

The Rights of A Soldier Arrested For or Charged with an Offence Under the Army Act 1955

This guide is to help you understand your rights, military laws and regulations and what help is available to you when arrested for or charged with an offence under the Army Act 1955. It cannot deal with every question you might have. While most of its contents apply to all persons arrested or charged with an offence, the primary objective is to assist accused private soldiers and NCOs. If you are in any doubt about the contents or your rights generally, you should ask for an officer, WO or SNCO to assist you.

If this pamphlet was issued to you on enlistment, you should be aware that it is periodically updated. If you wish to confirm that the contents are still current, you should check with your Orderly Room. A copy of the current version will be issued to you if you are arrested and kept in military custody or charged with an offence.

This copy is issued to No

RankName

Unit

and is not to be taken away from him/her.

Abbreviations

Note: Throughout this pamphlet you will find a number of abbreviations are used. Some of these may be unfamiliar to you, and where abbreviations are not in common military usage you will find that they are explained at the start of each section where they are first used.

| | |
|------------|---|
| AA 55 | Army Act 1955 |
| ACR 00 | Army Custody Rules 2000 |
| AGAls | Army General & Administrative Instructions |
| APA | Army Prosecuting Authority |
| ASA | Appropriate Superior Authority |
| CAO | Court Administration Officer |
| Ch | Chapter |
| CM(A)R | Courts-Martial (Army) Rules 1997 |
| CO | Commanding Officer (or officer commanding an independent company or equivalent) |
| CSD(A)R 00 | Custody and Summary Dealing (Army) Regulations 2000 |
| DCM | District Court-Martial |
| I&D(A)R | Imprisonment and Detention (Army) Rules 1979 |
| JA | Judge Advocate |
| JO | Judicial Officer |
| MML1 | Manual of Military Law Part 1 |

| | |
|------------|---|
| OC | Company or equivalent commander |
| para(s) | paragraph(s) |
| QRs | The Queen's Regulations for the Army 1975 |
| r (rr) | Rule(s) or regulation(s) as the context requires |
| s (ss) | Section(s) |
| SAC | Summary Appeal Court |
| SAC(A)R 00 | SAC(A)R 00 Summary Appeal Court (Army) Rules 2000 |
| Sch | Schedule |
| SNCO | Senior Non-Commissioned Officer |
| UDO | Unit Defending Officer |
| VTC | Video conferencing |

GENERAL

1. Advice. You have been given this pamphlet on enlistment or because you have been arrested and retained in military custody, or have been charged with an offence under the AA 55. It explains the procedure that will be followed in your case, and your rights. All major stages of your case will be covered but some parts of this guide may not apply to you.

This guide is only a summary of the relevant law that applies; you might also have to look at MML1, QRs and AGAIs (references to these appear as appropriate in each section). If you wish, you may take advice from your Assisting Officer, Accused's Adviser or Defending Officer appointed to help you. You may also seek advice from a civilian lawyer or service legal officer. [QR 6.050A]

2. Delegation of Powers. Your Commanding Officer (CO) is able to delegate many of his powers and duties to other officers, e.g. your Company/Squadron/Battery Commander (OC). When your CO is away from barracks another officer, e.g. the 2IC, may exercise your CO's powers. Unless stated otherwise, all references to your CO in this guide include other officers exercising duties or powers on your CO's behalf.

Officers and WOs cannot be dealt with summarily by their CO; instead, any charges against them for summary dealing are dealt with by an Appropriate Superior Authority (ASA).

ARREST AND MILITARY CUSTODY BEFORE CHARGE

Note: *In this section, at para 8 onwards, you will find references to the Judicial Officer (JO). He is a legally qualified person, appointed by the Judge Advocate General. Usually he or she will be a civilian, but in some circumstances may be a Naval Judge Advocate.*

3. Arrest. You will not necessarily be arrested at all during the case. If not, then ignore this section.

A number of different people have the power to make arrests. WOs, NCOs and soldiers may be arrested by an officer, WO, or NCO but they must be of, or acting on the orders of someone of, a higher rank than you. [s74 AA and s74(3) AA]

The Royal Military Police (RMP) may arrest any officer, WO, NCO or soldier, even if of a higher rank. If someone of a lower rank who is not RMP arrests you then your arrest may be improper, and you should bring this to the attention of your CO. [*s74(4) AA*]

If you are AWOL and are found by the civil police, you may be arrested and may also appear in the local magistrates court, before being handed over to the local military authorities who will normally return you to your unit. [*ss186&187AA and s190B AA*]

4. Report of your Arrest. Once you have been arrested, your arrest must be reported to your CO as soon as practicable. The “Arrest Report” (AF A6211) must indicate whether you are still in military custody and if so, why. [*s75A(1) AA*]

Unless you have been charged with an offence (i.e. given an AF B252) you may only be kept in military custody until the report is made if the arresting officer reasonably believes that it is necessary to keep you in custody [*s75A(2) AA*] to:

- a. secure or preserve evidence relating to the offence for which you were arrested;
- or
- b. to obtain such evidence by questioning you.

For example, he reasonably believes that if you are released you will:

- a. interfere with any witnesses or evidence in the case;
- or
- b. fail to attend for questioning

and there is no other way to prevent this.

You should note that even if you are not placed in military custody, your CO may place restrictions on your movements.

5. Military Custody: Your Rights. Once you have been arrested, you may be held in military custody. If you are retained in military custody, you have a number of rights. [*CSD(A)R r20(2)*]

a. *Information*. Each time your retention in military custody is authorised (see para 8), you must be given a form, “Custody Information for an Accused Not Yet Charged” (AF A6212), which will tell you:

1. what offence you were arrested for;
2. the date, time and location of your arrest;
3. why you are to be kept in custody;
4. how long your retention in military custody is authorised;
5. your right to make representations (see b. below); and
6. your right to an Assisting Officer (see d. below).

You will have to sign for this form to confirm that you have received it.

b. *Contact your CO.* You may apply in writing to the person who arrested you or, if he has received the report, to your CO, to be released from military custody. You should explain why you think you should be released, bearing in mind the reasons you have been given for your custody. If you have an Assisting Officer or legal adviser (see para 7 below), you may want to discuss this application with them and ask them to help you do this. [**CSD(A)R r20(1)(b)**]

c. *Communication.* You should be given writing materials if you ask. [**QR J6.006B**] You should also be allowed to;

1. have one person of your choice contacted, at public expense, and told the fact of your arrest and the place where you are being held [**QR J6.006A**];
2. make at least one telephone call, at public expense, to a legal adviser (see para 7 below) [**QR J6.006B**];
3. speak on the telephone to relatives or friends at your own expense or receive incoming telephone calls at reasonable times;
4. send letters or telemessages at your own expense.

