



Your rights if you are accused of an offence under the Service Justice System

Index

Contents

Index	1-6-G-2	Part 2 – Summary hearing, activation hearing and appeal	1-6-G-9
Definitions	1-6-G-3	General	1-6-G-9
General	1-6-G-4	Police National Computer	1-6-G-9
Advice	1-6-G-4	Collection of DNA samples and fingerprints	1-6-G-9
Help	1-6-G-4	Informing you	1-6-G-9
Legal representation	1-6-G-4	Summary hearing	1-6-G-9
Interpretation and translation	1-6-G-4	You must also be told that you have the following rights.	1-6-G-10
Your rights	1-6-G-4	Legal Advice	1-6-G-10
Who can investigate	1-6-G-5	Assisting officer	1-6-G-10
Information that must be given to you	1-6-G-5	Before the summary hearing	1-6-G-10
Reporting your arrest	1-6-G-5	Choosing a Court Martial trial	1-6-G-10
Once you have been arrested, you may be held in custody. If you are kept in custody you:	1-6-G-5	At the start of a summary hearing	1-6-G-10
Information that must be given to you	1-6-G-5	Admitting the charge	1-6-G-10
Applying to be released	1-6-G-5	Denying the charge	1-6-G-11
Asking for writing material	1-6-G-5	Sentencing	1-6-G-11
Contacting certain people	1-6-G-5	Activation hearing	1-6-G-11
		Your Commanding Officer must tell you, in writing, about:	1-6-G-12
Part 1 – Arrest and custody	1-6-G-5	Assisting officer	1-6-G-12
Investigations	1-6-G-5	Appeals from summary hearing to the Summary Appeal Court	1-6-G-12
Arrest	1-6-G-5	Appeal	1-6-G-12
Custody without charge - your rights	1-6-G-5		
Choosing an assisting officer to help you	1-6-G-6		
Attending for duty	1-6-G-6		
Commanding Officer's decision on custody	1-6-G-6		
Legal representation	1-6-G-6		
Consular protection of foreign nationals	1-6-G-6		
Time limits on custody	1-6-G-6		
Further custody without charge	1-6-G-6		
Further custody - your rights	1-6-G-6		
Judge Advocate's powers (custody without charge)	1-6-G-7		
Interviews or identification parades by Service Police	1-6-G-7		
Arrests by persons other than the Service Police, and Commanding Officers Investigations	1-6-G-7		
Duties	1-6-G-7		
Action by your Commanding Officer	1-6-G-7		
Custody after charge - your rights	1-6-G-7		
Judge Advocate's powers (custody after charge)	1-6-G-7		
Custody after charge - your rights	1-6-G-7		
Review of custody after charge	1-6-G-8		
MCTC (Colchester)	1-6-G-8		
Custody at Court Martial	1-6-G-8		

This guide is to help you understand your rights, and what help is available to you, if you are to be dealt with in the Service justice system. It aims to give you enough information to help you make informed decisions, but it will not answer every question you have. **If you have any questions about your rights, ask for an officer, a warrant officer (WO), a senior rate or a senior non-commissioned officer (SNCO) to help you.**

This copy has been issued to

Service number

Rank or rate

Name

Ship, unit, establishment

Definitions

In this guide, the words and phrases listed below have the meanings shown.

