made by—
    - (i) the offender, or
    - (ii) an officer of a provider of probation services, and
  - (b) it appears to the appropriate court that it would be in the interests of justice to exercise it in the way proposed having regard to circumstances which have arisen since the order was made.
- (4) No application may be made under this paragraph while an appeal against the suspended sentence is pending

## **PART 4 SUPPLEMENTARY**



## Provision of copies of orders etc

28 (1) This paragraph applies on the making by ~~a court~~ the Crown Court or a relevant service court of an order under this Schedule amending or revoking a suspended sentence order.

(2) The court must provide copies of the amending or revoking order to—

- (a) the offender, and
- (b) the responsible officer.

(3) In the case of an amending order which substitutes a new local justice area as the offender's home local justice area, the court must also provide a copy of the amending order to—

- (a) a provider of probation services that is a public sector provider operating in that area, ~~and~~
- ~~(b) the magistrates' court acting in that area.~~

(4) In the case of an amending order which imposes or amends a requirement specified in column 1 of the following table, the court must also provide the person specified in the corresponding entry in column 2 with a copy of so much of the amending order as relates to that requirement

[table]

~~(5) Where the court acts in a local justice area other than the offender's home local justice area specified in the order prior to the amendment or revocation ("the former home area"), the court must provide a copy of the amending or revoking order to a magistrates' court acting in the former home area.~~

~~(6) Where under sub-paragraph (3) the court provides a copy of an amending or revoking order to a magistrates' court acting in a different area, it must also provide that court with such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.~~

(7) In this paragraph "public sector provider" means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State

## ANNEX C TO GUIDANCE ON SENTENCING IN THE SERVICE COURTS – VERSION 6

### THE SERVICE PENSION REGIMES

*Below is a very simplified explanation of the three different Service Pension Regimes. It does not reflect changes which may be made pursuant to the McCloud judgement.*





## **The Armed Forces Pension Scheme 75 (AFPS75)**

Pension benefits start to build up at age 18 for other ranks/ratings and age 21 for officers, or date of entry if later.

An immediate pension is payable to other ranks/ratings after completion of 22 years' service (i.e. at age 40, or later for those joining the Service after the age of 18), and to officers after completion of 16 years' service (i.e. at age 37, or 38 for RAF officers, or later for those joining the Service after the age of 21).

Those who leave the service after qualifying for immediate pension also receive a tax-free lump sum worth three times the annual pension.

Those who continue to serve after reaching the immediate pension point continue to accrue additional benefits, the maximum number of years' service counting towards pension being 34 years for officers and 37 years for other ranks (i.e. to age 55).

If a person leaves the Service before reaching the immediate pension point, then they receive no immediate payment but instead qualify for a deferred pension (and a tax-free lump sum of three times the pension when pension begins) based on number of years' service and final rank. A deferred pension is paid when the member is age 60 and/or age 65 for service after 6 April 2006.

If an individual has qualified for a Resettlement Grant (i.e. over 12 years' reckonable service Other Ranks or 9 years reckonable service Officers) this will be paid if no other pensionable benefits are paid (Immediate Pension, invaliding pension or redundancy payment).

## **The Armed Forces Pension Scheme 05 (AFPS 05)**

This came into force on 6 April 2005 for all those joining the Armed Forces after that date, and for those serving before that date who opted to transfer from AFPS 75 to AFPS 05.

All personnel have to serve for 18 years and reach the age of 40 to qualify for Early Departure Payments (comprising a tax-free lump sum of three times pension, and income worth at least half deferred pension). The EDP is not a pension. It is paid until the member is eligible for a pension at age 65.

There is no immediate pension or payment unless the member leaves service at age 55, qualifies for an EDP or is awarded an ill health pension. Otherwise a deferred pension is payable at age 65 (together with a tax-free lump sum).



If an individual has qualified for a Resettlement Grant (i.e. over 12 years' relevant service) this will be paid if no other pensionable benefits are paid (Immediate Pension, EDP, ill health pension or redundancy payment).

### **The Armed Forces Pension Scheme (AFPS 15)**

AFPS 15 was introduced on 1 April 2015. It is the pension scheme for Regular and Reserve Service personnel who first join the Armed Forces from 1 April 2015, and those Service personnel who were already in Service before that date and did not qualify for Transitional Protection in their legacy pension scheme.

AFPS 15 is a defined benefit, Career Average Revalued Earnings (CARE) scheme. All members of the Armed Forces have transferred to AFPS 15 except those who within 10 years of their current scheme pension age on 1 April 2012, who have remained in their legacy pension scheme.

All personnel have to serve for 20 years and reach the age of 40 to qualify for Early Departure Payments (comprising a tax-free lump sum of three times pension, and income worth at least half the deferred pension). The EDP is not a pension. It is paid until the member is eligible for a pension at State pension age.

AFPS 15's normal retirement age is 60 (retirement in service) and the deferred pension age is State Pension Age.

Every year, the MOD adds an amount equal to 1/47th of annual pensionable earnings for that year, to the individual 'pension pot'. The member's 'pension pot' accumulates from first day of paid service and is carried forward into each year where indexation applies, based on the Average Weekly Earnings index. This process is repeated every year until the member leaves the Armed Forces.

If an individual has qualified for a Resettlement Grant (i.e. over 12 years' relevant service) this will be paid if no other pensionable benefits are paid (Immediate Pension, EDP, ill health pension or redundancy payment). Members who on 1 April 2015, were transferred from their legacy scheme to AFPS 15 have accrued rights protection. This means that the benefits, up to and including 31 March 2015, will be guaranteed and they are entitled to receive that proportion of the benefits at the same time as originally expected (in accordance with the relevant legacy scheme rules). Providing there is no break in service of more than 5 years, the legacy pension will also be linked to the member's final pensionable salary at the date of leaving the Armed Forces - not the salary/rank at the time of transfer into AFPS 15.



## **Forfeiture of pension**

As a general rule, pension entitlements once earned may not be forfeited and the Service Courts have no power to sanction forfeiture. However, all Pension Schemes do provide for exceptional circumstances where the Secretary of State may order forfeiture. Such an order may be made where, for example, the Service person is convicted of treason, Official Secrets Acts offences where the sentence is at least 10 years' imprisonment, and other offences which the Secretary of State considers to have been injurious to the defence, security or other interests of the State (e.g. assisting the enemy, mutiny, desertion in war and grave breaches of the Geneva Conventions). Similarly, surviving spouses' benefits may be abated where they wilfully aided and abetted the commission of the offence. The schemes allow forfeiture if the member has a monetary obligation to the Crown which arises out of criminal, negligent or fraudulent act or omission and arises out of or in connection with service in the Armed Forces. Recovery is possible once the pension begins payment.







# **GUIDANCE ON SENTENCING IN THE SERVICE COURTS**

Version 6

## **PART 2 – CRIMINAL CONDUCT OFFENCES**



## Guidance on Sentencing in the Service Courts Part 2 (Criminal Conduct Offences)



**Effective from:** 01 June 2023

For use when dealing with a criminal conduct offence (e.g. ABH, sexual assault, theft), in conjunction with sentencing guidelines issued by the Sentencing Council and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#).

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### 1. Applicability

1.1 This guideline applies in respect of all offenders whether they are civilians subject to Service discipline (CSSD) or persons subject to Service law (PSSL) or persons who have ceased to be PSSL or CSSD by the time of sentence (ex-PSSL / ex-CSSD) unless specified to the contrary.

[Section 259\(1\) Armed Forces Act 2006](#) requires Service Courts to “have regard to” any guidelines issued by the Sentencing Council.

[Section 259\(2\) Armed Forces Act 2006](#) permits the Service Courts to depart from the Sentencing Council’s Guidelines if in its opinion the departure is justified by any features of Service life or of the Service disciplinary system that are relevant to the case.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.



1.3 Further detailed guidance can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#).

## 2. The Approach to Sentencing Criminal Conduct Offences

2.1 This Part contains guidance for sentencing Criminal Conduct Offences. These are offences contrary to the law of England and Wales (e.g. ABH, theft), as opposed to disciplinary offences contrary to sections of the Armed Forces Act 2006 (e.g. absence, disobedience of orders). The guidance is set out in the following sections:

3. [Steps in Sentencing](#)
4. [Offences of Violence](#)
5. [Offences of Dishonesty](#)
6. [Sexual Offences](#)
7. [Drug Offences – possession](#)
8. [Drug Offences - supply](#)
9. [Relevant Reference Material](#)

2.2 The unique circumstances and challenges of service in the Armed Forces may aggravate or mitigate an offence depending on the circumstances. A higher sentence will often be justified where the offence is corrosive of Service discipline, for example theft from fellow Service personnel or assaults upon superiors, or where it has an adverse effect on operational effectiveness or morale; likewise, the consequences of criminal conduct may be much more serious in a dangerous Service environment, for example the possession or supply of controlled drugs. On the other hand, a more lenient sentence may in certain circumstances be justified. If, in the court's opinion, the departure is so justified, then the sentence should be adjusted accordingly. This should be clearly set out in the sentencing remarks.