Some or all of these rights can be delayed or withheld if it is considered by the arresting officer or your CO that they would interfere with the investigation, cause another offence or warn another suspect, or interfere with operations or compromise safety or security.

d. *Assisting Officer.* You can ask for an officer, WO or SNCO to be appointed to assist you (your "Assisting Officer"). If the Assisting Officer you choose is unable or unwilling to assist you, your CO will nominate another person of your choice instead. If you do not want an Assisting Officer, you will be asked to sign a form to confirm this. [**CSD(A)R and r20(1)(a)**]

e. *Duties.* Once you are in military custody you will not have to attend parades or do more than is necessary to keep yourself and your accommodation clean. You may however be ordered to perform duties if you are on operations. [**QR 6.013**]

6. CO's Decision on Custody. Once your CO has received the arrest report he must then decide whether you are to remain in military custody without being charged. [**s75A(3)&(4) AA**]. He can only do this if he reasonably believes that keeping you in custody is necessary to:

- a. secure or preserve evidence relating to the offence for which you are under arrest (e.g. because if released, you may interfere with any witnesses or evidence in the case and there is no other way to prevent this); or
- b. to obtain such evidence by questioning you (e.g. because if released, you may fail to attend for questioning and there is no other way to prevent this);

and that the offence which you were arrested for is being investigated diligently and expeditiously (i.e.. properly and as quickly as practicable).

Even if he believes this he may still order your release.

If your CO does order that you stay in custody this should only be for as long as he believes is needed in relation to the reasons he gives. You should remember that you have the right to write to your CO about your custody, setting out the reasons why you think you should be released (see para 5b above).

7. Assistance and Legal Representation. You should also remember that you have the right to an Assisting Officer (see para 5d above) and if you do want one you should ask for his help now. You are entitled to the lawyer of your choice. Usually your lawyer will be a civilian but in some cases, especially overseas, RN or RAF lawyers may be available to represent you. They may be arranged in the same way as a civilian lawyer. You will be entitled to ask for free legal assistance under legal aid or other similar arrangements in place in your area.

If you wish to take legal advice, remember your right to call a legal adviser (see para 5c(2) above) and telephone them as soon as possible.

8. Your CO's Powers. The maximum length of time that your CO can order that you remain in custody without charge is normally limited to 48 hours from the time of your arrest, [s75A(6) AA], or, if you were AWOL, your surrender to the civil authorities. That 48 hours may be extended to 96 hours in certain circumstances. [s75C(5)(b)AA].

Your CO cannot order that you remain in custody for 48 hours at one time. [s75A(5) AA]. The maximum he can order at any one time depends upon how long after your arrest or surrender he makes the authorisation (see para 6 above), but may be no more than a further 12 or 24 hours from then. At the end of this period, if you have not been released, your CO must consider the case again and you may make further written representations to him at any time. [s75B AA]

He may of course order your custody for a shorter period than the maximum he is allowed, and he must, at the end of that shorter period, consider your case again. In some circumstances, e.g. when it is impractical, the CO can put off reconsidering your case to a later time.

Your CO must inform you of his reasons, as mentioned above, each time that he orders that you stay in custody. If those reasons cease to apply he must order your release at once, unless you are also in military custody for some other matter. [s75(2) AA].

Generally within 48 hours, and in every case, within 96 hours, from your arrest/surrender, you will be:

- a. released, (with or without charge); or
- b. taken before a Judicial Officer (JO) (see para 9 below), either in person or by video teleconferencing (VTC) link (see para 15 below), for him to decide if you should be kept in further custody (you may or may not have been charged).

9. Further Custody Without Charge. Unless it is impractical your CO must request a court hearing (usually within 48 hours of your arrest) before a JO. The JO will decide whether you should remain in custody and, if so, for how long. [*s75C AA*]

You should note that your CO may order that you remain in custody beyond 48 hours, to a maximum of 96 hours, if it is not practicable to arrange a hearing before a JO before then. If this happens your CO must consider your case at more frequent intervals (every 6 hours or less). [*s75C(5)(b) AA and s75C(6)(a) AA*].

10. Further Custody: Your Rights. If your CO intends to apply to the JO for an extension of custody without charge, he must notify you of this in writing, setting out his grounds for believing why continued custody is justified. [*s75C(2)(a)AA and ACR r8(1)(b)*]. You have a right to:

- a. be present at the hearing of your CO's application before the JO and tell the JO why you think you should be released [*s75C(2)(b)AA*];
- b. be represented by a lawyer at the hearing;
- c. apply for legal assistance under legal aid or other similar arrangements in place in your area. [*s75C(3) AA*].

Legal help may be available from a civilian or service lawyer (see para 7 above). If you do not already have a legal adviser, you should think seriously about contacting one.

If you do not have a legal adviser and want one, the JO may adjourn the hearing for you to contact one. This may mean that you remain in custody during the adjournment. [*s75C(3) AA*].

11. JO's Powers. The JO has the power to order that you remain in custody up to a total of 96 hours after your arrest/surrender before you are charged. This may be in one long period or several shorter ones, as the JO sees fit. However long the period ordered by the JO, you must be brought back before him for it to be extended again, unless of course your CO has ordered your release in the meantime. [*s75C(10) AA*].

The JO can only order your continued custody if he is satisfied that there are reasonable grounds for believing that keeping you in custody is necessary [*s75(2) AA and s75C(4) AA*] to;

- a. secure or preserve evidence relating to the offence for which you are under arrest (e.g. if released, you may interfere with any witnesses or evidence in the case and there is no other way to prevent this); or
- b. obtain such evidence by questioning you (e.g. if released, you may fail to attend for questioning and there is no other way to prevent this);

and that the offence which you were arrested for is being investigated diligently and expeditiously (i.e. properly and as quickly as possible).

If he is not satisfied of this he may either refuse your CO's application, or adjourn the hearing for up to 48 hours after your arrest/surrender, and may order that you be kept in military custody pending that adjourned hearing. [s75C(8) AA].

