



**COURTS MARTIAL AND
THE SUMMARY APPEAL COURT GUIDANCE**

**Volume 1:
Guide to Procedure**

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Section 1: Definitions & Introduction

1.1 Definitions

Judge Advocate:	is the statutory term for a judge who has been appointed by the Judge Advocate General to preside over a Court Martial or the Summary Appeal Court.
The court:	means the Court Martial or the Summary Appeal Court in the appropriate sections of this guide. The court can comprise <i>either</i> the Judge Advocate and the Board <i>or</i> the Judge Advocate sitting alone.
The Board:	means the group of service (or sometimes civilian) persons who have been appointed as lay members of the court, the most senior of whom is the President of the Board.
Members:	means the President of the Board and the other lay members of the Board taken collectively.
The Military Court Service:	includes the former Naval Courts Administration Office, Army Court Service and RAF Court Administration Unit.
Court Administration Officer: ...	is the Director of the Military Court Service who is responsible, by his staff, for the administration of the court and the appointment of the Board members.
Court Officer:	is an official of the Military Court Service responsible for running day-to-day operations at a court.
The Accused:	is a person accused of an offence which may or may not be taken to Court Martial.
The Defendant:	is a person prosecuted at Court Martial for an offence of which he may or may not be guilty.
The Offender:	is a person who has pleaded guilty or been found guilty of an offence.
The Appellant:	is a person who makes an appeal to the Summary Appeal Court
He / him / his:	are masculine gender terms, used for simplicity to include the feminine gender terms 'she / her / hers'. All court appointments are gender neutral and must be treated as such in practice.

Introduction

1.2 This Guide is issued under the authority of the Judge Advocate General and the Director of the Military Court Service jointly as an aid to those who practise in the military criminal justice system, and it is to be used in all hearings. Volume 1 provides information about procedure generally and it deals with all Royal Navy Courts Martial, General Courts Martial, and District Courts Martial as well as the Summary Appeal Court. Volume 2 provides information specifically for members of Boards. Neither volume deals with preparations for trials, or events away from the Military Court Centre.

1.3 Where there are discrepancies between this Guide and other documents which purport to describe order of procedure, the Guide has precedence over all apart from the statutory court rules. The Guide is provided to all defence representatives as a matter of course. Its contents are not confidential or classified.

Section 2: Courts Martial

Ceremony

2.1 Courts Martial are formal occasions which, in addition to the normal courtesy of a court, include a certain amount of military or naval ceremony as befits the traditions of the Armed Forces and the unique nature of service life. Nevertheless it is the fairness of the trial process which is the most important factor and not the strict adherence to military or naval drill.

Presence of Judge Advocate

2.2 In the case of *Cooper v UK*¹ the European Court of Human Rights ruled that the presence in a Court Martial of a civilian Judge Advocate, with his legal qualifications, judicial independence, and pivotal role in conducting the proceedings, constitutes not only an important safeguard but one of the most significant guarantees of the independence of the Court Martial proceedings. This ruling explains and reinforces the rationale that proceedings at Court Martial should be and are presided over by the Judge Advocate.

Responsibility of Judge Advocate

2.3 This Guide does not provide guidance on the law, as sole responsibility for the law lies with the Judge Advocate who conducts every Court Martial. It is the responsibility of the trial Judge Advocate to give directions on questions of law including questions of procedure and practice² and only he has the authority to vary the procedures in the Guide in individual trials. All the participants in the court process thus receive all direction on the law including legal procedure and practice from the Judge Advocate.

2.4 The court procedures used by the Royal Navy, the Army and the Royal Air Force, although founded on their respective Service Discipline Acts, are almost identical. Thus, this Guide has been produced to cater for the needs of all Services with the few differences being indicated in the Guide.

Role of Board Members

2.5 In a Court Martial the Board members alone are required to make a finding of fact based on the evidence that the Judge Advocate determines is admissible for them to hear and see, presented to them

¹ [2003] ECHR 48843/99 at paragraph 117

² Naval Discipline Act 1957 s53B and Army and Air Force Acts 1955 s84B

by the prosecution and the defence. The Judge Advocate guides the Board through the trial at all stages, leaving members to concentrate on the task of listening to, assessing and analysing the facts and evidence presented to them in court. Any questions the members may have can only be raised through the Judge Advocate who will decide whether the question may be asked. In the event of a finding of guilt, the members take part in deciding the sentence together with the Judge Advocate.

Interests of Justice

2.6 All trials must be conducted in a way that is, and is seen to be, absolutely impartial and fair. At a trial the interests of justice must take priority over all other considerations. As in any other criminal court, every defendant is presumed to be innocent until such time as he may plead guilty or be found guilty of an offence.

2.7 Members must therefore pay particular attention to any directions given by the Judge Advocate. Failure to follow his directions could result in dissolution of the court, or a finding of guilty being quashed later which could have the added impact of being perceived as unfair to a victim. The requirements imposed on members are set out in detail in Volume 2 of the Guide. The Guide may be taken into court.

Section 3: Roles

Appointment of Judges

3.1 Her Majesty the Queen appoints the Judge Advocate General, and the Lord Chancellor appoints individuals to the judicial offices of Vice Judge Advocate General or Assistant Judge Advocate General. The Judge Advocate General appoints individual judges to fulfil the role of Judge Advocate in presiding over each trial. Those offices and roles are defined by law. Deputy (part-time) Judge Advocates are appointed by the Judge Advocate General to preside over particular trials and whilst they are sitting they have the same status, and are addressed and treated in the same way, as the full-time judges.

