CHAPTER 20

DISCIPLINE POLICY AND PROCESSES

(Sponsor: NAVY LEGAL-DISCIPLINE LAW SO1)

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CHAPTER 20

DISCIPLINE POLICY AND PROCESSES

References:

A. BRd 2 (King's Regulations for the Royal Navy) Chapters 1, 3, 36-42
B. JSP 830 Manual of Service Law (the MSL)
C. BRd 9467 (Fleet Administrative and General Orders) Chapter 16
D. JSP 831 (Redress of Individual Grievances: Service Complaints)
E. JSP 832 (Service Inquiries)
F. JSP 833 (Minor Administrative Action)
G. BRd 172 The Yellow Guide

SECTION 1

GENERAL

2001. Why Discipline Matters

a. The values and standards of the Royal Navy are established, upheld and sustained by a combination of leadership by example, education and training, and by regulation through the Royal Navy's discipline system. Discipline is founded in the doctrine of command which places the responsibility for maintaining discipline on commanders. In order to fulfil their disciplinary responsibilities, commanders are granted appropriate authority. Most professions and organisations have regulatory or disciplinary codes. For the Royal Navy, Commanding Officers (COs) are granted statutory powers under the Armed Forces Act 2006, including the authority to issue lawful commands, in order to support their disciplinary role. One of the objects of military law is to provide for the maintenance of good order and discipline among members of the Services and, in certain circumstances, among others who live or work in a military environment. This it does by supplementing the ordinary criminal law of England and Wales with a special code of discipline and a special system for enforcing it. Such special provision is necessary in order to maintain, in time of peace as well as war, and overseas as well as at home, the operational efficiency of an armed force. It is for this reason that acts or omissions which in civil life may amount to no more than breaches of contract (like failing to attend work) or indeed mere rudeness (like being offensive to a superior), become in the context of Service life punishable offences.

b. Discipline is one of the Royal Navy's Six Core Values:

The Royal Navy must be a disciplined service if it is to be effective. We must therefore obey all lawful orders from our superiors. Self-discipline is fundamental; being able to discipline ourselves will earn us the respect and trust of others, and equip us to cope with difficult, individual decisions we will have to make during our service.

c. Discipline in the Service is underpinned through:

(1) **Formal Disciplinary Action.** Action taken to uphold good order and Service discipline using statutory powers.

and,

(2) **Administrative Action.** Action taken to rehabilitate, censure or initiate sanctions to correct professional or personal failings.

d. The fundamental purpose of the disciplinary and administrative processes is to foster and promote the discipline and behaviour required for the maintenance of operational effectiveness.

SECTION 2

DISCIPLINE POLICY, GOVERNANCE AND CHAIN OF COMMAND

2002. Governance

Governance of discipline and related legal matters in the Armed Forces is the responsibility of the Service Justice Board (SJB). This sits at the head of the Service Justice System and comprises uniformed, MOD civilian, and other governmental, legal and judicial authorities with a shared and vested interest in the maintenance of discipline in the Armed Forces in direct support of the Moral Component of Operational Capability. The Service Justice Executive Group (SJEG) transacts routine Service discipline and other legal business in support of the SJB.

2003. Discipline Policy

a. The generation, articulation, correlation and implementation of Discipline Policy for the Service is the responsibility of Head Naval Legal Services, drawing on executive input from other NCHQ directorates and Royal Navy commands as required. Broad legal policy for the Service is contained within References A to G in addition to this Chapter of BRd 3(1).

b. Of note, in October 2009 the Armed Forces Act 2006 (AFA 06) replaced the single Service Discipline Acts and is the single, primary, statutory base (complemented by approximately 80 pieces of secondary legislation) for the disciplinary regime in force for members of the Armed Forces, including reservists and former members, as well as civilians or other individuals whose professional, geographic or familial links to the Armed Forces confer certain status and jurisdiction.

2004. Jurisdiction

The Armed Forces Act 2006 applies to all regular Service personnel, wherever they are in the world at all times and to reservists at certain times. Certain civilians may also be subject to the Act at certain times and in certain locations. Detailed guidance is contained in Chapter 3 to JSP 830 Manual of Service Law (the MSL).

2005. Processes

Disciplinary processes are set out primarily within the MSL and this chapter. See also FLAGO Chapter 16.

2006. Authority

The authority for the investigation, bringing of charges, summary hearing or Court Martial is set out in AFA 06, KRRN and this chapter.

2007. Service Law Harmonisation

AFA 06 harmonised Service law and provides a tri-Service system that is designed to ensure consistency and parity when dealing with personnel, regardless of their Service. The increasing trend towards joint operations and joint defence organisations means that operational effectiveness is more efficiently supported by this single system of Service law.

a. **Summary Discipline.** Summary Hearings and the role of the CO are at the heart of Service discipline and remain the mechanism by which most offences are addressed. Summary offences and powers are harmonised across the Services. Personnel of one Service of the UK Armed Forces who serve in or with one of the other Services of the UK Armed Forces may come under the jurisdiction of the CO of the unit in which they serve or are attached. Similarly, Service personnel serving in Joint organisations come under the jurisdiction of the CO of that unit or formation. All personnel dealt with at Summary Hearing have the right to appeal to the Summary Appeal Court.

b. **Service Prosecuting Authority.** There is a single independent Service Prosecuting Authority (SPA), staffed by lawyers from all three Services and civilian lawyers, and headed by a civilian Director. The SPA determines whether or not to prosecute those who are alleged to have committed offences contrary to Service law where cases are referred to it by the Service Police, the CO or on election by the accused, and the SPA conducts the prosecution in the Court Martial.

c. **The Court Martial.** The Court Martial is available to deal with the most serious offences or where the accused elects for trial by Court Martial. The Court comprises a Judge Advocate and a minimum of 3 or 5 Service members, depending on the seriousness of the offence. The unqualified right for all personnel to elect for trial by Court Martial regardless of the seriousness of the offence is a fundamental tenet of the Service Justice System.

SECTION 3

ROYAL NAVY HIGHER AUTHORITIES, DISCIPLINE CHAINS OF COMMAND AND SOURCES OF LEGAL ADVICE

2008. Organisation

a. The CO is central to the Service discipline system and is responsible for the effective administration of discipline at unit level. AFA 06 requires the CO to seek Higher Authority permission before exercising certain functions (in essence, for permission to hear certain specified charges, or to be granted 'extended powers' to impose certain punishments).

b. In general terms, powers of summary discipline are vested in officers who are COs of units (meaning ships or establishments) or appointed as the 'Commanding Officer' of a body of service personnel. AFA06 also empowers 'Subordinate Commanders' who may exercise powers of summary discipline under the authority of the CO.

c. Service policy requires that those who exercise powers of summary discipline are authorised in advance (either as COs of ships or establishments, or as otherwise authorised) – and that the relationship between subordinate commander, Commanding Officer and Higher Authority is approved.

d. AFA 06 defines a Higher Authority (HA) as any officer in the CO's disciplinary chain of command who is superior in that chain of command to the CO. Within the Service, those appointments in which officers may act as HAs for discipline purposes are as follows[1]:

Fleet Commander
Second Sea Lord and Deputy Chief of Naval Staff
Director Strategy and Policy
Director Develop
Director People and Training/Naval Secretary
Director Force Generation
Director Acquisition
Director Submarines
Director Naval Staff
Commander Operations
Commander Strike Force
Commandant General Royal Marines
Commander British Forces Gibraltar
United Kingdom Maritime Component Commander Bahrain
Commodore Surface Flotilla
Commodore Submarine Flotilla
Deputy Director Aviation and Commodore Fleet Air Arm
Deputy Director Policy and Engagement
Operational Advantage Centre Director

[1] These changes reflect the structural changes to the RN as implemented through the 2020 RN Transformation programme.

Naval Base Commanders: Portsmouth, Devonport and Clyde
Head of Navy Healthcare Commander Fleet Operational Sea Training
Commander Maritime Reserves
Commander Littoral Strike Group
Commander Carrier Strike Group
Commander 3 Commando Brigade Royal Marines
Assistant Chief of Staff Maritime Warfare
Chief of Staff Navy Command Headquarters

e. The Service disciplinary chain of command is set out in the table at Table 20-1. This reflects wherever possible the administrative and operational chains.

f. Where HA authority is required, COs are to apply to the HA specified in the table, unless the HA is unavailable or directed to do otherwise by that HA.

g. Reference B Chapter 9 and this chapter give detailed instructions for making applications to HA for disciplinary matters.

h. Legal advice to COs and HA is available from the appropriate Legal Adviser listed in Table 20-2 below.

2009. Meaning of 'Commanding Officer'

a. The CO is central to the functioning of AFA 06. Under the Act they are responsible for making key decisions throughout the whole of the disciplinary process, including (as applicable) authorising custody, bringing a charge, hearing a charge summarily or referring a case to the SPA for trial by Court Martial. Under the Armed Forces Code of Practice for Victims of Crime 2015 as outlined at Annex 20K, the CO also has responsibilities in relation to certain complainants.

b. In most circumstances the identity of the CO will be readily apparent and will be the officer appointed in command of the ship, unit or establishment in which an individual is serving. The Armed Forces (Meaning of 'Commanding Officer') Regulations ('the meaning of CO Regulations') specifies that a person must be appointed 'in command' of a unit, ship, establishment, and if any doubt arises over the authority of an individual to act as a CO for discipline purposes, the appropriate Career Manager and JPA record should be consulted (see also Chapter 59 and the Annexes thereto). Where doubt remains, the matter should be referred to CNLS SO1 Discipline Law.

c. Regulation 3 of the Meaning of CO Regulations also allows the appointment of other officers to be the CO for purposes under the Act, such as exercising disciplinary functions. Such 'Regulation 3' or 'bespoke CO' appointments may be made in circumstances where the normal CO is unavailable, such as when elements of a unit are on detached duty, or when it would be inappropriate for the normal CO to exercise disciplinary functions. An example of the latter would be when a number of individuals from different units are accused of joint offending which may be appropriately dealt with by Summary Hearing. Rather than holding several separate summary hearings, one CO can be nominated under Regulation 3 to hold a single hearing.

d. The Defence Council has authorised Royal Navy officers (this includes officers of the Royal Marines) in Command at 1* rank or above to appoint officers for Regulation 3 purposes with respect to personnel within their chain of command. In determining the chain of command, Table 20-1 should be consulted. Where it is necessary to make such an appointment for a large number of individuals across a range of commands, Dir P&T/Naval Secretary will normally be the most appropriate officer to make such appointments. Legal advice should be sought.

e. It should be noted that Regulation 3 'bespoke CO' appointments carry no authority broader than that which is contained in the appointment itself. Thus, where the appointment is made for 'disciplinary purposes', the officer so appointed has the full powers that the original parent CO would have had to authorise custody or bring charges etc. but they do not have powers in relation to other non-disciplinary matters (for example, the handling of Service Complaints) which remain the responsibility of the parent CO. Similarly, the appointment relates only to matters regulated under AFA 06. It does not convey any authority in relation to matters not regulated by the Act, such as the disposition of forces or the conduct of operations.

f. Wherever practical before exercising a function likely to have a significant impact on an individual (e.g. imposing a sentence of detention or reduction in rank) a Regulation 3 CO should normally consult the parent unit CO. The decision remains, however, that of the Regulation 3 CO.

2010. Personnel Embarked in RFA Vessels

a. **Royal Fleet Auxiliaries.** RN and RM personnel embarked in RFA vessels remain subject to AFA 06 at all times and are not subject to the RFA's own disciplinary or administrative procedures. Key to the successful integration of Naval personnel into a RFA vessel is the maintenance of the highest professional standards and a culture of mutual respect and trust. There have been occasional cases where this respect and trust has been undermined by a perception that the Service Justice System is slow and unresponsive; this has been particularly so where cases have had to be referred to parent units for decisions and authorisations. To avoid delay, units should consider the appointment, whenever practicable, of a temporary CO in accordance with the provisions of Regulation 3 of the Armed Forces (Meaning of "Commanding Officer") Regulations (see Para 2009 above). The appropriateness of such an appointment will vary according to the type and number of personnel embarked and the length of the deployment. For example, there may be little utility in appointing a Regulation 3 CO where only a few individuals are embarked for a two-week exercise, but more benefit may be gained when a large number are drawn from disparate units for a prolonged deployment. Any Regulation 3 CO appointed may only exercise their powers in relation to those under their command and has no authority over the vessel or its RFA crew.

b. Whether a Regulation 3 CO is appointed or not, the senior officer of embarked RN/RM personnel is responsible for ensuring that all those subordinate to them comply with the orders and directions of the ship's Commanding Officer. The CO of a RFA vessel remains ultimately responsible for the safety of the ship and personnel onboard and retains the right to have any individual removed from the vessel in order to ensure the safety of the ship. BRd 875[2] 0322 gives guidance to RFA COs on the circumstances in which they can exercise their right to remove embarked RN/RM personnel and the procedure to be followed, including the requirement to consult DACOS RFA Personnel Ops SO1 and the Regional Legal Office.

c. The RFA alcohol testing policy does not apply to embarked RN/RM personnel. Whilst it is not unlawful to require embarked personnel to comply with RFA breath testing, this should only be used as a last resort, where existing AFA 06 disciplinary provisions - s.20 (drunkenness) and s.20A (exceeding prescribed limits) – are not practicable.

2011. Embarked Army, RAF and Royal Marines Units

a. The MSL Chapter 2, paragraph 22 provides that, as a general rule, when Army and RAF personnel are embarked in HM Ships they are subject to the exclusive jurisdiction of the CO of the ship. It also provides that, when a 'formed unit' of the Army or RAF is embarked, the default position is that the CO of that ship (or ships if the embarked unit is dispersed across a number of vessels) will exercise disciplinary powers over the unit unless prior notification has been given by HQ Land Forces or Air Command, in which case the COs of the Army and RAF formed units may retain their full disciplinary powers when embarked. This special arrangement for formed units is subject to the caveat that the CO of the ship may take jurisdiction in any case where an alleged offence committed by one of the embarked personnel affects the operational efficiency of the ship or the incident occurs overseas where the sovereign immunity of the ship is an operative factor.

b. Although not specifically mentioned in the MSL, the above policy applies in relation to embarked RM personnel. Where RM personnel are embarked as singletons or sub-units in warships (including those units which form part of the Ship's Company, e.g. the Assault Squadrons embarked in amphibious shipping or a FSRT in FF/DDs) the CO of the ship will be their CO for disciplinary purposes, although they may delegate subordinate commander powers to, for example, OCRM. Where RM units embark as formed units (i.e.. units which have their own COs) the unit CO retains their disciplinary powers, subject to the CO of the ship (or ships) having the discretionary right to take jurisdiction over those matters outlined in sub-para a above. This aligns RM units with embarked Army and RAF units. While formal notice in writing will not be required for RM units (unlike the other Services) COMOPS is to be informed of any RM CO's declared intent to exercise retained disciplinary powers, e.g. at pre-embarkation conferences.

[2] BRd 875 Regulations for Royal Fleet Auxiliaries.

Table 20-1. Naval Service Discipline Chains of Command

Unit/Establishment	Sub Cdr	CO (Note 3)	HA (Note 3)		Regional Legal Office (RLO)
			1* (if applicable) (Note 7)	2*	
Plymouth					
HM Ships[3]	XO	CO	COM SURFLOT	Dir FGen	Western
HM Submarines	XO	CO	COM SUBFLOT	Dir SM	Western
SURFLOT HQ, ETS-W FSU-C T23 RSG WLSG FHMU	Cdr X(AFH) Cdr L Cdr Op Eng Spt SO1 War	Chief of Staff SURFLOT HQ	COM SURFLOT	Dir FGen	Western
HMS DRAKE/HMNB DEVONPORT	BXO	COB (**Note 8**)	NBC D	Dir SM	Western
RNRC Hasler		OC	NBC D	Dir P&T	Western
Shore-based RNP		PM(N)	COS HQ		Western
Portsmouth					
HM Ships[4]	XO	CO	COM SURFLOT	Dir FGen	Eastern
SURFLOT HQ (SS), ETS-E FSU-A & B T45 RSG WLSG	Cdr X (C&D) Cdr L Cdr Op Eng SO1 War	Chief of Staff SURFLOT HQ	COM SURFLOT	Dir FGen	Eastern
Mine Counter Measures Squadron 2		Cdr MCM2	COM SURFLOT	Dir FGen	Eastern
Overseas Patrol Squadron		Cdr OPS	COM SURFLOT	Dir FGen	Eastern
Coastal Forces Squadron		Cdr CFS	COM SURFLOT	Dir FGen	Eastern
HMS NELSON/HMNB Portsmouth	BXO	COB	NBC P	Dir FGen	Eastern
HMS TEMERAIRE	XO	CO		Dir P&T	Eastern
HMS EXCELLENT	XO	CO	NBC P	Dir FGen	Eastern
Diving and Threat Exploitation Group	Chief of Staff	CO	COM SURFLOT	Dir FGen	Eastern
A Sqn		CO	COM SURFLOT	Dir FGen	Eastern
B Sqn		CO	COM SURFLOT	Dir FGen	Eastern

[3 2] All P2000 units are included as part of HM Ships, however, due to their command structure, will not have a subordinate commander.

Unit/Establishment	Sub Cdr	CO (Note 3)	HA (Note 3)		Regional Legal Office (RLO)
			1* (if applicable) (Note 7)	2*	
C Sqn		CO	COM SURFLOT	Dir FGen	Northern
D Sqn		CO	COM SURFLOT	Dir FGen	Eastern
E Sqn		CO	COM SURFLOT	Dir FGen	Eastern
Mine and Threat Exploitation Group	Chief of Staff	CO	COM SURFLOT	Dir FGen	
MST1		CO	COM SURFLOT	Dir FGen	Eastern
MST2		CO	COM SURFLOT	Dir FGen	Eastern
MST3		CO	COM SURFLOT	Dir FGen	Northern
HQ Provost Marshal (Navy), SPLI, Shore-based RNP		PM(N)	COS HQ		Eastern
HQ Band Service Royal Marines and Royal Marines Bands		PDM	DD Pol&Eng	Dir StratPol	Eastern
Maritime Deployed Hospital Care	XO	CO		CSF	Eastern
Sea Preparation Squadron		CO SPS	DDPD	Dir P&T	Eastern
Faslane					
HM Ships	XO	CO	COM SURFLOT	Dir FGen	Northern
HM Submarines	XO	CO	COM SUBFLOT	Dir SM	Northern
SUBFLOT HQ	SXO	COS	COM SUBFLOT	Dir SM	Northern
HMS NEPTUNE/HMNB Clyde	BXO	COB	NBC C	Dir SM	Northern
Shore-based RNP		PM(N)	COS HQ		Northern
Naval Aviation					
HMS HERON/RNAS Yeovilton	XO	CO	DD NavAvn	Dir FGen	Western
Lynx Wildcat Maritime Force HQ		CO	DD NavAvn	Dir FGen	Western
VL based Squadrons	XO	CO	DD NavAvn	Dir FGen	Western
CHF HQ		CO	DD NavAvn	Dir FGen	Western
CHF Squadrons		CO	DD NavAvn	Dir FGen	Western
FW Squadrons		CO	DD NavAvn	Dir FGen	Western
HMS SEAHAWK/RNAS Culdrose		CO	DD NavAvn	Dir FGen	Western
CU based Squadrons	XO	CO	DD NavAvn	Dir FGen	Western

Unit/Establishment	Sub Cdr	CO (Note 3)	HA (Note 3)		Regional Legal Office (RLO)
			1* (if applicable) (Note 7)	2*	
HMS GANNET	XO	CO	DD NavAvn	Dir FGen	Western
Training Units / Establishments (see Note 6)					
HMS RALEIGH	XO	CO	DDPT	Dir P&T	Western
BRNC	XO	CO	DDPT	Dir P&T	Western
CTCRM HQ		Comdt CTCRM	DDPT	Dir P&T	Western
CTCRM Training Wings		Wing CO	DDPT	Dir P&T	Western
HMS / MWS Collingwood[5]		CO	DDPT	Dir P&T	Eastern
MWC Collingwood	XO	CO		CSF	Eastern
FOST (S)		Capt (S)	COM FOST	Dir FGen	Western
FOST (N)		Capt (N)	COM FOST	Dir FGen	Northern
DCTT	XO	CO HMS SULTAN		Dir P&T	Eastern
DSLA		CO CTW and Hd of Naval Training		Dir P&T	Eastern
DTUS Southampton		CO		Dir P&T	Eastern
Defence Diving School		CO	DDPT	Dir P&T	Eastern
INM (incl RNMS in Training Margin)		CO		Dir P&T	Eastern
URNU units		CO BRNC		Dir P&T	Western
COTC (incl RNSTC, SMERAS, MTE(N), FFTI (Lingwood), Diligence Squadron)		CO TRG CLYDE	DDPT	Dir P&T	Northern
Ships in Build/Refit					
		SNO (see **Note 2**)		Dir Naval Acq.	Relevant Geographic RLO
Royal Marines					
3 Cdo Bde HQ		Dep Comd	Comd 3 Cdo	CSF	Bde LEGAD
3 Cdo Bde Units (incl RM bases)		CO	Comd 3 Cdo	CSF	Bde LEGAD
RM Poole		CO		CSF	Eastern
Overseas Units					
JSU Gibraltar	2 i/c	CO	CBF Gibraltar	COM OPS	Eastern
Gibraltar Squadron Units		CO Units / CO RNGS	CBF Gibraltar	COM OPS	Eastern
UKMCC Bahrain (UKNSF Bahrain)		CO	UKMCC	COM OPS	Eastern
BIOT	XO	CO	UKMCC	COM OPS	Eastern
Joint Units (Note 4)					

[5] The roles of CO HMS Collingwood and CO MWS Collingwood are performed by the same person, who hold powers of punishment separately for each position. As CO MWS Collingwood, the incumbent holds primary jurisdiction to exercise disciplinary powers of punishment over personnel in MWS outstations but may defer to local COs should they wish.

Unit/Establishment	Sub Cdr	CO (Note 3)	HA (Note 3)		Regional Legal Office (RLO)
			1* (if applicable) (Note 7)	2*	
JSU Northwood	XO	CO		COM OPS	Nwd LEGAD
JHG (S) (**Note 10**)		CO		CSF	Eastern
JHG (SW) (**Note 10**)		CO		CSF	Western
Defence School of Healthcare Training		CO		Dir P&T	Eastern
Reserves					
RMR Units (see Table 20-3)		CO	COM MARRES	Dir P&T	Relevant Geographic RLO
RNR Units		CO	COM MARRES	Dir P&T	Relevant Geographic RLO
RNR Air		CO	COM MARRES	Dir P&T	Relevant Geographic RLO

Notes:

1. The disciplinary powers of sub-commanders are not inherent in their appointments. These powers must be specifically delegated – in writing – by the CO and the exercise of those powers by sub-commanders will remain subject to certain limitations (see the MSL Chapter 6).

2. A SNO does not automatically acquire powers as CO but may be appointed as CO for disciplinary purposes under 'Regulation 3' (see Para 2009).

3. Where the nominated 1 or 2* Higher Authority is unavailable, another Higher Authority from the list at Para 2008 may act in lieu.*

4. In accordance with 2018DIN01-073 (see the MSL Chapter 44), disciplinary responsibility for joint units is divided between the three Services. Lodger dental and medical units will fall under the disciplinary chain of their host units.

5. Special arrangements apply to Army Air Corps units located within Naval Air Stations – Cos should seek legal advice.

6. Special arrangements apply to lodger sub-units (see the MSL Chapter 2 for definition) within Naval Establishments, e.g. Submarine School and Board and Search School at HMS RALEIGH. Refer to relevant local memoranda and seek legal advice as required.

7. 1 Has are defined where there exists an applicable Command position to fulfil this function.*

8. The roles of COBs and NBCs in fulfilling these roles remain extant but will be reviewed in the event of further developments arising out of the RN Transformation Programme.

*9. As part of the restructuring and alignment of the CSF Enterprise under RN Transformation, COS CSF, COM LSG and COS CSG have all been appointed as Cos under AFA 06 and ACOS MARWAR has been nominated as a 1*HA as per Fleet Cdr decision of 30 Jul 20.*

10. Joint Hospital Groups South and South West replace the names Defence Medical Group Portsmouth and Derriford, respectively.

Table 20-2. Legal Advisers - Contact Details

Area	Email
EASTERN	NAVY LEGAL-RLO MAILBOX (MULTIUSER) NAVY LEGAL-RLOMAILBOX@mod.gov.uk
WESTERN	
NORTHERN	
NORTHWOOD	NAVY LEGAL-LEGAD NORTHWOOD
3CDO BDE	NAVY LEGAL-LEGAD 3CDO BDE

Out of hours, the duty lawyer is contactable via the Duty Fleet Controller.

Table 20-3. G1 Discipline Support for RMR Units

RMR Unit	G1 Discipline Support
RMR City of London	RM Poole
RMR Bristol	40 Cdo RM
RMR Merseyside	43 Cdo FPGRM
RMR Scotland	45 Cdo RM

SECTION 4

DISCIPLINARY AND ADMINISTRATIVE ACTION

2012. Discipline and Administrative Action - the Distinction

a. Separate to, but running in parallel with, the formal disciplinary system, there exists a range of administrative measures and sanctions that may be used to deal with personal or professional failings or minor indiscipline. Guidance on the administrative sanctions which may be imposed following a minor, serious or gross security breach committed by Royal Navy or Royal Marines personnel is outlined at Annex 20P.

b. The distinction between disciplinary action and administrative action is an important one. As a general rule, disciplinary action should be used where an offence is suspected which is wholly deserving of the consequences of the application of Service law and where an individual should, if convicted, expect to be punished. Administrative action – which is intended to address professional and personal shortcomings – should be used where it is clear that criminal and/or disciplinary measures are not necessary, appropriate or desirable. Any administrative sanction must be proportionate to the professional failing and must seek to correct the shortcoming, rather than punish the individual. While distinct, the two forms of action are not mutually exclusive, however; 'upholding good order and Service discipline' and 'correcting personal or professional failings' may cover the same central ground and, typically, disciplinary action may be appropriate where (e.g. minor) administrative action has patently failed for personal shortcomings such as lateness or slackness.

c. The availability of an administrative action regime does not preclude the Command from proceeding directly to disciplinary action where that is considered to be the more appropriate course. Placing an individual under warnings for discharge or reversion (as applicable) should always be considered where that person displays repeated indiscipline, even when administrative action alone has been used to seek to address the behaviour. Warnings may be particularly effective in dealing with persistent minor absence or minor but repeated negligence by an individual in the conduct of their duties. Where consideration is being given to administrative action other than warnings in the context of matters that are the subject of disciplinary proceedings, Cos should normally wait for the conclusion of the Summary Hearing or Court Martial before deciding on administrative measures.

d. Minor Administrative Action (MAA) may not be taken in conjunction with disciplinary action for the same misdemeanour, but it may be appropriate where there is insufficient evidence to support a formal charge but, on the balance of probabilities, there remains clear evidence of some other failing. Similarly, some professional failings can be dealt with appropriately without recourse to disciplinary action, MAA or major administrative action. For example, minor transgressions can and should be corrected informally and immediately, often verbally.

2013. Deciding on Method of Investigation

a. **Generally.** The decision whether to have a matter investigated by RN Police (RNP)[6], or through some other, formal, disciplinary investigation must be taken with care. In the event that an allegation or apparent shortcoming is amenable to MAA or other administrative disposal, an RNP investigation may not be required. Cos should ensure that the authority to consider and use MAA is clearly understood within their unit. Superior officers (at every level) should be supported in their decision to use MAA, but they should be guided on when it will be appropriate to use it (and crucially, when it will not be) by the CO and the unit management. The process for deciding whether and how to use MAA is set out in JSP 833 Chapter 3 which should form the basis of unit orders and training. It should be noted that, under AFA 06, 'prescribed circumstances' or 'Schedule 2' offences **must** be reported to the RNP as a matter of law and regardless of whether the CO believes that administrative disposal would be more appropriate. Guidance is contained within the MSL Chapter 6.

b. **Alleged Sexual Offences.** All alleged sexual offences are to be reported to the RNP for investigation.

[6] The term RNP embodies the Royal Marines Police Troop (RMPT) and, for the purposes of this Chapter, RNP can also be read as 'Service Police'.

SECTION 5

MINOR ADMINISTRATIVE ACTION

2014. Introduction

a. Minor Administrative Action (MAA) gives the power to all Service personnel from Leading Hand/Corporal upwards to impose 'minor sanctions' to rectify minor professional and personal failings (e.g. minor leave breaking, poor turnout, failure to comply with Standing Orders, failure to attend, etc). A similar but distinct system of Remedial Training is used in training establishments for the management of personnel during Phase 1 and 2 Training, but this is distinguished from the MAA regime which applies in all units.

b. The tri-Service policy is contained in JSP 833 – Minor Administrative Action (Ref A). All ships, units and establishments are to follow JSP 833 for the guiding principles and administrative arrangements for MAA. This section provides single Service guidance to supplement the JSP.

2015. Aim

This Section aims to guide RN/RM Cos in the application and administration of MAA within RN/RM units.

2016. Overview

a. MAA is part of the overall system for the maintenance of Service ethos and standards that encompasses everything from the immediate rebuke to minor and major administrative action, summary trial and Court Martial. The CO is central to the maintenance of discipline within their unit; they set the standard that is essential for operational efficiency and timely justice.

b. This Section is designed to give Cos a framework on which to write their own unit orders based on the context in which their unit operates.

2017. Whether to Take Minor Administrative Action or Disciplinary Action

a. It will be up to Cos to decide and define whether MAA or disciplinary action is the appropriate route to take depending on the circumstances. Seagoing units will operate different routines to shore establishments, which may in turn differ from air stations, while submarines operate differently to surface units and units undergoing extended maintenance periods may adopt tailored working practices. Some guidance on the types of individual shortcoming, which might amount to a disciplinary offence, but which could also be suitable for MAA, is at Para 2028 below. Cos should also consider including a requirement that, where it is unclear whether MAA is an appropriate response, such cases should be referred to the Chain of Command.

b. Superior Officers (Leading Hands and above in the RN, LCpl and above in the RM) are able to use MAA instead of instigating formal disciplinary action to deal with minor professional and personal failings. MAA is never to be taken in conjunction with disciplinary action for the same misdemeanour or shortcoming. The freedom to choose to deal with a shortcoming through MAA as an alternative to disciplinary action persists only up to the point at which a person committing the personal or professional failing is charged in relation to that failing. The moment that a charge is brought (i.e. the accused has been served with a charge sheet and relevant supporting papers) is that when MAA is no longer an option for the Command.

c. However, MAA must not be confused with major administrative action. This description of administrative action (which includes, for example, Discharge Shore or SNLR, Reversion and warnings for these procedures etc), may - and often should - be taken in conjunction with disciplinary action. In addition, personal failings may be noted in appraisal reports in accordance with current guidance if necessary. If in doubt as to the potential combination of desired measures, legal advice should be sought.

d. Administrative action is intended to set straight professional or personal shortcomings and should not be used in response to matters which are clearly criminal in nature. The action taken should fit the failing and be clearly designed to correct it. MAA policy has been developed to correct inefficiency, unacceptable behaviour and minor misconduct. This supports all levels of leadership, particularly at lower levels, by ensuring that personnel are empowered to take the most appropriate action and to prevent any temptation to take unofficial ‘punitive’ action.

2018. Minor Administrative Action and the Chain of Command

Authority to impose MAA lies throughout the chain of command, subject to the direction of the CO. By granting more junior personnel the authority to deal swiftly with failings in their subordinates, MAA strengthens the chain of command and emphasises the importance of leadership by superior Officers (Leading Hands and above). Cos are therefore encouraged to delegate authority to impose MAA to the lowest level commensurate with the efficient management of their ships, establishments and units.

2019. Imposition of Minor Administrative Action

a. The guidance in JSP 833 is to be followed in all cases. All matters should be dealt with at the lowest level commensurate with maintenance of discipline and standards and the efficient management of the unit. It is therefore important to decide as quickly as possible the most appropriate course of action. Delay in imposing MAA may undermine the system, and all MAA should usually be initiated within 48 hours of discovery of the failing. This time limit may be extended where necessary, such as where a disciplinary investigation was initially considered appropriate but subsequently terminated without bringing a charge. It may be possible to deal with a professional or personal failing immediately, without resorting to MAA or formal disciplinary action. For example, someone who turns to in an unacceptable state of dress may be ordered to clean their boots or iron their shirt; but where someone turns to 15 minutes adrift MAA may be appropriate depending on the ship's programme and impact on the unit (disciplinary action may be necessary where the ship is under sailing orders). Guidance as to the types of AFA 06 offence which might be suitable to be dealt with by MAA as an alternative to disciplinary action is given below.

b. In order to make this judgement, all personnel involved in the process of imposing and administering MAA should be given appropriate training and guidance within the unit concerned, including instruction on the content and application of the CO's policy for the individual unit, contained in Ship's Standing Orders or a CO's Temporary Memorandum as appropriate.

c. Any MAA sanction imposed must fit the failing identified in order to restore the service person's efficiency. Guidance as to which sanction might be appropriate to given situations should be provided during such internal training in order to ensure consistency within units. Superior Officers authorised to impose MAA, and Reviewing Officers, should also be instructed on the two-stage test to be applied before imposing any sanction:

(1) Has a failing occurred, on the balance of probabilities (i.e. is it more likely than not that the person has failed to meet the required standard, committed the misdemeanour alleged etc.)?; if so;

(2) Is the Service test satisfied? i.e. *'Have the actions or behaviour of a serviceperson adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Service?' "Service"* in this context includes the duty watch, department, ship, unit etc. as appropriate to the situation.

d. Consideration should be given to advising those imposing sanctions, if in doubt as to whether to impose a sanction or which sanction to impose, to seek advice from an appropriate person of Reviewing Officer rank (see paragraph 2021 below) before any action is taken. In the interests of empowering Leading Hands and above to take appropriate action to correct failings as swiftly as possible, however, with proper training and published guidance it should not usually be necessary for designated superior officers to seek prior approval for such action. Training in the purpose and application of MAA is included in Command Courses and the Divisional Officers Course.

2020. Available Sanctions

a. There are a number of authorised minor administrative actions available, and these are set out below. In addition, Table 20-4 is to be consulted on the sanctions applicable to each rank/rate:

(1) **Report Back Muster/Parades.** Up to three musters/parades (45 minutes maximum duration) between 0700–2300, in whatever appropriate uniform and equipment as directed by the superior rank imposing the sanction. These may be appropriate in cases of poor timekeeping, turnout or standards of equipment. Relevant skills training, such as properly supervised drill and physical training, may be included if the service person's failing warrants it. A drill lesson can only be imposed as a sanction to address failings in drill. All training is to be conducted by an appropriately qualified instructor. Presenting at a poor standard may result in an order to 'show again', up to a maximum of two 'show again' musters for each Muster/Parade imposed.

(2) **Extra Duties/Tasks.** Up to three extra tasks or duties may be imposed to correct a professional failing directly connected to an individual's normal work or duty. The additional task or duty nominated must be of the same nature as the duty in which the individual failed. For example, a minor failure on gangway watch as QM could result in extra QM duties, or poor task-book progress may lead to further task-book training. Any duty or task should be of the same or lesser duration than the normal period of duty. A duty should not extend beyond 24 hours and there should be at least 48 hours between each 24-hour period of extra duty.

(3) **Extra Work.** Up to three periods of four hours (maximum) of extra work can be given. Work is to be of a type that benefits the unit but is not associated with the individual's normal duties. Such an action would be appropriate to address a failing not directly associated with an individual's normal tasks or duties. For example, a failure to conduct a chart outfit spot-check may result in the imposition of further spot-checks or similar administrative tasks.

(4) **Return to Unit (RTU).** RTU can be used during non-career courses or temporary loan (for example a squadded rating loaned to another unit for employment); in most circumstances the person should have been previously warned and their unit informed of the situation.

(5) **Informal Interview.** An Informal Interview may be conducted in order to brief a serviceperson on their shortcomings and to give advice on how they may be rectified. Such an interview would normally be expected to take place within the divisional system when a serviceperson needs to be made aware of minor failings, weaknesses, or mishandling of personal affairs (for example financial irresponsibility).

(6) **Formal Interview.** A Formal Interview is intended to make a serviceperson aware of their shortcomings and advise them on how to rectify their behaviour. It would be appropriate when an individual's persistent personal and professional failings need to be addressed before more formal action becomes necessary. The interview should be noted on the form T-WS-MAA02 'Record of Formal Interview', giving details of the failing and the actions required to correct it. For a rating this will normally be conducted by the Divisional Officer or Divisional Senior Rating; for an officer this would be conducted by the training Officer, HoD or CO as appropriate. Failure to respond to a Formal Interview may result in disciplinary or major administrative action such as formal warning or censure.

b. No sanctions other than these, and the relevant limitations on imposition, are permissible (albeit noting the provision below at Para 2026.c regarding the realignment of leave balances for incidents of AWOL). All minor sanctions except for Informal and Formal Interview are to have been completed within eight days of being issued. Imposition of report back musters and associated skills training, extra tasks and extra work may not be combined, i.e. only one type may be imposed to correct a failing. All must be properly supervised, at an appropriate level, throughout.

2021. Reviewing Officers

a. Cos should designate Reviewing Officers within their units, **both** within departments (it is recommended that DEPCOs be designated for MAA imposed to Junior Ratings, and that HODs be designated to review MAA imposed to Senior Ratings) **and** on a whole ship basis (it is recommended that EWO/BWO be designated for CPO/CSgt Ratings and below and the XO (of at least SO2 rank) for WO1s, WO2s and officers). These designations should be promulgated within the unit. Reviewing Officers will decide whether or not MAA is appropriate in the circumstances. If the Reviewing Officer considers that MAA is appropriate, they must offer the subject of the sanction the opportunity to request a formal review, and in all cases ensure the person in receipt of MAA is informed about the sanction and the reasons for its imposition.

b. The table below shows those ranks and rates that may be made the subject of sanctions; who can impose sanctions; who reviews the imposition and which sanctions may be imposed upon certain ranks or rates. A CO may vary upwards the rank or rate of those who have power to impose a minor sanction if this would be more appropriate to the maintenance of operational effectiveness within the unit; the precise authority of personnel will be dictated by the CO of a unit, based on the needs of that unit.

Table 20-4. Naval Sanctions

Ser (a)	Subject (b)	Minor Sanction imposed by (Lowest Rank/Rate) (c)	Minor Sanction Reviewed by (Lowest Rank/Rate) (d)	Sanctions available (e)
1	Cdr/Lt Col	Capt RN/Col	Cdre/Brig	RTU, Informal Interview, Formal Interview
2	Lt Cdr/Maj	Cdr (Note 1)/Lt Col	Capt/Col	
3	Mid/SLt/Lt/Capt (RM)	Lt Cdr (Note 2)/Maj	Cdr Lt Col	RTU, Informal Interview, Formal Interview, Extra Tasks / Duties
4	WO1	Lt Cdr (Note 3)/Maj	Cdr/Lt Col	
5	WO2	WO1	Lt Cdr/Maj	All but Report Back Musters / Parades
6	CPO/CSgt	WO2	WO1	
7	PO/Sgt	CPO/CSgt	WO1	
8	LH/Cpl	PO/Sgt	CPO/CSgt	
9	LCpl	LH/Cpl	PO/Sgt	
10	AB/Mne	LH/LCpl	PO/Sgt	All Available

Notes:

1. Except that a CO of the rank of Lt Cdr/Maj may impose sanctions at this level.

2. Except that a CO or MWV XO of the rank of Lt may impose sanctions at this level.

3. Except that a CO of the rank of Lt may impose sanctions at this level.

2022. Conduct of MAA Review

a. Whenever MAA has been imposed it must be reviewed by a Reviewing Officer. The Reviewing Officer is to ensure that it has been appropriately investigated by the person initiating the action; that correct procedures have been followed; and that the sanction is an appropriate one in the circumstances. The Reviewing Officer may decide that MAA is inappropriate and cancel the sanction. This might be because they consider that either disciplinary or major administrative action should be taken instead or, equally, it may be that they deem that no action is necessary. If, having reviewed the matter, a Reviewing Officer decides that MAA is appropriate, they may then either uphold or reduce the sanction imposed.

b. Having confirmed that MAA is appropriate, the Reviewing Officer must offer the recipient of the sanction the opportunity for a formal review. If the individual does not request such a review, then the sanction is to be performed. If, however, the subject of the MAA requests a review, that person is to be offered the opportunity to say why they believe the finding to be unfair or why they should not receive the sanction imposed. The Reviewing Officer is then to consider the matter considering the representations made by the subject of the sanction and any other relevant factors. The Reviewing Officer may decide to uphold the sanction imposed, to reduce it or to cancel the MAA altogether.

c. In conducting a review, the Reviewing Officer must ensure that:

(1) On the balance of probabilities, the alleged incident took place;

(2) The Service Test has been satisfied; and

(3) The sanction imposed is fair and proportionate.

d. The person seeking formal review should normally be given the opportunity to appear before the Reviewing Officer to state their case. In certain circumstances, for example when a ship is at sea, it may not be possible to take the individual before an officer of appropriate rank; in such cases review may be carried out by other means (including telephone and electronic means), and the Reviewing Officer should sign the form at the first reasonable opportunity thereafter.

e. The review is normally to take place as soon as possible after imposition of the sanction and, in any event, within 24 hours and before any sanction is performed.

2023. Complaints and Redress

If, after review by an appropriate superior, an individual considers him or herself to have been wronged by any administrative action taken then they are entitled to submit a Service complaint under AFA 06 and JSP 831. The submission of a complaint must not delay the conduct of any sanction imposed.

2024. Records and Subsequent Action

a. The administrative process is quicker and simpler than the disciplinary process. The action must be properly recorded, however, to ensure fairness, to discourage misuse and to facilitate audit by higher authority. A full audit trail is also required in order to ensure the MAA system is used appropriately. Continual failings on the part of an individual should lead to a formal warning (e.g. DO's warning for Discharge Shore (Inadequacy) or Reversion) or, if a particular failing is repeated several times and it amounts to an offence under the AFA 06, disciplinary action should be taken. It will rarely be appropriate for one superior Officer to take MAA against an individual repeatedly. All cases of repeated failing should be discussed with a Reviewing Officer, Head of Department or the CO as necessary.

b. Once approved, the action should be formally recorded on form T-WS-MAA01 'Record of Minor Sanction Awarded' and placed in a unit folder[7], in a Departmental subsection. In addition, if a Formal Interview is conducted this must be recorded on form T-WS MAA02 'Record of Formal Interview' and placed with the individual's service documents for the period of their current assignment. Both forms are contained in JSP 833 and are available from JPA.

c. The recording proforma is straightforward and contains the details of the individual involved, details of the personal and/or professional failing and the remedial action proposed. It must be signed by the subject and the imposing officer and countersigned by the Reviewing Officer. This will ensure that the action is properly endorsed and allows for formal review. Having endorsed the imposition of a sanction the Reviewing Officer is to inform a rating/other rank's DO or an Officer's 1RO of the decision. When a sanction is completed the tear-off slip is to be signed by the person supervising the conduct of the sanction.

d. Departments are to keep a record of MAAs awarded which is to be inspected monthly by the XO/HoD/OC and quarterly by the CO. Records of Formal Interviews are also to be retained with the individual's Divisional Documents or personal files as appropriate for the duration of their assignment and a copy held by the individual subject to the interview. If an individual is assigned when subject to the review period of a Formal Interview, the CO must decide whether the receiving unit should be made aware of the circumstances. Records of MAAs are to be held by the unit for 2 years for audit and inspection. Flotilla Commanders and FOST will inspect records during routine visits/OST periods to monitor consistency of standards.

2025. Requirement for Returns

There is no requirement for a formal return on MAA: units should retain records of individual MAAs until the individual leaves the unit, or for two years, whichever is less. The register of MAAs imposed should be retained and archived iaw JSP 441 for statistical purposes. There is no facility or requirement to record MAA on JPA.

