



The Military Justice System: an introduction

Standard Note: SN06823

Last updated: 7 May 2014

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Section International Affairs and Defence section

The Service Justice System provides a legal framework that ensures Service personnel are subject to a single disciplinary code that applies wherever they are serving.

The disciplinary systems of the three services – the Army, the Royal Navy and the Royal Air Force – were drawn together under a common system by the *Armed Forces Act 2006*. While the Service Justice System mirrors the criminal law in England and Wales as closely as possible it also provides an avenue to enforce standards that are distinctive to the Armed Forces.

This note provides a short introduction to the different parts of the system, including the Court Martial process, the role of the Commanding Officer and the Service Prosecution Authority, and the separate role of the Service Complaints Commissioner. It briefly notes some of the issues raised by Members during the current Government.

This note has been updated to reflect Government plans, announced in March 2014, to give the Service Complaints Commissioner new powers and rename the Commissioner's title to ombudsman.

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1 The Service Justice System

The Military or Service Justice System¹ has evolved over the years to provide a legal framework that recognises the environment in which the Armed Forces operate. It ensures that Service personnel are subject to a single code that applies wherever in the world they are serving. While the Service Justice System mirrors the criminal law in England and Wales as closely as possible it also provides an avenue to enforce standards that are distinctive to the Armed Forces.²

The Government overhauled the legislation relating to military law and Service discipline in the *Armed Forces Act 2006*. Previously all three Services had their own separate systems of Service Law. This was replaced by the Act with a single system applicable to all members of the Armed Forces, plus some civilians who are subject to Service Law. The Commanding Officer remains central to the system and can investigate and decide upon less serious offences summarily. More serious offences are heard by Court Martial, a standing court which is headed by a civilian Judge Advocate. All defendants may elect trial by Court Martial rather than a Summary Hearing by the Commanding Officer. Serious cases must be referred to the Service Police and passed to the independent Director of Service Prosecutions, who heads the Service Prosecutions Authority.

¹ The terms military or service justice system are both used by Members during discussions on this topic.

² Much of the information taken below is sourced from “[Overview of Service Justice System and the Act](#),” *Armed Forces Bill Team, Ministry of Defence*; The Service Prosecuting Authority; JSP 830 Manual of Service Law.

Members have raised particular concerns over the reporting and investigation of sexual assaults and rape in the military; how the armed forces respond to complaints of bullying and harassment; echoed calls by the Service Complaints Commission for an Armed Forces ombudsman to be created; and discussed certain high profile trials involving members of the Armed Forces.

1.1 Legal foundation

The legal foundation of the Service Justice System is in the [Armed Forces Act 2006](#). The Act consolidated and modernised the previous Service Discipline Acts³ and replaced them with a single system of Service law that applies to all Service Personnel wherever they are serving in the world. It also brought the military disciplinary system into line, as far as practicable, with the civil criminal justice system. The Act came into force in 2009. There is extensive secondary legislation with the Act.⁴ Further changes to the Justice System were made by the [Armed Forces Act 2011](#)⁵ although they were not nearly so extensive. An Armed Forces Act is required every five years with the next due in 2016.

The [Manual of Service Law](#), also known as Joint Service Publication (JSP) 830, is the principle reference publication and provides guidance on the Armed Forces Act 2006. It gives detailed information on the powers of the Commanding Officer, investigative powers, the Summary Hearing and Court Martial processes among others. It also contains a list of secondary legislation made under the Armed Forces Act as well as other allied legislation and source material ([volume 3](#)). There is a simplified leaflet for those accused of a crime: [Your rights if you are accused](#).

1.1 Why have a separate Service Justice System?

The need for a separate Justice System for the Armed Forces is twofold.⁶ First, it reflects offences that are distinctive to the Armed Forces - absent without leave or disobeying a lawful command, for example. Second, in recognition of the fact the Armed Forces operate worldwide, it ensures that the Services' disciplinary system applies to service personnel wherever they may be serving.⁷

When in the United Kingdom, Service personnel are subject to both service and civilian criminal jurisdiction. Allegations of wrong doing may be reported to either service or civilian police and whether Service or civilian police investigate an alleged crime depends on the circumstances and the status of those involved. When overseas, Service Police would normally take the lead.

