JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 13

CONTEMPT OF SERVICE COURTS AND OFFENCES BY BOARD MEMBERS

1. The provisions for dealing with contempt of court in the Service Courts are set out in the Armed Forces Act 2006 and differ considerably from those in the Crown Court. This Practice Memorandum provides a guide to judges and practitioners, setting out the law and procedure relating to contempt of court in the Service Courts (excepting the Court Martial Appeal Court), and giving some guidance on related offences which may be committed by Board Members. Whilst guidance can be sought from the civilian criminal courts, the Service Justice System deals with contempt in a way which is different in many important respects. Further guidance is available in the Manual of Service Law JSP 830 at Chapter 33.

"Misbehaviour" in Service Courts – non-Board Members

2. The provisions in the Armed Forces Act 2006 sections 309-312 apply in the Court Martial, the Summary Appeal Court and the Service Civilian Court. They apply to

    a. A person who is in the UK, or
    b. A person who is outside the UK but who is subject to Service Law or is a civilian subject to Service discipline[1].

3. The powers to deal with contempt are exercised by the Judge Advocate alone[2].

4. The following specific "misbehaviour" is set out in section 309:

    a. Refusing to take an oath or to make an affirmation when duly required by the Court to do so.
    b. Refusing to answer any question which the Court has lawfully required them to answer.

[1] AFA 06 s309(6)
[2] AFA 06 s312(2)

c. Refusing to produce any document or other thing, when attending or brought before the court, which is in their custody or under their control and which the court has lawfully required them to produce.
d. Intentionally interrupting the Court's proceedings or otherwise misbehaving in Court.
e. Intentionally insulting or intimidating:

(i) any member of the Court while that person is acting as a member, or is going to or returning from Court; or
(ii) any witness or other person whose duty it is to attend Court, while that witness or other person is attending Court, or is going to or returning from Court.

5. When a Judge Advocate suspects that an offence under section 309 has been committed, they may:

a. Deal with the matter immediately, or
b. Deal with the matter before the rising of the Court.

6. If the Judge Advocate decides to deal with it immediately and finds the offender in contempt they can:

a. Commit the offender to Service custody for up to 28 days (only of the offender is subject to Service law) and/or
b. Impose a fine not exceeding Level 4 on the standard scale[3], in instalments if appropriate.

7. The court can order that any committal to Service custody takes effect after any sentence of Service detention either already being served by the offender or imposed by the Court on the same occasion.

8. The court may at any time revoke an order of committal for contempt and, if the person in contempt is in Service custody, order their release. Therefore if, for example, the offender made an appropriate apology to the court or gave an undertaking as to their future behaviour, the Judge Advocate might order the offender's release from custody.

9. If the Judge Advocate decides not to deal with the matter immediately, they can order a Service policeman, an officer of a UK police force or a member of the Court staff to

[3] AFA06 s309(2)

take the offender into Service custody and detain them until the Court next rises, for example either for a break or the end of the working day. Reasonable force may be used to do this, if it is necessary.

10. This may be an effective practical way of dealing with a situation such as when a person interrupts proceedings or otherwise misbehaves in court. The court may order the offender to be detained in Service custody until those proceedings are adjourned for the day or concluded.

11. At the end of that detention, if the Judge Advocate thinks that there should be another hearing to determine the issue, the offender will be released, unless there are substantial grounds to believe that if released, the offender would

    a. fail to attend a further hearing; or
    b. commit a further offence while released; or
    c. interfere with witnesses or obstruct the course of justice,

    in which case the Judge Advocate can give orders for the further detention of the offender in Service Custody for no more than 48 hours from the point when the offender was first detained.

12. The Judge Advocate can also detain the offender for the same period if they are satisfied that they should be kept in Service custody for their own protection, or, if they are under 17, for their own welfare or in their own interests. Further, the Judge Advocate can detain the offender if they are satisfied that it has not been practicable to obtain sufficient information for the purposes of deciding whether the conditions for further detention have been met.

13. Any order for detention will end no later than 48 hours from when the offender was first detained[4].

14. If a person within paragraph 2 above does something, either by act or omission, which is not within the list of "misbehaviour" in section 309, and which would constitute a contempt of court if the proceedings were before a court having power to commit for contempt (for example the Magistrates' or Crown Court), the Judge Advocate may choose not to deal with the offender but rather to certify the offence to another court and have that other court deal with it instead[5]:

[4] AFA06 s310(3)
[5] AFA06 s311(2)

a. If the misbehaviour took place in the UK, that court can be any court of law in that part of the UK which has the power to commit for contempt (remembering that not all courts have that express power).
b. If the misbehaviour took place outside the UK, that court is the High Court in England and Wales.

In either case, the civil court to which the offence is certified can enquire into the matter. After hearing any witnesses against or on behalf of the accused person, and any statement that may be offered in defence, it may deal with the offender in the same way as if the offence had occurred during proceedings before that court.

15. Where the Service court certifies and offence to a civil court, the Service court is not permitted to exercise any powers in respect of that contempt.

16. A specimen letter of certification is at Annex A.

Offences by Board Members, Schedule 2A Armed Forces Act 2006

17. The following offences apply to Board members who have been sworn to try a case and until either proceedings end, or the lay member is discharged by the Judge Advocate. All offences are punishable with up to two years' imprisonment.