2026. Unauthorised Absence

a. **Use of Minor Administrative Action (MAA).** In the first instance, where it has been established on the balance of probabilities that an individual has been absent without leave, units should consider whether or not the matter can be dealt with appropriately by means of MAA. Disciplinary action should only be taken against an absentee where a decision has been made not to use MAA. Unless the Command determines that there are exceptional reasons to merit departure from this policy, administrative action should be taken in the following circumstances:

(1) For ships and submarines alongside in the UK which are not under sailing orders, unauthorised absence up to a maximum of 48 hours.

[7] 'Unit' denotes the level in the chain of command at which the day-to-day management of MAA is devolved. There should normally be only one MAA Folder per Unit, with subsections for Departments; held by the EWO/COX'N/BWO for that Unit. Dependent upon the size and complexity of a unit or establishment, however, the CO may deem it necessary to hold more than one.

(2) For ships and submarines alongside abroad, which are not under sailing orders, unauthorised absence up to a maximum of four hours.

(3) For all UK shore establishments, unauthorised absence up to a maximum of 48 hours.

b. Exceptionally, unauthorised absence may be dealt with by disciplinary rather than administrative means when:

(1) The ship or submarine is under sailing orders.

(2) Previous use of MAA or disciplinary action has proved ineffective in addressing an individual's misconduct or unauthorised absence. In these cases, units should consider whether the individual is fit to retain their rate or rank or to remain in the Service, instigating warning procedures where necessary.

(3) Due to their absence, the absentee was unable to perform their duty as a member of the Duty Watch or in support of a major evolution (e.g. ammunitioning ship).

(4) The absentee ignored orders to return immediately to the unit or establishment.

(5) The individual was absent deliberately in order to avoid an arduous duty or pre-deployment training.

(6) For deployed units, significant resources were expended trying to locate the individual.

(7) Individuals breached a local curfew.

(8) The Command determines that disciplinary action is necessary in the circumstances to maintain operational capability.

c. **Leave Account Regularisation.** For absences of between four and 48 hours, one day's leave may be deducted from an individual's leave account for each day or part of a day of unauthorised absence. Deductions to a leave account may only be imposed by the CO or an officer designated by the CO.

d. Whether or not a decision is made to take administrative or disciplinary action against an absentee, units must still comply with Provost Marshal (Navy)'s Technical Instruction Number 8 and take the necessary action in relation to missing persons.

2027. Conclusion

MAA has a proven track record for dealing with minor personal and professional failings without resort to time consuming, resource intensive disciplinary procedures, or worse, failing to take appropriate action or resorting to unofficial 'punishments'. Used properly, it is a powerful weapon in the management arsenal. Cos are to ensure it is used appropriately within their units, that consistency of approach within units is maintained, that Leading Hands and above are thus suitably empowered to enforce ethos, discipline and standards, and that the appropriate use of MAA is recognised.

2028. Guidance On Offences Which May Or May Not Be Dealt with Using MAA

This is at Table 20-5 below.

Table 20-5. Guidance on Offences Which May or May Not Be Dealt with Using MAA

s.9 AFA 06	**ABSENCE WITHOUT LEAVE CONTRARY TO SECTION 9 OF THE ARMED FORCES ACT 2006**
Administrative Action	• IF THE UNIT CIRCUMSTANCES ARE CONSIDERED APPROPRIATE BY THE CO - ABSENCES OF UP TO 48 HOURS MAY BE DEALT WITH BY MAA. HOWEVER, THIS IS NOT MANDATED AND IF THERE ARE AGGRAVATING FACTORS THEN COMMAND IS ENTITLED TO USE DISCIPLINARY MEANS IF IT IS DEEMED TO BE MORE APPROPRIATE IN THE CIRCUMSTANCES. • Consult JSP 833 for guidance.
s.10 AFA 06	**FAILURE TO CAUSE APPREHENSION OF DESERTERS AND ABSENTEES CONTRARY TO SECTION 10 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.11(1) and 28(1)(b) and 28(2) AFA 06	**MISCONDUCT TOWARDS A SUPERIOR OFFICER CONTRARY TO SECTION 11(1) (USING VIOLENCE) and RESISTANCE TO ARREST CONTRARY TO SECTION 28(1)(b) and 28(2) (USING VIOLENCE) OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with using MAA.
s.11(2), s.12, s.28(1)(a) and s.28(1)(c) AFA 06	**MISCONDUCT TOWARDS A SUPERIOR OFFICER CONTRARY TO SECTION 11(2) (NO VIOLENCE), DISOBEDIENCE TO LAWFUL COMMANDS CONTRARY TO SECTION 12 and RESISTANCE TO ARREST (NO VIOLENCE) CONTRARY TO SECTIONS 28(1)(a) or 28(1)(c) OF THE ARMED FORCES ACT 2006**
Administrative Action	• Insubordination must be suppressed as soon as possible. The rapid institution of MAA may be more appropriate and have more impact than a protracted disciplinary investigation. MAA, however, will generally only be appropriate when the overall incident is minor and there are mitigating factors.
s.13 AFA 06	**CONTRAVENTION OF STANDING ORDERS CONTRARY TO SECTION 13 OF THE ARMED FORCES ACT 2006** **(General guidance)**
Administrative Action	• May be dealt with by MAA except where the contravention would have been dealt with under the Road Traffic Act had an equivalent offence been committed on the public highway.
s.15(1)(a) and s.15(1)(b) AFA 06	**FAILURE TO ATTEND FOR A DUTY CONTRARY TO SECTION 15(1)(a) and UNAUTHORISED LEAVING OF DUTY CONTRARY TO SECTION 15(1)(b) OF THE ARMED FORCES ACT 2006**
Administrative Action	• May be dealt with by MAA, unless there are aggravating factors.

(Continued)

Table 20-5. Guidance on Offences Which May or May Not Be Dealt with Using MAA (Continued)

s.15(1)(c) and s.15(2) AFA 06	**NEGLECT OF DUTY CONTRARY TO SECTION 15(1)(C) and FAILURE TO PERFORM DUTY CONTRARY TO SECTION 15(2) OF THE ARMED FORCES ACT 2006**
Administrative Action	• May be dealt with by MAA, unless there are aggravating factors. • For Negligent Discharges see specific guidance in the MSL.
s16(1)(a) and s16(1)(c) AFA 06	**MALINGERING CONTRARY TO SECTION 16(1)(a) or 16(1)(C) OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with using MAA.
s.17 AFA 06	**DISCLOSURE OF INFORMATION USEFUL TO AN ENEMY CONTRARY TO SECTION 18 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with using MAA.
s.18 AFA 06	**MAKING FALSE RECORDS CONTRARY TO SECTION 18 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May be dealt with by MAA if very strong mitigating factors.
s.19 AFA 06	**CONDUCT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE CONTRARY TO SECTION 19 OF THE ARMED FORCES ACT 2006 (General guidance)**
Administrative Action	• May be dealt with by MAA, unless there are aggravating factors. Aggravating factors include any sexual element to the behaviour, and any demonstration of hostility based on a protected characteristic.
s.20 AFA 06	**UNFITNESS THROUGH ALCOHOL OR DRUGS CONTRARY TO SECTION 20 OF THE ARMED FORCES ACT 2006**
Administrative Action	• Poor turnout, attitude or work as a result of previous overindulgence in alcohol may be dealt with by MAA. • Unfitness through drugs may not be dealt with by MAA. • Administrative action may be ordered (not under MAA) which does not form part of a disciplinary sentence, but which might be an appropriate ancillary measure to deal with alcohol abuse. For example: • Restriction of beer or spirit ration, or use of bar facilities on board, base or camp for up to one month. Guidance on alcohol education can be obtained from: DRST CDT MAA: 93832 8885 Alcohol Treatment Unit - Ft Blockhouse 93806 65146/65379 HMS DRAKE 9375 67593.
s.20A AFA 06	**EXCEEDING ALCOHOL LIMITS FOR PRESCRIBED SAFETY CRITICAL DUTIES**
Administrative Action	• The circumstances where MAA is appropriate for such an offence will be rare. • Where a person is actually performing a safety-critical duty (s.20A(1)(a)), MAA may not be used. • In exceptional circumstances, MAA may be used where: • the accused might reasonably be expected to perform such a duty but are not actually performing it (s.20A(1)(b)); • the duty is subject to the upper limit (i.e.. MAA may not be used for lower limit duties); and • the proportion of alcohol is only marginally above the prescribed limits. • In all circumstances where MAA is being considered for this offence, legal advice should be sought. • The additional administrative measures detailed above for s.20 offences also apply.

(Continued)

Table 20-5. Guidance on Offences Which May or May Not Be Dealt with Using MAA (Continued)

s.21 AFA 06	**FIGHTING OR THREATENING BEHAVIOUR CONTRARY TO SECTION 21 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.22 AFA 06	**ILL TREATMENT OF SUBORDINATES CONTRARY TO SECTION 21 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.23 AFA 06	**DISGRACEFUL CONDUCT OF A CRUEL OR INDECENT KIND CONTRARY TO SECTION 23 OF THE ARMED FORCES ACT 2006**
Administrative Action	• Where an incident involves lawful activity which is considered inappropriate because of Service context MAA may be used however incidences of this kind will be extremely rare. In all other cases disciplinary action will be appropriate.
s.25 AFA 06	**MISAPPLYING OR WASTING SERVICE PROPERTY CONTRARY TO SECTION 25 OF THE ARMED FORCES ACT**
Administrative Action	• May be dealt with by MAA.
s.27 AFA 06	**OBSTRUCTING OR FAILING TO ASSIST A SERVICE POLICE OFFICER CONTRARY TO SECTION 27 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.29 AFA 06	**ESCAPING FROM LAWFUL CUSTODY OR USING VIOLENCE OR THREATENING BEHAVIOUR AGAINST A PERSON IN WHOSE CUSTODY AN OFFENDER IS IN CONTRARY TO SECTION 29 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.30(1) AFA 06	**NEGLIGENTLY ALLOWING ESCAPE OF PRISONERS CONTRARY TO SECTION 30(1) OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.34 AFA 06 **s.35 AFA 06**	**LOW FLYING AND CONTRARY TO SECTION 34 OF THE ARMED FORCES ACT 2006 and ANNOYANCE BY FLYING CONTRARY TO SECTION 35 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.36 AFA 06	**INACCURATE CERTIFICATION CONTRARY TO SECTION 36 OF THE ARMED FORCES ACT 2006**
Administrative Action	• May not be dealt with by MAA.
s.42 AFA 06 AND s.39 CJA1988 or s.47 OAPA 1861	**COMMON ASSAULT AND BATTERY CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT AND SECTION 39 OF THE CRIMINAL JUSTICE ACT 1988 and ASSAULT OCCASIONING ABH CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT AND SECTION 47 OF THE OFFENCES AGAINST THE PERSON ACT 1861**
Administrative Action	• Very minor offences constituting a 'technical' assault may be suitable for MAA where there is strong mitigation and no aggravating factors; legal advice is always to be sought. • It will only be in exceptional circumstances that an assault, other than common assault, can appropriately be dealt with by way of MAA.
s.42 AFA 06 AND s1(1) TA 68	**THEFT CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT AND 1(1) OF THE THEFT ACT 1968**

(Continued)

Table 20-5. Guidance on Offences Which May or May Not Be Dealt with Using MAA (Continued)

Administrative Action	• May not be dealt with by MAA.
s.42 AFA 06 +	**DISHONESTY OFFENCES OTHER THAN THEFT**
Administrative Action	• May not be dealt with by MAA.
s.42 AFA 06 AND s.1(1) CDA 1971 s.24 AFA 06	**DAMAGE TO OR LOSS OF SERVICE PROPERTY CONTRARY TO SECTION 24 OF THE ARMED FORCES ACT 2006 and CRIMINAL DAMAGE CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT AND SECTION 1(1) OF THE CRIMINAL DAMAGE ACT 1971**
Administrative Action	• May be dealt with by MAA where there are strong mitigating factors.
s.13 AFA 06 OR s.42 AFA 06 AND s.139 CJA 88 or s.1 PCA 53	**CONTRAVENTION OF STANDING ORDERS (weapon offence) CONTRARY TO SECTION 13 OF THE ARMED FORCES ACT 2006 or HAVING OFFENSIVE WEAPON IN PUBLIC PLACE CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT 2006 AND s1 PREVENTION OF CRIME ACT 1953 or HAVING ARTICLE WITH BLADE OR POINT IN PUBLIC PLACE CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT 2006 AND S139 CRIMINAL JUSTICE ACT 1988**
Administrative Action	• May not be dealt with by MAA.
s.42 AFA 06 AND s.5(2) MDA 71	**POSSESSION OF A CONTROLLED DRUG CONTRARY TO SECTION 42 OF THE ARMED FORCES ACT 2006 AND SECTION 5(2) OF THE MISUSE OF DRUGS ACT 1971**
Administrative Action	• May not be dealt with by MAA. • Administrative Discharge (Major Admin Action), which is quick, cheap and less resource-intensive than disciplinary action, will be appropriate in the following circumstance: • Personnel who test positive for Class A, B or C drugs (whether by CDT, disciplinary investigation, PIDAT or any other investigation) but who are not caught in physical possession of them; and may be appropriate when: • Personnel voluntarily admit to drug misuse. Where the only evidence in a case is a confession, a conviction is by no means certain, although it is still possible providing the Trying Officer is sure that the confession is reliable and credible. Care should be taken, however, to spot the false confession. Difficulties can arise where the confession is disputed, and in all cases legal advice must be taken with a view to deciding whether application for Discharge or warning and monitoring is appropriate, or whether the case should be directed for trial by court-martial.
ss. 93A, 93E, AND 93G AFA 06	**FAILURE TO COMPLY WITH PRELIMINARY TESTING REQUIREMENT, FAILURE TO PROVIDE A SPECIMEN, FAILURE TO CONSENT TO LABORATORY TEST OF A SPECIMEN CONTRARY TO SECTIONS 93A, 93E OR 93G AFA 06**
Administrative Action	• May not be dealt with by MAA.

SECTION 6

MAJOR ADMINISTRATIVE ACTION

2029. Choice of Administrative Action

a. Where an event or behaviour is not suitable for MAA, Cos must consider whether other Administrative Action is appropriate – either alone, or in conjunction with disciplinary investigation and action. For Officers, KRRN Chapter 38 should be read in conjunction with this Chapter.

b. Administrative Action includes censure, reversion, recommendation for re-assignment, discharge for inadequacy or recommendation for special reporting. This Chapter is limited to guidance on the applications of censures for officers and letters for guidance, and administrative action available to ratings. Further guidance is contained in BRd 2 Chapter 38 (Misconduct and Negligence of Officers), BRd 2 Chapter 39 (Civil Power), BRd 3(1) Chapter 54 (Discharges), BRd 3(1) Chapter 57 (Appraisal and Warnings), BRd 3(1) Chapter 60 (Removal from Assignment), and BRd 3(1) Chapter 70 (Reversion).

c. Where an issue arises over the appropriate disposal, Cos should take legal advice before disclosing their intended course to the subject concerned. Where a matter is or may be linked to a protected characteristic[8], this should be highlighted when advice is sought. Such behaviours are not in keeping with RN values and standards and will inevitably be considered serious.

d. **Ratings.** Where a rating is found to have breached Service policy which is not disposed of via disciplinary action, the following administrative actions are available:

(1) **Discharge SHORE/SNLR.** Discharge is appropriate in the most serious of cases indicated in the relevant policy. See Chapter 54 for further guidance.

(2) **Reversion.** Reversion is appropriate in circumstances where the CO decides that the individual's actions call into question their suitability to continue in their current rate. See Chapter 70 for further guidance.

(3) **Career Check.** A Career Check (CC) may be awarded in instances where the CO decides that the incident warrants a permanent marker in the individual's record and that the incident should not go unchecked in their career. The level of authority to award a CC is as for the award for a CC for a Service Penalty.

(4) **Administrative Formal Warning.** Notwithstanding the above, COs are reminded that the formal warning process remains available and may be an appropriate option. See Chapter 57 for further guidance.

[8] As defined in the Equality Act 2010, Part 2.

SECTION 7

CENSURES AND LETTERS FOR GUIDANCE

2030. Administrative Censure of Officers

Administrative censure constitutes Major Administrative Action and is not a punishment. It reflects the right of the Service as an employer, after due process which includes the rules of natural justice, to admonish employees for failing in their duties or for failing to maintain the required standards of performance or conduct. Officers may be censured as a result of a conviction by a civil court (see Section 19), as well as for certain acts of misconduct and negligence as well as for poor or inadequate professional performance. A censure stands in its own right as a formal correction and as a warning about future performance or conduct and may properly be taken into account in decisions concerning the officer's career.

2031. Scope

Nothing in this guidance is intended to inhibit Commanding Officers from warning officers informally about their conduct should it fall, or risk falling, from the high standards expected; nor does it affect action taken in general to accord with the customs of the Service (e.g. stopping the use of bar facilities). The award of an administrative censure is not a bar to subsequent trial by Court Martial on the same issue if this is considered necessary.

2032. Available Censures and Their Effects

a. The censures which may be awarded, and their practical effects, are as follows:

(1) **Admiralty Board's Severe Displeasure.** Always to be available to Career Boards and Career Managers. Discretion to direct that the recipient is not to be considered at Career Boards and/or direct de-selection.

(2) **Fleet Commander's or Second Sea Lord's Severe Displeasure.** Always to be available to Career Boards and Career Managers. Discretion to direct that the recipient is not to be considered at Career Boards and/or direct de-selection.

(3) **Fleet Commander's, Second Sea Lord's or other 2* Higher Authority's[9] Displeasure.** Not to be made available to Career Boards or Career Managers.

(4) **Commanding Officer's Logging.** Not to be made available to Career Boards or Career Managers.

[9] Other Higher Authorities authorised to award these censures are those officers listed in Para 2008. sub para d of 2* rank or above.

b. **Career Effects.**

(1) **Prevent consideration by Career Boards**. When awarding a Severe Displeasure, the awarding officer must decide whether consideration by Career Boards should be barred, and if so, for how long (**one or two** years). The censure will stipulate the period for which an individual will be prevented from consideration within the overall censure period. Thus, an individual can receive a Severe Displeasure which prevents consideration by Career Boards for 2 years and thereafter, is available to Career Boards for the remainder of the directed period.

(2) **De-select.** If an individual has been selected for promotion, commission transfer or command/professional command, but it has yet to become effective, the officer awarding a Severe Displeasure has the discretion to direct that they be de-selected[10]. It is possible to both de-select and prevent from future consideration for one or two years.

c. Consideration of Censures by Career Boards and Career Managers

(1) As directed above a Severe Displeasure is to be made available to all Career Boards and Career Managers for the period stated.

(2) A Displeasure is not to be made available to Career Boards or Career Managers. Such a censure is designed to make the recipient aware of the Higher Authority's disapproval of their conduct or performance, but it is a standalone re-proof.

d. **Length of Censure.** A Severe Displeasure can be awarded for up to five years. However, censures that are awarded as a result of a civil conviction(s) will be treated as spent after the period appropriate to that conviction as specified in the Rehabilitation of Offenders Act 1974. The letter of censure will stipulate the end date of the censure.

2033. Commanding Officer's Logging

A logging is retained locally in the unit, until the officer leaves that unit. A logging is not available to Career Boards or Career Managers. Should a Commanding Officer subsequently report a matter to Higher Authority for consideration of administrative action, which has been subject to a logging from them, the record of the logging is to be included in that report. It is also inappropriate for any mention of loggings to be made in an officer's OJAR, although the behaviour or error which led to the logging may influence the content of the report[11]. The wording to be used in a logging is at Annex 20A.

2034. Censure and Subsequent Misconduct

If an individual has received a censure and falls below the expected standard again, the existence of a previous censure is a factor that should be considered and may be reflected in the award of a subsequent sanction.

[10] The requirement for an adverse report as detailed at BR3(1) Chapter 66 paragraph 6624 is removed, paragraph 6624 is to be updated to reflect that the award of a censure can direct de-selection.
[11] Refer to direction in JSP 757 Volume 1, Chapter 4, Paragraphs 13-14.

2035. Procedure for Imposition of Censures

a. **Commanding Officer's Report and Recommendations.** If an officer falls below the standard in performance or conduct, the Commanding Officer[12] must first obtain legal advice from the Regional Legal Offices as to the appropriate level of administrative action. Application for censure will then be sent directly to the relevant office, via the RLO. The individual will be given opportunity to comment when they receive the Letter of Allegation. The Commanding Officer would wish to ensure that their immediate superior in the chain of command is informed of the application.

b. Where the **Higher Authority, Second Sea Lord or Fleet Commander agrees** that an officer appears to have been at fault, the specific allegations will be presented to the officer through their Commanding Officer. In cases where the censure is to be considered by the Admiralty Board, the Fleet Commander or 2SL will arrange for this to be staffed through the relevant Regional Legal Adviser.

c. **Individual's Right to Comment on Allegations.**

(1) Before any censure is awarded to an officer, they must have been acquainted with the specific allegations against them and invited to comment or put forward any relevant matters for consideration if they so wish. Such an explanation should normally be obtained in writing.

(2) If the allegation arises from the report of a Service Inquiry, the officer will, at the President's discretion, be supplied with a copy of the relevant part of the report of proceedings. Evidence before a Service Inquiry or similar fact-finding investigation, or of an officer's account submitted before specific allegations have been made against them, should not properly be regarded as a rebuttal to the allegations. An explanation, however, may already exist when, for example, the recommendation for administrative censure is the result of a trial before a civil court and the officer has made their defence or mitigation. Even in such cases, the officer may make representations, should the officer so wish. If the officer does, the explanation is to be forwarded with the report of the conviction.

d. **Administration (Same Assignment).** When an officer who is still serving in the unit in which the matter arose is to be censured:

(1) Two copies of the letter of censure[13] are sent to the officer's Commanding Officer under a covering letter of instruction.

(2) The Commanding Officer is to hand the officer the original letter of censure for their retention and obtain the officer's signature acknowledging receipt of the censure on the duplicate.

[12] There may be occasions where the report of conduct/performance is made directly to a Higher Authority or when a matter needs to be brought to the attention of a CO when the individual is in a new assignment. Examples may include, but are not limited to, the decision of a Service Complaint where administrative action is recommended, or when the matter under scrutiny is removed in time and place from its occurrence.
[13] Promotions (NAVY PEOPLE - PROMS Hd) are to be copy addressees on the censure letter.

(3) The signed duplicate is to be sent by the Commanding Officer to office of the awarding officer for retention of the paper record.

e. **Administration (New Assignment)**. Where an officer is no longer serving in the same ship/assignment in which the matter arose, for which a previous Commanding Officer made report to Higher Authority, any correspondence will normally be addressed to the officer personally at their new place of work and not through their present Commanding Officer[14]. The officer is, however, at liberty to bring it to the notice of their new Commanding Officer if they so wish.

f. **JPA action**. The staff of the awarding officer are to input the award onto JPA into the Warning and Sanction area.

(1) A Severe displeasure is to be placed in the 'Severe Displeasure' option, with the from and to dates completed. Where an individual is de-selected or prevented from consideration by Career Boards, that detail is to be input into the 'Description' line.

(2) A Displeasure is to be placed in the 'Letter of Censure' option. As this is a standalone reproof, the from and to date will be the same.

g. **Censure of Ship's or Establishment's Commanding Officer**. In the event of a Higher Authority other than the Fleet Commander or Admiralty Board taking action against a ship's or establishment's Commanding Officer, the Fleet Commander is to be informed.

2036. Letters for Guidance

The issue of 'Letters for Guidance' (LFG) is a well-established customary practice. An LFG is neither a warning nor a censure but is intended to provide guidance to an officer, following an incident or investigation in which the officer's conduct or performance may have been under scrutiny. Nor should an LFG be used as a 'back door' route to warn or censure an officer, although an LFG may accompany or follow the imposition of a censure. An LFG is time sensitive, relates to a particular event and the Chain of Command's perspective of the officer's part in that event, with a view to offering guidance in respect of future conduct and/or performance. Only two copies are to be produced, one for the recipient and one which is to be kept by the author. The author's copy is to be retained only until such time that either the recipient or the author is reassigned when it must be destroyed. An LFG is always addressed to the individual officer personally, and it is not to be recorded by way of being placed in an officer's official records. If an error of judgement or shortcoming is considered significant enough to merit being recorded (e.g. by placement in an officer's official records) then a recorded censure is to be issued, either in place of or alongside an LFG.

[14] It may be necessary to involve the new CO, if for example, a matter hitherto undealt with manifests when in a new assignment.

2037. Letters for Guidance and the Appraisal Process

Legal advice should be sought prior to writing a Letter for Guidance (LFG) in all but the most straightforward cases. Reference is not to be made to the fact of a LFG in an officer's report (JPA Appraisal - OJAR), although there is no bar to mentioning that an officer has "responded to advice" or "required advice and guidance" in respect of a potential shortcoming. An LFG is not a substitute for ongoing assessment of an officer's general and/or professional performance, which the appraisal process should cover.

2038. Letters for Guidance - Other Considerations

Commanding Officers and others in the chain of command enjoy a wide discretion to give LFGs; this should be exercised with due regard to the nature of the incident, conduct or performance; the specific, related evidence which suggests that guidance is called for; consideration of which officer is the most appropriate person to give such guidance; ensuring that the language used does not appear censorious and the possibility that the LFG may have to be disclosed subsequently[15].

2039. Professional Negligence by Ratings

It is the general policy that professional negligence by ratings should be dealt with by disciplinary proceedings rather than by major administrative action because the duties of a rating generally provide less risk of their being accused of professional negligence. Minor instances of professional negligence by ratings may be dealt with via Minor Administrative Action.

2040. Warrant Officers

Warrant Officers may be regarded as an exception to the above principle since they have wider responsibilities than other ratings. Cases which do not therefore involve gross negligence yet require warning and censure action beyond that available to a Commanding Officer may be dealt with under the procedures at Para 2032 sub-para b, sub-para c or sub-para d. Admiralty Board censures or warnings are not considered appropriate, as cases likely to require such a high degree of censure would normally attract disciplinary action. Any censure given is to be conveyed orally to the Warrant Officer concerned by the Commanding Officer and an official record of the censure, and the circumstances that led to it, retained by the Commanding Officer.

2041. General

Nothing in this guidance is intended to affect the normal practice by which any rating may be formally warned by an officer (recorded as necessary in appraisal records) or the procedure for reversion.

[15] Following a Subject Access request under the Data Protection Act 2018, under the terms of the Freedom of Information Act 2000 or through the disclosure process attendant on civil litigation.

SECTION 8

FORMAL DISCIPLINARY PROCESS

2042. Investigation of Offences

a. The MSL Chapter 6 gives detailed guidance on the conduct of investigations. All investigations which are not conducted by the RNP are referred to as 'Commanding Officer's Investigations'. This includes investigations by RN Cox'ns and RM CSMs. RN Cox'ns are nevertheless in a different position to others who conduct CO's investigations. Having received basic training in Police and Criminal Evidence Act (PACE) procedures, Cox'ns should use those procedures where disciplinary action is anticipated, providing that they fulfil the requirements in accordance with the relevant Provost Marshal (Navy) Technical Instructions (PM(N) TI). Cox'ns should bear in mind that any offence for which a charge is brought for Summary Hearing may end in a Court Martial or in the SAC. The best evidence available is always to be sought. Cox'ns should always seek advice from Regional Police Commanders (RPCs) before conducting PACE interviews. It will normally be inappropriate for a Cox'n to conduct an interview where the accused has legal representation. Disciplinary action under AFA 06 cannot be taken by units until a disciplinary investigation has been completed and a report made to the CO. Where borne on the Ship's books, either the RNP or RN Cox'n should investigate offences which require a formal disciplinary investigation. Where no RNP or Cox'n is borne, other than for minor offences, COs should seek legal advice before directing an investigation.

b. All disciplinary investigations need to be thorough, yet expeditious, and will benefit from early legal advice in all but the most minor (and factually and evidentially straightforward) cases. Whatever the nature of the offence, RNP should be prepared to seek early legal advice through their RPC and, where the issues cannot be resolved at that level, the SPA in accordance with established protocols (see PM(N)'s TIs). Cox'ns should seek such advice through RPCs and RM CSMs through local RMPT or their RPC. The SPA's role is to advise the RNP on their investigations up to the point at which a charge is recommended. Pre-charge advice is particularly important because it can assist in the identification of evidence to support the more serious charges or conversely suggest alternative charges that may be easier to prove. In this way, hard-pressed RNP can focus their resources more effectively. NLS Regional Legal Advisers advise the Command throughout. Service legal advice will only be available to personnel post-charge (save in relation to custody hearings) and only where a Service lawyer is available; civilian legal advice may be taken by individuals at any stage. See the MSL Chapter 6 and below for circumstances in which COs must seek legal advice before bringing a charge or deciding the appropriate disposal of a case.

c. When conducting investigations, RNP are independent of the chain of command. This is essential in order that they fulfil their statutory duties. COs should be aware that when conducting higher level investigations, RNP often act under the guidance of the DSP. The senior RNP will need to prioritise disciplinary investigations (especially those where SPA may be engaged) and balance these against unit duties or other non-police tasking. But, commensurate with the primary role and purpose of the RNP and the exercise of their statutory duty to investigate, discipline will normally come first. Any member of the RNP who believes that they are subject to improper interference in the conduct of an investigation should report that fact without delay to the senior RNP member in their unit, RPCs, or PM(N). Reporting officers who are not members of the RNP are not to comment in OJARs/SJARs on an individual RNP member's exercise of their investigatory functions. COs may however comment on RNP member's general qualities. For example, comments such as "PO(Police) Smith manages her busy workload well" would be appropriate but "PO(Police) Smith conducted a prolonged investigation into a serious assault entirely to my satisfaction" would not.

2043. Better Case Management in the Service Justice System: Avoidance of Delay

a. Delay has an adverse effect on the impact of the process and undermines operational efficiency. It may:

(1) Reduce the prospects of a proper conviction or hinder the mounting of a proper defence;

(2) Result in a significant reduction in sentence on appeal following successful prosecution; and

(3) Contribute to the discontinuance of proceedings by the Director Service Prosecutions (DSP) or their decision not to contest summary appeals.

(4) Ultimately, unreasonable delay may result in the effectiveness and credibility of the Service Justice System being undermined.

b. To address delay in the progress of disciplinary cases, on 1 Sep 16 the initiative 'Better Case Management in the Court Martial (BCM(CM))' was introduced. The key features of BCM(CM) are as follows:

(1) The RNP's completion of an expedited Initial Detail of the Prosecution Case (IDPC) which will be forwarded to the accused's CO or DSP as applicable as soon as the Evidential Sufficiency Test (EST) is met. The IDPC will contain the following:

(a) The Service Police Case Referral (SPCR), which will include a summary of the circumstances of the offence and any account given by the accused in interview[16], whether contained in that summary or in another document;

[16] Where the RNP consider that the EST is met prior to any interview, they may decide to refer without conducting an interview.

(b) Any available supporting statements;

(c) Details of the accused's previous convictions and disciplinary record;

(d) Any CCTV recording (as applicable) if available; and

(e) Any other documents which support the case against the accused.

(f) Submission of the IDPC to the CO or DSP will not be delayed pending receipt of evidence which does not impact on the EST. COs or the DSP will not receive full transcripts of interviews if this will delay progress of the case; summaries will suffice.

(2) Target timelines for the referral of a case to the CO or DSP. In straightforward cases, the target timeline is 21 days after a complaint or report of an offence. The Judge Advocate at a CM will make some allowance for the impact of deployments or the complexity of a case on an RNP investigation.

(3) The Service Prosecuting Authority (SPA) operates as an independent prosecuting body and sets its own target timelines for case decisions. These targets are determined by the Director of Service Prosecutions.

(4) A revised timetable for proceedings in the CM, as part of which the prosecution and the defence will be required to indicate to the Court the matters in issue at an early stage. The case thereafter will be carefully managed by the Judge Advocate, with time permitted for further evidence to be gathered and disclosure matters to be dealt with as required.

c. The RNP will apply the BCM(CM) provisions in all cases noting that, with the universal right to elect for trial by CM, any disciplinary case may be referred for trial by CM. Accordingly, where a case is referred by the RNP to the CO of the accused, the CO will receive an IDPC which may contain less evidence than RNP reports which were produced prior to 1 September 2016. This is a function of the expedited referral process and the IDPC will still contain information deemed sufficient to meet the EST. The RNP will identify two main areas: 'Key evidence', which is evidence that is available and relates to an evidential point to prove; and 'Non-Key evidence', which is evidence that is available but has not been gathered because it is not key. If the CO determines that disciplinary action should be taken, they will then proceed in accordance with JSP 830 Chapter 6 Part 4, namely:

(1) Decide whether or not they has initial powers in respect of the case; then

(2) Decide the appropriate mode of trial; then

(3) If a decision is taken to deal with the matter summarily, decide whether or not to bring a charge. Generally, a CO should not charge a person with a Service offence if it is plain that either there is no basic evidence against the suspect, or the evidence is clearly outweighed by evidence in the suspect's favour. Legal advice must be sought where mandated as a matter of policy[17].

d. If the CO requires further evidence in order to decide any of the matters outlined at sub-paragraphs (1)-(3) above, they should request that the RNP gather that evidence accordingly. Any requests for additional evidence should be clear and focussed, with the justification for the request articulated. The Regional Legal Offices remain available to support the CO should they require advice on evidential sufficiency or similar matters.

e. The CO's options in relation to a case which has been referred to them by the RNP are unaffected by BCM(CM) and remain as follows: request that the RNP conduct further enquiries; hear a charge which is listed in Schedule 1 of the Armed Forces Act 2006; refer the case to the DSP for trial by CM; discontinue the case and take no further action; or discontinue the case and take administrative action.

f. Other than in exceptional circumstances, on receipt of an SPCR or conclusion of a CO's Unit Investigation, any Summary Hearing is to be held within 21 days. Exceptional circumstances may include, for example, illness of the accused or the non-availability of a key witness. Unless the CO determines that there is an exceptional need to do otherwise, leave should not be prioritised over discipline matters. Where the 21-day time limit is exceeded, detailed reasons must be recorded on the Record of Summary Hearing form.

g. Units are to promptly and accurately record the progress of disciplinary cases on the JPA system. Minimum recording standards are outlined at Sections 16 and 20 below.

h. COs are responsible for ensuring that there is no unreasonable delay in completion of the disciplinary process for personnel within their units, and for those landed for squad rotation or other purposes pending the outcome of proceedings. For the avoidance of doubt, this includes:

(1) Timely completion of investigation;

(2) Prompt analysis and decision to determine whether administrative or disciplinary action is appropriate;

(3) Seeking early legal advice as to disposal of the case and, if disciplinary, any appropriate charge(s);

(4) Timely appearance of accused at Summary Hearing;

[17] BRd 3(1) Chapter 20 Para 2048.

(5) Where the matter (either a case or a charge(s)) is referred to the DSP, timely despatch of appropriate documentation to the SPA and Military Courts Service (MCS) as appropriate;

(6) Timely bringing of charges at the direction of the DSP and service of papers on the accused;

(7) Ensuring availability of the accused (and witnesses if appropriate) for CM and SAC hearings;

(8) Ensuring the accused has the opportunity to receive early and appropriate legal advice; and

(9) Ensuring the accused is appropriately supported by the Divisional System, including attendance of DO or other appropriate person (as Defendant's or Appellant's Assisting Officer) at CM or SAC hearing.

(10) Ensuring that appropriate progress, recording and sentencing action is taken on JPA and the record is forwarded to the Summary Hearing Review Cell for closure in a timely fashion.

i. COs should take a personal and direct interest in the effective processing of disciplinary cases in their unit. Whilst COs cannot interfere in any investigation being undertaken by the RNP, they are nevertheless entitled to inquire into general progress with a case and should ensure RNP (and Cox'ns and CSMs) are progressing investigations and reports - including recommending charges where appropriate - in a timely manner. COs should note that the administration of summary justice should take priority over leave, such that the accused's leave may be postponed in order to conduct interviews, bring charges and serve papers on the accused, and complete the Summary Hearing process. The use of a routine meeting to discuss the administration of pending disciplinary cases is encouraged (this is wholly viable, as the CO is not precluded from dealing with the case before hearing it summarily).

2044. Commanding Officer's Delegations

Under AFA 06, COs have authority to delegate certain statutory duties relating to investigation and bringing of charges to personnel under their command. Guidance on delegations to subordinate commanders is given in the MSL Chapter 9 Part 1 and FLAGO Chapter 16. On appointment, COs should consider the need for, and effectiveness of, delegations to other personnel in their unit.

2045. Delegation of Disciplinary Powers to a Subordinate Commander

a. COs may delegate (in writing) their disciplinary functions to one or more Subordinate Commanders (Sub Cdr), for example the XO or OC. The Sub Cdr must be of OF2 rank or higher (see also FLAGO Chapter 16).

b. When the Sub Cdr is temporarily unavailable to exercise their responsibilities for the administration of justice, the CO of a ship, unit or establishment may delegate another officer to assume such responsibilities. This delegation must be in writing, is to be promulgated within the ship, unit or establishment and is to specify the period during which the named officer is to fulfil these duties.

c. Only one Sub Cdr may hold the CO's delegation for a particular charge. In effect this means that the CO may delegate disciplinary powers to the XO/OC, but if the XO's/OC's powers are insufficient to deal with a particular charge then the CO would have to revoke the delegation in respect of that charge and deal with the matter personally. Such revocation need not be in writing, but may be executed by the action of bringing the charge or hearing the charge personally. Ideally, however, the revocation should be in writing.

2046. Recommending, Bringing and Serving Charges

a. Where an investigation is completed, the RNP will either refer the case to the CO or the DSP. If referred to the CO, the CO must then decide whether a charge is brought, what that charge should be, or whether they should refer the matter direct to the DSP without bringing a charge. Guidance on recommendation, bringing and serving of charges is contained in FLAGOs Art 1606 and below.

b. Where authority to bring charges has been delegated, care is required - powers of punishment will be capped at the level of the officer who brings the charge, which may not always be the same as the officer who hears the charge (see Section 9 - Mode of Trial (Para 2049 et seq.) below).

c. Whenever RNP investigate a case with a view to disciplinary action, they must consider, where necessary having consulted with the SPA, whether there is sufficient evidence to bring a charge. Where there is sufficient evidence to bring a charge, they must either recommend a charge to the CO or, if the offence is not a 'CO Offence' i.e. it is a Schedule 2 offence, one suspected of having been committed in prescribed circumstances or is unlisted, the case must be referred to the DSP. Recommended charges should normally be produced in writing. Where there is sufficient evidence to bring a charge, it is most important that the RNP recommend potential charges to the CO (see the MSL Chapter 6 paragraphs 51-53).

d. If the RNP does not recommend a charge(s), the CO has no power to bring a charge in relation to that case unless the case has been referred to the DSP and the DSP:

(1) Directs that charge(s) be brought; or

(2) Refers the case to the CO.

e. Where the DSP directs that a charge(s) be brought, the CO must bring the charge(s). Where the DSP refers the case to the CO, the CO should decide the most appropriate course of action, taking into consideration any advice and charge(s) recommended by the DSP, seeking further legal advice as necessary.

f. Those conducting CO's investigations (as distinct from RNP investigations) should recommend charge(s) but if they do not, then the CO may nevertheless bring a charge if one is potentially capable of proof. Other than in very minor and non-criminal conduct cases, COs should seek legal advice before doing so.

g. Except where the DSP directs the CO to bring a charge, wherever the CO has power to bring a charge, which charge is brought is a matter entirely for the CO, or that of the person acting on the CO's delegated authority. Legal advice on the appropriate charge should be sought in all but the most simple or routine cases, however, and in particular if the CO wishes to bring a charge different to that recommended in an SPCR.

h. Under AFA 06, when an offence is to be heard summarily, the CO (or delegated Officer not below the rank of OF2 (such as the XO/OC)) will be required to 'bring' the charges. Guidance on delegation of this function is given in FLAGO Chapter 16. Bringing a charge is a three-stage process:

(1) Preparation of the charge sheet.

(2) Signature by CO or delegated Officer.

(3) Service of the charge sheet on the accused.

i. In RN units the RNP or the Cox'n, having investigated the offence, should normally prepare the draft charge sheet with a recommended charge. In RM units, this should be done by the G1 Discipline Adviser or the CSM.

j. The person preparing the charge sheet should then present the case papers, including the draft charge sheet, to the CO (or XO/OC etc. as appropriate) for consideration. It is the responsibility of the charging Officer to decide whether, and if so how, to charge based on the information given, but if they decide not to proceed with charges recommended then legal advice must be sought before informing the accused of the decision. If borne, the LO or DLO should advise the person finalising the charge sheet, having sought legal advice as required. The CO (or XO/OC etc.) should sign the charge sheet only if they are content that the charge is appropriate, having ensured that the evidential sufficiency and Service interest tests are met (see the MSL Chapter 6 paragraphs 93 and 94) and that they are the appropriate officer to hear the case. If in doubt as to the most appropriate charge, legal advice is to be sought. A Sub Cdr may also seek the CO's guidance on whether they should hear a case (and therefore whether they should bring a charge).

k. Service of the charge is the process of giving the charge sheet and associated case papers to the accused individual. This will normally be carried out by the RNP or Coxswain or in the RM by the G1 Disc Adv or CSM, but it may be more appropriate for the CO to serve charges on officers or Warrant Officers or charges directed to be brought by the DSP. Once a charge sheet has been signed and served, the charge is said to have been "brought".

l. When appropriate the CO can delegate power to bring charges to an officer under their command (not below the rank of OF2). The delegation can be subject to such conditions the CO might consider appropriate and can be revoked at any time. See FLAGO Chapter 16.

2047. Preparation and Service of the Case Summary

a. After the charge is brought, the CO or a person authorised by them must also serve a Case Summary. Guidance on its content may be found in the MSL Chapter 9 Article 34. The Case Summary is a summary of the evidence which the CO considers relevant to the charge. In RN units this will normally be prepared by the Command Adviser. Best practice requires that the Case Summary is prepared and agreed by the CO (or officer hearing the case) before the charge is brought. It should provide sufficient information to put the offences in context and indicate any particular aggravating or mitigating features. The CO (or officer hearing the charge) must approve the content of the Case Summary before it is served.

b. The Case Summary is not evidence and is only to form part of the Summary Hearing where the accused admits the charge. Before approving a Case Summary, COs must satisfy themselves that there is sufficient, relevant evidence relating to each element of the offence to be charged and any aggravating features. Any cases of doubt should be referred for legal advice before a charge is brought. There will be no opportunity to 'top up' the evidence once a charge is brought. In particular, if a case is subject to summary appeal (either against finding or punishment) sufficient evidence setting out the relevant features of the offence (including any aggravating features) will be required.

c. Where evidence is not already gathered, the RNP may be asked to re-visit an issue. There are limitations on whether they may interview an accused after recommending a charge, but other evidence, including witness statements, may be taken (provided they are served on the accused in the proper way before a summary hearing). Where a fact will be important to the determination of a case, or the level of sentence likely to be imposed, COs should ensure that evidence is gathered before the charge is brought.

d. The case summary, with the other case papers, is to be served no less than 24 hours before the Summary Hearing.

2048. Seeking Legal Advice

a. COs should not hesitate to seek legal advice at any stage in the process, particularly when they do not have a Command Adviser or RNP on board. Advice should normally be sought, via the Command Adviser, from the Regional Legal Office set out in Table 20-2.

b. Legal advice must be sought by completing the form at Annex 20S in the following circumstances:

(1) Where the offence alleged is a Schedule 2 offence, one suspected of having been committed in prescribed circumstances or is unlisted (the MSL Vol 1 Chapter 6). Note, however, that such offences should be referred by the RNP direct to the DSP; it would be unusual, therefore, for a CO to deal with an offence in one of these categories.