2.3 Further detailed guidance on the sentences available in the Service courts can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes [the relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



### 3. Steps in Sentencing

When a Service Court is sentencing an offender convicted of a criminal conduct offence the Court should adopt the stepped approach set out below.

#### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should consider the guidance on dismissal for particular types of offence elsewhere in this Part, and in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and [Annex A to Part 1](#).

#### Step 1 Determining the offence category

Have regard to any definitive guideline issued by the [Sentencing Council](#). Determine culpability and harm.

#### Step 2 Consider whether any additional Service factors may affect culpability and harm

Consider any Service factors in the table below which may affect the assessment of culpability and harm. Their significance and impact on the overall assessment of culpability and harm will depend on the circumstances of each case.

Service factors which may increase Culpability	Service factors which may increase Harm
Use of rank or position to commit offence	Adverse effect on operational effectiveness
Offender is a commissioned officer	Adverse effect on morale, unit cohesion or discipline
Offence committed in an operational environment or a ship at sea	Adverse effect on reputation of His Majesty's armed forces
Offence committed in victim's accommodation	Victim is junior in rank

#### Step 3 Determine the starting point

Determine the appropriate starting point on Sentencing Council Guideline based on Steps 1 and 2.

#### Step 4 Consider factors increasing or reducing seriousness

Consider the aggravating and mitigating factors in the Sentencing Council Guideline.





### Step 5 Consider whether any additional Service factors may increase or reduce seriousness

Consider whether any Service factors in the table below affect the starting point determined at Step 4.

<b>Service Factors increasing seriousness</b> (Factors are not exhaustive and are not listed in any particular order)
Common offence in ship/unit (this should be supported by evidence)
Offender in a position of responsibility or trust (e.g. Service police, Mess treasurers, SPS personnel)
Offender holds rank
Offence took place in the public eye where the offender was clearly identifiable as a Service person (e.g. in uniform)
Offence took place in front of junior ranks
Offence involves bullying
Offence involves violence or other reprehensible conduct against citizens of Host Nations
Poor disciplinary record
Warnings ignored
Deliberate targeting of victim, particularly if of junior rank
Offender or victim on duty
Offence occurred during an initiation ceremony
Forcing victims to engage in demeaning or disgraceful conduct
<b>Service Factors reducing seriousness</b> (Factors are not exhaustive and are not listed in any particular order)
Substantial cooperation with investigators
Offender inexperienced in the Service context
Good professional and/or disciplinary record

### Step 6 Aggravated offences – race, religion, disability, sexual orientation and domestic abuse

[Sections 240 and 241 Armed Forces Act 2006](#) require Service courts to treat as an aggravating factor the fact that the offence was aggravated by hostility to a person's race, religion, disability or sexual orientation, and to state in open court that the offence was so aggravated.

Where the offence is committed under Sections 29-32 Crime and Disorder Act 1998, the guidance in the Sentencing Council's guidelines should be followed.

When sentencing for cases involving domestic abuse, Courts should have regard to the [Sentencing Council's Overarching Principles: Domestic Abuse](#).

### Step 7 Consider any other factors which indicate a reduction, such as assistance to the prosecution



## Step 8 Reduction for guilty plea

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

## Step 9 Dangerousness

The court should consider whether, having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#), it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

## Step 10 Totality Principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

## Step 11 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the Guidance on Sentencing in the Service Courts Part 1 – General Principles at [section 4.3](#) (Imprisonment) and [section 4.4.15](#) (Service detention) and refer in the sentencing remarks to the factors therein upon which their decision is based.

## Step 12 If the offender is not to be dismissed and holds rank, consider reduction in rank/disrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/disrating or forfeiture of seniority.

## Step 13 Compensation and ancillary orders



In all cases the Court should consider whether to make a Service Compensation Order and/or other orders. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the Guidance on Sentencing in the Service Courts Part 1 – General Principles at [section 4.16](#) et seq.

#### Step 14 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

## 4. Offences of Violence

4.1 Service personnel are trained to exercise controlled and lawful violence towards the enemy. Unlawful violence displays a lack of discipline and can corrode unit cohesiveness and operational effectiveness, particularly when directed at Service colleagues or in a domestic context. Deterrent sentences are often necessary, particularly where violence is associated with excess alcohol.



4.2 Where offences involve domestic abuse, the [Sentencing Council's Overarching Guideline: Domestic Abuse](#) should be consulted.

4.3 Dismissal should be considered in cases of ABH and above when culpability is assessed as B or above and/or harm is assessed as 2 or above.

4.4 Dismissal is likely to be inevitable for commissioned officers in all cases of violence above common assault/battery.

4.5 Reduction in rank/disrating is likely to be appropriate in all cases of ABH and above and may be appropriate for offences of common assault/battery, particularly in a domestic context.

## 5. Offences of Dishonesty

5.1 Dishonesty is not consistent with service in the Armed Forces because it is corrosive to unit cohesiveness and morale and breaches the bond of trust which exists between Service personnel. Dismissal will be appropriate in all but the most minor cases.

### 5.2 Fraud/Theft from the Employer

These offences should be treated as a breach of a high degree of trust or responsibility demonstrating high culpability. As part of their conditions of service, Service personnel have the benefit of a range of valuable allowances and benefits which are not available to civilians (e.g. married quarters at discounted rates, interest free loans to purchase a house, continuity of education allowance (CEA)). Some of them come with restrictions on the claimant which are designed to ensure the benefit or allowance, which may be worth a significant amount of money, is awarded only in appropriate cases (e.g. restrictions on where a CEA claimant may live). These allowances and benefits are administered on the basis that claimants are trusted to make honest and accurate claims and furnish honest and accurate information thereafter. Whilst the details of the rules and regulations are complex in places, the general principles are generally well known.

5.2.1 Service personnel may have access to valuable stores (including those attractive to terrorist organisations), IT equipment and a wide range of other materiel. They have access to the Joint Personnel Administration System (JPA) and can claim expenses and allowances with limited checks or controls. They are trusted to deal with such equipment or claims honestly, and theft or fraud is a clear breach of that trust. Offences can be hard to detect and sentences with an element of deterrence are generally required, particularly when offences are committed by commissioned officers.

### 5.3 Fraud/theft from other Service personnel

These offences should be treated as a breach of a high degree of trust or responsibility demonstrating high culpability. Service personnel enjoy a mutual bond of trust and respect as part



of Service life. They often live and work in close quarters. When training or on operations they may share tents with no secure storage space. Naval personnel on ships have little room for secure storage. In accommodation blocks occupants understandably do not always lock their doors when moving around their block. Any theft from a fellow Service person is to be treated as having the aggravating feature of breach of trust. Theft from a Service person's messdeck/room/bedspace is to be treated particularly seriously.

5.3.1 Dismissal will be appropriate in all but the most minor cases. If, exceptionally, an offender is not dismissed, detention and reduction in rank/disrating is likely to be appropriate.

5.3.2 Dismissal is likely to be inevitable for commissioned officers in all cases.

## 6. Sexual Offences

6.1 Dismissal will be appropriate in all but the most exceptional case. Even if an offender is not dismissed by the court, subsequent administrative action by the offender's Service leading to discharge is almost inevitable pursuant to the Services' zero tolerance approach to sexual offences and inappropriate behaviour<sup>156</sup>.

6.2 Service personnel have little choice where and with whom they serve. They may live in close confines, with only a curtain or, if on operations, nothing separating them from others. They may share facilities including ablutions and social spaces. They work, eat, and socialise together. Sexual offending undermines the bond of trust which must exist between those who serve together, affects morale and ultimately operational effectiveness. Where offences involve domestic abuse, the Sentencing Council's Overarching Guideline: Domestic Abuse should also be consulted.

6.3 Dismissal will be appropriate in all but the most exceptional case. In such an exceptional case, the Judge Advocate should make clear in their sentencing remarks why this guidance is not being followed. An offender who is dismissed will automatically forfeit their commission or be reduced to the ranks. In an exceptional case where an offender is not dismissed, it is highly unlikely to be appropriate for them to retain any rank. If an offender is not dismissed, their chain of command will consider administrative action, which is very likely to involve discharge.