If the JO refuses the application [s75C(9) AA] he:

- a. if it is less than 48 hours since your arrest/surrender, **may** order your release or that you be charged [s75C(11) AA] or;
- b. if it is more than 48 hours after your arrest/surrender, **must** order that you be charged at once or released. [s75C(12) AA].

12. Interviews or Identification Parades by RMP. There are Codes of Practice which cover the way you should be treated by the RMP. If, while you are in custody or at any other time, you are questioned or put on an identification parade you may ask to read these and the RMP must allow you to do so, but you cannot use this to delay the investigation.

13. Some Points Which You May Wish to Discuss With Your Advisers in Respect of Pre-Charge Military Custody:

- a. have I received the information and documentation concerning my military custody which I am entitled to?
- b. are the grounds for my military custody valid and are there any alternatives to military custody?
- c. would I benefit from legal representation and are there any witnesses who would assist my case?
- d. should I make written representations to the CO as to why I should be released from military custody?

MILITARY CUSTODY AFTER CHARGE

***Note:** In this section you will find references to the Judicial Officer (JO), and the Court Administration Officer (CAO). The **JO** is a legally qualified person, appointed by the Judge Advocate General. Usually, he or she will be a civilian, but in some circumstances may be a Naval Judge Advocate The **CAO** is appointed by the Defence Council to convene trials by court-martial, custody hearings before a JO and other courts. He is independent of the chain of command.*

14. Action by your CO. If, after you have been charged, your CO thinks that you should remain in military custody until your case has been dealt with, he must bring you before a JO as soon as practicable. [s75F AA and ACR r9]

15. Your Rights. You must be given a notice in writing confirming that your CO intends to apply for your continued custody, and his grounds for doing so, and setting out your rights, [ACR r9(1)(b)] including:

- a. to be brought before a JO as soon as practicable (this may be done by video teleconferencing (VTC) link);
- b. to legal representation (you may apply for legal aid (see para 10c above)) [*ACR r19*];
- c. why your CO thinks you should stay in custody.

16. JO's Powers. The JO may order that you be kept in custody for a maximum of 8 days at your first hearing, [*s75F(6) AA*] but only if he is satisfied that:

- a. there are substantial grounds [*s75F(2) AA*] to believe that if released you would-
 - i. fail to attend any hearing in the proceedings,
 - ii. commit an offence, or
 - iii. interfere with witnesses or otherwise obstruct the course of justice;
- b. you should be kept in military custody for your own protection or, if you are under 17 years old, for your own welfare;
- c. he does not have sufficient information to make a final decision yet because of the short space of time since you were charged; or
- d. you have previously been released from military custody after you were charged with this offence and you went AWOL or deserted.

The JO will consider, particularly in relation to a. above:

1. the nature and seriousness of the offence you are charged with [*s75F(3) AA*];
2. your character, antecedents (i.e. your disciplinary record and any criminal convictions you have), associations and social ties;
3. how you behaved if you have previously been released from military custody, or on bail from civil custody;
4. the strength of the evidence against you.

You or your legal adviser can address the JO on these points and any others you feel are relevant.

You should note that, if you are held in military custody in MCTC after you are charged but before you are dealt with, your CO for your stay there will be Comdt MCTC.

Any order the JO makes for further custody automatically ends if you have been dealt with for the offence.

17. Review of Custody After Charge. If the JO orders that you remain in custody, he will specify a date to review your case before the period he authorised runs out unless you have been released in the meantime. [*s75G(1) AA*]

At the review the JO decides whether you should still remain in custody and if so, for what further period. The maximum he may order is 8 days, unless certain conditions apply (see para 19 below), and the factors he considers are as para 16 above. [*s75G AA and ACR r13*]

If the JO decides that you should remain in custody, then he will review your case again not later than the end of the period for which custody was authorised. This process will continue until you are released or dealt with for the offence. [*s75G(1) AA*]

There will always be a hearing if:

- a. it is the first review [*ACR r14*];
- b. your CO has requested one because he believes the grounds for your custody may no longer exist;
- c. it is during your trial by court-martial.

In other cases the JO may decide to deal with the review “on paper” but only after you have had the chance to make written representations (see para 18). You will be notified of the JO’s decision in writing.

If you have a legal adviser he must notify the CAO of his address, and if you cease to have a legal adviser you must tell the CAO. [*ACR r19 (5)&(6)*]

18. Written Representations. If the review is not one of those where there always has to be a hearing you will be given the chance to make written representations to the JO before the review about whether to hold a hearing and whether you should remain in custody. These should be sent to the CAO. Ideally, you should put forward some new relevant points to support this request. [*ACR rr14 & 15*].

Your CO may also make written representations and you will receive a copy, and he will receive a copy of any you make.

You should note that points you have made at the initial hearing before the JO and at the first review are unlikely to be of much effect at subsequent reviews, whether at a hearing or on paper, since the JO does not have to consider them. [*s75G(5) AA and s75G(6) AA*]

19. Frequency of Review. If you do not wish the JO to continue to review your case every 8 days, you may agree to a review only every 28 days. [*s75G(7) AA*].

You may only do this if you are in front of the JO and have a lawyer representing you.

If your CO at any time feels that the reasons for your custody no longer apply, he can either release you or ask the JO to review your case. [*s75G(2) AA and ACR r11*]

20. Custody at Courts-Martial. If your case proceeds to court-martial, similar rules apply except that any decisions on whether you are to remain in custody or not are made by the court-martial judge advocate. [s75H AA].

21. Some Points Which You May Wish to Discuss With Your Advisers in Respect of Post-Charge Military Custody

- a. what are the grounds for the CO's application for post-charge military custody?
- b. are those grounds valid and are there any alternatives to military custody?
- c. would I benefit from legal representation at the hearing before the JO and are there any witnesses who would assist my case?

INVESTIGATION OF CHARGES AND SUMMARY DEALING

Note: Unless stated otherwise, all references in this and the following sections to your CO include ASA and your OC.

22. CO's Duties. Your CO or OC must investigate a charge reported or referred to him by causing such enquiries, or further enquiries (if any), to be made which he considers necessary, and considering any witness statements or other material relevant to the charge. [s76 AA CSD(A)R r21 and CSD(A)R r9 and Sch 2].