(2) Where the CO requires the permission of Higher Authority to hear the charge (offences listed in the MSL Vol 1 Chapter 6 Annex B).

(3) Where, were the charge to be proved, the CO may require extended powers of punishment.

(4) Where the CO is considering the following punishments if the charge is proved:

(a) A period of detention;

(b) A period of suspended detention;

(c) A financial penalty, the combined effect of which is in excess of 14 days' pay; or

(d) A Service Supervision and Punishment Order.

(5) Where the offence alleged was committed while the accused was under a suspended sentence of detention.

(6) Where the CO intends to refer the case or charge to the DSP.

(7) Where the CO intends not to proceed with a charge(s) recommended by the Service Police.

(8) Any offence alleged to have been committed by an officer.

(9) Where the circumstances of the case indicate a sexual element to the offending (though note these are likely to amount to Schedule 2 offences in any event).

(10) Any case in which the offence alleged had, at any stage, been suspected of having been committed in prescribed circumstances.

(11) Any offence which involves a person under the age of 18 years, whether that be as accused, alleged victim or witness.

(12) Any offence alleged to have been committed by a member of the Reserve Forces.

(13) Where the charge(s) recommended by the Service Police are recordable on the Police National Computer, namely all Criminal Conduct offences and the following Service offences:

(a) s11 - Misconduct towards a superior officer (but only when the offence is under s11(1));

(b) s14 - Using force against a sentry;

(c) s24 - Damage to or loss of public or Service property (but only when the offence is under s24(1) and relates to damage to property and not loss of property);

(d) s27 - Obstructing or failing to assist a Service Police Officer (but only where the offence is for obstructing a Service Police Officer and not failing to assist);

(e) s28 - Resistance to arrest (in the case of an offence under section 28(1), only where the conviction is for conduct within section 28(1)(b) or (c));

(f) s29 - Offences in relation to Service custody;

(g) An offence under s30(1) of negligently carrying out an act that results in a person's escape, or an offence under section 30(2), allowing escape, or unlawful release, of prisoners (but only where the conviction is for conduct within s30(4)(a));

(h) s96 or s97 of the Reserve Forces Act 1996.

c. The application for advice should include all the information required for an application for extended powers of punishment and to hear a charge summarily and any guidance issued separately by legal advisers. With the exception of the imposition of the sentences in Para 2048.b sub para (4) above, however, and personnel under suspended sentence of detention, the relevant legal adviser may, in exceptional cases, dispense with the requirement to forward full documentation. Where advice is sought by the command, written advice will be provided by the relevant legal adviser.

d. Where legal advice has been sought, a record that advice has been sought is to be made on the Record of Summary Hearing (T-SL-SH01 - the MSL Vol 1 Chap 9 Annex C) under 'Miscellaneous matters', and in the case of Activation Hearings, on the Record of Activation Hearing (T-SL-SH02 – the MSL Vol 1 Chap 9 Annex I). The name of the legal adviser providing the advice is to be recorded on these forms, in case of a requirement to contact the relevant legal adviser, e.g. on review of the case by the Summary Hearing Review Cell.

e. **RNP and Coxswains.** Advice to the RNP and Cox'ns on the investigation, up to the point of recommending a charge, is provided by the RPC who will seek further advice from DSP Service Police Liaison staff as appropriate. Procedural advice may be sought from the appropriate DSP legal adviser at any stage. Once a charge has been recommended, legal advice (for example on formulating the final charge) may also be sought. Where a case is to be referred to the DSP, the investigator should always consult DSP Service Police Liaison staff.

f. **Legal Advice to the Accused.** An accused person is to be informed that they have the opportunity to seek legal advice on whether to elect for trial by CM when the charge sheet and case papers are served before a hearing. They should also be given a copy of the guide 'Your rights if you are accused of an offence under the Service Justice System' (the MSL Chapter 6, Annex G). Legal advice and representation may be obtained from a naval barrister post charge, subject to their availability. Legal Aid is also available for those considering mode of trial, facing CM or the SAC. The Accused's Assisting Officer (AAO) (see below) should ensure that the accused is aware of the opportunity to seek advice and should assist the accused in that matter if required. Further guidance on Legal Aid, including personal contribution towards costs, in contained in JSP 838. Requests for a naval barrister to assist an accused should be made to:

Email: NAVY PEOPLE-SCL SC MC CPO

g. The accused is not allowed legal representation at the Summary Hearing but may be assisted by their AAO. A naval barrister may only assist as an AAO if the barrister is the accused's Divisional Officer.

SECTION 9

MODE OF TRIAL

2049. Importance of Mode of Trial

a. The structure of the Service Justice System relies on careful selection of the Mode of Trial, which may be a Summary Hearing or CM.

b. Guidance on Mode of Trial is in the MSL Vol 1 Chapter 6. Where it is intended the case should be heard summarily, the proposed Hearing Officer should bring the charge(s) against the accused. Where the case is more appropriate for CM, the CO should refer the case to the DSP without bringing a charge (see also Para 2052 below).

2050. Choosing the Hearing Officer

The most appropriate Hearing Officer (usually CO or XO/OC) should be determined before any Summary Hearing, usually on the advice of the unit's command adviser (LO, DLO, EA or G1 Disc Adv), such that the case is dealt with at the correct level, and preferably by the same officer, from the outset. It should be noted that only the CO can hear a charge summarily when the offence alleged was committed during the operational period of a suspended sentence of detention.

2051. Hearing Officer's Decision

Before bringing any charge, Hearing Officers must always consider whether they have sufficient powers of punishment to deal with an offence in the event of an admission of the charge or finding the charge proven, in accordance with their delegated powers of punishment and the limitations in the MSL Vol 1 Chapter 13 Annex A. If the proposed Hearing Officer considers their powers of punishment to be inadequate, they must pass the case on to the next higher authority (e.g. XO/OC refers to CO; CO refers the case to the DSP for CM trial) without bringing a charge. The person who is to hear the charge (i.e.. who intends to conduct the disciplinary process) should then, if they consider it appropriate to do so, bring the charge(s) against the accused. In the event that a charge has already been brought, and the Hearing Officer considers their powers of punishment to be inadequate, then they should consult the CO. The CO may then revoke the delegation to hear the charge, and hear the charge, or refer the charge to the DSP. In cases of doubt, advice on the correct procedure to follow should be sought from the appropriate Regional Legal Adviser.

2052. Referral for Court Martial (No Option)

a. In some cases, it will be either mandatory or appropriate to refer the **case** to the DSP for consideration for a CM trial, without bringing a charge and without giving the accused the option. In other circumstances it will be appropriate to refer a charge to the DSP, without giving the option. Once a case or charge has been so referred, the CO loses their powers to deal with it (although they remain responsible for completion of the JPA discipline record).

b. Situations when a CO has no discretion whether to refer a case to the RNP/DSP are as follows:

(1) **Prescribed Circumstances.** Offences suspected of having been committed in certain circumstances are considered inherently more serious and must always be reported to and investigated by the RNP. The RNP will then either refer the case to the DSP or consult with the DSP before reporting the case to the CO (see the MSL Vol 1 Chapter 6 paragraphs 59 and 60). Where the case has been referred to the DSP the CO has no power to deal with it summarily unless the DSP refers it back to the CO. Where the RNP have consulted the DSP, however, and the DSP is satisfied that there is insufficient evidence to charge an offence committed in prescribed circumstances, the RNP may refer the case to the CO. The CO will then have the power to bring a charge capable of being tried summarily. Unless the DSP directs the CO to bring a charge(s), COs dealing with a case in which the offence alleged had at any stage been suspected of having been committed in prescribed circumstances, must seek legal advice before bringing any charge(s).

(2) **Serious Offences.** Serious offences which are capable of being tried only by CM are listed in Schedule 2 to AFA 06 and in the MSL Vol 1 Chapter 6 Annex C. These cases must be referred to the DSP. Certain other offences (listed at the MSL Vol 1 Chapter 6 Annex B) may be tried summarily only with permission from the relevant HA. If the CO brings such a charge, and subsequently the HA refuses permission to hear the charge, the charge must be referred to the DSP without giving the accused the option. Even where the charge is capable of being heard summarily, the CO has the choice of whether to bring such a charge or refer the case to the DSP.

(3) **Unlisted Offences.** On 1 July 2019, an amendment was enacted to Part 5 AFA 06 such that offences which are not listed in either Schedule 1 or 2 of AFA 06 must be referred by the RNP direct to the DSP.

c. Situations when a CO has discretion, but should normally refer a case are as follows:

(1) **Sentencing Threshold.** Where a conviction, following denial of the offence(s), is likely to merit a sentence beyond the CO's maximum powers (either with or without extended powers of punishment), the CO should refer the case for CM. COs should be aware that when an accused elects for trial by CM, the sentencing powers of the CM will be capped at the CO's maximum (the MSL Vol 1 Chapter 13 Annex A). If the CO has been granted extended powers of punishment before giving the accused the option, the CM's powers are capped at the CO's maximum with extended powers. In all other cases, regardless which Hearing Officer gave the accused the option, the CM's powers are capped at those of the CO without extended powers.

(2) **Witness Difficulties.** Where a ship, unit or establishment will have difficulty securing or co-ordinating the attendance of witnesses, for example when there are civilian witnesses involved or Service witnesses are scattered, a CM may be the most convenient method of trial. Legal Advice should be sought.

(3) **Legal Difficulties/Complexity.** Where the case is legally complex, e.g. the proposed charge is technical or involves multiple witnesses, difficult 'points to prove', the case involves expert evidence or there are issues of admissibility, the CO should consider referral to the DSP. The CO should seek legal advice before referring any case to the DSP.

d. In all circumstances where the CO refers the case for trial by CM, the DSP will have full powers to deal with the case in the manner most appropriate. This includes preferring charges they deem have a realistic prospect of conviction and referring the case or part thereof back to the CO, as well as discontinuing the case. Significantly, the sentencing powers of the CM will not be limited to those of the CO, as they would be if the accused elected for trial by CM.

2053. Accused's Option for Trial by Court Martial

a. It is obligatory to give all personnel the option of trial by CM (the MSL Vol 1 Chapter 9) (unless the case or charge is to be referred direct for trial by CM).

b. If an accused elects to exercise their right to trial by CM at a Summary Hearing, charges will already have been brought and hence it is the charge which will be referred to the DSP, not the case. This is very significant, because the DSP's powers to deal with the case in terms of preferring different or additional charges will be limited. Furthermore, where an accused elects for trial by CM the powers of punishment of the CM will be limited (see above). In addition, once a charge has been referred to the DSP, the CO will no longer have powers to deal with it. If the accused wishes to withdraw their election for trial by CM, they will have to make a representation to the DSP through the CO and the DSP will decide whether to refer it back to the CO.

2054. Referral of a Case or Charge to the DSP for Trial by Court Martial

Whether the matter is proceeding towards CM as a case or charge via direct referral by the CO, or at the Accused's option, the procedures for referring a case or charge to the DSP are detailed in the MSL Vol 1 Chapter 6 (Investigation, Charging and Mode of Trial). When referring cases and charges to the DSP, COs should ensure that a covering letter includes full particulars of factors that the CO took into account when deciding whether the case should be dealt with by CM. In addition, if the RNP have referred a case directly to the DSP, the CO of the accused is entitled to provide the DSP with any additional information relevant to the case. Such information may assist the DSP in deciding whether it is in the Service interest to prosecute the case. COs must seek legal advice when considering referring a charge or case for consideration of trial by CM. If the DSP decides to allocate a case for CM, the CO will be directed to bring a specified charge(s); the CO should sign the charge sheet and serve it on the accused (see paragraph 34 for service of charges).

2055. Applications for Extended Powers or for Authority to Hear Certain Charges Summarily

a. COs of below 2* rank must apply to Higher Authority *in advance* for extended powers of punishment if the offence to be charged, if proved, would merit one of the following punishments:

(1) Detention of more than 28 days.

(2) Detention for Leading Hand/Lance Corporal.

(3) Forfeiture of seniority (officers only).

(4) Disrating/reduction in rank (one step only).

b. Applications for extended powers of punishment should be submitted to the appropriate HA by completing Annex 20T, supported by the documents listed in the MSL Vol 1 Chapter 9 paragraph 18, including a copy of the Case Summary. If the application is approved by the HA, the HA will notify the CO in writing, and the CO must provide the accused with a copy of the notification not less than 24 hours before the hearing. The notification need not be signed by the HA personally.

c. In addition, COs must apply to HA for permission to hear certain summary offences in advance of the proposed Summary Hearing. These include more serious but not uncommon 'summary level' offences, such as assault occasioning actual bodily harm, unlawful possession of an offensive weapon, fraud/dishonesty; such offences are listed in the MSL Vol 1 Chapter 6 Annex C and Chapter 9 paragraph 13. Applications for permission to hear such charges summarily should be submitted to the appropriate HA by completing Annex 20T, supported by the documents listed in the MSL Vol 1 Chapter 9 paragraph 14, including a copy of the Case Summary. If the application is approved, the HA will notify the CO in writing, and the CO must provide the accused with a copy of that notification not less than 24 hours before the hearing.

d. Applications for extended powers of punishment and for permission to hear a charge summarily should be accompanied by an application to impose forfeiture of GCB(s) if the CO considers it appropriate and if forfeiture is not an automatic consequence of the proposed punishment. In the event of a finding that the charge is proved, where relevant, the imposition of a Career Check, which is obligatory depending on the punishment imposed, and the forfeiture of GCB(s) should be notified to the accused when the sentence is imposed. See below and Annex 20C on the Administrative consequences of punishments.

e. Applications should normally be prepared by the LO/DLO (where borne) assisted by the senior Logs (Pers) rating. In MWVs an application should be prepared by CORRO assisted by the Coxswain. In RM units the Adjutant should prepare the application, assisted by the G1 Disc Adv. In all cases the CO should approve and sign the application.

SECTION 10

OFFENCES BY OFFICERS

2056. Choice of Administrative Action, Summary Discipline or Court Martial

a. The most minor professional or personal failings by officers up to the rank of Cdr/Lt Col may be dealt with by Minor Administrative Action (see JSP 833). For officers below the rank of Capt RN/Col RM, where the Hearing Officer determines that they have sufficient powers of punishment, offences amounting to misconduct may be dealt with by means of a Summary Hearing. More serious offences should be considered for trial by CM. In certain circumstances, Administrative censure action may provide a suitable alternative to disciplinary action. BRd 2 Chapter 38, the MSL Chapter 12, this Section and Para 2012 should be considered before a decision is made on the appropriate disposal.

b. Careful judgement is needed to weigh the factors which determine the appropriate course to adopt in any given situation and, in order to ensure consistency of treatment throughout the Service, guidance should be sought from Legal Advisers in all but the most straightforward cases.

2057. Negligence

a. An officer's wide responsibilities make them more susceptible than a rating/other rank to allegations of negligence, and censure action provides an effective and convenient way of dealing with less serious instances of this kind. BRd 2 Article 3802 advises that negligence of a serious or gross degree will normally lead to disciplinary proceedings against the officer concerned whereas other cases may be dealt with administratively. In cases of professional negligence, a view can be taken, based on the findings of a Service Inquiry or Immediate Ship's Investigation/RM Unit Inquiry and dependent upon the degree of negligence involved, on whether the matter requires disciplinary action or administrative censure.

b. Negligence is defined in the MSL Chapter 12. In essence, an officer is negligent if either they have done something which a reasonably capable and careful person of their seniority and experience in the Service would not have done, or has failed to or omitted to do something which a reasonably capable and careful person in their position in the Service would have done. The degree of negligence is not determined by the consequences of the act or omission, but by the extent to which the conduct failed to reach the standard of the reasonably capable and careful person. Where something has gone wrong, it does not necessarily mean someone must have been negligent. Similarly, a person may have been negligent but have caused no loss or injury.

c. Serious or gross negligence can be regarded as a marked or notable failure to act in the way that a reasonably capable and careful person would have done. Wilful negligence, which is to say negligence with a reckless regard to the possibility of loss, damage or injury, will almost always be serious.

d. For negligence that is not serious, administrative censure action is normally the most appropriate course of action where:

(1) Culpability is not disputed;

(2) The degree of negligence is assessed, having regard to all the circumstances, as being unlikely to attract a punishment (should the allegations be proved summarily or in CM) greater than a Severe Reprimand; and

(3) There are no overriding considerations demanding disciplinary action.

e. Where the evidence suggests that disciplinary action is appropriate, then consideration should be given to whether the matter can be heard summarily or whether referral should be made for trial by CM. Summary Hearing will not be appropriate where serious negligent failings are identified by Immediate Ship's Investigation/RM Unit Inquiry or Service Inquiry. Nevertheless, Summary Hearing may be appropriate in some cases, e.g. persistent minor neglect to carry out routine but essential tasks. Referral for trial by the CM would also be appropriate where the issues are complex. In all cases, legal advice should be sought.

2058. Officers Under Training

The option of administrative action for minor misconduct may sometimes be more appropriate for officers under training because of their lack of naval (and perhaps general) experience. Cases in which misconduct is clearly attributable to misplaced exuberance may, where the circumstances and interests of discipline allow, fall into this category. Young Officers and officers under training who have, however, previously been warned about their conduct but have nevertheless repeated such or similar misconduct are less likely to avoid disciplinary action than might otherwise be the case.

2059. Senior Officers

a. An officer of the rank of Capt RN/Col RM (or other Service equivalents) and above cannot be dealt with summarily. For officers below this rank, COs may hear a case summarily, provided there is at least a two-rank separation between the Hearing Officer and the accused officer. If the two-rank separation does not exist but a CO considers that Summary Hearing is appropriate, they should forward the case to their relevant Higher Authority who will appoint a bespoke CO for the purposes of hearing the case.

b. COs themselves, and Chaplains, may similarly be dealt with summarily. The Fleet Commander is to be informed where charges are being considered against a CO. For summary discipline purposes, Naval Chaplains are to be treated as though they hold the rank of Commander.

2060. Available Punishments

The punishments which may be imposed summarily upon officers are laid down in JSP 830 Chapter 13 Annex B, and include the following:

a. Forfeiture of seniority (extended powers of punishment required).

b. Fines not exceeding 28 days' pay.

c. Severe Reprimand.

d. Reprimand.

e. Admonition.

f. Service Compensation Order.

2061. More Serious Cases

Any offence thought to justify punishment in excess of the CO's summary powers should be referred to the DSP for CM using normal procedures. COs must take legal advice before bringing any charge against an officer and proceeding to Summary Hearing.

2062. The Obligatory Option of Court Martial

As is the case for ratings/other ranks, it is obligatory to give officers the option for trial by CM in every case, unless the CO refers the case to the DSP for consideration for trial by CM or the DSP has referred a case back to the CO with the written consent of the accused.

2063. Joint Hearings with Ratings/Other Ranks

Unless the interests of justice require it, the Summary Hearing of officers and ratings/other ranks should be conducted separately. Therefore, if it appears an officer and rating/other rank are both involved in an incident likely to give rise to disciplinary proceedings, legal advice on the method of trial/hearing should be sought at the earliest opportunity.

2064. Sentencing

The general sentencing principles set out in the MSL Chapter 14 apply equally to the summary punishment of officers as for ratings. Whilst the starting point in the detailed MSL guidance should be at least that for experienced senior ratings/SNCOs (bearing in mind the limitations on punishment) COs should have particular regard for the status and responsibilities of officers when deciding what punishment to impose.

2065. Reporting and Recording

a. Punishments imposed summarily upon officers are to be recorded on JPA but, as is the case for ratings, are subject to the Rehabilitation of Offenders Act 1974[18]. Offences may be considered for promotion and appointing purposes until the individuals have become rehabilitated and therefore may be included on the official record as follows:

(1) **Forfeiture of Seniority.** Spent immediately; not to be recorded.

(2) **Fine.** Recorded at the discretion of the officer imposing the fine. A fine of over 14 days' pay should normally be recorded for one year from the date of conviction (six months if imposed upon a person under 18).

(3) **Admonition.** Spent immediately; not to be recorded.

(4) **Reprimand.** Recorded at the discretion of the officer imposing the reprimand. A reprimand should normally be recorded for one year from the date of conviction (six months if imposed upon a person under 18).

(5) **Severe Reprimand.** Recorded for one year from the date of conviction (six months if imposed upon a person under 18).

(6) **Service Compensation Order.** Recorded until the date on which payment is made in full.

b. Administrative censures are recorded in JPA and are included in the Personal File record held by Career Manager.

[18] As amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Armed Forces Act 2021.

SECTION 11

PREPARING FOR THE SUMMARY HEARING

2066. Preparation by the Hearing Officer

Before the Hearing, the CO (or officer conducting the SH) must familiarise themself with the case papers, including the evidence. They must understand the issues in the case, and the facts which must be proved for the offence charged to be made out.

2067. Role of the Accused's Assisting Officer (AAO)

The role of the AAO is an important one. The CO must satisfy themself that the individual acting as AAO is capable of doing so, and that they have been afforded adequate time and facilities to prepare for the Hearing. The AAO's role begins when a charge is brought – and they should be involved with the accused from that point forward. Guidance on their role is contained in the MSL Chapter 9 Annex G and in Section 23 to this chapter, which the AAO must read. HODs should be encouraged to take an interest in the progress of the case, including the role and responsibilities of the AAO.

SECTION 12

SUMMARY HEARING PROCEDURE, ROLES AND RESPONSIBILITIES

2068. Inquisitorial Summary Hearing

The Summary Hearing is inquisitorial rather than accusatorial; there is no 'prosecution' by XO, RNP or Coxswain, but rather the Hearing Officer plays the role of investigator. The CO must consider the case, examining evidence from witnesses in support of the charge, the accused and witnesses for the accused before coming to a finding. The Hearing Officer will have seen the case papers beforehand and will usually have brought the charge. Because it is a hearing, not a trial, the accused will not plead guilty or not guilty, but will instead admit or deny the charge(s). The finding of the Hearing Officer will be that the charge is proved or not proved. The Summary Hearing procedures under AFA 06 are essentially the same across the Services, but with slight Service-specific differences in terms of the 'ceremony' of the Summary Hearing. Before the hearing begins, the accused will be afforded the opportunity to elect for trial by Court Martial. If the accused elects for Summary Hearing, they will then be asked to admit or deny the charge. If they deny the charge, the evidence of witnesses will be considered and, if necessary, the witnesses may be questioned before the Hearing Officer comes to a finding. The accused will be supported and represented by an Accused's Assisting Officer who may question witnesses on their behalf and give mitigation and character evidence. The MSL Chapter 9 describes in detail the procedure to be followed, and the form 'Record of Summary Hearing' (RSH) is to be used as a guide and made out by the Hearing Officer during the proceedings. A CO should not find a charge proven unless they are sure that the accused committed the offence as charged.

2069. Requirement for Global Sentence

Where a Hearing Officer records findings that two or more charges against a person have been proved, the sentence they impose must be a single 'global' sentence and not separate sentences for each charge.

2070. Role of the Hearing Officer

a. The Hearing Officer will be the CO or delegated Sub Cdr (normally the XO/OC but may be any officer of Lt RN/Capt RM rank or above who has delegated disciplinary powers). The CO will follow the procedure laid down in the RSH (Annex C to the MSL Vol 1 Chapter 9) in considering the case, coming to a finding and, if the charge is found proved, imposing a sentence.

b. In cases where the accused admits the charge it will be the Hearing Officer who reads out the Case Summary. If the accused denies the charge, the Hearing Officer will read out the witness evidence and, if necessary, question witnesses before giving the accused the opportunity to do so. If the accused states (in advance of the hearing) that they wish to challenge the evidence of the witnesses, or ask further questions of them, then the CO is to require the attendance of those witnesses. The CO may also question the accused. Detailed instructions on the Summary Hearing procedure are in the MSL Vol 1 Chapter 9.

2071. Completion of the Record of Summary Hearing

The officer hearing the case should normally maintain the RSH themself. Where necessary, they must make a written record of any oral evidence; since the record is likely to be a paraphrase of what was said it is important that what is recorded is the understanding of the Hearing Officer, not a third party, and that it is completed at the time of the Hearing and treated as a live record. There is no requirement for a fair copy to be typed after the hearing. The RSH must be retained in the unit for two years before archiving iaw JSP 441.

2072. Role of RNP/Coxswain/Company Sergeant Major (CSM)

Before the hearing the RNP or Coxswain/CSM who investigated the charge should prepare the case papers, including the draft Case Summary (which in an RN unit will be prepared by the Command Adviser) and the draft Charge Sheet with the recommended charge and present them to the Hearing Officer, normally through the Command Adviser. Once the Hearing Officer has signed the charge sheet it should normally be the RNP/Coxswain/G1 Discipline Adviser or CSM who serves the charge sheet and case papers on the accused. The Hearing Officer may, however, decide to do this personally in appropriate cases, e.g. CO bringing a charge on the direction of the DSP. The CO should conduct the Summary Hearing in person, including, should the matter be admitted, reading out the Case Summary, and the written evidence of any witnesses where it is not. At the direction of the CO, the RNP/Coxswain/RSM/CSM should continue to arrange and stage manage the table/hearing. They should muster and march in the accused (and witnesses) and ensure that customary Service procedures are followed. They must not act as 'prosecutor' or read out the case summary or other evidence. If the RNP/Coxswain/RSM/CSM is to be a major witness at the hearing, in order to preserve the fairness of the proceedings, another suitable rating/rank such as the EWO, CBM/senior Logs (Pers)/alternative CSM should assume this role.

2073. Accused's Assisting Officer (AAO)

a. All accused Service personnel are entitled to an AAO to help them before, during and after the hearing. In the RN it is expected that the AAO would normally be the DO or DSR of the accused and must be an officer or Senior Rating. In the RM it is expected that the AAO would normally be the Tp Cdr/HOD/Tp Sgt of the accused and must be an officer or SNCO. The potential AAO must consent to being nominated, and there may be circumstances under which the candidate is unable to act for the accused, for example if they are a witness. If the accused is unable to secure the services of an AAO the CO must nominate two suitable officers or senior ratings/SNCOs between whom the accused can choose. The services of an AAO are not mandatory and a hearing can go ahead if the accused chooses not to be supported by an AAO.

b. During the hearing the AAO may question witnesses on behalf of the accused. The AAO may make a plea in mitigation also give character evidence on behalf of the accused. The AAO may present an appraisal report or assessment of the performance of the accused for the Hearing Officer's perusal if the accused so wishes, but to do so is not mandatory; negative inference should not be drawn if the appraisal or assessment is not presented, it is simply an opportunity for mitigation which has not been taken. Detailed instructions are in Annex G to the MSL Vol 1 Chapter 9 – which must be read and understood by the AAO, together with the relevant Annex to that Chapter.

2074. Witnesses

Witnesses may be required to attend the hearing if the Hearing Officer or the accused wish to question them. The accused will be notified of the witnesses whose evidence the Hearing Officer wishes to use when they are served with the case papers. The accused should also notify the Hearing Officer of the witnesses whose evidence they wish to call at least 24 hours in advance where possible; this is not a legal requirement but allows for effective management of the case and is in the interest of all concerned.

2075. Command Adviser

If borne, the LO, DLO or CorrO will normally advise the command before and during a Summary Hearing. In RM units the Adjutant or G1 Discipline Adviser will normally advise the command. When required they will prepare the applications to HA for permission to hear certain charges summarily or for extended powers of punishment (see above). Under direction of the Hearing Officer, they shall also finalise the Case Summary. In RM units the Case Summary will be prepared by the G1 Discipline Adviser or CSM. The Command Adviser shall supervise the completion of all post-hearing actions (including the RSH, JPA record and submission of materials for review). It remains the CO's responsibility that the review process is followed (see Para 20103).

SECTION 13

SENTENCING (INCLUDING GIVING REASONS)

2076. Sentencing Guidance

Guidance on the sentencing process and summary punishments is contained in the MSL Chapter 13. The MSL Chapter 14 includes a Sentencing Guide, which sets out the features and considerations in different cases, and gives guideline sentences. Both chapters should be consulted by officers exercising powers of summary discipline, and by AAOs. Guidance on the imposition of specific punishments, and the processes involved, are set out in this section.

2077. Requirement to Give Reasons

When sentencing, Hearing Officers must give reasons, which should include an explanation of the facts which they found proved, whether any credit has been given if the charge was admitted, and any aggravating or mitigating features. In order to consider sentence and prepare their reasons, Hearing Officers should not hesitate to break proceedings after finding the case proved and hearing any mitigation. The RSH should be used to record the reasons given. Hearing Officers should take care to set out the salient facts proved, particularly where these have been disputed by the accused, or where they form features which aggravate the offence and had an effect on the sentence. Hearing Officers must explain any discount they apply to the sentence.

2078. Announcing Sentence or Imposing Sentence in the Presence of the Ship's Company

a. Under AFA 06 there is no equivalent to the former RN warrant punishment, and consequently no requirement to conduct a formal reading of a Warrant to announce the sentence imposed. As part of the Summary Hearing process, the Hearing Officer will, in all circumstances of imposing punishment summarily, inform the accused of the sentence.

b. COs may open the sentencing phase of the Summary Hearing to the Ship's Company. This should only be done where legal advice on the charge and sentence has been received. This procedure is only to be used in relation to ratings and other ranks below the rank of Warrant Officer.

c. It is left to the CO's discretion when such a procedure should be followed, but in the majority of cases such a procedure will not be appropriate. The procedure is to be used only where the CO considers there will be a tangible benefit in terms of the maintenance of discipline in the ship, unit or establishment.

d. There is no formal procedure for opening the sentencing part of the Summary Hearing to members of the Ship's Company. COs will invariably wish to consider and prepare their sentencing remarks before conducting the proceedings, however, and a stand over prior to the sentencing part of the hearing will be necessary. The CO should then re-convene the hearing before members of the Ship's Company. The CO should then sentence the accused and give reasons for the sentence in the usual manner. COs may then wish to call a short stand over and then re-convene in the absence of the Ship's Company to complete the summary hearing process. This will include ensuring the accused understands their rights and, in the case of Detention, asking the accused whether they wish to go to Detention immediately or wait until the initial appeal period has passed.

e. Announcement of sentences imposed can be an important reminder to the Ship's Company of the Royal Navy core values and standards. Where, in more serious cases, the CO does not consider it appropriate to announce the sentence in front of members of the Ship's Company but does wish the sentence to be fully understood, the CO should consider conducting a Clear Lower Deck of the Ship's Company or relevant Department in the absence of the accused to explain the sentence and reasons for it. This method has considerable benefits: it can be timed to occur after the accused has commenced the sentence, reducing the artificiality involved in a sentence of detention being announced but not implemented; it allows the CO to explain the context and reasons for the sentence – and explain what they expect of the Ship's Company in future; and the risk of an intemperate response from the accused or others may be reduced. The normal management practice by which the ship's senior management (XO, EWO, HOD, DOs) may informally debrief the Ship's Company as to the effect of a severe punishment, e.g. on loss of pay, pension, eligibility for the LS&GC medal, promotion opportunity etc, continues under AFA and is to be encouraged. In all cases COs will wish to consider publishing punishments on Daily Orders. Where an accused subsequently appeals, the fact of the appeal and the outcome of any appeal should also be published. Consideration should be given to explanatory notes following conviction at CM.

SECTION 14

GUIDANCE ON PARTICULAR SENTENCES

2079. Dismissal

Dismissal is not available as a summary punishment under AFA 06. It remains the responsibility of the accused's CO to take the necessary administrative actions, however, that give effect to dismissal where it is awarded by CM. For certain offences, for example drugs offences, COs should consider administrative discharge (see FLAGO Chapter 16 and BRd 3(1) Chapter 54). In addition, where a sentence of imprisonment is imposed by the CM, administrative discharge must be considered and is the responsibility of the accused's CO to action. Administrative discharge may also be considered where a CM has not imposed dismissal, but the CO considers discharge to be appropriate. In all such circumstances, legal advice should be sought.

2080. Detention and Short-Term Detention

a. **Sentencing Approach.** The correct approach is to consider **first** whether a proved offence justifies a sentence of Detention, **second**, if so, what period, and **third**, whether the sentence should be committed or suspended. Legal advice must be taken if a CO is considering a sentence of detention, no matter what length.

b. **Is a Sentence of Detention Justified?** There are restrictions on Award of Detention. A CO may only impose detention summarily to personnel of or below Leading Rate or Lance Corporal RM. The CO may not summarily sentence a PO or Cpl RM, or above, to detention. The CO may not impose a sentence of detention, of any permitted length, to a Leading Hand/Lance Corporal unless they have applied for, and been granted, Extended Powers of Punishment. When imposing a sentence of detention to a Leading Hand/Lance Corporal the CO should consider, separately, whether or not to impose a separate sentence of Disrating/Reduction in Rank; the CO may (but need not) impose that accompanying punishment. Re-promotion following reduction in rank is governed by Chapter 70 and requires a minimum of 12 months Career Check free service. In any event, during the time that any Royal Navy offender is in custody at MCTC, they are for all purposes treated as being of the rank or rate of able rate or marine.

c. **Offences Justifying Detention.** Advice on offences justifying detention is given in the MSL Chapter 14 under each specific offence.

d. **Length of Sentence.** When calculating the appropriate length of sentence, COs should take the following matters into consideration:

(1) **MCTC Colchester Training Programmes.** Sentences of Detention for RN/RM personnel will normally be served at MCTC Colchester. The minimum effective course of corrective training at MCTC is 21 days. MCTC will take personnel into Service Detention for periods of less than 21 days, but the corrective training value and rehabilitative effect will be severely limited. After 21 days, the next natural training step is set at 28 days. Where COs conclude that, in all the circumstances, a longer period of training is merited, consideration should be given to imposing a sentence in excess of 28 days. In cases where the CO believes that the offender is not likely immediately to respond to corrective training and taut discipline, consideration should be given to imposing 36 days. The next steps up in length of sentence are generally accepted as being 42 days, then 60 days, and finally the summary maximum of 90 days.

(2) **Remission.** Remission is not granted for sentences up to 24 days. Beyond 24 days, $^{1}/_{3}$ sentence is automatically remitted to a minimum of 24 days. Therefore, for sentences of 25 days to 36 days the sentence that will be served is 24 days, for a sentence of 42 days it will be 28 days, for 60 days it will be 40 and for 90 days 60 will be served. For sentences of detention over 90 days, further remission of up to $^{1}/_{6}$ of the portion of the sentence over 90 days may be earned for exceptional behaviour. Sentences in excess of 90 days may only be imposed by CM.

(3) **Intermediate Periods of Detention and Time Spent in Custody.** COs retain the lawful authority to impose a sentence of less than 21 days, but must in all cases consider suitable alternatives. It will be the exception to the norm that other punishments, or a combination thereof, are not far more appropriate and effective. In addition to seeking legal advice, where sentences of less than 21 days are under consideration, COs must contact the RPC to ensure suitable arrangements can be made for detention either at MCTC or, if necessary and/or desirable, regional facilities run by the Army. It should be noted that regional facilities may well require additional supervisory personnel to be provided by the discharging unit, and for operational/logistical reasons, RPCs may not be in a position to provide either transport or escorts. Time spent in pre-trial custody after charge should be credited against any sentence of detention (see the MSL Chapter 13). COs should impose the full sentence of detention and MCTC will calculate the time remaining where time spent in custody is to count as time served. There is no legal requirement for time spent in custody before charge to be counted against any period of detention subsequently imposed, but a CO may take such periods into account when determining the length of a sentence to be imposed. Periods spent under arrest during interview will usually be so short as to be not worthy of taking into account in calculating the ’discount’.

(4) **Travelling Time.** COs should take into consideration the impact of travelling time when determining whether the period of detention proposed is adequate, subject to the principle that the length of detention proposed must still be appropriate to the offence and to the offender. Therefore, even where a sentence of 21 days detention or more would be appropriate, an alternative punishment might be better where it would not be possible to transfer the offender to and from MCTC within the requisite timescale.

(5) **Escorting Detainees.** Historically, RNP facilitated the transportation of Detainees Under Sentence (DUS), however, this is now a unit Command responsibility. Guidance is contained within JSP 837 Part 2 'Service Code of Practice – Custody and Detention and Committal to Civil Prison'. It is advisable that, where possible, the I/C Escort is of superior rank or seniority to the detainee. The driver should not routinely be counted as an escort. For example, a unit sending an offender to the MCTC by a road move would require I/C Escort, second escort, and driver (total of three personnel) in order to safely move the detainee. RPCs are available to provide support and guidance where concerns exist that an offender is likely to become violent and/or abscond prior to successful committal to MCTC or HM Prison.

e. Sentences of 90 days must be reserved for the most serious of cases. Command Advisers (LO, DLO, Adjt/G1 Disc Adv or EA) should consider carefully, on the basis of the papers and any admissions made in interview, the likelihood of the accused opting for Summary Hearing and admitting the charge. In the majority of serious cases, it will be more appropriate to refer the matter to the DSP for trial by CM (without giving the option), thereby allowing the CM full sentencing powers (instead of being capped to the sentencing powers of the CO).

2081. Suspended Sentences

a. Once a sentence of detention has been decided upon, the CO must then consider whether the sentence should be suspended or committed. The MSL Chapter 13 describes the factors that should be taken into account when making this decision.

b. A sentence of detention may be suspended for a period of a minimum of 3 months and up to 12 months (the Operational Period). The CO must consider the length of time it is likely to take the offender to reform when deciding the Operational Period. The period of Detention imposed may inform the CO as to the most appropriate period of suspension. As a rule of thumb, the longer the sentence imposed, the more serious the offence, and the more likely it is to be necessary to suspend the sentence for a longer period.

2082. Activation of Suspended Sentences

a. A CO may activate a suspended sentence of detention which has been imposed at a Summary Hearing or by the SAC if the offender is found guilty of an offence in a civilian court or when an offence which has been found proved at a Summary Hearing was committed during the operational period of the suspended sentence. The MSL Vol 1 Chapter 9 gives full details of the procedure for activation during a Summary Hearing when a service offence is found proved and during an activation hearing following a civilian conviction. In all cases where a CO is considering the activation of a suspended sentence, legal advice must be sought. As stated, Disrating/Reduction in Rank is incurred automatically by activation, where this was not imposed as a separate, optional punishment with the (suspended) detention.

b. Whenever a CO intends to activate a suspended sentence and at the same time award a further sentence of Detention, the two may be ordered to run concurrently or consecutively in accordance with the MSL Chapter 13. The maximum of both sentences must not exceed the CO's powers of punishment, i.e. 28 days, or 90 days if extended powers have been granted.

2083. Alternatives to Sentences of Detention - Fines, Stoppage of Leave, Restriction of Privileges and Service Supervision and Punishment Order

Under AFA 06 COs may impose up to 28 days' detention *without reference to higher authority*. Before sentencing an offender to a short period of detention the CO should consider whether an alternative punishment would be more effective, both for the offender and the unit. A combination of a fine, stoppage of leave (SoL) and restriction of privileges (RoP) will have a similar financial effect on the offender and limit the offender's liberty whilst retaining them on board. For more serious offences where detention of 28 days or more is being considered a Service Supervision and Punishment Order (SSPO) might be an appropriate alternative. The table below lists possible alternatives to Detention, and should be read in conjunction to the MSL Vol 1 Chapter 14. The Table should be read as a whole, e.g. seven days' detention = 14 days SoL + 14 days concurrent RoP + a fine equivalent to seven days' pay:

Table 20-6. Alternatives to Detention

Short Detention (Days)	SoL + RoP (Days)	Fine (Days' Pay)
1-2	3	2
3	5	3
4	7	4
5	10	5
6	12	6
7	14	7
8	14	9
9	14	11
10	14	13
11	14	15
12	14	17
13	14	19
14	14	21

2084. Deployed Ships - Alternatives to Committed Sentences of Detention

When it is considered that a committed sentence of detention is the correct punishment, deployed ships should not suspend a sentence solely on the grounds of cost of air transport, difficulty of arranging transport to the UK, or problems of providing escort. In such cases suspension is appropriate only if no transport is available or if duration of passage would be so excessive as to render time spent in MCTC too short to be effective. In such circumstances an SSPO or a combination of a fine, stoppage of leave and restriction of privileges may be considered as alternatives, in accordance with the comparable tariff in the table above.

2085. Financial and Other Consequences of Detention

It is essential that personnel under corrective training are made aware how significantly a sentence of detention will affect them financially. Consideration should be given to informing a Ship's Company of the consequential, and in particular financial, effects of a sentence of detention by means of a note in Daily Orders after an offender has been sentenced to detention.

2086. Leave on Completion of Detention

The Commandant MCTC does not have authority to grant leave on completion of sentence. During main leave periods, the units to which an offender is to be assigned should advise MCTC of the date by which the offender is required to re-join. This advice must specify:

a. The authority for leave.

b. The authority for leave travel if applicable.

2087. Commencement of Sentence of Detention

a. Before sending personnel to MCTC, COs are to ensure the offender has all necessary kit and is prepared in all respects for the training regime. It is the responsibility of the committing CO to ensure that all necessary administration is complete – see JSP 837 'The Code of Practice for the Management of Personnel Within Service Custody and Committal to Service Custody Premises and Civil Prisons'.

b. COs should note carefully the provisions of the MSL Vol 1 Chapter 15 paragraphs 65-66, which determine the date on which a sentence of detention begins. These provisions explain when ordinarily a sentence of detention begins and when the sentence actually begins if the offender exercises their right to appeal to the SAC.

c. All relevant paperwork must accompany the offender sent to detention. This will be examined by MCTC on arrival and sets out the legal authority for them to take the person into custody. If paperwork is missing or incorrectly completed, MCTC may have no option but to return the offender to their parent unit.

2088. Forfeiture of Seniority

COs with extended powers of punishment have the ability to impose the forfeiture of up to all of an officer's seniority as a summary punishment. If a CO is considering forfeiture of seniority, they should consider the financial and career consequences for the officer involved, consulting Career Managers as appropriate. In all cases legal advice must be sought.

2089. Disrating/Reduction in Rank

A CO may, with extended powers of punishment, disrate or reduce the rank of a Warrant Officer or non-commissioned officer of or above the rank of Leading Hand or Corporal. Extended powers of punishment are not needed for a CO to reduce in rank a Lance Corporal. A CO may only remove one acting or substantive rank or rate under this punishment; multi-step reductions are not allowed.

2090. Service Supervision and Punishment Order (SSPO)

The effect of an SSPO is described in full in the MSL Vol 1 Chapter 13, and is similar to that of the former naval punishment of Reduction to the Second Class for Conduct. It is designed to punish and reform a persistent offender without the need to impose detention. It may be imposed summarily by the CO to an able rate or marine without reference to Higher Authority. When imposing the punishment, the CO will add whichever of the discretionary requirements of the punishment they consider to be necessary (see the MSL Chapter 13 paragraph 71b). The CO may delegate, in writing, responsibility to permit the offender to leave the ship, unit or establishment or enter specified areas to another officer not below the rank of Lt RN/Capt RM or equivalent, and it is recommended that they do so to appropriate duty personnel including the DCO/OOD/Duty Staff Officer (DSO) and to the XO/OC as appropriate to the unit (see FLAGO 1608). Where the requirement to undertake extra duties is imposed, the CO may detail what extra duties are to be performed (for example extra work or training), for how long and when. The CO is permitted to delegate, however, in writing, this function to a person of or above the rate/rank of CPO/CSgt. They may wish to prescribe the routine to be followed in SGOs/USOs (see recommended routine in Table below), but it is also recommended the function be delegated to the XO/Adjt/MAA/Cox'n/OOD/DSO/CQMS and the OC as appropriate (see FLAGO 1608) in order to cater for circumstances in which, for any reason, the normal routine cannot be followed. The DPO/DSNCO (if Sgt) will be unable to allocate the work or duties to be performed, but must seek the approval of the OOD.

