



SENTENCING IN COURTS MARTIAL: A SHORT GUIDE

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INTRODUCTION

1. This guide is issued by the Office of the Judge Advocate General and contains judicial guidance on appropriate sentencing tariffs while taking account of the Armed Forces discipline policy. It is intended to assist all concerned in the sentencing of people found guilty by Court Martial. Sentencing is a complex and difficult exercise which is not a rigid or mechanistic process, but consistency of approach is essential to maintain public confidence. Those who sentence have a discretion to reflect the gravity of the offence, the effect on the victim, the circumstances of the offender and the public and Service interest. This guide, therefore, is designed not to be prescriptive but to provide an aid to consistency within the Court Martial system.

2. A Court Martial is a criminal court dispensing public justice. It is a public court in every sense and it has regard to the general public interest as well as to the interests of the Armed Forces. Its jurisdiction is such that it hears the full range of criminal offences and the presence of an independent civilian judge (known as the Judge Advocate for historical reasons) who conducts all trials ensures its independence and impartiality. A Court Martial is not the Crown Court sitting in uniform, but proceedings in contested trials mirror those in the Crown Court except where there are good operational reasons for differences. The panel fulfils the functions of a jury but it has more power reflecting the military nature of the Court and the President is more than a foreman in that he is responsible for ensuring that the trial is conducted in a manner which befits the traditions of the Service. At the sentencing stage the panel moves up onto the bench to bring their collective Service experience and knowledge to bear and together with the Judge Advocate decide the appropriate sentence.

3. The differences between the military and civilian systems of justice exist only to reinforce and support the operational effectiveness of the Armed Forces, and are necessary because of the link between the maintenance of discipline and the administration of justice. There have been several legal challenges to the system as a whole in recent years and some critics have argued that crimes committed by Service personnel should more properly be dealt with in the Magistrates' Courts and Crown Court. Those arguments have been successfully resisted before the domestic courts and the European Court of Human Rights, which have ruled that the British Court Martial system is compatible with Article 6 of the European Convention on Human Rights (ECHR)¹.

4. There are four cogent reasons for maintaining a unique system of military justice separate and distinct from the civilian system. These are to:

- **Support the operational effectiveness of the Armed Forces and morale.** A separate system of justice enables the timely disposal of crimes and breaches of discipline, thereby preventing discontent from festering and undermining morale. It provides a transparent system which is visibly fair to both the individual and the Armed Forces, and it sets limits within a Service context which deter others from conduct

¹ *Morris v UK* [2002] ECHR 38784; *Cooper v UK* [2003] ECHR 48843/99

which might detract from fighting efficiency. It is also a transportable system and a Court Martial can sit anywhere in the world during peace or armed conflict.

- **Assist in the maintenance of discipline.** Discipline is an essential element of Command and the Commanding Officer is central to the system. Without the ability of the Command to exercise punitive powers over their subordinates the fabric of discipline would be weakened.
- **Reflect the special and unique nature of the Armed Forces by setting criminal and Service disciplinary offences into context.** Members of the Armed Forces uniquely in contemporary society are lawfully required to use lethal force to support Government policy, and to place themselves in situations where their own lives are at risk. The Armed Forces maintain a disciplinary code to support the ethos which ensures operational effectiveness, and breaches of that code, which might not constitute criminal behaviour in civilian life, can nevertheless often have serious adverse consequences in a military context. In addition there is always a disciplinary element to criminal offending by Service personnel which needs to be considered within the unique context of the Armed Forces. Some criminal offences, such as petty theft in a barrack room or a messdeck, are aggravated by the corrosive effect on discipline and morale. Similarly the Services' attitude towards drug abuse is less tolerant because of the inherent dangers associated with handling weapons or operating in a dangerous environment when under the influence of drugs. On the other hand if an offence is committed just after return from a hazardous operational deployment, the accused deserves more sympathetic and understanding consideration from those who understand the pressures of operations. This means that Service offences can only be fully understood by Service Courts, and resulting sentences sometimes properly vary from norms within the civilian courts.
- **Extend the law of England and Wales to personnel serving overseas and outside the jurisdiction of the civilian courts.** The Armed Forces are deployed world-wide and all alleged offences committed overseas can be tried in Service courts, thus ensuring that high standards of behaviour are maintained. This also protects Service personnel from being subject to harsher, non ECHR compliant regimes in countries where they serve.

5. The three Armed Forces are also different in a number of significant respects and vary in the way certain disciplinary offences are handled and sentenced. This guide highlights differences where they arise. Government policy is to minimise those differences through changes proposed in the Armed Forces Bill 2006. This guide will be updated in time for the implementation of the Act in 2008.

6. In addition to Service personnel there are many civilians either working alongside the Armed Forces or accompanying as families abroad. These civilians may also be liable to be tried by Court Martial (where the panel may include

civilians) or by a Standing Civilian Court, which is a court sitting overseas comprising a Judge Advocate sitting alone as a Magistrate (Army and RAF only).

7. The vast majority of disciplinary and criminal matters are dealt with summarily by the Commanding Officer of the accused or the Appropriate Superior Authority. This guide is primarily concerned with Courts Martial, but where the accused has elected for trial by Court Martial (rather than being directed for trial) the sentencing powers of the court are limited to those which could have been exercised by the Commanding Officer. In such trials Judge Advocates should take into account the Commanding Officers' guide to sentencing for the relevant Service².

8. Transcripts of the proceedings of all trials where there is a plea of guilty or a conviction are reviewed by the individual Service's Reviewing Authority on advice from the Judge Advocate General³. All persons convicted by Court Martial also have a right of appeal against conviction (following a contested trial) and sentence to the Courts Martial Appeal Court (CMAC). The CMAC, in assessing whether a particular sentence is manifestly excessive or wrong in principle, will be referred to this guide.

9. A useful guide on procedure in Courts Martial is contained in "*Courts-Martial, Discipline, and the Criminal Process in the Armed Services*."⁴

His Honour Judge Jeff Blackett
Judge Advocate General

June 2006

² Green Guide for the Royal Navy; Commander's Guide to Sentencing for the Army, RAF COs' Sentencing Guide

³ Or in the case of the Royal Navy by JAF or the DNLS until October 2006 when those arrangements will be aligned with the other two Services.

⁴ By HHJ James W Rant with Commodore Jeff Blackett; Oxford ISBN 1-84174-288-0

CHAPTER 1

GENERAL COMMENTS ABOUT SENTENCING IN SERVICE COURTS

1.1 Sentencing process. Sentencing in Courts Martial is undertaken by a Judge Advocate sitting with the lay (meaning not legally qualified) Service members of the court. The Judge Advocate will be experienced in sentencing practice in the civilian courts, and will have regularly attended JSB training seminars provided for Recorders and Judges in the Crown Court (many Judge Advocates also sit as Recorders). In addition he will be experienced in the general sentencing practices and policies of the Armed Forces, and their needs and requirements. The lay Service members, who will have little or no training in sentencing practice, bring their service background and knowledge of disciplinary issues to bear on the process. Those of them who have been involved with summary dealing will, however, have some knowledge of principles of sentencing. Sentencing deliberations necessarily take place in closed court and may not be disclosed. In some cases, albeit rarely, it is necessary for the panel members and Judge Advocate to vote on sentence but if that occurs only a simple majority is required and no indication is given as to whether any decision was unanimous or by majority. The Judge Advocate explains in open court the reasons for sentence and the President then formally announces it.

1.2 Sentencing powers. The range of sentences available to a Court Martial is different from that available to the Crown Court – in particular some community penalties available to the civilian courts are incompatible with military service. The detention regime at the Military Corrective Training Centre (MCTC) Colchester is designed to rehabilitate service personnel to make them fit either for further service or for transition into civilian society. Thus there is an element in sentences of detention which has the same purpose as community penalties. The maximum sentence which can be awarded by a District Court Martial (DCM) is imprisonment for two years (even if the statutory maximum for the offence is higher), and by a General Court Martial (GCM) or any Naval Court Martial it is imprisonment for life. There are, however, additional sentencing powers available in respect of civilians who are subject to service discipline, including Community Supervision Orders (which can include limited conditions that unpaid work be performed and are in that respect similar to Community Orders with an Unpaid Work Requirement⁵) and the imposition of Conditional or Absolute Discharges.

1.3 Proportionality. Courts Martial, just like any other criminal courts, are reminded by the Judge Advocate that any sentence should be proportionate by reference to⁶:

- The punishment of offenders;
- The reduction of crime (including its reduction by deterrence);
- The reformation and rehabilitation of offenders;
- The protection of the public; and
- The making of reparation by offenders to persons affected by their

⁵ Criminal Justice Act 2003 s 177a

⁶ Criminal Justice Act 2003 s 142

offences.

Additionally a Court Martial must take into account what is in the best interests of the Service because the whole military and naval justice system is designed to underpin the operational effectiveness of the Armed Forces. This often makes the sentencing exercise different from that in the civilian courts. The close knit structure of the Armed Forces means that sentences of Courts Martial are much more widely disseminated than sentences in civilian courts are and this makes deterrence a more important factor in Court Martial sentencing.

1.4 Multiple offences. Where the accused has committed more than one offence, a Court Martial imposes one global sentence, not a separate sentence for each offence. A GCM has the power to impose separate consecutive sentences of imprisonment on the same occasion but only for civil offences. In practice this power is rarely used.

1.5 Sentences available. Depending upon the offence and the rank of the offender⁷, the sentences available to courts-martial are⁸ (*in declining order of severity*):

- i.) imprisonment (in a civilian prison)
- ii.) Detention by virtue of a custodial order made under s 71AA of the Army or Air Force Act or s 43AA of the Naval Discipline Act (young offenders)
- iii.) Order that the convicted person be disqualified from working with children
- iv.) Dismissal with disgrace from Her Majesty's Service
- v.) Dismissal from Her Majesty's Service
- vi.) Detention for a term not exceeding two years in the Military Corrective Training Centre (not for commissioned officers)
- vii.) Forfeiture of seniority for a specified term or otherwise (only for commissioned officers)
- viii.) Dismissal from the ship or naval establishment to which the offender belongs (commissioned officers convicted at Naval Courts Martial only)
- ix.) Reduction to the ranks or any less reduction in rank (Army and RAF), disrating (Navy) (not for commissioned officers)
- x.) Fine
- xi.) Severe reprimand
- xii.) Reprimand
- xiii.) Stoppages, in the case of an offence which has occasioned any expense, personal injury, loss or damage (recovery by deductions from the offender's pay, or a specified sum by way of compensation for the expense, personal injury, loss or damage); and
- xiv.) Such minor punishments as may from time to time be authorised by the Defence Council (such as Second Class for Conduct (RN only), stoppage of leave, extra work, restriction of privileges, etc

⁷ For civilians see Chapter 5

⁸ Army and Air Force Acts 1955 s 71, Naval Discipline Act 1957 s 43

which can be found in the relevant Service manuals).

