



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 2

Progression of a Case through the Court Martial

Introduction

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

Role of the Service Prosecuting Authority (SPA)

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

Role of Commanding Officer

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

Role of Defendant's Assisting Officer

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

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

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

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

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

Legal Aid

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

Role of the Military Court Service

- 6.1 The Military Court Service will list the case for Plea and Trial Preparation Hearing (PTPH) within 42 days of receiving the case papers from the SPA. PTPHs are generally held before the Resident Judge in the Military Court Centres at Catterick (North Yorkshire) and Bulford (Wiltshire). Attendance by all parties is by video link unless the court orders otherwise, usually in particularly serious or complex cases, cases with more than 2 defendants or an unrepresented defendant. It is a court hearing, parties should robe as appropriate and Service personnel should appear in Service Dress. If a party considers that a hearing in person is required, they should make a suitable application to the court.
- 6.2 The Military Court Service is now using the Thompson Reuters Case Center digital system for case management. Further information, registration and login details can be found on the Military Court Service [website](#). Prior to the PTPH all parties should complete the Case Management Form on the Case Center system. The parties are expected to have discussed the case prior to the PTPH.

Role of the Court

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

- 8.1 In the event of a Not Guilty plea, the Judge Advocate will consider witness requirements, order “Stage Directions” to ensure that the case progresses to trial and complete the Case Management Form. A trial date will be fixed. The form will be saved to the Case Center system to enable the parties to comply with case progressions directions. Compliance will be monitored by the Military Court Service and the appropriate judge notified of any non-compliance.

Disclosure Management Document (DMD)

- 8.2 A Disclosure Management Document (DMD) is a disclosable document setting out the Prosecution’s intended course of action in respect of relevant non-sensitive material, including digital/electronic material and material held by third parties. It gives the Court a clear understanding of the prosecution’s intended approach and the defence an opportunity to raise objections or request additional lines of enquiry. It also gives the Court an opportunity to pro-actively manage cases by, eg, giving directions as to material the prosecution must make available or to set deadlines for defence disclosure applications. It therefore reduces the risk of cases being de-railed before trial by late disclosure requests.

Digital electronic material.

- 8.3 The prosecution will set out what material has or is intended to be obtained and from where in respect of electronic devices, such as phones or laptops. Where required, the DMD will define search terms, search parameters, methods of extraction/examination and other measures to ensure investigations are proportionate and focussed yet comprehensive. This section also has provision for the prosecution to deal with CCTV or other multi-media evidence/material.

Third party material.

- 8.4 This section allows the prosecution to set out which third parties it believes may hold relevant non-sensitive material and why, and what steps have or will be taken to obtain this material. Finally, the document makes clear that the defence have a critical role in ensuring the prosecution are directed toward disclosable material and allows the prosecution to set a proposed deadline for defence representations/applications.

Final Witness Table

- 8.5 A Final Witness Table is used to provide the Court and Prosecution with a complete, finalised schedule of all witnesses the Defence intends to rely upon, ensuring efficient case management and avoiding unnecessary delay during trial. It sets out each witness’s identity and essential details such as name, date of birth, address, any

special measures required, and estimated examination times and must be served by the deadlines set at the Plea and Trial Preparation Hearing (PTPH) or by the date ordered for the Defence Statement. The table also lists any prosecution witnesses whom the Defence requires to attend for cross-examination, along with clear time estimates so that the Judge Advocate can determine accurate trial length and structure. Its purpose is to assist the court in controlling the proceedings, managing witness attendance, and ensuring examinations are limited to the estimates provided unless otherwise directed.

- 8.6 MCS will chase parties for completion 3 days before the judge as directed completion.
- 8.7 The parties will complete Trial Readiness Forms a month before trial, or as otherwise directed. If there are still problems relating to trial readiness, a further hearing will be held. The trial will then take place. Parties and witnesses will attend in person unless application is made for a witness to attend by video link. Law and practice generally reflects that of the Crown Court. The Board has the same role as a jury in determining verdict.
- 8.8 In the event of a Guilty plea the case will be adjourned for sentence at the first opportunity. If a Pre-Sentence Report (PSR) is required, a standdown report may be available and the case may be able to proceed. An adjournment may be required for a written PSR to be prepared. The Probation Service will not prepare standdown reports in sexual cases.
- 8.9 At the sentencing hearing the Judge Advocate will consider sentence together with three Board members. Having heard submissions from the Prosecution and mitigation from the Defence and considered any references or other reports, the Judge Advocate and Board will retire together to decide upon sentence. The Judge Advocate has an equal vote as a Board member unless the vote is split, in which case the Judge Advocate has the casting vote. The Judge Advocate and Board return to court, where the Judge will give reasons for sentence. The President of the Board formally passes sentence.
- 8.10 In the event of a Guilty verdict at trial, the procedure is the same. All the Board members who sat on the trial will sit with the Judge Advocate to determine sentence.

Further Guidance

- 9.1 Further guidance on procedure in the Service Courts can be found

[Better Case Management in the Court Martial BCM\(CM\) 23](#)

Further guidance on sentencing can be found in the [Judge Advocate General's Guidance on sentencing in the Service Courts Version 7](#).