Activation hearing	A hearing at which your Commanding Officer will decide whether you should start a sentence of detention which had been suspended.
Armed forces criminal legal aid authority	The organisation that you will apply to for legal aid if you are being tried by the Court Martial or appearing before the Summary Appeal Court. If you are entitled to have a lawyer represent you, you can ask the armed forces criminal legal aid authority to appoint a lawyer to act for you.
Arrest	In this guide, the word 'arrest' also covers when a person who was AWOL surrenders to a civilian policeman.
Assisting officer	Assisting officer is the term used for a person who will help you when you are in custody. It could be an officer, WO, senior rate or SNCO. The 'accused's assisting officer' is the person who will help you to prepare for your summary hearing and represent you at that hearing. The 'appellant's assisting officer' is the person who will help you prepare for your summary appeal and represent you at that appeal. The 'offender's assisting officer' is the person who will help you to prepare for an activation hearing and represent you at that hearing. The 'defendant's assisting officer' is the person who will help you to prepare for your trial in the Court Martial, and can help you or your legal representative at that trial.
Commanding Officer	Except where this guide says otherwise, all references to your Commanding Officer include other officers acting on your Commanding Officer's behalf.
Court administration officer	The court administration officer will make the arrangements for trials at a Court Martial, custody hearings before a judge advocate and hearings before the Summary Appeal Court. He or she is independent of the chain of command.
Court Martial	A court that has a judge advocate and between three and seven lay members (officers or WOs not from your chain of command). The lay members decide if a person is guilty of a charge and the judge advocate and lay members decide on any sentence.
Director of Service Prosecutions	The head of the Service Prosecuting Authority. His prosecuting officers prepare cases for trial and appear in court. They also represent the Director of Service Prosecutions at the Summary Appeal Court. The Director of Service Prosecutions is independent of the chain of command.
Reviewing authority	If the case against you is found proved at a summary hearing, an appointed officer will automatically review your case to decide whether the correct procedure was followed and the punishment awarded was reasonable.
Home nation consul	An embassy or high commission staffed by people from the country you are a citizen of and based in the country you are living in.
Judge advocate	Is a civilian judge who is chosen by the Judge Advocate General.
Service Civilian Court	The Service Civilian Court is a standing court that can deal with civilians who can be charged with offences under the Armed Forces Act 2006. Its powers are like those of a magistrates' court in England and Wales.
Summary Appeal Court	The Summary Appeal Court decides appeals from summary hearings. It is made up of a judge advocate and two service members from outside your chain of command.
Summary hearing	A hearing where you are charged in front of your Commanding Officer or other officer.

Note: Forms referred to in this guide are available on JPA from the SPVA information centre under 'JPA forms'. They are also available in JSP 830 Manual of Service Law.

General

Advice

- If you are suspected or have been arrested for or charged with an offence you should read this guide carefully. It will help you to understand your rights and what will happen next.
- Part 1 of this guide is to help you if you are suspected of a Service offence, arrested or kept in custody.
- Part 2 of this guide is to help you if you are charged and face a summary hearing.

Help

- This guide only tells you about the law that applies to the rights of those suspected or accused of an offence. If you want to know more, ask your assisting officer to provide a copy of the Manual of Service Law and any other related documents.
- You can get help from an officer, WO, senior rate or SNCO of your choice.
- You can watch the Service Justice System DVD to help you understand what will happen if you are charged.

Legal representation

- If you are arrested or kept in custody, you can get legal advice.
- If you are interviewed under caution by the Service Police, you can get legal advice.
- You cannot have a lawyer represent you at a summary hearing.
- You can ask for legal advice to help you decide whether you want a Court Martial trial rather than a summary hearing.
- You can ask for legal advice about appealing if a charge brought against you is found proved at a summary hearing.
- You are allowed a lawyer at a Summary Appeal Court or a Court Martial.

Interpretation and translation

- If you do not speak or understand English, you have the right to an interpreter during Service Police questioning and all court hearings, free of charge.
- This right to interpretation may include the translation of essential documents. You may in some circumstances be provided with an oral translation or summary.
- Similar assistance should be given to you if you have a hearing or speech impediment.

Your rights

- If you are suspected or accused of any offence you must be provided with information concerning the following procedural rights as they apply under national law:
 - The right to access to a lawyer.
 - The entitlement to free legal advice and the conditions for obtaining such advice.
 - The right to be informed of the offence you are suspected of having committed.
 - The right to interpretation and translation.
 - The right to remain silent.
- If you are arrested you have the additional following rights:
 - The right to have someone informed of your arrest (unless that right has been delayed by the Service Police).
 - If you are not a British citizen you have the right to communicate with the appropriate High Commission, Embassy or Consulate and upon request inform them of your whereabouts and the grounds for your detention.
 - The right to see records and documents about why you have been arrested and are being detained.
 - The right to access urgent medical assistance.
 - To be informed of the maximum length of time that you may be detained before being charged or brought before a Judge Advocate, when detention must be reviewed and when release is required.
 - If you are charged with an offence you have the right to see the prosecution evidence before attending any Summary Hearing or trial before a court.