1.6 Recording convictions. Convictions by Courts Martial for criminal offences and some service disciplinary offences are recorded on the Police National Computer. In Royal Navy Courts Martial the Judge Advocate specifies when a conviction is to be recorded.

1.7 Stoppages. Compensation for personal injury or damage to property can be ordered against convicted Service personnel by way of stoppages of pay. In this way the interests of victims can be addressed without them having to pursue civil recovery of damages, although the award of stoppages does not prevent a victim from suing for compensation through the civil courts.

1.8 Service policy considerations. Courts Martial are independent courts but they are also an essential part of the process which maintains discipline within the Armed Forces. They must, therefore, take account of Service policy considerations when deciding the appropriate sentence in any case, although they are not bound by them.

1.9 Entry points. This guide contains suggested entry points for Courts Martial when sentencing certain civil and Service offences. They take account of civilian and Services' sentencing policy and guidance, but do not fetter the discretion of Courts Martial to apply whatever punishment they feel to be just and appropriate. Where the punishment awarded departs significantly from the suggested entry points Judge Advocates should explain the departure in their reasons for sentence. Where entry points are not provided, Judge Advocates should refer to civilian guideline cases and then apply the additional aggravating or mitigating factors relevant to Service personnel.

1.10 Reduction for a guilty plea. Courts Martial apply the statutory provisions relating to reduction in sentence for a guilty plea⁹, and approach reductions in accordance with the Sentencing Guidelines Council guideline. The level of reduction should be a proportion of the total sentence imposed, with the proportion being based upon the stage in the proceedings at which the guilty plea is entered. The first reasonable opportunity attracts a maximum $\frac{1}{3}$ reduction; after the trial date is set a maximum of $\frac{1}{4}$; and at the door of the court/after the trial has begun a maximum of $\frac{1}{10}$. Defendants are reminded of this at the first Directions Hearing. Reduction may be withheld in certain circumstances¹⁰, but the normal sliding scale of reduction does apply even where the defendant is "caught red-handed". As sentences of detention include a large element of retraining¹¹ and minimum periods are necessary to achieve this, the mathematical approach to reduction need not be applied to short sentences of detention where the reduction would only be a few days.¹²

1.11 Relevant publications. This guide should be read in conjunction with the following publications:

⁹ Powers of Criminal Sentencing Courts (Sentencing) Act 2000 s 152

¹⁰ See Sentencing Guidelines Council compendium

¹¹ See 4.4 and 4.5 *infra*

¹² See also 4.7.2 *infra* in relation to calculating credit for time spent in post-charge custody.

- Current Sentencing Practice by David Thomas QC(Hon), LL.D
- Guideline Judgments – Case Compendium issued by the Sentencing Guidelines Council (SGC)
- The Guide to Summary Punishments (Green Guide for the Royal Navy)
- The Commander’s Guide to Sentencing (Army)
- The COs’ Sentencing Guide (RAF)

CHAPTER 2

CIVIL OFFENCES

General Comments

2.1 **Regime.** In this chapter “civil offence” means an offence which is a criminal offence under the law of England and Wales as it applies to all persons. Any person subject to military or naval law who commits a civil offence whether in the United Kingdom or elsewhere may be tried by Court Martial for that offence by virtue of the Army and Air Force Acts 1955 s 70 and the Naval Discipline Act 1957 s 42. When sentencing offenders for civil offences Courts Martial should take account of relevant guideline cases and other precedents¹³, and, where relevant, the Sentencing Guidelines Council. However it may be necessary to depart from those guideline cases for Service reasons and where necessary the Judge Advocate will give reasons for such departure when he explains the sentence in open court. The changes in civilian sentencing introduced by the Criminal Justice Act 2003 do not automatically apply to Courts Martial. In particular there is no power in a Court Martial to impose imprisonment for public protection,¹⁴ but courts should undertake an assessment of whether the offender is a risk to members of the public of serious harm and reflect any such assessment in the overall length of any custodial sentence passed.

2.2 **Entry points.** The entry point for any sentence passed by a Court Martial on those who have committed civil offences should be the same as in a civilian court. The sentence may be increased to reflect aggravating features or reduced to take account of mitigation adduced and the pressure of Service life, or the unique circumstances of military or naval service. Higher sentences are necessary where the nature of the offence is such that it is potentially corrosive to Service discipline, for example thefts from fellow Service personnel and assaults upon superiors, or where the consequences of a civil offence might have particularly dangerous or even catastrophic results in a Service environment. An example of the latter would be the use of illegal drugs. On the other hand, a more lenient sentence might be appropriate where the guideline sentence would lead to disproportionate loss of status or pension or where the operational context is relevant.

2.3 **List of offences.** No exhaustive list can be given but this chapter deals with some of the more common types of civil offences. It includes offences committed against members of the local civilian population in foreign countries and particular types of offence which are prevalent in the Armed Forces and call for strong deterrent sentences.

2.4 **Serious offences.** Differences in the level of sentence between civilian and military courts tend to be minimised in the more serious civil offences. For example, if a soldier is sentenced for rape when serving abroad he would not normally be given a heavier sentence than that which he would receive in a Crown

¹³ See Thomas on Current Sentencing Practice

¹⁴ The relevant provisions in Criminal Justice Act 2003 Part 12 (Sentencing) do not apply because s 305(1) states that “court” (without more), except in Chapter 7 (effect of life sentence), does not include a Service court

Court since the general tariff of sentencing in Crown Courts is sufficient to meet the Service interests. However, if the offender was of a superior rank to the victim, the additional element of breach of trust or abuse of authority might be an aggravating factor leading to a heavier punishment. Similarly service personnel convicted of offences of simple possession of dangerous drugs are dealt with more harshly than equivalent civilians because of the risk that drug abuse could make the offender become a danger to colleagues. Those who supply illegal drugs are usually dealt with in accordance with the guidelines of the civilian courts, which call for particularly strong deterrent sentences, but abuse of superior rank would again be an aggravating factor.

Certain Common Civil Offences

2.5 Possession of dangerous drugs

2.5.1 Service policy considerations. Drug abuse is incompatible with service in the Armed Forces and there is a presumption of dismissal in all drug abuse cases. The close-knit nature of a Service community renders it very susceptible to the spread of drug abuse and the wide spread use of drugs would seriously undermine the operational effectiveness of the Armed Forces. Personnel in the Armed Forces who carry lethal weapons, operate and maintain dangerous equipment, or have responsibility for the safety of others must display higher standards of behaviour than civilians, and must expect to be punished more severely for breaching those high standards.

2.5.2 Aggravating factors.

- quantity other than very small;
- use within the Service environment;
- previous conviction for drugs offences;
- corruption of others;
- abuse of position of authority (in supply cases);
- class A drugs.

2.5.3 Mitigating factors.

- very small quantity;
- youthful first time experimentation;
- social setting away from the Service environment;
- young age of offender;
- admission of involvement at early stage;
- co-operation with investigators;
- special personal or domestic circumstances.

2.5.4 Entry points.

Dismissal + a custodial sentence.

Simple possession – short period of detention, the length depending on extent of misuse and class of drug.

Other offences – imprisonment unless there are compelling mitigating features which allow detention.

Exceptionally an offender may be retained in the Service if the following factors balance in his favour:

- the offender was young and inexperienced;
- it was a first offence involving singular use on one occasions;
- the substance was class B or below;
- the chances of reform are good;
- the offender expresses remorse;
- the offender has significant potential;
- it is in the interest of the Service to retain the offender.

2.6 Theft and other offences of dishonesty

2.6.1 **Service policy considerations.** Dishonesty is incompatible with service in the Armed Forces because it is corrosive to unit cohesiveness and morale.

2.6.2 **Theft from employer/breach of trust.** These are serious aggravating factors. Where the theft is institutional or amounts to a breach of trust, the well established principles established in the civilian courts are applied and the entry point for this type of theft would be the same as for cases of theft from employer or breach of trust in the civilian courts. However minor theft from an employer is often treated more severely within the Service context. The rank of the offender, the degree of trust reposed, the sum involved and the period of time over which offences have been committed remain the determining factors. The more senior the rank held by the offender the more serious the case and it would be very unusual to retain a commissioned officer who is convicted even of only one offence.

2.6.3 **Barrack room or messdeck theft.** Theft from colleagues who live in a close community undermines the mutual respect and comradeship that are the basis of service life, and may ultimately affect operational effectiveness. It is very serious even where the value of the items stolen is low.

2.6.4 **Aggravating factors.**

- type of theft (breach of trust, theft from employer, barrack room/messdeck theft);
- undermining of morale and discipline;
- the more senior the rank of the accused the more serious is the case – even where the amount is comparatively small any dishonesty by an officer can undermine the integrity of the command chain;

- effect on the victim.

2.6.5 **Mitigating factors.**

- value of item stolen is low;
- the overall level of dishonesty is not high;
- single instance, opportunistic, unpremeditated theft;
- co-operation with investigators;
- special personal or domestic circumstances;
- expression of remorse and willingness to repay;
- no subsequent deceit;
- good professional and disciplinary history;
- the offender has significant potential or is of value to the Service.

2.6.6 **Entry point.**

Dismissal + a custodial sentence

Exceptionally an offender may be retained in the Service where many of the mitigating factors are present and retention is in the interests of the Service.

2.7 **Offences of violence**

2.7.1 **Service policy considerations.** The Armed Forces train their personnel to exercise controlled violence towards the enemy in a disciplined way. Unlawful violence undermines discipline and must be deterred. The starting points for more serious offences of violence are the guideline cases in Current Sentencing Practice and the SGC. Where the violence is directed at superiors or is an abuse of rank or authority, heavier sentences may be appropriate. Alternatively there may be compelling mitigating factors resulting from operational considerations which justify a lower sentence than might be appropriate in a civilian context.

