OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)



**PROCEDURE WHERE CHARGE IS DENIED**

T-SL-SH01A

Evidence in support of the charge

Appendix 1 to ANNEX C TO VOL1 CH 9

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Where CO's witness provides evidence in person

10. Question to witness: **"Are you......................................?"** (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?"

Method

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

1. Oath, affirmation or promise to be administered.
2. The written evidence of the witness is to be read out by the CO or a person authorised by him (which can be the witness himself). The witness may produce any exhibit (e.g. a document or an item).
3. Once the witness evidence has been read the witness may be questioned by the CO. On completion state to the accused:

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

**"Further, you should be aware that if I consider it is in the interests of fairness to you, I will give you the opportunity to recall any witness whose evidence has been given in this hearing for you to ask any additional questions"**

1. When the accused has finished questioning the witness further questions of the witness may be asked by the CO.
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."**
3. Each of the CO’s witnesses is then to be dealt with in the same manner as above.

1-9-C-1-1

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1. Is there documentary evidence from CO’s witnesses?

Yes If YES go to serial 19.

No If NO go to serial 20 after stating:

# “There is no documentary evidence in this case to be read out.”

## Where no requirement for a witness to attend

1. **"There is documentary evidence in this case to be read out."**

The written evidence is to be read out by the CO or a person authorised by him.

## Decision

1. All the evidence from the CO’s witnesses and any further information from additional questions have now been brought out.

If the accused does not wish to provide any evidence the CO must now decide whether or not there is sufficient evidence to continue with the charge i.e. he must decide whether he is sure that he has heard sufficient evidence to prove each element of the charge.

Each charge is to be considered separately.

If there is sufficient evidence to prove the charge go to serial 22.

1. If the CO is not sure that the charge has been proved or he determines that there is insufficient evidence (as above) to prove the charge it must be dismissed and the following should be stated:

# "Charge dismissed"

The hearing is then concluded.

1. If the CO is of the opinion that there is sufficient evidence (as above) upon which to find the charge proved he is to continue by hearing evidence for the accused.

## Evidence for the accused

1. Statement to the accused:

# "You may now give your evidence. You have 3 options available to you. You may give evidence orally; you may submit evidence ; or you may say nothing. If you decide not to give evidence on your own behalf this will not count against you. Whether or not you decide to give evidence yourself you may call witnesses on your behalf.

**Do you wish to give evidence?"**

If the accused decides not to give evidence himself go to serial 27. If the accused wishes to give evidence:

# "How do you wish to give your evidence?"

If the accused decides to give evidence orally go to serial 25.

If the accused wishes to submit a written statement, allow him or his AAO to read the statement.

1-9-C-1-2

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

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## Where the accused decides to give his own evidence in writing

1. Before the statement is read state to the accused or his AAO:

# "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, or the AAO on his behalf, is to read the written evidence If the CO wishes to question the accused go to serial 26

If the CO does not wish to ask questions of the accused go to serial 27.

## Where the accused decides to give his own evidence orally

1. Statement to accused:

# "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.

# "You may now give me your evidence."

The accused is to give his evidence orally.

1. The CO may now question the accused regarding the evidence he has given either in writing or orally. When the CO has finished questioning the accused he is to be warned as follows:

# "You are not to discuss your evidence with anyone until the hearing has finished"

## Where the accused wishes to adduce evidence from witnesses

1. Question to accused:

# "Do you wish to call any witnesses on your behalf?"

Yes If YES go to serial 28

No If NO go to serial 31

1-9-C-1-3

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

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## Where witnesses for the Accused are called to give evidence

1. Call first witness and ask:

**"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.

1. Statement to witness:

# "You have 2 options available to you. You may give evidence orally or you may submit written evidence; How do you wish to give your evidence, orally or in writing?"

If the witness wishes to give evidence by written statement it is to be read out by the accused or the accused's assisting officer.

1. If the witness wishes to give evidence orally state to the accused:

# "You may now give your evidence"

The witness is to give his evidence.

The accused is then to be asked:

# "You, or your Assisting Officer, may now ask questions of this witness should you wish to do so."

Once the accused has asked questions of the witness the CO may ask questions of the accused’s witness. At the end of the evidence of each witness, before releasing him to wait outside, warn the witness:

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

Repeat the above for each witness.