Part 1 – Arrest and custody

Investigations

Who can investigate

- Your Commanding Officer has the duty to ensure that all offences are investigated appropriately. Your Commanding Officer will have to decide what investigation is appropriate.
- Who conducts investigations depends upon a number of factors however they can be conducted by either the Service Police or by means of a Commanding Officers investigation.
- You can find out more about investigation and charging from chapter 6 (Investigation, charging and mode of trial) of the Manual of Service Law.

Information that must be given to you

- Depending upon who is conducting the investigation the relevant Notice of Rights must be given:
 - If Service Police Investigation you must be given MOD Form 811A (Service Police Notice of Rights upon arrest or interview by the Service Police).
 - If a Commanding Officer's Investigation you must be given Annex A to Defence Council Instruction 2014 DIN01-115. (Notice of Rights to Suspects).

Arrest

Who can arrest you

- Service Police can arrest any member of HM Forces, no matter what their rank. Officers, WOs or NCOs can sometimes arrest people. Your arrest might not be valid if you are arrested by someone of a lower rank to you who is not a service policeman. If this is the case you should tell your Commanding Officer.
- You can find out more about arrest from chapter 4 (Arrest and search, stop and search, entry search and seizure and retention) of the Manual of Service Law.

Reporting your arrest

- If you have been arrested, the person who arrested you must report it to your Commanding Officer as soon as practicable.
- You are formally charged when you are served with a charge sheet signed by your Commanding Officer.
- If you are not charged, you can only be kept in custody if the person who arrested you has reasonable grounds for believing that you need to be kept in custody so:
 - evidence relating to the offence you were arrested for can be gathered or protected; or
 - you can be questioned.

Custody without charge - your rights

Once you have been arrested, you may be held in custody. If you are kept in custody you:

- must be given certain information;
- can apply to be released;
- can ask for writing materials;
- can contact certain people; and
- can choose an assisting officer to help you.

Information that must be given to you

- You must be given a 'Custody information for a person held in custody without charge' form every time you are kept in custody. You should read this form carefully.
- You will be asked to sign for this form to confirm that you have received it.
- You will not have to say anything, but if you do say anything about your arrest or the alleged offence, or about being kept in custody, that will be recorded.
- You must be given the relevant Notice of Rights.

Applying to be released

- At any time you can ask to be released from custody. To do this you can ask or write to the person who arrested you or your Commanding Officer.
- Explain why you think you should be released.
- If you have an assisting officer or legal advisor, you can ask them to help you get released.

Asking for writing material

- You should be given writing materials (paper, pens and so on) if you ask for them.

Contacting certain people

- You can choose one person to be told about your arrest and where you are being held.
- You can make at least one phone call to a legal adviser. This call is free.
- You can phone relatives or friends to speak to them for a reasonable time. You can also receive phone calls at reasonable times. You will have to pay for any phone calls you make.
- You can send letters, but you will have to pay for posting them.

Some or all of these rights can be delayed or withheld. If this happens you will be told why.

Part 1 – Arrest and custody

Choosing an assisting officer to help you

- You can choose an officer, WO, senior rate or SNCO to help you as your assisting officer. If you have any difficulty finding a suitable person to be your assisting officer, your Commanding Officer will give you the names of at least two people who can help you. If you do not want an assisting officer you will be asked to sign a form to confirm this.

Attending for duty

- When you are in custody you will carry out work or training for between six and nine hours a day, except on Sundays and public holidays.

Commanding Officer's decision on custody

- When your Commanding Officer has been told about your arrest they must decide if you should stay in custody without being charged. They will only decide to keep you in custody if they have reasonable grounds for believing that this is necessary.
- Your Commanding Officer must also be sure that the offence you were arrested for is being investigated properly and as quickly as possible.
- If your Commanding Officer decides that you should stay in custody, this must only be for as long as is necessary.