2.7.2 **Aggravating factors.**

- Harassment including bullying – where assaults take the form of bullying, particularly bullying by superiors who take advantage of their rank or the bullying of those who are particularly vulnerable such as recruits. It is the aim of the Services to eradicate any traces of a bullying culture and sentences should contain an element of deterrence;
- group action – this is an aggravating factor in civilian cases but it is additionally so in the military context as it contains an implicit element of bullying;
- insubordination – where the victim of the assault is of superior rank to the offender, or a member of the Service police or provost, or in the RN someone exercising authority on behalf of the OOD/OOW, and the offender knew that this was the case. Any unlawful violent attack

on a superior undermines discipline and can damage the chain of command;

- vulnerability of the victim – attacks on fellow service personnel in their private living space, especially attacks whilst resting or asleep in bed, are particularly nasty and regrettably prevalent. Such an offence is serious and normally warrants a substantial sentence of detention even where injuries are minor, and imprisonment where injuries are significant;
- drunkenness – violence fuelled by drunkenness is a prevalent type of offence among young service personnel which merits deterrent sentences;
- violence against citizens of host countries – where unlawful violence is used overseas on citizens of an occupied or host country, this is particularly harmful to the reputation of the British Armed Forces especially in that theatre. It can undermine the mutual trust between Service personnel and the local population, put the lives of other Service personnel at risk, and hamper future operations.

2.7.3 **Mitigating factors.**

- Stress caused by the situation – an operational deployment which involves stressful, risky or arduous conditions or exhaustion can affect a Service person either during operations or later on return to a peaceful environment;
- Impulsive action or provocation – where the context of the offending is appropriate (for example where a soldier overreacts in a hostile crowd control situation) a Court Martial may allow greater weight to be applied to the mitigation than might be appropriate where the offence was committed in a civilian environment.

2.7.4 **Entry points:** Refer to Current Sentencing Practice and SGC

2.8 **Serious sexual offences**

2.8.1 **General.** Only Judge Advocates who are ticketed to deal with serious sexual offences (having attended the relevant JSB training seminars) will sit in cases involving serious sexual offences. The starting points are the guideline cases in “Current Sentencing Practice”, but rank differential or the abuse of a position of authority would be an aggravating factor.

2.8.2 **Notification.** The Notification requirements for persons convicted of sexual offences are contained in the Sexual Offences Act 2003 Part 2 and should be applied to those convicted and sentenced by Court Martial in the same way as in the civilian courts. Where a person is sentenced to detention, the notification requirements are governed by the Sexual Offences Act 2003 Sch 3 paragraph 93: a reference in any of those paragraphs to being made the subject of a community sentence of at least 12 months is to be read, in relation to an offence under the Army or Air Force Acts 1955 s 70 or the Naval Discipline Act 1957 s 42, as a reference to being sentenced to a term of service

detention of at least 112 days.

2.9 **Motoring offences and disqualification from driving**¹⁵

2.9.1 **Service policy considerations.** Military establishments occupy large areas of land and can contain all the infrastructure of a small town. Motoring offences committed within military establishments are dealt with in the same way as motoring offences on public roads in the UK but are subject to a different sentencing regime.

2.9.2 **No disqualification.** In all but the most serious offences the sentence for motoring offences is a fine calculated in much the same way as in the civilian courts. One important difference however is that a Court Martial has no power to disqualify an offender from driving. Since disqualification (or penalty points) is often mandatory in the civilian courts, and is usually regarded as the harshest element of the sentence, a Court Martial sometimes imposes correspondingly heavier fines.

2.9.3 **Overseas cases.** If a motoring offence is committed overseas, the offender's Commanding Officer or appropriate superior authority has the power to withdraw the military permit which is required for any Service person to drive in that country. In Germany, Standing Orders prohibit the driving of any motor vehicle unless a special licence, gained after a written test, is obtained. Withdrawal of the permit effectively disqualifies the holder from driving in that country, but has no effect on his ability to drive anywhere else including the UK. In Germany a scheme has been agreed whereby the Judge Advocate makes a recommendation to the Service authorities as to the withdrawal of a permit and the length of any such withdrawal. By the time an offender is ready to be sentenced, he or she may already have suffered withdrawal of driving permit for a period.

2.9.4 **Fines.** A sentence of a heavier fine than the civilian norm may be justified in overseas cases where the offence would have carried mandatory disqualification but the fact that the offender is shortly to leave the country means that the withdrawal of driving permit would have little effect.

2.9.5 **Entry point**¹⁶.

Fine + recommendation for withdrawal of military permit

Detention in cases involving drink driving offences where the level of alcohol is over twice the limit.

¹⁵ Charged either under the relevant Road Traffic Acts or in some circumstances as breaches of standing orders under Army and Air Force Acts 1955 s 36, Naval Discipline Act 1957 s 14A.

¹⁶ See also Wilkinson's Road Traffic Offences for guidance on levels of fines

CHAPTER 3

SERVICE OFFENCES

General Comments

3.1 **Maxima.** The Service Discipline Acts¹⁷ create a number of specific service offences each of which specifies the maximum sentence. Where offences formerly carried the death penalty¹⁸ the maximum sentence is now “imprisonment or any less punishment” and that term includes life imprisonment. Most offences, however, are punishable with a maximum of two years’ imprisonment.

3.2 **Service differences.** Many service offences are dealt with summarily by Commanding Officers and guidance in the Armed Forces’ publications on summary punishment is helpful and should be consulted in appropriate cases (and always where the defendant has elected for trial by Court Martial). There are some differences in sentencing practice between the three Armed Forces where a particular type of offending is considered to be more serious in one Service than the others. For example negligent discharge of a weapon is more serious in the Army where higher standards are expected of those who routinely handle personal weapons. Where appropriate those differences are highlighted within the text of this guidance.

3.3 **Serious Service offences.** Service offences that do not constitute criminal behaviour in civilian life may nevertheless be serious in a military or naval context and therefore attract a custodial sentence. Normally the appropriate custodial sentence would be detention at the MCTC in Colchester, but sometimes imprisonment is appropriate particularly where there is a public interest in the conduct which has fallen below the expected standard of behaviour of members of the Armed Forces. In general offences which undermine discipline or the integrity of the chain of command will attract more severe punishment, as will any offence where an offender lets down his colleagues and thereby affects morale or unit cohesion.

3.4 **Precedents.** The Service offences listed below are examples that have been considered by Courts Martial in recent years. Where Courts Martial have to deal with other offences policy guidance can be obtained from summary discipline guides, and the general principles of sentencing exemplified in this guide should be adopted.

Certain Common Service Offences

3.5 **Offences by or in relation to sentries, persons on watch, etc¹⁹.**

3.5.1 **Service policy considerations.** The safety of personnel in the Armed Forces is guaranteed by sentries and persons on watch. Those who neglect those duties or interfere with colleagues who are

¹⁷ Army and Air Force Acts 1955 and Naval Discipline Act 1957

¹⁸ Abolished by the Armed Forces Act 2001

¹⁹ Army and Air Force Acts 1955 s 29, Naval Discipline Act 1957 s 6

carrying them out put at risk the safety and security of all. In operational theatres this is a very serious offence.

3.5.2 **Aggravating factors.**

- voluntary consumption of alcohol either while on watch or before;
- duty is safety critical;
- sentry deliberately leaving his or her post;
- potential danger caused by the sentry being asleep or leaving his or her post;
- theatre of operations and existing security state.

3.5.3 **Mitigating factors.**

- no intention to sleep – but long hours worked on duty prior to offence;
- duty is not safety critical;
- offence committed during basic training;
- youth and inexperience of the offender.

3.5.4 **Entry point.**

Detention + reduction in rank

3.6 **Negligent performance of duty²⁰**

3.6.1 **Services policy considerations.** This charge covers a wide range of conduct from very minor (such as failing to maintain a record), through conduct the consequences of which are very expensive (such as failure to carry out the correct navigation procedures leading to a ship running aground), to the most serious where the neglect or negligence leads to serious injury or loss of life. Courts Martial should assess the seriousness of the neglect or negligence by reference to the extent of the breach of duty, the age, training and experience of the offender, and the consequences of the breach.

3.6.2 **Aggravating factors.**

- seriousness of the breach of the duty of care – ie the conduct falls well below level expected of a competent and careful person of defendant's age, rank, experience and training;
- the negligence put safety or lives of others at risk;
- actual severe consequences including injury or loss of life, or major loss of equipment or resources;
- poor professional record indicating a general lack of professionalism;
- alcohol or drug induced conduct;
- horseplay or misuse of equipment.

3.6.3 **Mitigating factors.**

²⁰ Army and Air Force Acts 1955 s 29A, Naval Discipline Act 1957 s 7

- operational situation which reduces opportunity to exercise usual care and competence;
- isolated and momentary lapse;
- extreme fatigue caused by long hours on duty;
- insufficient training;
- minor consequences;
- no risk to safety or lives of others;
- conduct occurred during training;
- youth and inexperience of offender.

3.6.4 **Entry points.**

Fine and/or reprimand for minor breaches

Reduction in rank/loss of seniority/detention for more serious offences

Stoppages of pay as compensation²¹

- 3.6.5 **Negligent discharge of personal weapons.** This is a prevalent offence in the Army which is normally dealt with by way of a fine of between 7 and 14 days' pay. Where injury or death is caused to another person, but the negligence cannot be classified as "gross" so as to support a charge of manslaughter (following a death), the extent of the injury will be opened by the prosecutor (if necessary calling evidence). A sentence of detention might be considered in cases where many of the aggravating factors and none of the mitigating factors above are present.

3.7 **Insubordination and disobedience to lawful command²²**

- 3.7.1 **Service policy considerations.** The integrity and effectiveness of the Armed Forces relies on obedience of, and respect to, those in authority. Insubordination and disobedience undermines the chain of command and can seriously affect operational effectiveness. The authority of superior officers must be upheld and those who flout that authority must be dealt with quickly, proportionately and severely.

3.7.2 **Aggravating factors.**

- deliberate malcontent;
- offence committed in front of those of inferior rank;
- flagrant contempt;
- offending while on operations;
- disobedience created a security risk or put lives or safety of others in jeopardy.