Terms of Address

3.2 In court the Judge Advocate is addressed as “Sir” or “Madam”, and referred to as “the Judge Advocate”. If the Judge Advocate General, or another Circuit Judge, presides he is addressed as “Your Honour” and referred to as “His Honour the Judge”. On the rare occasion when a High Court Judge presides he is addressed as “My Lord” and referred to as “His Lordship”.

Board

3.3 The Board comprises the President of the Board and other lay members, who are the Service members of the court referred to in this guide as “members”. Officers and warrant officers who are appointed to perform their duties as members of a Board must do so independently and impartially in accordance with the evidence and the law. If the defendant is a civilian, the Board is usually composed wholly of civilians.

President of the Board

3.4 The President of the Board is shown as such in Court Martial convening orders, except that an all-civilian Board or a mixed Board chooses a President from among their number. The Judge Advocate conducts the hearing, which means that he runs the court and gives directions to the Board.

The role of the President of the Board is not dissimilar to that of the foreman of the jury in a civilian Crown Court during the trial stage of a Not Guilty plea. Under no circumstances may the President of the Board use the authority of his rank to influence other members of the Board concerning either finding or sentence.

***Morris* Direction**

3.5 Early in a trial the Judge Advocate gives specific directions, in open court on the record (known as the *Morris* direction), which ensure the Board understands its duties in respect of the trial. It is helpful if the President of the Board has a thorough understanding of the procedures, especially the means by which fairness and the appearance of fairness are maintained. The functions of the President of the Board are set out in detail in Volume 2 of the guide at paragraphs 3.7 to 3.9.

3.6 If there is concern that the correct uniform, drill and forms of address are not being properly observed, subject to the Judge Advocate's responsibility for conducting the trial, the President of the Board is a suitable interlocutor to raise these and other matters. If he is concerned that best traditions are not being maintained, he may take action by issuing direction through the Court Orderly / Officer Of the Court, having first cleared such action with the Judge Advocate by means of a written note. This must always be done in open court, with the expectation that the contents of the written note to the Judge Advocate will be disclosed to the prosecution and defence representatives.

Contrasting Roles of the Judge Advocate and Board Members

3.7 The roles and functions of the Judge Advocate and the members are entirely different, but taken together they contribute directly to a just outcome of each trial. As such they are complementary and both functions are indispensable. Where there is a plea of Not Guilty in a Court Martial, the members exclusively decide the guilt or otherwise of the defendant, based on the evidence presented to them. The Judge Advocate takes no part in this decision. The members hear, assess, deliberate on, and (if applicable) arrive at a finding on the facts of the case. In this part of the trial process they are acting in a similar way to a jury, and all members of the Board have an equal vote and voice; there is no casting vote at this stage. The President of the Board chairs the discussion and reports the outcome to the court.

3.8 The Judge Advocate, in addition to being aware of the evidence before the court, will have seen the trial papers and may have heard legal arguments in the absence of the Board. The function of the Judge Advocate is to ensure the trial is conducted fairly, decide what evidence the members hear and see, and ensure the correct interpretation and application of the law and procedures. His role is exactly the same as the role of the judge presiding over a jury trial in the Crown Court until it comes to the sentencing stages.

Legal Rulings

3.9 Sometimes the Judge Advocate may need to rule upon lengthy legal arguments about issues which can take hours or days to resolve. Before a trial the Judge Advocate sometimes conducts a preliminary hearing with prosecution and defence counsel in the judge's chambers or in the courtroom. This may delay the start of a trial. Such a 'trial within a trial' is a normal and fundamental part of the trial process in both military and civilian courts, and it is essential that members must have no knowledge of what is being discussed unless and until the Judge Advocate tells them. Members should never speculate or try to ascertain what is occurring in court in their absence, and those who find themselves in this situation should be patient. It is recommended that they consider bringing work with them if they wish to use this time productively.

Newton Hearings

3.10 Sometimes following a Guilty plea there is a dispute about the factual basis of the plea, which may affect subsequent sentencing considerations and which needs a hearing to resolve (known as a *Newton* hearing). Under these circumstances the Judge Advocate and the members all take full part in the hearing on that point.

Sentencing

3.11 If a Guilty finding has been recorded in a Court Martial, the members and the Judge Advocate together deliberate to determine the appropriate sentence for the offence. The worth or value of the opinion and vote of every member is equal, irrespective of their Service rank, subject to the casting vote of the President of the Board in the event of a tie. Members must accept the Judge Advocate's directions on what sentencing options are available in law, and the legal principles of sentencing. The publication *Sentencing in Courts Martial: a Short Guide* issued by the Judge Advocate General contains judicial guidance on appropriate sentencing tariffs while reflecting Armed Forces discipline policy. It is taken into account by Judge Advocates when giving directions or providing advice on sentence to the members.

Section 4: Courtroom, Officials & Dress

Officer Of the Court: Court Clerk / Court Orderly

4.1 The Officer Of the Court (Royal Navy) or Court Orderly (Army / RAF) is a key court official, who is responsible to the Court Officer for ensuring the smooth running of the court. He is given written instructions and a detailed briefing on his duties from the Court Officer which will reflect the specific needs of the location and of the trial(s) due to take place there, and the directions of the Judge Advocate. Once a trial has begun, the Court Officer and the Officer Of the Court / Court Orderly (and other members of the court administrative party as authorised by the Court Officer) are the only contacts permitted between the members and anyone else involved with the trial. It is essential that the Officer Of the Court / Court Orderly does not reveal to any member anything which has occurred while the Board has been excluded from the courtroom.