## Documentary evidence

1. The accused may present written statements from witnesses and should be asked:

# "Do you wish to provide written witness statements?"

Yes No

The accused, or his AAO on his behalf, may read statements of his witnesses.

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1-9-C-1-4

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

## Issues of fact, arising out of evidence, that could not have been foreseen by the CO

1. In the event that evidence given by the accused or by an accused’s witness gives rise to an issue of fact which could not have been foreseen in advance of the summary hearing and about which none of the CO’s witnesses can give evidence, the CO may call a witness who can give evidence in relation to the issue. It may be necessary to adjourn in order to arrange for the witness to attend. See paragraph 72 of this Chapter for the methods of introducing such evidence to the hearing.

If no such issues of fact arise go to serial 33.

To deal with issues of fact the CO may provide evidence to address the new issue by calling a witness to give evidence orally or by producing a signed, written statement by such a witness.

All evidence must be given on oath (etc) where appropriate.

Where the witness gives evidence the CO may take the opportunity of questioning the witness. On completion he may allow the accused to question the witness by asking him:

Either:

Or:

# “That concludes my questioning of the witness. Do you or your Assisting Officer wish to question the witness?”

**"I have no questions for this witness. Do you or your Assisting Officer wish to question the witness?"**

## Final questions for the accused

1. If the CO considers that it would be in the interests of fairness to the accused to do so he may, at any time before determining that the charge is proved, allow the accused a further opportunity to question any witness whose evidence has been adduced.

Question to accused:

# "Do you require a further opportunity to question any of the witnesses who have given evidence?"

Recall witnesses and question as required

When the accused has questioned any witness the CO may also question the witness.

1. Question to accused:

# "Do you or your Assisting Officer wish to address me on any matter relevent to this case?"

No

Yes

If Yes state to the accused:

# "You may do so now"

The CO may now wish to adjourn the hearing to consider all the evidence.

1-9-C-1-5

OFFICIAL - SENSITIVE PERSONAL (WHEN COMPLETED)

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## Decision

1. The CO must now 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).

If the charge is not proved go to serial 36. If the charge is proved go to serial 37.

## 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 therefore 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 charge(s) have been proved, he will say.

Statement to Accused:

# "I find the charge proved"

Before sentencing the charge the CO is to hear evidence of the accused’s character, any plea in mitigation, any submission as to activation (if applicable) and he is to look at the accused’s discipline record.

## 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 42.

1-9-C-1-6

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

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## 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 42

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 If YES the witness is to be called by the CO:

No

**"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.

1-9-C-1-7

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

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## Plea in mitigation

1. Statement to the accused:

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

If NO go to serial 43 (if subject to suspended sentence) or serial 44 (if not subject to suspended sentence)

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.

## 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 to which you are currently subject?"

Yes

If Yes continue to hear the submission

No

## Sentencing

1. The summary hearing procedure is now complete apart from sentencing the offender and, if applicable, activating a suspended sentence of detention.

Paragraph 77 (sentencing) of this Chapter and [Chapter 14](http://www.afimplementation.dii.r.mil.uk/chapter14.pdf) (The summary hearing sentencing guide) 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 2 of this Record.

## Mandatory statement:

**"Having found the charge(s) against you proved, I award you………………………… (State Sentence) for the following reasons"**

Go to page 4 of 'Record of Summary Hearing' (annex C) and read out the reasons for the 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-1-8

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

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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 to 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:

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

Read reasons from page 2 of 'Record of Summary Hearing' Annex C'

## 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 paragraph 47.

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 you for any reason be unable to make a decision as to whether to appeal during that initial period you may apply for extra 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

1-9-C-1-9

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)

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Should the offender consider that he is unable to make a decision whether to appeal within that period he may apply for extra time. If the offender gives no indication of his decision or it becomes apparent that a longer adjournment would be necessary for the offender to make his decision it should be assumed that he does not wish to elect to start the sentence immediately. Full guidance can be found in [Chapter 15](http://www.afimplementation.dii.r.mil.uk/chapter15.pdf) (Summary hearing review and appeal).

# “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 47

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-1-10

OFFICIAL – SENSITIVE PERSONAL (WHEN COMPLETED)