²¹ NB where negligence causes damage to property the quantum will be specified in the charge. Where negligence causes death or personal injury, a Court Martial may award stoppages to compensate the victim. The death or injury will not be specified in the charge, but must be opened by the prosecution or proved. Guidance on quantum can be found in the Judicial Studies Board publication "*Guidelines for the assessment of General Damages in Personal Injury Cases*".

²² Army and Air Force Acts 1955 ss 33, 34, Naval Discipline Act 1957 ss 11, 12

3.7.3 **Mitigating factors.**

- excitable immature youth;
- lack of appreciation of seriousness of actions or words;
- badly handled by superiors;
- disobedience occurs in a place remote from the Service context and does not undermine authority of the superior;
- single instance not repeated.

3.7.4 **Entry points.**

Detention + reduction in rank in all but the most minor cases
Dismissal (+ detention) in the most serious cases

3.8 **Disobedience to standing orders²³**

3.8.1 **Service policy considerations.** Standing Orders are written instructions which cover many aspects of Service life and disobedience of them can be very minor or very serious. For example a failure to book out of barracks at the guardroom might be punished by a Commanding Officer by way of restriction of privileges. A failure to carry out a vital procedure in servicing a vehicle or aircraft in circumstances which create a serious risk to others might deserve a reduction in rank or a sentence of detention. As with other offences of disobedience, the integrity of the chain of command can be adversely affected by those who blatantly disregard superior instructions. Courts Martial should assess the seriousness of the breach of standing orders against the aggravating and mitigating factors in 3.7 supra.

3.8.2 **Entry points.**

Fine and/or reprimand for minor breaches
Reduction in rank/loss of seniority for more serious offences
Detention (+ dismissal if appropriate) for the most serious offences.

3.8.3 **Out of bounds.** A common case concerning disobedience of standing orders is the “out of bounds” offence. In certain part of the world, including Northern Ireland, there are areas which are ordered “out of bounds” to Service personnel for safety and security reasons or for the maintenance of order. Service personnel are prohibited from visiting certain parts of Cyprus by standing orders which were imposed after a brutal murder which led to revenge attacks from the local population. The entry point for breach of these orders would be a short sentence of detention and/or reduction in rank.

3.8.4 **No touching rule.** In the Royal Navy, particularly in ships, a strict “no touching” rule between the sexes is enforced. Offenders can be

²³ Army and Air Force Acts 1955 s 36, Naval Discipline Act 1957 s 14A

charged with Disobedience to Standing Orders and are generally dealt with by Commanding Officers. Serious cases committed by senior personnel against juniors, and involving an abuse of authority, may be tried by Court Martial. In these cases, the entry point would be detention and disrating for ratings and forfeiture of seniority for officers (or dismissal in the most serious cases).

3.9 **Desertion and absence without leave (AWOL)** ²⁴

3.9.1 **Service policy considerations.** Sentencing in AWOL and Desertion cases has always been difficult because it attempts to reconcile a number of functions which are not entirely compatible. This sentencing policy is designed to deter absentees, permit retraining of those who are caught or surrender, and prevent recalcitrant Service personnel from using the disciplinary system to support their own aim of leaving the Service early. It also distinguishes desertion which is a much more serious offence.

3.9.2 **Deterrence.** The policy at one time was to award one day's custody for each day's absence – known colloquially as “a day for a day.” This fell into disuse many years ago, although the length of absence remains one of the factors in deciding the appropriate period of detention. One of the purposes of sentences is as a deterrent, although it appears from the high level of absence in the Army that this approach has not worked well in the past. Many absentees appear to be “working their ticket” and are quite content to be kept in pre-trial custody (with full pay and free food and accommodation) for as long as possible until trial, so that on sentencing their period of detention with no pay is minimal and they hope to achieve their aim of leaving the Army through dismissal. Sentences which encourage this approach should be avoided.

3.9.3 **Detention/dismissal.** Sentences of detention without dismissal will ensure the offender is retrained in A Wing at the Military Corrective Training Centre and there is a chance that he or she will become a satisfactory member of the Armed Forces. If he or she does not, his or her removal from the Service can be effected by administrative discharge after return to his or her unit when it has become clear that retraining has failed. Such discharge would be for reasons of general misconduct, unsuitability or incompetence, and the conviction would be one factor taken into consideration by the administrative authority authorising discharge. Dismissal should not be awarded simply for administrative convenience, because it attracts a criminal record which may not be appropriate in all the circumstances of the case.

3.9.4 **AWOL.** Courts Martial should take account of:

²⁴ Army and Air Force Acts 1955 ss 37, 38, Naval Discipline Act 1957 ss 15-17

- the circumstances under which the offender went absent (e.g. remained absent after leave or sick leave, ran away to avoid alleged harassment, etc);
- the effect of the absence on the unit;
- the length of absence;
- number of separate absences;
- whether the absence was terminated voluntarily or by arrest, and whether arrest was resisted;
- reports from the offender's unit;
- any other aggravating or mitigating factors relevant to the case.

3.9.5 **AWOL entry points.**

Six months detention should normally be the upper entry point for cases of long absence (i.e. months rather than days) following a guilty plea, and dismissal should not be included. However longer sentences of detention may be appropriate in cases where there are a number of offences and the offender has already served a previous sentence of detention for absence.

3.9.6 **Where dismissal may be appropriate.** Where there are exceptional aggravating features then dismissal might also be considered – but such a dismissal should be very rare and is used only to suit the purposes of the Service not of the offender.

3.9.7 **Suspended detention.** Where there are exceptional mitigating factors for the offender's absence, or he has performed exceptionally well since his return thereby rehabilitating himself, a suspended sentence of detention would be appropriate.

3.9.8 **Desertion.** Courts Martial should take account of all the factors listed in 3.9.4 together with:

- whether the accused went absent with the intention of avoiding active service overseas rather than simply forming an intention to remain permanently absent (the mischief being the adverse affect on operational effectiveness);
- what service was actually avoided.

3.9.10 **Desertion entry points.**

Dismissal + 12 months imprisonment

Where desertion includes the element of absence to avoid active service overseas, there is a public interest as well as a Service interest, because the public are entitled to expect their Service personnel to undertake operations for which they are trained and which support the Government's foreign policy.

12 months detention – without dismissal

Where there is no element of avoiding active service (but see note about dismissal in paragraph 3.9.6 supra).

- 3.9.11 **Royal Navy cases.** AWOL is regarded particularly seriously in the Royal Navy because of the detrimental effect to operational effectiveness if ratings miss their ship on sailing, and a deterrent approach based on a well-established but flexible tariff (to promote a measure of consistency) is customary. Most offences in the Royal Navy are however dealt with within Commanding Officers' summary powers. If a Royal Navy rating is charged at Court Martial with absence or desertion the same guidance as for the other two Services is appropriate, although the case is likely to be in the more serious category where dismissal is a consideration.

3.10 **Drunkenness**²⁵

- 3.10.1 **Service policy considerations.** Many offences result from over-indulgence in alcohol. While moderate and sensible drinking is acceptable, abuse of alcohol can reduce efficiency, lead to further offending, and bring discredit on the Service.

It is not an offence to be drunk per se. The offence is committed if as a result of the consumption of alcohol or drugs, whether alone or in combination with any other circumstances, the offender either (1) renders himself unfit to be entrusted with his duty or (2) renders himself unfit to be entrusted with any duty he might reasonably expect to be called upon to perform, or (3) behaves in a disorderly manner, or (4) behaves in a manner likely to bring discredit on Her Majesty's service. Thus the offence may be minor or very serious depending upon the circumstances.

The more senior the offender the more serious the offence. Officers who are convicted of even minor offences of drunkenness should be dealt with severely as they have brought discredit on their Service and demonstrated a lack of self discipline and control.

3.10.2 **Aggravating factors.**

- on duty, unable to perform a specific duty;
- (in the Royal Navy) on board a ship at sea;
- official function;
- in the public eye;
- safety of others put at risk;
- injury to others;
- under age;
- alcoholism where the accused has ignored help after diagnosis.

3.10.3 **Mitigating factors.**

²⁵ Army and Air Force Acts 1955 s 43, Naval Discipline Act 1957 s 28

- offence committed in Service Club or in Single Living Accommodation;
- no disturbance and placid behaviour;
- off duty;
- caused by welfare or personal problems.

3.10.4 **Entry points.**

Minor offences: fine of up to 14 days pay + (severe) reprimand (if of appropriate rank)

Medium offences: reduction in rank/short period of detention

Major offences: dismissal + detention

3.11 **Disorderly conduct and fighting²⁶**

3.11.1 **Service policy considerations.** The most commonly charged offence in this section is “fighting” which is normally dealt with summarily by the Commanding Officer. The nature of this offence is very different from the civil offence of assault, the gravamen of which is the attack on a victim. The essence of this offence is the disturbance of good order. This charge is not to be brought where the force used amounts to a one-sided attack because that would not be a fight in the ordinary meaning of the word in the statute; that is, a struggle or conflict. For this reason the degree of personal injury involved will not be a particularly weighty consideration and stoppages of pay for compensation will rarely be appropriate.

3.11.2 **Entry points.**

Minor offences: Fine + (severe) reprimand (if of appropriate rank)

Other offences: Reduction in rank or a short period of detention

3.12 **Misapplying or wastefully expending public or Service property²⁷**

These offences cover the misuse of public property where the offender has acted improperly, but not dishonestly. Sentencing considerations may be affected by whether the offender or any other person benefited from the misapplication or waste, but sentences will invariably be much less severe than for dishonesty offences.

3.13 **Offences in connection with flying²⁸**

An offence in this category is “low flying”. It normally results in a substantial fine and a reprimand or severe reprimand. If a flying offence was such as to cause an exceptionally high risk, and at the same time the degree of neglect or recklessness involved was very high, a Court Martial might impose a

²⁶ Army and Air Force Acts 1955 s 43A, Naval Discipline Act 1957 s 13

²⁷ Army and Air Force Acts 1955 s 45, Naval Discipline Act 1957 s 30

²⁸ Army and Air Force Acts 1955 ss 49-52, Naval Discipline Act 1957 ss 20-22, 25

higher penalty.