Layout of the Courtroom

4.2 A schematic layout of a typical courtroom for a Court Martial is shown at **Annex A**. The presiding Judge Advocate in all military trials sits at the front and centre facing the courtroom behind the judge's bench, which in most courts is on a dais. The prosecution team and the defence team including the defendant normally sit side by side facing the Judge Advocate, with the Verbatim Court Recorder placed between the legal teams and the bench or to one side. Witnesses give evidence from a position near the bench at one side of the courtroom facing the Board. At the rear of the courtroom there is seating for the general public including the media; hearings are always open to the public unless the Judge Advocate rules otherwise. The Officer Of the Court / Court Orderly sits in front of the public seating and towards the middle of the courtroom, or in Royal Navy trials may sit at the door of the court. The members have no need to go anywhere within the Military Court Centre other than to the courtroom, to their retiring room suite, and to use the directly associated facilities. To that end, the Military Court Centre layout ensures that the Judge Advocate and the members are segregated from other participants throughout the trial. Access to and movement within the Military Court Centre is controlled overall by the Court Officer assisted by the Officer Of the Court / Court Orderly while a trial is in progress, and the safety and security of all participants are maintained.

Seating Arrangements

4.3 In a Court Martial the Board sits in different places during the course of a trial. During the finding part of a trial, when the Board's role is analogous to that of a civilian jury, the Board sits separately, usually at right angles to the judge's bench. These seating arrangements are designed to make clear the Board's complete separation from the Judge Advocate. During the later part of the trial (the determination and passing of sentence where a defendant has pleaded guilty or been found guilty), the Board moves onto the bench and the members sit each side of the judge, to signify their participation in the sentencing process along with the Judge Advocate. Exceptionally if the courtroom does not permit the standard layout, the Judge Advocate presiding may authorise different arrangements.

Dress: Uniform

4.4 Units are responsible for ensuring that all personnel attending court are correctly dressed. Service personnel (including the defendant if still serving, and including members of the Special Investigation Branch) normally wear formal dress uniform at Courts Martial, including Plea and Case Management Hearings. The Services have directed that the following are worn:

Royal Navy:	No 1C.
Army:	Officers: Service Dress or equivalent (without medals, gloves, Sam Browne or sword). Soldiers: No 2 Dress (without medals).
RAF:	No 1 (without medals or gloves).

The servicemen of the Officer Of the Court / Court Orderly's administrative support team may wear working dress, as appropriate to their assigned tasks. The President of the Board checks that all military personnel in the court maintain a proper standard of dress, and he addresses any comments about this via the Judge Advocate. However it is not appropriate to make any comment on the turn-out or dress of the defendant; any issues in this area are handled by the Court Officer via the defendant's unit. In hot weather the President of the Board may permit shirt-sleeve order to be worn. Challenges to the fairness of trials based purely on differences in standard uniforms supposedly reflecting inequality of arms are usually without merit: it is wholly appropriate for military personnel to wear formal uniforms.

Head-dress

4.5 Head-dress is worn by all Service personnel, male and female, in the courtroom at the beginning of the hearing until the oaths are taken. The Judge Advocate gives instructions as to removal and replacing of head-dress when required. Head-dress is replaced and worn during the announcement of findings, during the passing of sentences, and on every occasion when the Judge Advocate and the Board enter or leave the courtroom. The Officer of the Court / Court Orderly uniquely keeps head-dress on throughout.

Service Witnesses

4.6 Service witnesses wear head-dress, and salute on entering the court. They remove head-dress for the swearing of the oath and whilst giving evidence. Before leaving the courtroom they replace head-dress and salute. Military personnel appearing as witnesses who would normally be required to

wear uniform may be authorised by the Court Officer to attend the court in civilian clothes where justified by operational, travel or other practical considerations. Persons attending to give evidence (except character witnesses) are not allowed to observe proceedings in court before they are called. After witnesses have completed their evidence they may be asked to remain available for recall, or may be released.

Legal and Civilian Dress

4.7 Legal representatives such as barristers and solicitors appear robed as appropriate for their qualification, as if appearing in a Crown Court. Otherwise civilians dress as they choose, provided styles adopted are not likely to cause offence. If asked, the Court Officer advises civilian attendees to wear clothing which is neat, tidy, restrained and commensurate with the dignity of the court.

Section 5: Procedure

Order of Procedure at a Trial by Court Martial

5.1 The detailed order of procedure is set out in the table at **Annex B**. The Judge Advocate may depart from the standard procedures exceptionally in particular cases, in which event he will give directions.

Entry of Judge Advocate and Board

5.2 The time at which the Officer Of the Court / Court Orderly is to open the court is directed by the Judge Advocate and notified to the Board and the Court Officer. The Court Orderly warns others as necessary. After the prosecution, defence, and other participants are assembled in the courtroom, the Judge Advocate enters and takes his place on the bench. When ready, the Judge Advocate instructs the Officer Of the Court / Court Orderly to ask the Board to enter. Thus the Board always enters the courtroom last. Head-dress is worn by all Service personnel in the courtroom. The Judge Advocate remains seated so as not to throw into doubt the appearance of his independence, or be seen to show deference or appear to be subordinate to the Board. Under the direction of the Court Orderly / Officer Of the Court all others stand, and all Service personnel salute the President of the Board who returns the salute. The Judge Advocate invites them to take their seats.

