OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)



Appendix 2 to ANNEX C TO VOL1 CH 9

JSP 830 MSL

revised 01/17

**PROCEDURE WHERE CHARGE IS ADMITTED**

T-SL-SH01B

## Case summary

1. The officer hearing the charge, or a person authorised by him, is to read out the case summary to the accused. Question to the accused:

# “You have heard the case summary, do you agree with all the facts it contains or do you dispute any facts?”

Agrees Disputes If the accused **agrees** all of the facts contained within the case summary go to serial 17.

## Disputed facts

1. If the accused **disputes** any of the facts contained within the case summary, the CO is to assume that the undisputed facts are true. If the CO considers that any of the disputed facts are relevant to sentencing he is to take evidence from such witnesses who he considers can give relevant evidence and from the accused if he chooses to give evidence.

The accused may now make a submission on which witnesses may be able to give relevant evidence on the disputed facts.

# “Do you wish to address me on which witnesses may be able to give evidence

**on the disputed facts?”**

Yes No

If Yes allow the accused to make a submission.

If No, and after the accused submission (if applicable), continue to call the first witness who the CO believes can give evidence on the disputed facts and whose evidence is to be given orally and on oath. The witness may produce any exhibit (e.g. a document or an item)

1. Call the witness and ask:

**"Are you………………………….?"** (Service Number, Rank/Rate & Name of Witness)

Statement to witness:

# "Your evidence is to be given on Oath, under Solemn Affirmation or promise. What method do you choose?"

***2010-04-09 10:03:27***

--------------------------------------------

distributed

Method

(Under 18 year olds may either make a promise or affirm)

Administer oath, affirmation or promise to accused.

1-9-C-2-1

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

1. On completion state to the accused:

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

# “You or your Assisting Officer may now ask questions of the witness. This may include questions about any exhibits that may have been produced”

1. Once the accused has finished questioning the witness the CO may question the witness.
2. When the CO has finished questioning the witness, before releasing him to wait outside, the witness shall be warned as follows:

# “You are not to discuss your evidence with anyone until the hearing has finished.”

Each witness is then to be dealt with in the same manner as above.

1. The CO will now make a determination on the disputed facts which will inform his decision as to the correct sentence.

## Evidence as to character, plea in mitigation and discipline record

1. If the accused is already subject to a suspended sentence of detention the CO must consider both the offence that has just been heard and whether activation is appropriate.
2. **Mandatory question** - Statement and question to the accused:

# “Before I consider any sentence that I may award, or any activation of a suspended sentence of detention (if applicable), you or your assisting officer may offer evidence as to your character, make a plea in mitigation and (if applicable) make a submission on activation; you may call witnesses for these purposes. Do you wish me to consider evidence as to your character?”

Yes

No (If no character evidence go to paragraph 22)

## Evidence of the accused’s character

1. If the character evidence is given in writing it is to be read to the CO by the accused or by the AAO; a copy of any written statement should be given to the CO.

The accused may call the witness who has provided a written statement or any other witness to give evidence orally or in writing.

Question to the accused:

# “Do you wish to call any witnesses to give evidence as to your character?”

Yes

No (If NO go to serial 22)

1-9-C-2-2

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

Once any written statement from that witness has been read the accused may question the witness. Statement to the accused: **“Do you wish to ask questions of this witness?”**

Yes No If YES the witness is to be called by the CO:

**"Are you………………………….?"** (Service Number, Rank/Rate, Full Name)

Statement to witness:

# “Your evidence is to be given on oath, under solemn affirmation or promise. What method do you choose?”

Method

(Under 18 year olds may either make a promise or affirm)

Administer oath, affirmation or promise to accused. The accused may now question the witness.

1. Once the accused has been given the opportunity to question the witness, the CO may then question the witness.

When the CO has finished questioning the witness, before releasing him to wait outside, the witness shall be warned as follows:

# “You are not to discuss your evidence with anyone until the hearing has finished.”

1. Each witness is then to be dealt with in the same manner as above.

## Plea in mitigation

1. Statement to the accused:

# “Do you, or your AAO on your behalf, wish to make a plea in mitigation?”

No If No go to serial 24 (if subject to suspended sentence) or serial 25 (if not subject to suspended sentence)

Yes

If YES the plea in mitigation may be made orally or in writing. The accused may submit documents to support his plea in mitigation which may include his Service appraisal reports or a performance assessment.

On completion the CO may ask questions of the accused if he is considering a punishment with financial consequences. The CO MUST take this opportunity (if the information is not already provided within the mitigation) to enquire into the accused’s financial circumstances.

1. If the CO considers that a defence has been raised to the charge during the plea in mitigation he is advised to adjourn to take legal advice.