2091. Stoppage of Leave and Restriction of Privileges - Routines

a. Stoppage Of Leave (SOL) and Restriction Of Privileges (ROP) will usually be the most commonly imposed punishments. Stoppage of leave will require the offender to be confined to their ship or establishment and to muster periodically during the period of the punishment. Restriction of privileges will require the offender to muster periodically and perform extra work, training or any other Service duty (up to 5½ hours per day). Both punishments may be imposed individually, or in combination.

b. As far as possible units should strive to achieve consistency in the punishment routine within the unit, and any routine worked must be clearly distinguishable from sanctions imposed under MAA. It is suggested that the relevant routines are published in SGOs/USOs. Adjustments may have to be made, however, depending on the unit's programme and the availability of staff to manage the routine, to achieve a punishment routine that is both relevant and contemporary.

c. In many cases it may be desirable for extra work to be carried out within the offender's department. Whilst it is ultimately for each ship and establishment to determine its own routine, the table below provides a model which may be adopted or adapted:

RN Ship/Establishment Routine:

Routine	Muster at:	Work until (RoP only):
Daily Harbour	0630 1230 1630 1855 or 5 minutes before evening rounds 1915 RoP Only 2200	0700 1315 1730 Evening Rounds 2100* Muster Only
Saturday Harbour	0630 1230 1630 1855 1915 RoP Only 2200	0700 1315 1730 Evening Rounds 2100* Muster Only
Sunday Harbour	Half hour before call the hands 1300 1630 1855 2200	Muster Only Muster Only Muster Only Evening Rounds Muster Only
Tropical Harbour	Half hour before call the hands 1330 1630 1855 or 5 minutes before evening rounds 1930 RoP Only 2200	Work for 30 minutes 1600 1730 Evening Rounds 2100 Muster Only
Daily Sea	0630 1230 1630 1855 or 5 minutes before evening rounds 2000 RoP Only 2200	0700 1330 1830 Evening Rounds 2100* Muster Only
Saturday Sea	0630 1300 1630 1855 or 5 minutes before evening rounds 2000 RoP Only 2200	0700 1500 1830 Evening Rounds 2100* Muster Only
Sunday Sea	Half hour before call the hands 1300 1630 1855 or 5 minutes before evening rounds 2200	Muster Only Muster Only Muster Only Evening Rounds Muster Only

Notes:

** If a night watch is kept then secure at 2000.*

1. Specify place to muster.

2. Direct offender to muster in correct rig of the day, which is to be clean and in good repair.

3. Instruct offender to produce 'excused chit' in advance of foreseeable absence from time and place of muster.

4. Following from Note 3, if a night watch is kept the offender may be excused the first muster, but the DPO must be informed the day before.

5. If the offender is required for work within their own department at the time of a muster, this must be agreed beforehand between the DepCo and the XO/MAA/DCO/DSO/OOD or OC responsible for deciding which duties are to be performed. The presumption is that an offender should attend a muster and then return to their departmental work.

RM Unit/Establishment Routine:

Other Ranks on SoL and/or RoPs are to report to the DSNCO at the Unit/Establishment Guardroom (or as otherwise detailed) at the following times daily:

Mon to Fri (Parade - SoL and RoP)	Work Until (RoP only)
0630 hrs	0730 hrs
1230 hrs	1330 hrs
1700 hrs	Parade Only
1800 hrs	2100 hrs
2000 hrs (SoL only)	
2230 hrs	Parade Only (30 minutes max)
Saturday	
0700 hrs	0800 hrs
1000 hrs	1230 hrs
1400 hrs	1500 hrs
1800 hrs	Parade Only (20 minutes max)
2000 hrs	Parade Only (20 minutes max)
2230 hrs	Parade Only (20 minutes max)
Sunday	
0700 hrs	0800 hrs
1000 hrs	1230 hrs
1400 hrs	1500 hrs
1800 hrs	Parade Only (20 minutes max)
2000 hrs	Parade Only (20 minutes max)
2230 hrs	Parade Only (20 minutes max)

Notes:

1. Other ranks placed on RoPs will be informed by the DSNCO of the period(s) of extra duties, work or training during non-working hours to be completed (no more than 5½ hours in any one 24-hour period). The maximum number of working hours (16 in any 24-hour period is not to be exceeded). Note: Where the requirement to undertake extra duties is imposed, the CO may detail what extra duties are to be performed, for how long and when. The CO is permitted to delegate, however, in writing, this function to a person of or above the rate/rank of CPO/CSgt. Therefore, a DSNCO of Sgt rank must obtain authorisation from the Duty Officer when considering extra work for ranks on RoPs outside of that which the CO or an Officer authorised by them has already laid down.

2. If an offender is required for night duty they are not to be paraded before the start of their normal working day (i.e. normally excused the first muster time).

3. The offender is to report for each parade in the rig of the day or as directed in Unit Standing Orders or unless directed otherwise by the DSNCO.

4. If the offender is required for work at their normal place of work at the time of a muster, then their Tp Sgt/HOD should liaise with the DSNCO/Duty Officer to de-conflict, the presumption being that the offender should attend a muster and then return to their place of work.

5. The offender is to parade in MTP if they are due to carry out work or training. At the other times they can be detailed to parade in for example No 1 Blues, No 3 Lovat dress or No 4 Combat Dress with CEFO.

2092. Delegations Relating to Stoppage of Leave/SSPO

The CO may delegate, in writing, the function of granting permission to leave the ship, unit or establishment to an officer under their command of or above the rank of Lt RN/Capt RM or equivalent whilst an offender is under SoL (see the MSL Chapter 13 paragraph 132). It is recommended this be delegated to duty personnel including the DCO/OOD/DSO and to the OC as appropriate to the unit (see FLAGO 1608). They may also delegate, in writing, to a person under their command of or above the rank/rate of CPO/CSgt, the function of deciding which extra duties the offender must carry out (see the MSL Chapter 13 para 140). It is recommended the routine be set out in SGOs/USOs, but the function should also be delegated to the XO/Adjt/MAA/OOD/DSO/CQMS/Duty SNCO and the OC as appropriate (see FLAGO 1608) in order to cater for circumstances in which, for any reason, the normal routine cannot be followed.

2093. Deferral of Stoppage of Leave and Restriction of Privileges

Hearing Officers imposing SoL and RoP should note that the commencement of these punishments may be deferred by up to 28 days, and the punishment can be applied on specified days within a further 28 days. The purpose of this is to give Hearing Officers the discretion to maximise the effect of the punishment by applying it only on days when the ship is alongside, or the unit is on stand-down i.e. the punishment does not have to be conducted in one continuous block within the parameters above. Deferral is therefore rarely appropriate for shore establishments or ships alongside for a protracted period. When imposing deferred punishments on specified days, Hearing Officers should bear in mind that the punitive effect may be more severe than when the punishment runs continuously from imposition.

2094. Supervision of Service Supervision And Punishment Order, Stoppage of Leave and Restriction of Privileges

Hearing Officers are to ensure that all personnel subjected to an SSPO or a combination of SoL and RoP carry out the routine under the close and careful supervision of a senior rating/SNCO.

SECTION 15

THE ADMINISTRATIVE CONSEQUENCES OF PUNISHMENTS

2095. Requirement to Consider Administrative Consequences

a. The table at Annex 20C summarises the administrative consequences of punishments imposed under AFA 06. It lists the administrative actions which are to be taken automatically (obligatory), and those which may be taken (optional), when a member of the Royal Navy is punished under AFA 06. This includes forfeiture of LS&GC Medal or the MSM, forfeiture of GCBs and the imposition of a Career Check (obligatory only).

b. The potential imposition of administrative action under this section following a conviction by CM or the SAC, or a finding by a CO that a charge is proved, is triggered by the punishment imposed. Where the sentence was imposed by CM or the SAC, the offender's CO should consider whether any such action should be taken. All administrative actions dealt with under this article require approval, save that a Captain Royal Navy/Colonel Royal Marines may order forfeiture of one GCB and a CO may impose a Career Check without seeking such approval.

c. Where an offence dealt with at CM or the SAC calls into question an individual's suitability for continued service, or to continue to hold their current rank or rate, the CO must also consider action under Section 19 of this chapter.

2096. Meritorious Service Medal

The award and forfeiture of the MSM is governed by Chapter 9 of JSP 761, which should be referred to where an offender holds the MSM.

2097. Forfeiture of Long Service and Good Conduct Medal (LS&GCM)

The regulations for the award and forfeiture of the LS&GCM were revised with effect from 1 Oct 16. An individual who has been awarded the LS&GCM and subsequently incurs an entry on their disciplinary record cannot now forfeit the medal unless they are sentenced to imprisonment for a period greater than six months and/or are dismissed. Further details regarding the award and removal of medals are contained in JSP 761 Chapter 5. Under AFA 06 deprivation of the LS&GCM is no longer a punishment in itself. All circumstances giving rise to forfeiture of the LS&GCM are to be reported to the Naval Secretary (Honours and Awards).

2098. Forfeiture of Good Conduct Badges

As with the LS&GCM, under AFA 06 deprivation of Good Conduct Badges (GCBs) is not a punishment. GCBs may, however, be forfeit following disciplinary action. This preserves the previous position whereby under the Naval Discipline Act 1957 the officer or court imposing a punishment was obliged also to consider whether deprivation of GCBs was obligatory or optional as part of the overall punishment imposed.

a. **Obligatory Forfeiture.** Forfeiture of all GCBs is mandatory whenever any of the following punishments is imposed under AFA 06:

(1) Imprisonment.

(2) Dismissal.

(3) Detention over 14 days.

(4) Suspended sentence of detention over 14 days.

(5) Service Supervision and Punishment Order.

b. **Optional Forfeiture.** Forfeiture of one or more GCBs is to be considered whenever a rating/other rank holding GCBs is sentenced to any of the following punishments:

(1) Detention up to 14 days.

(2) Suspended sentence of detention up to 14 days.

(3) Reduction in rank/disrating.

(4) Fine.

(5) Severe reprimand.

(6) Reprimand.

(7) Service Compensation Order.

2099. Effect of Activation of Suspended Sentence of Detention on GCBs

Where an offender has been sentenced to a short period of suspended detention, GCBs were not forfeit as a result of that punishment, and that punishment is subsequently activated either wholly or in part, by a CO, CM or SAC, the CO should consider whether the circumstances merit forfeiture of GCBs. This action may be taken whether the offence triggering activation of the suspended sentence was dealt with by a civilian court, a Service court, or by the CO.

20100. Factors to Consider when Forfeiture of GCBs is Optional

Wherever forfeiture is optional the following factors should be taken into consideration:

a. **Punishment Imposed.** The more severe the punishment, e.g. the longer the period of detention or the greater the financial penalty, the more appropriate it may be to impose forfeiture of one or more GCBs. Noting that in some (in particular, joint) units short periods of detention may be imposed in preference to a combination of Restriction of Privileges and Stoppage of Leave, care should be taken to ensure GCBs are not forfeit as a result of a relatively minor offence.

b. **Offence Committed.** The type of offence committed may influence the decision whether a GCB should be forfeit. Offences involving poor conduct in relation to the offender's or another person's duty may justify forfeiture of one or more GCBs, particularly if the offence was committed deliberately or involves dishonesty. In particular, Desertion (AFA 08 s.8) repeated or long absence without leave (AFA 06 s.9), failure to cause the apprehension of deserters or absentees (AFA 06 s.10), misconduct towards a superior Officer (AFA 06 s.11), disobedience (AFA 06 s. 12), using force against a sentry (AFA 06 s.14), serious neglect of duty (including sleeping on watch) (AFA 06 s.15(2)), malingering (AFA 06 s.16), making false records (AFA 06 s.18), conduct prejudicial to good order and discipline (AFA 06 s.19), serious or repeated drunkenness (AFA 06 s.20), ill-treatment of subordinates (AFA 06 s.22), and misapplying or wasting public or service property (AFA 06 s.25) may justify forfeiture of a badge or badges. In addition, any offence involving physical violence, dishonesty, criminal damage, smuggling, contravention of censorship regulations or possession of an offensive weapon will usually justify forfeiture. Failure to report any of the offences listed in this paragraph, in contravention of standing orders, is also a serious matter which may warrant forfeiture of a badge(s). The list of types of offence in this paragraph is not exhaustive.

c. **Disciplinary Record.** Repeated offences may indicate that the offender is unfit to hold one or more GCBs. Conversely, where an offence can properly be regarded as out of character the forfeiture of a badge, and the associated impact on award of LS&GC Medal, may be regarded as unduly harsh.

d. **Conduct.** Forfeiture of one or more badges following a relatively minor offence may be appropriate where the offender has previously been subject to MAA instead of disciplinary action for similar incidents. The offender's general conduct should also be taken into consideration. Any MAA taken against the offender in the current unit may indicate that the offender's general conduct has fallen below the required standard and therefore that they are no longer fit to hold one or more badges.

20101. Approval of Forfeiture of GCBs

Where forfeiture of GCBs is obligatory, prior approval to impose forfeiture is not required. COs of the rank of Captain Royal Navy/Colonel Royal Marines and above may impose forfeiture of one GCB without seeking approval. In all other circumstances application to impose forfeiture of GCBs must be made to the Higher Authority.

20102. Applications for Approval by Higher Authority

Where forfeiture of a GCB requires approval, the application is to be made in writing to the HA, utilising the form at Annex 20T. Where forfeiture of a GCB is optional and the CO subsequently orders that a GCB is to be forfeited, the accused is to be informed of their right to state a Service Complaint in relation to the matter.

SECTION 16

REVIEW OF SUMMARY HEARINGS

20103. Review of Summary Hearings - Purpose and Method

a. AFA 06 requires the review of Summary Hearings where a finding that the charge has been proved has been recorded. Review ensures that no mistake has been made in law and that the punishment imposed is commensurate with the offence.

b. It is Naval policy that review will be conducted on behalf of the Defence Council by the Summary Hearing Review Cell (SHRC). The Defence Council has delegated all barristers on the staff of NLS of the rank of Cdr RN and above as Reviewing Officers. Only these personnel may apply for leave to appeal to the SAC or, where the accused has already lodged an appeal, notify the SAC of relevant matters.

20104. After Hearing Actions - Preparing the Case for Review

After a charge is found proved at a Summary Hearing, unit staff are to perform the following tasks without delay to facilitate a timely review of the case:

a. Complete the JPA record in accordance with the Business Process Guide.

b. Complete Annex A v.9/16 (Summary Hearing Review) (available from the SHRC) and attach it to the JPA record; and

c. Assign the JPA case to the SHRC, granting it instant access to the whole record. (If connectivity issues preclude the use of JPA then the Annex A v.9/16 should be emailed or faxed to the SHRC and the remaining actions completed as soon as JPA connectivity is returned.)

d. After Hearing Actions are to be completed within 48 hours of sentence, or within 24 hours of punishment where detention (including suspended sentence of detention) or SSPO has been imposed.

20105. Actions by Summary Hearing Review Cell (SHRC)

a. A preliminary screening will be conducted by SHRC staff, who will check that the punishment was lawful, was within the powers of the person imposing the punishment, and that the severity was not manifestly excessive for the offence proved.

b. Any practical difficulties which will lead to a delay in completion or transmission of the case papers to the SHRC are to be raised at the earliest opportunity.

c. If any potential discrepancy is detected the SHRC will call for the case papers. If staff encounter a potential legal difficulty, they will refer the case to a Reviewing Officer on the staff of NLS of rank not lower than Cdr RN/Lt Col RM (usually NLS SO1 Discipline Law). The Reviewing Officer will, where necessary, make application to the SAC for leave to appeal or notify the SAC of relevant matters. The appeal may be against sentence or against finding and sentence. The offender may abandon any appeal which has been referred to the SAC by the Reviewing Officer if they do not wish to take the matter further.

20106. Expedited Review of Sentences of Detention

COs must always seek legal advice when they are considering imposing a sentence of detention summarily. For all sentences of detention, no matter what length, the policy for the Royal Navy will be that a preliminary review is to take place within 24 hours. If an offender opts to commence their sentence of detention immediately on being sentenced, commencement should not be delayed pending review. COs are to ensure that case papers are passed to the SHRC with appropriate expedition.

20107. Contact Details for the Summary Hearing Review Cell

Email (MODNET): NAVY LEGAL-SHRC MAILBOX
SHRC i/c (WO1) 93832 5210 (02392 62 5210)
SHRC Admin (Discipline Process Queries) (LLogs) 93832 5859 (02392 62 5859)

SECTION 17

REPORTING SERIOUS DISCIPLINARY AND PERSONNEL INCIDENTS

20108. Service Policy and Employment

a. The Royal Navy, both as an employer and a public body, must take account of pending and completed civil offences in order to regulate the workplace, protect the legitimate interests of the accused and their colleagues, to maintain the discipline and ethos of the Service, to assist the Court and the criminal justice system, and ensure that public confidence is maintained.

b. KRRN Chapter 39 should be consulted together with this section.

20109. Reporting

a. In order to ensure that all personnel are aware of the requirement to report interactions with the criminal justice system, COs are to issue Standing Orders requiring a report in the following circumstances: any arrest, fixed penalty notice, summons, conviction, Police Caution, Anti-Social Behaviour Order (ASBO), Football Banning Order (FBO), reprimand or warning (for persons under 18, under the Crime and Disorder Act 1998).

b. Fixed Penalty Notices for motoring offences need not be reported.

c. Where a CO becomes aware of an allegation, pending case or conviction, they must consider whether the fact should be reported immediately to Higher Authority, following the guidance below. Where a civil case is brought to the CO's attention, they should keep the progress of the case under active review – both to ensure proper and full support to individuals involved, and to update Higher Authority as required.

20110. Informing Navy Command HQ

a. COs are to report serious disciplinary and personnel incidents through the Chain of Command (CoC) and to other NCHQ stakeholders by completing the Report Form at Annex U and sending it to their immediate superior officer and Duty Fleet Controller (DFC), who will distribute it as appropriate. 'Serious disciplinary or personnel incident' should be interpreted to mean as follows:

(1) Any alleged offence listed in Schedule 2 of the Armed Forces Act 2006;

(2) Any serious harm to RN/RM personnel, or

(3) Any other personnel matter which is likely to attract media and/or Ministerial interest.

b. Serious disciplinary or personnel incidents can have significant ramifications for operational effectiveness and/or the reputation of the RN. As such, the CoC and appropriate stakeholders within NCHQ must be made aware of a situation at the earliest opportunity to ensure that a swift, appropriate and coherent response may be made. The speed of response is particularly critical when details of the incident are already within the public domain or are likely to be so imminently. If in doubt whether or not to report an incident, COs or their representative must seek **immediate** advice from the DFC.

20111. Cases to be Reported

The term 'serious disciplinary or personnel incident' is broad and covers criminal and non-criminal conduct committed by or against RN/RM personnel. COs are empowered to exercise discretion in determining whether or not this threshold is met; examples of such incidents are outlined below, but this list is not exhaustive. In all circumstances, COs will need to assess the situation and consider the potential administrative and reputational ramifications for the Service.

If in doubt, units should seek advice from the DFC

a. A fatality;

b. Any incident where there is actual or potential media or Ministerial interest;

c. Any incident that has or could have been filmed and/or photographed and that is at risk of entering the public domain.

d. An incident involving the authorities of a host nation;

e. Significant injuries to one or more persons;

f. Domestic abuse;

g. Harassment/stalking;

h. Alleged sexual offences [alleged victim not to be identified];

i. Offences involving children;

j. Drugs offences, which involve large numbers of individuals or large quantities;

k. Harm or damage to civilians or their property;

l. Arson;

m. Illegal possession/use of a firearm (inc. ammunition) or offensive weapon;

n. Significant fraud, especially if involving public property;

o. 'Hate' crimes;

p. The loss or damage of significant amounts of Service property;

q. Mutiny or desertion;

r. Initiation ceremonies or rituals involving alleged physical or mental abuse;

s. Mistreatment of Captured Persons.

20112. Types of Offence that Need Not be Reported to NCHQ

a. The following list of examples is not exhaustive and is intended only to give a broad indication of the type of Service or civil offence which, when reported to the CO, is unlikely to be noteworthy or require further management outside the unit (at least until completion of the case). In cases of doubt ships/units are to contact the DFC and NAVY CULTURE-DISCIPLINE HEAD SO2:

(1) Minor motoring offences (including speeding, parking and fixed penalty offences).

(2) Less serious drink driving offences which have not resulted in accident/injury.

(3) Low level assault on adults falling short of ABH.

(4) Police Cautions (except those for sexual offences, serious assault or drugs), Anti-Social Behaviour Orders for infringements such as littering or abandoning cars.

(5) Football Banning Orders for minor matters such as taking alcohol/fireworks to football matches.

(6) Minor dishonesty, non-possession of TV licences etc.

(7) Minor damage to property.

(8) Fixed Penalty Notices.

(9) Additionally, the following incidents should be reported by using the established reporting routine:

(a) Navigational/seamanship incidents.

(b) Aviation incidents.

(c) Operational incidents.

(d) Serious security breaches/incidents (including terrorism and espionage).

b. However, where there has also been a death in Service an Annex U report is to be submitted alongside the established reporting process.

20113. Updates as Cases Progress

a. The CO is to ensure that updates are forwarded to DFC as cases progress. Such updates will typically be required when:

(1) The precise charges and custody position become known.

(2) Detail of any next step (date of court appearance for hearing, bail, fine, formal caution issued, charges dropped, etc.) is known.

(3) The date, time and place of trial are known.

(4) Any significant Service disciplinary issues occurring while the individual(s) are awaiting trial (e.g. AWOL or other offences).

(5) Any relevant welfare issues of the individual(s) become apparent

(6) The name and contact details of the officer or senior rating (usually the individual's Divisional Officer) who will accompany the accused to court for hearings to watch the trial and report back to NAVY CULTURE-DISCIPLINE HEAD SO2 once the outcome is known.

(7) The outcome of each court appearance is known and should be notified to NAVY CULTURE-DISCIPLINE HEAD SO2 by the unit on the same day directly after the court appearance (so that a timely adjustment can be made to the Defensive News Brief (DNB) ahead of fresh press enquiries and in preparation for any adverse coverage that may appear in the next edition of newspapers/news broadcasts, etc.)

(8) There is any indication of known interest/coverage by local and/or national press reporters including television and radio and especially whether they were present in the courtroom.

b. This list is not exhaustive and if there is any material change to the case DFC should be informed at the earliest opportunity and by telephone if that is quicker or more convenient.

20114. Method of Reporting

a. COs are to inform their immediate superior officer and DFC using the Form at Annex U. Existing direction regarding reports to the DFC remains extant[19] and applies to all ships, submarines, Naval Air Squadrons, RM units and establishments of the Fleet, namely:

> "The Duty Fleet Controller (DFC) is the first point of contact for any accident or incident, and any event which may attract the attention of Flag Officers, Ministers or the news media. Out of hours, the DFC is also the first point of contact for all Fleet business except submarine operational matters, for which the Duty Submarine Controller (DSMC) is the first point of contact."

b. The Duty Fleet Controller will distribute Annex 20U to the following Tier 1 recipients:

(1) Fleet Commander, 2SL, COMOPS[20], Dir P&T[21], DDC, and SECPOL.

(2) Other key individuals will be added at the discretion of the DFC for current operations, Death and VSI. The Navy Culture Discipline Team will receive all Annex 20U.

c. The Navy Culture Discipline Team will distribute Annex 20U to Tier 2 recipients:

(1) 1SL Outer Office, 2SL Outer Office, STRATPOL, NAVY COMMS, LEGAL-RLO, Discipline Law, Culture, Navy Safety Centre, and DCOTF.

(2) Amending the list according to the subject matter on a need-to-know basis and retaining as records for trend analysis.

d. Reporting procedures for the following, as set out in this chapter also remain extant: alleged sexual offences[22]; alleged Schedule 2 offences or those committed in 'prescribed circumstances' under the Armed Forces Act 2006[23]; or for those appearing before civil courts.[24]

e. When the unit/personnel are operating outside single service Joint Command there is likely to be a requirement to inform the Operational Commander. In most cases this will be executed through the DFC by a 5W return as coordinated by DFC. For more serious incidents a PJHQ SINCREP (as available on PJHQ website) will be required. DFC will coordinate all returns to the Joint Commander and can provide templates upon request.

[19] BRd 9467 Fleet Administrative and General Orders Article 0115.
[20] Including those personnel critical in execution of OPCON/OPCOM.
[21] Including those personnel critical in execution of welfare and discipline.
[22] BRd 3(1) Article 20015, Article 20123, Chapter 20 Section 22.
[23] BRd 3(1) Article 20013(a).
[24] BRd 3(1) Articles 20117-20118 and 20120-20121.

20115. Allegations of Sexual Offences

Where a CO receives an allegation that suggests that a sexual offence may have been committed or that there may be a sexual element to an offence, legal advice must be sought. COs, NCHQ, Career Managers and Welfare Staffs have specific responsibilities in cases involving allegations of Sexual Offences (whether these allegations are being investigated by Service or civil police). Direction and guidance is contained in Section 22 of this Chapter.

20116. Media Attention and Defensive News Brief (DNB) Produced by NCHQ

COs should not underestimate the effect that media attention can have in turning what is a minor incident into something that is perceived as serious. This is particularly the case where photographs or film of an incident exists and may have been provided to the media. Where any doubt exists as to whether an incident has been notified to the media, this reporting process should be followed.

a. A DNB using information supplied by ships/units will be produced only when the NCHQ stakeholders (NAVY CULTURE-DISCIPLINE HEAD SO2, POL SEC, MEDIA, NLS)) agree that the following two conditions are met:

(1) Based on experience the situation is assessed as having a strong likelihood of there being press/media interest in the case at either a local or national level; and

(2) The press interest in the incident is assessed as being likely to result in adverse coverage and therefore constitute a risk to the reputation of the Royal Navy that cannot be allowed to go unanswered when media ask for a MOD response to news coverage or proposed news coverage.

b. All the types of offence listed at Para 20111 above can warrant a DNB to be prepared for issue at the most suitable stage of the proceedings, and the question of when is an important consideration and subject to agreement between the relevant NCHQ stakeholders.

c. Other than for the typical exceptions listed below, a DNB will be produced only when an enquiry is received from the Press or when charges have been raised by the Police. In all these exceptions, and any others on which NCHQ discretion may be used, a DNB will be produced as soon as sufficient accurate and reliable information is notified by the ship/unit and before charges are brought:

(1) Incidents occurring overseas.

(2) Fatality or serious injury.

(3) Firearm/weapon incidents.

(4) Sexual offences where there is a particularly predatory element.

(5) 'Hate' crimes.

(6) Any case where the individual, their family or their ship/unit will require media guidance/assistance from NCHQ Media/Comms (i.e. media shielding).

d. The DNB consists of two or sometimes three parts, the first being the Background which is not for release and explains the details of the alleged incident; the second part is the Line To Take (LTT) forming the response to enquiries that the MOD is able to make without compromising future proceedings, the privacy/anonymity and human rights of those involved; in some cases it will be appropriate to have a third section Q&A brief with the answers to anticipated lines of questioning ready prepared some of which will be used only if pressed.

e. Although a copy of the DNB will be sent to the ship/unit for information, any enquiries received from the press should be referred to NAVY MEDIA for the appropriate handling. The DNB will be updated whenever significant developments are reported to NAVY CULTURE-DISCIPLINE HEAD SO2 by the ship/unit and this should happen promptly once new information is known.

20117. Ministerial Submission (Min Sub) Produced by NCHQ

a. In this context a Min Sub serves the purpose of alerting the relevant Minister's Private Office to an incident involving naval personnel that could break in the Press with news that it is thought will reflect badly on the reputation of the Royal Navy as well as the wider MOD or *in extremis* the UK Government. With the appropriate lines in place and the relevant background to the incident, the Minister will not be caught unawares if the matter is addressed to them either in Parliament, by the media, or by communication direct with the Private Office.

b. Determining the requirement for, and timing of, a Min Sub will be agreed between NAVY CULTURE-DISCIPLINE HEAD SO2 and Pol Sec on a case-by-case basis, however based on experience the criteria that have most frequently been found to make this necessary are as follows:

(1) Criminal incidents occurring overseas especially in EU countries, countries of NATO allies and countries where diplomatic relations may be sensitive and thus the British Government as well as the department may be caused embarrassment.

(2) Serious crimes that reflect badly on the standard of conduct of naval personnel when they are off duty.

(3) Serious crimes that have a particular relevance to current issues already in the news.

(4) Serious crimes that can be viewed as sensitive in the current political climate.

(5) Serious crimes involving the abuse of young recruits to the Royal Navy.

(6) Serious crimes involving equality and diversity issues.

c. One or more of these criteria may be applicable to a particular case but one can be enough to trigger the requirement for a Min Sub to be prepared. In many less-serious cases it will be sufficient for the Private Office to be alerted by a copy of the DNB.

d. When a case clearly requires a Min Sub, a submission will be made to the Private Office as soon as sufficient detail of the case is obtained from the ship/unit and further updates provided whenever significant developments occur. NAVY CULTURE-DISCPLINE HEAD SO2 will prepare the draft for agreement with NAVY MEDIA/COMMS and clearance by NAVY SEC-HD.

e. The Min Sub for reporting of discipline matters follows a format including the current DNB as an Annex. Particular care will be taken to ensure consistency between the Min Sub and the DNB, although it is possible that the Min Sub will contain rather more background information for the Minister than is made available to Navy Comms and the MOD Press Office in the DNB. Information provided as background may include sensitive personal data and therefore be subject to data protection rules; it may also include information that is sub judice and not to be disclosed without permission of the author.

SECTION 18

DIVISIONAL ATTENDANCE AT COURTS

20118. Guidance for Attending Officers

a. This guidance should be read in conjunction with BRd 2 Art 3903.

b. If a member of the Royal Navy is to appear in the Crown or Magistrate's Court, an officer (usually the Divisional Officer/Troop Commander (DO)) should normally attend. Divisional representation from another ship or establishment better placed than the accused's own may be arranged. For minor offences dealt with in the Magistrates Court it may not be necessary for divisional staff to attend and guidance may be sought from a Legal Adviser if required.

c. Prior to attending court, DOs should receive a brief from the Command Adviser, Adjutant or G1 Adviser on the purpose of their attendance, the information they may give the court, and the information they must obtain from the court. They should wear smart plain clothes in court.

d. Attending Officers should be ready to assist the court in the following areas:

(1) **Character.** DOs may testify as to the person's character. Where available they should take a copy of the rating's appraisal reports to assist them, but these should not be given to the court unless the person consents or the court so directs. The Formal Disciplinary Record (including print of JPA discipline record/S3300D Conduct Record (where still held)) should not be taken, or given to, the court.

(2) **Pay Details.** Broad details of pay should be obtained from the UPO/JPA.

(3) **Likely Penalty.** A court may be particularly interested to know whether an individual is likely to be discharged from the Service or whether the Service would be able to accommodate someone who has been made subject to a Community Sentence. The decision on discharge from the Service lies with the CO and Higher Authority and will take into account many factors. The DO cannot give anything more than a broad answer. A useful line to take, both to the court and to any press, is as follows:

> "In line with the principle that any employer is entitled to consider the effects of a conviction in a civilian court upon an employee's position, the Royal Navy/Royal Marines reserves the right to take any administrative action against any Service personnel so convicted. The type of action will very much depend upon the nature of the offence and how it reflects on the person's character and reputation, the punishment imposed by the court and in serious cases could result in termination of service."

(4) Payment of a fine through deduction from pay is not allowed save in exceptional circumstances. The responsibility for paying the fine remains the individuals, and the court will usually allow payment by instalments. In certain circumstances, however, the Defence Council may order deductions from a person's pay in satisfaction of the amount ordered by a civilian court (see the MSL Chapter 20 (Forfeitures and Deductions) and JSP 754 for further guidance).

(5) **Bail.** If the court has to decide between remanding the individual on bail or in custody, the individual should be encouraged, through their legal adviser, to ask for bail. Courts have a variety of possible bail conditions but may assume, incorrectly, that the Service can supervise such conditions. The Service can usually provide the individual with Single Living Accommodation in a suitable area, but no undertaking can be given to the court that the Service will supervise bail conditions. If the court appearance is abroad there is a strong Service interest in the individual being granted bail.

(6) **Community Orders.** The Community Order (see note below) is the sentence of the court, not of the Service, but a court may inquire whether, if the rating were retained, a Community Order would be consistent with their service in the Royal Navy. As a general rule no assurance should be given that an individual's duties can be arranged to allow compliance with a Community Order. It is, therefore, important that the court is informed of the individual's Service commitments. Where, however, a Community Order can be carried out over evenings and weekends without detriment to Service duties, the imposition of a Community Order, instead of a custodial sentence, is to the benefit of both the Service and the individual. Normally a Pre-Sentence report (written by a Probation Officer) will be requested before such a sentence is imposed. The Probation Officer (if at court) may seek assistance from the DO.

Note. *Courts are able to choose different elements to make up a bespoke Community Order which is relevant to the offender and the crime(s) they committed. There is a range of requirements available within a Community Order including: unpaid work, participation in specified activities, participation in programmes aimed at changing offending behaviour, prohibition from certain activities, curfew, exclusion from premises or locations, residence requirements, drug treatment, alcohol treatment, supervision and (for offenders under 25) attendance at a centre. For offenders under 18, youth rehabilitation orders may also be available.*

(7) **Suspended Sentences of Service Detention.** In light of a subsequent conviction for an offence, AFA 06 enables COs to commit to detention those already under a suspended sentence of detention where the sentence was imposed summarily or by the SAC. Such action is NOT a consequential penalty, but part of the summary discipline process. In addition, where the offender has committed an offence whilst under a suspended sentence of detention (or imprisonment or a detention and training order) imposed by a CM, the CM has the power to activate the sentence. COs should report such offences to the Court Administration Officer, and the DSP will decide whether to apply for CM activation proceedings. DOs should be prepared to advise the civilian court that such action is a possibility which may be considered by the CO and should note any comments made by the court in relation to the matter. No undertaking should be given, however, as to whether such action will be taken or the likely outcome of such proceedings.

e. DOs should take a blank copy of Form C57 to the court. Ships and establishments are advised to produce a DO's Attendance at Court Proforma to ensure that the CO is provided with all the relevant information. In summary, the DO should:

(1) Establish the circumstances of the offence and arrest.

(2) Record the details of the court, and the date and time of the court appearance.

(3) Record the wording of the charge(s), including the Act and Section.

(4) Record the plea.

(5) Record the sentence of the court.

(6) Summarise the court's sentencing considerations.

(7) Provide an immediate update to NAVY CULTURE-DISCIPLINE HEAD SO2 where the case meets the criteria mentioned in Para 20111.

f. In a few isolated cases, Court ushers have reprimanded Attending Officers for taking written notes of court proceedings. For clarity, those Court ushers have been misguided. The Criminal Practice Directions issued for use in civilian courts make clear that so long as it does not interfere with the proper administration of justice, anyone attending court 'may quietly take notes, on paper or by silent electronic means'[25]. Attending Officers, if challenged by a Court usher, should highlight this fact to ensure that they are able to take a full record to report back to the accused's CO. In exceptional cases, the Judge may prohibit note taking 'if that is necessary and proportionate to prevent unlawful conduct' or there is reason to believe that the individual(s) are in fact engaged in the transmission of live text-based communications[26]. The default position therefore is that those attending public court hearings should be free to make notes of what occurs without seeking permission from the Judge unless the activity is likely to interfere with the course of justice.

g. Court Clerks are generally helpful and approachable; once the Judge or Magistrate has left the courtroom the DO can speak to the Clerk.

h. It is normal practice for the accused's name and address to be disclosed in court and many journalists will subsequently report these details in the media. Attending Officers should ensure that the accused is aware of this fact and encourage them to raise any resulting security concerns with their legal representative (or with the court directly if they are un-represented). In certain circumstances, it may be possible for the court to make an order banning publication of the accused's identity and/or address details.

[25] Criminal Practice Direction 1 paragraph 6D.1.
[26] Criminal Practice Direction 1 paragraph 6D.2.

SECTION 19

ADMINISTRATIVE ACTION FOLLOWING CONVICTION

20119. Guidance on Dealing with Convictions

a. Regulations relating to the reporting of convictions and the Service's entitlement to take action as a result are contained in BRd 2 Chapter 39, which should be read in conjunction with this Section. Legal advice should be sought using the Request for Legal Advice - Service Penalty form at Annex 20V.

b. The purpose of this Section is to outline the criteria to be applied by COs and Higher Authorities in determining whether or not to take administrative action against a Service person who has been convicted of an offence, either within the UK or abroad. This is referred to as a Service Penalty. This is not a further punishment but enables the Service, as an employer, to decide whether in light of a conviction an individual is fit to remain in the Service, remain in their rank or rate or retain an unblemished Service record. The criteria have been carefully drawn up, and Service Penalties should be applied consistently. A key aim of the Service Penalty is to achieve comparable consequences for those convicted under different systems. This action will be less common following conviction in the Service Justice System because a wider range of punishments are available, but the same principles apply. The Service is also entitled to take into account character and conduct when considering whether individuals may hold superior rank or rate or be employed in positions of particular authority. Legal advice must be sought in all cases, even where the CO considers that a Service Penalty should not be imposed. In the case of officers, Censure action (or administrative discharge as appropriate) will be considered in accordance with this Chapter. Form C57 should be used to record officers' civil convictions and censure action taken (including no censure).

c. The approach that a CO should take is as follows:

(1) **Can the individual continue to serve?** In some cases, a conviction will call into question an individual's suitability for retention. This may be because:

(a) The nature of the offence is fundamentally incompatible with Service values and standards or has irredeemably damaged the trust between the individual and the Service.

(b) Where an offender was convicted in a civilian court, the seriousness of the offence as indicated by both the charge sheet and the court's sentence would have been likely to lead to dismissal had they been sentenced under AFA 06.

(c) The effect of the punishment, alone or in combination with any registration or offender management requirements, is incompatible with further service.

(d) The nature or circumstances of the offence dictate that retention would have such a detrimental impact on Service reputation or morale that discharge is appropriate. In these circumstances, discharge should be considered. If the individual can continue to serve, go to sub-paragraph (2) below.

(2) **Can the individual continue to hold the same Rank or Rate?** Where the circumstances of the offence do not rule out further Service, the CO must consider whether it indicates that the individual can no longer exercise the responsibilities required by their rank or rate. This may be because:

(a) The offence calls into question their suitability to exercise leadership and command.

(b) The effect of the offence or punishment is incompatible with discharging their professional responsibilities (e.g. the individual has lost a necessary professional registration).

(c) In these circumstances reversion/reduction in rank should be considered. Where an individual cannot be reverted/reduced in rank but cannot continue to serve in their current rank or rate, then discharge should be considered.

(3) **Can the Individual Continue to Progress Unchecked in Their Career?** Would the offence, in combination with the offender's Service record (their conduct record and annual appraisal) have attracted a punishment which would incur a Career Check in accordance with BRd 3(1) Annex 20C? If the answer is 'yes' then a Career Check should normally be imposed.

d. Table 20-7 outlines the Service's policy in relation to Service Penalties in the light of a conviction for a particular offence. The penalties indicated are starting points, not a rigid tariff, and each case must be considered on its merits. In cases that are particularly minor, or serious, in the context of the offence charged it may be appropriate to move up or down the scale of penalties. Legal advice will give consideration to the merits of the case, as well as the views of the CO, in advising on the appropriate Service Penalty.

e. If the CO proposes not to impose a Service Penalty, legal advice is still required and a C57 must still be raised to record any civil conviction and the CO's reasons for not imposing a penalty. This is primarily because there is a requirement to keep a record of civil convictions, whether or not they lead to a Service Penalty. In addition, if a C57 is not raised and, for example, in preparation for a later Court Martial trial totally unconnected with the civil conviction, a prosecuting authority runs an antecedents check on the Police National Computer, the conviction will be shown but there will be no record of a C57 in the accused's Conduct Record. The suspicion may then arise that the accused has committed an offence of not reporting a conviction by the civil power to Service authorities.

f. Notwithstanding the table below, iaw KRRNs Art 3906(7), where a civil conviction has resulted in the imposition of a custodial sentence, whether suspended or committed, the decision as to what Service Penalty should be imposed is to be taken at a level no lower than Dir P&T/NavSec.

20120. Offences and Naval Penalties

The following Table gives starting points for Service Penalties.

Table 20-7. Offences and Naval Penalties

Service Penalty	Offences
Career Check	• Serious offences of careless driving • Drink driving offences (first offence and under 3½ times the legal limit - see Notes) • Driving whilst disqualified by court order • Battery or common assault • Low level assaults occasioning actual bodily harm • Serious criminal damage
Reversion (Requires approval in accordance with Annex 54A)	• Assault occasioning actual bodily harm • Low level offences of wounding or inflicting GBH (s.20 OAPA 1861) • Minor dishonesty offences • Drink driving (second offence (where the first conviction is not spent under ROA 74) or if 3½ times the legal limit - see Notes) • Low level arson • Affray
Discharge SNLR (Requires approval in accordance with Annex 54A)	• Drugs offences • Very serious criminal damage • Arson and aggravated arson • Sexual offences • Domestic abuse[27] • Criminal harassment • Hate-related offences • Burglary • Robbery • Causing GBH with intent (s.18 OAPA 1861) • Dishonesty other than very minor • Homicide

[27] Domestic Abuse is not a specific criminal offence in England and Wales; see paragraph 20123 below.

Notes:

1. The limits for alcohol in England, Wales and Northern Ireland are:

   35 microgrammes of alcohol in 100 millilitres of breath.

   80 milligrammes of alcohol in 100 millilitres of blood.

   107 milligrammes of alcohol in 100 millilitres of urine.

2. The limits for alcohol in Scotland are:

   22 microgrammes of alcohol in 100 millilitres of breath.

   50 milligrammes of alcohol in 100 millilitres of blood.

   67 milligrammes of alcohol in 100 millilitres of urine.

3. The limits for alcohol in England, Wales and Northern Ireland are higher than the limits for alcohol in Scotland. As a matter of policy, and to ensure parity of treatment for Service personnel throughout the UK, the limits for England, Wales and Northern Ireland will apply for the purpose of Service Penalties.

20121. Offences Related to Unlawful Making and Storing of Images of Minors

a. There is a strong tri-Service presumption that sexual offending, including indecent images, will result in discharge. But each case should be considered on its merits.

b. In making a recommendation, COs are to take into account the full facts of each case. It is important to establish the basis upon which a court sentenced an individual. The key facts to establish are the number of images held and the seriousness of each image. Images are normally classified into three categories of seriousness ranging from Category A (most serious) to Category C (least serious). Units are to note in detail the precise charges and the total number of images involved, often represented by sample charges, as well as the level of seriousness of the images. Sentencing remarks in court will also usually give an indication of the overall seriousness of the offending behaviour and therefore care should be taken to accurately capture such remarks, word for word if possible.

20122. Offences Contrary to Service Values and Standards

Some offences are by their nature fundamentally at odds with the Values and Standards of the Royal Navy. Commission of such offences will always reflect extremely badly on the character, trustworthiness and employability of the individual, and may also reflect on the reputation of the Service. A presumption of discharge exists where an individual has committed:

a. A sexual offence; or

b. An offence demonstrating hostility to a group or individual based on a protected characteristic.

20123. Domestic Abuse

Domestic Abuse is defined in the Domestic Abuse Act 2021 Section 1. This covers a variety of behaviours between people with many different types of relationships. The fact that an offence falls within this definition will often not be apparent from the charge and care must be taken to interrogate the circumstances of each case to establish whether the presumption of discharge is engaged. In most cases, domestic abuse will involve abuse of power and it is this which gives rise to the presumption of discharge. In some cases, the facts of the offence may indicate that there is no such power dynamic, for example where a fight occurs between siblings; in these cases, a lesser penalty may be appropriate.

20124. Custodial Sentences

Where a civil conviction results in the imposition of a custodial sentence, including a suspended sentence, there is a strong presumption that the individual will not be fit to remain in the RN, as by its sentence the court has indicated that a serious offence has been committed. Discharge SNLR (Ratings) or Misconduct (Officers) will usually be appropriate. Where exceptional circumstances lead the delegated authority to consider retaining someone subject to a custodial sentence, NAVSEC/DirP&T must be consulted. In addition, it may be appropriate to direct forfeiture of pay in accordance with the MSL Chapter 20 (Forfeitures and Deductions). Legal advice must be sought in all cases. Whenever a custodial sentence is imposed an updated Annex U should be raised.