Legal representation

If you are arrested, or interviewed by the Service Police, you have the right to be represented by a lawyer. A lawyer may be provided free of charge through the civilian duty solicitor scheme, or a service lawyer may be available, especially overseas. If you want to appoint your own lawyer, you may have to pay their costs if you do not have legal aid. See JSP 838 The Armed Forces Legal Aid Scheme, for more information.

Consular protection of foreign nationals

- If you are a foreign national who is serving in HM Forces, and you are arrested or detained by someone other than the Service Police, you have a legal right to contact your home nation High Commission, Embassy or Consulate. If you want to contact your home nation, tell your Commanding Officer as soon as possible

Time limits on custody

The maximum length of time that you can be held in custody without being charged is 48 hours from the time of your arrest. That time may be extended to 96 hours only if a judge advocate agrees. If you are not charged within 96 hours, you must be released.

- While you are in custody authorised by your Commanding Officer, at the end of every 12-hour period your Commanding Officer must consider whether you should stay in custody. At any time you can write to your Commanding Officer asking to be released.
- If your Commanding Officer orders that you should be kept in custody they must tell you why.
- Within 48 hours from the time of your arrest you will be:
 - released (with or without charge); or
 - taken before a judge advocate for him or her to decide whether you should be kept in custody (you may or may not have been charged).

Further custody without charge

- If your Commanding Officer wants to keep you in custody without charge for more than 48 hours, they must ask for a hearing before a judge advocate. The judge advocate will decide if you should stay in custody and, if so, for how long.
- In very exceptional circumstances your Commanding Officer may order you to stay in custody for longer than 48 hours, up to a maximum of 96 hours, if it is not practical to arrange a hearing with a judge advocate before then. If this happens, your Commanding Officer must consider your custody at least every six hours.

Further custody - your rights

If your Commanding Officer intends to ask a judge advocate for permission to keep you in custody without being charged, they must tell you this in writing, setting out the reasons for their decision. You have a right to:

- be at the hearing with the judge advocate, and to tell the judge advocate why you think you should be released;
- be represented by a lawyer at the hearing; and
- apply for legal aid or other similar arrangements in place in your area.

If you do not have a lawyer and want one, the judge advocate may adjourn (postpone) the hearing for you to contact one. This may mean that you stay in custody during the adjournment.

Part 1 – Arrest and custody

Judge Advocate’s powers (custody without charge)

The judge advocate can order that you stay in custody for up to 96 hours after your arrest before you are charged or released. At the end of the period the judge advocate sets, if your Commanding Officer still wants to keep you in custody he or she must apply to the judge advocate again.

- The judge advocate can either refuse your Commanding Officer’s application, or adjourn the hearing for up to 48 hours after your arrest, and order that you be kept in custody. If the judge advocate refuses the application to keep you in custody and it has been less than 48 hours since your arrest, he or she will order that you are charged or released immediately.

You can find out more about custody without charge in chapter 5 (Custody) of the Manual of Service Law.

Interviews or identification parades by Service Police

There are codes of practice which cover the way you should be treated by the Service Police. You can ask to read the codes of practice whenever you are questioned or put on an identification parade. The Service Police must give you a reasonable time to read the codes of practice. You may also want to get legal advice if you have not already done so.

Arrests by persons other than the Service Police, and Commanding Officers Investigations

Defence Council Instruction (2014 DIN01-115) titled ‘The statutory powers of arrest and investigations of Service Offences by persons other than the Service Police’ covers the way you should be treated whenever you are arrested by persons other than the Service Police, and during a COs Investigation. You can ask to read the DCI whenever you are so arrested or subject to a Commanding Officer’s Investigation. The Commanding Officer must give you a reasonable time to read the DCI.

Custody after charge - your rights

‘Charging’ is where you are formally accused of committing an offence. Your Commanding Officer will sign a charge sheet which states the offence or offences you have been accused of committing and will give you a copy of it.