Exit of Judge Advocate and Board

5.3 Each time the trial is adjourned, or when it has concluded, the Judge Advocate and the Board leave the courtroom. The Board leave the courtroom first. Head-dress is replaced by all Service personnel in the courtroom. Under the direction of the Officer of the Court / Court Orderly, all (apart from the Judge Advocate) stand and all members of the Services salute the President of the Board and civilians present may bow. The Judge Advocate leaves the courtroom last. Unless there has been a guilty plea or a finding, the Judge Advocate pauses before leaving the court to ensure that he has no inadvertent contact with the members. Once the members and Judge Advocate have left, the Officer Of the Court / Court Orderly clears and closes the courtroom (if appropriate), advising all present when the court will be re-opened. If a defendant has been sentenced, in appropriate trials he is marched out of the courtroom before the Judge Advocate and Board leave.

Section 6: Other Types of Hearings

Custody Hearings

6.1 All participants wear whatever dress they have on at the time. Service personnel attending are on duty and are therefore normally in uniform. Proceedings are informal, at the discretion of the Judge Advocate.

Plea and Case Management Hearings

6.2 A Plea and Case Management hearing is part of a Court Martial trial, but held in the absence of a Board. It is referred to in the convening order as a preliminary hearing. All participants are robed and uniformed and wear head-dress as for a Court Martial. Procedure is similar to a Court Martial but omitting the roles of the Board. The judge may direct that robes should not be worn if that is appropriate. If, exceptionally, a Plea and Case Management Hearing is held in a civilian setting (such as the Office of the Judge Advocate General), it is appropriate for the defendant and all other participants to appear wearing civilian clothing unless the judge directs otherwise.

Standing Civilian Court Hearings (adult)

6.3 The Judge Advocate sits alone in the capacity of a magistrate, and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. If any Service personnel attend, they may appear either in uniform or in civilian clothing. The procedures maintain the dignity befitting a court, but being characteristically civilian they avoid the military drill typical of a military court.

Standing Civilian Court Hearings (juvenile)

6.4 The Judge Advocate sits alone in the capacity of a magistrate, and is not robed. Legal representatives are not robed. Civilians attending, including the defendant, wear dress of their choice. Service personnel wear civilian clothing. The procedure is informal, and it is most important to avoid intimidating or confusing the juvenile defendant. The magistrate gives instructions concerning any special arrangements which need to be put in place.

Section 7: Summary Appeal Court (“SAC”) Hearings

Origins of the SAC

7.1 The SAC was established under provisions of the Armed Forces Discipline Act 2000 which amended the Service Discipline Acts 1955/57. The amendments were necessary as it was found that the summary trial (Royal Navy) or summary dealing (Army/RAF) processes are not of themselves compliant with the European Convention of Human Rights (“ECHR”). It is the ability to appeal to the SAC together with the unfettered right to elect trial by Court Martial, both of which are ECHR compliant courts, which makes the summary process as a whole ECHR compliant. Everyone who is dealt with summarily has an automatic right to seek leave to appeal to the SAC. A person may appeal against both finding and punishment, or against the punishment only.

Constitution of the SAC

7.2 The SAC comprises a Judge Advocate, who is a civilian judge appointed by the Judge Advocate General to conduct the hearing; and two ‘lay members’ (referred to below as members), who are officers or warrant officers qualified and eligible to sit. The duties and responsibilities of the

members of the SAC are set out in detail in Volume 2 of the guide at paragraphs 4.1 to 4.11. The members sit on the bench alongside the judge throughout. All participants are robed and uniformed and wear head-dress as for a Court Martial. Procedure is broadly similar to a Court Martial except that the judge and members enter and exit the courtroom together.

Nature of Hearing

7.3 To ensure ECHR compliance an appeal against both finding and punishment is an entire re-hearing of the facts. In an appeal against punishment only, the facts of the case are often undisputed and can be read to the court on that basis before the submissions on mitigation from the appellant. On rare occasions in an appeal against punishment only, the appellant accepts that he committed the offence but disputes the alleged facts as presented at the summary trial / dealing, so there is held a “*Newton* hearing”. A *Newton* hearing is a limited hearing of only the evidence relevant to the disputed facts of the offence, so that the court can decide upon which facts the punishment should be based. The court then hears any submissions or evidence on mitigation from the appellant before considering the punishment.

Layout of the courtroom

7.4 A schematic layout is shown at **Annex C** which is typical of a courtroom in which an appeal is heard. The Judge Advocate sits at the centre front facing the courtroom on the bench, which is often on a raised dais. The Appellant and Respondent teams usually sit side by side facing the judge and the Verbatim Court Recorder sits to one side of the bench. Witnesses usually give their evidence from a witness box positioned near the bench, to one side. Members of the public and press sit at the back of the courtroom. During the appeal the members sit alongside the judge on the bench throughout. This is because the judge and members together decide whether to confirm, substitute or quash a finding of guilt and the appropriate punishment.