20125. Committal for Contempt

The Service Penalties authorised by KRRN 3906.4(d) are intended to follow criminal convictions and are inappropriate for individuals who are committed to prison for default in payment of court orders or for other forms of contempt. COs have the option of granting leave, from annual leave allowance, for the relevant period, if the circumstances justify it. Where it is inappropriate to grant leave or the offender's leave balance is zero, COs should consider whether the offender's pay should be forfeit for the period committed for contempt. See the MSL Chapter 20 (Forfeitures and Deductions) for guidance. Legal advice should be sought in these circumstances.

20126. Binding Over

The power to bind a person over to keep the peace and/or to be of good behaviour can exist both where there has been a conviction (when it can be imposed in addition to a fine or punishment) and where there has not. In effect, the court requires the individual to promise to be of good behaviour for a specified period. Where no conviction is imposed, for instance, when the Magistrates decide not to try a complaint of a trivial nature but instead offer the option to be 'bound over', a Service Penalty cannot be imposed.

20127. Absolute and Conditional Discharge

An absolute or conditional discharge is an order of a Magistrate or Crown Court following a conviction for an offence. While Service Penalty action should always be considered, the type of discharge imposed will determine whether Service Penalty action can be applied under the Rehabilitation of Offenders Act 1974. To that end, legal advice must always be sought when considering possible Service Penalties following sentences of conditional discharge.

20128. Police Cautions

a. If the Civil Police form the view that the offence is not serious enough to justify criminal proceedings, they have the discretion to issue a Police Caution (PC). Increasing use of PCs is being made, however, in cases which would be regarded, particularly when committed by Service personnel, as more serious. Typical examples are theft and unlawful possession of controlled drugs.

b. Amendments to the Rehabilitation of Offenders Act 1974 make the determination of Service Penalties for PCs particularly complex. Since November 2009, Simple Police Cautions become spent immediately after they are issued, while Conditional PCs become spent on completion of the condition. Where PCs are considered spent, an employer is restricted in their ability to ask questions or take action in relation to that caution. There are a number of exceptions to the 1974 Act that apply to the Armed Forces, and in certain circumstances a PC issued to some personnel, such as RNP, lawyers, medical personnel or those involved in youth training, may trigger appropriate administrative action. Legal advice should be sought whenever a CO becomes aware that one of their personnel has received a PC.

c. No Service disciplinary action under the AFA 06 is to be instituted for an offence for which a PC has been given.

d. **Scotland.** PCs are not issued in Scotland, where a Fixed Penalty Notice (FPN) may sometimes be issued for minor offences. The Procurator Fiscal also has discretionary power to give an oral or written warning in suitable cases, rather than proceed to trial. These ‘Alternatives to Prosecution’ should be considered in the same way as a PC issued in England and Wales. Where other Scottish penalties are issued legal advice should be sought.

20129. Fixed Penalty Notices/’Community Resolutions’

FPNs, issued by Police Officers, and ‘Community Resolution’ measures do not normally require C57 action and will not normally attract a Service Penalty. But where the FPN/Community Resolution is made in relation to behaviour considered incompatible with Service life, such as for possession of illegal drugs, other administrative action may well be appropriate. Where a CO is considering administrative action following an FPN, legal advice should be obtained.

20130. Giving Reasons

The CO or Higher Authority deciding upon a Service Penalty must give reasons. These are to be explained to the individual when they are informed of the penalty.

20131. Administrative Notes for Service Penalties

A Service Penalty of a Career Check has no permanent effect on an individual under the age of 17½.

20132. Civil Offences Committed During the Operational Period of Suspended Sentences

Where an offender is convicted by a civilian court of an offence committed during the operational period of a suspended sentence of Service detention imposed summarily or of a suspended sentence of Service detention or imprisonment imposed by the CM, COs should consider whether the suspended sentence should be activated or whether the offence should be reported to the Court Administration Officer with a view to CM activation proceedings. In all such cases legal advice should be sought.

20133. Requirement to Allow Representations Before imposing a Service Penalty

Before imposing a Service Penalty, the individual is to be reminded of their right to make a representation (BRd 2 3906.8).

20134. Right to Complain Against Service Penalty

After imposing a Service Penalty, the individual is to be reminded of their right to submit a Service Complaint (JSP 831 and BRd 2 Chapter 42). The effect of the penalty will not be held in abeyance pending consideration of the complaint.

20135. Impact of Pending Appeal on Imposition of Service Penalty

If the individual is appealing against their civil conviction or sentence, then reference should be made to BRd 2 Art 3906.12.

20136. Recording Service Penalties

a. All civil convictions and associated Service Penalties must be recorded in JPA Discipline under 'Warnings and Sanctions' (JPA W&S) in accordance with the relevant JPA Business Process Guide (BPG). This reporting includes the requirement for details of all civil convictions to be recorded in JPA W&S.

b. The Form C57 is to be used as a record of the CO's action and for submission to Higher Authority when approval is required for the penalty proposed. Blank forms may be requested from the Regional Legal Office. It can also serve as a template in which to collate the details that will need to be input to JPA W&S. Instructions for the completion of Form C57 are at the section below.

c. In addition to details of Service offences/convictions, details of civil convictions (including the relevant rehabilitation period) and consequential Service Penalties occurring after 31 October 09 can be printed automatically from JPA as the Formal Discipline Record (FDR) which has superseded the paper Conduct Record.

20137. Review of Service Penalties

Service Penalties are reviewed by the Summary Hearing Review Cell (SHRC). The JPA record and a copy of the C57 is to be forwarded to the SHRC within five working days of completion.

20138. Form C57 Service Penalty for a Civil Conviction - Completion

All sections must be completed as follows (those not applicable should be annotated as such):

a. **Section A.**

(1) Insert Date, Time and Place of Arrest.

(2) Insert Date and Time of which leave expired (including night leave). Insert Date and Time of return to Ship/Unit if the accused subsequently attends Court.

(3) Insert all period(s) accused is absent from ship/unit to attend court (use attached sheet if required).

(4) Insert date Convicted at Court or date of PC.

(5) Enter details of Court in which charged or Police Station in which cautioned.

(6) Insert rank/rate and name of Court Attending Officer.

(7) Insert Offence(s) in exact terms of Charge(s) (Attach sheet if necessary).

(8) Insert Order of the Court in exact terms of the order and state whether the fine/costs have been paid, if ordered.

b. **Section B.**

(1) Tick either ‘Yes’ or ‘No’.

(2) Tick either ‘Yes’ or ‘No’.

(3) Tick either ‘Yes’ or ‘No’. If ‘Yes’, insert rate to which Reversion is being considered.

(4) Tick ‘Yes’ or ‘No’. If Discharge SNLR, Discharge SHORE or Reversion is imposed, then a CC is automatically incurred.

(5) No longer applicable.

(6) Insert Rehabilitation Date: see separate instructions on Rehabilitation of Offenders. This date starts from the date of Conviction/PC at Section A4.

(7) In CO’s Observation box, in addition to the penalty imposed, ensure that the fact that the individual has been given the right to make a representation and right to make a complaint in accordance with Paras 20133 and 20134 above is recorded.

(8) On completion of the Request Hearing the C57 must be signed by the Commanding Officer.

c. **Section C.** Completed by Higher Authority if required.

d. **Section D.** Forfeiture of Pay and Time is no longer imposed.

e. Where the CO implementing the administrative action takes a particularly severe or lenient course of action, this must be explained in the CO's box on the reverse of the form. Any letters or accompanying documents are to be attached to the C57.

SECTION 20

JPA DISCIPLINE REPORTING AND RECORDING PROCESS

20139. The Importance of Discipline Reporting and Recording

a. Maintenance of accurate disciplinary records is an important personnel management function which supports the disciplinary process, the Service Justice System, and allows the RN to comply with a number of statutory obligations. Sufficient information must be recorded in JPA to ensure that live discipline can be monitored, and an accurate record is maintained of completed disciplinary action.

b. A JPA record must be created by the investigator as soon as an investigation has commenced and must be regularly updated by the unit JPA discipline owner until completion of the case, when the record must be forwarded to the SHRC for review and closure. If at any stage during the disciplinary process the accused is reassigned, it is the responsibility of the 'losing' unit to assign the JPA discipline record to the appropriate JPA Discipline Group at the 'gaining' unit.

c. The following table outlines the JPA tasks that may be required. All JPA actions should be in accordance with the relevant BPG. Issues are to be raised at the earliest opportunity with the SHRC.

Table 20-8. Disciplinary Cases: Information to be recorded on JPA

Event To Be Recorded	Timescale	JPA Task
Creation of a Disciplinary Case (SL Crown Case) and subsequent SL Suspect Case on JPA. Details to be recorded include: • Details of the person(s) under investigation (Crown Case anonymous) • Unit details • Start and end dates of the investigation • Alleged offence(s) committed • SPCB IRN • Add investigation notes or documents to the SL Suspect Case as per the BPG	Within 24 hours of the start of a disciplinary investigation.	**Do not create tasks in the SL Crown Case.** The following task will auto populate when selecting type of investigation when adding the suspect to the SL Suspect Case. **SL Serv. Police Investigation** or **SL Unit Investigation**.

(Continued)

Table 20-8. Disciplinary Cases: Information to be recorded on JPA (Continued)

Event To Be Recorded	Timescale	JPA Task
Where Armed Forces Code of Practice for Victims of Crime 2015 applies: The conduct of a **Needs Assessment** in respect of the complainant. Details to be recorded include: • Whether the complainant is assessed to be vulnerable, intimidated, a victim of the most serious crime, or persistently targeted. • Whether the complainant has requested the use of special measures. • Whether the complainant has requested special investigation measures. • Confirmation that the complainant has been handed a "Victims Leaflet".	Within 24 hours of the Needs Assessment.	
Where Armed Forces Code of Practice for Victims of Crime 2015 applies: The assignment of a **Victim Liaison Officer** (VLO). Details to be recorded include: • Name and contact details of the VLO. • Confirmation that the VLO has been briefed by the Command on their duties and by whom.	Within one working day of a suspect being identified where the alleged victim is a victim of the most serious crime, persistently targeted, or vulnerable or intimidated. For all other cases, within three working days of a suspect being identified.	Add VLO details in Related Objects.
(*As applicable*) **Discontinuance** of a disciplinary investigation by the RNP, RMPT or unit investigator. SPIS, SPCR or Annex I is to be completed and uploaded to JPA.	Within 24 hours of a decision to discontinue a disciplinary investigation. **SHRC to be informed by email**.	For RN/RM Police add **SL Progress to SH Review** task and assign to the SHRC For Unit investigation add **SL CO Review** task with reasoning and **SL Progress to SH Review** task to assign to SHRC for closure
Referral of a Service Police Case Referral (SPCR) or Unit Investigation (UI) to the CO or the DSP. Details to be recorded include: • Date and means of despatch. • Intended recipient. • Recommended charges. • Ensure case is assigned to the Unit of the Suspect	Within 24 hours of referral to the DSP or CO.	Change the Group and Owner on the Workbench to move the case to the Command Adviser of the suspect's Unit CO. Add **SL Refer to Prosecuting Authy** if referring straight to DSP.

(Continued)

Table 20-8. Disciplinary Cases: Information to be recorded on JPA (Continued)

Event To Be Recorded	Timescale	JPA Task
Receipt of a SPCR or UI by the accused's Commanding Officer (CO).	**Within 24 hours of receipt by unit of SCPR or UI.**	**Add details to SL Serv. Police Investigation or SL Unit Investigation**
(*As applicable*) **Informing HA** of the JPA record (3CDOX and 3 Cdo Bde - Army only). Details to be recorded include: • Date HA informed	On submission of notification.	Create **SL Notify HA** task and assign as group and assignee **HQ 3 CDO BDE RM Discipline**.
(*As applicable*) Submission of a **Request for Legal Advice**. Details to be recorded include: • SR Number • Date of request • Relevant Regional Legal Office • Date of proposed Summary Hearing • SLA must be sought to discontinue a charge referred to CO by the Service Police.	Within 24 hours of submission of request.	If no legal advice requested create an **SL CO Review** task and include explanation of why no legal advice was sought by the CO. If legal advice sought, create **SL Legal Advice** task and include the date Legal Advice was requested.
(*As applicable*) **Receipt of Legal Advice**. Details to be recorded include: • Date of receipt. • Name of advising lawyer.	Within one working day of receipt of advice.	Add date Legal Advice received to **SL Legal Advice** task.
(*As applicable*) **Applying for Extended Powers**. Details to be recorded include: • Date EPs requested. • Date EPs were granted/rejected. • Details of what EPs have been approved and the details of the HA (Superior Officer)	Within 24 hours of submission of request.	Create **SL Request Extended Powers** task. Attach request and Annex T to JPA record. Add Superior Officer to related objects.
(*As applicable*) **Referral of a case to the SPA**. Details to be recorded include: • Date of despatch. • Unit's location at time of despatch.	Within two working days of despatch.	Create task **SL Refer to Prosecuting Authy**. and enter dates.
(*As applicable*) **Acknowledgment of receipt by SPA** of case referral, including the date of receipt.	Within two working days of unit's receipt of SPA's acknowledgment letter.	Add details to **SL Refer to Prosecuting Authy.** task.

(Continued)

Table 20-8. Disciplinary Cases: Information to be recorded on JPA (Continued)

Event To Be Recorded	Timescale	JPA Task
(As applicable) A decision not to bring any charges against an accused or not to refer the case to the SPA. Details to be recorded include: • The date the accused was informed of the decision and by whom. • Confirmation that any victim has been informed of the decision and by whom.	Within two working days of the accused being informed of a decision not to bring any charges against them.	Enter details in relevant task already created.
(*As applicable*) *Where Armed Forces Code of Practice for Victims of Crime 2015 applies:* **A decision by a victim to exercise their right to a review** of a CO's decision not to bring charges / not to refer the case to the SPA, including the date of the victim's decision.	Within 24 hours of the victim's decision being communicated to the CO.	Enter details in relevant task already created.
(As applicable) *Where Armed Forces Code of Practice for Victims of Crime 2015 applies and following a request by a victim for a review of a CO's decision not to prosecute*: **The appointment of a new bespoke CO** for disciplinary purposes. Thereafter all actions are to be recorded on JPA on behalf of the bespoke CO.	Within 24 hours of the appointment of the bespoke CO.	Create an **SL Bespoke Appointment of CO** task and enter details. Enter details in related objects.
(*As applicable*) **A decision by the SPA not to bring any charges against the accused**. Details to be recorded include: • The date the CO was informed of the SPA's decision. • The date the accused was informed of the SPA's decision.	Within two working days of the accused being informed of a decision not to bring any charges against them.	Attach the Non-Direction or similar letter to the record and record in **SL Refer to Prosecuting Authy.** task. Create an **SL Progress to SH Review** task to assign to SHRC for closure.
The bringing of charges against the accused. Details to be recorded include: • The date and time of charging. • The nature of the charges brought (*alleged offences only – the full wording of the charge is not required).*	Within 24 hours of the accused being charged.	Create an **SL Summary Hearing** task and add basic details for future tasks.

(Continued)

Table 20-8. Disciplinary Cases: Information to be recorded on JPA (Continued)

Event To Be Recorded	Timescale	JPA Task
The outcome of any Summary Hearing, including: • **The date of the hearing** • **Whether or not the relevant charge(s) was/were found proven or not proven.** • **Whether or not the accused admitted the relevant charge(s).** • **Any punishment imposed.** • **Any Administrative Sanctions.**	Within 24 hours of the completion of the Summary Hearing.	Update the SL Summary Hearing task and then update the Workbench and Charges/Warning and Sanction task to include the charges and punishments, as per the BPG/Guide.
The despatch of the Record of Summary Hearing to the Summary Hearing Review Cell.	Where a sentence of detention is imposed (included as suspended sentence) within 24 hours. For all other cases within 48 hours of the completion of the Summary Hearing.	Create **SL Progress to SH Review** with date sent, Do not enter closed date as will not appear in SHRC worklist. Assignee Type **Group** and Assignee is **NAVSEC Discipline**. Attach Annex A to SR and email SHRC to capture actions.
(*As applicable*) **An offender's decision to exercise their right of appeal** post Summary Hearing to the Summary Appeal Court (SAC). Details to be recorded include: • Whether the appeal is against finding and/or punishment.	Within 24 hours of the offender exercising their right to appeal. **SHRC is to be informed**.	Create **SL Summary Hearing Appeal** task and enter details. Attach the Appeal documents.
(*As applicable*) **The date of referral of a case to the SPA following the exercise by an offender of their right to appeal to the SAC**.	Within 48 hours of the offender exercising their right to appeal	As above.

(Continued)

Table 20-8. Disciplinary Cases: Information to be recorded on JPA (Continued)

Event To Be Recorded	Timescale	JPA Task
Court Martial. Once a case is referred to the SPA and a decision taken to prosecute record the following details: • Details of Legal Aid request and confirmation. If RN Barrister used enter dates of Legal Aid discussion and date when refused. • Details of all Preliminary Hearings. • Details of the Court Martial and whether the case was discontinued pre-trial, was tried, or was adjourned for sentencing proceedings. • Details of charges, redacting any victims under the SOA 03 as it is a criminal offence to name such a victim, whether the verdict guilty or not, their anonymity protected. • Punishment for each charge found guilty (no global imposition) • Assign the record to the SHRC to review the JPA record.		
Auditing and managing the Unit JPA Discipline Worklist.	Only live cases belonging to the Unit CO on worklist, other cases closed or assigned to subsequent Unit.	CO seeks assurance this is managed by their HR staff.
Managing physical SL and WS records.	Records retained and indexed in Unit or archive iaw JSP 441 and USO.	CO seeks assurance this is managed by their HR staff and USO.

d. Units remain responsible for recording details of CM, including pre-hearings and the trial. This will include the CO/Sub Cdr/Judge, accused's AO/DAO, outcome, sentence imposed and any consequential penalties. On completion, the record must be forwarded to SHRC for review and closure.

20140. Conduct Record and Formal Discipline Record

a. The arrangements for maintaining the Conduct Record for ratings are set out at Chapter 58 Annex 58K Para 10). The conduct record may be printed automatically as the 'Formal Discipline Record (FDR)' from data held in JPA HR and Discipline records compiled by ships/units. Where required (e.g. for consideration pre-sentencing at summary hearing), the FDR can be printed using the procedure published by SPVA in the JPA Portal (Instruction to Produce Disciplinary Document {Task 46}).

b. Any conduct history paper records prior to 31 October 2009 (i.e. RN Forms S3300d and S2200e) should be forwarded to NAVY SEC-DISCELL MAILBOX (93832 8692/ 02392 628692) to ensure the completeness of the RN Legacy Discipline Database.

c. Any unit or organisation requiring assistance with pre-JPA discipline records should contact NAVY SEC-DISCELL MAILBOX (93832 8692/02392 628692).

SECTION 21

IMPLEMENTING THE REHABILITATION OF OFFENDERS ACT

20141. The Act and its Effects

a. The general purpose of the Rehabilitation of Offenders Act 1974 (the 'Act') is to enable all but the most serious criminal offender to live down their criminal record after a specified period of time and, provided they do not acquire a fresh conviction during that period, to behave as if the conviction had not occurred. Once a conviction has been rehabilitated it is known as 'spent'. Many of the provisions of the Act were extended to Northern Ireland under the Rehabilitation of Offenders (Northern Ireland) Order 1978 and all references in these instructions to the 1974 Act should be taken to refer equally to the Northern Ireland Order 1978. These instructions apply to all members of the regular and reserve forces of the Royal Navy. In March 2014 significant changes were made to the rehabilitation periods under the 1974 Act, with many punishments to be regarded as being spent immediately: the guidance below reflects these changes.

b. The main effects for Service administration (subject to the exceptions at Para 20144) are as follows:

(1) Questions asked about previous convictions, offences or conduct are deemed not to relate to spent convictions and a person may lawfully answer accordingly (s.42(2)) [s.5(2)][28].

(2) A spent conviction, or any of the ancillary circumstances of a spent conviction, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing them in any way in any occupation or employment. Any person who does so is acting unlawfully. (Ancillary circumstances means the offence which was the subject of the conviction, or the conduct constituting the offence, or any proceedings preliminary to or following conviction such as an appeal, and any sentence, or anything done in pursuance of or in compliance with any sentence)(s.4(3)(b)) [s.5(3)(b)].

(3) It is an offence under the law, punishable by a fine (Level 4 for the disclosure of specified information and Level 5 or up to six months' imprisonment or both where specified information is obtained by means of any fraud, dishonesty or bribe) for a person to disclose information relating to a spent conviction to another person otherwise than in the course of their official duties (s.9(2)) [s.10(2) and (6)].

(4) Evidence relating to both spent and unspent convictions and ancillary circumstances remain admissible in any Service disciplinary proceedings or in any proceedings or appeal from any Service disciplinary proceedings (s.7(2)(b)) [s.8(2)(b)] (see para 20148.a.).

[28] Where a specific section of the Act is referred to, the corresponding Article of the Northern Ireland Order is given in square brackets.

c. It is therefore not lawful to take account of spent convictions, whether incurred before a person joins the Service or after, in any function involving personnel management other than disciplinary proceedings, unless the conviction is covered by exceptions listed later in these instructions.

d. The rehabilitation periods in England and Wales are shorter than the rehabilitation periods in Scotland and Northern Ireland. As a matter of policy, and to ensure parity of treatment of Armed Forces personnel throughout the UK, the Armed Forces will apply these shorter rehabilitation periods in its own internal processes.

20142. Application of The Act

The Act applies specifically to:

a. All civil offences dealt with under civil criminal proceedings.

b. All civil offences dealt with under service disciplinary proceedings i.e. those previously dealt with under Section 42 of the Naval Discipline Act 1957 (and similar offences under the Army Act applicable to the Royal Marines), or s42 of the Armed Forces Act 2006 (s.2(5)).

c. Any service offence dealt with under the Naval Discipline Act 1957 (or other service equivalent), or the Armed Forces Act 2006 (s.2(5)).

20143. Application of Rehabilitation Principle to Administrative Sanctions

a. The Act applies only to convictions. Where administrative action is used to address misconduct, it is RN policy that the rehabilitation principle should apply – and that sanctions (such as censures) should be treated as spent after a period of five years from the date of imposition (two and a half years where the subject is under 18 at the time of the imposition).

b. Administrative Action taken as a result of a civil conviction (a Service Penalty) is to be treated as spent in the same timescale as the offence to which it relates (noting that the rehabilitation period for an offence is set by reference to the sentence imposed).

c. Administrative decisions regarding character, conduct, badges, medals, reversion and forfeitures of pay and time which were correctly made at the time under the influence of a conviction which subsequently becomes spent are not altered retrospectively. The effect of the March 2014 changes to the 1974 Act, however, mean that even if a punishment and consequent administrative action were imposed prior to the changes, the rehabilitation periods are to be calculated by reference to the Act as it stands currently. In any event, all administrative sanctions are to have no effect after five years (unless a further conviction has occurred), and are thereafter not to be taken into account in administrative decisions.

d. Offences committed overseas which are subject to Service jurisdiction are subject to the 1974 Act.

20144. Extension of Rehabilitation Periods

The Act's provisions for extending rehabilitation periods are detailed later in this section; it should particularly be noted that a conviction for a summary offence by a civil magistrates' court does not extend earlier rehabilitation periods.

20145. Exceptions

Certain exceptions are made under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and Rehabilitation of Offenders (Northern Ireland) Order 1978 (Exceptions) Order 1979 of which the significant ones for Naval administrative purposes are as follows:

a. **Any Action Taken for the Purposes of Safeguarding National Security.** In effect this means vetting procedures and any consequential administrative action, and additionally in Northern Ireland for protecting public safety or public order.

b. **RNP, Medical, Legal and Dental Personnel.** The effect of this exemption is that evidence of spent convictions may be used when making administrative recommendations or decisions in respect of the personnel of the exempted branches. Nevertheless, exemption does not authorise uninhibited use of evidence of spent convictions. Records of all convictions, whether spent or unspent, may be placed before those making recommendations and decisions in these branches but spent convictions must be annotated as such, and should not be taken into account unless they indicate a lasting defect of character that could by itself, or in combination with other factors, render the individual unsuitable *for the actual duties being considered.*

20146. Administrative Action

a. The Act does not preclude keeping official records of convictions which have become spent, and indeed such records are necessary in connection with the proper use of spent convictions in Service disciplinary proceedings or where national security is affected. The Act does not prevent an official having custody of or access to such records in the course of their official duties. It provides that, if an individual in the course of their official duties has custody or access to records containing details of spent convictions, they must not disclose such information otherwise than in the course of their official duties, and must help ensure that such information is not used to the prejudice of the person concerned.

b. Wherever practicable those making decisions on matters such as advancement, promotion, assigning, re-engagement or consideration of administrative discharge should not have access to details of spent convictions. Should they see a conviction that may be spent they must, if there is no firm evidence that it has been extended, treat it as spent and disregard it for administrative purposes.

c. Where it is necessary for medical purposes to include in medical documents reference to activity of a criminal nature (e.g. drug abuse), no mention should be made of any conviction arising out of that activity or behaviour. A reference should merely be made to the particular activity, which requires a medical note to be recorded.

20147. Reports and Correspondence

a. Reports and correspondence should not normally contain evidence of spent convictions. When it proves necessary to refer to a spent conviction, it should be annotated as "spent".

b. Unspent convictions may be referred to in reports and correspondence, even when the conviction is shortly due to become spent (e.g. in the case of recent minor civil convictions). Care is required because the document concerned will require special handling both by the sender and recipients as soon as the convictions become spent. This should not inhibit reference to recent convictions when this is essential for the purpose of the report, but the date on which a conviction becomes spent should be stated.

20148. Disciplinary and Civil Court Proceedings

a. In summary hearings account may be taken of spent convictions when deciding sentence. Any spent convictions must be identified as such when they are brought to the notice of the officer hearing the case. Any questions relating to the use of such spent convictions should be referred to a Legal Adviser.

b. At CM proceedings the Judge Advocate is responsible for advising the court on the implications of the Act.

c. In proceedings in a civil court full details of all convictions, whether spent or unspent, should be provided, but the officer providing them must not refer orally to spent convictions in open court, except with the express leave of the court.

20149. Disclosure and Complaints

a. **External Disclosure.** Information on spent convictions is not to be given in response to enquiries from outside the Service, from home or overseas, unless the enquirer is able to provide evidence of exemption under the ROA 1974 (Exceptions) Order 1975. In cases of doubt on the disclosure of records of offences, spent or otherwise, outside the Services (other than in police or security vetting fields), NAVY SEC-DISCELL MAILBOX is to be consulted.

b. **Disclosure to a Rehabilitated Offender.** A rehabilitated person may, at their personal request, be provided with details of convictions spent under the Act, but any such requests must be referred to the sponsor, who will send the information direct to the applicant.

c. **Complaints.** Complaints about alleged breaches of the Act are to be referred through normal channels.

20150. Problems Arising

The implications of the Act are sometimes complex, and any cases of doubt should be referred to the POC. Advice in specific cases is available from Legal Advisers.

20151. Rehabilitation Periods

A summary of the most common (civilian and service) sentences, and their rehabilitation periods with effect from 10 March 2014 is set out in Table 20-9 below. Legal advice should be sought if there is any doubt.

Table 20-9. Rehabilitation Periods for Service and Civilian Sentences

Sentence		Adult (18+) when convicted	Under 18 when convicted	Note
		Rehabilitation period (from end of sentence (including any licence period) where indicated or from date of conviction where not)	Rehabilitation period (from end of sentence where indicated or from date of conviction where not)	
Custodial sentence (1)	Over 4 years	Never	Never	
	More than 30 months and less than or equal to 4 years	Seven years	Three and a half years	(2)
	More than 6 months and less than or equal to 30 months	Four years	Two years	(2)
	Less than or equal to 6 months	Two years	18 months	(2)
Service Detention including where the sentence is suspended		One year	Six months	(3)
A Community Order including a Service Community Order or Overseas Community Order (4)		Last day order has effect + 12 months	Last day of order + six months	(5)
A sentence relating to Removal from Her Majesty's service (including Dismissal and Dismissal with Disgrace)		One year	Six months	
Fine		One year	Six months	(6)
Compensation Order including a Service Compensation Order		The date on which the payment is made in full	The date on which the payment is made in full	
Reparation Order		Spent Immediately	Spent immediately	
Absolute Discharge , Admonishment , Discharge by Children's Hearing in Scotland following acceptance or judicial establishment of the commission of a criminal offence by the child		Spent Immediately	Spent Immediately	
Conditional Discharge, Bound over to keep the peace, Bound over to be of good behaviour, a Hospital Order, a Street Offences Act Order, a Referral Order under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000		Last day order has effect	Last day order has effect	(7)
A relevant order (not listed elsewhere) which imposes a disqualification, disability, prohibition or other penalty		Last day order has effect	Last day order has effect	(7)

(Continued)

Table 20-9. Rehabilitation Periods for Service and Civilian Sentences (Continued)

Sentence	Adult (18+) when convicted	Under 18 when convicted	Note
	Rehabilitation period (from end of sentence (including any licence period) where indicated or from date of conviction where not)	Rehabilitation period (from end of sentence where indicated or from date of conviction where not)	
Conditional Caution	Three months; or earlier, when the caution ceases to have effect	Three months; or earlier, when the caution ceases to have effect	
Formal/Simple Caution,	Spent Immediately	Spent Immediately	
Alternatives to Prosecution - Category 1 – warnings given by a constable or a procurator fiscal, fixed penalty notices under section 129 of the Antisocial Behaviour (Scotland) Act 2004.	Spent Immediately	Spent Immediately	
Alternatives to Prosecution – Category 2 – fiscal fines, fiscal compensation orders, fiscal work orders, fiscal activity/treatment orders and a notice to comply with a restoration order.	Three months from the date made	Three months from the date made	
Forfeit of Seniority	Spent Immediately	Spent Immediately	
Reduction in Rank	Spent Immediately	Spent Immediately	
Severe Reprimand	One year	Six months	
Reprimand	One year	Six months	
Service Supervision and Punishment Order	For the period specified in the order	For the period specified in the order	(8)
Stoppage of Leave	Last day order has effect	Last day order has effect	(9)
Restriction of Privileges	Last day order has effect	Last day order has effect	(9)
Admonition	Spent Immediately	Spent Immediately	

Notes:

1. Includes Imprisonment (including suspended sentences), Detention in a young offender's institution, Borstal training, Youth Custody, Corrective Training, Detention, and Detention and Training orders. Does not include sentences of Service detention either in MCTC or other service custody facilities – see Service Detention.

2. Starting from the day on which the sentence (including any licence period) is completed.

3. Starting from the day on which the sentence is completed i.e. the date on which the individual is actually released from Detention.

4. Includes a Community Order, Community Rehabilitation Order, Community Punishment Order, Community Punishment and Rehabilitation Order, Drug Treatment and Testing Order, Drug Abstinence Order, Probation Order, Community Service Order, Combination Order, a Youth Rehabilitation Order, a Curfew Order, Exclusion Order, Attendance Centre Order, Supervision Order, or Action Plan Order.

5. From the end of the order. This period starts from the last day of when the order given by the court has effect. When no such date is provided, the rehabilitation period for the order is two years starting from the date of conviction.

6. Includes fines imposed by a Service court or a CO at a Summary Hearing, and fines upon children or young persons but ordered to be paid by their parents.

7. The day provided by or under the order as the last day on which the order is to have effect. Where there is no provision for such a day, rehabilitation is 24 months beginning with the date of conviction.

8. For example, where an individual is made subject to a SSPO for 60 days the sentence will be rehabilitated after 60 days even if the individual's CO reviews the punishment and decides to conclude the punishment earlier.

9. Where the CO decides that the punishment should not begin immediately, the sentence will be rehabilitated on the last day the order has effect.

20152. Rules for Extending Rehabilitation Periods - Further Convictions

a. Where more than one sentence is imposed at the same time, the longest rehabilitation period applicable to those sentences counts in determining when the conviction becomes spent.

b. A person who has been convicted of an offence and given a conditional discharge or probation (first sentence) may, if they are in breach of the condition of probation, be brought back before the court and given another sentence (second sentence) for the original offence. Normally this would be done within the first rehabilitation period so that Para 20141 would apply. There may, however, be cases where the breach occurs right at the end of the first rehabilitation period and it is not possible to get the person before the court until after the period expires. In these cases the second sentence will usually attract a rehabilitation period longer than the first and, if so, the first is deemed not to have expired until the completion of the second.

c. In the event of a further conviction during the rehabilitation period the basic rule is that if a person is convicted during the rehabilitation period of another offence attracting a rehabilitation period which would end later than the first, the first period is extended to expire at the same time as the second. An earlier rehabilitation period, however, will not be extended:

(1) Where the second conviction is by a Magistrate's Court, or its equivalent in Scotland, of an offence which can only be tried by such a court (a summary offence).

(2) Where the second sentence is only a disqualification, disability, prohibition etc.

(3) Where the second sentence is of a court outside Great Britain and the conduct to which it relates would not have been an offence in Great Britain.

d. Some Service offences (under NDA or AFA) act to extend the rehabilitation period of an earlier offence (where the maximum sentence allowed by law is more than two years imprisonment). The following Service offences will have extended the rehabilitation period of an earlier offence (AFA 96 Sch.4 and AFA 06 Sch 16 s66):

NDA Section	Offence
2	Misconduct in action
3	Assisting the enemy
4	Obstructing operations, giving false air signals etc.
5	Looting
9	Mutiny
10	Failing to suppress a mutiny
16	Desertion
19	Loss or hazarding of ship
20	Dangerous flying
23	Prize offences by CO
24	Other prize offences
34	Unauthorised disclosure
36	Scandalous conduct
36 A	Ill-treatment of a subordinate
37	Disgraceful conduct
42	All civil criminal offences except summary only

AFA 06 Section	Offence
1	Assisting an enemy
2	Misconduct on operations
3	Obstructing Operations
4	Looting
5	Failure to escape
6	Mutiny
7	Failure to suppress mutiny
8	Desertion to avoid period of active service
11	Misconduct towards a superior officer (using violence or threatening behaviour)
12	Disobedience to lawful commands
24(1)	Causing damage to public or service property
31(1)	Hazarding of ship
32	Giving false air signals
33(1)	Dangerous Flying

Note. *If both a disqualification etc. and another punishment, such as a fine, are imposed for the subsequent offence then the first rehabilitation period is extended by reference not to the disqualification but to the other punishment, e.g. the fine.*

SECTION 22

SUSPECT OFFENDER RISK MANAGEMENT

20153. Introduction

a. This section sets out the process for managing those Royal Navy personnel who are subject to ongoing investigation by Home Office Police Forces (HOPF) or Service Police (RNP, RMP, RAFP, DSCC / DSCU) for alleged offences of a serious nature such as sexual offences, those of serious violence, offences of terrorism, extremism, Prevent referrals, Domestic related offences such as offences of stalking, harassment, controlling coercive behaviours, non-fatal strangulation. Offences relating to child abuse / neglect. Sexual offences against children, including offences relating to images of children. Those Royal Navy personnel who are considered to be a Registered Sex Offender (RSO) or have exceptionally been retained following conviction for such an offence as an RSO. Commanding Officers will need to ensure adequate resources are dedicated to all aspects of such cases while also observing the appropriate discretion given the sensitivity.

b. The Roles and Responsibilities described in Annex 20D and processes described in Annex 20E to Annex 20H are designed to ensure that full and proper consideration is given to the assignment and tasking of Royal Navy personnel who are either suspected of, or convicted of a sexual offence and placed on the Sex Offenders Register, while limiting the spread of sensitive information including details of the police investigation. Additionally, performance of the roles and processes is to ensure that the Royal Navy meets its responsibility to assist HOPF to mitigate the risk of re-offending and to exercise the duty of care to the individual who is suspected or convicted of such an offence.

c. COs and Career Managers (CMs) are advised to familiarise themselves with the process described in this section. The number of Service personnel typically under investigation for relevant offending at any given time suggests that there is a high probability that such key stakeholders will have need to follow this guidance for one or more individuals under their command or within their assignment plots.

d. Conversely, the number of personnel retained following conviction for a sexual offence is exceptionally low. Tri-Service policy prompts a presumption of dismissal or discharge for convicted sex offenders, save in the most exceptional circumstances. This reflects the gravity of sexual offending, its damaging effect on cohesion and the considerable additional administrative burden involved with managing an individual with registration requirements (see Para 20121 and Para 20122 on Service Penalties).

e. The guidance given here, and examples used, are very much based on experience to date where sometimes mistakes have been made and lessons learned to inform future activity. If any circumstances appear not to be covered or there is doubt about how to proceed then Commanding Officers and their representatives are encouraged to contact NAVY CULTURE-DISCIPLINE (MULTIUSER) and / or NAVY POLICE-HQ INTEL PPU MAILBOX (MULTIUSER) for assistance at the earliest opportunity.

20154. Confidentiality

The availability of information about suspected or convicted sex offenders should be kept to the absolute minimum with only those who strictly need to know being given access to the sensitive information about the accused, the victim, the circumstances and the charge(s)/conviction(s). Failure to observe this may breach the human rights of individuals, the Sexual Offences Act 2003, the Sexual Offences (Scotland) Act 2009 or the Data Protection Act 2018, and could therefore lead to a service complaint, subject the alleged offender to reprisals or increase risk of deliberate self-harm and ultimately undermine the integrity of the investigation process to the point that it cannot proceed. In certain circumstances the disclosure of sensitive information relating to the investigation of sexual offences may constitute a criminal offence in itself under the Sexual Offences (Amendment) Act 1976 and 1992. If there is any doubt about what information can be disclosed, advice should be sought from RNP Public Protection Lead (+44 (0) 300 163 2082). Email: NAVY POLICE-HQ INTEL PPU MAILBOX (MULTIUSER). The flow of sensitive information should initially be limited to those stakeholders identified in Annex 20D. Other staff with responsibility for the individual's movements or welfare may in certain circumstances need to be informed of the allegation or offence and should be reminded of the need for absolute discretion.

20155. Restrictions That Can Apply to Suspected and Registered Sex Offenders

While it is the personal responsibility of an offender to comply with registration requirements imposed on them because of conviction for a sexual offence, there are potentially several accompanying restrictions that the Service will need to consider the implication of immediately after conviction and when looking at assignment options. Although not exhaustive, this list includes some of the more common restrictions that can apply to Service personnel suspected of sexual offences or those convicted and placed on the Sex Offenders Register.

a. Many serious criminal offences (arrest before conviction or caution) may prohibit a suspect or an offender from legitimately entering certain countries without applying for a full Visa. (e.g. USA, Canada, Australia, or New Zealand).

b. Assignment to British Overseas Territories may be problematic (e.g. Gibraltar, Falkland Islands and the British Indian Ocean Territory (BIOT) do not recognise the Sexual Offences Act 2003 or Sexual Offences (Scotland) Act 2009 and therefore have no powers / mechanisms in place to manage a person during the period of their stay).

c. A Sexual Harm Prevention Order (SHPO) may prohibit the offender from: personal use of the internet and / or any electronic communication devices which allow them to make contact with juveniles or other vulnerable groups; or accessing certain premises.

d. Barring by the Disclosure & Barring Service (D&BS) or Protection of Vulnerable Groups (PVG) from performing any regulated activity with adults or children.

e. A convicted sex offender is unlikely to be granted clearance to engage in regulated activity (i.e. positions requiring a Disclosure & Barring Service or Protection of Vulnerable Groups check clearance).

20156. Assignment Restrictions for Career Managers

a. A standard Assignment Restriction that states **"Not to be reassigned without first contacting NAVY CULTURE-DISCIPLINE HEAD SO2"** is to be placed on the JPA HR record of both a suspected and a Registered Sex Offender (RSO) to ensure that future assignment plans are developed using the full information of what the restriction involves. Career Managers will receive an email to advise of the assignment restriction requiring their acknowledgement. The standard wording of the restriction is designed to avert the disclosure of sensitive information. Upon request, NAVY CULTURE-DISCIPLINE HEAD SO2 will endeavour to give approval or provide further guidance within 48 hours except when an Employment Suitability Risk Assessment (ESRA) meeting is deemed necessary (see Annex 20E).

b. In order to reflect the practical implications of appointing these individuals, DDPD requires the attachment of an additional Assignment Restriction stating that a suspected or RSO is **"Not to be considered for any LFS, Loan or Exchange position**".

c. Career Managers are not expected at any given time to be aware of all the limitations placed on individuals within their assignment plot as these will change over time. It is therefore essential that stakeholders ensure that JPA Assignment Restrictions are kept up to date and that Career Managers check and act on them before an assignment is approved. Failure to take account of these restrictions could result in the assignment having to be withdrawn at short notice leading to complications and inconvenience for the Service, the individual and their family.

d. The JPA Assignment Restrictions stipulated above will remain in place for the duration of an active relevant police investigation or, in the case of a RSO, for the duration of the period the individual is on the Sex Offenders Register or until they leave the Service, whichever is sooner.

20157. Instructions for Managing Personnel Accused or Guilty of Sexual Offences and Offences involving Children - Suspect Offender Risk Management (SORM):

a. There are differences between managing those personnel who are under investigation for an offence, those charged with an offence, and those who have entered a guilty plea or been found guilty at a Civilian Court or Court Martial. At every stage, an Employment Suitability Risk Assessment (ESRA) is the key framework to use to mitigate any risk of harm to others the individual, and the trust and confidence in the Royal Navy. If in any doubt seek advice from NAVY CULTURE-DISCIPLINE HEAD SO2. The processes set out in Annex 20E - Annex 20J should support.

(1) **Presumption of Innocence.** The criminal justice system operates under the principle that those accused of a criminal offence are innocent until proven guilty. There should be no determination of an individual's guilt relating to a criminal offence until the matter has been determined by a civilian or military court. 29

(2) **Assignment Considerations:**

(a) Keep the individual gainfully employed within their trade where possible having taken all assignment considerations below into account.

(b) NAVY CULTURE-DISCIPLINE HEAD SO2, on behalf of DDir Leadership and Culture, may direct that an application for removal from assignment be submitted[30] or additional safeguards/mitigations are implemented during investigations or proceedings.

(c) **Separation from Complainants:** Do not employ or accommodate the accused in the same Ship/Unit/Establishment as the complainant(s). Seek advice from the Casework Cell or Regional Legal Office on making an application for *Removal from Assignment* if necessary.

(d) **Accommodation:** Ensure the accused current Service accommodation arrangements are reviewed and risk assessed using the ESRA process.

(e) **Witness Protection:** If there is a risk of interference with witnesses, consider what additional measures need to be in place and seek advice on applying for *Removal from Assignment* from the Casework Cell or Regional Legal Office. Additional advice can be sought from the RNP or DSCU Public Protection Units[31].

(f) **Vulnerable Groups:** Do not assign the accused to roles involving or that have contact with vulnerable persons (e.g. trainees, cadets, detainees) or people within the alleged offence victim or survivor group.

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[30] This is not automatic and will require a RFA application to be made to the appropriate Deciding Officer, with advice from the relevant Regional Legal Office.
[31] NAVYPOLICE-HQINTELPPUMAILBOX@mod.gov.uk or DSCU-PPU-MAILBOX@mod.gov.uk

(g) **Deployment:** Avoid deploying the accused overseas or on operations without risk mitigation discussions with NAVY CULTURE-DISCIPLINE HEAD SO2[32].

(h) **Public Duties:** Exclude the accused from public or representative duties.

(i) **Other Duties:** Conduct an Employment Suitability Risk Assessment (ESRA) to ensure all their duties do not pose risks to the accused, the complainant(s), work colleagues, victims or survivors if known, and the general public.

