

**COURT MARTIAL SEMINAR**  
**AN INTRODUCTION TO PROCEDURE**  
**IN COURTS MARTIAL**

**Introduction**

Misdemeanours in the Services are formally dealt with in one of three ways:

1. Minor administrative action;
2. Summary dealing; and
3. Court martial

**Minor administrative action**

Minor administrative action (“MAA”) is day to day disciplining of service personnel that is governed within the Services. It would generally cover relatively trivial misdemeanours – a few minutes late for guard duty, poor performance in a routine task etc. Usually it will mean a quiet word with a superior in a relatively formal setting with a minor punishment e.g. reduced shore leave, extra guard duty. The officer dealing could be one or several ranks above the individual concerned, but this would depend on circumstances and possibly on repetition. In practice NCOs would tend to deal with this form of discipline.

MAAs are not recorded on an individual’s service record but are recorded centrally within a unit (the MAA record). This record is then reviewed regularly by the chain of command.

All administrative action should now be governed by the Joint Services Publication 883, but the Army may also refer to being AGAI’ed or AGAI 67 action rather than MAA’ed. This stems from Adjutant General Army Instructions 67.

Lawyers and civilians would not be involved in this form of discipline.

**Summary dealing**

More serious matters are dealt with by summary dealings or courts martial. Although courts martial can deal with all service cases, some cases can be dealt with by means of summary dealing. Summary dealing is comparable to Magistrates’ court jurisdiction. The punishments are restricted – broadly a total of 28 days detention/ fine of 14 days’ pay/ reduction of one rank for non-commissioned officer without special approval from Higher Authority which increases the possible maximum to 90 days. Higher Authority is an officer superior to the commanding officer.

In summary dealing the Defendant would appear in front of the commanding officer. This would tend to be the sub-unit commander i.e. Major or equivalent. Personnel cannot

be legally represented, but could have received advice outside, from an officer or lawyer. This could include during his interview or afterwards. At the summary hearing the defendant should be advised that he has the right to obtain legal advice before deciding whether to elect court martial or not. The proceedings would be adjourned whilst this is done. It is not standard but does happen.

He would also be advised of his right to elect to have the matter to be dealt with in a court martial. An accused may also have an assisting officer willing to undertake the task of representing him at the hearing. Such an officer must be at least sergeant rank or equivalent.

If the matter proceeds by way of summary dealing the unit commanding officer deals with the matter. The CO may be assisted by another officer, usually an adjutant but it can be a senior NCO (the assisting officer). In practice the discipline officer e.g. discipline sergeant will prepare a case file which will be checked by the adjutant before being passed to the CO. The adjutant or CO would also ensure that the correct legal principles are applied, by checking with the central law helpline who would normally provide assistance as to the elements of an offence, sentence etc. Lastly, the sub-unit commander would also provide a report on the defendant, explaining if this was an isolated incident etc.

The CO or a person authorised by him would present the case, reading out the charge and setting out the facts.

Summary dealings are inquisitorial rather than adversarial, taken seriously by the soldiers and still very formal. The presumption of innocence is generally regarded as nominal rather than real.

## **Courts martial**

### ***Getting there - cases***

There are a number of ways cases could get to court martial. These are:

#### **1. Directed –**

- a. Mandatory due to the severity of the case (offences that must be dealt with by court martial are listed in the Armed Forces Act 2006 Schedule 2, include all serious cases; those involving Prescribed Circumstances, specifically to deal with torture, degrading punishment etc. must also be heard in court martial). Cases in which there is already a service or civilian police investigation must be dealt with at court martial;
- b. Discretionary, depending on the nature of the charge and/ or the case itself. COs can deal with offence in AFA Schedule 1Part 1 and may deal

with those in Schedule 1 Part 2 with leave of higher authority. Complex cases may also be sent by the CO to courts martial.

2. **Elected** - there is also an unqualified right of election (mainly to be compliant with the ECHR). The unqualified nature of election is self-policing as frequently offences are self-explanatory and the offender would want to be dealt with swiftly. Sentences are in any event capped to what the summary maximum would have been if the case would have been suitable for summary dealing but for the election. An accused should be told before making his decision about election if the CO has obtained leave from a Higher Authority to use extended sentence of up to 90 days' detention. The court martial would be bound by the maximum as well. In practice few tend to elect court martial: soldiers are advised not to do so because it takes time for the case to be heard and they are invariably awarded a more severe punishment.
3. **Appellate** –
  - a. Appeal of sentence/ conviction from summary dealing by Defendant (time limit of 14 days unless extended) Details are in the Armed Forces Summary Appeal Court Rules SI 1211/2009. Hearings are *de novo*. Penalties cannot be increased.
  - b. Appeal by reviewing authority. Summary dealing decisions are reviewed and if the sentence is manifestly excessive or wrong in principle the matter will be referred to the court martial. Technical irregularities are left.