6.4 A Pre-Sentence report should be obtained in all cases involving sexual offences, even when a lengthy custodial sentence is inevitable. The report provides the court with a professional assessment of risk of re-offending and gives the Probation and Prison Services and other agencies valuable information to work with during the sentence and upon release. It also provides an assessment of risk of self-harm which is not uncommon when offenders are sentenced for sexual

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<sup>156</sup> [Zero Tolerance to Sexual Offences and Sexual Relationships between Instructors and Trainees](#)



offences. An oral report will not be provided by the Probation Service in such cases, and it is likely that the court will have to reconvene for sentence when a full report is available.

## 7. Drug Offences - Possession

7.1 The Armed Forces' policy on drug abuse is published in Joint Service Publication 835 and is well known amongst Service Personnel. Personnel who misuse drugs can expect to be removed from the Services by disciplinary or administrative means except in exceptional circumstances. The misuse of drugs is incompatible with the demands of Service life and poses a significant threat to operational effectiveness. The implications of drug misuse are particularly damaging, and the illegal possession and use of controlled drugs is an offence under both Service and Civil Law. Drugs impair judgement and reliability, reduce fitness, damage health, degrade performance, and harm team cohesion and Service ethos - as well as being harmful personally, to family relationships and to society generally.

7.2 Personnel in the Armed Forces who carry lethal weapons, operate, and maintain dangerous equipment, or bear responsibility for the safety of others must display higher standards of behaviour than civilians. They must expect to be punished more severely for breaching those high standards and deterrent sentences are often appropriate.

7.3 The starting point for all offences involving possession of illegal drugs is dismissal and a sentence of Service detention or a Service Community Order. Only in exceptional cases should an offender convicted of possession of a controlled drug be retained in the Service, and the reasons for not dismissing should be clearly set out in the Judge Advocate's sentencing remarks. As stated above, sentencing courts should bear in mind that the offender may subsequently be discharged in accordance with Service Policy, and that the decision on discharge will not be made by the offender's Commanding Officer.

7.4 The Compulsory Drug Testing regime operates on very different principles and comparisons between it and a criminal case of possession of a controlled drug are unlikely to assist.

7.5 Starting points in the Sentencing Council Guideline for the lower categories of possession offences, are therefore not applicable in the Service context and a fine would never be appropriate. In such low-level cases courts should consider guidance issued to Commanding Officers in JSP 830:



**Punishment after denial of offence:**

- Low – 36 days detention.
- Entry point – 48 days detention.
- High – 72+ days detention.

**Punishment after admission of offence:**

- Low – 28 days detention.
- Entry point – 42 days detention.
- High – 60+ days detention.

## 8. Drug Offences - Supply/Being Concerned in the Supply/Making an Offer to Supply/Possession with Intent to Supply a Controlled Drug

8.1 For more serious offences of supply, Service Courts should follow the Sentencing Council Guidelines. Dismissal will be inevitable in all but the most exceptional case. For cases at the very lowest end of the scale involving supply Class B or C drugs, the Sentencing Council Guideline has a starting point of a low-level community order or fine. Such a sentence will not reflect the seriousness of the offence in the Service context and dismissal with a high-level community order or equivalent sentence of detention is likely to be appropriate.

## 9. Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

[Suspended Sentence Orders \(imprisonment\)](#)

[Service Community Order](#)

[Overseas Community Order](#)

[Service detention](#)

[Suspended sentences of Service detention](#)

[Comparison between Service detention and imprisonment](#)

[Deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#)

[Dismissal and Dismissal with Disgrace from His Majesty's Service](#)

[The approach to Dismissal](#)

[Forfeiture of Seniority \(officers only\)](#)

[Disrating or Reduction in Rank](#)

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# GUIDANCE ON SENTENCING IN THE SERVICE COURTS

Version 6

## PART 3 – SERVICE DISCIPLINARY OFFENCES

**Selected offences - further guidelines will be issued in due course**

When dealing with Service Disciplinary Offences not covered in this Version,  
guidance may be found from [Version 5 of this guide](#)





# INDEX

References are to sections of the Armed Forces Act 2006

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[s19 Conduct prejudicial to good order & service discipline](#)

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[s23 Disgraceful conduct of an indecent kind](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Desertion and Absence without Leave

**Effective from:** 01 June 2023

[Section 8 Armed Forces Act 2006](#)

[Section 9 Armed Forces Act 2006](#)

Maximum:

Desertion - Life (where intent to avoid active service) 2 years (all other cases)

Absence without leave - 2 years

Triable by the Court Martial or at a Summary Hearing

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These offences are not recordable Service offences and will not be recorded on the Police National Computer<sup>157</sup>.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).

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<sup>157</sup> See Guidance on Sentencing in the Service Courts Part 1 – General Principles para 2.7



There is a significant difference between desertion and absence without leave.

Desertion can only be committed if the offender intended to remain permanently absent without leave or was absent without leave with the intention of avoiding a period of active service.

Absence without leave can be committed negligently or intentionally, or as a result of anything done by the offender which causes them to be absent recklessly (e.g. returning to their unit from a location where they have not left sufficient travel time to return in time not to be absent without leave).

### Offences of Desertion

Desertion is the more serious offence of the two, and desertion with intent to avoid active service is the most serious offence. Desertion during periods of active service where the offender's conduct could lead to a unit being short of essential manpower on operations, and ultimately unnecessary loss of life is particularly serious. This is reflected in the maximum sentence for desertion with intent to avoid active service which is life imprisonment. Sentences with a significant element of deterrence are often necessary.

### Offences of Absence without Leave

The purpose of sentencing in absence offences is as follows:

- to punish absentees
- to deter potential absentees
- to support operational effectiveness
- to permit retraining

Absence offences can have a significant impact on operational effectiveness by denuding units of personnel, and have a significant impact on other Service persons who may have to be deployed to cover for the offender; sentences should reflect this.

While the overall length of the absence is a factor for the sentencing board to consider, a long absence by a junior untrained Service person is often less serious than a short absence by experienced and trained personnel which results in a unit deploying understrength and lessens its operational effectiveness. Similarly, a long absence where the offender surrenders themselves is usually less serious than a series of short absences which are terminated by arrest and followed by repeated absconding, even if the total number of days absent is less than the single absence.

The starting point for all but the shortest periods of absence is a period of detention. Reduction in rank should also be considered in all cases where the offender holds rank.

Where there are exceptional mitigating factors for the offender's absence, or they have performed exceptionally well since their return (not in custody) thereby rehabilitating themselves, or there has been an exceptionally long delay (not caused by the offender) in bringing the matter before the Court with the matter left hanging over their head, a suspended sentence of detention may be considered.

Absence without leave is regarded particularly seriously in the Royal Navy because of the detrimental effect on operational effectiveness of even a very short period of absence, for example if an individual fails to play their part in preparing their ship for sailing, or fails to sail with it. Even one absentee from a lean-crewed ship can cause severe



disruption. Slightly longer sentences than would be passed on soldiers and aviators are normal to reflect this factor, and absence from a ship under sailing orders is a significant aggravating factor.

#### Short Periods of Absence without Leave

The Summary Hearing sentencing guide in JSP830 Manual of Service Law provides the following guidance for short absences dealt with by Commanding Officers. While it is not binding on the Service Courts, it ought to be considered when dealing with short absences and/or where the offender has elected trial in the Court Martial, and is set out here:

Period of Absence	Fine (days' pay)	Number of days detention
Up to 24 hours	Up to 6 days' pay	
Up to 2 days	Up to 9 days' pay	
Up to 3 days	Up to 13 days' pay	Consider short detention (up to 3 days)
Up to 7 days	Up to 16 days' pay	Consider short detention (up to 7 days)
8 – 14 days	17 - 21 days' pay	Consider medium term detention (up to 14 days)
15 – 21 days	22 - 28 days' pay	Consider medium term detention (up to 21 days)
22 – 28 days		Medium term detention (up to 28 days)
29 – 100 days		Consider longer term detention with extended powers (29 – 49 days)
Over 100 days		Detention with extended powers (50 – 90 days)

#### Dismissal from His Majesty's Service

Sentences of dismissal or dismissal with disgrace will be inevitable in cases of desertion with intent to avoid active service. In other cases of desertion and absence cases the offender will generally not be dismissed, in order to maintain the important deterrent effect of sentencing in such cases. The exception to this is cases of desertion/absence offences involving very long periods of absence with no other significant aggravating features, where the offender has effectively settled into civilian society and a sentence of detention would be unduly punitive. In such cases a sentence of dismissal coupled with a Service Community Order may be appropriate.