1.2 Who is subject to Service law?

Every member of the Regular forces is subject to Service law at all times. The circumstances in which members of the Reserve forces are subject to Service Law are set out in the Armed Forces Act and broadly speaking apply when a Reservist is in service or undertaking any training or duty. More detail of when Service Law applies to a regular or reservist can be found in the Armed Forces Act 2006 or chapter 3, volume 1 of the Manual of Service Law.

³ The *Army Act 1955*, the *Air Force Act 1955* and the *Naval Discipline Act 1957*.

⁴ Further House of Commons Library material on the Armed Forces Act 2006 is listed in [Secondary legislation of the Armed Forces Act 2006](#), SN04342, 15 January 2008.

⁵ Claire Taylor, [Armed Forces Bill \(Bill 122 of 2010-11\)](#), House of Commons Library Research paper 10/85, 17 December 2010

⁶ [JSP 830 Manual of Service Law](#) version 2.0, 1.1.3

⁷ [JSP 830 Manual of Service Law](#) version 2.0, 1.1.3

Civilians may also be subject to Service Law if they fall into one of the categories set out in Schedule 15 to the Act. This includes civilians in Her Majesty's ships and aircraft; persons in service custody; crown servants (eg Ministry of Defence civil servants) in a designated area; members of specified military organisations (NATO); Members of other specified organisations in a designated area; Persons residing or staying with certain people in a designated area; and Persons designated by or on behalf of the Defence Council.

Where a civilian is subject to Service discipline, a Commanding Officer must be allocated to them. Civilians subject to Service discipline are only subject to Service jurisdiction for a limited range of offences.⁸ Civilians can only be brought before the Service Civilian Court or tried before the Court Martial (see below); they cannot be brought before a Commanding Officer.⁹

1.3 Service police

Each of the three Services¹⁰ has its own police force which is headed by a Provost Marshal who is separate to the chain of command. Collectively, they are known as the **Service Police**. In the Army, for example, the [Provost Marshal](#) oversees three organisations: The Royal Military Police, who are responsible for investigations and policing and include a Special Investigation Branch; the Military Provost Staff, who focus on custody and detention; and the Military Provost Guard Service, who are responsible for guarding military bases.¹¹

1.4 Jurisdiction

In the UK **jurisdiction** over offences solely against service law (such as absence without leave) lies with the Service authorities. Concurrent jurisdiction (between the service and civilian police) may apply in other offences. Jurisdiction over who investigates offences depends on where the offence took place, what the offence is, the complexity, and who was involved. Where issues of jurisdiction are complex then agreement is reached between the military and civilian police as to who will lead the investigation.¹²

In cases that occur overseas, jurisdiction is often regulated by a treaty, Memorandum of Understanding or other agreement, including a Status of Forces Agreement.¹³

1.5 Role of the Commanding Officer

Commanding Officers are at the heart of the Service Justice System and are responsible for standards of behaviour under their command. They are vested with statutory powers to administer justice for certain offences. The Manual of Service Law, volume one, provides a detailed guide to the powers of Commanding Officers.

Commanding Officers administer justice for non-criminal conduct disciplinary offences through the **Summary Hearing** process. Examples of these types of offences include failing to attend for duty, misconduct through alcohol or drugs,

⁸ [JSP 830 Manual of Service Law](#) version 2.0, 1.3.7 details these circumstances in more detail

⁹ Armed Forces Act 2006, chapter 1

¹⁰ The Royal Air Force Police, The Royal Navy Police and the Royal Military Police (for the Army)

¹¹ In addition, the Ministry of Defence Police Act 1987 established a national civil police force, the MOD Police. Its primary function is to provide civil policing and armed security for the MOD's nuclear sites and other key defence assets.

¹² [The Protocol on the exercise of criminal jurisdiction in England and Wales](#) between the Service Prosecuting Authority and the Director of Public Prosecutions and the Ministry of Defence is available on the SPA's website.