3.14 **Loss and hazarding of ships**²⁹

3.14.1 **General.** Loss means total loss; hazarding has always been regarded as having its ordinary sense of “exposing to danger” and includes collision. The relevant provisions of the Service Discipline Acts encompass “stranding” which requires that a ship should run aground, settle on the bottom (or into or on to some object affixed on the ground) and remain fast for a time. Such cases often include allegations of neglect to perform or negligent performance of some duty which played a part in the hazarding or grounding. Whilst the Acts allow an unlimited sentence of imprisonment in cases of wilful neglect, with a limit of two years imprisonment in other cases, punishments awarded in the latter cases are usually confined to those which have an effect on the offender’s future career and promotion, as these offences call into question their professional abilities. Punishments appropriate for truly criminal conduct are avoided.

3.14.2 **Entry points.**

Severe Reprimand - or in more serious cases where level of negligence was higher dismissal from ship (Royal Navy only) and/or loss of seniority.

3.15 **Offences in connection with the falsification of official documents**³⁰

These offences can vary widely in seriousness, for instance from falsifying a booking-in sheet to make it look as though an offender booked back into barracks in time, to offences in relation to accounting for arms, ammunition and money. The sentence in such cases will therefore depend upon the importance of the document in the system and the effect, or likely effect, of the falsehood. If a financial or pecuniary advantage is sought or gained, the sentence may be similar to that which might be imposed for a civil offence of fraud.

3.16 **Ill-treatment of persons of inferior rank**³¹

3.16.1 **Service policy considerations.** Harassment including bullying in any form gravely undermines morale and discipline in a Service environment, which can cause a loss of confidence in the command chain and harm recruitment. This is a very serious offence which should be punished severely.

3.16.2 **Aggravating factors.**

²⁹ Army and Air Force Acts 1955 s 48A, Naval Discipline Act 1957 s 19

³⁰ Army and Air Force Acts 1955 ss 61, 62, Naval Discipline Act 1957 ss 34A, 35

³¹ Army and Air Force Acts 1955 s 65, Naval Discipline Act 1957 s 36A

- conduct over a protracted period;
- conduct undertaken by a group;
- physical or severe mental abuse;
- mental or physical injury to victim or harm to victim's career;
- abuse of trainees in basic training;
- forcing victims to undertake demeaning or disgraceful conduct;
- abuse of rank to obtain financial benefit;
- racial or sexual element;
- large rank disparity between offender and victim.

3.16.3 **Mitigating factors.**

- one-off incident of a minor nature;
- over-zealous attempt to reinforce training;
- no injury to victim;
- genuine remorse and apology to victim.

3.16.4 **Entry points.**

Reduction in rank + detention (6 - 12 months)
For most serious cases dismissal + detention (consider imprisonment)

3.17 **Disgraceful conduct of a cruel or indecent kind³²**

3.17.1 **Service policy considerations.** The object of the section is to preserve proper standards of decency within the Services, and to prevent personnel from bringing the Services into disrepute by publicly or openly behaving in an indecent manner. Conduct charged under this section may also include an element of abuse of rank or superior position. The type of offence often charged is "indecent" (such as indecent exposure or indecent words) particularly towards female personnel.

3.17.2 **Aggravating factors.**

- abuse of position of authority;
- in public or in front of a group;
- racial or sado-masochistic element;
- other factors relating to ill treatment.

3.17.3 **Mitigating factors.**

- one-off incident of a minor nature;
- over zealous attempt to reinforce training;
- no injury to victim;
- genuine remorse and apology to victim.

3.17.4 **Entry points.**

Reduction to the ranks + detention

³² Army and Air Force Acts 1955 s 66, Naval Discipline Act 1957 s 37

Serious offences: dismissal + detention (consider imprisonment)

3.18 Conduct to the prejudice of good order and Service discipline³³

The gravamen of an offence under this section is that the conduct is prejudicial to good order and Service discipline. The wording of the offence is such that it has a very wide ambit and in sentencing Courts Martial should not only consider the conduct proved or admitted, but also to what extent it has been shown that there really was prejudice to good order and Service discipline. Where the conduct publicly undermines discipline or the command chain it is more serious. It is for this reason that care should be taken when sentencing to keep in mind the object of the offence. It was not intended by Parliament that these sections be used to punish immoral behaviour which falls short of criminal behaviour or misconduct. Courts Martial should therefore be slow to allow this section to be used to create what are in effect new offences otherwise unknown to law.

³³ Army and Air Force Acts 1955 s 69, Naval Discipline Act 1957 s 39

CHAPTER 4

THE SENTENCES AVAILABLE TO A COURT MARTIAL FOR SERVICE PERSONNEL AND RELATED MATTERS

4.1 Imprisonment

- 4.1.1 Although most of the criminal justice legislation of recent years does not apply to Courts Martial, the spirit of that legislation is taken into account by the court and followed whenever possible. Thus, it is generally accepted that a sentence of imprisonment will not be imposed as a punishment for a civil offence unless the offence would be likely to be met with imprisonment in the civilian courts unless the conduct is so serious within a Service context that imprisonment is necessary. The same principles apply when determining the length of the sentence. This will be on a par with sentences passed in the civilian courts unless there is some special Service requirement. Courts Martial will have the same regard to sentencing guidelines laid down by the Court of Appeal for civilian courts. However, any sentence of imprisonment imposed on Service personnel leads to automatic loss of rank³⁴, status and employment, and can have an effect on payment of an immediate pension, and this may mean that there are some differences. Where the offence is a serious one which would inevitably warrant a sentence of imprisonment in a civilian court, the disciplinary needs of the Services are given a lower priority and the accepted practice of the civilian courts is followed.³⁵
- 4.1.2 Where the appropriate penalty is on the borderline between imprisonment and a Community Order, the Crown Court might take the view that a Community Order would not be sufficient to mark the gravity of the offence, and pass a sentence of imprisonment on the grounds that the offence is such that the offender ought to be deprived of his liberty. At a Court Martial, a real alternative to imprisonment for Warrant Officers and below is Service detention coupled with dismissal. This involves loss of liberty and, in the case of a Warrant Officer or non-commissioned officer, automatic reduction to the ranks, but does not carry the stigma of imprisonment. This alternative will often be appropriate, although Courts Martial take into account that detention is not appropriate for those who have been convicted of the more serious criminal offences.
- 4.1.3 A Court Martial will be informed where an accused person is held in pre- or post-charge custody prior to his trial and must take this period into consideration.³⁶ A sentence of imprisonment will generally run from the date it is passed but, where the offender is already serving a sentence of imprisonment or detention, a GCM

³⁴ Although not in the case of commissioned officers

³⁵ See Chapter 2

³⁶ See 4.7.2 *infra*

may order that the sentence of imprisonment (or detention) which it imposes shall run consecutively from the date on which the earlier sentence expires.

- 4.1.4 It would be very rare for a Court Martial to suspend a sentence of imprisonment because the Crown Court has no power to activate a suspended sentence imposed by a Court Martial and the Court Martial would have no jurisdiction over the offender if he committed other offences after he had been released from the Service.

4.2 **Dismissal and dismissal with disgrace from Her Majesty's Service**

- 4.2.1 Dismissal is a lesser punishment than imprisonment but greater than detention and can have far reaching consequences on an ex-Service person in civilian life. It is, therefore, well established that dismissal should not be imposed as a matter of expediency. It would clearly be wrong in principle to impose it purely because the offender is, for some extraneous reason, not fitted for Service life, or states through his counsel or defending officer that he does not wish to remain in the Service. In those circumstances administrative discharge may be appropriate. The sole consideration for a Court Martial is whether or not the offence is so serious that the offender should be dismissed.
- 4.2.2 An offender who is dismissed from the Service must also be reduced to the ranks (but not if a commissioned officer) and has no right to a resettlement course or terminal leave. Dismissal remains on an offender's record for seven years; dismissal with disgrace for ten years.
- 4.2.3 An Army or Royal Air Force Court Martial will be informed whether or not the offender's Commanding Officer wishes to retain him in his or her unit. This means exactly what it says; it is not a recommendation as to whether or not the offender should be sentenced to be dismissed from the Service. The fact that the Commanding Officer wishes to retain the offender may be of use to the court in a borderline case where it is considering whether or not to give the offender a second chance but this is the only circumstance where it can properly be taken into account.
- 4.2.4 Dismissal must always be included where the sentence is imprisonment³⁷ and it may be imposed with a sentence of Service detention. It can, in certain circumstances, be imposed together with an order for stoppages of pay by way of compensation but the instances where it will be coupled with a fine are rare.
- 4.2.5 Dismissal with disgrace is an exceptional form of punishment for use when the nature and circumstances of the offence make a sentence of dismissal inadequate to reflect the gravity with which the court regards the defendant's conduct. It should be used sparingly to

³⁷ And the equivalents for offenders under the age of 21

avoid losing its effect. The nature of the offence itself need not necessarily be disgraceful but all factors must be considered including:

- The nature of the offence;
- Its surrounding circumstances;
- The rank of the defendant and the degree of responsibility that should therefore be expected of him; and
- The sentence is the proper one in the Service's interest.

4.2.6 Further, when dismissal with disgrace is imposed for very serious offences (such as treason, offences under the Official Secrets Act and offences considered by the Defence Council to have been gravely injurious to the defence of the State), pension benefits already qualified for may be forfeit. Where this occurs a compassionate allowance may be payable, at the discretion of the Defence Council. Such instances will be very rare.

4.3 Effect of dismissal on immediate pension

4.3.1 **Financial implications.** The Armed Forces have two pension schemes running together and it is important that Courts Martial know which scheme applies to a defendant where dismissal is being considered. Those who are susceptible to the greatest financial loss are those with the highest rank or those who have been in the Services for a long time. Whilst it is necessary to consider the financial implications of sentences passed on such service personnel, it is important to bear in mind that seniority and maturity in an offender are generally regarded as aggravating factors and it would be wrong to sentence a high-ranking offender to a significantly lower sentence than an immature or low-ranking one. Those who are nearing the end of their service are the most vulnerable to the financial effects of dismissal. The lack of opportunity to have the final years of an engagement credited to a pension calculation can be very significant.