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A to Part 1](#).

#### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.



**Culpability** The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

**A – Highest Culpability**

- Desertion with intent to avoid active service

**B – High Culpability**

- Desertion with intent to remain permanently absent
- Intentional absence without leave reckless as to whether active service avoided as a result

**C – Medium Culpability**

- Intentional absence without leave

**D – Low Culpability**

- Negligent or reckless absence without leave

Where the offence is repeated (either at the time or where the defendant has recent conviction/s for like offences), the Court should consider moving up a category.

**Harm** The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

**Category 1**

- Absence has a significant impact on offender's unit or other Service personnel

**Category 2**

- Absence has an impact on offender's unit or other Service personnel
- Cases falling between categories 1 and 3

**Category 3**

- Absence has no or very limited impact on offender's unit or other Service personnel

**Step 2 Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.



Harm	Culpability			
	A	B	C	D
Category 1	Starting point 4 years' imprisonment	Starting point 18 months' service detention	Starting point 12 months' service detention	Starting point 9 months' service detention
	Category range 3 to 6 years' imprisonment	Category range 12 months' service detention to 2 years' imprisonment	Category range 9 to 24 months' service detention	Category range 6 to 18 months' service detention
Category 2	Starting point 3 years' imprisonment	Starting point 12 months' service detention	Starting point 9 months' service detention	Starting point 6 months' service detention
	Category range 2 to 4 years' imprisonment	Category range 9 to 24 months' service detention	Category range 6 to 18 months' service detention	Category range 3 to 12 months' service detention
Category 3	Starting point 2 years' imprisonment	Starting point 9 months' service detention	Starting point 6 months' service detention	Starting point 3 months' service detention
	Category range 1 to 3 years' imprisonment	Category range 6 to 18 months' service detention	Category range 3 to 12 months' service detention	Category range 1 to 6 months' service detention

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order (SSPO) instead of a fine or short sentence of Service detention.

### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness (Factors are not listed in any particular order and are not exhaustive)
<ul style="list-style-type: none"> <li>Previous convictions/poor disciplinary record.</li> <li>Previous similar offences.</li> <li>Common offence in ship/unit (this should be supported by evidence).</li> <li>Offence occurred during an operational environment.</li> <li>Offender in position of responsibility or trust.</li> <li>Offender under the influence of alcohol or drugs at the time of the offence.</li> <li>Ship under sailing orders/unit on or about to be on operational deployment.</li> <li>Long absence.</li> <li>Absence in order to avoid other disciplinary action.</li> <li>Intention to avoid arduous service (where not considered at Step 1)</li> </ul>



Failed to contact unit when plenty of opportunity.  
Returned involuntarily as a result of arrest.

Factors reducing seriousness or reflecting personal mitigation  
(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators.  
Offender relatively young (usually under 21).  
Offender inexperienced in the Service context.  
Previous good character.  
Good professional record.  
Previous exemplary service.  
Lack of appreciation of seriousness of absence.  
Very short absence.  
Attempted return.  
Genuine reason e.g. domestic problems.  
Returned voluntarily.  
Whether offender asked for help in trying to resolve problems that led to absence.  
Evidence of lack of support for offender's problems.  
Low level of recklessness/negligence, for example a Service person who goes to sleep on a train when returning to duty and is carried past their station making them unable to return to their unit on time.  
Made contact with unit.  
Genuine remorse.

#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.



## Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/disrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/disrating or forfeiture of seniority.

## Step 9 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure. The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

## Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

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## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Misconduct towards a superior officer

**Effective from:** 01 June 2023

#### [Section 11 Armed Forces Act 2006](#)

Maximum: 10 years' imprisonment (where violence used)  
2 years' imprisonment (in all other cases)

Triable by the Court Martial or at a Summary Hearing

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This is an offence which is recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



## General Principles for Offences of Misconduct towards a Superior Officer

The integrity and effectiveness of the Armed Forces rely on obedience and respect to those in authority. Misconduct towards a superior officer undermines the chain of command and can seriously affect operational effectiveness. The authority of superior officers must be upheld and those who threaten or flout that authority must be dealt with quickly and proportionately but firmly.

Where the offence involves an assault and the injury amounting to actual or grievous bodily harm, sentencers may consult the Sentencing Council guideline for that criminal conduct offence. However, offences contrary to this section which could also be charged as a criminal conduct offence of violence are, by their very nature, more serious than their civilian equivalents and that should be reflected in sentencing.

Dismissal should be considered in more serious cases and will be inevitable in the most serious cases.

In all cases the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disgraced / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order (SSPO) instead of a fine or short sentence of Service detention.

## Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).

## Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – Highest Culpability

- Any use of significant violence towards a superior officer
- Use of a weapon or weapon equivalent
- Group violence
- Prolonged/persistent assault

#### B – High Culpability



- Any use of violence towards a superior officer
- Threatening behaviour causing another to fear violence or behaviour designed to provoke violence
- Persistent behaviour ignoring warnings to desist
- Offence committed on active operations
- Offence committed in front of others of inferior rank

#### **C – Medium Culpability**

- Deliberate behaviour falling between B and D

#### **D – Low Culpability**

- Minor or momentary threatening or disrespectful behaviour
- Single instance
- Disobedience occurs in a place remote from the Service context and does not undermine authority of the superior

### **Harm**

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

#### **Category 1**

- Use of violence causes serious physical injury
- Behaviour causes very serious harm or serious psychological harm and/or substantial impact upon victim

#### **Category 2**

- Use of violence causes injury
- Behaviour causes serious harm or distress
- Behaviour has a significant deleterious effect on discipline and/or unit cohesion
- Behaviour endangers the safe performance of a duty

#### **Category 3**

- Use of violence causes no injury
- Cases falling between categories 2 and 4

#### **Category 4**

- No use or threat of violence
- Behaviour causes little or no harm or distress



## Step 2 - Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Harm	Culpability			
	A	B	C	D
Category 1	Starting point 2 years 6 months' imprisonment	Starting point 18 months' imprisonment	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment
	Category range 18 months' to 4 years' imprisonment	Category range 36 weeks to 2 years 6 months' imprisonment	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment
Category 2	Starting point 18 months' imprisonment	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 36 weeks to 2 years 6 months' imprisonment	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 3	Starting point 12 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point 28 days' service detention	Starting point 28 days' pay fine
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment	Category range 14 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 4	Starting point	Starting point	Starting point 28 days' pay fine	Starting point 14 days' pay fine



	6 months' imprisonment	Service Community Order (Low) / 10 weeks' service detention		
	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range 28 days' pay fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention	Category range 4 days' to 28 days' pay fine

### Step 3 - Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

Previous convictions/poor disciplinary record.  
 Previous similar offences.  
 Common offence in ship/unit (this should be supported by evidence).  
 Deliberate targeting of victim.  
 Victim carrying out duties.  
 Premeditation.  
 Offence occurred during an operational environment/ship at sea.  
 Offender in position of responsibility or trust.  
 Offender under the influence of alcohol or drugs at the time of the offence.  
 Offence took place in the public eye and offender was clearly identifiable as a Service person  
 Offence took place in victim's room, cabin, or bunk space.  
 Offence had a deleterious effect on unit cohesion and/or discipline.

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators.  
 Offender relatively young (usually under 21).  
 Offender inexperienced in the Service context  
 Previous good character.  
 Good professional record.  
 Previous exemplary service.  
 Lack of appreciation of seriousness of actions or words.  
 Provocation.  
 Genuine remorse.

### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution



#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.



The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

#### Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

[Suspended Sentence Orders \(imprisonment\)](#)

[Service Community Order](#)

[Overseas Community Order](#)

[Service detention](#)

[Suspended sentences of Service detention](#)

[Comparison between Service detention and imprisonment](#)

[Deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#)

[Dismissal and Dismissal with Disgrace from His Majesty's Service](#)

[The approach to Dismissal](#)

[Forfeiture of Seniority \(officers only\)](#)

[Disrating or Reduction in Rank](#)

[Fines](#)

[Severe Reprimand/Reprimand](#)

[Service Restraining Order](#)

[Service Supervision and Punishment Order](#)

[Service Compensation Order](#)

[Sexual Harm Prevention Order](#)

[Driving Disqualification Order](#)

[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Disobedience to Lawful Commands

**Effective from:** 01 June 2023

#### [Section 12 Armed Forces Act 2006](#)

Maximum: 10 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).





