



ANNUAL REPORT OF THE OFFICE OF THE JUDGE ADVOCATE GENERAL

2022 – 2023

Introduction

This year has been the first since the pandemic which could be called a normal operating period for the Service Courts. Judge Advocates, court staff and court users have appreciated a return to business as usual. That said, there have been some important developments in the operation of the courts which are described within this report.

As each year passes, my aim is for the Service Courts to provide an improved level of service to the Armed Forces, thereby fulfilling their key role of supporting operational effectiveness and the maintenance of discipline through the efficient and fair administration of justice. I am confident we have achieved that this year, in no small measure due to the continued dedication of the staff of the Military Court Service and colleagues across the Service Justice System, who have worked together to deliver some key projects on time and within budget.

At the end of this year, we say farewell to Judge Alastair McGrigor, who has served as an Assistant Judge Advocate General since 2005, following a successful career in the Royal Air Force. His contribution to Service Justice has been considerable and I would like to thank him publicly for his ever-willing approach to his work and to wish him a very happy and healthy retirement. Judge Darren Reed, who was appointed as an Assistant Judge Advocate General in 2021, leaves us to become a Circuit Judge. I congratulate him on his appointment and am grateful for all his work and support, particularly in relation to revised sentencing guidance.

I welcome feedback on this report. Please send any observations to my Office at OJAG@judiciary.uk.



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

1 December 2023

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1. The Service Courts

The Service Courts within the jurisdiction of the Judge Advocate General are the Court Martial, Summary Appeal Court and Service Civilian Court.

The Summary Appeal Court provides a direct route to appeal against finding (conviction) or punishment for anyone who has been dealt with in the summary justice system, where proceedings are held before a Commanding Officer or other nominated subordinate commander. The court comprises a Judge Advocate and two serving members, and closely resembles the appellate jurisdiction of the Crown Court. Legal Aid is available for appellants, and lawyers in the Service Prosecution Authority respond to the appeal on behalf of the Crown. Leave to appeal is not required – the right to appeal, providing it is lodged in time, is unfettered. Even an appellant who has admitted guilt in summary proceedings may still appeal the finding against them.

Appeals are also brought on behalf of individual Service personnel by organisations in the Royal Navy, Army, and Royal Air Force, each of which have a statutory duty to review all summary cases and ensure the charge(s), procedure and, if relevant, punishment imposed are lawful. The diligent and detailed work of these organisations often goes unseen but provides important safeguards against error and injustice in the summary system.

The caseload of the Summary Appeal Court has remained consistent during the reporting period. Legislation has recently been introduced to implement a “slip rule” for the correction of simple errors in the summary system, which will reduce the workload for the Summary Appeal Court and free up valuable staff and court time.

The Service Civilian Court provides the equivalent of a magistrates’ court for civilian personnel serving with the armed forces overseas, either as contractors, MOD employees or accompanying family members. During this year, the court has sat in Cyprus and Germany.

The Court Martial has jurisdiction to try offences committed anywhere in the world. Any Service person charged with any offence has the right to elect trial in the Court Martial, and more serious cases are sent directly to the court. The court can deal with the full range of criminal cases, as well as disciplinary offences such as disobeying orders, desertion etc. It can impose almost all civilian sentences including imprisonment, and sentences such as detention and reduction in rank. Legal aid to assist with the cost of legal representation is available from the Armed Forces Criminal Legal Aid Authority, which operates a non-statutory scheme based on the equivalent in the civilian courts. Cases are prosecuted by lawyers from the independent Service Prosecuting Authority. The court sits predominantly in the

purpose-built Military Court Centres in Catterick in North Yorkshire and Bulford in Wiltshire, but it is a portable court and has sat this year in Germany and Cyprus.

Protocol Between the Director of Public Prosecutions and the Director of Service Prosecutions Regarding the Exercise of Criminal Jurisdiction in England and Wales

On 25 October 2023 a [revised protocol](#) was signed by the Directors of Public and Service Prosecutions. It sets out the factors which will be considered when determining whether a case will be heard in the civilian or service justice system and introduces the need for consultation between the Service Prosecuting Authority and the Crown Prosecution Service in all cases of murder, manslaughter, rape, sexual assault, domestic or child abuse and where the defendant is under 18. In the unlikely event of disagreement over jurisdiction, the final determination will be made by the Director of Public Prosecutions.