Dress

7.5 Dress at an SAC is the same as for a Court Martial hearing.

Procedure at an SAC hearing

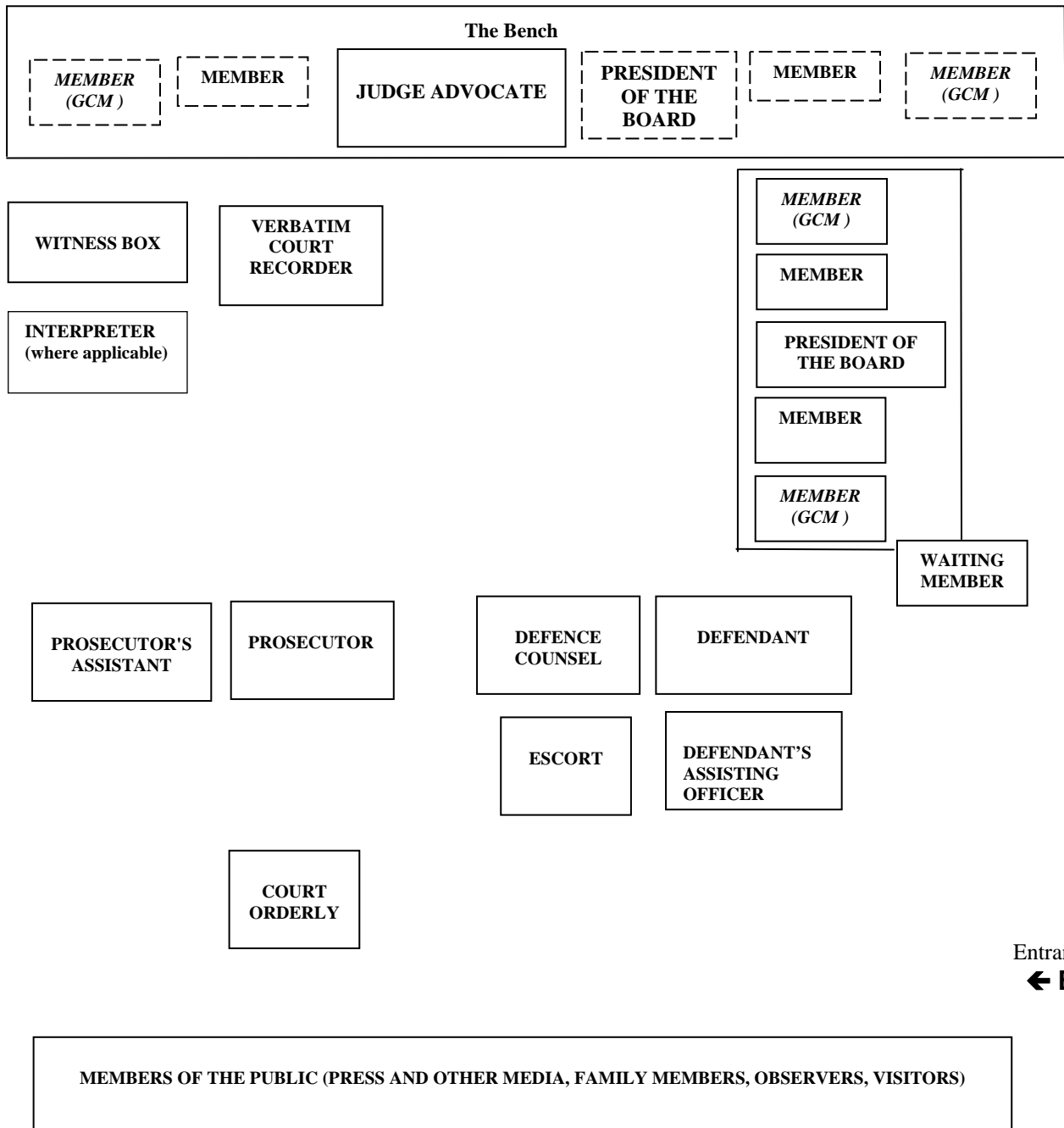
7.6 A tabulated order of procedure for the SAC is given at **Annex D** below.

ANNEX A

**LAYOUT OF A COURTROOM
FOR A COURT MARTIAL**

[Royal Coat of Arms]

Entrance
← **A**



Notes

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres, and are modified as necessary if there is more than one Defendant.
2. The Court Officer may also have a desk in the courtroom.
3. The two additional Board members required for a General Court Martial or Royal Navy trial are shown in *italics*. Board members join the Judge Advocate on the bench only for sentencing stage, as indicated in hatched lines -----
4. Arrows indicate separate entrances (A) for the Judge Advocate and Board members; and (B) for all others.

ANNEX B

ORDER OF PROCEDURE AT A TRIAL BY COURT MARTIAL

Glossary: COrd = Court Orderly (Army and RAF trials); OOC = Officer Of the Court (RN trials)

Serial	Activity	Speech	Remarks
1	No later than 5 minutes before the appointed time COrd/ OOC opens the court.	COrd/OOC: “The court is now open”	Defendant must enter the court. Defendant’s Assisting Officer, legal representatives and Verbatim Court Recorder may enter the court as required. Public and press enter and take their places. Service personnel wear head-dress.
2	Judge Advocate enters.	COrd/OOC: “All stand”	Counsel bow, Judge Advocate bows and sits down. All sit.
3	Judge Advocate deals with any preliminary matters.		
4	President of the Board and Board members enter.	COrd/OOC: “All stand”	All stand except Judge Advocate, who remains seated. Counsel bow, Service personnel salute. President of the Board returns salute. If there has already been a guilty plea, or a guilty plea is known to be offered, the Judge Advocate directs the Board to join him on the bench; otherwise they are directed to the designated area to the side of the courtroom.
5	On direction from Judge Advocate all sit except the Defendant(s) who remain standing.		Judge Advocate may ask the Defendants to identify themselves where more than one.
6	Judge Advocate (Army/RAF) or Clerk (RN) reads the convening order including the names of the officers nominated as members of the Board.	Each Board Member: “That is I”	As the name of each officer or warrant officer is read out he identifies himself.
7	Judge Advocate asks if there are any objections.	Judge Advocate: “Do you object to the constitution of the court or any of the members composing this court?”	Judge Advocate deals with any objection.
8	Administration of oaths.	Judge Advocate: “All in court stand. Service members remove head dress”	All stand including Judge Advocate who administers oath to President of the Board and members in order of seniority.
9	Judge Advocate directs the waiting / spare member to		All sit.