The charges that your CO may deal with himself are set out below:

| AA 55 | Offence |
|-------------------------|---|
| s.29 | Offences concerning sentries |
| s.29A | Failure to attend for duty, neglect of duty etc. |
| s.30(c) | Taking stores etc., abandoned by the enemy. |
| s.33(1)(a) | Using/offering violence to a superior officer. |
| (b) | Threatening/insubordinate language. |
| s.34 | Disobeying lawful commands |
| s.34A | Failure to provide a sample for drug testing |
| s.35 | Obstructing provost officers |
| s.36 | Disobedience to Standing Order |
| s.38 | AWOL |
| s.39 | Failure to report or apprehend deserters or absentees. |
| s.42(1)(a) | Malingering (falsely pretending to be sick or disabled) |
| s.43 | Drunkenness |
| s.43A(a) | Fighting |
| (b) | Threatening etc. words/behaviour |
| s.44 | Damage to/loss of public/service property |
| s.44A(1)(c)(d) & (e) | Unlawful disposal of, damage to aircraft etc. |
| s.44B(2) | Conduct likely to impair the efficiency or effectiveness of signal equipment or to interfere with or modify a message or signal |
| s.45 | Misapplication or waste of public/service property |
| s.46 | Losing or making away with clothing, arms, ammunition or equipment issued |

| | |
|-----------------------|--|
| s.47(c) | Damaging billets etc. |
| s.50 | Inaccurate certification of ships or aircraft |
| s.54(2) | Improperly releasing or allowing persons to escape (not wilfully) |
| s.55 | Resisting arrest |
| s.56 | Escaping from confinement |
| s.60 | Unauthorised disclosure of information |
| s.61 | Making false answer on attestation |
| s.62(1)(a), (b) & (c) | Making false official documents or tampering with official documents. |
| s.65 | Ill-treating subordinates |
| s.66 | Disgraceful conduct of a cruel, indecent or unnatural kind |
| s.68 | Attempting to commit a military offence (only if that offence itself could be dealt with summarily) |
| s.69 | Conduct to the prejudice of good order and military discipline |
| s.70 | Committing a civil offence shown below: <ol style="list-style-type: none"> 1. Common assault or battery. 2. Driving without due care and attention or driving without reasonable consideration. 3. Dangerous riding of a cycle. 4. Riding a cycle without due care and attention or riding a cycle without reasonable consideration. 5. Taking a conveyance without the consent of the owner. 6. Taking a pedal cycle without the consent of the owner. 7. Criminal Damage not exceeding £2000. 8. Tampering with a motor vehicle on a road. 9. Unlawful possession of a controlled drug. 10. Theft. 11. Interfering with a vehicle. 12. Driving a motor vehicle with excess alcohol. 13. Being in charge of a motor vehicle with excess alcohol. 14. Making off without payment not exceeding £100. |
| s.75J(3) | Failing to attend a hearing |

There are generally no time limits for these offences, or those which can only be tried at court-martial, [s.132 AA] but there are time limits:

- a. for some s.70 (civil) offences;
- b. you leave the Army before you are charged with an offence.

Once you have left the Army, you must be dealt with quickly thereafter either by summary dealing within three months or trial by court-martial within six months.

ASA may also deal with the same charges in relation to WOs and officers below the rank of Col. Since your CO cannot deal with such persons, he will investigate to see if there is the required evidence, and if so, refer the case to his Higher Authority (usually his Bde Comd). He will decide if and how the case should proceed, which may be by summary dealing by ASA or court-martial.

23. Informing You. At least 24 hours before your summary hearing, you must be provided with the following (whether or not you were arrested or held in military custody in connection with the offence) [*CSD(A)R r24*]:

- a. a copy of the charge report (AF B252), containing the charge(s) you face;
- b. a copy of the evidence which it is proposed to use to prove the charge against you;
- c. details of any exhibits and where you may inspect them;
- d. a copy of your conduct sheets;
- e. a list of any material collected during the investigation which it is not proposed to use (you may be able to use some of this in your defence);
- f. a copy of any permission to do any of the following: award extended detention; impose stoppages in excess of 14 days' pay; punish for an earlier offence an acting WO or an acting NCO who has been or is to be ordered to revert to his permanent rank or to assume a lower acting rank; punish for an earlier offence a LCpl or LBdr who is to be or has been reduced to the ranks.
- g. a copy of "Information on Election for Court-Martial Trial" (AF A6201) which sets out your rights in relation to electing court-martial trial;
- h. a copy of this pamphlet.

24. Accused's Adviser. When appearing at any summary hearing you are entitled to be assisted by an Accused's Adviser, unless you refuse such assistance in writing. [*AGAI Vol 2 Para 62.452*]

Your Accused's Adviser will normally be an officer, WO or SNCO known to, and chosen by you, though certain persons, e.g. witnesses, the Adjt, are excluded. If the person you want is unavailable, unwilling or excluded, someone else will be appointed for you. [*AGAI Vol 2 Para 62.453*]

Your Accused's Adviser is not a defending officer. His function is to advise you before and at the hearing on military law and procedure as appropriate. He will help you to decide whether to give evidence or call witnesses, or elect trial by court-martial. Your Adviser can make a statement about your background or in mitigation of punishment. [*AGAI Vol 2 Paras 62.451 – 62.460 and Annex M*]

Your Adviser will be present throughout the hearing and you may consult him at any time during the hearing. His role is limited in certain ways, e.g. he cannot talk for you when you are asked if you want to say anything about the case. Only you can do this, although your Adviser may assist you to prepare questions for witnesses before and during the hearing.

25. Hearing. What is said below about CO's hearings also applies to ASA and OC hearings. Before dealing summarily with a charge, your CO will ask if you have been informed of the

charge(s) against you and received the information provided before the hearing (see para 23 above). [*ss76AA & 76B AA and CSD(A)R r28*]

He will then ask if you have had sufficient time to prepare your case and if you wish to elect trial by court-martial (see para 40 below). If you do not elect, your CO will then read the charge, ask if you understand it and, if necessary, explain the charge to you.

Your CO will then hear the evidence against you. The witnesses called by your CO must give their evidence orally on oath in your presence, unless you agree that some or all of the witnesses' evidence can be given from written statements or other documents they have made and which will have been provided to you (see para 23b above). Your CO will read any statements you have agreed. You may question any witness called by your CO.