Duties

- When you are in custody you will carry out work or training for between six and nine hours a day, except on Sundays and public holidays.

Action by your Commanding Officer

- After you have been charged, if your Commanding Officer thinks that you should stay in custody until your case has been dealt with, he or she must arrange a custody hearing before a judge advocate as soon as practicable.

Custody after charge - your rights

Your Commanding Officer must give you written notice to confirm that they intend to apply for you to be kept in custody. This notice will explain his or her reasons, and will set out your rights, including your right to:

- be brought before a judge advocate as soon as possible;
- be represented by a lawyer; and
- be told why your Commanding Officer thinks you should be kept in custody.

Judge Advocate’s powers (custody after charge)

- At your first hearing the judge advocate can order that you stay in custody for up to eight days.
- More information on why a judge advocate can make this decision, and the things he or she takes into account, is given in chapter 5 (Custody) of the Manual of Service Law.
- You or your lawyer can talk to the judge advocate about any points you think are important.
- If the judge advocate makes an order for you to stay in further custody, that order will automatically end once you have been dealt with for the offence.

Part 1 – Arrest and custody

Review of custody after charge

- If the judge advocate orders that you stay in custody, he or she will set a date for your case to be reviewed. The date must be before the period of further custody runs out, unless you have already been released.
- At the review, the judge advocate will decide if you should stay in custody and, if so, for how long. The maximum period he can order is a further eight days, unless you agree to a longer period of up to 28 days. You can only agree to this if you have a lawyer.
- If the judge advocate decides that you should be released, he may still set conditions for your release. This will mean that your freedom will be restricted in some way. For example, you may have to report to the guard room at certain times. If you do not keep to these conditions, your Commanding Officer may order that you are arrested.
- The judge advocate will hold a hearing for a review if:
 - your further custody has not been reviewed before;
 - your Commanding Officer has asked for one because the reasons for keeping you in custody may no longer exist; or
 - it is during your trial by the Court Martial.
- In other cases, the judge advocate may decide to deal with the review on paper rather than at a hearing, but only after you have had the chance to write to the judge advocate (a copy of your letter will be given to your Commanding Officer). It will help if you raise some new points that support your request to be released.
- Your Commanding Officer may also write to the judge advocate about your custody. You will receive a copy of that letter.
- The judge advocate's decision will be given to you in writing.

If your Commanding Officer ever feels that the reasons for your custody no longer apply, he or she can either release you or ask the judge advocate to review your case.

MCTC (Colchester)

- If you are held in MCTC, your Commanding Officer will be Commandant MCTC, who will make applications about your custody if necessary.

Custody at Court Martial

- If your Court Martial trial has started and you are in custody, similar rules apply. However, any decisions on whether you should stay in custody are made by the judge advocate of the Court Martial.

Part 2 – Summary hearing, activation hearing and appeal

Summary hearing

General

The most serious offences must be investigated by the Service Police and reported directly to the Director of Service Prosecutions for Court Martial trial. However, less serious offences may be investigated by your Commanding Officer. Most offences committed are less serious and your Commanding Officer can deal with them at a summary hearing if you wish.

Police National Computer

You should be aware that if a criminal charge at Summary Hearing is found proven, or the Court Martial finds you guilty of a criminal offence, in the majority of cases a record will be made on the Police National Computer (PNC). There are also a limited number of non-criminal conduct (Disciplinary) offences that are recorded on the PNC after conviction. A table listing all offences capable of being heard summarily and stating whether or not they are recordable on the PNC, has been added to the Manual of Service Law at Annex Q to Chapter 9 and you are advised to consult the table before your summary hearing. If you are unsure get your Assisting officer to help or ask the unit discipline staff. If you are accused of an offence that is not on the list at Annex Q and are due to be tried by Court Martial, you may wish to obtain independent legal advice to determine whether or not the offence is recordable.

You may have to declare convictions if asked by people like prospective employers or when making an application for citizenship or residency in the UK.