Serial	Activity	Speech	Remarks
	withdraw.		
10	Morris Direction.		Judge Advocate addresses the members on their duties, reminds them that they will not be reported on for their performance in court, and that they must report to the Judge Advocate any attempts to interfere with or pressurise them before or during the trial.
11	Judge Advocate directs that members be provided with copies of the charge sheet.		Unless any objections raised by counsel.
12	Defendant(s) stand.		
13	If the defendant has not been arraigned previously at a Plea & Case Management Hearing (preliminary hearing): Arraignment.	Judge Advocate asks the Defendant: “Are you the person named in the heading of the charge sheet?” [Yes] “Were you at the time of the offence/s specified in the charge sheet [the dates being...], and are you now, subject to the NDA/AA/AFA?” [Yes]	Arraignment takes place in the absence of the Board. Judge Advocate reads the heading of the charge sheet. Judge Advocate deals with any negative responses.
14	Arraignment.	Defendant: “Guilty” or “Not Guilty”	Judge Advocate reads charges and asks each defendant how he pleads to each charge. Judge Advocate takes a record of each plea. Board returns to court – see serial 4 above.
15	If the defendant(s) has been arraigned previously and has entered a plea(s)	Judge Advocate reads the charge sheet and tells the Board how the Defendant pleaded to each charge.	
16	No charge to be tried (Plea of guilty to all charges, or prosecution accepts pleas to sufficient charges for justice to be done).		Omit serials 17 to 33. Turn to serial 34
17	Charges to be tried; plea of Not Guilty.		
18	Trial commences.		Defendant sits.

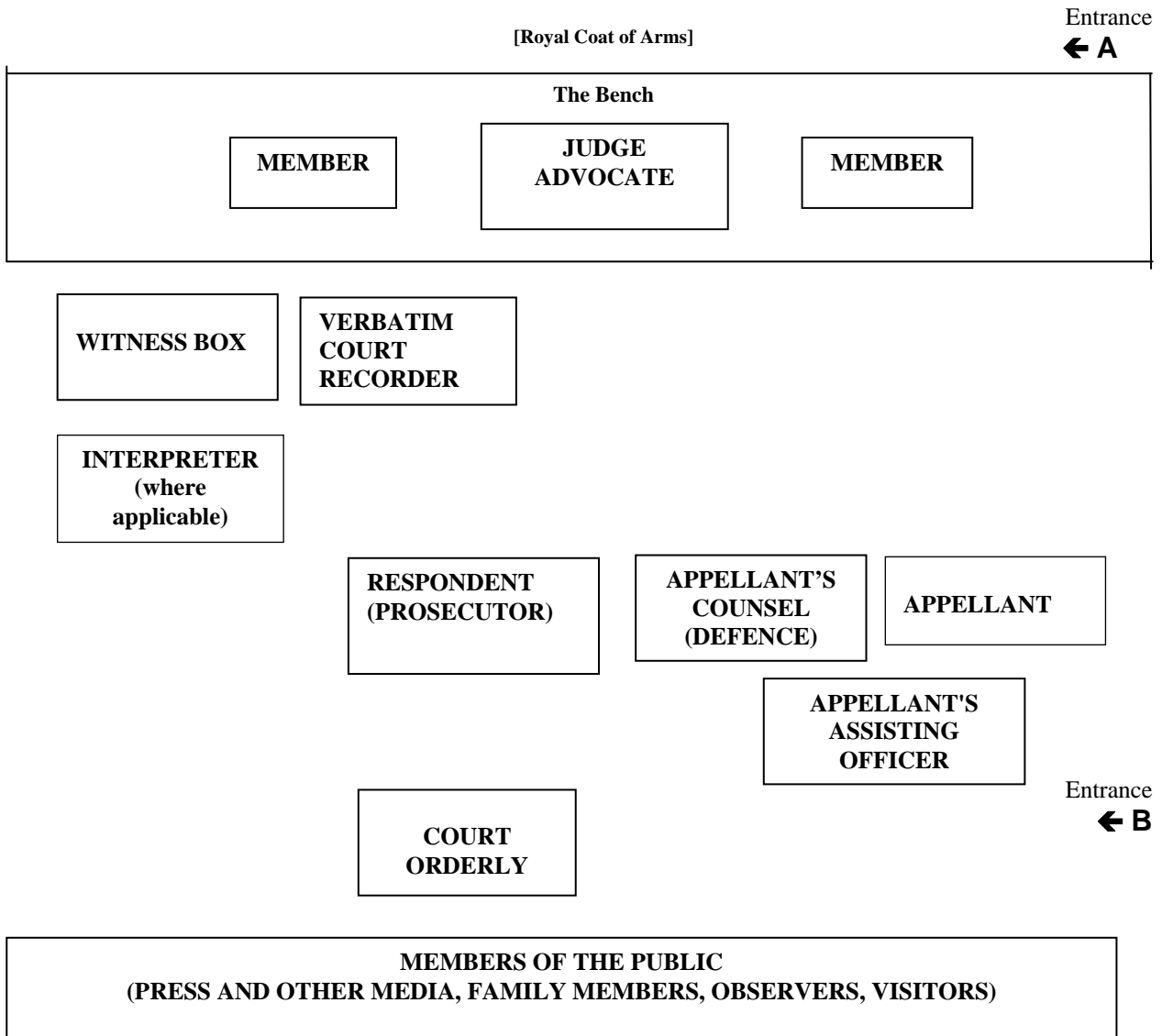
Serial	Activity	Speech	Remarks
19	Prosecution opens its case.		
20	Prosecution witnesses called to give evidence.		See guide paragraph 27. COrd/Clerk administers the oath and invites witness to sit.
21	Examination in chief; Cross-examination; Re-examination.		
22	Questions from the Board.		President of the Board or member writes question on paper and passes to Judge Advocate, who decides whether to ask it.
23	Release of witnesses.		See guide paragraph 27.
24	Legal submissions during the trial.		President of the Board and members retire while Judge Advocate adjudicates. If at any stage the Judge Advocate decides to withdraw the matter from the Board and directs the Board to find the defendant Not Guilty, turn to serial 31.
25	Defence case.		Same procedure as for prosecution opening and witnesses. See serial 19 – 23.
26	Defendant may give evidence.		Defendant puts on head-dress, salutes the court and takes the stand in the same way as any other witness. On completion, he replaces head-dress, salutes the court and returns to his seat.
27	Closing speeches.		Advocates address the court, with the defence having the last word.
28	Judge Advocate sums up the case.	COrd/OOC: “All stand”	On completion, Board retires to consider finding (verdict). Judge Advocate leaves. COrd/OOC clears the court.
29	President of the Board informs COrd/OOC that Board has reached a verdict.		COrd/OOC informs Judge Advocate.
30	COrd/OOC re-opens the court.		See serials 1 - 4.
31	Verdict (findings).	Judge Advocate: “On charge 1 (etc) do you find the Defendant Guilty or Not Guilty?” President of the Board: “Guilty” or “Not guilty”	Judge Advocate asks the President of the Board for separate findings for each charge for each defendant as applicable. Judge Advocate records the findings.
32	In the case of a finding of NOT GUILTY to all charges	Judge Advocate: You have been acquitted and you are free to go.	Judge Advocate and President of the Board sign the Record of Proceedings / TRN1. Prosecutor passes up diary of events Judge Advocate dissolves the court.