(j) **Conviction:** If an accused enters a guilty plea or is found guilty at Civilian Court or Court Martial, place the offender on Directed Leave[33], ensuring the necessary divisional and welfare support is in place.34 Following the introduction of 2025DIN01-043, Service personnel convicted of a sexual offence will be administratively discharged. On conviction, advice should be sought from the Casework Cell and Regional Legal Office.

(k) If the accused cannot be assigned to any role due to security clearance suspension/removal, or risks that cannot be mitigated, apply for *Removal from Assignment*. Consider how the person will be supported if they are unable to access MOD sites and include details in a care action plan to ensure access to divisional and welfare support.

(l) As a result of an accusation(s), if an individual cannot be employed in any assignment after removal, they should be instructed to remain contactable but be sent on directed leave. There may be occasions that the Service considers discharge in these circumstances, legal advice must be sought. Consider how the person will be supported if they are unable to access MOD sites and include details in a care action plan to ensure access to divisional and welfare support.

b. **Duty of Care - Legal and Welfare Considerations:**

(1) Enable the accused to comply with police or court bail conditions and Service Police / Command orders.

(2) Ensure any assignment allows access to legal advice for defence preparation.

(3) Consider information from the Vulnerable Risk Management Information System (VRMIS) regarding self-harm risks and ensure welfare support is provided to complainants, those accused, and witnesses.

[32] Naval Personnel Management - BRd 3(1) Part 5 Chapter 20 Section 22 Para 20155 (a) (b).
[33] Naval Personnel Management - BRd 3(1) Part 7 Chapter 60 Section 1 Para 6006 (g) (2) – Directed Leave

c. **Overseas Deployment.** Alleged offenders deployed overseas may need to return to the UK due to restrictions in certain countries. Apply for *Removal from Assignment* and place the accused on Directed Leave until a decision is made.

d. These steps ensure fair and informed management of personnel while safeguarding others and maintaining operational integrity, trust and confidence You may not know the identity of the victim or their location, this and where the system can support to help mitigate any risk, must be captured in the ESRA.

20158. Royal Navy Suspect Offender Risk Management / Employment Suitability Risk Assessment

a. Suspect Offender Risk Management (SORM) is a practice which ensures the Royal Navy effectively manages and mitigates where possible, known risks posed by personnel who are suspected of committing, or have been convicted of, serious criminal offences. These persons are considered to require specific direct management to safeguard other personnel and associated communities. SORM utilises the Royal Navy Annex 20 series of Employability Suitability Risk Assessment (ESRA) proformas.

b. There are currently two versions of the Royal Navy ESRA form which serve as the prompt for up-to-date assessments of an individual who is either suspect of, or convicted of, an offence in the following circumstances.

(1) Annex 20I – Sexual Offences.

(2) Annex 20J – Registered Sex Offender.

c. The regular completion of the appropriate Annex 20 series Royal Navy ESRA forms detailed at Annexes 20I and 20J by the Commanding Officer serves a dual purpose.

(1) Firstly, it ensures the CO is aware that a member of their unit is either under investigation for an unproven allegation of a 'specified offence'[35] as detailed within Schedule 15, Schedule 16 and Schedule 17 of the Criminal Justice Act 2003; or has Registered Sex Offender (RSO) status and may therefore require specific employment consideration.

(2) Secondly, it ensures that other stakeholders responsible for the overall management of an individual are aware of any changes in the circumstances and are given the opportunity to offer advice. New information may also prompt a requirement to hold a Multi-Agency Risk Assessment Committee (MARAC) or a Multi-Agency Public Protection Assessment (MAPPA) meeting with appropriate RN representation.

(3) On completion of the relevant version of the form a hard copy, signed by the CO, is to be forwarded to RNP Public Protection Unit. (See Annex 20E and Annex 20F). A CO's digital or electronic signature is acceptable but hard copies should be retained.

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[35] https://www.legislation.gov.uk/ukpga/2003/44/schedule/15/enacted#:~:text=SCHEDULE%2015%20Specified%20offences%20for%20purposes%20of%20Chapter,section%2016%20of%20that%20Act%20%28threats%20to%20kill%29.

d. COs are required to complete a fresh ESRA on the following occasions:

(1) On notification that a Service Person under their command is the subject of a police investigation for a qualifying alleged criminal offence.

(2) On notification that a Service Person has been convicted of a sexual offence and / or placed on the Violent / Sex Offenders Register (ViSOR).

(3) When a suspected or RSO's personal circumstances have changed significantly (e.g. charges have been raised or if suspected of being in breach of a Sexual Harm Prevention Order (SHPO)).

(4) On notification that a Service Person has been convicted of a serious offence of violence and they are placed on the Violent / Sex Offenders Register (ViSOR).

(5) Prior to implementing any plan which changes the individual's UK geographical location or responsibilities for a consecutive period in excess of 48 hours (e.g. external training / loan temporary duty intentions / directed or domestic leave, overseas leave / overseas deployment) or taking permanent assignment action, a suitable ESRA is to be produced. When a person moves between units, a CO-to-CO ESRA handover must take place.

(6) Within the first week of receiving command responsibility for a newly assigned suspected or convicted person, or RSO.

(7) Six months have elapsed since the last ESRA was completed.

e. COs should therefore ensure lines of communication are in place to keep them informed of any local factors such as external training or loan temporary duty / detachment plans for such a person under their command, and that the responsibility for ongoing management is formally handed over to their successor. This is especially important in the case of ships entering refit when the command responsibility may be delegated to lower ranked officers in a much-reduced crew.

f. On receipt of a completed ESRA, RNP Public Protection Unit may choose to liaise with NAVY CULTURE-DISCIPLINE HEAD SO2, the Service Police Crime Bureau (SPCB) or HOPF Police Offender Management Centres and provide the appropriate input to the MAPPA process and / or provide relevant guidance to the Command as necessary.

g. It is important to distinguish between the Royal Navy ESRA and the risk assessment produced by the Home Office Offender Manager (HOOM) in consultation with the SPCB. The HOOM / SPCB risk assessment is conducted in accordance with Home Office Police protocols and satisfies a legal requirement solely in respect of those convicted of a sexual offence, whereas the Royal Navy forms are mandated internal employment tools used to assist the good management of both suspected of serious criminal offence involvement and those who are RSOs, whilst they are serving.

20159. Plans for the Management of Suspected or Registered Sex Offenders

a. The most effective method of managing a suspected or RSO will usually be through assessment of the individual's circumstances at a given point (for example, on initial notification or when considering alternative employment if the individual's circumstances change) and sometimes the outcome may be that little or no modification is needed. Other more challenging situations will require an Employment Suitability Risk Assessment meeting to be facilitated and chaired by NAVY CULTURE-DISCIPLINE HEAD SO2 (see Annex 20E and Annex 20F).

b. Attendance at these meetings will vary depending on the circumstances which typically require input from RN Family and People Support (RN FPS), British Forces Social Work Service (BFSWS) for overseas investigations, representatives of the person's current (and future) units, Career Manager, RNP Public Protection Unit Lead, Defence Serious Crime Unit and/or Home Office Police and the SPCB Violent and Sexual Offenders Register (ViSOR) Manager. The chairperson will ensure that any limitations agreed for current and future employment are documented and, where possible, explained to the individual. The ESRA meeting will be in addition to any Social Work assessment required to mitigate risk from a Safeguarding perspective.

c. Meetings may also be called by external agencies such as Home Office Public Units or Children's Protection Agencies. Naval representation at these meetings is likely to be limited to PM(N) staff (RNP PPU) and NAVY CULTURE-DISCIPLINE HEAD SO2 and the output may prompt further engagement with Royal Navy stakeholders as deemed necessary depending on the circumstances of the case.

d. In managing cases of this nature effectively the Service can provide assurance to the public, Parliament, and the wider Service community that, at any given time, the Royal Navy can identify all such individuals in our employment and that the appropriate management plans and safeguards for them are in place.

e. The requirement of all suspected or RSO management plans is that they are:

(1) Properly considered by staff who are appropriately informed.

(2) Justifiable and proportionate to the risks perceived.

(3) Fair in taking account of the individual's requirements and any restrictions placed upon them by a Court Order; and,

(4) Not capable of being construed as the imposition of any form of penalty.

f. Registered Sex Offenders (RSO) are monitored by the designated HOPF and attend as directed for administration by their appointed handler. COs are to provide full contact details of the appointed HOPF handler, and any restrictions imposed by the order (e.g. access to media/internet devices, places or persons and travel) to RNP Public Protection Unit.

20160. Issues Specific to Suspected or Registered Sex Offenders under RNR/RMR Command

a. In recognition of the part-time nature of reserve employment RNR/RMR COs will need to ensure that they are contactable at all times in order to serve as the officer responsible for the management of suspected and RSOs under their command. Should stakeholders experience difficulty in contacting the respective RNR/RMR CO, however, then assistance should be sought from the unit Support Manager or the Regional Staff Officer; if neither of these is available then CMR Policy staff are best placed to provide assistance. NAVY CULTURE-DISCIPLINE HEAD SO2 and the RNP Public Protection Unit should be consulted at the earliest stage in all cases where a deployment abroad is contemplated or if a requirement emerges for the individual to carry out any training or an assignment in a Phase 1 or Phase 2 training establishment or RNR/RMR unit.

b. Those involved in the management of suspected or RSOs will need to appreciate that a reservist's JPA record cannot be relied upon as a tool with which to monitor an individual's current or future movements. Good communication between RNR/RMR COs and other stakeholders is therefore especially important to ensure there is timely consultation over movement plans. CMR HQ is to be notified of all movements and will apply agreed Assignment Restrictions on JPA as required.

20161. Record Keeping – Suspect or Offender Risk Management (SORM)

a. Home Office Police maintain the national 'Violent and Sex Offender Register' (ViSOR), Due to the transient nature of Armed Forces employment, the SPCB provides assistance in maintaining the National Register and managing the risk, primarily while a Service offender is deployed outside of the UK. At present the MOD carries out this function in respect of sex offenders but not for violent offenders. Information provided by a convicted Royal Navy Registered Sex Offender, their CO, RNP Public Protection Unit and NAVY CULTURE-DISCIPLINE HEAD SO2 may be recorded on ViSOR.

b. The primary record in the local management of a suspected or RSO in the Royal Navy is the entry for them in the 'RN ViSOR Database', a MODNET based solution which is maintained by RNP Public Protection Unit. The entry consists of both investigative detail as well as a record of deliberations over assignment of the person. Access to the database is strictly controlled to satisfy the requirements of the Data Protection Act (DPA 18) and the personal data policy set by the National Police Chiefs Council (NPCC). It is from this database that NAVY CULTURE-DISCIPLINE HEAD SO2 will also collate anonymised details for the creation of statistics for Parliamentary Questions, Freedom of Information Act 2000 requests and to produce general management information.

c. JPA is a key tool in the administration of those deemed to require Suspect or Offender Risk Management (SORM)and must therefore be maintained as completely, accurately and up to date as possible. Assignment Restrictions applied should avoid any direct reference to an individual's status as a suspected or RSO and must be amended or removed when NAVY CULTURE-DISCIPLINE HEAD SO2 indicates that it is necessary following the completion of any registration period, the discontinuance of a police investigation or the completion of legal proceedings. Also, the RNP Public Protection Unit will conduct regular checks of suspected and RSOs' JPA 'move and track' records to ensure that the ViSOR accurately reflects the individual's current and planned movements within the Service.

d. Copies of ESRA meeting records held by stakeholders should be destroyed in accordance with DPA 18 when they are no longer in force.

e. Stakeholders must be careful to observe the lasting right to anonymity of every victim in a sex offence case as required by the Sexual Offences Act 2003 under which it is an offence to publish the identity of the victim or to publish details that could lead to their identification whether or not a complaint subsequently leads to prosecution.

20162. Useful Contacts

Advice on the process and individual cases can be obtained from:

NAVY CULTURE-DISCIPLINE HEAD SO2
Second Floor West Battery
HMS EXCELLENT
Whale Island
Portsmouth
PO2 8BY

Tel: +44 (0) 300 163 8412

Email:
NAVYPEOPLE-PSPEXECDISC@mod.gov.uk

RNP Public Protection Unit
Ground Floor West Battery
HMS EXCELLENT
Whale Island
Portsmouth
PO2 8BY

Tel: +44 (0) 300 163 2082

Email:
Navypolice-hqintelppumailbox@mod.gov.uk

SECTION 23

ROLE OF DIVISIONAL OFFICER IN THE DISCIPLINARY PROCESS

20163. Role of the DO and AAO

a. The Divisional Officer (DO), when acting as Accused's Assisting Officer (AAO) at Summary Hearing or CM, has a vital and challenging role. Careful preparation, a willingness to seek advice and appropriate support from line management are essential to success.

b. HODs and Line Managers should take a direct interest in DOs who are required to act as AAOs, and should make themselves available to advise and assist, particularly where DOs are inexperienced, or cases are complex or serious. The burden on AAOs is not to be underestimated, and the Line Manager should allow time and facilities accordingly. The Command Adviser (LO, DLO, Adjutant, G1 Adviser) can provide further assistance.

c. Should AAOs require further advice or assistance they should contact NLS CPOWtr (details below under 'legal advice').

20164. Preparing to act as AAO

JSP 830 Chapters 6 and 9 (see Annex F and especially Annex G) guidance must be read by all DOs called upon to perform the role of AAO. RN DOs must bear in mind that the former, adversarial, summary trial process under the Naval Discipline Act has been replaced by an inquisitorial, summary hearing under the AFA in which the CO is personally investigating the case to determine whether a charge is admitted, or if denied, proved or not proved. The following guidance must therefore be construed in that context.

a. AAOs should familiarise themselves with the booklet 'Your rights if you are accused of an offence under the Service justice system' (T-SL-accused – as per Reference B Chapter 6 Annex G), which will be given to the accused.

b. DOs are also to familiarise themselves with the regulations, criteria and considerations applicable to personnel held in custody before or after charge (the MSL Chapter 5 and especially the Annexes thereto).

20165. Understanding the Charge

a. Analysis, by DOs, of an offence and charge in order to establish whether the individual has a defence available in law, and/or preparation of comprehensive, relevant and helpful (to the individual) mitigation continue to be among the weakest features of the Service Justice System at the summary level.

b. Before speaking to the Accused, the AAO should read all the papers in the case (which will have been served in preparation for the summary hearing). Using JSP 830, they should consider what the necessary 'elements' of the offence are – including the state of mind that the accused must have had to be guilty (for example, whether they must have *intended* to do something, or be *reckless* as to whether an event will occur). The AAO should decide whether they think all the elements of the offence can be proved using the evidence available. The AAO must bear in mind that the CO may choose to call a witness to ask them questions which go beyond what is in their written statement.

20166. Establishing What the Accused Says About the Charges

The AAO must establish what the accused says about each charge. It is for the accused to decide whether they will admit or deny the charge – and the AAO may advise and guide them through the process.

20167. The Decision the Accused Must Make

The accused must decide what they will say about each charge. Under no circumstances should the AAO 'suggest' or offer explanations for events or tell the accused or anyone else what they should say at the hearing. The choices the accused has are as follows:

a. To accept that they did the thing charged, with the necessary 'guilty mind', and therefore should admit the charge.

b. To deny the charge(s). This may be because:

(1) The act/s did not occur.

(2) The individual was not involved.

(3) The individual did not have the alleged 'guilty mind' (e.g. where it is alleged, they intended to do something, it was an accident; or where they are alleged to have acted dishonestly, they thought what they were doing was right).

(4) The evidence suggests the individual committed the offence, but it is not conclusive and/or they want to make the CO or Trying Officer determine whether or not they did. In the civilian system this is called 'putting the case (or prosecution) to proof'. See further below.

20168. AAO's Responsibility to the Service

a. The AAO's responsibility is to present the individual's case as well as it can be put, whether that involves assisting the individual's denial of the charge or mitigation. It is not to secure a finding that a charge has not been proved by improper means. In doing so, the AAO should bear in mind the responsibility of all superior officers for the maintenance of discipline.

b. The AAO's duty to the Service requires that they must not knowingly mislead an investigating officer or an officer conducting a Summary Hearing. This means, however, that if the individual did commit the offence and admits this to the AAO, the AAO can still take part in the summary hearing even if the individual decides to 'deny' the charge. For example, the AAO can highlight the failure of the investigator to adduce sufficient proper evidence to prove the charge, and/or the AAO can suggest that the evidence fails to reach the relevant standard. The AAO must only bring the case for the individual on the basis of testing the evidence supporting the charge i.e. putting the case to proof. In advance of the hearing, the AAO should tell the accused the following:

(1) That the only evidence given must be the truth (a person cannot give evidence which they or the AAO know to be untrue);

(2) That neither the individual nor AAO may call any defence witnesses whose evidence suggests the individual is not guilty (because the effect of that evidence will be misleading even if honest to that witness);

(3) That all the AAO can do is to cross-examine witnesses in order to suggest that their evidence is lacking, or unreliable, and/or to speak on the individual's behalf to suggest that the evidence is insufficient to make the CO sure that the accused is guilty.

c. Thereafter, the AAO can offer mitigation if the CO finds the charge proved.

d. In sum, an AAO must not allow the individual to put forward a positive defence when they have confessed that they committed the offence. If they insist on putting forward evidence to suggest that they did not commit the offence, the AAO must withdraw and may not represent or assist the individual. Where an individual proposes to 'put the prosecution to proof' – they should be warned that this will be the case.

e. The AAO is not a lawyer, and they must remind the accused of their right to seek legal advice, either from a naval barrister or a civilian solicitor (subject to AFCLAA funding, JSP 838 refers), should they feel it necessary. Even the simplest, low level charges can sometime raise difficult questions of law.

20169. Disputed Facts

Where the individual accepts the charge but not the full facts alleged, AAOs should consult JSP 830 Chapter 9 Part 5 (Disputed facts). The proper course is likely to be to admit the charge (or an alternative) but contest the facts via witness evidence.

20170. Mode of Trial

In all cases the option for trial by CM must be given. JSP 830 Chapters 6 and 9 should be read carefully. AAOs can assist in any decision to opt for Summary Hearing or CM but must bear in mind that the decision must be the personal choice of the accused. It may assist the individual if it is first established whether they are likely to admit or deny any charge(s).

20171. Choice of Mode - Guidance

Circumstances will vary enormously, and it is stressed that AAOs must ensure the decision is taken personally by the accused, but experience has shown the following worthy of consideration:

a. Broadly, individuals may be better served by electing Summary Hearing if they wish to admit the charge.

b. Summary Hearing is best if there is no real defence (see the MSL Chapter 12 and take legal advice) and the investigation and charge are sound.

c. Some individuals choose Summary Hearing if the overriding wish is to get matters over with quickly and/or 'put it behind them', restore normality etc.

d. It may be better to elect for CM if some of the evidence may be successfully challenged or proper testing of it in court would be to the individual's advantage.

e. A CM gives a better chance of challenging weak evidence and proper legal advice, and representation will draw out any genuine defence.

f. Elect for CM if the evidence or law is complex (e.g. in some cases of negligence – especially if technical, alleged fraud where dishonesty is disputed, or claims of self-defence, especially if anticipatory).

g. AAOs must advise an individual of the general effect of opting for trial by CM, which might include the impact of any delay on proceedings. AAOs should refrain from advising an individual to opt for CM on the sole basis that this will delay the proceedings so as, for example, to allow the individual to take main or seasonal leave. This would be spurious justification, however superficially attractive, and undermine the overriding responsibility to uphold the timely and efficient working of the disciplinary system. Where leave is imminent, AAOs should address this in mitigation at a Summary Hearing and explain to a CO the impact of the likely range of punishments available, seeking to do the best for their individual. An individual may be required to delay or adjust their leave where under investigation, or to facilitate the service of charges or papers by COs, or for any Summary Hearing convened. AAOs must not, however, use this to deter an individual from electing trial by CM. To do so would be improper.

20172. Mitigation

a. AAOs must be familiar with the provisions of the JSP 830 Chapter 9 Annex G as regards their duties and Chapter 12 as regards Defences and Mitigation – and the differences therein. The difference between defence and mitigation must always be considered when the individual is considering whether to admit a charge and, if in doubt, legal advice should be sought.

b. Broadly, the role of an AAO is in presenting the best possible mitigation available – it is not appropriate for personal antipathy towards an individual, or personal distaste or condemnation of their actions, to form part of a statement in mitigation. Nor should AAOs misguidedly feel that in this capacity they must express their loyalty to the Service by, for example, criticising the individual, or suggesting there is no mitigation, or claiming the individual or the offence has no redeeming characteristics, or spontaneously casting doubt on the individual's future prospects in the Service. AAOs must not lie and should be slow to embellish the truth but are fundamentally to do the best they can for the individual.

c. In addition to JSP 830 Chapter 9 Annex G, which lists points which have proved relevant and helpful when preparing a statement in mitigation, it is worth adding that where the officer hearing the case has decided the charge is proved, mitigation must not resuscitate arguments which – mistakenly or deliberately - continue to assert the individual's innocence. Vague sentimentality is ineffective, but sincerity and facts, particularly if they indicate the offence was not so serious by type or degree, or not prolonged in time, or that the circumstances or impact of the offence are relatively trivial, or were quickly resolved, are not. Brevity and clarity are also key – preparation of points in writing usually helps. Time in custody before charge may mitigate sentence. Mitigation will be persuasive where resulting from an individual pleading guilty and showing genuine remorse, but even where a charge is found proven despite denial, an individual can still express remorse that the incident should ever have happened.

d. In addition, JSP 830 Chapter 14 lists specific mitigating factors relevant to each charge and should be consulted in all cases.

20173. Legal Advice and Legal Aid

a. Comprehensive guidance on eligibility for, application process and decisions on awards are contained in JSP 838, The Armed Forces Legal Aid Scheme.

b. All personnel are entitled to seek legal advice on the option for trial by CM and on appeal.

c. Head Naval Legal coordinates Naval barristers available to defend or advise accused personnel (telephone 93832 5739/02392 625739). Naval barristers do not attend police interviews under caution, but a Legal Aid duty solicitor can be arranged when one is required. Naval barristers can normally give advice or representation after an individual has been charged, and this advice can include on mode of trial and plea. Alternatively, individuals may seek civilian legal assistance subject to the normal legal aid rules. There is no right to legal representation at summary hearings, but personnel are entitled to be represented at SAC hearings and CM.

d. An individual who intends to represent him or herself at CM or in the SAC has a right to do so but should be advised in the strongest possible terms to seek professional legal assistance.

e. Representation and advice from a Naval barrister has the following advantages:

(1) A Naval barrister's overriding duty in advice or representation is to that individual personally, not the wider Service. Once instructed to advise or represent, they must and do act and advise fearlessly in that individual's genuine best interests. Their ethical and professional codes of conduct make it clear that they face no conflict of interest in representing individuals within the Service Justice System. Their professional conduct in this regard is regulated internally by Hd NLS and externally by the Bar Standards Board.

(2) Naval barristers have experience of the CM and SAC system and, as RN or RM officers, of the wider Royal Navy. They are experienced, professional criminal advocates with the advantage of close personal knowledge of the Service context, including of being deployed at sea and on operations.

(3) Statistics show no appreciable difference between acquittal rates achieved by Naval or civilian lawyers.

(4) There is no charge for a Naval barrister (legal aid, where available, is means tested).

20174. Consequential Effects of Punishments

a. The AAO is to explain the effect of the sentence to their individual, pointing out any other penalties which may be involved in the punishment imposed – whether obligatory or optional - and drawing attention to the consequential effects of each. The obligatory and optional administrative sanctions which may follow punishment are set out in Section 15 of this chapter and the consequential effects of each punishment are set out in JSP 830 Chapter 13, expanded further in the Naval context also in Annex 20C of this chapter. Typical sanctions include forfeiture of pay, imposition of a Career Check, forfeiture of Good Conduct Badges, or the Long Service and Good Conduct Medal (remember even the imposition of a Career Check may well entail a delay in promotion or award of badges).

b. When an individual is sentenced, whether summarily or by CM, the CO or Judge Advocate is required to explain the effects, both direct and indirect, of the punishment imposed. When an individual is sentenced to imprisonment or detention, however, the AAO is to brief the individual on the effect of such sentence on pay, allotments and marriage or dependants' allowances. The individual might be advised to inform the next-of-kin of the sentence and of its effects, and stress the desirability of writing immediately to the next-of-kin or any other person who might be affected by the sentence so that they do not hear about it from any other source (for example, as a result of stoppage of allotment). If necessary, and if the individual has no objection, the AOO may write to the next-of-kin and should, if possible, inform them of the name of the prison or detention location (most likely MCTC Colchester) to which the individual is being committed. Rules and regulations on administrative discharge are set out in Chapter 54 of this BR.

c. Equally, personnel about to be tried in civil courts on serious charges which, if proved, could lead to a sentence of imprisonment or any other form of confinement, or by CM on charges which, if proved, could entail sentence of dismissal, imprisonment or detention, are to be advised to inform their next-of-kin. Imprisonment, which is not suspended, by a civil court or CM will almost invariably result in discharge from the RN.

d. When personnel under the age 18 are involved, the AAO is always to inform the next-of-kin unless certain that the individual has done so.

20175. Detention

DOs must take a personal interest in any personnel sentenced to detention, whether the sentence is committed or suspended. The reformatory value of corrective training cannot be fully exploited unless effective after-care is exercised by the Divisional system on the individual's return to the ship/unit. The DO should be involved personally in the following arrangements at least:

a. Kit muster before any CM in which Detention might be an option, and before committal to Detention following summary hearing.

b. See individual immediately after sentence of detention is imposed.

c. Discuss financial arrangements whilst in detention.

d. Make telephone call to, or visit, MCTC to talk briefly to the DO appointed in detention, prior to the individual's release.

20176. Court Martial Cases

In all cases referred for trial by CM, the DO should be familiar with the case and, as a matter of law, must now give assistance to the individual's legal representative as Defendant’s Assisting Officer (DAO) (see JSP 830 Chapter 28 and Annex B to Chapter 29). This is a formal, significant, statutory and additional role which represents a notable change from the previous ad hoc role of a Naval DO acting in support of the Accused’s Friend (a qualified lawyer, Service or civilian) at CM. It is akin to the former Unit Defending Officer (UDO) role familiar to the Royal Marines. In most circumstances, the DO/DAO will be expected to attend each day of a CM trial and a unit should make suitable arrangements to facilitate this. If unable to attend the CM or complete the full range of duties as DAO, the CO must arrange for someone else to do so, enlisting a Transit Divisional Officer where appropriate.

SECTION 24

COMPENSATION FOR CRIMINAL INJURIES

20177. Introduction

This section deals with compensation for the victims of crimes (in addition to any compensation which may be imposed by a Service Court or civil court in the UK).

20178. Compensation for Injuries Suffered in the UK

Victims of crimes of violence in England, Scotland and Wales, including members of the Armed Forces, may be eligible to claim compensation from the Criminal Injuries Compensation Authority (CICA). Applications are assessed under a tariff Scheme made under the Criminal Injuries Compensation Act 1995. A separate scheme administered by the Northern Ireland Office operates in Northern Ireland for criminal injuries sustained in the Province. Further details of the CICA and the Compensation Agency (Northern Ireland) are available online at www.cica.gov.uk.

20179. Compensation for Injuries Suffered Outside the UK

a. For members of the Armed Forces and their dependants, members of the Reserve Forces and their instructors, and members of the Cadet Forces who, while serving overseas, sustain injury (including death) directly attributable to a crime of violence, the MOD operates similar, discretionary, ex-gratia, tariff scheme: Criminal Injuries Compensation (Overseas), (CIC(O)). The MOD scheme is designed to give comparable levels of compensation to that which would be imposed by CICA if the incident had occurred in Great Britain.

b. Whether or not to make a payment under the provisions of the MOD CIC(O) scheme, and the level of any payment, is wholly within the discretion of the Defence Council.

c. Compensation is not payable where death or injury is the result of war operations or military activity by warring factions.

20180. Administration of the MOD CIC(O) Scheme

The Scheme is administered by the Service Personnel and Veterans Agency.

20181. Applications and Assistance

a. Further information and the application form are available on the MODWEB by searching ‘Criminal Injuries’. Details of the scheme are in DIN 2017DIN01-100.

b. Assistance and hard copy application forms can be obtained from:

Service Personnel and Veterans Agency
Criminal Injuries (Overseas) Scheme
Room 6129
Norcross
Blackpool
FY5 3W
Tel: 01253 333442.

20182. Time Limit for Applications

Applications should be made as soon as possible after the incident giving rise to the injury, and within two years. Claims outside this period can be considered in exceptional circumstances; SPVA should be consulted for advice.

20183. Sources of Advice

Advice on access to free legal advice and assistance (including from Victim Support) in submitting a claim for members of all Services can be obtained from Unit Personnel/HR or G1 staff.

20184. Types and Limits of Compensation

Compensation payable under the MOD CIC(O) arrangement will be:

a. A standard amount of compensation based on the nature of the injuries. The injury must be serious enough to qualify for an award equal to at least the minimum amount payable under the CICA Tariff, currently £1,000 (full details of current Tariff rates are available at www.cica.gov.uk[36]).

b. Specific rules relate to multiple or minor injuries; the DIN should be consulted for details.

c. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than the injury leading to their death), an additional amount in respect of such lost earnings.

d. The maximum award that may be made in respect of the same injury (tariff and loss of earnings) will not exceed £500,000.

e. Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to their death), an additional amount in respect of any special expenses; for example, special care costs, which could include home mobility equipment and fittings, special wheelchairs, fees for care in a nursing home etc.

f. Where the victim has died in consequence of the injury, reasonable funeral expenses will be payable for the benefit of their estate if these expenses are not admissible from public funds under relevant Service regulations.

g. Where the victim has died since sustaining the injury, compensation may be payable to the deceased's spouse or the parent of a deceased child or the child of the deceased.

[36] http://www.cica.gov.uk/

20185. Eligibility to Receive Compensation

The Claims Officer may withhold or reduce an award where it considers that:

a. The applicant failed to take reasonable steps to inform relevant Service and/or civil authorities of the circumstances giving rise to the injury, or failed to co-operate in bringing the assailant to justice, or failed to give all reasonable assistance to the Claims Officer considering the application; or

b. The conduct of the applicant before, during, or after the incident, or their character, makes it inappropriate that a full award or any award at all be made.

c. Additionally, the Service Awards Panel will make an award only where they are satisfied that there is no likelihood that an assailant would benefit if an award were made.

20186. Contact Details for CICA

Criminal Injuries Compensation Authority
Tay House
300 Bath Street
Glasgow, G2 4LN

The Compensation Agency (Northern Ireland)
Royston House
34 Upper Queen Street
Belfast
BT1 6FD

SECTION 25

MARITIME RESERVES DISCIPLINARY REGULATIONS

20187. Maritime Reserves Disciplinary Regulations

Reference should be made to other publications (e.g. BRd 2 The King's Regulations for the Royal Navy, JSP 830, BRd 3(2) Naval Personnel Management – Reserves and other parts of BRd 3(1), as appropriate), especially with regard to detailed rules and procedures relating to disciplinary matters.

20188. Dealing with Misconduct of Reservists

COs may take the following action against reservists who commit offences or misconduct themselves, subject to prior consultation with CMR Staff and the appropriate Regional Legal Adviser:

a. Disciplinary/Criminal Action Under the AFA 06 (see above);

b. Disciplinary/Criminal Action under the RFA 96 (see below); or

c. Administrative Measures (see below).

20189. Members of the Reserve Forces and Individuals Liable to Recall - Liability to Service Law (AFA 06)

For a full discussion of the application of jurisdiction as to person for members of the reserve forces and individuals liable to recall see the MSL Chapter 3, Part 1, Paras 10-13 and Chapter 10, Annex A. Particular areas of single service relevance are set out below:

a. **Training and Duty.** Whether a reservist is undertaking training or duty at any given time is a question of fact. Where training and duties are officially authorised, no difficulty should arise; however, the terms of training and duty should be widely construed to include all activities engaged in by a reservist, which are pursuant to an objective, aim or purpose of the regular or reserve forces. The wearing of uniform for activities will give rise to a strong presumption that an individual will be undertaking training or duty, but the converse will not be true. The wearing of plain clothes does not prevent an activity being training or duty within the meaning of the AFA. Travel at public expense will be deemed duty for this purpose. Guidance on travel to and from a short duty, e.g. drill night, is contained in the MSL, Chapter 3, Part 1, Para 12.

b. **Social Events.** Social events may also amount to training or duty. Formal and representational occasions and those which form an integral part of a training or duty activity are more likely to be duty while informal events will be less so. Commanding Officers should determine in advance and promulgate by temporary memorandum whether a social event is considered to be training/duty.

c. **Failure to Attend for Training or Duty.** Where clear orders have been given for reservists to report to a given location for training or other duty, they are subject to the AFA 06 from the time given for them to report to the location concerned and, therefore, are liable to be charged for "failing to attend" under AFA Section 15 should they neglect to do so. Furthermore, section 97 of the Reserve Forces Act 1996 makes it an offence, in some circumstances, for a Reservist to fail to attend for duty or training. The preferring of such charges will be dependent on the facts of the case and whether the matter can be dealt with in the service or civilian jurisdiction.

d. **Referral of Criminal Activity to the Civil Police.** Within the UK, in respect of offences committed by persons subject to Service law, jurisdiction may lie with the Service authorities under the Act or with both the Service authorities and the civilian authorities under the ordinary law of the relevant part of the UK. In the latter circumstance, there are a number of established procedures and protocols that determine the exercise of jurisdiction and COs should liaise with the RNP and seek legal advice from the relevant Regional Legal Office on jurisdiction. (See the MSL Chapter 3, Part 3, Paras 50-55.)

20190. Offences Under The AFA 06 - Trial and Punishment

See the MSL, Vol 1, Chap 10, Annex A, Paras 3-4, and Vol 1, Chap 3, Part 4. Policy requirements are set out below:

a. Maritime Reserve Unit COs are to consult with their Regional Support Unit (RSU) Officer in Charge (OiC) in all cases, who will seek further legal advice in mandated cases (see below), prior to commencing any disciplinary proceedings against a reservist. RSU OiCs will inform CMR via routine Disciplinary Reporting.

b. Procedures for trial and punishments, which may be imposed summarily by COs under AFA 06, are shown in JSP 830. COs are reminded of the requirement to seek legal advice in the circumstances as set out in Para 2048.

c. Custodial sentences and other punishments, which would prolong a reservist's period of service and thereby prejudice their civilian employment, if held, should be avoided where possible. Substantial fines or Disrating may have to be imposed when Detention would have been applicable in the RN/RM. Detailed guidance on suitable punishments for particular offences is given in the MSL, but legal advice should be sought.

20191. Offences Under The RFA 96 - Trial and Punishment

See the MSL, Vol 1, Chap 10, Annex A, Paras 5-11. A summary is set out below for ease of reference:

a. A member of a reserve force convicted by a civil court of the offences listed below is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding Level 5 on the standard scale (or both):

(1) Failing to attend for service on call-out or recall (RFA 96 s.96(1);

(2) Failing to attend for duty or training (RFA 96 s.97(1); or

(3) An offence under service law of desertion or absence without leave.

b. A person convicted of an offence under RFA 96 s.97(2) (failure to train) is liable:

(1) If convicted by the CM, to the same punishment as for an offender under service law of absence without leave, namely up to two years' imprisonment;

(2) If convicted by a civil court, to imprisonment for a term not exceeding six months or a fine, not exceeding Level 5 on the standard scale (or both).

c. Where a member of a reserve force or a person liable to recall is convicted of an offence of desertion, the time which elapsed between the time of their desertion and the time of their apprehension or voluntary surrender shall not be taken into account in reckoning their service for the purpose of release from permanent service or discharge (RFA 96 s.98(6).

d. Pursuant to s101 RFA 96, a person who, in the UK or elsewhere, by any means:

(1) Procures or persuades, or attempts to procure or persuade a member of a reserve force, or a person liable to recall, to commit an offence of desertion or absence without leave;

(2) Knowing that a member of a reserve force, or a person liable to recall, is about to commit such an offence, aids or assists them in so doing; or

(3) Knowing a member of a reserve force, or a person liable to recall, to be a deserter or an absentee without leave, procures or persuades or assists them to remain a deserter or absentee, or assists in their rescue from custody, is guilty of an offence and is liable on summary conviction in a civil court:

(a) In the case of an offence involving an offence of desertion or aiding a deserter, to imprisonment for a term not exceeding 6 months or a fine not exceeding Level 5 on the standard scale (or both); and

(b) in the case of an offence of absence without leave or aiding an absentee without leave, to a fine not exceeding Level 5 on the standard scale.

20192. Administrative Action

a. On receipt of advice of CMR Staff and legal advisers, administrative measures may be taken by COs against reservists in any of the following circumstances:

(1) When behaviour which would constitute a Service disciplinary offence has been committed but jurisdiction under the AFA cannot be established and the offence does not merit referral to the civil authority, i.e. not a criminal law offence.

(2) When the likely punishment under the AFA would be inappropriate or ineffective.

(3) When, despite warning, a reservist consistently falls short of the standards of conduct, appearance or attendance expected of a member of the Armed Forces.

(4) When a reservist's general conduct and performance indicate to their CO that they do not deserve to be paid part or all of their bounty, are unfit to retain their rate, or are unsuitable for retention in the RNR/RMR.

(5) When convicted of, or receiving a Police Caution in respect of a civil offence.

(6) Code of Social Conduct. In cases where a serious breach of the Armed Forces Code of Social Conduct has occurred or for a series of relatively minor offences where formal warnings have been given.

b. Administrative measures include:

(1) Forfeiture of part or all of a reservist's bounty.

(2) Forfeiture of GCB(s).

(3) Reversion as unsuitable to hold their substantive Rate.

(4) Discharge SNLR or SHORE as unfit to remain in the Reserves.

(5) Censure Action for officers (see Chapter 20 Section 6 and Section 7).

(6) Termination/removal of an officer's commission.

c. **Investigation prior to Administrative Action.** The CO is to conduct a formal investigation of the alleged misconduct or other shortcoming. Before reaching a decision, the CO must give the reservist full opportunity to state their case (including calling witnesses if desired), assisted by their DO or any other person in the unit who may reasonably be made available. If the reservist does not wish to state their case, they should sign a statement to that effect. Advice should always be sought from EA to CMR and the Regional Legal Office before administrative action is commenced.

d. **Forfeiture of Bounty.** As a criterion for the award of bounty, a reservist must have carried out all training and duties satisfactorily. If after the appropriate warning, the CO is not satisfied that a reservist has carried out all their training and duties satisfactorily, they may refuse to approve the award of bounty or direct that part of it be forfeited.

e. **Discharge.**

(1) Discharge SNLR and SHORE are administrative measures distinct from the punishment of Dismissal under the AFA. Powers of Discharge are pursuant to RFA 96 sections 14 and 15. Legal Advice should always be sought before such action is taken.

(2) When a rating is deemed to be unfit to remain in the Service, consideration may be given to discharge SNLR or SHORE. Authority for Discharge SNLR must be obtained from CMR. The CO has the authority to Discharge SHORE ratings who fail to fulfil their training obligations and are persistent bad attendees. In the case of the RMR, CMR must give authority for the Discharge SHORE of an NCO or Marine OR who has proved themselves unsuitable for the Reserve or inefficient in their rank for reasons other than bad attendance. The detailed procedures for discharge SNLR/SHORE, contained in BRd 3(1) Chapter 54 are to be consulted before application is made.

f. **Termination of an RMR Officer’s Commission.**

(1) An officer’s commission may be terminated at any time during their service for misconduct, inefficiency, unsuitability or physical unfitness. Officers discharged for any of these reasons are not eligible to be placed on the Retired List.

(2) Officers who continually fail to meet their training commitments may have their commissions terminated.

(3) Officers who fail to gain promotion during the prescribed 'in zone' period may have their commissions terminated.

(4) Application for termination of an officer’s commission should be made to CMR following legal advice. Prior to any such application the officer concerned should be subject to formal warning, and is entitled to forward a Representation, if he chooses to do so, with any such application. If the decision is made to waive this right a certificate to that effect should be signed accordingly.

g. **Termination of an RNR Officer’s Commission.**

(1) An officer's commission may be terminated at any time during their service for misconduct, inefficiency, unsuitability or physical unfitness. Officers discharged for any of these reasons are not eligible to be placed on the Retired List.

(2) Application for termination of an officer's commission should be made to CMR following legal advice. Prior to any such application the officer concerned should be subject to formal warning, and is entitled to forward a Representation, if they choose to do so, with any such application. If the decision is made to waive this right a certificate to that effect should be signed accordingly.

20193. Convictions by the Civil Power

See BRd 2 Articles 3901-3906 and BRd 3(1) Chapter 20 Section 19 and Section 20, for guidance on actions to be taken.

a. **Ratings - Reversion or Discharge SNLR/SHORE.** Detailed guidance is given in BRd 2 and this BR but, broadly, if the nature of an offence or offences shows the rating to be unfit to retain their rate/rank, or to remain in the RNR/RMR, a recommendation should be made on Form C57 and forwarded to CMR for approval for Reversion or Discharge SNLR/SHORE.

b. **Attendance of an Officer in Court.** An officer needs to attend Court when a rating is tried, only if the alleged offences occurred during, or in connection with, reserve service or training, or if attendance is requested by a Court and this request can be met without detriment to Service commitments. CMR staff is to be consulted if an officer is not available from the rating's unit.

c. **Officers.** The arrest, summons or conviction of an officer on criminal charges, other than minor motoring offences which do not require an appearance in court, is to be reported by the CO to CMR by letter. The CO is also to forward any representation the officer may wish to submit following a conviction. Conviction of an officer, or the issue of a Fixed Penalty, depending on the nature of the offence(s), may result in the imposition of a service penalty, which may range from a formal Censure to Removal from the Active List, or termination of their commission.

20194. Conduct Record and Formal Discipline Record

Ratings and ORs of the Maritime Reserves used CRs until 2010, since when their arrangements are the same as for regulars (see para 20140).

ANNEX 20A

LOGGING

1. When the Commanding Officer considers that minor misconduct by an officer, for which no further disciplinary or administrative action is to be taken, should be recorded, the following wording is to be used:

I have this day had occasion to log .....

for .....

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Signed .....
Commanding Officer

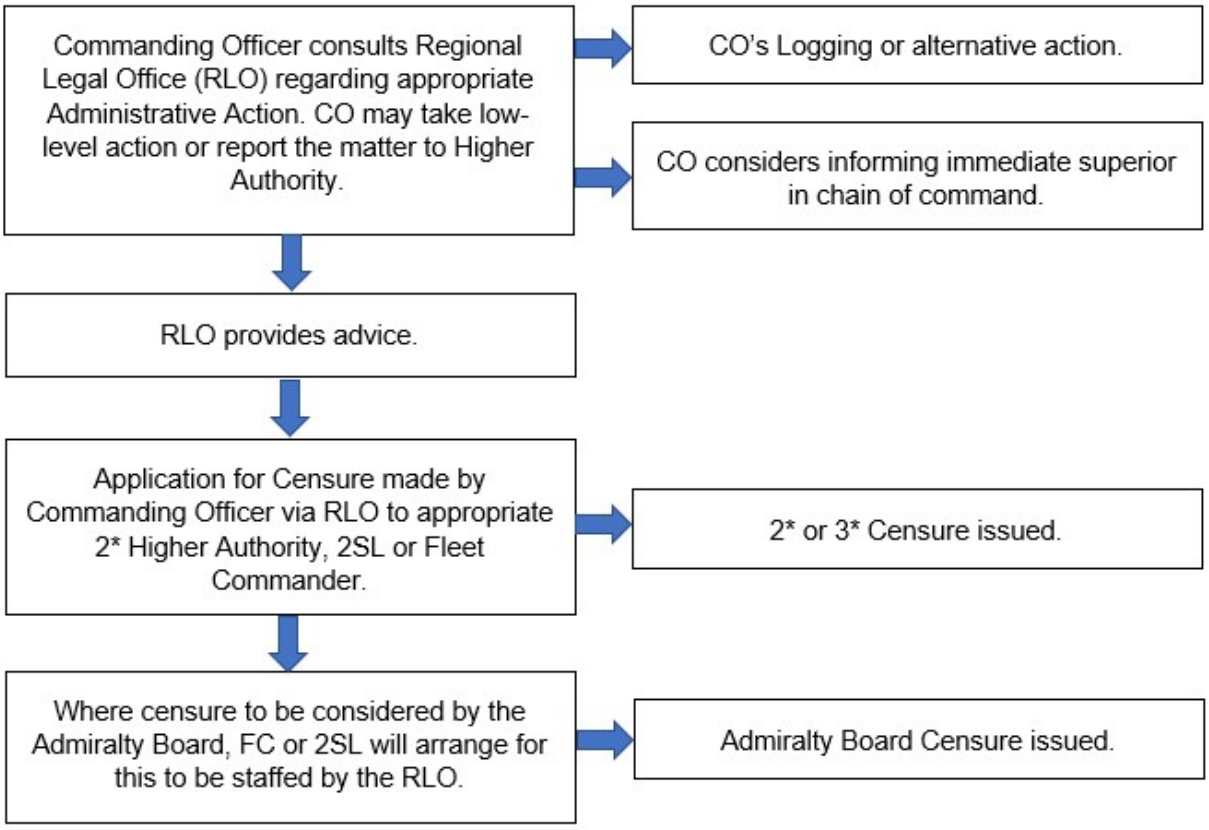
Read and understood

Signed .....