You may also give evidence yourself, but you do not have to and cannot be forced to do so. If you do, it must be on oath. You may (but do not have to) also call witnesses yourself. They must give their evidence orally on oath in your presence and may be questioned by your CO, unless he agrees to read a written statement from them. You may then tell your CO anything relevant to the case. Following this your CO will announce whether he has found the charge proved or not.

If your CO finds the charge proved, he will go on to consider your character, a performance assessment and any factors which are relevant to sentencing. In particular, he will have regard to your disciplinary record. You or your Accused's Adviser may then address your CO on your character and in mitigation of punishment (i.e. any factors concerning the offence that could operate in your favour to reduce the severity of the punishment).

Your CO will then proceed to announce the punishment awarded and will give reasons for his decision. If you are awarded detention then your right to exercise a Detention Option will be explained to you (see para 27 below). You will also be given a written summary of the outcome of the hearing which summarises your rights to appeal against finding or punishment (see para 30 below).

26. Punishments

a. The punishments ASA can award are summarised below:

[*s76C AA and CSD(A)R rr10 -14*]

| | Offr | WO |
|-------------------------|-------------|-----------|
| Forfeiture of seniority | Yes | No |
| Fine up to 28 days' pay | Yes | Yes |
| Severe Reprimand | Yes | Yes |
| Reprimand | Yes | Yes |
| Stoppages of pay | Yes | Yes |

b. The punishments your CO can award are summarised below:

| | SSgt/Sgt | Cpl | LCpl | Pte |
|---------------------------------------|----------|-----|------|-----|
| Detention up to 28 days (for extended | No | No | No | Yes |

| | | | | |
|---|-----|-----|-----|-----|
| Detention, 29-60 days, see para 29 below) | | | | |
| Fine up to 28 days' pay | Yes | Yes | Yes | Yes |
| Severe Reprimand | Yes | Yes | Yes | No |
| Reprimand | Yes | Yes | Yes | No |
| Reversion from acting to permanent or intermediate rank | Yes | Yes | Yes | No |
| Reversion to the ranks | No | No | Yes | No |
| Stoppages of pay | Yes | Yes | Yes | Yes |
| Minor punishments | | | | |
| – admonition | Yes | Yes | Yes | Yes |
| - restriction of privileges (up to 14 days) | No | No | No | Yes |
| - extra guards or picquets (up to 3) | No | No | No | Yes |

If you receive an award of detention whilst you are already serving a previous period of detention, your CO may order that the new period does not start until you finish the one you are already serving.

c. Your OC's powers depend on his rank and what powers have been delegated to him by your CO, but will be more limited than the CO's powers; [*s118A(2) AA*]

below are the maximum powers an OC may have [*CSD(A)R r16*]:

| | Cpl | LCpl | Pte |
|--|-----|------|-----|
| Fine up to 7 days' pay | Yes | Yes | Yes |
| Reprimand | Yes | Yes | No |
| Stoppages up to 7 days' pay | Yes | Yes | Yes |
| Minor punishments | | | |
| – admonition | Yes | Yes | Yes |
| - restriction of privileges (up to 7 days) | No | No | Yes |
| - extra guards or picquets (up to 3) | No | No | Yes |

27. Detention Option. If your CO awards you detention this will not normally start until the 15th day (including the day of the award) after your CO's award (or longer, if the Summary Appeal Court (SAC) extends the 14 day period; see para 31 below). If you appeal within the allowed time, then your detention will not start until your appeal has been heard.

[*s118ZA(3)AA and CSD(A)R r34*]

However, you may still choose to begin your detention on the day it is awarded. This is known as exercising your Detention Option. You might wish to do this if, for example, you have no intention of appealing against your CO's finding or award. [*s118ZA(2) AA*]. You should note that you may only exercise your Detention Option on the day your CO awards the detention. If you do not do so, you must wait until the 15th day (including the day of the award) after your CO's award before you start your detention.

You should note that your position is different and more complex if your award is made to start after an existing period of detention (see para 26b above). [*s118A(2) & (3) AA*]

28. Detention Option and Your Appeal. Exercising your Detention Option has no effect on your right to appeal against your CO's finding or award (see para 30 below); in other words,

you may decide to serve your detention straightaway but still appeal. But bringing your appeal will suspend the rest of your sentence until the appeal is heard.

Even if you do decide to exercise your Detention Option and therefore begin your detention straightaway, you are still free to change your mind and withdraw the exercise of your Detention Option at any time within 14 days of the hearing (including the day of the hearing) or such longer period as may be allowed (see para 31 below). The effect of withdrawing the exercise of your option is that you will be released and the remainder of your detention will not start again until the 15th day or until after your appeal (if you do decide to appeal) is heard, and only then if your CO's award is upheld.

If you wish to change your mind, you may do so in writing, using the form given to you at the summary hearing, "Withdrawal of Detention Option" (AFA6210), by handing it to a member of the guard responsible for your custody or another person in authority. [*CSD(A)R r34(3)*]

29. Extended Detention. This applies only to private soldiers and is a punishment of more than 28 days' but not more than 60 days' detention. [*CSD(A)R r30*]. It may be awarded by a CO if the following conditions are satisfied:

- a. your CO has been granted permission by his Higher Authority (normally his Bde Comd) to award extended detention;
- b. you are told before and at the start of the summary hearing that your CO has the power to award extended detention; and
- c. the CO finds the charge(s) proved and that more than 28 days' detention is appropriate.

You have the same right to exercise your Detention Option (see para 27 above) when given extended detention.

APPEALS FROM SUMMARY DEALING

Note: In this section you will find references to the Judge Advocate (JA), the Summary Appeal Court (SAC), the Army Prosecuting Authority (APA) and the Court Administration Officer (CAO).

The JA is a legally qualified civilian, appointed by the Judge Advocate General. He or she is the equivalent of a judge in a civilian court and has similar powers and duties.

The SAC is a new court set up in Oct 2000 just to decide appeals from summary cases heard by COs, OCs and ASAs. It consists of a JA and two military members from outside the relevant chain of command.

The APA is a senior legal officer who is responsible for the prosecution of all trials by Army courts-martial and responding to appeals at SAC. He delegates his functions to individual Army Legal Services (ALS) prosecuting officers who prepare cases for trial or appeal and appear in court. They are independent of the chain of command.

