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Military

Introduction

This section provides information about the position, function and history of the Service Justice System and Judge Advocates. It also contains a brief outline of the legal system which underlies the discipline of the British Armed Forces as well as key contact details and links to important documents.

The material on this page is intended to be an informal guide to the Service Justice System and is not authoritative as to the law. Service law is to be found in the statutes, statutory instruments, regulations, and reports of cases decided by the superior courts; a brief list of some of the relevant statutes is given below.

Historical Background

The conduct of English soldiers was for many centuries regulated by the Court of the High Constable and Earl Marshal. From 1521 onwards, it was the “Court of the Marshal”, and after the standing army had been brought into being in Cromwellian

times the office of Judge Advocate General was created in 1666 to supervise "Courts-martial".

It has been held in continuous succession ever since, being expanded to cover Great Britain, and later the United Kingdom, the Royal Air Force, the Royal Navy, and all British land, air and naval forces overseas. Historically the responsibilities of the Judge Advocate General were very wide and included oversight of both prosecution and defence arrangements as well as the court.

Since 1948, the role has concerned the Court-martial process. From 1661 the office of Judge Advocate of the Fleet (JAF) existed to supervise the Royal Navy Courts-martial system, separately from the JAG. The two historic offices were amalgamated by the Armed Forces Act 2006, with the role of JAF subsumed into JAG. The Armed Forces Act 2006 repealed the three Service Discipline Acts of 1955/57, established a single system of Service law, and created the Court Martial as a standing court. It came into effect on 31 October 2009.

Judiciary

The Judge Advocate General is the Judicial Head of the Service Courts. There is also a Vice-Judge Advocate General (V-JAG) and several Assistant Judge Advocates General (A-JAGs).

All the judges are civilians, appointed from the ranks of experienced barristers or solicitors in the same way as Circuit Judges. When conducting a particular trial, they are formally titled "The Judge Advocate", and out of court they are generally referred to and addressed as "Judge". In court the judges wear legal costume, comprising a bench wig and black gown, with a tippet (sash) in army red with navy blue and air-force blue edges.

All Judge Advocates also sit in the Crown Court. It is also possible for a High Court Judge to be specified to preside in the Court Martial as a Judge Advocate; this is done for exceptionally serious or unprecedented cases, just as in the Crown Court.

More information about the Judge Advocates and the role of the JAG can be found here:

Judge Advocate General (<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/judge-advocate-general/>)

Service Justice System

The main elements of the Service Justice System are:

The Court Martial

The Court Martial is for many the most familiar aspect of the SJS. The Court Martial has global jurisdiction over all service personnel and civilians subject to service discipline (e.g. family members, civilian contractors, teachers, administrative staff when serving abroad) and hears all types of criminal case including murder and serious sexual offences.

Serious matters, including both offences against the civilian criminal law and specifically military disciplinary offences, may be tried in the Court Martial, which is a standing court. A Judge Advocate arraigns each defendant and conducts the trial which is broadly similar to a civilian Crown Court trial in all cases, even when dealing with a minor disciplinary or criminal offence.

The jury, known as the board, comprises between three and seven commissioned officers or Warrant Officers depending on the seriousness of the case. Having listened to the Judge Advocate's directions on the law and summary of the evidence, they are responsible for finding defendants guilty or not guilty.

Following a finding or plea of guilty, the board joins the Judge Advocate to decide on sentence. The Court Martial has the same sentencing powers in relation to imprisonment as a Crown Court, including life imprisonment. Most of the sentencing powers in the Criminal Justice Act 2003 are also available in the Court Martial.

The Court Martial mirrors the Crown Court in practice, procedure and sentencing powers with important additional features:

- A large number of additional Service offences (some of which carry life imprisonment) are tried in the Court Martial;
- Trials are conducted with smaller Boards (juries) of usually 3 or 5 lay members, depending on the gravity of the case, and up to 7 members in long or very serious cases. Boards in cases involving serving personnel are made up of serving military personnel;
- Trials involving civilian defendants usually require a civilian board of up to 7 civilian members. With the exception of the size of the Board, procedure during trial and sentence is identical to the Crown Court;
- Judge Advocates direct lay members in detail at the start of each trial in relation to their duties and responsibilities (as per a jury) but also specifically in relation to the importance of the independence of their role from any chain of command or other Service influence and the need for all lay members to have an equal voice and vote regardless of disparity in rank. This is required to ensure the Court remains compliant with Article 6 ECHR;
- Sentencing proceedings for service personnel convicted at trial or, in the event of a guilty plea are conducted together with the Board. The Judge Advocate (JA) directs the Board in relation to sentencing guidelines and principles, and has a casting vote;
- The Court Martial can pass the full range of custodial and non-custodial sentences available in the Crown Court (with the exception of POCA orders and disqualification from driving) and an additional range of sentences available under the Armed Forces Act 2006, including dismissal from Her Majesty's Service, detention for up to two years in military detention and reduction in rank. Almost all defendants in the Court Martial are serving military personnel of good character and the consequences of these sentences upon them and their families can be very significant. In every sentencing hearing, however serious, the lay board members of varying ranks require very careful direction, guidance and management. Sentencing hearings generally take over an hour;
- Appeal from the Court Martial, even for the most minor summary offences, is to the Court Martial Appeal Court (civilian Court of Appeal reconstituted for the CM);
- A significant number of hearings are conducted with prosecution and defence advocates and defendants on video link.