In these circumstances state to the accused:

# “This case is adjourned.”

1-9-C-2-3

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

## Submission on activation of suspended sentence of detention

1. (ONLY IF APPLICABLE) Where the accused is subject to a suspended sentence of detention he is to be given the opportunity to make a submission in relation to activating that sentence which may be made orally or in writing:

# “Do you, or your AAO on your behalf, wish to make a submission in relation to my decision as to whether I should activate the suspended sentence of detention you are currently subject to?”

Yes No If Yes continue to hear the submission.

## Decision

1. Once the CO has heard the evidence of the accused and has determined that there is no defence to the charge he is to decide whether he is satisfied so that he is sure that each individual charge is found proved (ie the charge has been found proved beyond reasonable doubt).

## CASE NOT PROVED

In relation to each individual charge, if the CO is not satisfied so that he is **sure** that the elements / ingredients of the charge(s) have been found proved, then he must dismiss the charge:

Statement to accused:

# “I find the charge not proved and therfore dismiss it.”

The hearing is then concluded.

## CASE PROVED

In relation to each individual charge, if the CO is satisfied so that he is **sure** that the elements / ingredients of the charge(s) have been found proved, he will say:

Statement to Accused:

# “I find the charge proved”

## Sentencing

1. Now that the charge has been found proved the CO is to sentence the offender and, if applicable, consider activating a suspended sentence of detention.

Part 8 [Chapter 9](http://www.afimplementation.co.uk/chapter9.pdf) (Summary hearing and activation of suspended sentence of Service detention) and [Chapter 13](http://www.afimplementation.co.uk/chapter13.pdf) (Summary hearing sentencing and punishment) should be consulted before the sentence is announced and the accused’s disciplinary record is to be read.

The CO may wish to adjourn to consider the sentence he is to award and (if applicable) whether he should activate the suspended sentence of detention and to complete Page 1 of this Record.

## Mandatory statement

**“Having found the charge against you proved, I award you...................................... (State sentence) for the following reasons”**

Go to page 4 of this record and read out the reasons for sentence before returning to this paragraph.

# “If you fail to comply with any part of this sentence further disciplinary or administrative action may be taken against you”

1-9-C-2-4

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

If activation of a sentence of detention has been considered the CO should then announce:

# “Furthermore, I have considered whether to activate your suspended sentence of detention and have decided that it will:

Not be activated Be activated in full

Be activated in part by the substitution of a term of......................days detention

Where two periods of detention have been awarded the CO is to announce whether they are to run concurrently (at the same time) or consecutively (one following the other). In these circumstances he is to state:

# “The activated sentence of detention will run consecutively/concurrently to the sentence of detention imposed for the offence I have just heard”

In all cases the CO is to state:

activation

non activation

# “The reasons for my decision regarding the activation/non activation\* of the suspended sentence are as follows...........................................(insert date)"

If you go to page 2 of 'Record of Summary Hearing' (Annex C) note the reasons already stated.

## Notification of rights

1. Where any punishment is awarded state to the accused:

# “You have the right to appeal to the summary appeal court against my finding or sentence within 14 days (including today). You have the right to seek independent legal advice on whether you should appeal and have the right to be legally represented at the summary appeal court. You may apply for legal aid.”

If detention is not awarded go to serial 32.

1-9-C-2-5

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

1. Where detention is awarded go on to state to the accused:

# “Having awarded you a sentence of detention as (part of\*) your punishment, I must now inform you that the sentence will not commence before the end of 14 days, beginning today, during which time you may appeal to the summary appeal court against my finding or sentence. However you may choose to start your sentence of detention immediately. If you do choose to start your detention immediately, you have an absolute right to change your mind within the 14 day period.

**Should for any reason you decide that the 14 day period will be inadequate for you to make your decision you may apply for an extension of time.**

**If that is the case your AAO / I\*\* will let you know how to make such an application. You may now have a brief break to consult with your AAO if you requre it.**

\*\* If the accused is unrepresented

# Would you like to consult with your AAO before I ask you whether you choose to commence your sentence of detention immediately?”

Yes No

If Yes then adjourn for a brief period to allow the accused to consult with his AAO.

# “Do you choose to commence your sentence of detention immediately?”

Yes No

If ‘Yes’ go to serial 32.

If ‘No’ state to the accused:

# “If you do not submit an appeal during the next 14 days, you are to report to

**……………….. on (insert date) …….…………to start your sentence of detention.”**

A sentence of detention will normally start on the 15th day after the punishment is awarded unless the accused has elected to commence his sentence immediately.

1. Statement to the Accused:

# “The hearing is now concluded.”

Effect the exit of the AAO and the accused in accordance with single-Service protocols

1-9-C-2-6

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)