4.3.2 **The Armed Forces Pension Scheme 75 (AFPS75).** Pension benefits start to build up at age 18 for other ranks/ratings and age 21 for officers. An immediate pension is payable to other ranks/ratings after completion of 22 years service (ie at age 40, or later for those joining the Service after the age of 18), and to officers after completion of 16 years service (i.e. at age 37, or 38 for RAF officers, or later for those joining the Service after the age of 21). Those who leave the service after qualifying for immediate pension also receive a tax-free lump sum worth three times the annual pension. Those who continue to serve after reaching the immediate pension point continue to accrue additional benefits, the maximum number of years Service counting towards pension being 34 for officers and 37 for other ranks (i.e. to age 55). If a person leaves the Service before reaching the immediate pension point then he/she qualifies for a preserved pension (and tax-free lump sum of three times the

pension) based on number of years' service payable from age 60 (65 in relation to service after 6 April 2006). Additionally personnel receive resettlement grants as follows: officers after 9 years service (£12,709 at 2006 rates); other ranks/ratings after 12 years service (£8,687 at 2006 rates).

- 4.3.3 **The Armed Forces Pension Scheme 05 (AFPS05).** This came into force on 6 April 06 for all those joining the Armed Forces after that date and for those serving before that date who opted to transfer from AFPS75 to AFPS05. All personnel have to serve for 18 years and reach the age of 40 to qualify for Early Departure Payments (together with a tax-free lump sum of three times pension, and income worth at least half preserved pension). There is no immediate pension but a preserved pension payable at age 65 (together with a second tax free lump sum). Additionally all personnel receive resettlement grants after 12 years service (£9,000 at 2006 rates).
- 4.3.4 **Statement.** Before sentencing, a Court Martial will be made aware of which scheme the offender is serving under, and it will be provided with a Statement of Serviceman's Monthly Pay and Compulsory Deductions which will include individual financial predictions with options.
- 4.3.5 **Conclusion.** Any court in sentencing must take account of the effect of the sentence passed, and particularly the financial effect³⁸. In *R v Cooney* the CMAC reinforced this principle and, on the facts of one of the cases (*Allam*), stated that dismissal and the ensuing loss of an immediate pension was too severe for a single charge of causing death by dangerous driving, particularly because there was no aggravating feature arising from the Service context (page 183e of the judgment). More generally, however, the issue of loss of pension and gratuity has been exaggerated and misinterpreted by those seeking to use this fact to argue against dismissal. In civilian life a professional person convicted of serious offences would inevitably lose his employment. He would retain contributions conferring entitlement to a pension which he would be due to receive when reaching pensionable age (normally 65), and he would inevitably suffer financial loss by not being able to earn the same amount of money in any subsequent employment. In the Service context, the individual retains a preserved pension when dismissed which reflects those years already served, but he does not have the opportunity to qualify for an immediate pension (AFPS75) or Early Departure Payment (AFPS05) – in effect that future loss is no different from future loss of earnings in the civilian context. It is, therefore, a flawed argument to suggest that someone who has committed an offence meriting dismissal should be retained in the Service solely on the basis that he otherwise would lose the opportunity to qualify for an immediate pension, but any potential loss should be one of the

³⁸ *R v Cooney, Allam and Wood* [1999] 3 All ER 173

factors which is relevant when considering dismissal. The Court Martial Appeal Court have accepted this proposition.³⁹

- 4.3.6 The pension or early departure payments will not be affected where a person is dismissed by Court Martial after reaching the immediate pension point/early departure point⁴⁰.

4.4 **Service detention**

- 4.4.1 Service detention in all but very short sentences is served at the Military Corrective Training Centre (MCTC) Colchester. Detention is only available for Warrant Officers and below, and an offender sentenced to detention must also be reduced to the ranks. Artificers and technicians in the Royal Navy are reduced to the lowest rank commensurate with their qualifications. The maximum sentence of detention which can be imposed is two years, but the regimes at MCTC are such that the maximum sentences are normally between 15 and 18 months. Automatic remission of one third of the sentence is given to all offenders sentenced to over 28 days detention⁴¹. The training regime within the MCTC is designed on a 6 month rotational basis and it has been assessed that offenders serving any longer than two rotations will not benefit further. However those who do serve longer sentences are engaged in programmes which include work and visits in the community.
- 4.4.2 Service personnel are not paid any salary whilst serving a sentence of detention at the MCTC; they are merely given a small allowance to meet their needs, and the time does not count towards qualification for pension. An allowance may also be paid to help meet the needs of the family of a detained Serviceman.
- 4.4.3 Offenders who are not sentenced to dismissal as well serve sentences in 'A' Wing where the regime is not dissimilar to basic military training. The aim is to return a retrained Service person to his or her Service to continue with a career. MCTC can only achieve this task if the length of the term is sufficient to enable a full programme of training to be completed, and in this respect detention has some similarities with certain community orders in civilian life. Offenders who are also sentenced to dismissal serve sentences in 'D' Wing where the regime has less military training and contains a significant element of pre-release training aimed at assisting the Service person to make a successful transition to civilian life.
- 4.4.4 The regime at MCTC is not intended for those who have been convicted of serious criminal offences. However, a young offender might be ordered to serve a period of detention before dismissal for a

³⁹ *R v Peters* 2005 AER (D) 68 (Nov)

⁴⁰ Except in the rare circumstances described in relation to dismissal with disgrace at paragraph 4.2.6 supra

⁴¹ Sentences of 21 days and lower attract no remission. Sentences of 28 days attract 4 days remission.

serious offence where the court considers there may be a better chance of rehabilitation for a young offender in the Service environment than in a civilian penal institution. Such a course is not usual but it is available to a Court Martial as a real alternative to imprisonment.

4.5 The difference between imprisonment and Service detention

4.5.1 The CMAC has equated detention with imprisonment in terms of loss of liberty⁴² although the recent case of *R v Holmes*⁴³ contains an acknowledgement from the CMAC that imprisonment and detention are different. It would be wrong to consider a sentence of detention to be more severe a punishment than a sentence of imprisonment of the same length because remission in a sentence of detention is one third whereas for imprisonment it is one half. The punishment certainly does not carry the stigma that a sentence of imprisonment often does. A sentence of detention ranks below imprisonment on the scale of punishments and is markedly different – it effectively has elements of a civilian community penalty. The inmates sleep in barrack rooms, and can earn a half-day's leave per week at a certain stage of their sentence. Service personnel are used to certain restrictions on their liberty and the regime in 'A' Wing is no more severe than basic military training. The crucial issue is that a sentence must be of sufficient length to enable retraining and rehabilitation to be completed. This has worked well in the past and rates of recidivism among those who have served sentences of detention are very low, with many ex-inmates going on to have highly successful careers.

4.5.2 Thus when calculating the appropriate length of a sentence of detention, Courts Martial should not reduce sentences to reflect the length of time an offender in a civilian prison would actually serve before being released on licence.

4.6 Suspending or postponing sentences of imprisonment or detention

4.6.1 Courts Martial may suspend sentences of imprisonment and detention, although sentences of imprisonment are in practice hardly ever suspended because of the lack of power to commit them⁴⁴. However, sentences of detention may be suspended where:

- the offender can retrieve his good name without actually undergoing a committed sentence. This is often the case where there has been significant delay between the offence and trial during which period the offender has performed his duties very well and effectively rehabilitated himself;
- the offender has shown genuine remorse and voluntarily made

⁴² *R v. Ball, R v. Rugg* (1998) Times, 17 February

⁴³ [2004] EWCA Crim 3180

⁴⁴ See supra 4.1.4

- reparation for any damage caused by the offending;
- the offender is young and inexperienced and it is clear that the offence is an isolated occurrence;
- the offence does not involve serious violence or violence towards a superior officer;
- the offender is required for important operational duties.

4.6.2 If a court passes a suspended sentence, it means the committal of that sentence is suspended for one year. If it is not activated within that period, the defendant is not liable to serve it. A suspended sentence can be activated by a subsequent Court Martial before whom the offender is convicted of further offences, if it sentences him to detention or imprisonment. It can currently also be activated by the Defence Council when reviewing the case or, in the Royal Navy, by the Commanding Officer. However, the reviewing authority never exercises this power and Commanding Officers in the Royal Navy are instructed that they should only do so where the offender is found guilty of further offences in a summary trial.

4.6.3 A Court Martial may postpone any custodial sentence⁴⁵ but this power is rarely used. When a custodial sentence is postponed it runs from the day it is passed but the offender will not be liable to serve it until the postponement ends, thereby only serving part of his sentence. The Defence Council has the power to vary the court's order for postponement by changing the date. The power of postponement is clearly intended for situations where an offender is on active service so he can continue to serve with his unit. Under ordinary conditions, it is perhaps difficult to envisage any circumstances when the exercise of this power would be appropriate.

4.7 **Forms of custodial sentences and calculating credit for time spent in pre-trial custody**

4.7.1 Periods of imprisonment or detention not amounting to 6 months are expressed in days, a month being 28 days. Periods of imprisonment above 6 months are expressed in years (if appropriate), months and days, a month being a calendar month.

4.7.2 Where a defendant was held in military custody pending trial the Judge Advocate should announce that the time spent in custody has been taken into account. Where the sentence is imprisonment the defendant is entitled to a discount of double the time spent in military custody from the starting point. Where the sentence is detention the defendant is entitled to a discount of one-and-a-half times the time spent in military custody from the starting point. It is good practice for the Judge Advocate to announce the starting point and indicate that he has applied an arithmetical approach to calculating credit. This mathematical approach to credit is not necessary in relation to short periods spent in post-charge custody where the sentence is a

⁴⁵ Army and Air Force Acts 1955 s 120A, Naval Discipline Act 1957 s 89A

short sentence of Service detention. As minimum periods are necessary to complete retraining programmes, the credit for time spent in post-charge custody in these circumstances can properly be discounted as being de minimis.

4.8 The importance of an offender's rank, special qualifications and unit on sentence

4.8.1 Courts Martial when sentencing will always take account of the rank of an offender, and normally the higher the rank the greater the degree of culpability. Reduction in rank for Warrant Officers and below is a sentence in itself. Such a sentence normally has significant financial effects and Courts Martial must take into consideration the amount of pay lost and the length of time it will take for the defendant to recover his rank. Anyone holding rank up to Warrant Officer must be reduced to the ranks before he can be given a custodial sentence. The sentence of military detention is not available for officers, nor can officers be reduced in rank although seniority within a rank can be removed. These differences can sometimes cause anomalies.

