

Zero Tolerance to Sexual Offences and Sexual Relationships Between Instructors and Trainees

'MOD needs high quality people with the necessary skills, knowledge and experience, who are valued, respected, invested in and feel supported. The UK Armed Forces are a formidable fighting force and the commitment of all Service personnel and civilian employees is rightly celebrated. Unacceptable behaviour persists, however, which negatively impacts on people, the teams they serve in and, ultimately, operational output. It also has an impact on attracting, recruiting and retaining the talent we need.'

JSP 763, Policy Statement.

Note: This Policy should be read in conjunction with 2022DIN01-073 'Zero Tolerance to Unacceptable Sexual Behaviour: A Victim/Survivor Focused Approach'.

Introduction

1. Sexual offending is a crime, harms people, adversely impacts unit cohesion and operational effectiveness, and undermines public confidence and trust in the UK Armed Forces. There is no place in the UK Armed Forces or MOD Civil Service¹ for people who commit sexual offences. Additionally, instructors or personnel in a position of authority, who engage in sexual relationships with trainees or recruits², are abusing their position of trust and may be committing an offence. For that reason, this issue is also addressed in this zero tolerance policy. This policy is the first of a range of measures intended to tackle unacceptable sexual behaviour in Defence. The MOD's Policy on Unacceptable Behaviours, including sexual offending, is set out in JSP 763 Part 1.³

Purpose

2. Supporting people who are victims of sexual offending (and preventing trainees from becoming victims) is our priority.⁴ Defence has aligned single Service (sS) policies⁵ to create an overarching zero tolerance to sexual offending and instructor/trainee sexual relationships policy.

¹ In accordance with paragraph 9, this current policy currently only applies to Armed Forces personnel. Relevant MOD Civilian policy is set out at paragraph 17.

² Referred to throughout this policy as an 'instructor/trainee sexual relationship' in short, but it captures any Service person in a position of authority over trainees or recruits at any stage of training (i.e. Phases 1-3) where that sexual relationship took place whilst the trainee or recruit was still in training.

³ JSP 763, Part 1, paragraphs 1.3 and 2.1. Core behaviours are discussed at JSP 763, Part 1, paragraph 1.3. Non-exhaustive examples of breaches of core behaviours are provided in JSP 763 paragraph 2.22.

⁴ JSP 839, 2020DIN01-065 and 2014DIN01-209.

⁵ Royal Navy Policy in [BR3, Chapter 20](#). Army Policy in Army General and Administrative Instructions (AGAI), Volume 2, [Chapter 62](#) and [Chapter 67](#). RAF Policy in AP3392 Vol 4, [Leaflet 701](#) (Attendance at Court) and AP3392 Vol 4, [leaflet 801](#) (Major Admin Action Policy).

Intent – Zero Tolerance

3. Zero tolerance means that every allegation of sexual offending or instructor/trainee sexual relationships will be acted upon through prompt, thorough, efficient and independent investigation⁶. When a person is convicted⁷ of a sexual offence or an instructor is found⁸ to have engaged in a sexual relationship with a trainee, their discharge is mandatory.

Sexual Offences

4. In relation to the sexual offences specified below, where a person is found guilty of such an offence, it is mandated that they will be administratively discharged:

- a. Any offence whose punishment triggers a Violent and Sex Offender Register (VISOR) reporting requirement.⁹
- b. Any offence under the Sexual Offences Act 2003 (see footnote¹⁰ re. sexual activity in a public lavatory).
- c. Pre-2003 Sexual Offences.
- d. Any offence involving indecent images of children.¹¹
- e. Extreme pornographic images.¹²
- f. Revenge porn.¹³
- g. Obscene publications.¹⁴
- h. Voyeurism¹⁵.
- i. Harassment, where there is a sexual element.¹⁶
- j. Modern Slavery Offences where there is a sexual element.¹⁷
- k. Any offence under the Female Genital Mutilation Act 2003.

5. This list is not exhaustive, and it is for the Commanding Officer of a person found guilty of a different/alternative offence of a sexual nature to apply this policy. Legal advice must be sought.