¹³ JSP 830 Manual of Service Law, volume 1, chapter 3, discusses jurisdiction at length.

low flying or misconduct on operations. COs can also hear some criminal conduct offences summarily, with or without permission from a higher authority, eg common assault and battery or assault occasioning actual bodily harm.¹⁴ The maximum sentence that can be imposed by a Commanding Officer is 28 days' detention.¹⁵ An accused may appeal the finding or sentence to a **Summary Appeal Court**. This is headed by a Judge Advocate and two military officers. An accused may also elect for a trial before the Court Martial rather than a Summary Hearing.

It is at the Commanding Officer's discretion as to how the majority of cases are handled, except for offences listed in **Schedule 2** of the Armed Forces Act (for example murder, manslaughter, high treason, mutiny, serious sexual offences) or committed in prescribed circumstances (e.g. death in custody), which must be referred to the Service Police. The Service Police will then refer a case to the Director of Service Prosecutions if there is evidence of a Service offence. Schedule 2 offences can only be tried by Court Martial (see below).¹⁶ Offences committed in prescribed circumstances must be referred to the Director of Service Prosecutions for a decision on the charge and mode of trial (Court Martial or Summary Hearing).

1.6 The Service Prosecuting Authority

The Director of Service Prosecutions heads the **Service Prosecuting Authority** (SPA) which is independent of the chain of command and is akin to the Crown Prosecution Service. It was created by the Armed Forces Act 2006 to replace the individual Service Prosecution Authorities and formed in January 2009.

The Director of Service Prosecutions and the SPA act under the general superintendence of the Attorney General of England and Wales and remains fully independent of the Military Chain of Command. The Director of Service Prosecutions is not answerable to the Secretary of State for Defence in respect of his decision making relating to prosecutions.¹⁷ The Service Prosecuting Authority determines whether to prosecute an individual by trial at Court Martial and prosecutes that case.

The **Military Court Service** (MCS) provides a criminal court service for all three Services in the Court Martial, Summary Appeal Court and Service Civilian Court. It was set up by the Armed Forces Act 2006 to provide a tri-service military court service, merging the three Services court services. There are five permanently manned military Court Services in the UK and one in Germany. Trials can be held outside the manned Military Court Services when required. Court Martial results from the Military Court Centres are published on the Government website.

1.7 The Court Martial process

The **Court Martial** is a standing, permanent court established by the Armed Forces Act 2006. It is similar in its sentencing powers and procedure to the civilian Crown Court. It has

¹⁴ [JSP 830 Manual of Service Law](#) version 2.0, details non-criminal and criminal offences at length in chapters 7 and 8 respectively.

¹⁵ A list of the punishments that may be awarded by a Commanding Officer under the Armed Forces Act 2006 can be found on the [Government website](#). A CO who holds the rank of rear admiral, major-general, or air vice marshal automatically has extended powers under section 133 of the Armed Forces Act 2006 and can award up to 90 days detention

¹⁶ JSP 830, vol 1 chapter 6, para 23 (page 1.6.11). Lists of these types of offences can be found in JSP 830, volume 1, chapter 6, Annex D and Annex E.

¹⁷ [SPA policy for prosecuting cases of rape](#), accessed 12 February 2014

jurisdiction to try any Service offence including criminal conduct and disciplinary offences although it predominantly deals with serious cases.

A Court Martial is presided over by a civilian judge known as a Judge Advocate and between three to seven lay or board members who act as the jury. The lay members also help the Judge Advocate to decide on any sentence if the accused is found guilty. Whether lay members are service personnel (commissioned or warrant officers) or civilians depends on the status of the defendant.¹⁸ The Court Martial has the same sentencing powers in relation to imprisonment as a Crown Court, including life imprisonment.¹⁹ Those found guilty may appeal to the **Court Martial Appeal Court**, which has equivalent powers to the Criminal Appeal Court.