The CAO is appointed by the Defence Council to convene SACs, custody hearings before a JO and other courts. He is independent of the chain of command.

The following paragraphs deal with appeals from summary dealing by your CO but they apply also to summary dealing by the ASA or by your OC

30. Appeal. If your CO finds the charge proved, you have the right to appeal against either his finding, or any award he makes, or both. Your appeal will be heard by the SAC.
[s83ZE(1) AA and s83ZA AA]

When deciding whether to appeal, you should bear in mind that whilst the SAC may alter your award (see paras 34 and 36 below) they cannot make it more severe than that awarded by your CO. [SAC(A)R rr23 & 24]

You are entitled to seek legal advice (see para 7 above) and may apply for legal aid using “Summary Appeal Court Legal Aid Application” (AFA6199). Your unit should have this form.

31. Procedure. The administration of the SAC is handled by the CAO.

You should normally lodge your appeal within 14 days (including the day of the hearing) of your CO’s award by sending the “Notice of Appeal” (AF A6222) (your orderly room should have one) to your CO. You only need one form, even if there are several charges you are appealing against, provided your CO dealt with them at the same time. [s83ZE(2) AA/SAC(A)R r8/SAC(A)R r8(2)]

If you are unable to prepare your appeal within this time, you may apply to extend it by sending a “Notice of Application to Extend the Period of Time for Bringing an Appeal” (AFA6223) to your CO before the 14 days are up. You may also bring an appeal after the 14 days are up if the SAC agrees. There is a separate form for this (“Notice of Application for Leave to Appeal Out of Time” (AFA6224)). Again, your unit should have these forms.
[s83ZE(3) AA/SAC(A)R r9]

Any application to extend the 14-day limit or to appeal after it is reached will be considered by a JA. He may deal with it on paper or ask for you to explain in person. [SAC(A)R rr10(1)&11] If the JA intends to refuse your application without hearing from you, the CAO will notify you and you may then request a hearing of your application by notifying the CAO in writing within 14 days of the CAO’s notification to you. If the JA determines that a hearing is required or you request one, you have the right to appear in person and to be legally represented. [SAC(A)R r10(3)&(4)/SAC(A)R rr6(1)&14(2)]

You will receive the JA’s decision in writing, with reasons if he has refused your application.

32. The APA's Decision. The APA are the respondents to your appeal at SAC. They will be the “other side” in your case. [SAC(A)R rr16 & 17]

If your appeal is against finding (see para 33 below), the APA must notify the CAO whether or not it intends to oppose it. If it does not oppose your appeal, or fails to notify the CAO, the SAC will quash your CO's finding and any punishment awarded in respect of it and you will be notified.

Where the APA does intend to oppose your appeal, it must send you the documents set out in SAC(A)R 00 which includes a summary of the APA's case. Your CO, once he receives them from the APA, will deliver them to you together with the documents set out in SAC(A)R 00 r18(3). [**SAC(A)R r18(1)**]

If you are appealing against your CO's award only (see para 35 below) but you do not agree with the facts set out in the summary of the APA's case, you must notify the APA in writing of the facts you do not accept. [**SAC(A)R rr21 & 61**]

33. Appeals Against Finding Only. If you appeal against your CO's finding that a charge has been proved, there will be a completely new hearing and all the evidence heard by your CO may be given again. Any new evidence that has been given to you by your CO, which has come to light since the summary hearing, may also be given. The CAO will notify you of the date, time and place of your appeal. [**s83ZF(1) AA and SAC(A)R Part VIII**]

You have the right to be present, to give evidence yourself, to call witnesses, to have a lawyer and to apply for legal aid. Legal help may be available from RN or RAF lawyers (see para 7 above). You must advise the CAO who your lawyer is. [**SAC(A)R r6**]

34. Powers of the SAC on Appeal Against Finding. The SAC may either: [**s83ZG AA**]

- a. agree with your CO's finding; or
- b. find another charge proved that your CO could have dealt with; or
- c. find the charge not proved.

If the SAC does either a. or b., it may either leave the award given by your CO unchanged or alter the award to one that your CO could have given and is no more severe than the one your CO gave you. You will have to comply with any award, even one of detention, in the normal way, even though some time has passed since your CO first dealt with you. You may have to contribute towards your legal aid costs.

If the SAC finds the charge not proved, both the finding and the award made by your CO will be quashed.

35. Appeals Against Award Only. If your appeal is only against your CO's award (i.e. you accept that you committed the offence charged), then the SAC will consider the award and may confirm or vary it. The CAO will notify you of the date, time and place of your appeal. [**s83ZG(4) AA and SAC(A)R Part IX**]

Where there are disputes about facts on an appeal against punishment, those issues may be dealt with by the SAC and evidence called.

You have the right to be present, to address the court yourself, to call witnesses, to have a lawyer and to apply for legal aid. Legal help may be available from RN or RAF lawyers (see para 7 above). [**s83ZF(2) AA and SAC(A)R r61**]

36. Powers of the SAC on Appeal Against Award Only. The SAC may either:

- a. agree with your CO's award; [**S83ZG(4) AA**]
- b. alter the award to one that your CO could have given and is no more severe than the award your CO gave you.

You will have to comply with any award, even one of detention, in the normal way, even though it may be some time since your CO first dealt with you. You may have to contribute towards your legal aid costs.

37. Abandoning Your Appeal. You may change your mind and abandon your appeal, wholly or partly, at any time before it is determined by advising the CAO using the form "Notice of Abandonment of Appeal" (AF A6225). Your unit should have this form. [**SAC(A)R r15**]

38. Review. A finding or award by your CO may also be reviewed by a reviewing officer (one more senior to your CO), who may seek permission to refer your case to the SAC even if you have not appealed yourself. This is an automatic procedure, and may take place at any time. [**s115 AA and SAC(A)R rr 12 & 13**]

If permission is granted and your case is referred to the SAC it will be treated as an appeal. You may abandon this appeal (see para 37 above).

39. Appealing from SAC. If you think that the decision of the SAC in your appeal is wrong, you may appeal in certain circumstances to the High Court. [**s83ZH(2) AA and SAC(A)R r65**]

To take your case to the High Court, you need to inform your CO in writing, but you must do so within 21 days of the date of the SAC's decision. Whatever you send to your CO you should also copy to APA as soon as possible. Your CO will forward your request to the SAC. The SAC's initial decision in response to your request will be notified to you by the CAO.