Summary Hearings by a Commanding Officer

Minor disciplinary and criminal matters are dealt with summarily by the Commanding Officer of the accused. The vast majority of matters are disposed of in this way, which forms one of the foundations of the disciplinary system of the armed forces. A Commanding Officer has powers of punishment up to 28 days' detention, which may be extended to 90 days' detention with approval from Higher Authority. In all cases an accused person may elect for trial in the Court Martial rather than appear before their Commanding Officer, or may appeal to the Summary Appeal Court after the event.

Summary Appeal Court

The accused, if dissatisfied with the outcome of a summary hearing, always has the right of appeal to the Summary Appeal Court, which is conducted by a Judge Advocate accompanied by two officers. This is modelled on an appeal from a Magistrates' Court to the Crown Court.

Court Martial Appeal Court

The avenue of appeal for a convicted defendant, subject to obtaining permission to appeal, is to the Court Martial Appeal Court (as the Court of Appeal Criminal Division is named when dealing with Service cases), and ultimately to the Supreme Court.

Service Civilian Court

Civilians who are officials attached to the Services overseas, or dependants of Service personnel resident overseas (for example in Germany or Cyprus) may be tried for minor offences by the Service Civilian Court (which consists of a Judge Advocate sitting alone), or, for more serious matters, may be tried in the Court Martial. This is then usually constituted with an all-civilian board acting as a jury; in such cases the Judge Advocate sentences alone.

Custody, Search Warrants and Arrest Warrants

If a serviceman or woman is to be detained in custody, or if private premises need to be searched in the course of investigations, or if a person needs to be arrested, the authority of a Judge Advocate is required. The JAG or one of the judges must be satisfied that the continued detention, or the search or arrest, is legally justified. Such cases are often heard by video link and a judge is on duty every day of the year to rule upon urgent applications if required.

The Office of the Judge Advocate General (OJAG)

The Judge Advocates are supported in the exercise of their judicial functions by the Office of the Judge Advocate General (OJAG).

This small administrative office, which primarily supports the JAG with deployment of the Judge Advocates and with liaison with certain parts of Government, forms part of the Judicial Office.

OJAG is located at:

The Office of the Judge Advocate General

9th Floor, Thomas More Building, The Royal Courts of Justice, The Strand, London.

WC2A 2LL

Day to day administration is carried out by Marie Bantoft

Email: Marie.Bantoft@judiciary.uk

(<mailto:Marie.Bantoft@judiciary.uk>) Phone: 020 7218 8095

The Military Court Service

The administration of the courts themselves is managed by the Military Court Service (MCS), which is part of the Ministry of Defence, in the same way that Her Majesty's Courts and Tribunals Service, part of the Ministry of Justice, manages the civilian courts.

The Court Martial may sit anywhere in the World and is portable so as to support the operational effectiveness of the Armed Forces. However, most trials take place in the Military Court Centres in the UK which are at:

- Bulford (Wilts)
- Catterick (Yorks)

The Court Martial may also sit from time to time in Northern Ireland (Aldergrove), Germany (Sennelager) and Cyprus (Episkopi). MCS arranges, funds and supports trials at these centres and sometimes at other venues in the UK and overseas.

Communications about particular cases must be addressed in the first instance to:

The Military Court Service:

The Military Court Service Headquarters

The Military Court Centre, Vimy Crescent, Bulford, Wiltshire SP4 9FS

Telephone: 01980 672071

Email: [**MCS-Group@mod.gov.uk**](mailto:MCS-Group@mod.gov.uk)

Documents relating to practice in the SJS:

- The Court Martial and the Summary Appeal Court guidance – Volume 1 (https://www.judiciary.uk/wp-content/uploads/2015/05/20150616-cm_sac_guide_vol1_procedure_ver7_hqmcs-o.pdf)
- The Court Martial and the Summary Appeal Court guidance – Volume 2 (https://www.judiciary.uk/wp-content/uploads/2015/05/20150616-cm_sac_guide_vol2_members_ver7_hqmcs-o.pdf)
- Guidance on sentencing in the Court Martial – Version 5 (<https://www.judiciary.uk/wp-content/uploads/2018/03/sentencing-guide-v5-jan18.pdf>)
- Practice in the Court Martial: Collected memoranda – Version 6 (<https://www.judiciary.uk/wp-content/uploads/2015/05/practice-memo-ver-6-1Sep16.pdf>)
- DH1: Direction hearing form (https://www.judiciary.uk/wp-content/uploads/2015/05/20141009-dh1_ver7_hqmcs-o.doc)

List of selected statutes:

- Air Force Act 1955
- Armed Forces Acts 1976, 1986, 1991, 1996, 2001, 2006, 2011, 2016

- Army Act 1955
- Courts and Legal Services Act 1990
- Courts-Martial Appeal Act 1951
- Courts-Martial (Appeals) Act 1968
- Criminal Justice Act 2003
- Human Rights Act 1998
- International Criminal Courts Act 2001
- Naval Discipline Act 1957
- Police and Criminal Evidence Act 1984
- Reserve Forces Act 1996

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🕒 28th Feb

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