2. After signature the logging is to be filed in the Captain's office and retained there until the officer leaves the ship. Loggings are not to be reported to the Naval Secretary for recording on official or reporting records.

ANNEX 20B

CENSURES



ANNEX 20C

ADMINISTRATIVE CONSEQUENCES OF PUNISHMENT UNDER ARMED FORCES ACT 2006 - OFFICERS, RATINGS AND ROYAL MARINES OTHER RANKS

The table below lists the administrative actions which are to be taken automatically (obligatory), or which may be taken (optional), when a member of the Naval Service is punished under the Armed Forces Act 2006. These administrative consequences apply whether the punishment is imposed at Summary Hearing, by the Summary Appeal Court or by the Court Martial. This table is for guidance only. The relevant articles should be consulted.

AFA 06 Punishment	Forfeiture of LS&GC Medal (see Note 1)	Forfeiture of GCBs (see Note 2)	Career Check (Rating, SNCO or RMOR) (see Note 3)	Note on Official Record (Officers)	Explanatory Notes	References
Imprisonment	Obligatory when period of imprisonment is greater than 6 months.	Obligatory (all badges)	Obligatory (See Note 3 Note 4)	Obligatory	a. May only be imposed by Court Martial. b. Administrative discharge from the Service will be considered if dismissal is not imposed with imprisonment. c. If neither dismissal nor administrative discharge: CC with consequent effect on promotion (BRd 3(1) Part 8), and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5); stoppage of pay for period of imprisonment; loss of time for the period of the sentence imposed, less any remission (ie. time spent in custody). A CC has no effect when recorded on the CR of an individual aged under 17½.	
Dismissal	Obligatory for Dismissal with Disgrace.	Obligatory (all badges)	Obligatory (See Note 4)	Obligatory	a. May only be imposed by Court Martial.	

(Continued)

AFA 06 Punishment	Forfeiture of LS&GC Medal (see Note 1)	Forfeiture of GCBs (see Note 2)	Career Check (Rating, SNCO or RMOR) (see Note 3)	Note on Official Record (Officers)	Explanatory Notes	References
Detention and Suspended Detention > 14 days	N/A	Obligatory (all badges)	Obligatory (See Note 3 Note 4)	N/A	a. Punishment not available for Officers. b. CC with consequent effect on promotion (BRd 3(1) Section 8), and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5). A CC has no effect when recorded on the CR of an individual aged under 17½. c. Stoppage of pay for period of Detention. A family maintenance grant may be available at CO's discretion (JSP 754 Chap 8). d. Except in connection with advancement, loss of time for the period of the sentence imposed less any remission.	JSP 830 MSL Chap 13 para 34-44
Detention and Suspended Detention 14 days or less	N/A	Optional (See Note 2)	N/A	N/A	a. Punishment not available to Officers. b. Stoppage of pay for period of Detention. A family maintenance grant may be available at CO's discretion (JSP 754 Chap 8). c. Except in connection with advancement, loss of time for the period of the sentence imposed less any remission.	JSP 830 MSL Chap 13 para 34-44
Forfeiture of Seniority	N/A	N/A	N/A	N/A	a. Available for Officers only. b. Not to be recorded except as change in seniority date.	JSP 830 MSL Chap 13 para 85 - 93
Reduction in Rank/Disrating	N/A	Optional (See Note 2)	Obligatory (See Note 4)	N/A	a. Not available for Officers. b. CC with consequent effect on promotion, and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5). A CC has no effect when recorded on the CR of an individual aged under 17½.	JSP 830 MSL Chap 13 para 94-104
Fine >14 days' pay	N/A	Optional (See Note 2)	Obligatory (See Note 4)	Obligatory	a. CC with consequent effect on promotion, and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5).	JSP 830 MSL Chap 13 para 105 - 122
Fine 14 days' pay or less	N/A	Optional (See Note 2)	Obligatory for WO	Optional	a. CC with consequent effect on promotion, and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5).	JSP 830 MSL Chap 13 para 105 - 122

(Continued)

AFA 06 Punishment	Forfeiture of LS&GC Medal (see Note 1)	Forfeiture of GCBs (see Note 2)	Career Check (Rating, SNCO or RMOR) (see Note 3)	Note on Official Record (Officers)	Explanatory Notes	References
Severe Reprimand	N/A	Optional (See Note 2)	Obligatory (See Note 4)	Obligatory	a. CC with consequent effect on promotion and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5). A CC has no effect when recorded on the CR of an individual aged under 17½.	JSP 830 MSL Chap 13 para 123 - 126
Reprimand	N/A	Optional (See Note 2)	Obligatory for WO	Optional	a. CC with consequent effect on eligibility for LS&GCM and MSM (JSP 761 Ch 5).	JSP 830 MSL Chap 13 para 123 - 126
Service Supervision & Punishment Order	N/A	Obligatory (All badges)	Obligatory (See Note 3 Note 4)	N/A	a. Not available for Officers. b. CC with consequent effect on promotion and eligibility for GCBs, LS&GCM and MSM (JSP 761 Ch 5). A CC has no effect when recorded on the CR of an individual aged under 17½.	JSP 830 MSL Chap 13 para 68 - 84
Service Compensation Order > 14 days' pay	N/A)	Optional (See Note 2)	Obligatory (See Note 4)	Optional	a. CC with consequent effect on promotion eligibility for GCBs, and LS&GCM and MSM (JSP 761 Ch 5). A CC has no effect when recorded on the CR of an individual aged under 17½.	JSP 830 MSL Chap 13 para 152 - 179
Service Compensation Order 14 days' pay or less	N/A	Optional (See Note 2)	Obligatory for WO	Optional	a. CC with consequent effect on eligibility for GCBs, and LS&GCM and MSM (JSP 761 Ch 5).	JSP 830 MSL Chap 13 para 152 - 179
Restriction of Privileges	N/A	N/A	N/A	N/A		JSP 830 MSL Chap 13 par 136 - 148
Stoppage of Leave	N/A	N/A	N/A	N/A		JSP 830 MSL Chap 13 para 127 - 135
Admonition	N/A	N/A	N/A	N/A		JSP 830 MSL Chap 13 para 149

Notes:

1. *This Table defines the consequence of punishment under AFA 06 on eligibility to hold LS&GC Medal for members of the Naval Service. JSP 761, Chapter 5, para 5.20 states that, "An individual who has already been awarded the LS&GCM who subsequently incurs an entry on their disciplinary record cannot forfeit the medal but will incur an automatic delay before the clasp can be awarded. However, an individual who is sentenced to imprisonment for a period greater than 6 months and/or is dismissed with disgrace is liable to forfeit the LS&GCM or VRSM as well as Campaign, Commemorative and other Service medals in accordance with Chapter 9 of JSP 761. All medals can be restored after a further period of service on application to the Defence Council in accordance with Chapter 9 of JSP 761." All such offences should be reported to Naval Secretary (Honours and Awards), Navy Command Headquarters, Leach Building (MP 3.1), Whale Island, Portsmouth, PO2 8BY. In addition, where any punishment gives rise to optional forfeiture of LS&GC Medal, the offence is to be reported to the Naval Secretary (Honours and Awards).*

2. *Where forfeiture of GCBs is obligatory, all badges are to be forfeit. Where forfeiture is optional, any number of badges may be forfeit but legal advice must be sought in order to ensure consistency across the Service. See Chapter 20 Section 15 for guidance as to whether badges should be forfeit, and JSP 761 Chapter 5 Annex B Appendix 1 for restoration). Where forfeiture of a GCB is ordered the offence is to be reported to the Naval Secretary (Honours and Awards).*

3. *More information about the CC can be found at BRd 3(1) Chapter 58, Annex K, para 10(k); Chapter 67, para 6718; and Chapter 68 para 6806. Where detention or imprisonment is awarded, the CC date used for calculating future eligibilities is the date of release from custody. If a sentence of imprisonment/detention is suspended, the CC date is the date of conviction. Where the punishment is an SSPO, the CC date used for calculating future eligibilities is the last day of the SSPO (may be awarded for 30, 60 or 90 days duration).*

4. *Whenever a CC is imposed the offence is to be reported to the Naval Secretary (Honours and Awards). A CC at any time after the MSM has been awarded will automatically result in forfeiture of the medal (JSP 761 Annex 5A article 16). If the holder of an MSM comes to adverse disciplinary notice short of the award of a CC the circumstances are nevertheless to be reported to the Naval Secretary (Honours and Awards), Navy Command HQ where suitability to retain the MSM will be considered.*

ANNEX 20D

ROLES AND RESPONSIBILITIES FOR THE MANAGEMENT OF SUSPECTED AND REGISTERED SEX OFFENDERS (RSO) IN THE ROYAL NAVY

1. **SPCB ViSOR Manager:** - is responsible for:

a. Maintaining Home Office ViSOR system.

b. Informing Commanding Officer in writing of new conviction, implications and single Service procedural guidance.

c. Briefing of a Commanding Officer prior to the deployment of a RSO.

d. Informing RNPHQ Public Protection Lead and NAVY CULTURE-DISCIPLINE HEAD SO2 by email of new Visor cases and subsequent updates.

e. Arranging and conducting Matrix 2000 Risk Assessments where a Royal Navy RSO is outside the UK and any other appropriate occasion.

f. Attending Multi-Agency Public Protection meetings.

g. Providing advice on request to assist the RN/RM assignment process

See Annex 20F and Annex 20H.

2. **Commanding Officer of Suspected or Registered Sex Offender (RSO):** - is responsible for:

a. Managing Suspected or RSO under their command and that these responsibilities are handed over to any successor.

b. Completing and submitting Employment Assessments (see Annex 20I and Annex 20J).

c. Ensuring that they are notified of any external training or loan temporary duty/detachment intentions, and if these are to last for more than 3 consecutive days to forward details to NAVY CULTURE-DISCIPLINE HEAD SO2 (and SPCB for a RSO).

See Annex 20E, Annex 20F and Annex 20H.

3. RNP PUBLIC PROTECTION LEAD: - is responsible for:

a. Maintaining the RN/RM Sex Offender Management Database.

b. Requesting completion of Employment Assessments and drawing Commanding Officer's attention to BRd 3(1) Chapter 20 Section 22.

c. Attending Employment Suitability Assessment/Multi-Agency Risk Assessment Committee (MARAC)/Multi-Agency Public Protection (MAPPA) meetings.

d. Specifying limitations on what police information can be disclosed to other stakeholders.

See Annex 20E, Annex 20F, Annex 20G and Annex 20H.

4. NAVY CULTURE-DISCIPLINE HEAD SO2: - is responsible for:

a. Providing ViSOR and D&BS briefings to new Career Managers.

b. Arranging and chairing 'Employment Suitability Risk Assessment' meetings.

c. Production and maintenance of Defensive News Briefs (BRd 3(1) Chapter 20 Section 17).

d. Prompting NAVY PERS-CM DACOS COORD SO2C to add or delete JPA Assignment Restrictions.

e. Conferring with RNPHQ Public Protection Lead to consider the implications of new assignment plans notified by Career Managers.

f. Advising Career Manager on wisdom of planned assignment (where no Employment Assessment meeting was deemed necessary).

g. Informing RNP Public Protection Lead of Service Penalty once known.

See Annex 20E, Annex 20F, Annex 20G and Annex 20H.

5. NAVY PERS-CM DACOS COORD SO2C: - is responsible for:

a. Maintaining JPA Assignment Restrictions as prompted by NAVY CULTURE-DISCIPLINE HEAD SO2 and alerting specific Career Managers by e-mail.

b. If required, liaising with NPT(Reserves) for any amendments to JPA Reservists PIDs.

See Annex 20E, Annex 20G and Annex 20H.

6. DDPD: - is responsible for:

a. When necessary, conferring with RNP PPU Lead to examine the implications of a sentence to assist full consideration of Service Penalty action following a civil conviction or police caution for a sexual offence.

b. When necessary, convening multi-Agency employment meetings to gain the fullest possible picture of the offence and any limitations placed on the offender, to aid Service Penalty decision making.

See Annex 20H.

7. DDPD Career Manager: - is responsible for:

a. Checking and acting on all JPA Assignment Restrictions.

b. Implementing agreed assignment plans following discussion with NAVY CULTURE-DISCIPLINE HEAD SO2 or attendance at Employment Suitability Risk Assessment meeting.

c. Informing a new Commanding Officer of the provisions in BRd 3(1) before the reassignment of a suspected or RSO to a new post.

See Annex 20E and Annex 20F.

8. Regional Legal Adviser: - is responsible for:

a. Informing NAVY CULTURE-DISCIPLINE HEAD SO2 of Service Penalty following civil conviction or Police Caution for a sexual offence.

b. Requesting sentence implications from RNP Public Protection Lead.

See Annex 20H.

ANNEX 20E

INITIAL ACTIONS ON NOTIFICATION OF A CRIMINAL INVESTIGATION INTO AN ALLEGED SEXUAL OFFENCE

Annex 20U or INREP received notifying:

RNPHQ Public Protection Lead & Navy Culture Discipline Head that a member of the RN is subject to a Service or Home Office Police investigation into an alleged sexual offence.

RNPHQ Public Protection Lead is to:

- Create new record in the Violent and Sex Offenders Register (ViSOR) database.
- Send Offender's CO Registered Sex Offender Employment Suitability Risk Assessment (ESRA) Form Annex 20I for completion.

Offender's Commanding Officer is to:

- Complete ESRA Form Annex 20I, save in PDF format with CO's dated signature, scan and send by email: NAVYPOLICE-HQPPUMailbox@mod.gov.uk & NAVYPEOPLE-PSPEXECDISC@mod.gov.uk
- Notify PSyA by completing Aftercare Incident report (AIR) who will consider whether SC and/or DV need to be suspended.
- Consider the needs of any victim(s) or witness(es).
- Consider ongoing Divisional, Welfare, Medical & Pastoral support.

Navy People Discipline Policy Head is to:

- Contact NAVY PEOPLE-CM COMD POLICY SO2C to place assignment restriction and inform Career Manager.
- Consider convening and chairing ESRA meeting as required.
- Update Defensive News Briefs and issue Lines to Take as required.
- Direct Assignment Action to mitigate risk and protect Victim(s) and/or Witness(es) whilst complying with any conditions imposed by Home Office Police.

ESRA Meeting Required?

Navy Culture Discipline Head is to:

- Arrange & chair ESRA Meeting to include: RNPHQ Public Protection Lead, Home Office Police, Medical, Unit Rep, RN FPS, Personnel Support Group as required.

Navy Culture Discipline Head is to:

- Advise the Career Manager of any Assignment Action and need for any CO to CO ESRA Handover.

Career Manager is to:

- Implement any revised assignment plan as directed by Navy Culture Discipline Head.
- Notify the CO and the individual as required.

ANNEX 20F

ACTIONS TO ENSURE APPROPRIATE EMPLOYMENT OF SUSPECTED OR REGISTERED SEX OFFENDERS

Note. *The Employment Assessment of those 'suspected' of committing sex offences is to be conducted on a case-by-case basis being careful to avoid an assumption of guilt.*

Suspect/Registered Sex Offender's Commanding Officer is to:

- Complete ESRA Form Annex 20I or Annex 20J (RSO) every 6 months or on significant change of circumstances, save in PDF format with CO's dated signature, scan and send by email: NAVYPOLICE-HQPPUMailbox@mod.gov.uk & NAVYPEOPLE-PSPEXECDISC@mod.gov.uk
- Discuss any planned training or loan away from unit greater than 3 days with Navy People Discipline Policy Head to mitigate risks,
- Conduct ESRA handover to any temporary CO or permanent relief.

Career Manager is to:

- Contact Navy People Discipline Policy Head to discuss any assignment plan prior to taking assignment action.

RNPHQ Public Protection Lead is to:

- Update record in the Violent and Sex Offenders Register (ViSOR) database on receipt of Suspect/Registered Sex Offender's CO (ESRA) Form Annex 20I or Annex 20J.

Navy People Discipline Policy Head is to:

- Liaise with RNPHQ Public Protection Lead to discuss and mitigate risks.
- Consider convening and chairing ESRA meeting as required.
- Update Defensive News Briefs and issue Lines to Take as required.
- Direct Assignment Action to mitigate risk and protect Victim(s) and/or Witness(es) whilst complying with any conditions imposed by Home Office Police.

ESRA Meeting Required?

Navy People Discipline Policy Head is to:

- Arrange & chair ESRA Meeting to include: RNPHQ Public Protection Lead, Home Office Police, Medical, Unit Rep, RN FPS, Personnel Support Group as required.

Navy People Discipline Policy Head is to:

- Advise the Career Manager of any Assignment Action and need for any CO-to-CO ESRA Handover.

Career Manager is to:

- Implement any revised assignment plan as directed by Navy People Discipline Policy Head.
- Notify the CO and the individual as required.

ANNEX 20G

ACTIONS ON NOTIFICATION OF SEXUAL OFFENCE INVESTIGATION DISCONTINUANCE, A COURT CASE DISCONTINUANCE/ACQUITTAL/QUASHING OR THE SUCCESSFUL COMPLETION OF AN OFFENDER'S REGISTRATION PERIOD

On receipt of official notification that an investigation has been discontinued, court case discontinuance/acquittal/quashing or on successful completion of an offender's registration period:

RNPHQ Public Protection Lead is to:

- Update record in the Violent and Sex Offenders Register (ViSOR) database by the inclusion of a suitable comment and alteration of the record status, alerting Navy People Discipline Policy Head.

Navy People Discipline Policy Head is to:

- Inform Navy Pers-CM DACOS Coord SO2C that the JPA Assignment Restriction is to be removed.
- Discuss with the Commanding Officer whether a Zero Tolerance/Unacceptable Sexual Behaviour Immediate Ships Investigation is required where the 100% threshold for conviction in Court is not met and there may be, on the balance of probabilities; a case to answer.

Career Manager is to:

- Remove the JPA Assignment Restriction.

ANNEX 20H

ACTIONS ON NOTIFICATION OF SEXUAL OFFENCE CONVICTION

On notification that a member of the RN has been convicted of a sexual offence:
Military Court Service, Personnel Support Group OIC or Commanding Officer are to:

- Notify RNPHQ Public Protection Lead & Navy People Discipline Policy Head by email.

RNPHQ Public Protection Lead is to:

- Update Violent and Sex Offenders Register (ViSOR) database and send Offender's CO Registered Sex Offender Employment Suitability Risk Assessment (RSO ESRA) Form Annex 20J for completion.

Offender's Commanding Officer is to:

- Complete RSO ESRA Form Annex 20J, save in PDF format with CO's dated signature, scan and send by email: NAVYPOLICE-HQPPUMailbox@mod.gov.uk & NAVYPEOPLE-PSPEXECDISC@mod.gov.uk
- Take Legal Advice from Regional Legal Office to commence Discharge SNLR proceedings if offender has not been sentenced or not dismissed at Courts Martial.
- Notify PSyA by completing Aftercare Incident report (AIR) who will consider whether SC and/or DV need to be suspended.
- Record any Service Penalties and convictions in JPA.
- Consider HARDFACTS.

Navy People Discipline Policy Head is to:

- Convene Employment Suitability Risk Assessment (ESRA) meeting as required.
- Update Defensive News Briefs.
- Consider Assignment Action to mitigate risk and protect Victim(s) and/or Witness(es) whilst complying with any conditions imposed by the Courts.

Regional Legal Office is to:

- Provide Legal Advice to Commanding Officer.
- Process the Discharge SNLR application through to conclusion.
- Notify Navy People Discipline Policy Head of any Service Penalties.

Offender Retained?

No → End Process

Yes → Manage Offender (Annex 20F)

ANNEX 20I

ALLEGED OFFENDER'S EMPLOYMENT SUITABILITY RISK ASSESSMENT (ESRA)

ALLEGED OFFENDER'S EMPLOYMENT SUITABILITY RISK ASSESSMENT (ESRA) *(Downloadable version available in BRd 3(1) Forms Section)*

ANNEX 20J

REGISTERED SEXUAL OFFENDER EMPLOYMENT SUITABILITY RISK ASSESSMENT (RSO ESRA)

1. Confidentiality Statement: In working with Registered Sex Offenders (RSO) all personnel have agreed boundaries of confidentiality. The information contained within this Employment Suitability Risk Assessment (RSO ESRA) respects those boundaries of confidentiality and is shared on the understanding that:

The assessment is called for in circumstances where it is felt that the risk presented by the offender is so great that issues of the service community or individual safety outweighs those rights of confidentiality.

2. This RSO ESRA is closed under the Freedom of Information Act under one or more of the following reasons:

a. Investigations and proceedings by public authorities (S.30(1)(B)).

b. Health and Safety (S.38).

c. Personal Information (S.40).

d. Information provided in confidence (S.41).

3. The questions in this risk assessment consider Article 8.2 European Court of Human Rights, with reference to:

a. Public Safety.

b. The prevention of crime and disorder.

c. The protection of health and morals.

d. The protection of the rights and freedom of others.

4. This RSO ESRA should not be photocopied, or the contents shared outside of the Command, Navy People Discipline Policy Head, RNPHQ Public Protection Unit, Personnel Support Groups (Devonport, Faslane and Portsmouth and their satellite offices) and the Armed Forces ViSOR Manager. If further disclosure is essential, then permission should be sought from RNPHQ Public Protection Unit..

5. Offence related questions.

Full Name: .....

Service Number: .....

DoB: .....

Ship / Unit: .....

What is the trigger for completion of this form? (e.g., Guilty Plea at a Hearing / Conviction / Change in the offender's circumstances / Contemplation of re-tasking)
Give full details, including full contact details, the responsible authority and of the specific person appointed to manage this Offender for the duration of their awarded period as a Sex Offender.
Are there any known restrictions imposed by the Court, Police? (e.g., Restraining Order, Sexual Offences Prevention Order (SOPO), Barred from working with Vulnerable Groups etc.)
What is the Offender's current, and intended future tasking under your command? (To include job description, forthcoming deployments, including any Loan Temporary Duty period of 3 days or more).
Is the Offender currently engaged in Regulated Activity? (i.e. In a position that requires D&BS / PVG clearance?)

Is the Offender employed in a supervisory capacity over any Juveniles (U18s) or Vulnerable Adults (ie Mess Deck Supervisor, Troop Commander, Line Manager etc).
What level of supervision will the Offender receive – give detail?
Does the conviction suggest an interest in a particular identified group of persons?
MALE: YES/NO **FEMALE:** YES/NO **U18:** YES/NO **U16:** YES/NO
Explain if the Offenders current or intended assignment causes contact with an identified group?
Does the post involve one-to-one contact with juveniles or vulnerable adults within such groups, as other service personnel, the public, potential recruits, or dependants?
Will the nature of the job present any realistic opportunities for the Offender to re-offend at work?
Is a management plan in place to mitigate any perceived risk? **(Management Plan to be attached and sent to RNPHQ PPU with this document).**

Does the Offender's current or intended assignment require entry to another country, for which authorisation will be required, and is to be requested?
Does the individual have access to weapon systems or any munitions? If yes, what considerations / mitigations are in place to manage / restrict / deny access to such articles.
Are you likely to hand over command responsibility while the Offender remains attached to this unit? (If so, have you briefed your successor on the requirements of this chapter of BRd 3(1)?)
Has dialogue taken place with Navy People Discipline Policy Head to discuss the implications and restrictions of employment regarding the individual?
Are there any other considerations regarding the Offender / offences?
Has the individual been entered into VRMIS?
Is the Offender considered to be at risk of self-harm or harm from others? (e.g., reprisals)

Does the Offender's current assignment allow the individual to have practical access to their nominated legal representative?
Is the Offender required to appear before further Court hearings? (e.g. Sentencing / SOPO hearings)
What is the attitude of the individual towards the Guilty Plea / Conviction?
Has a media strategy been agreed by Navy People Discipline Policy Head?
Have Discharge SNLR proceedings commenced?
Are there any other considerations regarding the Offender?

THIS RISK ASSESSMENT MUST BE SIGNED BY THE SUBJECTS COMMANDING OFFICER

6. Commanding Officers Details:

Name: ..... Rank: .....

Service Number: .....

Appointment: .....

Signed: ..... Date: .....

A fully completed and signed scanned PDF version of this document is to be emailed to the following mailboxes:

NAVY POLICE-HQ PPU MAILBOX (MULTIUSER)

and

NAVY PEOPLE-PSP EXEC DISC (MULTIUSER).

ANNEX 20K

THE ARMED FORCES CODE OF PRACTICE FOR VICTIMS OF CRIME 2015

1. Introduction

In accordance with The Armed Forces Code of Practice for Victims of Crime 2015 ('the Code'), alleged victims of crime (including victims of criminal and non-criminal conduct[1] offences under the Armed Forces Act 2006) are entitled to receive certain services where the alleged offence was committed in the European Union (EU) or criminal proceedings (including Summary Hearing and Court Martial proceedings) take place in the EU. Complainants are referred to as 'victims' within the Code. Service Providers under the Code include the Commanding Officer (CO) of the accused, the Service Police, the Service Prosecuting Authority (SPA) and the Military Court Service. Overall, the purpose of the Code is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Key features introduced by the Code include: an assessment of the victim's needs at the outset of an investigation; the appointment of a Victim Liaison Officer (VLO); and a victim's right to a review of a CO's decision not to bring any charge against an accused person or not to refer a case to the SPA. This Annex provides guidance to COs and VLOs in particular regarding their responsibilities. The RNP's responsibilities under the Code, including details of the procedure to be applied when a victim exercises their right to a review of a RNP decision to discontinue an investigation or not to refer any charges to the CO or the SPA, are set out in Provost Marshal Technical Instruction Number 31.

2. Application of the Code

There is a duty to provide services to victims when all of the criteria set out below are satisfied. The victim is entitled to access victim support services at any time, whether they have reported a crime or not, and after the conclusion of the investigation and prosecution.

a. A victim of an alleged offence has suffered harm, including physical, mental or emotional harm or economic loss, which was caused directly by a criminal offence. This includes a close relative of a person whose death was directly caused by a criminal offence. For victims aged under 18 years, their parent or guardian may also receive services under the Code.

b. The relevant offence was committed in the EU or is the subject of criminal proceedings which take place in the EU (including Summary Hearing and trial by Court Martial). The investigation stage forms part of 'criminal proceedings' for the purposes of the Code.

c. A victim, or a bereaved relative, has made a complaint to the Service Police or to the CO of the accused person, or the victim has been identified in a complaint made by a third party. The Code applies even if a suspect has not been identified.

[1] As defined in JSP 830 (MSL) Chapter 7.

d. The alleged offence is being dealt with by the Service Justice System (SJS). If the case is later transferred to a civilian jurisdiction, a victim will cease to be entitled to further services under the Code from the date of transfer provided they are notified of this fact. Responsibility for support will then transfer to the civilian sector. Where there is a joint civilian/military investigation, the Code applicable to the lead agency will apply.

e. The victim is present in the UK. Where a victim is not present in the UK or has left the territory of the UK, it is the victim's country of residence that should provide victim support services to that victim. As a matter of RN policy, the Code will apply when a victim is present onboard any RN warship, RN submarine or RFA vessel, even if that vessel is located outside UK internal or territorial waters.

f. The victim has not opted out of their entitlement to receive services under the Code. A victim may opt out of some services but retain their right to receive other services under the Code.

3. Key Features of the Code

The Code outlines obligations applicable to the SJS which the Service Police and the chain of Command must comply with. These include:

a. On receipt of an allegation, the conduct of a 'Needs Assessment' in relation to the victim. The purpose of this assessment is to identify any needs or support required by the victim. This includes whether and to what extent they may benefit from Special Investigation Measures[2] and Special Measures[3] to assist them in giving their best evidence in any proceedings.

b. The appointment of a VLO by the CO of the suspect. The primary role of the VLO is to keep the victim informed of key stages in the progress of the case. The VLO must be of the minimum rank of Petty Officer, not be part of the suspect's direct chain of Command and not have had any prior involvement in the case.

c. The victim's right to a review of a CO's decision not to prosecute. This includes a CO's decision not to charge any suspect with any offence in relation to a disciplinary investigation, or not to refer a case to the SPA where the matter cannot be dealt with by way of Summary Hearing. The victim is entitled to be notified of the reasons why this decision was made, how they can access further information about the decision and how they can seek a review of the decision. Victims may request a review within 3 months of them being notified of a CO's decision not to prosecute.

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[2] The following Special Investigation Measures may be available:
a. To have the same person, where possible, conduct all the interviews (unless to do so would prejudice the proper handling of the investigation);
b. To be offered the opportunity to have a person of the same sex conduct the interview where the individual is a victim of sexual violence, gender-based violence, or domestic violence (any request will be met where possible unless to do so would prejudice the proper handling of the investigation);
c. To have interviews carried out by or through professionals trained for that purpose;
d. To have interviews carried out in premises designed or adapted for that purpose.

[3] Special Measures is the term used to describe the measures a Service court can order to assist vulnerable or intimidated witnesses to give their best evidence in court.

4. Needs Assessment

In most RN cases, Needs Assessments are conducted by the Service Police. However, in accordance with RN policy4, there are some allegations which may be investigated by means other than a RNP investigation (for example by a Coxswain). In these circumstances, the unit investigator must conduct the Needs Assessment by reference to the guidance (at Annex 20L) which has been issued by the MOD. If Coxswains and other non-RNP personnel require advice and guidance on this process, they should contact their area NPM.

5. Victims Leaflet

Victims entitled to receive services under the Code should be provided with a copy of Annex 20M, completed with the relevant information. This should be provided to the victim by the RNP in the first instance, or by the unit investigator for non-RNP investigations.

6. Duties of the Commanding Officer

a. The CO must ensure that victims are provided with a written acknowledgement of the crime that they have reported including the basic details of the alleged offence. Where the matter is investigated by the RNP, the RNP will fulfil this duty. The victim must be asked if they wish to be referred to victim support services[5]. Where the RNP/CO considers there may be a risk of harm to the victim from sending a written acknowledgement (e.g. in domestic violence cases), they may agree with the victim not to send one.

b. Where a suspect is arrested, taken into custody or charged in respect of a criminal offence, a VLO is to be allocated to the victim's case no later than 3 working days after the day of the event, and within 1 working day where the victim is a victim of the most serious crime, persistently targeted, or vulnerable or intimidated. A VLO must be appointed by the suspect's CO. Upon allocation, the CO must inform the VLO of the event.

c. In appointing a VLO, a CO must take into account the factors outlined at paragraph 7 of this Annex. This is a non-exhaustive list and COs should apply common-sense in identifying a suitable VLO. On appointment, the VLO must be handed the guidance at Annex 20N. The CO should tell the VLO how often they wish the victim to be informed of the progress of the case; normally this will be monthly or whenever a significant event occurs.

d. The CO should inform the victim that they have a right to receive information about the progress of the investigation, including the information outlined at paragraph 8 of this Annex. The CO may direct the VLO to provide this information to the victim on their behalf. Where a suspect is arrested, taken into custody or charged in respect of a criminal offence, the CO must inform the VLO as soon as possible of the event.

[4] Provost Marshal (Navy) Technical Instruction 56.
[5] Details are at: www.victimsupport.org.uk or on 0808 1689293 in the UK.

e. The CO must inform the victim if they make a decision not to investigate the allegation and provide an explanation. The CO must also inform the victim if they conclude an investigation without any individual being charged. They must ask the victim if they wish to be informed if the investigation is re-opened (e.g. in the event that further evidence comes to light).

f. Where the victim is a victim of the most serious crime, a persistently targeted victim, or a vulnerable or intimidated victim, the CO must note any Special Investigation Measures identified as appropriate in the Needs Assessment or requested by the victim. Where it is assessed that a victim will or may require special measures to assist them in giving any evidence, the CO must seek legal advice prior to determining whether or not a case may be dealt with summarily or should be referred to the SPA for trial by Court Martial.

g. At a Summary Hearing, the CO must ensure the following:

(1) Where a victim is called to give evidence, they are given the opportunity to refresh their memory from their written statement or video-recorded interview (as applicable), shortly before the Summary Hearing.

(2) Victims, and any family members with permission to accompany them, can enter and leave the unit in which the Summary Hearing is being held through a different entrance and are seated in a separate waiting area from the accused where possible.

(3) Where circumstances permit, a member of the CO's staff meets the victim and answers any questions posed about the Summary Hearing process and where possible provides an indication of how long the victim may have to wait before giving evidence.

(4) Wherever possible, if there is a delay in proceedings on the day, a member of the CO's staff provides an explanation to the victim and indicates how long they may have to wait.

(5) That there is a CO's point of contact for victims in order that they can find out what is happening in their case while it is being heard.

(6) There are procedures in place for a member of their staff to take the victim's contact details if the victim needs to leave the unit at any time, to ensure that the victim can be contacted if necessary.

(7) The CO must ensure that the Summary Hearing is conducted in a fair and just manner. Part of the Summary Hearing process involves the questioning of witnesses to test their evidence. The CO will treat victims who are witnesses respectfully and, where appropriate, will intervene where questioning is considered inappropriate or too aggressive.

h. The CO must ensure that the victim is offered the opportunity to make a Victim Personal Statement (VPS) as outlined at paragraph 9 of this Annex. The CO must ensure that any VPS is forwarded to the SPA where applicable. If the case proceeds to a Summary Hearing, the CO must ensure that the VPS is included in the case summary and written evidence.

7. Appointment of Victim Liaison Officer

a. It may be that the most suitable individual to act as a VLO is not based in the accused's unit. Liaison between COs may therefore be required should a CO propose to assign a VLO who is not under the nominating CO's chain of Command. In nominating a VLO, the CO should take into account the following factors:

(1) The suitability of the individual to undertake the role by reference to their professional skills and personal characteristics. A VLO must have excellent interpersonal skills, with the ability to handle vulnerable or intimidated witnesses with empathy and discretion. They must also possess good written and oral communication skills and be well-organised. If the individual has not already been trained as a VLO, they must be directed to contact their Regional Legal Office in the first instance.

(2) **The Location of the VLO.** The VLO must be able to communicate effectively with the victim at regular and short-notice intervals as required.

(3) **The Rate or Rank of the Victim.** Where possible, it is advised that the VLO is a peer or superior in rank to the victim.

(4) The likelihood that an individual may become involved in the case as a witness or in an investigative capacity. If the individual is already involved, or if there is any prospect that they may become so, they must not be nominated as the relevant VLO.

(5) **The relationship of the VLO to the Victim.** The VLO should be able to remain objective and it is therefore undesirable that an individual is assigned who may have an emotional attachment to the victim or the case.

(6) The likelihood that the VLO is going to be able to see the case through to its conclusion. This is particularly important when an alleged Schedule 2 offence, or an alleged offence committed in prescribed circumstances, is involved which may be referred for trial by Court Martial. Where ever possible, changing a VLO part way through a case should be avoided.

b. The CO of the accused retains responsibility for ensuring that the VLO undertakes their duties. This may require cross-Command liaison. If an accused person is assigned to a new unit, the accused's new CO takes on this responsibility. In such circumstances, the original CO must ensure that all relevant information is passed to the new CO.

8. Duties of Victim Liaison Officer

a. Some of the functions required by the Code will be undertaken by the RNP in RN cases. The remaining duties must be fulfilled by the VLO, who must inform the victim verbally or in writing of the following information without delay:

(1) The date and time of any arrest of a suspect.

(2) The date and time of the release of the suspect from Service custody, including any release requirements that are imposed, changed or cancelled, unless the CO considers doing so would cause a risk of harm to the suspect.

(3) The progress of the investigation or criminal proceedings at intervals agreed with the victim at first contact.

(4) Any decision not to proceed with or to end an investigation, not to charge a suspect or not to refer the case to the SPA. The VLO must inform the victim that they have a right to a request a review of a CO's decision not to prosecute and to provide the victim with sufficient information to enable them to decide whether to request a review.

(5) Any decision to substitute a charge against the suspect with another charge, substantially alter a charge or to bring an additional charge against the suspect, together with a brief summary of reasons for the decision where available.

(6) The date, time and place of any Court Martial trial, Summary Hearing or appeal and the nature of the charges against the suspect.

(7) The final judgement of any Court Martial trial, Summary Hearing or appeal, including a brief summary of any reasons given.

b. The Victim Liaison Officer must inform the victim of their right:

(1) To opt into the Armed Forces Victim Contact Scheme (AFVCS) if the offender receives a sentence of Service detention or imprisonment. The AFVCS is offered to victims of offences including bereaved close relatives where the offender receives a sentence of Service detention. To opt into this scheme the victim should notify the Deputy Commandant MCTC[6]. The AFVCS provides victims who are concerned for their safety with information keeping them informed of the key stages of the offender's sentence, such as periods of unsupervised conditional release, as well as final release. The information is provided subject to the discretion of MCTC not to provide it in cases where there is an identified risk of harm to the offender which would result from the notification.

[6] 01206 816701 MCTC, Berechurch Hall Camp, Berechurch Hall Road, Colchester, CO2 9NU

(2) To apply for compensation under the Criminal Injuries Compensation Scheme (CICS) if the victim qualifies. The VLO should explain to the victim that the recommended tariff for Service Compensation Orders is closely related to the CICS and that any sum awarded by the CO would be deducted from the compensation scheme.

(3) To make a complaint if the victim does not receive the information and services that they are entitled to, and to receive a full response from the relevant Service Provider. The procedure for dealing with these complaints is at Annex 20O.

9. Victim Personal Statement

a. The RNP or CO must ensure that the victim is offered the opportunity to make a VPS in the following situations:

(1) For any victim, at the time that they complete a witness statement about what has happened.

(2) At any time for victims of the most serious crime (including bereaved close relatives), persistently targeted victims and vulnerable or intimidated victims, irrespective of whether or not they have given a witness statement about what happened.

(3) A parent or carer of a vulnerable adult or of a victim under the age of 18 unless it is considered not to be in the best interests of the child or vulnerable adult.

(4) In any other cases where the CO deems it appropriate.

(5) In most cases, the RNP will have discussed the issue of VPS with the victim and obtained a VPS in accordance with their wishes.

b. When a VPS is being taken, the person taking the statement must ensure that the victim is asked whether or not they wish the VPS to be read aloud or played (if recorded) if the matter proceeds to a Service court. For Court Martial proceedings, the victim must be asked whether they would prefer to read the statement aloud personally or whether they would like the SPA advocate to do this on their behalf. It must be explained to the victim that the VPS does not have to be read aloud if they do not wish this or, alternatively, to change their mind in this respect. The victim must be made aware that they may be questioned about the contents of their VPS in a Court Martial or a Summary Hearing, and that its contents may be reported by the media if the case is heard in a public Service court. Ultimately, the victim should be advised that it is a matter of judicial discretion whether a VPS is read aloud (and by whom) or played (where recorded) in full or in part before a Service court.

c. In relation to Summary Hearings, the victim must be advised that they may read out the VPS if they are called to give evidence as a witness; otherwise it will be provided as written evidence to the CO. The VLO must, wherever possible, notify the victim in a timely manner of the CO's decision about whether, and what sections of, the VPS will be read aloud (or played) and who will do this.

10. Expenses

As directed by the MOD, the unit must pay without unreasonable delay any expenses the CO has decided are due to the victim after receiving a correctly completed claim form.

11. Victims Right to a Review of CO's Decision not to Prosecute

a. The victim's is right to a review of a CO's decision not to prosecute applies where the CO has decided not to charge any suspect with any offence in relation to a disciplinary investigation or not to refer a case to the SPA where the matter cannot be dealt with summarily. The victim may notify the VLO or the CO, verbally or in writing, that they wish to exercise their right to a review of this decision. Where a victim nominates a third party to act on their behalf, the CO must be satisfied that the third party has the authority to do so. On receipt of a request from a victim for such a review the CO is to seek legal advice.

b. Where a review is to be conducted, a CO will be advised to refer the case to their Higher Authority (HA) who (provided that the HA is of the rank of at least Commodore) will appoint another officer to act as the suspect's CO for disciplinary purposes ('the Reviewing CO').

c. A Reviewing CO must conduct a review of the decision not to bring a charge or not to refer the case to the SPA, as applicable. They must consider the case afresh on the basis of the evidence presented. They may direct further investigation of the facts surrounding the alleged offence as they deem necessary. The Reviewing CO must not discuss with the original CO (or with those who advised them) the basis of the decision not to prosecute. Legal advice should be sought in line with existing RN policy.

d. In order to overturn the decision not to charge a suspect(s) or not to refer a case to the SPA, the Reviewing CO must be satisfied that the decision that the Evidential Test and/or Service Interest Test[7] had not been met was wrong and that for the maintenance of confidence in the SJS, the decision must be reversed. They must confirm in writing to the victim the outcome of the review. The victim is entitled to a single review only of a CO's decision not to prosecute.

e. If the Reviewing CO decides to overturn the original CO's decision not to prosecute, they must then try the case summarily or refer the case to the SPA as applicable.

[7] Evidential Test and Service Interest Test as defined at paras 93 and 94 of Chapter 6 of JSP 830 - Manual of Service Law

12. Complaints Procedure

A victim has a right to state a complaint under the legislation if they believe that they have not received, or are not receiving, the services under the Code to which they are entitled. Further details of this complaints procedure have been provided by the MOD, including the actions to be taken by the Command accordingly, as outlined at Annex 20O. In the event that a victim submits such a complaint, the CO must seek legal advice prior to taking any action in relation to it. This complaints procedure is separate to the Service Complaints process.

13. JPA Recording

The Needs Assessment and a record of rights offered and taken up by the victim must be recorded on JPA.

ANNEX 20L

VICTIM NEEDS ASSESSMENT

Investigation/Case Reference Number……..

Note. *Completion of this form does not mean that Special Investigation Measures or Special Measures* ***will*** *be implemented and* ***no assurances are to be given to the victim/witness***

Name …….Age ……..Date of Birth ……Gender ……

1. Identification of Victim/Witness

The Youth Justice and Criminal Evidence Act 1999 (YJ&CE 99) aims to assist certain vulnerable groups of witnesses[1] to give evidence at court with the support of 'Special Measures'. Similarly, the Armed Forces Code of Practice for Victims of Crime provides Enhanced Entitlements to certain groups of victims to assist in their provision of evidence during the investigation, at a Service court or Summary Hearing. Tick to show which of the group(s) below apply to the subject victim/witness.

a. **Vulnerable.**

(1) Person under 18 years of age ☐

(2) Person with a mental disorder ☐

(3) Person with a learning difficulty ☐

(4) Person with a physical disability/disorder ☐

b. **Intimidated.**

(1) Person in fear or distress about giving evidence ☐

(2) Complainant in a sexual/human trafficking case ☐

c. **Victims of the Most Serious Crime.** ☐

A victim of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent. This also includes a close relative bereaved by a criminal offence.