4.8.2 Certain categories or branches within the Services rely on special qualification which is sometimes aligned to rank. Courts should always ascertain what the effect of any proposed sentence will be on the offender's special qualification and take that into account.

4.9 Forfeiture of seniority

4.9.1 This punishment only applies to commissioned officers. An officer's seniority date is the day upon which he or she was promoted to the substantive rank held (i.e. not acting rank). From that date he or she builds up seniority. Annual increments of pay are applied on each anniversary of the date of promotion. Promotion to the next higher rank will depend on achieving a minimum amount of seniority in the current rank. Forfeiture of seniority can, in some respects, be the equivalent punishment for officers as reduction in the ranks or disrating for other ranks, although it does not carry the same visible stigma.

4.9.2 A Court Martial may order that an officer forfeits either all seniority in the present rank or some specified amount (in terms of years and months) of seniority. The effect of the punishment is that the seniority date of the officer is advanced by the period of the forfeiture. For example a Captain is convicted at Court Martial on 1 April 2006. His seniority for promotion to Captain was 1 January 2000 and he is sentenced to forfeit three years' seniority. His new adjusted seniority will be 1 January 2003 from which date eligibility for further promotion is assessed. The officer's pay will mark time, that is to say he will remain on his current incremental pay point until his seniority catches up again. On 1 January 2006 the Captain moved to pay point 7 on the incremental scale, but when sentenced to forfeit three years

seniority he will stand still on pay point 7 until he regains the requisite amount of seniority to move to pay point 8 (in three years time). Loss of seniority or time forfeited will not, however, involve loss of reckonable service for retired pay, pension or gratuity purposes.

- 4.9.3 Before making an order for forfeiture of seniority a Court Martial should take into consideration the effect in terms of pay and promotion prospects.

4.10 Reduction in rank or disrating

4.10.1 This is a sentence which is only available for Warrant Officers and below. The punishment involves loss of status and loss of income, and it may also involve a reduction in immediate pension as a Service person's pension is based on the highest rank held for two years in the last five years of service. The fact that it involves loss of income will mean that it is generally inappropriate to impose a financial penalty in addition to the reduction; one exception to this might be where the offender is about to leave the Service.

4.10.2 It is, however, wrong to consider this punishment in purely financial terms. A reduction in rank is also a reduction in responsibility and status – the latter point being very important as it remains a visible indication of conviction, and may include a change in messing arrangements and eligibility for higher standard of accommodation. The all-important question when a Court Martial is considering this punishment is whether the offender has demonstrated that he is unfit to hold his present rank by committing this offence. Whether he is reduced to the ranks or allowed to retain some lesser rank than his present one will depend on how seriously the court views his conduct, and the mitigating factors.

4.10.3 If a non-commissioned officer is dismissed he must also be reduced to the ranks, the rationale being that he must be deemed unfit to hold any position of authority if his misconduct has been adjudged so severe as to merit dismissal.

4.10.4 The three Services differ in relation to the time taken for someone who is reduced in rank or disrated to be promoted back to his original rank. Courts Martial should consider the specific regulations in relation to regaining rank before sentencing someone to this punishment.

4.11 Fines

4.11.1 A Court Martial may award a fine of up to 28 days pay, or 56 days pay if the offender is on active service, for a Service offence. Pay does not include any allowances that may be payable. In the case of a civil offence the limit is the maximum prescribed by the statute for the offence. A fine is expressed by the Court Martial in terms of an amount of money, rather than numbers of days pay, but care must be

taken to ensure that the specified amount does not exceed the relevant maximum. If an offender is retained in the Service, a fine will normally be recovered through the offender's pay account and the Court Martial should specify the time by which the fine should be recovered. If the accused has been discharged from the Service a fine can be registered and enforced through a Magistrates' Court in England and Wales, a Sheriff's Court in Scotland, or a Summary Court in Northern Ireland⁴⁶.

- 4.11.2 Like a civilian court, a Court Martial will have regard to the means of the offender when assessing the level of the fine. The court may stipulate how or when a fine is to be paid, but there are administrative instructions relating to deductions from pay which are designed to ensure that the serviceman or woman has sufficient left for his or her living expenses.
- 4.11.3 A Court Martial can only impose a term of imprisonment or a Custodial Order in default of payment of a fine if the accused is being imprisoned or sentenced to a Custodial Order on the same occasion, or is already serving such a sentence. Any such sentence in default would be served consecutively. The maximum terms in default are the same as in the Crown Court.

4.12 Combination of financial penalties with other sentences

Normally a financial penalty should not be imposed where other elements of the sentence such as dismissal, detention or reduction in rank carry financial consequences and reduce the offender's means. In exceptional cases a financial penalty can be added to these punishment, for example if the offender left the Service immediately after trial and the reduction in rank had no practical effect.

4.13 Severe reprimand and reprimand

- 4.13.1 These punishments are only available where the offender is an officer, Warrant Officer or non-commissioned officer. They are a mark of disapproval and may well adversely affect promotion prospects. They are frequently coupled with a financial penalty, but not usually with reduction in rank because that is a more severe punishment and so renders a reprimand unnecessary.
- 4.13.2 The exact effect of a reprimand depends on the Service of the offender, his rank and seniority within that rank, and his age. If an officer is reprimanded when very junior or when very near to the end of his or her career, then the effect of a reprimand is minimal. Alternatively if an officer is in zone for promotion then the effect could be great. Courts should always have regard to the individual offender's circumstances before sentencing him or her to be reprimanded so that they are aware of the potential effects of the

⁴⁶ Provided it is not exclusively service in nature – the Army and Air Force Acts 1955 s 113A

sentence on the individual.

4.14 Stoppages of pay by way of compensation

- 4.14.1 If an offence occasions some material loss or injury, the Court Martial may make an award of compensation by ordering that the offender be put under stoppages of pay until he has made good the sum set out in the charge or any lesser sum. Recovery of stoppages will be dealt with by deduction from pay in the same way as a fine. A court may also order stoppages of pay by way of compensation where the offence has occasioned personal injury⁴⁷. In this case it will make reference to the tables of the Criminal Injuries Compensation Agency.
- 4.14.2 The court will follow the practice of the civil courts when deciding whether it is appropriate to award compensation in a case where the offender is permanently deprived of his pay by dismissal and a sentence of imprisonment or detention. In most cases it will be inappropriate to order stoppages where there is no reasonable prospect of repayment within a reasonable period. However, an offender who is being dismissed may have money due to him, so an order may be appropriate.
- 4.14.3 Where there is material loss, the sum must be alleged in the charge sheet before the court can make an order for stoppages unless it is implicit in the particulars of the charge. A charge alleging theft of £100 would give the court jurisdiction to make an order for stoppages of up to £100. However, a charge alleging negligently running an account would not give the court jurisdiction to order stoppages unless the particulars of the charge contained an allegation such as "occasioning a loss of £100". Where the offence causes personal injury, the Court Martial can order stoppages of up to £5,000 provided the extent of the injury is opened by the prosecution and proved, or agreed by the defence.

4.15 Such minor punishments as may from time to time be authorised by the Defence Council

These include Second Class for Conduct (Royal Navy), restriction of privileges for a specified period, extra work and drill (Royal Navy), stoppage of leave, and admonition. It is rare of for a Court Martial to award these minor punishments because they are more often used by Commanding Officers to punish minor disciplinary offences. The extension by the Armed Forces Act 1996 of the right of service personnel to elect trial by Court Martial has to some extent changed this, but further guidance on these punishments is given in the relevant Service Summary Sentencing Guide.

4.16 Long Service and Good Conduct Medal and Good Conduct Badges

⁴⁷ See footnote 21 supra on quantum

- 4.16.1 GCBs are awarded on the basis of good conduct and length of service. One badge is awarded for every 4 years service (up to a maximum of three badges). The LS&GC Medal is awarded after a Service person has earned all three GCBs and served for a further three years (that is after 15 years service). Forfeiture of the LS&GC medal or deprivation of the GCBs have no financial effect on an individual either at the time of sentence or in the individual's future career; the main effect upon an individual is upon his morale and self-esteem.
- 4.16.2 Forfeiture of the LS&GC medal or deprivation of the GCBs can be effected either as a minor punishment⁴⁸ or administratively. When a court is considering the sentence of a Service person who has either the LS&GC Medal or GCBs, it should refer to single Service Manuals for advice about automaticity. Where a sentence involving the forfeiture or deprivation is quashed by the Courts Martial Appeal Court, restoration of either the LS&GC Medal or GCBs will be automatic.

4.17 Orders for restitution

A Court Martial is empowered to order restitution if unlawfully obtained property, or other property representing it, or money has been found in an offender's possession.

NB Two Annexes are included after this Chapter which contain tables indicating which punishments are available by rank and Service. These are only a guide, and source documents should be consulted where there is any doubt.

⁴⁸ In the Royal Navy, for example, GCBs can be deprived as a specific punishment or automatically as an accompanying punishment

PUNISHMENTS AT RN COURTS MARTIAL

ANNEX 1

Punishment	Available for RN:	Officers	WOs	POs/Ldg Rates	Ratings	Civilians	Limitations
Imprisonment		x	x	x	x	x	
Custody for Life s 43A(1A)	– Mandatory	x		x	x	x	Under 21s only
Detention at HM pleasure s 43A(3)	– Murder only				x	x	If under 18 at offence
Custody for Life s 43A(1B)	– Discretionary	x		x	x	x	18-21s only
Detention under s 43A(4)(a)	– 14 yr + max Offences				x	x	14-17s only
Detention under s 43A(4)(b)	– Manslaughter					x	Under 14s only
Custodial order made under s 43AA	17-20s only – must not exceed max prison for offence	x		x	x		18-20min 21 days 17s.....2-12 months
Custodial Order under s 43A(1D)/ Sch 4A para 10						x (all) x (male) x (female)	18-20min 21 days 15-172-12 months 17s.....2-12 months
NB General Restrictions on imposing custody on under 21s							
Disqualification from working with children		x	x	x	x	x	
Dismissal with disgrace/Dismissal		x	x	x	x		
Detention for a term not exceeding two years			x	x	x		
Forfeiture of seniority		x					
Dismissal from ship/naval establishment		x					
Disrating			x	x			Listed in BR 1066
Community Supervision Order						x	
Fine – Default periods are the same as in civilian courts		x	x	x	x	x	