⁶ Investigation will be by Service or Civilian Police where there is an allegation that an offence has been committed.

⁷ The criminal standard is beyond reasonable doubt.

⁸ The standard of proof that such a relationship took place is to the civil standard, i.e. on the balance of probabilities.

⁹ Part 2, Sexual Offences Act 2003.

¹⁰ Sexual activity in a public lavatory, contrary to s.71 of the Sexual Offences Act is likely to be private and consensual activity (unless other offences are added to the charge/indictment) and so is likely to be excluded from this policy. Legal advice should be sought as to whether the threshold to trigger this policy is reached where a Service person is found guilty of a s.71 charge.

¹¹ Likely to be charged under s.1 of the Protection of Children Act 1978 or s.160 of the Criminal Justice Act 1988 but includes such an offence however charged, for example possession of a paedophile manual contrary to s.69 Serious Crime Act 2015.

¹² Contrary to s.63 of the Criminal Justice and Immigration Act 2008.

¹³ Contrary to s.33 of the Criminal Justice and Courts Act 2015.

¹⁴ Charged under the Obscene Publications Acts 1959 and/or 1964.

¹⁵ Sexual Offences Act 2003 or The Voyeurism Offences Act 2019.

¹⁶ Contrary to The Protection from Harassment Act 1997 or s.4, 4A and 5 Public Order Act 1986.

¹⁷ Contrary to The Modern Slavery Act 2015.

6. When a Service person is convicted of a sexual offence outside England and Wales, where the relevant offence would be an offence if committed in England and Wales¹⁸, the same zero tolerance policy will apply, and it is mandated that they be administratively discharged.

7. The offences above may be tried by Court Martial, in which case dismissal is a punishment available to the Court. Where, despite the individual having been found guilty, the Court Martial Board chooses not to award dismissal, the Service with Full Command of the individual shall administratively discharge them in line with this policy.

Instructor/Trainee Sexual Relationships

Instructors or personnel in a position of authority who engage in sexual relationships with recruits or trainees will be discharged and may face prosecution.

8. Instructor/trainee sexual relationships are unacceptable. Such relationships would breach the Service Test, could cause harm to others and reputational harm to the Services, and may result in prosecution. Service personnel who are instructors or in a position of authority who engage in such relationships are to be administratively discharged. In situations where instructors and trainees are in relationships that pre-date them becoming an instructor or a trainee, both parties are to inform their chain of command of the pre-existing relationship. It is then for the chain of command to determine how their positions and training should be managed. Failure to declare a pre-existing relationship may result in discharge in accordance with this policy.

Application

9. This policy applies to UK Armed Forces personnel, whether Regular or Reservist, no matter who the victim, trainee or affected person(s) are. See paragraph 17 for relevant MOD Civilian Employee policy.

10. This policy draws together aspects of the single Services (sS) policy and sets out what Service personnel can expect to happen if they commit a sexual offence or engage in a sexual relationship with a trainee. For this reason, there is nothing to prevent the discharge of Service personnel who have been convicted of a sexual offence or engaged in an instructor/trainee sexual relationship prior to the publication of this policy, if the action taken is in line with pre-existing sS policy.¹⁹

¹⁸ For example, in some countries homosexuality is illegal, but it is not an offence in the UK.

¹⁹ i.e. this policy is not to be applied to address conviction for sexual offences, or instructor/trainee relationships that were concluded, prior to the introduction of this policy. In relation to convictions for a sexual offence or an instructor/trainee relationship that concluded prior to the introduction of this policy, the relevant sS policy in place at the time should be applied to determine the most appropriate action to be taken.

Process

11. Discharge of any individual is a Full Command issue and should be conducted in accordance with sS administrative procedures. The authority to approve discharge will sit at the level prescribed in sS Policy.

12. Discharge statistics for sexual offences must be submitted to Ministers on a 6-monthly basis. In support of the submission, each sS will provide an overview of the themes and lessons learned from the cases, along with details of any specific action being taken to address those themes and lessons. This will enable monitoring to ensure consistent application of this policy across Defence, allow analysis of the data and enable holding to account.²⁰

Addressing Sexual Offending and Unacceptable Sexual Behaviour

'When considering allegations of unacceptable behaviour, individuals should consider whether values and standards have been met. Everyone has a responsibility to challenge unacceptable behaviours; the standard one walks past, without taking action, is the standard one accepts.'

