



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 4

Directing the Board on Unanimity and Majority Verdicts

1.1 The law relating to unanimous and majority verdicts differs in the Court Martial from the procedure set out for the Crown Court in the Juries Act 1974. In the Court Martial a majority verdict may be returned without the requirement for a judge advocate to direct a Board that they must return a unanimous verdict, or to provide further directions on a majority verdict after a period of time has elapsed. Accordingly, the suggested directions as to unanimity in the Crown Court Compendium are not applicable to the Court Martial.

1.2 Judge advocates should, however, draw the attention of the board members to the desirability of reaching a unanimous verdict if possible. The following form of words (or something similar) should therefore be adopted before the Board retires to deliberate on their verdict:

“You must remember that each of you has an equal vote and voice when you as a Board decide the verdict in this case. You must each exercise your unfettered duty to act in accordance with the oath or affirmation which you took at the start of the case. You must consider all the evidence in the case, follow the directions as to the law that I have given you, take into account the arguments in the speeches you have heard, and of course listen to the views of the other members of the board expressed during your discussions.

It is obviously preferable that you should come to a unanimous decision on your verdict(s). However in the Court Martial the law permits you to decide whether the defendant is guilty or not guilty by a majority.

[For a Board of 3] You may return a verdict, guilty or not guilty, on which at least 2 of you are agreed.

[For a Board of 4] You may return a verdict, guilty or not guilty, on which at least 3 of you are agreed.

[For a Board of 5] You may return a verdict, guilty or not guilty, on which at least 4 of you are agreed.

[For a Board of 6] You may return a verdict, guilty or not guilty, on which at least 5 of you are agreed.

Having said that, I cannot emphasise too strongly that you should strive hard to reach a unanimous decision.

By way of analogy, in the Crown Court, a jury must have deliberated for over two hours and ten minutes before a judge can even direct them that a majority verdict may be acceptable and in a jury of 12 a majority verdict is one on which at least 10 of the 12 have agreed. You are not bound by that time limit, but the message is clear: it is only if, after thorough discussion and full consideration of the evidence, you find yourselves unable to reach a unanimous decision in respect of the defendant, that you should consider returning a majority verdict.

Mr/Madam President, when you return to court, I will first ask you if you have reached a verdict on each charge on the Charge Sheet. I will then ask you for your verdict on each charge in turn. I will not ask you whether you are agreed unanimously or by a majority and you should give no indication to that effect, either in court or in any note you may send”.

- 1.3 When the Board indicates it is ready to return a verdict and the proceedings resume, the following procedure should be followed.

JA *Mr/Madam President please answer my first question simply “Yes” or “No”. Have you reached a verdict/verdicts on each charge on which at least 5/4/3/2 of you are agreed?*

Pres Yes (If no, judge deals with the issue as appropriate)

Defendant stands

JA *On Charge 1 do you find the defendant guilty or not guilty?*

Pres Returns appropriate verdict

This procedure continues for all charges. In the light of the judgment of the Court Martial Appeal Court in the case of R v Twaite [2010] EWCA Crim 2973, no enquiry should be made as to whether the verdict was unanimous or by a majority.

- 1.4 In the event that the Board does not reach a verdict on which at least the minimum number are agreed, the judge advocate, at an appropriate time and having discussed the issue with the advocates, will ask the Board to return to court and ask the President:

JA *“Mr/Madam President, has the Board reached a verdict/any verdicts on the charge/charges upon which at least the required majority of 2/3/4/5 are agreed?”*

Pres *“No”*

JA *“I am now going to ask you to retire to consider the following question: Given further time, is there a reasonable prospect of you reaching a verdict/s upon which at least the required majority are agreed?”*

The Board retire to consider and return to court.

JA *“Has the Board reached a verdict/any verdicts on any of the charges upon which at least the required majority of 2/3/4/5 are agreed?”*

Pres "No"

JA *"Is there a reasonable prospect of you reaching a verdict/s upon which at least the required majority are agreed?"*

Pres "No"

The judge advocate may then discharge the Board pursuant to r25(3) AF(CM)R 09 and give the prosecution time to consider whether a retrial is sought. If the President relies "yes", the judge advocate may allow further time for deliberation.