Serial	Activity	Speech	Remarks
33	Board and Judge Advocate leave the court.	COrd/OOC: “All stand”	Service personnel salute. Board and Judge Advocate leave. COrd / OOC clears the court.
34	Sentence Stage. In the event of finding of GUILTY to any charges; or plea of guilty to any charges.	COrd/OOC: “All stand”	Members move from the designated position at the side of the courtroom to take their seats alongside the Judge Advocate. After they are seated, all in court sit.
35	If plea(s) of guilty: Prosecution opens the facts of the case and lists antecedents of offender. If finding of guilty: Prosecution lists antecedents of offender if relevant.		If there is a dispute about the facts following a guilty plea, court will consider a “ Newton Hearing ”.
36	In the event of a dispute about facts affecting sentence after a Guilty plea.	Judge Advocate announces factual basis upon which the court intends to sentence after consideration with the Board	Procedure for <i>Newton</i> hearing follows serials 20-23 & 26, after which Judge Advocate and Board retire together to consider the facts.
37	Adjournment for Pre-Sentence Reports or other reports.		If, following submissions from defence or on the court’s own motion, reports are considered necessary, the court is adjourned until some later date for sentence. The court is not dissolved at this stage. Judge Advocate and Board leave.
38	Court re-opens.		Serials 1 to 4.
39	Plea in mitigation.		Character witnesses may be called and/or written character evidence and other reports are put before the court.
40	Court retires to consider sentence.	COrd/OOC: “All stand”	Judge Advocate and Board may retire together or may remain in the courtroom while they deliberate, in which event the court is cleared.
41	Judge Advocate informs COrd/OOC that the court is ready to deliver sentence.		COrd/OOC reopens the court. Serials 1 to 4.
42	Judge Advocate and Board enter together if they retired to deliberate. If Court has remained in the courtroom, all other parties are readmitted.	COrd/OOC: “All stand” [Only if Court retired.]	Counsel bow, Service personnel salute. All sit except offender who remains standing.

Serial	Activity	Speech	Remarks
43	Judge Advocate gives reasons for sentence.		Head-dress remains on.
44	President of the Board formally announces sentence.		
45	With leave of the Judge Advocate, the President of the Board may address the offender.		Offender is addressed about the effects of his offending on the Service, and the effects of the sentence on his Service career.
46	March out.	President of the Board (if appropriate): “March out the Offender”	An offender sentenced to custody is always marched out whatever his rank. If non-custodial sentence, it is at the discretion of the President of the Board depending on the rank of the offender and the sentence. COrd/OOC orders offender and escort to attention, to salute, and then to march out of the court.
47	Miscellaneous rulings and Diary of Events		Judge Advocate deals with costs if appropriate. He may do so before the offender is marched out. Prosecutor hands up Diary of Events. Judge Advocate and President of the Board sign the completed Record of Proceedings / Trial Result Notification Form TRN1.
48	Judge Advocate dissolves the court.	COrd/OOC: “All stand”	Judge Advocate and Board leave. Court cleared.