Collection of DNA samples and fingerprints

If you are convicted of a recordable service offence, the Service police may recover fingerprints and DNA samples. DNA samples will be processed to produce a DNA profile and this DNA profile will be recorded on the UK National DNA Database. Fingerprints will be recorded on the national fingerprint database. The police can use information stored on these databases for the provision of intelligence and evidence to support the investigation, detection, prosecution and reduction of crime. They may be the subject of a speculative search. This means they may be checked against other fingerprints and DNA records held by, or on behalf of, the Service Police or civil police, and other law enforcement authorities in or outside the UK or held in connection with, or as a result of, an investigation of an offence inside or outside the UK.

The following offences which are capable of being heard summarily are recordable service offences allowing the Service

police to recover fingerprints and DNA samples following conviction:

- Those offences which are recordable on the PNC after conviction as set out in Annex Q to Chapter 9 of the Manual of Service Law.
- An offence under section 24(1) of the Armed Forces Act 2006 of reckless or intentional damage to or loss of public or service property, or an attempt to commit that offence.
- An offence under section 27 of the Armed Forces Act 2006 of obstructing or failing to assist a service policeman, or an attempt to commit that offence.

You are advised to consult this list and the table at Annex Q to Chapter 9 of the Manual of Service Law before your summary hearing. If you are unsure get your Assisting officer to help or ask the unit discipline staff. If you are accused of an offence that is not on the above list or the table at Annex Q and are due to be tried by Court Martial, you may wish to obtain independent legal advice to determine whether or not the offence is a recordable service offence.

Informing you

At least 24 hours before your summary hearing, you must be given the following.

- A copy of the charge sheet, showing the charges you face
- A copy of the case summary
- A copy of the written evidence relevant to the charge against you
- Details of any exhibits and where you can inspect them
- A copy of your disciplinary record
- A copy of any material collected during the investigation which is not intended to be used (you may be able to use some of this in your defence.)
- A copy of any permission of higher authority for extended powers to award:
 - extended detention (29 to 90 days);
 - a reduction in rank or disrating (WOs and below only);
 - removal of seniority (officers only);
 - a fine of 15 to 28 days' pay (officers and WOs only); or
 - detention (leading hand and below in the Royal Navy, lance corporal and below in the Royal Marines and Army, corporal and below in the Royal Air Force).
- A copy of this guide
- A copy of any permission to let your Commanding Officer hear some more serious charges
- The time of the hearing

Part 2 – Summary hearing, activation hearing and appeal

You must also be told that you have the following rights.

- To choose to be tried in the Court Martial instead of having the charge dealt with by your Commanding Officer at a summary hearing
- To be helped by an assisting officer
- To question witnesses called by your Commanding Officer
- To give evidence yourself
- To call your own witnesses
- To appeal to the Summary Appeal Court, if the charge is proved.

Legal Advice

You can get legal advice from a civilian lawyer, but you may have to pay for this. If a service lawyer is available, you can get advice from him or her free of charge. See JSP 838 The Armed Forces Legal Aid Scheme, for more information.

You cannot be represented by a lawyer at a summary hearing, but you can get legal advice before the hearing. This could help you decide whether to admit the charge. In particular, you might want to get legal advice on whether you should ask for a trial at the Court Martial instead of having a summary hearing.

If you want to talk to a lawyer you must be given a reasonable chance to do so before the hearing. If you are not given enough time you may ask for more time.

Assisting officer

- When you appear at a summary hearing you may be helped by an assisting officer.
- You can choose your assisting officer. This will normally be someone you know who is an officer, WO, senior rate or SNCO. Some people (for example, people who have been involved in the case against you) cannot be your assisting officer.
- If the person you want is not available, or does not want to be your assisting officer, your Commanding Officer will give you at least two names of people who can be your assisting officer. You do not have to use the people suggested by your Commanding Officer.
- If you do not want an assisting officer, your Commanding Officer will go ahead with your hearing without one.

Your assisting officer is not a lawyer. They are there to give you advice before the hearing and at it, and to help with paperwork. He or she can help you decide if you should choose to have a Court Martial trial, but you may want to discuss this with a lawyer.