The integrity and effectiveness of the Armed Forces rely on obedience to commands. Disobedience undermines the chain of command and can seriously affect operational effectiveness, especially while on operations. The authority of superior officers must be upheld and those who flout that authority must be dealt with quickly and proportionately but firmly.

Dismissal should be considered in more serious cases and will be inevitable in the most serious cases.

In all cases the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disgraced / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order (SSPO) instead of a fine or short sentence of Service detention.

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).

### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Deliberate or intentional disobedience
- Premeditated
- Prolonged/persistent disobedience
- Offence committed on operations
- Offence committed in front of others of inferior rank
- Group action

#### B – Medium Culpability

- Cases falling between category A or C because:
  - Factors in both high and lesser categories are present which balance each other out; and/or



- The offender's culpability falls between the factors as described in high and lesser culpability

### C – Low Culpability

- Reckless disobedience
- Minor or momentary disobedience
- Single instance

## Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

### Category 1

- Disobedience caused a security risk or put the safety of individuals at risk
- Disobedience has a significant deleterious effect on discipline and/or unit cohesion
- Disobedience endangers the safe performance of a duty
- Disobedience has a significant effect on operational effectiveness

### Category 2

- Cases falling between categories 1 and 3

### Category 3

- Minor or momentary disobedience
- No harm or risk of harm as a result of disobedience
- Limited impact on unit or others

## Step 2 Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment



Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point 28 days' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment	Category range 14 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 days' pay fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention	Category range 4 days' to 28 days' pay fine

### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

Previous convictions/poor disciplinary record  
Previous similar offences  
Common offence in ship/unit (this should be supported by evidence)  
Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)  
Deliberate targeting of victim  
Victim carrying out duties  
Premeditation  
Offence occurred during an operational environment/ship at sea  
Offender in position of responsibility or trust  
Offender under the influence of alcohol or drugs at the time of the offence  
Offence took place in the public eye and the offender was clearly identifiable as a Service person  
Offence took place in victim's room, cabin, or bunk space  
Offence had a deleterious effect on unit cohesion and/or discipline

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators  
Offender relatively young (usually under 21)  
Offender inexperienced in the Service context  
Previous good character  
Good professional record  
Previous exemplary service  
Lack of appreciation of seriousness of actions or words



#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what



the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

#### Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

[Suspended Sentence Orders \(imprisonment\)](#)

[Service Community Order](#)

[Overseas Community Order](#)

[Service detention](#)

[Suspended sentences of Service detention](#)

[Comparison between Service detention and imprisonment](#)

[Deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#)

[Dismissal and Dismissal with Disgrace from His Majesty's Service](#)

[The approach to Dismissal](#)

[Forfeiture of Seniority \(officers only\)](#)

[Disrating or Reduction in Rank](#)

[Fines](#)

[Severe Reprimand/Reprimand](#)

[Service Restraining Order](#)

[Service Supervision and Punishment Order](#)

[Service Compensation Order](#)

[Sexual Harm Prevention Order](#)

[Driving Disqualification Order](#)

[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Contravention of Standing Orders

**Effective from:** 01 June 2023

#### [Section 13 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can be committed by both persons subject to Service Law and civilians subject to Service Discipline.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



Standing Orders are written instructions which cover many aspects of Service life, and disobedience of them can be minor, very serious or anything in between. For example a failure to book out of barracks at the guardroom might be punished by a Commanding Officer by way of restriction of privileges and/or stoppage of leave. A failure to carry out a vital procedure in servicing a vehicle or aircraft in circumstances which create a serious risk to others might deserve a sentence of reduction in rank and/or detention.

As with other offences of disobedience, the integrity of the chain of command can be adversely affected by those who blatantly or covertly disregard superior instructions.

In all cases of Culpability A, the Court must consider disrating / reduction in rank, loss of seniority and, in the most serious of cases, dismissal in addition to the sentences recommended above.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disrated / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order instead of a fine or short sentence of detention.

## Specific Considerations

Notwithstanding the multitude of orders that exist and therefore the many potential contraventions that this offence can cover, the guidance given below should be considered when coming to the appropriate sentence for more commonly encountered contraventions.

### Breach of no-touching rule

For a first time offence of a minor nature restriction of privileges and/or stoppage of leave or an admonition may be appropriate, otherwise a small fine or reprimand for those in positions of responsibility.

For second time offences and offences of an intimate nature, a greater fine would be appropriate depending on the overall seriousness.

Those in positions of trust, duty or seniority should be sentenced more severely and consideration should always be given to reduction in rank/disrating. Offences committed in the training environment by instructors on those they are responsible for instructing (particularly in initial training) may be considered to be more serious and merit immediate sentence of detention, reduction in rank/disrating and, in the most serious of cases, dismissal.

## Driving Offences

Military establishments occupy large areas and can contain infrastructure the size of a town. Motoring offences within military establishments, if committed on roads that are as a matter of law public roads, are dealt with in the same way as motoring offences on public roads in England and Wales. If the roads are not public, they are often charged as breaches of standing orders. The Court Martial and Service Civilian Court has the power to impose a Driving Disqualification Order.



The sentences for dangerous driving, causing death, alcohol over twice the limit, and similar very serious matters should be based on those in the SC guidelines. For starting points for driving offences dealt with as contravention of standing orders, sentencers should refer to the tables at pages 1-14-14 and 1-14-15 of the [Manual of Service Law](#).

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).

### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Offence committed on operations
- Offence committed in front of others of inferior rank
- Deliberate contravention
- Premeditated contravention
- Repeated contravention
- Group action

#### B – Medium Culpability

- Behaviour falling between A and C
- Reckless contravention

#### C – Low Culpability

- Minor or momentary contravention
- Single instance





## Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

### Category 1

- Contravention caused a security risk or put the safety of individuals at risk
- Contravention has a significant deleterious effect on discipline and/or unit cohesion
- Contravention endangers the safe performance of a duty
- Contravention has a significant effect on operational effectiveness

### Category 2

- Order related to safety of offender or others (but safety not affected)
- Cases falling between categories 1 and 3

### Category 3

- Contravention occurs in a place remote from the Service context and does not undermine authority of the superior
- No harm or risk of harm as a result of the contravention

## Step 2 Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (Medium) / 20 weeks' detention – 12 months' detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
	Starting point	Starting point	Starting point



Category 3	Service Community Order (Low) / 10 weeks' service detention	28 days' pay fine	14 days' pay fine
	Category range 28 day fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' fine to 28 days' detention	Category range 4 days to 28 days' pay fine

### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

Previous convictions/poor disciplinary record  
 Previous similar offences  
 Common offence in ship/unit (this should be supported by evidence)  
 Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)  
 Deliberate targeting of victim  
 Victim carrying out duties  
 Premeditation  
 Offence occurred during an operational environment/ship at sea  
 Offender in position of responsibility or trust  
 Offender under the influence of alcohol or drugs at the time of the offence  
 Offence took place in the public eye and the offender was clearly identifiable as a Service person  
 Offence took place in victim's room, cabin, or bunk space  
 Offence had a deleterious effect on unit cohesion and/or discipline

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators  
 Offender relatively young (usually under 21)  
 Offender inexperienced in the Service context  
 Previous good character  
 Good professional record  
 Previous exemplary service  
 Lack of appreciation of seriousness of actions or words  
 Provocation  
 Genuine remorse

### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution



#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.



The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

#### [Relevant Reference Material \(from Guidance on Sentencing in the Service Courts Part 1 – General Principles\)](#)

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

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[Dismissal and Dismissal with Disgrace from His Majesty's Service](#)

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[Service Compensation Order](#)

[Sexual Harm Prevention Order](#)

[Driving Disqualification Order](#)

[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Failure to attend for or perform a duty and negligent performance of a duty

**Effective from:** 01 June 2023

#### [Section 15 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



This charge covers a wide range of conduct from very minor (such as a minor administrative failure), through conduct the consequences of which are very expensive, to the most serious where the failure or negligence leads, to serious injury or loss of life.

The consequences of the negligence or failure clearly provide some indication of the seriousness of the offence as well as the foreseeability that harm would flow from that negligence or failure.

In all cases of Culpability A, the Court must consider disrating / reduction in rank, loss of seniority and, in the most egregious of cases, dismissal is likely to be appropriate in addition to the sentences recommended above.

Dismissal would be appropriate where the failure or negligence demonstrated by the offender is so great that their continued service would pose an unacceptable risk of harm to others.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disrated / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order instead of a fine or short sentence of detention.