[1] In the majority of cases a victim will also be a witness in the case.

d. **Persistently Targeted Victims** ☐

A direct victim of crime repeatedly targeted over a period of time, particularly those who have been deliberately targeted or victims of a sustained campaign of harassment or stalking.

2. Eligibility for Special Investigation Measures/Special Measures

a. The YJ&CE 99 makes those victims/witnesses at paras 1.a(1) and 1.b(2) are automatically eligible for Special Measures. In addition, the Armed Forces Code of Practice for Victims of Crime **entitles** all victims of crime identified as belonging to one of the four groups within 1(a) to (d) above to Enhanced Entitlements, which includes Special Investigation Measures and Special Measures (see paras 3 and 4 below).

b. In relation to sub-paras 1.a(2), 1.a(3), 1.a(4) and 1.b(1), explain briefly below the nature of the vulnerability, fear or distress and show how it is likely to diminish the quality of the victim/witnesses evidence in terms of their evidence being complete, coherent and accurate. Coherence refers to their ability to understand the questions put to them and give appropriate answers.

Nature of disorder/impairment or witness fear/distress and effect on evidence (expert advice may need to be sought):	In relation to sub-para 1.b(1), consider and note these factors:
…… …… …… …… …… …… (*indicate here if a continuation sheet is used*) ☐	• The circumstances of the offence. • The age of the witness. • Their social and cultural background. • Their domestic and employment circumstances. • Any religious beliefs or political opinions of relevance. • Any behaviour towards the witness by the accused, their family or anyone else.

3. Special Investigation Measures - Victims

Special Investigation Measures must be discussed with a victim entitled to Enhanced Entitlements under the Armed Forces Code of Practice for Victims of Crime. The victim is entitled to request that Special Investigation Measures are used and their request is to be considered in deciding whether any such measures are provided. Special Investigation Measures are:

a. Having the same person, where possible, conduct all interviews (unless to do so would prejudice the proper handling of the investigation).

Requested ☐ Used ☐

Remarks: .....

.....

b. Be offered the opportunity to have a person of the same sex conduct the interview for victims of sexual violence, gender-based violence, or domestic violence (any request to be met unless to do so would prejudice the proper handling of the investigation).

Requested ☐ Used ☐

Remarks: .....

.....

c. To have interviews carried out by or through professionals trained for that purpose.

Requested ☐ Used ☐

Remarks: .....

.....

d. To have interviews carried out in premises designed or adapted for that purpose.

Requested ☐ Used ☐

Remarks: .....

.....

e. If the victim is under 18 years of age, an audio-visual recorded interview.

Requested ☐ Used ☐

Remarks: .....

.....

f. If the victim is under 18 years of age, suffers from a mental disorder, has a significant impairment of intelligence and social functioning, has a physical disability or physical disorder, the use of communication aids.

Requested ☐ Used ☐

Remarks: .....

.....

4. Special Measures

a. If a victim/witness is under 18, tick to show if the case is:

(1) Sexual Offence ☐

(2) Offence involving violence, cruelty or abduction ☐

(3) Any other offence ☐

b. The admission of a visually recorded interview should be considered, particularly if paras 4(a) and 4(b) above apply.

c. Which Special Measure(s) is/are likely to improve the ability of the witness to give evidence, and why? Consider: the needs of the victim/witness, age, development or disability, communication difficulties, the state of mind (distress, shock); the type and severity and/or the circumstances of the offence (e.g. offender known to the witness); the purpose and likely value of visually recorded interview on this occasion, perceived fears about intimidation and recrimination.

Special Measures	Tick if Required	State how this will improve the quality of the witness's evidence
Screens		
Live Link		
Evidence in Private		
Removal of wigs and gowns		
Visually recorded evidence		
Video cross-examination		
Intermediaries		
Interpreter		
Communication aids		

5. Please attach supporting evidence, e.g. birth certificate, medical report (if available).

Details of supporting evidence attached: .....

.....

.....

6. Give views of the witness as to why the measures sought are required.

.....

.....

.....

7. If appropriate, give views of interested parties, e.g. parent, carer, doctor, nurse, guardian, etc.

.....

.....

.....

8. Details of agencies involved, e.g. Social Care Services, SPA, SSAFA, etc. (include results of any communications and contact numbers, details and addresses).

.....

.....

.....

9. If you decide not to collect evidence from a witness by visual recording explain why.

.....

.....

.....

10. Indicate if a special measures meeting is required: Yes/No

Assessing NCO (name, rank, number)……Date……..

Contact Details……

GUIDANCE FOR COMPLETION OF VICTIM/WITNESS NEEDS ASSESSMENT

Note. *This assessment* ***MUST*** *be initiated* ***BEFORE*** *recording a statement from the Victim/Witness*

1. Purpose of the Victim/Witness Needs Assessment

a. The purpose of the Victim/Witness Needs Assessment is to:

(1) Identify whether the victim or witness is eligible for or entitled to any Special Investigation Measures or Special Measures.

(2) Allow for the victim or witness to request the use of any Special Investigation Measures and then document this request, as well as whether the measures are to be used.

(3) Provide information to the SPA for a Special Measures meeting if appropriate.

(4) Provide information to SPA to apply for Special Measures to the court.

(5) Record the views of the witness.

(6) Identify witnesses in need of special protection (see additional guidance notes below).

b. Where additional space is required, use a continuation sheet, indicating this on the assessment as appropriate.

2. Completing the Assessment

a. **Para 1.** Para 1 identifies the type of victim/witness who might be eligible for Special Measures.

(1) A vulnerable victim/witness is eligible for special measures if the witness is:

(a) Under 18; or

(b) Suffering from mental disorder, or significant impairment of intelligence and social functioning, or physical disability or disorder.

(2) An intimidated victim/witness is eligible for special measures if the witness is:

(a) In fear or distress about testifying; or

(b) Is a complainant in a sexual case.

(3) A victim of the most serious crime is defined by the Code as a victim of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent. This also includes a close relative bereaved by a criminal offence.

(4) A persistently targeted victim is defined by the Code as a direct victim of crime repeatedly targeted over a period of time, particularly those who have been deliberately targeted or victims of a sustained campaign of harassment or stalking.

b. **Para 2.** The assessment must take into account the victim's age, the nature and circumstances of the offence and any of the following factors that appear to be relevant:

(1) Social and cultural background and ethnic origins of the victim/witness;

(2) Domestic and employment circumstances of the victim/witness;

(3) Any religious beliefs or political opinions of the victim/witness; and/or

(4) Any behaviour toward the victim/witness by the accused, the family or associates of the accused or any other person likely to be an accused or a witness in the proceedings.

c. **Para 3.** Para 3 requires the assessor to inform an eligible victim of their entitlement to Special Investigation Measures and explain the range of measures that may be available to them to assist in obtaining the best possible evidence. The form allows the assessor to record any requests made by the victim for such measures, whether they were then used and the rationale should they not have been used.

d. **Para 4.** Para 4 requires the assessor to ensure that any victim/witness deemed to be 'in need of special protection' is identified. There are three categories of victim/witness who are under 18 years of age, as follows:

(1) Persons under 18 years of age giving evidence in a sexual offence case;

(2) Persons under 18 years of age giving evidence in a case involving an offence of violence, neglect or abduction; or

(3) Persons under 18 years of age giving evidence in all other cases.

3. Those under 18 years in the first two categories in particular should be considered for the provision of audio-visually recorded interview and for this to be used as evidence in court. For any other offence, under 18 year olds may be eligible for both visually recorded statements to be admitted and other testimony by live link.

4. Para 4 continues for all other cases by requiring justification of why a measure or measures would be likely to improve the quality of evidence by the witness. For example, give details of the special measures for a complainant in a sexual offence.

5. Para 5

Para 5 requires that any evidence which can be obtained to support the application should be submitted if available.

6. Para 6

It is essential that the victim/witness be asked to give their views, since any proceedings which consider the granting of a measure must take into account all circumstances of the case when deciding where the interests of justice lies, and in particular the views of the victim/witness. For similar reasons it is an important consideration in determining whether Special Investigation Measures are appropriate. It is essential to canvass the views of the victim/witness before deciding how to take their evidence.

7. Para 7

a. Para 7 requires that the views of interested parties such as a parent or carer, etc. be recorded. It should only be completed in appropriate cases, where the views of the victim/witness can be supported or assisted by such a person. Hence, this may/will include:

(1) The views of the carer about the victim/witness going to court;

(2) How supportive is the carer of the under 18 year old and the prosecution; and/or

(3) Strengths and weaknesses of the person under 18, such as:

(a) Developmental age.

(b) Linguistic and emotional development (e.g. their level of understanding or grasp of time intervals may be relevant to specimen charges); and

(c) Attention span relevant to requests for breaks when giving evidence.

(4) The person under 18 years own preference, the carer's and Service Police or CO's view about how the child should give evidence (ie. use of screens, TV link, and\or other special measures).

b. Inform any victim/witness aged under 18 years that, should they be called to give evidence at a Service court, the Military Court Service will send them an information leaflet designed specifically for them.

8. Para 8

Para 8 requires the details of other agencies involved, e.g. Social Services or a school, will assist the prosecution to ensure relevant assistance is given to the victim/witness. Include details of any work progressing with the witness, such as continuing support.

9. Para 9

In the event that a written statement is taken from any witness under 18 years of age, the investigator must ensure that any decision to do so is recorded and a sufficient explanation given having regard to “Achieving Best Evidence”.

10. Para 10

A Special Measures meeting is a meeting that takes place between the investigating and prosecuting agencies to discuss and agree which Special Measures may be required and applied for. Assessors are to ensure that the Service Police Case Referral or CO’s case papers indicate that a Special Measures meeting is required.

ANNEX 20M

VICTIM'S LEAFLET

1. Thank You for Reporting this Incident

This leaflet sets out what you can expect from the Service Justice System if you are a victim of crime. It contains information about organisations that you can contact for free advice, practical information and emotional support.

2. You can find some details below about the incident you have reported and other useful contact details. You may find it useful to keep this leaflet for future reference so that you have all the contact details and important information about the incident you have reported in one place, together with details about advice and support services that may be available to you.

3. Details of the crime you have reported:

4. Initial Contact

Name of person recording incident: .....

Phone number: .....

5. Person Dealing with the Case (if different from above)

Name: .....

Phone number: .....

6. Crime Case Details

Date incident reported: .....Date of incident (if different): .....

Investigation Reference Number (if assigned): .....

Description of the Incident: .....

.....

.....

.....

.....

.....

7. Next Steps

a. You will be informed by the person investigating your complaint about what to expect from the Service Justice System, including information about the Victims' Code. The Victims' Code sets out the services that victims can expect from Service Justice providers. A "needs assessment" will be conducted and you will be asked questions to establish what help and support you might need. The Victims' Code also sets out your rights to make a complaint under the Victims' Code if you are unhappy with the service you receive. If you would like to read the Code in full please visit: https://www.gov.uk/Armed Forces Code link.

b. If the crime against you did not take place within the European Union (EU), you will still be entitled to many of the services set out in the Victims' Code, but only in relation to criminal proceedings that are taking place in the EU. However, if you are not present in the UK, the country in which you reside should provide any Victim Support services to you.

8. The Victim Personal Statement (VPS)

The Victims' Code entitles victims of crime to make a Victim Personal Statement (VPS). The VPS helps give victims a voice in the Service justice process. In your VPS you can inform those hearing your case how the offence has affected you or your family. If the case is tried in a Service Court you can choose to read your statement aloud in court or have it read out on your behalf if the accused is found guilty. If your case is subject to Summary Hearing, your VPS will form part of the case papers considered by the CO.

9. Victim Support

If you are present in the UK or are a person subject to Service discipline, with your agreement your details will be passed on to an organisation that provides services to victims of crime. In the majority of cases, your details will be passed on to a local victim support service. You can also contact these services directly if you would like support following a crime. To find out more, visit: www.victimsupport.org.uk or phone 0808 1689293 in the UK or 05251 1809340 in Germany. Additional support, including for those in other theatres, may also be available through SSAFA, single Service welfare agencies and the Forces Helpline.

10. Working Together to Investigate your Crime

To assist those who will investigate your crime, you should let them know:

- if you remember something not already included in your current statement;
- if your contact details change;
- if the crime involved any type of hostility, for example if you believe you were targeted because of your actual or perceived race, sexuality, religion, disability or gender identity; and
- if you have any specific needs, for example, mobility, communication or religious requirements.

11. Protection Against Harassment or Intimidation

If you, or others close to you, are harassed or threatened in any way during an investigation or a trial, you should contact the Service Police immediately. If the accused is released from Service custody, requirements may be imposed that would prevent them from making any contact with a named person or persons. Protection for victims and witnesses against witness intimidation extends for up to one year after the end of a trial.

12. Criminal Charges

If there is sufficient evidence to charge the person(s) who committed the crime against you with a criminal offence, it may be dealt with at Summary Hearing by the suspect's CO, or the case may be referred to the Service Prosecuting Agency (SPA), who will decide whether to prosecute or not and whether to take your case to a Service court. To find out more about the SPA and for a useful overview of the Service Justice System visit: http://spa.independent.gov.uk/index.htm

13. Victim Liaison Officer

A Victim Liaison Officer (or in some cases a Service Police Liaison Officer) will be appointed to you to inform you about the progress of your case, including the date and outcome of any hearings. The Victim Liaison Officer will agree with you how often you will be updated about the progress of your case. They can also provide information on claiming any expenses that may be incurred should you be required to attend a Summary Hearing or Service Court to provide evidence.

14. Going to a Service Court as a Witness

The Military Court Service (MCS) is responsible for administering all Service courts (the Court Martial, the Standing Civilian Court and the Summary Appeal Court). To find out more visit: https://www.gov.uk/guidance/the-military-court-service. In advance of a trial, the MCS will provide a witness support leaflet to all witnesses who have been called through the Military Court system. The leaflet provides information on claiming expenses for attendance at court, such as travel, accommodation, meals and loss of earnings. It also contains details of what you can expect on the day and court procedures.

15. Witness Service

The Witness Service, run by Victim Support, helps victims and witnesses attending court. They are trained staff and volunteers who you can talk to about what to expect before going to court during a pre-trial visit, and who are also present to support you at court. The Witness Service cannot discuss the case or the contents of your evidence with you. To find out more, visit: www.victimsupport.org.uk or call 0808 1689293.

16. Compensation - UK

If you have been a blameless victim of a violent crime, you may be eligible for compensation. If the incident took place in the UK, this will be via the Criminal Injuries Compensation Authority (CICA). You can apply online at www.gov.uk. If you need help to complete an application by telephone, contact the CICA Customer Service Centre advisors on 0300 003 3601. You can apply for compensation whether someone has been prosecuted for the offence or not but you must apply within two years of the date of the incident. You should not wait until the end of Service court proceedings before applying for criminal injuries compensation. To find out if you are eligible for payment for having suffered immediate financial hardship, contact Victim Support on 0808 1689293 or visit: www.victimsupport.org.uk as soon as possible.

17. Compensation - Overseas

If you are a Serviceperson and have been the blameless victim of a violent crime overseas, you may be eligible to claim compensation via the Criminal Injuries Compensation (Overseas) Scheme, for which information can be found at www.gov.uk/government/publications/guide-to-the-criminal-injuries-compensation-scheme. Similarly, for Civil Servants there is the Civil Service Injury Benefits Scheme, for which information can be found at www.civilservicepensionscheme.org.uk.

18. Translation and Interpretation

If you do not understand or speak English, you are entitled to ask for interpretation into a language you understand when reporting a crime, being interviewed in respect of the crime and/or when giving evidence in criminal proceedings. The Victims' Code sets out your entitlement to request the translation of key documents as part of the case, including the written acknowledgement.

19. Conviction, Sentence, Release and Probation Supervision

When someone is convicted of an offence and sentenced to detention at the Military Corrective Training Centre (MCTC) or imprisonment in a civilian prison, they will pass into the care of the relevant detaining organisation. If this is the case, your Victim Liaison Officer will inform you of your entitlement to opt into the Armed Forces Victim Contact Scheme, following which you can be informed of the key stages of the offender's sentence, such as release information.

20. Special Measures

The Code sets out enhanced entitlements for victims entitled to receive services in the following categories:

a. Victims of the most serious crime.

b. Persistently targeted victims.

c. Vulnerable or intimidated victims.

The content of those enhanced entitlements is explained in the Code. If the CO considers that you fall into one of these categories, he will refer your case to the RMP who will explain the measures to you and apply any that are required.

21. Further Information

a. You can use the Victims' Information Service to find more detailed information about support and services for victims within the UK at:

www.victimsinformationservice.org.uk

or

Telephone 0808 168 9293.

b. Within the UK, Citizens Advice can help with financial problems or advice, legal issues or other practical problems. To find out more, visit: www.citizensadvice.org.uk or call 0845 126 4264.

c. Members of the military community can also call Forcesline (Mon–Fri, 1030–1930 (UK local time) on Freephone:

UK	-	0800 7314880
Germany	-	0800 1827395
Cyprus	-	800 91065
Falkland Islands	-	#6111
Rest of the World	-	+44(0)1980 630854 (staff will call back immediately)
Operational Theatres	-	Paradigm - dial access code, then enter *201 at the PIN prompt
Email	-	www.forcesline.org.uk

ANNEX 20N

GUIDANCE FOR VICTIM LIAISON OFFICERS

1. Who is a Victim?

The Victims' Code defines a victim as a natural person[1] who has suffered harm, including physical, mental or emotional harm or economic loss, which was caused directly by a criminal offence. This includes a close relative of a person whose death was directly caused by a criminal offence and who has suffered harm as a result of that person's death. If a family is bereaved as a direct result of a criminal offence, the deceased's close relatives are entitled to nominate a family spokesperson to act as the single point of contact to receive services under this Code. If the close relatives cannot choose a family spokesperson, the Service Police Senior Investigating Officer working on the case must choose the family spokesperson. Similarly, if the victim has a disability, or is badly injured as a result of the offence such that they are unable to communicate, the victim or their close relatives are entitled to nominate a family spokesperson to act as the single point of contact to receive services under this Code. A victim under the age of 18 and their parent or guardian are also entitled to receive services under the Code. Where a victim is not present in the UK, it is the victim's country of residence that should provide support services to that victim.

2. To Which Offences does the Code Apply?

The Code applies in respect of victims of alleged criminal or non-criminal conduct offences under the Armed Forces Act 2006. Providing the victim has suffered harm or economic loss, such offences therefore would include (but are not limited to): sexual offences (e.g. rape, assault by penetration, sexual assault); violence offences (e.g. battery, assault occasioning actual bodily harm, wounding, inflicting grievous bodily harm, fighting, using violence against a superior officer, ill-treatment of subordinates, disgraceful conduct of a cruel or indecent kind); theft; and criminal damage. The Code applies when such offences are committed within the European Union (EU) or when criminal proceedings take place in the EU (including Summary Hearing and trial by Court Martial).

3. From What Stage does the Code Apply?

The investigation stage forms part of 'criminal proceedings' for the purposes of the Code. Therefore the Code applies as soon as a victim, or a bereaved relative, makes a complaint to the Service Police or to the CO of the accused person. It also applies when a complaint has been made by a third party which identifies the victim. The Code applies even if a suspect has not been identified. The victim is entitled to access services under the Code regardless of whether anyone has been charged or convicted of a criminal offence and regardless of whether the victim decides that they do not wish to cooperate with the investigation. If a case is transferred to civilian jurisdiction, the civilian authorities will then be responsible for providing support services to the victim and the Armed Forces' obligations under the Code will cease.

[1] Legal persons (e.g. businesses) are not included in the definition of a victim.

4. Who Assigns the Victim Liaison Officer?

The Victim Liaison Officer (VLO) is assigned by the CO of the suspect. For RN investigations, some of the VLO's tasks will be undertaken by the Service Police. The VLO must be of the minimum rank of Petty Officer, must not be part of the suspect's direct chain of Command and not have had any prior involvement in the case. The VLO may not necessarily be serving in the same unit as the victim. Where a suspect is arrested, taken into custody or charged in respect of a criminal offence, the VLO will be allocated to the victim's case no later than 3 working days after the day of the event, and within 1 working day where the victim is a victim of the most serious crime, persistently targeted, or vulnerable or intimidated. Upon allocation, the CO will inform the VLO of their appointment as VLO.

5. What do I have to do as the Victim Liaison Officer?

The following actions should be undertaken by you as VLO:

a. Confirm with the Service Police whether or not they have provided the victim with the "Victim of Crime" leaflet. If they have not, arrange with the Service Police for this to be actioned.

b. Confirm with the Service Police whether or not a "Needs Assessment" has been conducted in respect of the victim and that the victim has been given the opportunity to make a Victim Personal Statement. If either has not occurred, arrange with the Service Police for this to be actioned.

c. You must keep the victim updated on the progress of the case. Therefore, as soon as you are informed of the following either verbally or in writing, you must inform the victim without delay of:

(1) The date and time of any arrest of a suspect. You will need to liaise with the Service Police to agree whether this information will be conveyed to the victim by you or by the Service Police.

(2) The date and time of the release of the suspect from Service custody, including any release requirements that are imposed, changed or cancelled, unless the CO considers doing so would cause a risk of harm to the suspect.

(3) An update on the investigation or criminal proceedings at intervals agreed with the victim at first contact. During the investigation stage, you will have to obtain such details from the Service Police. On completion of the investigation, the updates must be obtained from the CO of the suspect. If the matter has been referred to the SPA, you may have to contact the prosecutor who has been assigned to the case. Where the case is referred to the SPA by the Service Police, the Service Police will be informed by the SPA by letter of the name of the prosecutor. Where the case is referred to the SPA by the CO, the CO will receive this letter.

(4) Any decision not to proceed with or to end an investigation, not to charge a suspect or not to refer the case to the SPA. If the Service Police decide to end an investigation they may inform the victim of this fact, and you will have to confirm with the Service Police that this has occurred. If the CO decides not to charge the suspect or to refer the case to the SPA, the CO may inform the victim personally. If not, they may direct you to convey this information to the victim. You should be provided with a brief summary of the reasons for the relevant decision where available. Where a CO has decided not to charge any suspect or not to refer a case to the SPA, you must inform the victim that they have a right to a review of that decision.

(5) Any decision to substitute a charge against the suspect with another charge, substantially alter a charge or to bring an additional charge against the suspect, together with a brief summary of reasons for the decision where available. It may be that the CO or the SPA cannot provide reasons for the decision because they are not permitted to discuss evidence with a victim in ongoing criminal proceedings.

(6) The date, time and place of any trial, Summary Hearing or appeal and the nature of the charges against the suspect. When a case is to be tried in the Court Martial, the SPA will write to the victim directly informing them of these facts. For RN cases, the Naval Courts Administration Office will also inform the victim of the date, time and place of the Court Martial. However, you will have to provide this information to the victim in respect of Summary Hearings. Thereafter, update letters will be sent by the SPA after the Plea and Case Management Hearing and prior to any trial or sentence hearing. However, for Summary Hearings you will have to liaise with the Command Advisor (e.g. the DLO in a FF/DD) to obtain the information required and communicate these details to the victim.

(7) Wherever possible, notify the victim in a timely manner of the CO's decision about whether, and what sections of, the Victim Personal Statement will be read aloud (or played) and who will do this.

(8) The final judgement of any trial, Summary Hearing or appeal, including a brief summary of reasons for the decision where available. Again for Court Martial proceedings, the SPA will inform the victim of the outcome of any trial or sentencing hearing. However, for Summary Hearings you will have to liaise with the Command Advisor (e.g. the DLO in a FF/DD) to obtain the information required and communicate these details to the victim.

6. By What Means Must I Communicate with the Victim?

You may provide information to the victim by posting or personally delivering a letter to their last known correspondence address, or by sending an electronic message to the electronic contact details given by the victim to the Service Police, CO or to you. If written communication is not required, communication may be made by telephone call, audio-visual communication or a face to face meeting. Where there is a high number of victims involved in a case, or where otherwise appropriate in exceptional cases, information may be provided to a victim through alternative channels such as a website. In these circumstances, you should ascertain the CO's intention. Nothing in the Code requires a VLO, CO or Service Police to provide information where disclosure of that information could have the following consequences:

a. Result in harm to a person.

b. Affect the proper handling of any criminal investigation or prosecution, or could otherwise prejudice any civil or criminal case; or

c. Would, in the service provider's view, be contrary to the interests of national security.

Again, in these circumstances, you should consult with the CO to receive direction.

7. Can a Victim Decide to Opt Out of the Code?

A victim may decide that they do not want some or all of the information or services to which they are entitled under the Code. Similarly, they may want to access the services but then opt out of receiving these at a later date. If that is the case, then the victim can discuss with their VLO and/or the Service Police how the entitlements should be best tailored to their needs. A victim may opt back into receiving services under the Code at any time while the case is under active investigation or prosecution.

8. What Happens if a Victim Does Not Receive the Services to which they are Entitled under the Code?

If the CO, Service Police, VLO or other Service Provider fails to provide the services on behalf of the Armed Forces to which the victim is entitled and desires under the Code, then this places the UK in breach of its obligations under the relevant EU Directive. In such a situation, the victim is also entitled to make a complaint in accordance with the applicable complaints procedure.

9. Are any Victims Entitled to Enhanced Services under the Code?

Three categories of victims are entitled to enhanced services under the Code. These are as follows:

a. Victims of the most serious crime.

b. Persistently targeted victims; and

c. Vulnerable or intimidated victims.

10. The Service Police will determine whether or not a victim falls into one of these categories. On your appointment as VLO, you should check with the Service Police or CO whether or not the victim is entitled to enhanced services. Such services may include Special Investigation Measures, namely:

a. To have the same person, where possible, conduct all the interviews (unless to do so would prejudice the proper handling of the investigation).

b. To be offered the opportunity to have a person of the same sex conduct the interview where they are a victim of sexual violence, gender-based violence, or domestic violence (any request will be met where possible unless to do so would prejudice the proper handling of the investigation).

c. To have interviews carried out by or through professionals trained for that purpose.

d. To have interviews carried out in premises designed or adapted for that purpose.

11. The victim may also ask for Special Measures to be put in place to assist them in giving evidence during a trial. These Special Measures will be discussed with the victim by the Service Police. However, if the victim indicates to you that they would like to make use of Special Investigation Measures or Special Measures which they have not told the Service Police of previously, you should inform the Service Police of this.

ANNEX 20O

ARMED FORCES CODE OF PRACTICE FOR THE VICTIMS OF CRIME - COMMANDING OFFICERS' COMPLAINTS PROCEDURE

1. Introduction

a. The Armed Forces Code of Practice for Victims of Crime ('the Code') sets out the services to be provided by Service Providers to the victims of crime committed by persons subject to Service law or civilians subject to Service discipline. Included in the list of Service Providers are Commanding Officers who exercise powers of investigation or charge, and Victim Liaison Officers[1]. Victims are entitled to be treated by Service Providers in a respectful, sensitive and professional manner, without discrimination of any kind.

b. The Code provides that if a victim entitled to services under the Code believes that they have not received the services and support that they are entitled to by virtue of the Code, they can make a complaint. This Annex sets out the procedures for making and dealing with such a complaint.

2. What is a Complaint?

a. As set out above, this Annex applies to complaints made by a victim entitled to services under the Code who believes that they have not received the services and support that they are entitled to by virtue of the Code. It applies only to complaints made about Commanding Officers who exercise powers of investigation or charge, and Victim Liaison Officers. Complaints against other Service Providers should be made using their individual complaints procedures.

b. This procedure is distinct from the Service Complaint procedure described in JSP 831 - Redress of Individual Grievances: Service Complaints.

3. How May a Complaint be Made?

a. If the victim feels comfortable in doing so, they should first talk about their complaint with the person they have been dealing with as the representative of the Service Provider. This may help to answer or deal with the complaint. However, if this does not help answer the complaint, or the victim is not comfortable in dealing with the person directly, they may make a formal complaint in accordance with this procedure. A victim entitled to services under the Code is entitled to receive information about how to make a complaint, including contact details and the process for dealing with a complaint.

b. When making a formal complaint, the complaint must be made in writing[2], and should be addressed to the Commanding Officer of the person being complained about. The word 'complaint' need not be used and care must be taken to ascertain whether in such correspondence the victim has a considered grievance needing to be resolved, rather than an observation to be noted or question that a victim wishes to be answered.

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[1] A list of service providers is set out in paragraph 7 of the Introduction to the Code.
[2] This may include electronic communication, primarily email.

4. Who can Complain?

a. The complaint may only be made by a victim entitled to services under the Code, or someone acting on their behalf[3]. If it is being made by someone on the victim's behalf, evidence of their authority to act should normally be sought.

b. For crimes that occurred outside the EU, the complaints process is only available to victims in relation to criminal proceedings that take place within the EU4.

5. When can a Complaint be Made?

Complaints must be made within 3 months of any obligation to the victim as required by the Code. Should a victim wish to make a complaint outside of this timescale because they were previously unaware of their entitlements under the Code and therefore did not know that they had not been met, the person receiving the complaint has discretion to decide whether it can be allowed, taking into account the circumstances of the incident and investigation and whether to do so would be fair and just to all concerned.

6. Out of Scope Complaints

The following complaints do not fall within the scope of this procedure:

a. Complaints about the decision of a CO not to charge a suspect or, in cases where a CO is unable to hear a charge summarily, a decision not to refer the case to the Director of Service Prosecutions. All matters concerning these decisions must be dealt with in accordance with the COs' Victims Right to Review Scheme.

b. **Anonymous Complaints.** All complaints must be made by the victim or by a person acting on behalf of the victim, with their consent.

c. Complaints about the manner in which an investigation was conducted (e.g. a complaint regarding the quality of the evidence gathered).

d. **Complaints Older than 3 Months**. Such complaints will be subject to the discretion detailed at para 5 above.

e. Complaints which are deemed vexatious or oppressive.

7. The Complaints Procedure

The aim of this procedure is to resolve any complaints made by victims at the lowest level, expeditiously and to their reasonable satisfaction, taking appropriate action where relevant or providing information to the victim to demonstrate that any obligations required by the Code had been met.

[3] For example, a legal adviser.

[4] In a case, some criminal proceedings, such as the interview with the victim, may take place outside the EU, while other criminal proceedings, such as the Summary Hearing, may take place within the EU. The Code does not apply to those criminal proceedings that take place outside the EU.

8. Receipt of a Complaint

a. Receipt of a complaint made under this procedure must be recorded at the earliest opportunity in order to ensure that an audit trail is maintained. Should a complaint be sent to the wrong Service Provider, they must use their best endeavours to redirect the complaint to the correct Service Provider, and inform the complainant that they have done this.

b. All complaints must be acknowledged within 3 working days of receipt. This acknowledgement must state that the complaint has been received and is being dealt with. It should also contain information about how complaints are dealt with and indicate how long it may take to receive a full response to the complaint.

9. Local Resolution

Local resolution is a way of understanding a complaint and resolving it directly with the person making the complaint as quickly as possible. For local resolution to be successful, the complainant must give their consent and cannot be forced or feel under any pressure to proceed in that manner. Where both appropriate and possible, local resolution at the lowest possible level is the preferred method of addressing a complaint, as this will deal with the matter expeditiously for all involved in the process. Local resolution may be in the form of a personal visit from an officer with the authority to resolve issues or to issue an apology/explanation as appropriate. Should local resolution be achieved, it must be followed up by correspondence to the complainant confirming the nature of complaint and the resolution provided.

10. Commanding Officer Complaint Analysis

On receipt of the complaint, the Commanding Officer of the person being complained about is to conduct an analysis of the complaint. On conclusion of that analysis, it should be apparent whether the matter can be resolved by way of local resolution or whether the matter requires further enquiries in order to respond fully to the complainant. Broadly, the analysis should focus on assessing the following:

a. Who is complaining?

b. What are they complaining about?

c. Does the complaint fall within the scope of this procedure?

d. If relevant, do the circumstances leading to the complaint seem to be as a result of a genuine error or honest mistake?

e. What, if any, resolution is being sought by the complainant?

f. Can the complaint be resolved locally?

g. Are there wider lessons to be learnt from the circumstances that led to the complaint?

h. Is there any suggestion of negligence or other misconduct?

i. Does the matter require administrative or disciplinary processes to be initiated?

j. Does the complaint appear to be vexatious or oppressive (see paras 19-22 below)?

11. Determining Complaints

The Commanding Officer addressing the complaint is to:

a Consider the complaint, taking into account the obligations of the Service Provider and entitlements afforded to the victim by the Code, together with the circumstances of the incident/offence investigated.

b. Decide whether the matter can be dealt with by local resolution.

c. Decide what action is necessary and proportionate (e.g. the taking of administrative/disciplinary action, additional training, the giving of an apology or the provision of a previously denied service) and initiate it.

d. Identify any organisational learning from the matter and disseminate it.

e. Communicate the findings to the victim complaining. This may be conducted in person or in writing; however, if carried out in person this must be confirmed in writing.

f. A copy of the decision and finding is to be forwarded to the single Service Discipline Branch.

g. The determination of the complaint must be completed and the victim advised of the outcome within 10 working days from receipt of the complaint, where practicable. If this is not practicable, the victim must be informed in writing of progress and an anticipated completion date in accordance with paragraph 8 above.

h. All records must be retained for a minimum of 6 years from the date of the complaint.

12. Possible Outcomes

Following analysis of the complaint (at all levels) the range of outcomes may be one or more of the following:

a. **Complaint Rejected.** The complaint may be rejected if the analysis and/or any fact finding identify that the complainant's belief is incorrect. The complainant should be informed of the finding and rationale/evidence for it in person or in writing. If in person, it is highly recommended that the conversation is confirmed in writing.

b. **Local Resolution.** Local resolution could include an apology to the complainant and/or the provision of a service under the Code previously denied to the victim.

c. **Administrative Action.** In some cases, it may be appropriate for administrative action to be taken. Decisions on whether this is appropriate should be made in accordance with applicable joint and single Service guidance. This should not delay the provision of a service under the Code previously denied to the victim where this is appropriate.

d. **Disciplinary Action.** Where appropriate, disciplinary action may be commenced under the Armed Forces Act 2006. This should not delay the provision of a service under the Code previously denied to the victim where this is appropriate.

e. **No Action.** Notice that no action will be taken should the complaint be classified as vexatious or oppressive.

13. Apologies to Persons Making a Complaint

It is possible that in the interaction with a victim, mistakes will be made in the informing or delivery of their entitlements under the Code. If, on analysis of the complaint, there has been a mistake or error made by the person being complained about or personnel acting on their behalf, then it may be appropriate that an apology is offered as soon as is reasonably practicable once the facts have been established. Specialist advice should be obtained from personnel and legal staff.

14. Vexatious or Oppressive Complaints

a. Following analysis, it may be apparent that the complaint could be considered vexatious or oppressive. It is important to note that it is the complaint itself that must be judged vexatious or oppressive, not the complainant. The complainant's past complaint history may however be relevant to show that the current complaint is vexatious or oppressive. The complaint history may be relevant, for example to show whether there have been a series of like complaints that have been addressed, either directed at the person subject to the current complaint or another person.

b. Proportionate assessment of the complaint remains necessary to establish whether a complaint lacks foundation or amounts to an abuse. Information and explanation should be provided to support that assessment.

c. 'Vexatious' and 'oppressive' should be given their usual dictionary meanings. A vexatious complaint will be one that is without foundation which is intended, or tends, to vex, worry, annoy or embarrass. For a complaint to be vexatious, it does not have to be repetitious.

d. An oppressive complaint is without foundation and is intended, or likely, to result in wrongful treatment of the person complained against or creates a disproportionate organisational burden on the Service.

15. Disclosure

Disclosure of material is governed by the MOD disclosure policy and procedures. If requested by the person complaining, a copy of their complaint and the record of decision/finding may be provided once the CO has made a determination of the complaint. This will exclude any data protected by the Data Protection Act 1998, including, where appropriate, investigative material or security protected material. This may require the provision of a redacted copy of the relevant material, which must be sent to relevant single Service Discipline Branch for authority to release.

ANNEX 20P

GUIDANCE ON THE ADMINISTRATIVE SANCTIONS WHICH MAY BE IMPOSED FOLLOWING A MINOR, SERIOUS OR GROSS SECURITY BREACH COMMITTED BY ROYAL NAVAL OR ROYAL MARINES PERSONNEL

1. Introduction

2015DIN02-004 promulgated revised procedures for the reporting of security incidents with effect from 6 Jul 15. Further, it outlined guidance for assessing the severity of a security breach which is to be classified as 'minor', 'serious' or 'gross'. The aim of this Annex is to provide guidance to Commanding Officers and line managers regarding appropriate administrative sanctions following the commission of a security breach by Royal Naval (RN) or Royal Marines (RM) personnel. This guidance applies only where a decision has been made to take administrative, rather than disciplinary, action against an individual.

2. Investigation of Security Incidents

In the event of a security incident, extant tri-Service and RN regulations and guidelines apply in relation to the conduct of an investigation. From a disciplinary perspective, further guidance is provided in Chapter 20 for those deciding on the method of investigation.

3. Disciplinary Action

Chapter 20 explains the distinction between disciplinary and administrative action and outlines what factors should be considered when determining how to proceed. Security breaches assessed to fall into the 'gross' category as defined in 2015DIN02-004 should normally be dealt with by disciplinary means. The particular circumstances of a case, however, may dictate that administrative action is a more effective means of maintaining operational capability. Alternatively, criminal and/or disciplinary action may not be necessary, appropriate or desirable for some other reason. For security breaches assessed to fall into the 'serious' or 'gross' categories, whether or not disciplinary action or administrative action is appropriate must be determined by the unit's Commanding Officer, having obtained legal advice. This decision may be delegated to an officer not below the rank of Commander (or equivalent).

4. Administrative Action

a. Where a decision has been made to take administrative action against an individual, the sanction to be imposed will depend on the circumstances of the case. To that end, it is not appropriate or desirable to specify definitive sanctions for particular types of behaviour. This Annex, therefore, provides only general guidance.

b. In the first instance, legal advice must be sought before a decision is made to impose a sanction for a 'serious' or 'gross' security breach. Further guidance regarding major administrative action is contained in Chapter 20. For officers, this includes censure action for which reference should also be made to BR 2 (QRRN) Chapter 38. Army or RAF legal advisers should seek assistance from Naval Legal Services in providing advice to the Command about administrative action in respect of RN or RM personnel serving outside the RN chain of Command.

c. Where a decision has been made to take administrative action, the following ranges of sanction will normally apply for security breaches as defined in 2015DIN02-004:

(1) **Minor Breaches.** Informal interview - Formal interview.

(2) **Serious Breaches.** Formal interview - Major Administrative Action.

(3) **Gross Breaches.** Major Administrative Action.

d. These sanction ranges may be departed from in light of any aggravating or mitigating factors. For the most serious security breaches, major administrative action includes discharge. Commanding Officers, line managers and those advising them should be cognisant of both an individual's intent in the commission of a security breach and of the impact of that breach. Examples of behaviour likely to attract particular sanctions are outlined at Annex 20Q.

5. Aggravating and Mitigating Factors

It has been recognised by Navy Command Headquarters that there is a need for a robust system of sanction to counter security breaches while ensuring that rewards exist to influence behaviour. There must be a firm response to such breaches, but it would be undesirable to create a draconian security culture in which fear of sanction motivates concealment of security failings. To that end, the factors set out below must be taken into account in determining what administrative action may be appropriate. The lists are not exhaustive and other considerations may be relevant in a particular case:

a. **Aggravating Factors.**

(1) Blatant disregard for security procedures.

(2) Repeated misconduct.

(3) Breach(es) over a prolonged period of time.

(4) Attempt(s) to disguise or hide conduct.

(5) Failure to heed prior warnings.

(6) Rank/seniority of individual.

(7) Abuse of trust.

(8) Breach relates to cryptographic material, ammunition or explosives.

b. **Mitigating Factors.**

(1) Youth or immaturity of individual.

(2) First security-related transgression.

(3) Isolated incident.

(4) Early and voluntary admission of conduct.

(5) Poor training or lack of appropriate supervision.

6. Reporting Security Breaches to First Reporting Officer

The First Reporting Officer (1RO) of the individual concerned must be made aware of a security breach which is assessed to be ‘serious’ or ‘gross’. 1ROs must consider whether or not to comment on such a breach in the compilation of the individual’s next appraisal report.

7. After Action

After action will includes the reporting of security breaches, mandatory vetting and Aftercare Incident Reports in accordance with extant regulations.

8. Reporting of Sanctions Imposed

Any administrative sanction imposed following a ‘serious’ or ‘gross’ security breach is to be reported directly to PSyA by completing Annex 20R and sending it to the NAVY-WARP MULTIUSER mailbox within 5 working days of the imposition of the sanction.

ANNEX 20Q

EXAMPLES OF SECURITY BREACHES: SANCTIONS

Examples	Normal Sanction Starting Point
Inadvertent introduction of Personal Electronic Devices into SECRET or TOP SECRET working areas.	Formal Interview
Unauthorised transmission of OFFICIAL-SENSITIVE material over the Internet.	Formal Interview
Deliberate contravention of security orders, including: Connection of unauthorised ICT to any system.	Major Administrative Action
Use of Personal Electronic Devices in SECRET or TOP SECRET working areas.	Major Administrative Action
Unauthorised publication of OFFICIAL documents on social media, including photographic reproduction of official documents and official passes.	Major Administrative Action
Deliberately engineering through hardware or software or physical alteration to the system, the circumvention of any hardware or software security implementation on a MOD ICT network or system.	Major Administrative Action
Facilitating unauthorised access of personnel to a MOD establishment.	Major Administrative Action
For Officers:	
Negligence in accounting for cryptographic material, Charge Books, or ammunition with no attempt to conceal behaviour.	Censure: Displeasure
Negligence in accounting for cryptographic material, Charge Books, or ammunition coupled with attempts to conceal behaviour.	Censure: Severe Displeasure
Storing SECRET information on a personal laptop.	Censure: Severe Displeasure
Storing TOP SECRET information on a personal laptop.	Censure: Admiralty Board Severe Displeasure

ANNEX 20R

SECURITY BREACH SANCTION REPORT FORM

SECURITY BREACH SANCTION REPORT FORM *(Downloadable version available in BRd 3(1) Forms Section)*

ANNEX 20S

REQUEST FOR LEGAL ADVICE (RFLA) - DISCIPLINE

REQUEST FOR LEGAL ADVICE (RFLA) - DISCIPLINE *(Downloadable version available in BRd 3(1) Forms Section)*

ANNEX 20T

APPLICATION BY COMMANDING OFFICER TO HEAR A CHARGE SUMMARILY OR FOR EXTENDED POWERS OF PUNISHMENT OR FOR FORFEITURE OF GOOD CONDUCT BADGE AS AN ADMINISTRATIVE CONSEQUENCE OF PUNISHMENT

APPLICATION BY COMMANDING OFFICER TO HEAR A CHARGE SUMMARILY OR FOR EXTENDED POWERS OF PUNISHMENT OR FOR FORFEITURE OF GOOD CONDUCT BADGE AS AN ADMINISTRATIVE CONSEQUENCE OF PUNISHMENT *(Downloadable version available in BRd 3(1) Forms Section)*

ANNEX 20U

SERIOUS DISCIPLINARY AND PERSONNEL INCIDENT REPORTING FORM

SERIOUS DISCIPLINARY AND PERSONNEL INCIDENT REPORTING FORM *(Downloadable version available in BRd 3(1) Forms Section)*

ANNEX 20V

REQUEST FOR LEGAL ADVICE – SERVICE PENALTY

REQUEST FOR LEGAL ADVICE - SERVICE PENALTY *(Downloadable version available in BRd 3(1) Forms Section)*