



## JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 5

### Evidence of Character and Use of Annual Professional Reports (OJAR / SJAR) in Trials and Sentencing Hearings

#### Trial

- 1.1 Details of a defendant's previous convictions/cautions or disciplinary entries are provided by the prosecution to the court and defence before the start of a trial. If such information has not been provided, or it is out of date, the defence must request it from the prosecution and check the information provided before the case commences. Defence advocates should not assume their clients are of good character; failure to check the accurate position may prejudice the defendant and lead to a board being discharged. A wasted costs order will be considered in such circumstances.
- 1.2 If a defendant has previous convictions or disciplinary entries, defence advocates should take care when adducing evidence of a defendant's military service during a trial. Evidence that they have served for many years and participated in operational campaigns may create a false impression and allow application to be made to adduce their bad character. If in doubt, guidance should be sought from the judge advocate.
- 1.3 Evidence of a defendant's good character can be given during the trial proceedings as part of the defence case, or during sentencing proceedings as part of mitigation.
- 1.4 During a trial the way in which a person performs their duties is generally not relevant to an issue which a Board has to decide, except in cases such as of negligent performance of a duty. Evidence as to a person's personal qualities (e.g. honesty, integrity, conduct towards others) may be relevant, and is generally given by character witnesses either orally in court or in written statements which, with the agreement of the prosecution and judge advocate, are read out by the defence. Written character statements must be shown to the prosecution and judge advocate in advance and should be edited to remove irrelevant references to professional performance. Annual reports are rarely put before the court as character evidence during trial since they inevitably contain material relating to professional performance. If the defence wish to put annual reports before the court,

the leave of the judge advocate should be sought in advance. Large volumes of annual reports are very unlikely ever to be relevant. If an annual professional report is given to the board the judge advocate may direct them that references to professional performance are not relevant and should be ignored.

### **Sentencing Hearings**

- 2.1 Annual professional reports may be used in mitigation. If the defence do not intend to adduce such reports as part of their plea in mitigation, the judge may check with the defence advocate that they are aware of the reports and ask whether they wish to present them to the court. If reports are not produced and the issue is raised during the deliberations on sentence, the judge advocate should remind the board that they must not speculate about their contents.
- 2.2 Where the defence wish to reply on annual reports or other documents, the responsibility for producing sufficient copies for the judge advocate and board members lies with the defence. The court staff should not be asked to provide copies. Copies should be provided in advance of the hearing so that the judge advocate and board members can read them before coming into court. Defence advocates should not present the court with bundles of reports and references during the sentencing hearing.
- 2.3 Judge advocates should not order annual reports to be produced except in exceptional circumstances.