



ARMY

Commanding Officers' Designate Discipline Training

**Supporting Values and Standards and Threats to the
Service Justice System**

)



Introduction

- Remind you of your legal and disciplinary roles and responsibilities
- Refresh your knowledge and explain recent changes to the law and our processes
- Introduce you to the relationship between Values and Standards and disciplinary and administrative action
- Update you on other PS2 responsibilities that will affect you
- Outline some of the risks to you and Defence
- Show you how and where to get help



Investigation and Referral

- RMP
- Service Prosecuting Authority



Discipline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- Custody
- Summary Hearing
- Appeals



AGAI 67

- Minor Admin Action
- Major Admin Action
- Formal Warnings
- Removal from Appointment



Role of PS2(A)

- Staff SL&WS, Ceremonial and SI Cases
- Provide advice to the CoC
- Deliver the CDT Programme
- Develop Discipline, Complaints and Inquiry Policy for the Army
- Act as the Army's proponent for Values and Standards
- Deliver 1st Party Assurance



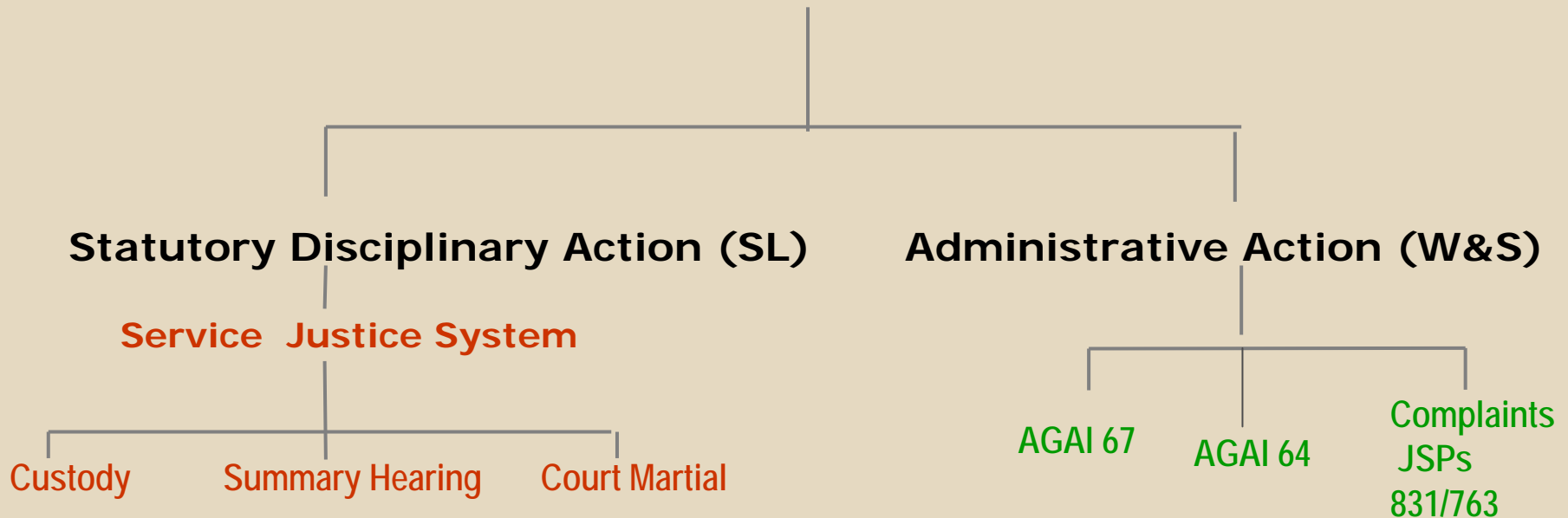
Command and Discipline

- To be effective in battle, the Army must act as a disciplined force
- Self-discipline must be underwritten by enforcement
- Military discipline must be in place in peace and on operations
- Discipline is inseparable from leadership
- Military discipline must be fair, appropriate, timely and proportionate



Service Justice System

- Minor Admin Action
- Major Admin Action
- Formal Warnings
- Removal from Appointment





Discipline

- There are **only** two ways a soldier may be punished or sanctioned
 - Following Summary Hearing, or Court Martial.
 - Following administrative action in accordance with the procedures contained in AGAI 67 or 64

These do not preclude appropriate verbal correction
But not informal systems ie Mess Fines



Threats To The Service Justice System

- Challenges to ECHR for greater public oversight, “professional” jurisdiction and to remove self-regulation
 - Lack of independence of Service Prosecuting Authority (SPA) from the CofC and political interference
 - Scrutiny of the RMP and their investigations of serious criminal allegations
- “Penny Dreadful” journalism
- Delay
- Failure of CoC to follow regulations + own policies



Military Ethos

Military Ethos is the spirit which inspires soldiers to fight. It derives from, and depends upon, the high degrees of commitment, self-sacrifice and mutual trust which together are so essential to the maintenance of morale.

V&S of the British Army



Ethos

- What is acceptable?
- How do you get your message across?
- How do you measure whether it is understood?



