



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 3

Directing the Board on their Duties and Responsibilities – the *Morris* Direction

- 1.1 The Court Martial is an independent tribunal established by law. Following the case of *Morris v United Kingdom* in the European Court of Human Rights [2002] Crim LR 494, (2002) 34 EHRR 52, [2002] ECHR 162, a number of safeguards were introduced to confirm and demonstrate that independence. These are incorporated into what is known as the “*Morris* Direction”.
- 1.2 A direction containing all elements of the *Morris* Direction should be given at the start of each trial, whether or not the members have heard it before.
- 1.3 A shortened version is appropriate prior to a sentencing hearing. When all members of a sentencing board have been given the full direction in previous cases, the judge may simply check that the direction is fresh in their mind and remind them that they can ask for further guidance if necessary.
- 1.4 The direction is also appropriate for the Summary Appeal Court, where the members must also be reminded that the appeal is a rehearing and the appeal must be looked at entirely afresh, without being influenced by the fact that the Commanding Officer took a particular view.
- 1.5 **The following topics should be included in the full *Morris* Direction:**
 - i. The Court Martial and the Summary Appeal Court Guidance - Volume 2: Guide for Court Members. The board should be reminded of the Guide and confirm that they have read it.
 - ii. The differing functions [not in the SAC or Newton hearings]. The judge will give binding directions on the law which Board members must follow; the Board members are the sole judges of fact. It is the Board members’ task to decide which evidence is truthful and reliable and it is their collective view of the evidence which will determine their verdict.
 - iii. Discussing the case.

- a. They must only discuss the evidence when they are in their retiring room, all of them are present and they cannot be overheard.
 - b. They must not discuss the case with anyone outside their number either face to face, on the telephone or on any social media platform. It is their view of the evidence that matters, and any discussion would risk, consciously or not, their being influenced by the opinion of others.
 - c. If anyone tries to talk to them about the case or influence them in any way, stop them straight away and report the matter to the court staff.
 - d. If anyone suggests that they should rush their duties to attend to other tasks, they should report that to the court staff.
 - e. They must have no contact with the prosecution or defence or any witness or potential witness, nor with the judge advocate once they have been sworn in.
- iv. Research/seeking further evidence. The prosecution and defence will decide what evidence should be put before them during the case. Board members must not seek any information about any aspect of the case on the internet or elsewhere. To do so would be contrary to their oath/affirmation and be a potential offence.
 - v. Visiting the location. They must not visit the scene except on a view arranged by the court.
 - vi. No reporting. Board members' independence is guaranteed, in part, by the fact that the Queen's Regulations specify that they cannot be reported on, formally or informally, for any decision they take on sentence or finding. KR 75, 6.111 states "The performance of a court member shall not be considered or evaluated in the preparation of any personal report, assessment or other document used in whole or in part for the purpose of determining whether a member is qualified to be promoted or is qualified or suited for particular appointments or training."
 - vii. Other duties. Board members may undertake other work outside court hours, but their main duty is trying the case and that takes priority. Until they retire to consider their verdict they can speak with their units, but not about the case.
 - viii. After retirement to consider their verdict they should not separate (except eg for a comfort break) until they reach a verdict, or the judge advocate otherwise directs. If they do separate for a comfort break, they should stop deliberating until they are all together again. They should have no contact with anyone by telephone, save for making administrative arrangements (e.g., to explain to family they will be late home). During any such conversation they must not discuss the case.

- ix. Questions. If Board members have any questions about law, procedure or evidence they must be addressed by the judge advocate in open court and in the presence of all parties. No advice should be sought elsewhere, and they should not speak to the Court Staff about the case. If they do wish to ask a question it should be written down and passed through the court officer or court orderly to the judge advocate who will answer it in open court. All questions are likely to be shown to the legal representatives.
- x. Confidentiality of deliberations. Board members undertake in the oath or affirmation not to disclose their deliberations. After all the cases are over, they can talk about what happened in open court, but they cannot disclose anything about their deliberations in reaching their verdict or discussions on sentence if the defendant is convicted, unless required to do so in due course of law. They may be directed by the judge advocate that any information which might lead to the identification of a witness should not be disclosed. They should be told that disregarding this or other directions may amount to an offence.
- xi. Other general matters (refer also to Crown Court Compendium).
- Making notes - suggest that they are only brief reminders as the judge advocate takes a full note and reminds them of it during his summing up. It is more important for Board members to watch the witnesses when they give their evidence so that they can assess whether or not they are telling the truth
 - Specific matters such as video equipment, special measures etc
 - Times of sitting, breaks etc
 - Communicating only via the court officer or the court orderly