In order for the Protocol to be as effective as possible, it is now necessary for the Service and Home Office police forces to reach similar agreements.

2. Change in Composition of the Board

This year there were three changes to the law relating to the composition of the Board (equivalent of the jury). Firstly, there should be at least one man and one woman on every board in every case. Secondly, for cases involving offences which carry a maximum sentence of more than 2 years' imprisonment, a Board of 6 people is required. For other offences, a Board of 3 is nominated. In addition, the law relating to majority verdicts has been changed. A 6-person Board may now return a verdict on which at least 5 are agreed, rather than a simple majority; and a 3-person Board continues to be able to return a 2:1 majority verdict.

Some concerns were expressed about the effect of "hung" Boards which could not reach a verdict on which at least 5 agreed, but there have been only two such cases in the reporting year.

The third change is the introduction of Board members of the rank of Chief Petty Officer, Staff Sergeant, or Flight Sergeant, thereby widening the range of ranks and experience on the Board.

3. Pilot of tri-Service Boards

Prior to the current pilot of tri-Service boards, a Service person was generally tried by a Board comprising members from their own Service. Following significant debate, a 6-month pilot scheme using tri-Service boards was launched in October 2023. Each Service is equally represented on the Board. This allows cases to be listed at the earliest opportunity, rather than waiting for a single-Service Board to be available, meaning that cases are concluded more quickly with advantages for the personnel involved and their units. Having seen tri-Service boards in action over the last two months, I consider they make a significant improvement to the administration of justice in the Court Martial and am hopeful that, once the results of the pilot scheme have been considered, they will become business as usual.

4. The Military Court Centres

The two Military Court Centres continue to provide an excellent level of service to all court users although, looking ahead to the next reporting year, staffing issues, exacerbated by a freeze on recruiting, will impact on the ability of the courts to operate at full capacity until Easter.

The quality of the facilities at both court centres remains very high. The courts are well maintained, and equipment updated appropriately.

5. Public and Media Access under section 85A Courts Act 2003

Public and media access to the courts has been enhanced through the introduction of a process to allow proceedings to be viewed over an internet video link. Application to view proceedings remotely can now be made via the Military Court Service website. Applications will be considered by the judge advocate presiding over the case(s) concerned and will be granted, subject to strict rules regarding the viewing and recording of any proceedings. A wide variety of people have viewed proceedings through this process.

6. Case Backlog and Listing Targets

There is now no backlog of cases resulting from the pandemic. I have set target times for cases involving sexual offences to be tried, which have resulted in almost all cases involving allegations of offences of a sexual nature, being heard in the region of 6 months after the case is directed for trial by the Service Prosecuting

Authority (the equivalent of charge). All other cases are generally heard within 8 months of direction.

7. Case Management Systems

Following a rapid and enforced move towards digitisation during the pandemic, a variety of options for a modern digital case management system in the Service courts were explored. It was not possible to overcome compatibility, cost and data-protection issues relating to the HMCTS Common Platform system, and a contract was placed for Thompson Reuters' Case Center system, which is the successor to the Caselines system still in use in the Crown Court. The new system was introduced in September, has been welcomed by all users, and is working very well.

A multi-agency project such as this, involving the judiciary, Military Court Service, Service Prosecuting Authority, and defence legal representatives as well as the Thompson Reuters team, is inherently complex. It was introduced on time and within budget and has transformed the way in which the courts are administered. I would like to thank those from each of the organisations I have mentioned who have worked tirelessly and cooperatively to bring this project to a successful conclusion. I want to single out Mr Matthew Bolt, a barrister, and Ms Amanda Sheppard, a solicitor, both of whom gave up a considerable amount of their time, without any payment and when they could have been in court, in order to ensure the system provides the best service to defence legal representatives. It is this spirit of cooperation which enables the Service Justice System to operate as well as it does.