#### Negligent discharge of personal firearms

This is a form of negligence in performing a duty which is a prevalent offence in the Armed Forces. Detention is considered in cases where many of the aggravating factors and none of the mitigating factors above are present. The appropriate ranges for an ordinary case with no damage or injury and limited danger is as follows:

- In a training environment - fine of 2 days' pay.
- Trained personnel whilst on range practice/phase 2 - Fine of 3 - 7 days' pay.
- In operational environment/on duty - Up to 28 days' pay or 1 – 7 days detention.

Where injury is caused to another person the extent of the injury should be assessed when considering the appropriate sentence. Where a death has been caused but the negligence cannot be classified as "gross" so as to support a charge of manslaughter, a sentence of 6 months imprisonment plus dismissal is likely to be the minimum appropriate sentence.



The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Offence committed on operations
- Offence committed in front of others of inferior rank
- Significant failure to perform a safety critical duty
- Offender experienced and fully aware of importance of duty and consequences of failure / negligent performance of same
- Intentional failure to perform or attend for a duty
- Wilful disregard of warnings regarding duty
- Prolonged/persistent failure

#### B – Medium Culpability

- Negligent performance of a safety critical duty
- Cases falling between category A or C because:
  - Factors in both high and lesser categories are present which balance each other out; and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

#### C – Low Culpability

- Minor or momentary failure to perform or attend for a duty
- Single instance
- Negligent performance of a non-safety critical duty

### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused. As it is possible for gross negligence to result in minor harm by some stroke of luck, "harm" includes an assessment of the risk of harm being caused.

#### Category 1

- Failure or negligence caused serious injury or put others at risk of serious injury
- Failure or negligence has a significant deleterious effect on discipline and/or unit cohesion
- Failure or negligence endangers the safe performance of a duty



- Failure or negligence caused serious impact, or risk thereof, on operational effectiveness or to national security

### Category 2

- Failure or negligence caused significant inconvenience to others
- Failure or negligence cause minor injury or put others at risk of minor injury
- Cases falling between categories 1 and 3 Cases because:
  - Factors in both high and lesser categories are present which balance each other out; and/or
  - The harm or risk of harm caused by the offence falls between the factors as described in categories 1 and 3.

### Category 3

- Minor or momentary failure or negligence
- No harm or risk of harm as a result of the failure or negligence
- Limited impact on unit or others

## Step 2 Starting point and category range

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (Medium) / 20 weeks' detention - 12 months' service detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 day fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' fine to 28 days' detention	Category range 4 days to 28 days' pay fine





### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

- Previous convictions/poor disciplinary record
- Previous similar offences
- Common offence in ship/unit (this should be supported by evidence)
- Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)
- Deliberate targeting of victim
- Victim carrying out duties
- Premeditation
- Offence occurred during an operational environment/ship at sea
- Offender in position of responsibility or trust
- Offender under the influence of alcohol or drugs at the time of the offence
- Offence took place in the public eye and the offender was clearly identifiable as a Service person
- Offence took place in victim's room, cabin, or bunk space
- Warnings as to appropriate procedures or behaviour were ignored

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

- Substantial cooperation with investigators
- Situation reduced scope for exercising usual care and competence
- Isolated momentary lapse
- Extreme fatigue caused by long hours on duty
- Insufficient / inadequate training
- Conduct occurred during initial training
- Offender relatively young (usually under 21)
- Offender inexperienced in the Service context
- Previous good character
- Good professional record
- Previous exemplary service
- Lack of appreciation of seriousness of actions or words
- Genuine remorse

### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or



indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate



the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

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[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Conduct prejudicial to good order and Service discipline

**Effective from:** 01 June 2023

#### [Section 19 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



The efficiency, effectiveness and reputation of the Armed Forces depends to a large extent on personnel acting in a disciplined manner. Conduct which falls below the required norms, which are often higher than those of contemporary society, undermines the integrity and high reputation of the Armed Forces.

The essential feature of an offence under this section is that the conduct is prejudicial to good order and Service discipline. The wording of the statute is such that the offence has a very wide ambit and in sentencing the Court Martial should consider not only the conduct proved or admitted, but also to what extent it has been shown that there really was prejudice to good order and Service discipline. Where the conduct publicly undermines discipline or the command chain it is more serious. Care should be taken when sentencing to keep in mind the object of the offence. It was not intended by Parliament that these sections be used simply to punish immoral or objectionable behaviour which falls short of criminal behaviour or misconduct. The Court Martial should therefore be slow to allow this section to be used to create what are in effect new offences otherwise unknown to law.

In all cases of Culpability A, the Court must consider disrating / reduction in rank, loss of seniority and, in the most serious of cases, dismissal.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disrated / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order instead of a fine or short sentence of detention.

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).



The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Deliberate and repeated conduct / omission
- Intention to cause harm (to self, others or reputation of Armed Forces)
- Misuse of rank to commit the offence

#### B – Medium Culpability

- Cases which fall between Categories A and C

#### C – Low Culpability

- Failure to appreciate effect of conduct
- No intent to cause harm

### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

#### Category 1

- Significant deleterious effect on good order and/or Service discipline
- Operational effectiveness undermined

#### Category 2

- Cases falling between category 1 and 3

#### Category 3

- Little or no actual effect on good order and/or Service discipline



## Step 2 Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' service detention	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention
	Category range 6 months' service detention to 2 years' imprisonment	Category range Service Community Order (Medium) / 20 weeks' detention – 12 months' detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (Medium) / 20 weeks' detention – 12 months' detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 day fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' fine to 28 days' detention	Category range 4 days to 28 days' pay fine

## Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

- Previous convictions/poor disciplinary record
- Previous similar offences
- Common offence in ship/unit (this should be supported by evidence)
- Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)
- Deliberate targeting of victim



Victim carrying out duties  
Premeditation  
Offence occurred during an operational environment/ship at sea  
Offender in position of responsibility or trust  
Offender under the influence of alcohol or drugs at the time of the offence  
Offence took place in the public eye and the offender was clearly identifiable as a Service person  
Offence took place in victim's room, cabin, or bunk space  
Warnings as to appropriate procedures or behaviour were ignored

**Factors reducing seriousness or reflecting personal mitigation  
(Factors are not listed in any particular order and are not exhaustive)**

Substantial cooperation with investigators  
Situation reduced scope for exercising usual care and competence  
Isolated momentary lapse  
Extreme fatigue caused by long hours on duty  
Insufficient / inadequate training  
Conduct occurred during initial training  
Offender relatively young (usually under 21)  
Offender inexperienced in the Service context  
Previous good character  
Good professional record  
Previous exemplary service  
Lack of appreciation of seriousness of actions or words  
Genuine remorse

**Step 4 Consider any factors which indicate a reduction for assistance to the prosecution**

**Step 5 Reduction for guilty pleas**

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

**Step 6 Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.





**Step 7** If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

**Step 8** If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

**Step 9 Compensation Orders and ancillary orders**

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

**Step 10 Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

**Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))**

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

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[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Unfitness or misconduct through alcohol or drugs Exceeding alcohol limit for prescribed safety-critical duties

**Effective from:** 01 June 2023

[Section 20 Armed Forces Act 2006](#)

[Section 20A Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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These offences are not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



Abuse of alcohol and drug misuse can reduce efficiency, lead to further offending, and bring discredit on the Service. Many offences result from over-indulgence in alcohol, but to be drunk is not in itself an offence. The offence is committed if as a result of the consumption of alcohol or drugs, whether alone or in combination with any other circumstances, the offender:

- i. is unfit to be entrusted with their duty, or
- ii. is unfit to be entrusted with any duty they might reasonably expect to be called upon to perform, or
- iii. behaves in a disorderly manner, or
- iv. behaves in a manner likely to bring discredit on His Majesty's Service.

Thus the offence may be minor or very serious depending upon the circumstances. Drunkenness on active service is very serious and the more senior the offender the more serious the offence. Officers who are convicted of even minor offences of drunkenness should be dealt with severely as they have demonstrated a lack of self-discipline and control.

The gravamen of the s20A lies in the risk to other people's guidance lives, their property and the environment; the greater the risk posed by the impaired performance of the safety critical duty, the greater the possible harmful consequences of the accused's actions

In all cases of Culpability A, the Court must consider disrating / reduction in rank, loss of seniority and, in the most serious of cases, dismissal.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disrated / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order instead of a fine or short sentence of detention.

#### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).