You will almost certainly need the assistance of a lawyer to appeal to the High Court.

ELECTING TRIAL BY COURT-MARTIAL

Note: In this section you will find references to the Army Prosecuting Authority (APA).

The APA is a senior legal officer who is responsible for the prosecution of all trials by Army courts-martial and responding to appeals at SAC. He delegates his functions to individual ALS prosecuting officers who prepare cases for trial or appeal and appear in court. They are independent of the chain of command.

What is said below about elections in cases before your CO applies also to cases before your OC or ASA.

40. When Can I Elect Trial? You can elect trial in all cases that are not to be referred for consideration of a court-martial. It does not matter whether or not the charge is one that would normally be sent for court-martial. You will be asked before the hearing begins if you wish to elect. You will have been provided with a document that sets out your options,

“Information on Election for Court-Martial Trial” (AF A6201). [*s76AA(1) AA and CSD(A)R Sch 4*]

If you elect, the case will go no further summarily, except that if you are before your OC, he will have to pass your case to your CO. Your case will then be referred by your CO to Higher Authority for consideration of a court-martial.

Where you are charged with two or more charges that are to be dealt with together, then an election by you on one charge will result in all the charges being referred for court-martial consideration.

41. Can I Change my Mind? Yes. You should notify your CO of your decision. Within 48 hours of electing court-martial trial, you have the absolute right to withdraw your election. [*CSD(A)R r33(1) and s.76A(1) AA*] After 48 hours, if your CO has already referred your case to his Higher Authority (normally his Bde Comd), you may only withdraw if:

- a. your CO's Higher Authority agrees, where he has not yet referred your case to the APA (see para 43 below); or
- b. the APA agree, where the case has been referred to them but your trial has not begun. [*CSD(A)R r33(2)*]

If you do withdraw your election, you may not be given a further opportunity to elect court-martial trial on that charge and your CO will therefore proceed to deal with the charge summarily.

However, if you decide not to elect, you cannot change your mind during the hearing, but your CO can decide that he no longer wishes to hear the case and refer it to Higher Authority with a view to court-martial.

42. What are the Consequences if I Elect?

- a. If you are found guilty by the court-martial, the court's powers of punishment are usually limited to those powers which would have been available to the CO had he dealt with the charge. In some circumstances, e.g. where a charge has been added or amended, they may not be limited in this way. More information is contained in the form “Information on Election for Court-Martial Trial” (AF A6201) (see para 23g above). [*s85A(1) AA/s83BB AA*].
- b. Bear in mind that the charge that you elected on is not necessarily the charge you will be tried on at court-martial. A different or additional charge may be put, which may be more or less serious than the charge on which you elected, or may even be one that your CO could not have dealt with at all. [*s83B(9A) AA/s83BB AA*]
- c. There will usually be a delay of some months before your case is heard as it takes some time to arrange a court-martial.

d. You will usually need a lawyer at court-martial and can apply for legal aid for assistance with his costs. You may be required to make a contribution towards the cost of legal representation at the conclusion of your case.

PREPARATION FOR TRIAL BY COURT-MARTIAL

Note: In this section you will find references to the Judge Advocate (JA), the Army Prosecuting Authority (APA) and the Court Administration Officer (CAO).

The JA is a legally qualified civilian, appointed by the Judge Advocate General. He or she is the equivalent of a judge in a civilian court and has similar powers and duties.

The APA is a senior legal officer who is responsible for the prosecution of all trials by Army courts-martial. He delegates his functions to individual ALS prosecuting officers who prepare cases for trial and appear in court. They are independent of the chain of command.

The CAO is appointed by the Defence Council to convene courts-martial, custody hearings before a JO and other courts. He is independent of the chain of command.

43. Referral for Court-Martial. If you have elected (see para 40 above), or, after investigating your case, your CO or ASA decides that it should be considered for trial by court-martial, he will refer it to his Higher Authority in disciplinary matters. If Higher Authority is of the same opinion, your case will be referred to the APA. [s76(5)(b) AA/s76A(1) AA/CSD(A)R r25]

You should note that ASA may also be a Higher Authority, and thus the referral may only be technical, rather than to another person.

If your OC considers your case should be referred, he will pass your case to your CO. Your CO may refer the case or decide to deal with it himself.

44. Army Prosecuting Authority. If a case is referred to the APA by your CO's Higher Authority, they decide which cases should be brought to trial, determine the charges to be tried, and whether they should be tried by a district or general court-martial. [ss83A & 83B AA].

45. Convening the Court. The CAO convenes trials by court-martial when the APA has directed trial. The CAO appoints the president and members of the court, but not the JA. Any members of the court will not be in your, or your CO's, chain of command.

46. Formal Preliminary Examination. Before directing trial, the APA may direct that a formal preliminary examination be held so that they can examine the evidence against you. [CM(A)R rr 5&6]

This will be taken by an ALS officer (the conducting officer) in your presence. You may be represented by a legal adviser and can apply for legal aid. Witnesses will be called by the conducting officer and will give evidence orally on oath and may be subject to cross-examination (i.e. questioned) by you or your legal adviser. Such evidence will be recorded by the conducting officer (or a court reporter if one is appointed). In addition the conducting officer may read to you signed statements of witnesses he does not call to give evidence orally, which he will include in his record.

You may give evidence if you wish, although you do not have to do so, and you may call witnesses, which, in both cases, will be on oath. Such evidence will be recorded by the conducting officer but neither the accused nor his witnesses may be questioned by the conducting officer, except to clear up any ambiguity or to enable him to record evidence in a coherent form.

A copy of the record of the formal preliminary examination will be served on you with the prosecution papers (see para 47 below) if the matter is to be brought to trial by court-martial. You will need to re-apply for legal aid to cover the court-martial if this happens.

47. Documentation. Where the APA has directed trial, your CO must serve on you the "prosecution papers", which is the notification of the charges and the evidence the prosecution will present at the court-martial to support those charges. [*CM(A)R rr 9&11*]. The prosecution papers will include:

- a. a copy of the charge-sheet (which is endorsed as to whether the charge(s) is/are to be tried by general or district court-martial);
- b. a list of the witnesses whom the prosecutor proposes to call;
- c. copies of the statements of evidence of the prosecution witnesses;
- d. a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts;
- e. copies of your conduct sheets;
- f. a list of all witness statements and other material in the APA's possession which are not otherwise included in the documentation served on you and which are not going to be used by the prosecutor at the court-martial.