ANNEX C

**LAYOUT OF A COURTROOM
FOR A SUMMARY APPEAL COURT**



Notes

1. The above layout is schematic but typical. Details of the layout vary between Military Court Centres, and are modified as necessary if there is more than one Appellant.
2. The Court Officer may also have a desk in the courtroom.
3. Arrows indicate separate entrances (**A**) for the Judge Advocate and members; and (**B**) for all others.

ANNEX D**ORDER OF PROCEDURE AT THE SUMMARY APPEAL COURT**

Glossary: COrd = Court Orderly (Army and RAF trials); CofC = Clerk of the Court (RN trials)

Serial	Activity	Speech	Remarks
1	No later than 5 minutes before the appointed time COrd/CofC opens the court.	COrd/ CofC: “The court is now open”	Appellant must enter the court. Representatives for the Appellant and Respondent and Verbatim Court Recorder (VCR) may enter the court as required. Public and press enter and take their places. Service personnel wear head-dress
2	At the appointed time COrd/CofC invites the Judge Advocate and Members to enter the court.	COrd/CofC: “All stand”	All persons in court rise. Counsel bow, all Service personnel salute. Service Members return salute.
3	Judge Advocate and Members take their places.	Judge Advocate: “Please sit down”	Members sit on the bench at each side of the Judge Advocate.
4	The Judge Advocate reads out SAC notice.		Judge Advocate invites all in the court to remove head-dress
5	Judge Advocate asks Appellant and Respondent if there are any objections.	Judge Advocate: “Do you object to the constitution of the court or any of the members composing the court?”	Judge Advocate deals with any objections
6	Judge Advocate reads out the charge and confirms with Appellant (or his Counsel / legal representative) whether appeal is against both finding and punishment, or punishment only.		If the appeal is against both finding and punishment this will form a complete re-hearing of all the evidence. Serials 7 to 24 apply. If the appeal is against punishment only the undisputed facts of the case are read to the court. Go to serials 21 onwards.
7	Trial commences.		Appellant sits.
8	Respondent opens its case.		
9	Respondent’s witnesses called to give evidence.		COrd/CofC calls in each witness as instructed. Witnesses entering the courtroom salute/bow as appropriate. COrd/Cof C administers the oath/affirmation. If appropriate, Judge Advocate invites the witness to sit.
10	Examination in chief; Cross-examination;		

Serial	Activity	Speech	Remarks
	Re-examination.		
11	Questions from the members.		The Judge Advocate and the members may ask questions of the witness.
12	Release of witnesses.		See guide paragraph 26. Judge Advocate gives the witness an appropriate witness warning. Witness stands, replaces head-dress, salutes/bows as appropriate, and leaves.
13	Appellant's case. Opening address, calls witnesses.		Same procedure as for Respondent.
14	Appellant may give evidence.		Appellant puts on headdress, salutes the court and takes the witness stand in same way as every other witness. On completion, returns to his seat in the court.
15	Closing speeches.		Advocates address the court, with the appellant having the last word.
16	Deliberation on finding.	Judge Advocate: “The court will now close to deliberate. COrd/CofC please clear the court.”	All except the Judge Advocate, members and COrd/CofC leave the court room. COrd/CofC receives any further instructions from the Judge Advocate before also leaving. The Judge Advocate and members deliberate the finding alone.
17	Judge Advocate calls for COrd/CofC to re-open the court	COrd/CofC: “The court is now open”	All persons involved in SAC return to respective places in the court room.
18	Judge Advocate announces the finding		Finding either: <ul style="list-style-type: none"> • confirms the original finding, or • quashes the original finding, or • substitutes a new finding that a different offence is proved.
19	If original finding of guilt is quashed.	Judge Advocate: You are free to go.	The conviction and punishment are reversed. Judge Advocate signs TRN confirming the outcome.
20	If appeal is on punishment only:		Respondent reads out the undisputed facts of the case to the court.
21	If finding of guilt is not quashed, or was not appealed: Respondent and Appellant address the court on punishment and mitigation.		Deals with reports on the appellant, antecedents, any time already spent in custody, evidence of character witnesses.

Serial	Activity	Speech	Remarks
22	Judge Advocate closes the court to allow for deliberation on punishment.	Judge Advocate: “ The court will now close to consider the punishment. COrd / CofC please clear the court. ”	All except the Judge Advocate, members and COrd/CofC leave the court room. COrd/CofC receives any further instructions from the Judge Advocate before also leaving. The Judge Advocate and members deliberate the sentence alone.
23	Judge Advocate calls for COrd/CofC to re-open the court	COrd/CofC: “ The court is now open ”	All persons involved in SAC return to respective places in the court room.
21	Judge Advocate formally announces the decision on punishment.		Judge Advocate gives reasons for the court’s decision. Judge Advocate signs the TRN Record of Proceedings.
22	March out	Judge Advocate: “ March out the Appellant ”.	An offender who is in custody, or whose custodial sentence still stands, is always marched out of court. In other cases it is at the discretion of the members of the court.
23	Judge Advocate concludes the case.	COrd/CofC: “ All stand ”	Judge Advocate announces that the appeal hearing is concluded, directs the COrd/CofC to clear the court. Uniformed personnel replace head-dress and salute, civilians bow. Judge Advocate and members leave. (SAC is not dissolved)