<u>Research – paras 2 and 3</u>

18. It is an offence to research[6] the case or to share research[7] with another lay member, though it is not an offence if the person seeking the information needs it for a reason which is not connected with the case.

a. "*Research*" means "*intentionally seeking information*" when the person doing so "*knows or ought reasonably to know that the information is or may be relevant to the case*". Examples include asking a question; searching an electronic database; visiting or inspecting a place or object; conducting an experiment; and asking another person to seek the information.

b. "*Information relevant to the case*" includes information about a person involved in events relevant to the case, the Judge Advocate, any other person involved in the trial whether as a lawyer, witness or otherwise, the law relating to the case, the law of evidence, and Court Martial procedure.

[6] Schedule 2A para 2
[7] Schedule 2A para 3

19. It is also an offence to share information with other lay members which has been illegally obtained in contravention of paragraph 2.

Prohibited Conduct – paragraph 4

20. It is an offence to engage in "*prohibited conduct*", that is "*conduct from which it may reasonably be concluded that the person intends to make a finding on a charge or a decision about a sentence otherwise than on the basis of the evidence presented…*".

Disclosing Information about Members' Deliberations – paragraph 5

21. Subject to exceptions set out below, it is an offence for any person, including the Judge Advocate, intentionally to disclose information about statements made, opinions expressed, arguments advanced or votes cast by lay members of the Court Martial in the course of their deliberations; or to solicit such information. If a person charged with this offence was a member of the Court Martial for the proceedings or was a person subject to service law or a civilian subject to service law at the time the offence was committed, they can be tried by the Court Martial and punished by up to two years imprisonment. Any other person is to be tried on indictment at the Crown Court, with the consent of the Attorney General.

Exceptions

22. Paragraphs 6-8 of the Schedule set out a number of exceptions, and these paragraphs should be consulted when dealing with any case under Paragraph 5. They include the following:

- It is not an offence for a person to disclose information for the purposes of enabling the Court Martial to make a finding on a charge or pass sentence, or in connection with the delivery of findings or sentence.

- It is not an offence for a person to disclose information when giving evidence in proceedings for an offence under paragraph 5. Nor is it an offence for a person to disclose information in the course of taking reasonable steps to prepare for such proceedings.

- It is not an offence for a Judge Advocate to disclose information for the purposes of dealing with proceedings for an offence under paragraph 5 or for the purposes of an investigation by a police force or the Attorney General into whether an offence or contempt of court has been committed by or in relation to a lay member. If someone reasonably believes that a Judge Advocate has made a

disclosure for the purposes of such an investigation, it is not an offence for that person to make disclosures for the purposes of that investigation.

SPECIMEN CERTIFICATION TO CIVILIAN COURT

IN THE COURT MARTIAL SITTING AT BULFORD

CERTIFICATION OF CONTEMPT OF COURT TO CIVIL COURT

ARMED FORCES ACT 2006 SECTION 311

ABLE SEAMAN ANDREW WHITE D123456E[8]

BACKGROUND

1. Leading Seaman JONES was the complainant and key prosecution witness in the prosecution in the Court Martial of Able Seaman WHITE. The alleged offence took place in December 2023. WHITE pleaded not guilty to the charge of assault occasioning actual bodily harm and the case was adjourned for trial in the Court Martial at the Bulford on 30 June 2024.

2. On 12 March 2024 JONES, who had since left the Royal Navy, confirmed he would be attending court.

3. On 17 April 2024 JONES emailed the Military Court Service informing them that he would not be attending the trial because he had work commitments overseas. Further discussions and correspondence revealed he had a contract to undertake security work on ships in Norway.

4. On 24 May 2024 the Service Prosecuting Authority applied for a witness summons for JONES which was issued that day.

5. On 25 May the Summons was served on JONES by Police Scotland police. JONES indicated to the police that he was intending to catch his flight to Tromso on 27 May despite being served with the Summons, and he would not be attending the trial.

6. On 30 June he failed to attend the trial. An application to read his evidence was rejected. The Prosecution offered no evidence and WHITE was acquitted.

[8] All names are fictional

LEGAL PROVISIONS

7. The Court Martial does not have power to issue a warrant following disobedience of a witness summons once the proceedings in question are concluded. The Court Martial has the power pass the matter to the civilian courts by certifying the offence of contempt of court to a civil court (Section 311 Armed Forces Act 2006). The following steps must be considered under that Section:

a. Were the proceedings before a qualifying service court?

Yes. Section 309(5) Armed Forces Act 2006 states that the Court Martial is a qualifying service court, and Section 311(5) refers to that section.

b. Is JONES a person within Section 309(6)?

Yes. He was within the UK at the time he committed the offence of contempt by ignoring the witness summons and boarding his flight leaving Edinburgh Airport for Tromso at 0530 27 May 2024, knowing that this would prevent his attendance at court.

c. Did JONES do an act which would constitute contempt of court before a court having power to commit for contempt?

Yes. A person who without just cause disobeys a witness order or summons is guilt of contempt of court as if it was committed in the face of the court: Section 3 Criminal Procedure (Attendance of Witnesses) Act 1965.

8. Accordingly I certify the offence of contempt of court to the Edinburgh Sheriff's Court and invite the Sheriff's Court to consider this matter. Under Section 311(3) the Sheriff's Court may inquire into the matter and after hearing evidence may deal with Mr JONES in any way in which it could deal with him if the offence had taken place in that court.

Assistant Judge Advocate General

4 July 2024