- If you prefer to have a summary hearing rather than a trial at the Court Martial, your assisting officer will help you decide whether to admit or deny the charge. However, he or she cannot make this decision for you. Your assisting officer can help you decide if you should give evidence or call witnesses, and can make a statement for you about your character or any special reasons why your punishment should be reduced.
- Your assisting officer will be with you during the hearing and you can talk to him or her at any time during the hearing. Your assisting officer can also help you to prepare questions for witnesses and ask those questions for you.
- You can get some helpful ideas about what to discuss with your assisting officer or lawyer from chapter 9 (Summary hearing and activation of suspended sentences of Service detention) of the Manual of Service Law. Annex F of the manual contains instructions for your assisting officer.

Before the summary hearing

- Before starting the hearing, your Commanding Officer will ask you if you have been given all of the information listed on page 9 of this guide.
- Your Commanding Officer will ask you if you understand the charge or charges and if you have had enough time to prepare for the hearing.

Choosing a Court Martial trial

Before starting a summary hearing, your Commanding Officer will ask if you understand that you have the right to elect (choose) to have a Court Martial trial rather than a summary hearing.

Your Commanding Officer will then ask you whether or not you want to be tried by the Court Martial.

If you choose to have a Court Martial trial and are found guilty, the court will not be able to give you a punishment that is more severe than the punishment your Commanding Officer could give to you if you had a summary hearing.

At the start of a summary hearing

- If you have chosen a summary hearing, your Commanding Officer will read out the charge and ask you whether you admit to or deny the charge.

Admitting the charge

- If you admit the charge or charges, your Commanding Officer will read out a case summary and ask you if you agree with it.

Part 2 – Summary hearing, activation hearing and appeal

If you do not agree with all of the facts, your Commanding Officer may call witnesses to find out what the facts are. You will have the opportunity to tell the Commanding Officer which witnesses you think should be called. The final decision on which witnesses to call will be made by the Commanding Officer. Once the witnesses have been heard, the Commanding Officer will decide on the facts of your case.

- If you agree with the case summary, your Commanding Officer will accept it as the facts of the case and keep it in the Record of Summary Hearing. He or she will then sentence you.

Denying the charge

- If you do deny the charge, or you admit some charges but not others, your Commanding Officer will hear the evidence given by witnesses. Evidence from these witnesses will be read from written statements. If you or your Commanding Officer want to question a witness, they must come to the hearing. The witness statement will then be read out by your Commanding Officer, and you or your assisting officer can ask the witness questions.

You can also give evidence yourself, but you do not have to and cannot be forced to do so. If you do give evidence, it must be 'on oath' or after making a 'solemn affirmation' (that is, you must swear to tell the truth). You may also give your evidence in the form of a written statement, and your Commanding Officer will be able to question you.

- You can call witnesses yourself. If you want to call a witness, you should tell your Commanding Officer this at least 24 hours before the hearing. Their evidence can be read from written statements or given in person.
- If your Commanding Officer wants to question your witnesses, the witness must appear in person at the hearing.
- If your Commanding Officer finds that the charge against you is not proved, he or she will dismiss it and end the summary hearing.
- If you are charged with several offences, he or she may find all the charges proved, dismiss some of the charges and find some proved or dismiss all the charges.

Sentencing

- If your Commanding Officer finds the charge proved, or if you have admitted the charge, he or she will then hear any evidence you have provided about your character and performance and look at any other factors that may be useful in deciding on the right sentence.