The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Intentional consumption of alcohol or drugs in quantities bound to have a significant affect on behaviour / ability to perform duty
- Offence committed in an operational environment or at sea
- Consumption of alcohol or drugs while armed
- Consumption of alcohol or drugs in breach of any order
- (for s20A offence) duty was one being performed

#### B – Medium Culpability

- Cases which fall between in Categories A and C or where factors in each balance each other out

#### C – Low Culpability

- Consumption of alcohol off base or in single living accommodation
- No intention to reach level of incapacity
- (for s20A offence) duty was one which offender might reasonably have expected to perform

### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused. As it is possible for gross negligence to result in minor harm by some stroke of luck, "harm" includes an assessment of the risk of harm being caused.

#### Category 1

- Disorderly behaviour or unfitness endangered the safety of others
- Disorderly behaviour or unfitness undermined operational effectiveness
- Behaviour brought significant discredit to HM forces

#### Category 2

- Disorderly behaviour or unfitness caused significant inconvenience to others
- Behaviour brought discredit to HM forces
- Cases falling between category 1 and 3



### Category 3

- Little or no actual effect on others
- Disorderly behaviour of limited duration
- All other cases

### Step 2 Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' service detention	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention
	Category range 6 months' service detention to 2 years' imprisonment	Category range Service Community Order (Medium) / 20 weeks' detention – 12 months' detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (Medium) / 20 weeks' detention – 12 months' detention	Category range 28 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 day fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' fine to 28 days' detention	Category range 4 days to 28 days' pay fine

### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.



#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

Previous convictions/poor disciplinary record  
Previous similar offences  
Common offence in ship/unit (this should be supported by evidence)  
Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)  
Deliberate targeting of victim  
Victim carrying out duties  
Premeditation  
Offence occurred during an operational environment/ship at sea  
Offender in position of responsibility or trust  
Offender under the influence of alcohol or drugs at the time of the offence  
Offence took place in the public eye and the offender was clearly identifiable as a Service person  
Offence took place in victim's room, cabin, or bunk space  
Warnings as to appropriate procedures or behaviour were ignored  
Offence committed under stoppage of beer/alcohol restriction rule.  
Intention to get drunk/wilful disregard of worsening condition

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators  
Off duty  
Led astray by more senior ranks/rates  
No disturbance/placid behaviour  
Welfare problems behind drinking  
Effort made to return on board from ashore/back to base or camp  
Drunkenness in Service club or in single living accommodation  
Illness – where offender has alcohol dependency/alcoholism  
Offender inexperienced in the Service context  
Conduct occurred during initial training  
Offender relatively young (usually under 21)  
Offender inexperienced in the Service context  
Previous good character  
Good professional record  
Previous exemplary service  
Lack of appreciation of seriousness of actions or words  
Genuine remorse

#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings



at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/dising or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/dising or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the





court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

[Suspended Sentence Orders \(imprisonment\)](#)

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[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Fighting or Threatening Behaviour

**Effective from:** 01 June 2023

#### [Section 21 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



The essence of fighting is the disturbance of good order, and this offence is very different from the criminal offence of assault, the essence of which is an attack on a victim. For this reason the degree of personal injury resulting is not as weighty a consideration and service compensation orders are rarely appropriate.

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

In all cases of Culpability A, the Court must consider disrating / reduction in rank, loss of seniority and, in the most serious of cases, dismissal.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disrated / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order instead of a fine or short sentence of detention.

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).

### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Persistent or sustained behaviour
- Intent to cause injury
- Significant force used (where force used)
- Offence occurred in an operational environment
- Part of wider disorder

#### B – Medium Culpability

- Threatening behaviour
- Cases otherwise falling between categories A and C



### C – Low Culpability

- Abusive, insulting or provocative behaviour
- Single instance

### Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

#### Category 1

- Behaviour has a significant deleterious effect on discipline and/or unit safety
- Large scale incident
- Injuries caused

#### Category 2

- Use of violence causes no injury
- Cases falling between categories 1 and 3

#### Category 3

- Situation resolved quickly, no effect on safety / security of others
- Little or no disturbance

### Step 2 Starting point and category range

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point 28 days' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment	Category range 14 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention



Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 days' pay fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention	Category range 4 days' to 28 days' pay fine

### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

Previous convictions/poor disciplinary record  
 Previous similar offences  
 Common offence in ship/unit (this should be supported by evidence)  
 Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)  
 Deliberate targeting of victim  
 Victim carrying out duties  
 Premeditation  
 Offence occurred during an operational environment/ship at sea  
 Offender in position of responsibility or trust  
 Offender under the influence of alcohol or drugs at the time of the offence  
 Offence took place in the public eye and the offender was clearly identifiable as a Service person  
 Offence took place in victim's room, cabin, or bunk space  
 Warnings as to appropriate procedures or behaviour were ignored  
 High degree of force used

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

Substantial cooperation with investigators  
 Off duty  
 Offender inexperienced in the Service context  
 Conduct occurred during initial training  
 Offender relatively young (usually under 21)  
 Offender inexperienced in the Service context  
 Previous good character  
 Good professional record  
 Previous exemplary service  
 Lack of appreciation of seriousness of actions or words



Provocation  
Incident started as self defence / defence of another  
Genuine remorse

#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.

#### Step 10 Reasons



[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

#### Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

[Separate sentences for each offence](#)

[Sentences available for persons subject to Service law \(PSSL\)](#)

[Sentences available for civilians subject to Service discipline \(CSSD\)](#)

[Sentences available for persons who were subject to Service law but have left the Service before sentence](#)

[Suspended Sentence Orders \(imprisonment\)](#)

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[Driving Disqualification Order](#)

[Minor Punishments](#)





## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### III-treatment of subordinates

**Effective from:** 01 June 2023

#### [Section 22 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the [relevant factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).





Operational effectiveness depends upon the maintenance of discipline. Discipline is maintained by the appropriate use of rank. Those with rank must not abuse it. Those who abuse it cause a reduction in confidence in the chain of command, undermine discipline and operational effectiveness.

Given that the nature of the offence involves an abuse of rank, in all but the most minor of cases, the Court must also consider disrating / reduction in rank, loss of seniority and, in the most serious cases, dismissal.

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles](#) and at [Annex A of Part 1](#).

### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### A – High Culpability

- Any use of force likely to result in injury (even if it does not)
- Intentional threatening behaviour causing a subordinate to fear violence
- Intentional ill treatment
- Persistent behaviour ignoring warnings to desist
- Offence committed on operations
- Offence committed in front of others of inferior rank
- Ill treatment occurs at an initiation ceremony which offender has organised

#### B – Medium Culpability

- Use of force unlikely to result in injury
- Cases falling between categories A and C

#### C – Low Culpability

- Reckless ill treatment
- Single instance
- Ill treatment involved no actual or threat of violence



## Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

### Category 1

- Behaviour causes serious harm or distress or injury to subordinate
- Behaviour has a significant deleterious effect on discipline and/or unit cohesion
- Behaviour endangers the safe performance of a duty

### Category 2

- Use of violence causes no injury
- Cases falling between categories 1 and 3

### Category 3

- Behaviour causes little or no harm or distress

## Step 2 Starting point and category range

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point 28 days' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment	Category range 14 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 days' pay fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention	Category range 4 days' to 28 days' pay fine



The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

- Previous convictions/poor disciplinary record
- Previous similar offences
- Common offence in ship/unit (this should be supported by evidence)
- Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)
- Deliberate targeting of victim
- Victim carrying out duties
- Premeditation
- Offence occurred during an operational environment/ship at sea
- Offender in position of responsibility or trust
- Offender under the influence of alcohol or drugs at the time of the offence
- Offence took place in the public eye and the offender was clearly identifiable as a Service person
- Offence took place during an initiation ceremony
- Offence took place in victim's room, cabin, or bunk space
- Warnings as to appropriate procedures or behaviour were ignored
- Physical or severe mental abuse
- Mental or physical injury to victim or harm to victim's career
- Abuse of trainees in initial training
- Forcing victims to undertake demeaning or disgraceful conduct
- Abuse of rank to obtain financial benefit

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

- Substantial cooperation with investigators
- Off duty
- Offender inexperienced in the Service context
- Conduct occurred during initial training
- Offender relatively young (usually under 21)
- Offender inexperienced in the Service context
- Previous good character
- Good professional record
- Previous exemplary service
- Lack of appreciation of seriousness of actions or words
- Absence of malice / "horseplay" gone too far
- Over-zealous attempt to reinforce training
- Provocation
- Genuine remorse



#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Offences Taken into Consideration](#) and [Totality](#) guidelines.