JSP 763, Chapter 2, paragraph 2.2.

13. Unacceptable sexual behaviour of any kind should be challenged and potential sexual offences or instructor/trainee sexual relationships reported to the Police.²¹ If a Commanding Officer becomes aware that a sexual offence may have been committed, they must report it to the Service Police.²² No-one is to 'walk on by'. 'We all have a role to play in preventing unacceptable behaviour. We must intervene when we see behaviours falling short of our high standards and values. Everyone in Defence needs to be confident that we will respond if they have cause to raise a complaint.'²³

14. As stated above, this policy applies to all Regular and Reserve personnel. The Services already place, or are developing, an obligation on Regular and Reserve Armed Forces personnel²⁴ to report to their Commanding Officer when arrested, charged or found guilty of a

²⁰ MOD reporting process to be published separately. Retention of data must be in line with appropriate data retention/protection laws and policies, and the Rehabilitation of Offenders Act 1974 (see paragraph 15).

²¹ Victims retain the right to report offences with a Service connection to the Service or Civilian Police.

²² Under s.113 of the Armed Forces Act 2003, Commanding officers have an obligation to report offences listed in Schedule 2 of the Armed Forces Act 2006 to the Service Police. Sexual Offences under Part 1 of the Sexual Offences Act 2003 (except sexual activity in a public toilet) are included in Schedule 2 at Paragraph 12(at).

²³ JSP 763, Foreword, paragraph 2. See also JSP 762, paragraph 1.10 – 1.14.

²⁴ RN – QRRN, [Chapter 58](#), paragraph 5808. Army – AGAI, Volume 2, [Chapter 65](#), paragraph 65.003. RAF policy is being developed.

criminal offence in the civilian criminal justice system, as well as reporting any punishment awarded. An individual's Chain of Command will already be aware of any disciplinary/criminal investigation or prosecution ongoing in the Service Justice System.

Rehabilitation of Offenders

15. Certain convictions awarded in the civilian criminal and Service courts carry a set period of rehabilitation.²⁵ The purpose of the rehabilitation period is to determine the point at which the offence is 'spent', i.e. removed from a person's criminal record. Once the conviction or caution is spent it may no longer be possible for an 'employer' to take action against that person regarding their 'employment'²⁶ in relation to that offence. Not all convictions have a rehabilitation period, and so are 'spent' immediately. To that end, discharge following a conviction for a sexual offence must take account of the relevant rehabilitation period associated with the punishment and legal advice should be sought in each case.

16. Personnel discharged in accordance with this policy are unlikely to be considered suitable to re-join the Armed Forces. Eligibility to re-join will depend on the sS Discharge category deemed appropriate by that Service.

Application to MOD Civilian Employees

17. This policy does not specifically apply to MOD Civilian Employees because of differences in administrative and disciplinary procedures. Nevertheless, the Civil Service has zero tolerance for sexual misconduct. They and those who manage them should be aware that they have an obligation to report any arrest, caution, conviction, discharge or being placed on (criminal) probation²⁷, and that conviction for a sexual offence is likely to be considered to be gross misconduct, for which the probable sanction is dismissal.²⁸

²⁵ Rehabilitation of Offenders Act (ROA) 1974.

²⁶ Whilst Armed Forces personnel are not 'employed' in the strict employment law definition of the word, ROA 1974 is still relevant to whether administrative action can be applied following a conviction.

²⁷ For MOD Civilian Employees see [Handling arrests, charges, police cautions and criminal convictions \(sharepoint.com\)](#). For DE&S Civilian Employees see this [link](#).

²⁸ For MOD Main Civilian Employees see [Misconduct and Discipline Procedure.docx \(sharepoint.com\)](#). For DE&S Civilian Employees see this [link](#). For RFA Personnel see [Misconduct - Royal Fleet Auxiliary \(sharepoint.com\)](#).