### ***Getting there – you***

It is standard practice that a defendant will appoint an officer to assist him with his defence. One is normally assigned to him. This is his “unit defending officer” or “defendant’s assisting officer”, or UDO or DAO. This is a key contact for the preparation of the case for witnesses and personnel records. The UDO will also be able to obtain any recommendation from a CO that the defendant should be retained in the service, which can be central to mitigation and sentence.

The UDO is therefore central to the good preparation of the case as well as assisting with administration e.g. securing travel from the airport to Sennelager!

It should be noted that a significant difference to courts martial and civilian courts is that the PCMH form (Office of the Judge Advocate General/ “OJAG” Form DH1) has to be completed even when the defendant is pleading guilty. The forms themselves are self-explanatory.

Another important distinction is that if the anticipated plea is one of guilty e.g. AWOL cases, a PSR will have been prepared in advance of the PCMH and sentence will occur straight after arraignment.

### *Courts martial themselves*

Courts martial are comparable to Crown Court jurisdiction in a number of ways. The court martial is presided over by a judge advocate. He is addressed as, "Sir" (except the Judge Advocate General who is, "Your honour"). His role is very similar to that of Crown Court judge.

The case will be prosecuted by a services lawyer, the calibre of which is fairly mixed.

In addition to the judge there will also be a "Board" who take the role of the jury.

Familiar legal principles are just the same:

- Disclosure is governed by the Criminal Procedure and Investigations Act 1996;
- Hearsay is governed by the Criminal Justice Act 2003;
- Bad character is governed by the Criminal Justice Act 2003;
- The Criminal Justice Act 1967 applies so section 9 and 10 admitted statements remain standard practice
- Special measures are the same
- Insanity or fitness to plead are the same
- Acceptability of pleas to certain counts/ submissions of no case to answer are the same
- Raising points of law are the same in the absence of the jury/ Board

The senior ranking officer will be the President of the Board. Those on the Board must be warrant officers or officers with at least three years experience after being commissioned (unless they served before being commissioned). The president of the Board must be at least of Major rank or equivalent (Squadron leader or Lt. Commander).

The President is responsible for the integrity of the Board and their deliberation as there is no jury bailiff. The Board must have at least 3 or 5 members. The number will depend on whether the offence with which they are dealing has a maximum sentence of seven years or more. Frequently the Board will have at least one extra member so that the minimum number is maintained in the event of an individual no longer being able to be present due to illness or service commitments. There may also be a waiting member who can attend but cannot comment on the discussions. He would not retire with the Board when they deliberate.

Although the procedure of opening, witnesses for the prosecution and defence, closing speeches and summing up are the same as in the Crown Court, the Board decides the verdict on a simple majority basis. In the event of a tie in votes then the defendant is acquitted. The President of the Board will obtain the votes from the most junior officer first so that he cannot be influenced by the decisions of the senior officers. This safeguard is in addition to the *Morris* direction at the start of the trial when the judge advocate will tell all members of the Board after they have been sworn that their

performance will not be reported on and they must tell the judge advocate any attempts to interfere with or pressure them before or during the trial.

Any questions from the Board are written down, passed to the judge advocate and dealt with as necessary by him in open court after consulting counsel.

In the event of an acquittal that is the end of the matter. In the event of a conviction the Board will move from the side of the court to the end of the court as they will assist in the sentencing decision, delivered by the judge advocate. The Board will usually retire with the judge advocate. The sentencing options will be set out by him. The decision as to sentence is again by a simple majority (so the judge advocate could be outvoted). In the event of a tie the judge advocate has a casting vote as to sentence.

If the Board are present only for sentence they will be directed to sit by the judge advocate from the start.

### ***Procedural points***

More details as to the procedure can be seen in a short guide to court martial. Some of the key points to remember:

- Dress is as for the Crown Court for advocates;
- Service personnel wear service dress without medals;
- All stand on entry and exit of the judge advocate;
- All except judge advocate stand on entry and exit of the Board;
- At the start of a trial the judge advocate or clerk will identify each of the members of the Board, who will respond, "That is I";
- Any objections to the composition of the Board are then considered;
- On the command "Remove head dress" from the court orderly all those service personnel with head dress on take it off;
- The judge advocate will administer the oath with each of the members of the Board in order of seniority;
- The judge advocate will give the *Morris* direction;
- Defendant identified by the judge advocate and who confirms he/ she was subject to services law at the time of the allegation, plea taken/ charge sheet read and pleas previously provided repeated, prosecution open;
- At sentence head dress remains on for service personnel;
- All service personnel salute at the start and end of proceedings;
- Defendant will put on head dress and salute before taking the stand, give evidence without head dress on then put on head dress and salute before returning to his original seat;
- All wear head dress on sentence;
- The President of the Board will formally announce sentence and may also add some words about the effect of such offending on the Defendant's career and the Service;

- The Defendant may be marched out after sentence, will be if he is sentenced to custody.

### **Other resources**

OJAG website - <http://www.hmcourts-service.gov.uk/infoabout/rcj/ojag.htm> (Google OJAG). These includes full details of procedure and a link to the PCMH forms, DH1.

“Rant on The Court Martial and Service Law” (3<sup>rd</sup> edn. 2009)