Judge Advocates are civilians. They are appointed by the Lord Chancellor like other District and Circuit Judges. The Office of the **Judge Advocate General** specifies which judge is to sit on each case.²⁰

The current Judge Advocate General has spoken of his concerns that a defendant can be convicted of a serious offence by a majority verdict rather than a unanimous decision. Jeff Black told the BBC that it was “an area of concern” that a defendant could be convicted by a military court if only three members of the board had voted for a guilty verdict and two had supported an acquittal.²¹ The Court of Appeal ruled in 2011 that a majority verdict did not infringe the right to a fair trial or produce an unsafe conviction.²²

1.8 The Service Civilian Court

The **Service Civilian Court** has similar powers to a Magistrate’s Court and has “jurisdiction to try civilians subject to Service discipline (mainly dependants of Service personnel including juveniles serving abroad) for most criminal conduct offences and a restricted list of disciplinary offences.”²³ It consists of a Judge Advocate sitting alone trying cases. It can also try civilian contractors working in support of the British Armed Forces on operations. It can impose a maximum of 12 months imprisonment.²⁴ Its jurisdiction was extended by the Armed Forces Act 2011 to cover the whole of the UK.

1.9 Police records

If a criminal charge at Summary Hearing is found proven, or a Court Martial finds the defendant guilty of a criminal charge, a record will be made on the Police National Computer. Some people have reported they were not aware of this²⁵ and only became aware after leaving the Service and encountering problems with visa applications or job applications because of their having a criminal conviction. The Home Office published [updated guidance](#) in January 2014 for Border Agency staff processing applications for Indefinite Leave to Remain in the UK by Foreign and Commonwealth service personnel.²⁶

¹⁸ [JSP 830: volume 2, chapter 28](#)

¹⁹ “[Service Criminal Justice System](#)”, *Judiciary of England and Wales*, accessed 11 February 2014

²⁰ “The JAG is not a General of the Army; the word “general” signifies broad oversight, as in Secretary-General, Attorney-General”, *Judiciary of England and Wales*, accessed 11 February 2014

²¹ “[Military judge raises court martial concerns](#)”, *BBC Radio 4 Law in Action*, 25 June 2013

²² “[Majority court martial verdict not breach of right to fair trial](#)”, *UK Human Rights Blog*, 11 January 2011

²³ [Service Prosecution Authority website](#), accessed 11 February 2014

²⁴ [Service Prosecution Authority website](#), accessed 11 February 2014

²⁵ “[Military justice left me unaware I had criminal conviction](#)”, *Channel 4 News*, 4 January 2013

²⁶ Army Families Federation guidance for Foreign and Commonwealth personnel, [discharging with a criminal conviction](#), accessed 12 February 2014

1.10 Defence and legal aid

Anyone who has been arrested and interviewed by Service police is entitled to a lawyer. A lawyer can be provided free of charge via the civilian duty solicitor scheme. A defendant is not allowed a lawyer at a Summary Hearing but may seek legal advice beforehand, including as to whether to choose a Summary Hearing or a Court Martial. Defendants may have what is an 'assisting officer' at a Summary Hearing. This is not a lawyer but an individual who can help the defendant with paperwork. A defendant may have a lawyer at a Court Martial or a Summary Appeal Court. This may be either a Service or a suitably qualified civilian lawyer. Legal Aid may be available via the [Armed Forces Legal Aid Scheme](#).

The [Armed Forces Criminal Legal Aid Authority](#) deals with all aspects of criminal legal aid for those prosecuted through the Service Criminal Justice system. It is part of the Military Court Service but is a statutory authority and is independent from the Service Prosecuting Authority. Details of the scheme are laid out in [JSP 838: Armed Forces Criminal Legal Aid Scheme](#). A number of legal firms specialise in offering services to serving personnel and advertise in magazines aimed at the Armed Forces.