#### Step 7 If imposing a sentence of imprisonment/detention in a Young Offenders Institution or Service detention, consider whether the sentence can be suspended

Consider whether the sentence can be suspended. Courts should have regard to the [Sentencing Council Guideline on the Imposition of Community and Custodial Sentences](#) and the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.3](#) and refer in the sentencing remarks to the factors therein upon which their decision is based.

#### Step 8 If the offender is not to be dismissed and holds rank, consider reduction in rank/distrating or, if an officer, forfeiture of seniority

Determine whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant reduction in rank/distrating or forfeiture of seniority.

#### Step 9 Compensation Orders and ancillary orders

In all cases the Court should consider whether to make a Service Compensation Order and/or other orders such as a Service Restraining Order, Driving Disqualification Order or Sexual Harm Prevention Order. The Court should give reasons for not making a Service Compensation Order in an appropriate case. Further detailed information can be found in the [Guidance on Sentencing in the Service Courts Part 1 – General Principles at section 4.16](#) et seq.



[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may have to vary the order on the application of the defendant, or anyone else, such as the probation service, and the consequence of not paying a fine, if one has been imposed ([section 252\(1\)\(b\) Armed Forces Act 2006](#)).

When explaining the court's reasons for sentence, the Judge Advocate should explain whether there is any departure from the Sentencing Council guidelines and state what features of Service life or of the Service disciplinary system justifies any departure.

The sentencing remarks should indicate the relevant starting point and range and set out the adjustments made to reflect the aggravating and mitigating circumstances and identify any Service features of the case which cause the court to depart from the Guidelines under [section 259\(2\) Armed Forces Act 2006](#). The sentencing remarks must indicate the amount of credit given for any plea of guilty. Victim personal statements may merit a brief mention but reports only need to be referred to if they are essential to an understanding of the court's decision.

### Relevant Reference Material (from [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#))

[Requirement for pre-sentence reports or medical reports](#)

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## Guidance on Sentencing in the Service Courts Part 3 Service Disciplinary Offences

### Disgraceful conduct of a cruel or indecent kind

**Effective from:** 01 June 2023

#### [Section 23 Armed Forces Act 2006](#)

Maximum: 2 years' imprisonment

Triable by the Court Martial or at a Summary Hearing

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This offence is not recordable on the Police National Computer

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

#### Applicability

This offence can only be committed by a person subject to Service Law. Therefore this guideline only applies in respect of offenders who are persons subject to Service Law (PSSL) or were so at the time of the offence.

[Section 237\(1\) Armed Forces Act 2006](#) requires Service Courts to have regard to the following purposes of sentencing:

- the punishment of offenders;
- the maintenance of discipline;
- the reduction of Service offences and other crime (including reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

More than one purpose might be relevant and the importance of each must be weighed against the offence and offender characteristics when determining sentence.

Further detailed guidance on the sentencing process and available sentences can be found in [Guidance on Sentencing in the Service Courts Part 1 – General Principles](#). This includes the relevant [factors to consider when deciding whether to impose a sentence of imprisonment, Service detention or a Service Community Order](#).



The object of this offence is to preserve proper standards of decency within the Services, and to prevent personnel from bringing the Services into disrepute by publicly or openly behaving in an indecent manner or with cruelty including to animals. Conduct charged under this section may also include an element of abuse of rank or superior position.

In all cases of Culpability A, the Court must consider dismissal in addition to the sentences recommended above.

In all other cases, the Court should consider whether, if the offender is an officer or non-commissioned officer, the offender should be disgraced / reduced in rank or lose seniority.

In minor cases involving Service personnel at the lowest rate/rank, the Court should consider imposing a Service Supervision and Punishment Order (SSPO) instead of a fine or short period of Service detention.

### Dismissal from His Majesty's Service

The appropriate stage to consider the issue of dismissal will depend on the circumstances of the case. In some cases, it will be clear from the outset that dismissal is inevitable; in others, it will have to be considered throughout the sentencing process. At whatever stage dismissal is considered, the court should determine whether the sentence imposed requires dismissal (e.g. a Service Community Order) or whether the offence or the combination of the offence and one or more offences associated with it is serious enough to warrant such a sentence. Service Courts should also consider the guidance on dismissal in the [Guidance on Sentencing in the Service Courts Part 1 - General Principles 4.9](#) and at [Annex A of Part 1](#).

### Step 1 Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

#### Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

##### Culpability A

- Intentional cruel or indecent act
- Persistent activity
- Cruel or indecent act involved actual or threat of violence to any person or animal

##### Culpability B

- Behaviour falling between A and C

##### Culpability C

- Reckless cruel or indecent act
- Single instance



## Harm

The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

### Category 1

- Act causes injury to a person or animal
- Behaviour causes very serious harm or distress to others
- Behaviour has a significant deleterious effect on discipline and/or unit cohesion
- Behaviour endangers the safe performance of a duty

### Category 2

- Cases falling between categories 1 and 3

### Category 3

- Behaviour causes little or no harm or distress

## Step 2 Starting point and category range

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 months' imprisonment	Starting point 6 months' imprisonment	Starting point Service Community Order (High) / 30 weeks' service detention
	Category range 12 months' service detention to 2 years' imprisonment	Category range Service Community Order (High) / 30 weeks' service detention to 12 months' imprisonment	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment
Category 2	Starting point Service Community Order (High) / 30 weeks' service detention	Starting point 28 days' service detention	Starting point 28 days' pay fine
	Category range Service Community Order (low) / 10 weeks' detention to 6 months' imprisonment	Category range 14 days' pay fine to Service Community Order (Medium) / 20 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention
Category 3	Starting point Service Community Order (Low) / 10 weeks' service detention	Starting point 28 days' pay fine	Starting point 14 days' pay fine
	Category range 28 days' pay fine to Service Community Order (High) / 30 weeks' service detention	Category range 7 days' pay fine to 28 days' service detention	Category range 4 days' to 28 days' pay fine





### Step 3 Aggravating and mitigating factors

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

(Factors are not listed in any particular order and are not exhaustive)

- Previous convictions/poor disciplinary record
- Previous similar offences
- Common offence in ship/unit (this should be supported by evidence)
- Offence motivated by prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability, and age)
- Deliberate targeting of victim
- Victim carrying out duties
- Premeditation
- Offence occurred during an operational environment/ship at sea
- Offender in position of responsibility or trust
- Offender under the influence of alcohol or drugs at the time of the offence
- Offence took place in the public eye and the offender was clearly identifiable as a Service person
- Offence took place during an initiation ceremony
- Offence took place in victim's room, cabin, or bunk space
- Warnings as to appropriate procedures or behaviour were ignored
- Physical or severe mental abuse
- Mental or physical injury to victim or harm to victim's career
- Offence committed against animals in the care of the offender
- Abuse of trainees in initial training

#### Factors reducing seriousness or reflecting personal mitigation

(Factors are not listed in any particular order and are not exhaustive)

- Substantial cooperation with investigators
- Off duty
- Offender inexperienced in the Service context
- Conduct occurred during initial training
- Offender relatively young (usually under 21)
- Offender inexperienced in the Service context
- Previous good character
- Good professional record
- Previous exemplary service
- Lack of appreciation of seriousness of actions or words
- Absence of malice / "horseplay" gone too far
- Over-zealous attempt to reinforce training
- Provocation
- Ignorance of proper animal care
- Genuine remorse



#### Step 4 Consider any factors which indicate a reduction for assistance to the prosecution

#### Step 5 Reduction for guilty pleas

[Section 239 Armed Forces Act 2006](#) requires the court to take into account the stage in the proceedings at which the guilty plea was indicated and the circumstances in which that indication was given. For sentences based on numerical values, such as lengths of custody or amounts of fines, the level of reduction is a proportion of the total sentence which would otherwise be imposed, with the proportion being on a sliding scale depending upon the stage in the proceedings at which the guilty plea was entered or indicated. The first reasonable opportunity for a guilty plea to be entered or indicated in the Service Courts is the Plea and Trial Preparation Hearing. The Service Courts apply the guidance in the [Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea](#). For non-numerical sentences, this approach has no applicability but it is important to apply appropriate credit for a guilty plea (for example by deciding not to dismiss, or by imposing fewer steps in reduction of rank or by suspending a sentence).

#### Step 6 Totality principle

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#### Step 10 Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence. Equally, the Court Martial is obliged when passing sentence to state in open court in ordinary language and in general terms its reasons for deciding on the sentence passed, and to explain the effects of the sentence to the offender in ordinary language ([section 252\(1\)\(a\) Armed Forces Act 2006](#)). The court must also tell the defendant, in ordinary language, what the effect of the sentence will be, the effect of non-compliance with any order of the court, any power the court may



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