Severe Reprimand/Reprimand	x	x	x			
Stoppages/Compensation	x	x	x	x	x	£5,000 max for p.i.
Conditional or Absolute Discharge					x	
Minor Punishments –			x	x		
				x		
Restitution Order	x	x	x	x	x	

- Notes**
- (i) Imprisonment and Orders under ss 43A/43AA must be accompanied by **both** Disrating **and** Dismissal with/without disgrace
 - (ii) WOs and POs sentenced to Imprisonment, Dismissal with/without disgrace, or Detention, must to be reduced to the ranks
 - (iii) Fine limits: s 42 *Offences* as available to a civil court in England and Wales *Otherwise* 28 days pay - 56 if committed on active service
 - (iv) RNR *cave*: (a) no Dismissal for officers, and (b) restrictions on Stoppages under s 211(4)
 - (v) *Civilians under 17*: Service parent/guardian to pay fines/compensation and may be required to provide Recognisance up to £1,000 - Sch 4A paras 13-14
 - (vi) Where the Accused has elected trial, NDA 1957 s 62ZA (3) gives RN CMs the powers a CO would have had only on a Punishment Warrant
 - (vii) Second Class for Conduct, Loss of GCBs, GSBs and LSGCM, Stoppage of Leave (max 30 days), Forfeiture of Pay for Improper Absence, Admonition
 - (viii) Extra Work and Drill (max 14 days), Extra Work and Drill for max 2 hrs per day (max 7 days)

PUNISHMENTS AT ARMY and RAF COURTS MARTIAL ANNEX 2

Punishment	Available for Army & RAF:	Officers	WOs	NCOs	Soldiers	Civilians	Limitations
Imprisonment		x	x	x	x	x	
Custody for Life s 71A(1A)	– <i>Mandatory</i>	x		x	x	x	Under 21s only
Detention at HM pleasure s 71A(3)	– <i>Murder only</i>				x	x	If under 18 at offence
Custody for Life s 71A(1B)	– <i>Discretionary</i>	x		x	x	x	18-21s only
Detention under s 1A(4)(a)	– <i>14 yr + max Offences</i>				x	x	14-17s only
Detention under s 71A(4)(b)	– <i>Manslaughter</i>					x	Under 14s only
Custodial order made under s 71AA		x		x	x		18-20....min 21 days 17s.....2-12 months
17-20s only – <i>must not exceed max prison for offence</i>							
Custodial Order under s 71A(1D)/ Sch 5A para 10						x (all) x (male) x (female)	18-20....min 21 days 15-17....2-12 months 17s.....2-12 months
Disqualification from working with children		x	x	x	x	x	
Dismissal with disgrace/Dismissal		x	x	x	x		
Detention for a term not exceeding 2 years			x	x	x		
Forfeiture of Seniority		x					
Reduction in rank			x	x			
Community Supervision Order						x	
Fine		x	x	x	x	x	
Severe Reprimand		x	x	x			
Reprimand		x	x	x			
Stoppages/Compensation		x	x	x	x	x	
Conditional or Absolute Discharge						x	
Minor punishments -	<i>Admonition</i>			x			
	<i>14 days RPs and</i>				x		
<i>Admonition</i>							
Restitution Order		x	x	x	x	x	

- Notes**
- (i) Imprisonment and Orders under ss 71A/71AA must be accompanied by **both** Reduction in rank **and** Dismissal with/without disgrace
 - (ii) WOs and NCOs sentenced to Imprisonment, Dismissal with/without disgrace, or Detention, must to be reduced to the ranks
 - (iii) Fine limits: s 70 *Offences* as available to a civil court in England and Wales. *Otherwise* 28 days pay - 56 if committed on active service
 - (iv) Fine default periods are same as civilian courts and, if the total would exceed two years, that does not exceed DCM powers
 - (v) There are the same restrictions on custody for under 21s as in civilian courts
 - (vi) TA and RAAF *cave*: (a) no Dismissal for officers, and (b) restrictions on Stoppages under s 211(4)
 - (vii) *Civilians under 17*: Service parent/guardian to pay fines/compensation and may be required to provide Recognisance up to £1,000 - Sch 5A paras 13-14

CHAPTER 5

THE SENTENCES AVAILABLE TO A COURT MARTIAL WHEN SENTENCING CIVILIANS

5.1 Sentences available against civilians

5.1.1 Civilians who are employed by the Armed Forces or who accompany them outside the United Kingdom are subject to the jurisdiction of Courts Martial and Standing Civilian Courts in respect of criminal offences and a limited number of service offences⁴⁹. The sentences available to Courts Martial when sentencing civilians are⁵⁰ (*in declining order of severity*):

- i.) Imprisonment (or custodial orders for civilians under age 21)
- ii.) Fine
- iii.) Community Supervision Order
- iv.) Compensation order
- v.) Order for a conditional discharge
- vi.) Order for an absolute discharge

5.1.2 The sentencing considerations in respect of compensation orders, conditional and absolute discharges are the same as in civilian courts in England and Wales. An offender under 14 years of age convicted of manslaughter may be sentenced to be detained for life in such place and on such conditions as the Secretary of State directs.

5.2 Custodial orders for civilians under the age of 21

5.2.1 A Court Martial can sentence civilian offenders subject to civil law between the ages of 17 (or 15 for a male offender) and 21⁵¹ to undergo a custodial order for an offence which in the case of an adult could attract imprisonment up to the maximum term of imprisonment for the offence.⁵² A District Court Martial is limited to imposing a custodial order up to two years.⁵³ The sentence must be at least 21 days if the offender is over 18 and two months if he is under that age,⁵⁴ and civilians under 18 cannot be sentenced to more than 12 months in total⁵⁵. If the sentence is passed by a Standing Civilian Court it is limited to six months.⁵⁶

⁴⁹ Army and Air Force Acts 1955 s 209, Naval Discipline Act 1957 s 118

⁵⁰ Army and Air Force Acts 1955 Sch 5A, Naval Discipline Act 1957 Sch 4A

⁵¹ Note these provisions are not set out in the Manual of Military Law Part I Volumes A and B. The Civilian Supplement is now very out of date and must be treated with extreme caution. In all cases the statutory provisions have been extensively amended as set out in Halsbury's Statutes Volume 3 noter-up, and Halsbury's Laws Volume 2(2) paras 432 and 433

⁵² These age limits were inserted by Armed Forces Act 1986 s 11 into Army and Air Force Acts 1955 Sch 5A para 10(2), and Naval Discipline Act 1957 Sch 4A para 10(1)

⁵³ Army and Air Force Acts 1955 s 85(2)

⁵⁴ Army and Air Force Acts 1955 Sch 5A para 10(1)(a), Naval Discipline Act 1957 Sch 4A para 10(1)(a)

⁵⁵ Army and Air Force Acts 1955 Sch 5A para 10(1A), Naval Discipline Act 1957 Sch 4A para 10(1A)

⁵⁶ Army and Air Force Acts 1955 Sch 5A para 10(1)(c), Naval Discipline Act 1957 Sch 4A para 10(1)(c)

- 5.2.2 The offender will be committed for the period of the order in a Young Offender Institution if the Secretary of State so directs. It is open to him to direct that the offender should serve his sentence in the Northern Irish or Scottish equivalents.⁵⁷ The court is bound to provide any report to the defence and must consider it before passing sentence.⁵⁸ The court may not make a custodial order unless it is satisfied that the circumstances are such that if the offender were aged 21 or over the court would pass a sentence of imprisonment and he qualifies for a custodial sentence. An offender qualifies for such a sentence if he has a history of failure (or is unable or unwilling) to respond to non-custodial sentences, or only a custodial sentence would be adequate to protect the public from serious harm from him, or the offence was so serious that a non-custodial sentence cannot be justified.⁵⁹ The court is obliged to state these matters in open court to record them and to explain them to the offender in ordinary language⁶⁰. If the offender is outside the United Kingdom as will often be the case, he must be moved back to the United Kingdom as quickly as possible⁶¹.
- 5.2.3 The court will follow the same principles as will be applicable to a civil court in imposing a sentence involving a Young Offender Institution in England and Wales.

5.3 Community Supervision Order

- 5.3.1 CSOs have features similar to Community Orders under the Criminal Justice Act 2003 and they can be made only with the consent of the offender. A CSO provides for the offender to be placed under supervision, usually by a member of the British Forces Germany Probation Service, although supervision can be carried out elsewhere other than in Germany following liaison with the relevant probation service. An offender can be required to undergo treatment by or under the direction of a psychiatrist or for drug/alcohol dependency. An offender can be required to perform unpaid work in the community by way of a condition in the CSO but there are differences from the practice in the civilian courts. Offenders must be 17 or over, as opposed to 16 in the civilian system, before this condition can be imposed and the maximum period of work which can be ordered is 100 hours. The order may contain other requirements concerning matters such as the offender's residence, and the offender must comply with the reasonable requirements of the supervisor.

⁵⁷ Army and Air Force Acts 1955 Sch 5A para 10(4A), Naval Discipline Act 1957 Sch 4A para 10(4A)

⁵⁸ Army and Air Force Acts 1955 Sch 5A para 10(2)-(3), Naval Discipline Act 1957 Sch 4A para 10(2)-(3)

⁵⁹ Army and Air Force Acts 1955 Sch 5A para 10(1AB), Naval Discipline Act 1957 Sch 4A para 10(1AB)

⁶⁰ Army and Air Force Acts 1955 Sch 5A para 10(3A), Naval Discipline Act 1957 Sch 4A para 10(3A)

⁶¹ Army and Air Force Acts 1955 Sch 5A para 10(4), Naval Discipline Act 1957 Sch 4A para 10(4)

5.3.2 A breach of the order is an offence which can be dealt with by Court Martial or Standing Civilian Court. If a breach is proved or admitted, the court can pass any sentence which would have been available to the court for the original offence, in which event the CSO lapses. Alternatively, a fine of up to £1,000 can be imposed, in which event the CSO continues to run.

5.4 Orders against parents of offenders under 17

The court has power⁶² to fine or make a compensation order against the Service parent or guardian of an offender aged under 17 instead of imposing the fine on or making the order against the offender himself; or to make an order requiring such a parent or guardian to enter into a recognisance to exercise proper control over the offender.

⁶² Army and Air Force Acts 1955 Sch 5A paras 13 and 23