2 The Service Complaints Commissioner

The Service Complaints process is separate to the Service Justice System but acts in parallel to it. The [Service Complaints Commissioner](#) is outside of the chain of command and is an avenue for Service personnel who wish to make a complaint but are concerned about how the Chain of Command may deal with it, or have a complaint involving their Commanding Officer. The Commissioner has special powers where a complaint is about bullying, harassment, discrimination, victimisation, dishonest or improper behaviour. The Service Complaints Commissioner reports annually to Parliament on how efficient, effective and fair the complaints process has been. The current commissioner, Dr Susan Atkins, is highly critical of the Service complaints system and in her most recent report, for 2012, published in March 2013, said "after five years of operation, the Service complaints system is still not working efficiently, effectively or fairly." She argues "the Services too often focus on the process rather than justice and have lost sight of the individual."²⁷

Plans to give the Commissioner new powers and to change the title to Service Complaints Ombudsman were announced by the Secretary of State for Defence, Philip Hammond, in March 2014. This will require amending the Armed Forces Act. The most recent statement on the matter by the Ministry of Defence, on 26 March 2014, was that detailed work on the proposals is in hand.²⁸

There have long been calls for an Armed Forces Ombudsman. The 2006 Deepcut inquiry recommended one be established. The Government at the time rejected such a call but instead announced the establishment of the Service Complaints Commissioner.²⁹ The Service Complaints Commissioner called for an Armed Forces Ombudsman in her 2010 Annual Report and has repeated that call in each of her subsequent reports. The Defence Committee echoed this position in its report on the work of the Commissioner in February

²⁷ ["Service Complaints Commissioner for the Armed Forces submits fifth Annual Report"](#), *Service Complaints Commissioner*, 21 March 2013

²⁸ HL Deb 26 March 2014 c111WA

²⁹ ["The Deepcut investigations"](#), *BBC News*, 19 December 2006

2013, stating “we recommend that the Service Complaints Commissioner’s role should be changed to that of an Armed Forces Ombudsman.”³⁰

The Government had for some time resisted efforts to do so, although the powers of the Commissioner were strengthened in 2013. The Government responded to the committee’s report by saying it is beginning discussions with the SCC to “explore what further, specific improvements might be made.”³¹

The Defence Secretary announced, in a written statement, plans to give the Commissioner further powers and to change the post’s title to ‘service complaints ombudsman’ on 13 March 2014.³² In the future, the Commissioner will have the power to consider whether a service complaint has been handled properly, once it has completed its normal internal stages. If the Commissioner considers there has been a maladministration in the handling of a complaint, he or she would make recommendations, formally to the Defence Council, for the complaint to be reopened and reconsidered. Mr Hammond explained the Defence Council would remain responsible for the decisions taken in response to the SCC’s recommendations, thus maintaining the authority of the chain of command, but the SCC would be informed of those decisions and the reasons for them. Mr Hammond said the new model “should lead to a higher proportion of complaints being decided more quickly.”

The Commissioner could be asked to decide whether a decision made not to allow a complaint to be considered within the service complaints system, because it is out of time or excluded on other grounds, is correct. Mr Hammond said:

The proposals I have outlined above represent a significant change to the way that service complaints are handled, and in particular to the role of the commissioner. As a result, I have decided that this new role would be better reflected in a change in the title of the commissioner’s post to the “service complaints ombudsman”.³³

The changes will require an amendment to the Armed Forces Act. Mr Hammond said “an early opportunity will be sought to introduce the necessary legislation once detailed work, in which the commissioner will again be engaged, is complete.” The next Armed Forces Act is in due in 2016.

The Ministry of Defence was asked by Baroness Hayter of Kentish Town whether the Cabinet Office was consulted and whether the new arrangements meet the criteria for the use of the term ‘ombudsman’, as set out in the Cabinet Office’s April 2010 guidance on Ombudsman Schemes. Lord Astor of Hever replied:

I can confirm that discussions have taken place between Ministry of Defence and Cabinet Office colleagues, and that these will continue as we take forward our proposals for a Service Complaints Ombudsman.³⁴

³⁰ Defence Committee, *The Work of the Service Complaints Commissioner for the Armed Forces*, HC 720 2012-13, para 66

³¹ Defence Committee, *The work of the Service Complaints Commissioner for the Armed Forces: Government’s and Commissioner’s Responses to the Committee’s Eighth Report of Session 2012–13*, HC 505 2013-14

³² [HC Deb 13 March 2014 c35WS](#)

³³ [HC Deb 13 March 2014 c36WS](#)

³⁴ [HL Deb 26 March 2014 cWA112](#)

3 Action in Parliament on the Military Justice System

Several high profile cases have drawn the attention of Members during the current Parliament.