8. Complainants, Witnesses and Special Measures in Court

The Service Justice System has continued to focus on ways in which participants in the court process can be best supported. The recently established Victim and Witness Care Unit (VWCU) now provides a bespoke hub for the support of complainants in cases dealt with by the Defence Serious Crime Command (DSCC), which includes all sexual offences. The VWCU has been designed to cater for the specific and individual needs of Service personnel. The Victim Liaison Officers in the VWCU, who are all independent civilians with a wide range of experience in justice and witness care, are now the point of contact for all aspects of witness care and liaise with civilian and military agencies as appropriate. They provide support to personnel serving across the UK and abroad, predominantly by phone and over video link, from the time the case is referred to the DSCC, through investigation and the trial process. Vulnerable witnesses in the summary system are also supported. I have visited the Unit and have been most impressed by the dedication and expertise

of the staff, the way in which this new system is working and the quality of support which is tailored for and understands the Service environment.

The Military Court Centres provide the full range of special measures for complainants. With the recent introduction of new technology, pre-recorded cross-examination of a complainant's evidence is now possible, although formal training is scheduled for February next year. The Court Centres are designed to ensure that complainants and vulnerable witnesses can enter court discretely, and separate, full equipped witness care suites and video link facilities are available.

I will continue to work with all stakeholders in the Service Justice System and interested parties outside it to ensure the best level of care and support is provided for all those who have to attend court.

9. Annual Statistics

The Ministry of Defence publishes annual statistics on murder, manslaughter and sexual offences in the armed forces which can be viewed [here](#). No offences of murder or manslaughter were tried in 2022. In relation to sexual offences, the statistics can be summarised as follows:

- During 2022 the Service Police referred 65% of concluded investigations into sexual offences to the Service Prosecuting Authority (SPA). 35% did not lead to a referral.
- The SPA brought charges in 52% of concluded cases. 35% of cases were non-directed, 7% were referred to the suspect's Commanding Officer for action in the summary system, and in 6% of cases an alternative non-sexual offence charge was preferred.
- 119 defendants appeared before the Court Martial for sexual offences and indecent images of children offences. Of those 119 defendants, 45 (38%) were convicted of those offences. The defendants faced 210 charges for sexual offences and indecent images of children offences. Of these 210 charges, 86 (41%) resulted in guilty verdicts and 124 (59%) resulted in not guilty verdicts.

A more detailed breakdown is available in the tables accompanying the online statistics, together with appropriate statistical caveats. It should also be noted that there are differences in the way in which the MOD and civilian statistics are compiled, in particular in relation to convictions.

10. The Armed Forces Act 2026

An Armed Forces Act is passed in Parliament every five years and the next Act must achieve Royal Assent by December 2026, 17 years after the coming into force of the 2006 Act, which transformed the Service Justice System. Preparatory work is already well underway within the Ministry of Defence on the Armed Forces Bill 2026. Whilst the 2006 Act has operated very well, it is important that legislative space and parliamentary time can be found to make the necessary improvements to law and procedure.

11. Commonwealth Issues

I have continued to work with the Commonwealth Secretariat on a project to assist in the improvement and modernisation of military justice. The project is currently focusing on drafting the fundamental principles for a fair military justice system, and drawing up model laws from which member countries can draw when they seek up update their legislation. Good progress has been made and I hope that public announcements on progress will follow soon.

12. Invitation to Attend Court

There is much positive news in this report, and I am confident that justice is being delivered in the Service Courts. I readily acknowledge that improvements can be made, and I am always pleased to receive suggestions and guidance, not least through feedback to this report. I also acknowledge that there are those who consider that the jurisdiction of the Service Courts to try serious sexual offences, manslaughter and murder should be removed to the Crown Court.

The Service Justice System, including the Service Courts, exists to deliver justice in the context of Service life. The Service police, and particularly the DSCC, work closely with independent military and civilian prosecutors at the SPA, to investigate and prosecute cases in which witnesses are often dispersed around the country and across the world, including on and under the sea. Service prosecutors understand the importance of context in their prosecutorial decisions. What might be regarded as relatively low-level sexual assaults in a civilian context are considered as more serious in military life, not least because of the effect they can have on morale and discipline. In the Court Martial, cases are listed quickly, within identified targets. Boards bring their knowledge and understanding of Service life to bear on the evidence they hear. The support and care provided to witnesses by the VWCU is excellent.

I would encourage anyone with an interest in military justice to come to court and watch a trial, so they can make a fully informed assessment of the way in which justice is administered in the Service Courts.

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