- You have the right to have witnesses to comment on your character and professional performance. You (or your assisting officer) and your Commanding Officer can ask these witnesses questions.
- You or your assisting officer can then make a plea in mitigation of punishment (that is, tell the Commanding Officer about the offence, your personal circumstances or anything else that could help to reduce the punishment).
- The Commanding Officer will look at your disciplinary record. If you admitted the charge or charges, your Commanding Officer will give you credit for this when deciding on a punishment.
- Your Commanding Officer will tell you what the punishment is and will explain the reasons for that decision.
- If you are sentenced to detention, you can choose to start your sentence immediately. If you do not choose to start your sentence immediately, it will be delayed for 14 days to give you time to appeal to the Summary Appeal Court.
- If you have spent time in custody after being charged with the offence, this time will be taken off the detention you must serve.
- You will be given a copy of the Record of Summary Hearing when it is over.
- You will be told about your right to appeal against the finding or punishment and your right to ask for legal advice about appealing.
- If you appeal to the Summary Appeal Court you can have a lawyer represent you in the court. You can apply for legal aid.
- If you do want to appeal, you should do so within 14 days of the date your Commanding Officer sentenced you. If you need more time to decide, you must ask the Summary Appeal Court for more time.
- You can find out more about summary hearings, and punishments your Commanding Officer can decide in chapter 13 (Summary hearing - sentencing and punishments) of the Manual of Service Law.
- You can find out more about the Summary Appeal Court in chapter 27 (Summary Appeal Court) of the Manual of Service Law.

Activation hearing

- If you are charged with an offence during the period of a suspended sentence of detention, and your Commanding Officer finds the charge proved at a summary hearing, at that hearing your Commanding Officer will decide whether or not you should serve the sentence of detention that had been suspended.
- If a civilian court convicts you of an offence committed during the period of a suspended sentence of detention, a special hearing will be arranged as soon as possible. This is called an

Part 2 – Summary hearing, activation hearing and appeal

activation hearing and it will be held before your Commanding Officer.

- In this case you will be given the following information.
 - A copy of your disciplinary record
 - A copy of the Record of Summary Hearing, or a copy of any record of the proceedings before the Summary Appeal Court that suspended the sentence of detention
 - Copies of the records of all summary hearings, the written records of any activation hearings, and any records of proceedings where reasons were given for any decision not to activate your suspended sentence of detention
 - Any details your Commanding Officer has about any proved offences you have committed during the time the sentence of detention was suspended
 - A copy of any notice a higher authority has given your Commanding Officer to give him or her extended powers.

Your Commanding Officer must tell you, in writing, about:

- his power to activate a suspended sentence of detention;
- your right to appeal;
- your right to give your Commanding Officer your opinion on whether your sentence should be activated or the terms of any activation order; and
- your right to have an assisting officer.

Assisting officer

- An assisting officer can help you at an activation hearing.
- You can choose an assisting officer. This will normally be someone you know who is an officer, WO, senior rate or SNCO. Some people (for example, people who have been involved in the case against you) cannot be your assisting officer.
- If the person you want to be your assisting officer cannot be, or does not want to be, your assisting officer, your Commanding Officer will give you at least two names of people who are available to you. You do not have to use the people suggested by your Commanding Officer.
- If you choose not to have an assisting officer, your Commanding Officer may go ahead with your hearing without one.
- Your assisting officer is not a lawyer. His or her job is to give you advice. They can help you to decide if you should call character witnesses. Your assisting officer can help you give your Commanding Officer your opinion on whether all or part of your suspended sentence of detention should be activated.
- Your assisting officer will be with you throughout the hearing and you can talk to him or her at any time. Your assisting officer

may help you to prepare questions for character witnesses before and during the hearing.

- Annex O of chapter 9 (Summary hearing and activation of suspended sentences of Service detention) of The Manual of Service Law has more information about activation hearings and instructions for your assisting officer.

Appeals from summary hearing to the Summary Appeal Court

Appeal

If your Commanding Officer finds the charge proved, you can appeal against that finding or the punishment. You should normally appeal within 14 days of being sentenced, but you can ask for permission to appeal later than this. Your appeal will be heard by the Summary Appeal Court.

The Summary Appeal Court may change your sentence but it cannot make it more severe than your Commanding Officer's punishment.

You can find out more about the Summary Appeal Court and making appeals in the Manual of Service Law (Chapter 15, Summary hearing review and appeal).

If you are thinking about appealing to the Summary Appeal Court you should get legal advice. See JSP 838 Armed Forces Legal Aid Scheme for more information.

Please check for the latest version of this document online, either through the intranet or the internet.