Sexual assault, rape and bullying in the Armed Forces became front-page news when Cpl Anne-Marie Ellement committed suicide in 2011 after complaining of suffering from bullying, following an allegation she made against two male colleagues of rape. Madeline Moon has asked the Ministry of Defence repeatedly for statistics on sexual assault in the Armed Forces and initiated a Westminster Hall debate in January 2013 on how allegations of rape and sexual assault are dealt with in the military justice system.³⁵ The military's response to allegations of bullying and harassment have also drawn similar interest and were also discussed during the Westminster Hall debate.³⁶ Defence Minister Mark Francois's subsequent letter to Mrs Moon, discussing the Royal Military Police's processes for investigating allegations of sexual violence, was placed in the Library.³⁷

The Ministry of Defence has since created a Service Police Crime Statistics and Analysis Cell within the Service Police Crime Bureau to "improve the quality of, and speed of access to, information relating to service police investigations."³⁸ It will create a new database to cover all sexual offences investigated by the Service police since the implementation of the Armed Forces Act 2006 and progressively expand to cover certain other offences (firearms, drugs, theft, fraud and those involving violence). Defence Minister Mark Francois said "sexual offences of any kind are not tolerated in the Ministry of Defence" and said the statistical analysis will enable the "service police to monitor patterns of offending behaviour more accurately, and to allocate their resources accordingly."³⁹

The prosecution of Sgt Danny Nightingale for possessing a pistol and ammunition he was given while serving in Iraq drew widespread coverage. Sgt Nightingale pleaded guilty to the charge of possessing a pistol and ammunition at a Court Martial in November 2012 but argued it was a 'war gift'. His conviction was overturned by the Court of Appeal after judges ruled he had been placed under "improper pressure" to plead guilty at the military trial, but at a retrial he was found guilty by a Court Martial board and given two years detention suspended for 12 months.⁴⁰ Members discussed the case in the House in November 2012.⁴¹

In November 2013 a Court Martial found Sgt Alexander Blackman guilty of shooting an unknown man while on patrol in Helmand province in 2011. Two other Royal Marines were acquitted. Sgt Blackman was originally granted anonymity and was therefore referred to as 'Marine A' at the time of the trial. It was the first time a member of the British armed forces had faced a murder charge in relation to the conflict in Afghanistan. The trial drew considerable interest from media and Members.

There is also a separate, ongoing discussion about combat immunity. In June 2013 the Supreme Court ruled that in the conjoined cases of *Smith and others v MOD*, *Ellis v MOD* and *Allbutt and others v MOD*, it rejected the MOD's defence that the soldiers were not within the jurisdiction of the UK for the purposes of the European Convention on Human Rights and

³⁵ HC Deb 31 January 2013 c347WH

³⁶ HC Deb 31 January 2013 c347WH

³⁷ [DEP 2013-1861](#)

³⁸ HC Deb 16 July 2013 c75WS

³⁹ HC Deb 16 July 2013c75WS

⁴⁰ Further information on the Sgt Nightingale case can be found on the [BBC News website](#)

⁴¹ HC Deb 20 November 2012 c553

because of combat immunity and ruled that all three sets of claims may proceed to trial. During debate on the Defence Reform Bill, Defence Minister Lord Astor of Haver hinted that the Government is considering legislating for a statutory definition of combat immunity but has decided it would be premature to bring forward any proposals at this stage.⁴² A more detailed analysis of this topic is available in [Debate on the 7 November: The Armed Forces and legal challenge](#), House of Lords Library note LLN 2013/032, 1 November 2013.

Outside of Parliament the human rights organisation [Liberty](#) is running a military justice campaign encouraging members to contact MPs. They are calling for (1) sexual assault allegations to be automatically referred for investigation by the Service Police and Director of Service Prosecutions; that all Service Police forces be subject to independent oversight; creation of an Armed Services Ombudsman.

⁴² HC Deb 5 February 2014 cGC100