In addition, you will be served with a form for notifying the CAO of any legal adviser you instruct, and a form of receipt for the prosecution papers. [*CM(A)R r11(3)*]

If you are under 18 your CO will inform your parents or legal guardian as soon as possible, stating the nature of the charge you face.

If the APA later decide to add more evidence, a copy of the statements of additional prosecution witnesses, or other evidence, will be served on you. [*QR 6.093(b)*].

If the APA decide not to call a witness whom they have previously indicated that they would call, your CO will notify you of that fact and you are then free to call that witness if you wish. [*CM(A)R r20 and CM(A)R r21*].

48. Unit Defending Officer. An officer will be appointed by your CO as your Unit Defending Officer (UDO) to assist you to prepare and conduct your defence unless you indicate in writing that you do not want one. Your CO should ensure your UDO obtains a

copy of the pamphlet 'Notes for the Guidance of UDOs at Army Courts-martial' (Army Code No 62232). [*CM(A)R r15(2)*].

49. Legal Representation. You may also appoint a legal adviser to act for you, and if your case is to be heard at court-martial you should do so. Assistance may be available from RN or RAF lawyers (see para 7 above). [*CM(A) R r15(3)*].

50. Legal Aid. Once the CO has served the prosecution papers on you, you may apply for legal aid, with a view to being represented by a civilian or service lawyer. You apply on form AFA6199, available from your orderly room. If it is granted, you may have to make a financial contribution that will be assessed in the light of your personal financial situation. If your application is refused, you have the right to ask for this decision to be reviewed. [*QR 6.094, 6.095, 7.040 & Annex D to Ch 6*]

51. Witnesses. If you wish to call any witnesses at your trial, the CAO will summon them, if you give him sufficient information to enable him to do so. [*CM(A)R r22(2)*]

52. Some Points Which You May Wish to Discuss With Your Advisers:

- a. does the prosecution evidence prove the charges against me?
- b. has the court-martial the right to deal with my case?
- c. does the charge correctly describe what it is alleged I did?
- d. if there are other accused or more than one charge, is it fair that one court should deal with all of them?
- e. do I have an alibi?
- f. should I agree with any of the prosecution case, so that some witnesses need not come to give their evidence?

TRIAL BY COURT-MARTIAL

53. At the Trial.

- a. You will be present throughout the proceedings.
- b. The JA will ensure that you understand your rights as to giving evidence yourself and the consequences if you choose to remain silent, and your right to call witnesses.
- c. You may consult your UDO or legal adviser at any time. Although you have the right to question witnesses and address the court, it is usual for those tasks to be done on your behalf by your UDO or lawyer. [*s.94(1) AA and CM(A)R r65(1)*].
- d. If you are found guilty of some or all of the charges, you may invite the court before it decides on sentence to take into consideration any other similar offences that you have committed. [*CM(A)R r15(3)*]. The advantage of this is that, if the court

agrees to do so, you cannot be tried in the future for those other offences. [*CM(A)R r74*].

54. Sentence. The sentences available to a court-martial are summarised below. You should note that the maximum sentence available for your charge may be lower. Full details may be found in MML1. [*ss71, 71A, 71AA, 71AB, 71B & 85 AA*]

| | Offr | WO | NCO | Pte |
|---|------|-----|-----|-----|
| Imprisonment or custodial order (DCM max 2 years) | Yes | Yes | Yes | Yes |
| Dismissal (with/without disgrace) from HM Service | Yes | Yes | Yes | Yes |
| Detention (max 2 years) | No | Yes | Yes | Yes |
| Forfeiture of seniority | Yes | No | o | No |
| Reduction in rank | No | Yes | Yes | No |
| Fine | Yes | Yes | Yes | Yes |
| Severe reprimand or reprimand | Yes | Yes | Yes | No |
| Stoppages of pay | Yes | Yes | Yes | Yes |
| Minor punishments | | | | |
| - admonition | No | No | Yes | Yes |
| - restriction of privileges up to 14 days | No | No | No | Yes |

POST-TRIAL

55. On Conviction. If you are convicted at court-martial:

- a. A copy of the pamphlet 'Appeals and Petitions' (Army Code No 11921) will be given to you.
- b. If you were granted legal aid for the court-martial, this will cover leave to appeal.
- c. A sentence of detention of 14 days or more will usually be served at the Military Corrective Training Centre at Colchester. Corrective training will be directed towards rehabilitation, either as a soldier or, if sentence is to be followed by discharge, as a civilian.
- d. A sentence of imprisonment, which automatically entails dismissal from the Army, will be served in a civilian prison in the UK.
- e. A "custodial order", which automatically entails dismissal from the Army, will be served in a civil establishment in the UK where civilians under 21 serve similar sentences. [*s71(3) AA*]
- f. You may petition the Army Reviewing Authority in respect of the finding and sentence of the court-martial and may apply for leave to appeal to the Courts-Martial Appeal Court against both finding and sentence. You may apply for legal aid to appeal. Fuller details are contained in the pamphlet "Appeals and Petitions". [*s71AA AA*]

g. If sentenced to imprisonment or to a custodial order, you may be entitled to remission of sentence, which may be lost for bad behaviour. [*ss 113, 113AA & 113AAA*]

h. If sentenced to detention of 28 days or more you shall be entitled to up to one third remission of sentence, subject to serving a minimum of 24 days in detention; which may be lost for bad behaviour. [*I&D(A)R r28*]

i. Your legal aid contribution will be re-assessed post-trial, to take into account the findings and sentence of the court. You may be required to make a further contribution towards the cost of your defence.

56. Release From Military Custody and Return to Duty After Conviction. If you were in military custody at the time of your trial and you are not given a custodial sentence, you will normally be released immediately after conviction and return to normal duties unless sentenced to imprisonment, dismissal (with or without disgrace) or detention.

57. Following an Acquittal or Discontinuance by the APA. You may apply to the Ministry of Defence (PS2(A)) for a refund of defence costs. Your application will be decided on its merits. [*QR J6.124*]

This pamphlet is sponsored by DALs and produced by HQ ALS (Advisory). All comments and suggestions should be forwarded to SO2 Publications at the address below.

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