Values and Standards

The Values

Courage

Discipline

Respect For Others

Integrity

Loyalty

Selfless Commitment

Values and Standards of the British Army



The Standards

Lawful

Appropriate

Professionalism



Social Trends – The Need for Values and Standards

- Quickness to claim rights and slowness to accept responsibility
- Respect for and obedience to elders and betters much weakened
- Resentment of any restriction on liberties and a demand to know why
- Conformity and obedience unfashionable
- Dress is generally more individual and gaudy
- Long hair is fashionable
- The Welfare State makes people expect to be looked after
- Lack of loyalty to Queen and Country
- Drug misuse and sexual promiscuity accepted by many

'Military Discipline in a Permissive Age'
Presentation to AG's Annual Conference May 1968



V&S - Application

- Requirement for self-discipline
- Commanders' challenge: to provide leadership and example
- Explaining, instilling and ensuring V&S understood by subordinates
- Effective and timely communication essential
- Not just an annual mandatory test – spirit and language should pervade all actions and behaviour

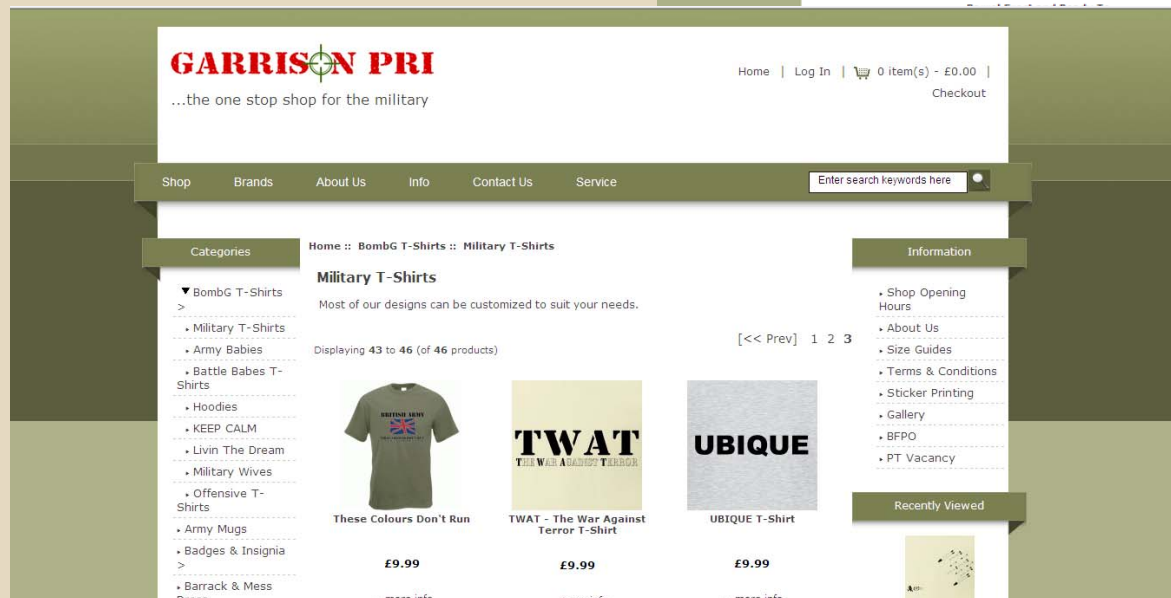
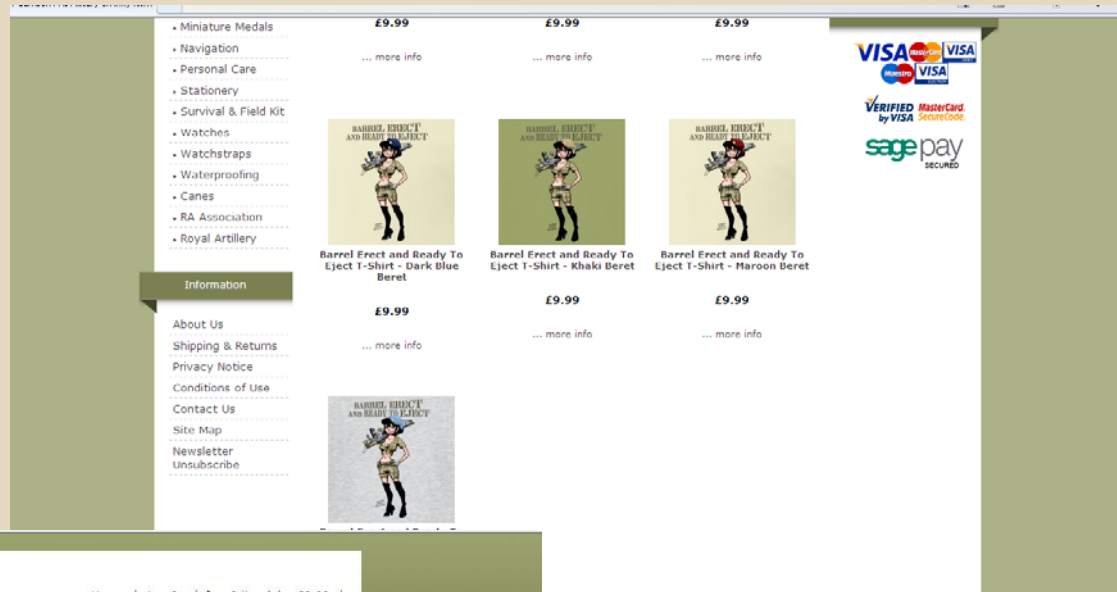


Values and Standards

- “The recruits coming through now are getting told this [V&S] in training and ...but what I’m saying is, all the seniors haven’t looked at that. They never attend the MATT.”
- “... we only get MATT6 given to us once a year, you know, and I bet you 9 times out of 10 - everyone can vouch for me here - none of your seniors are on that MATT. And the only person giving it is an officer and that’s because they have to and it’s read straight from the script, you know, so it’s pretty dull and boring.”
- “And he stands up there and goes ‘right this is what you need to know. Here are the questions and I’ll give you the answers. There you go’.”
- “To me values and standards is absolutely a good thing and I think it [MATT6 (V&S)] should carry on. I just think it could be delivered better, personally. It’s very lax at the moment.”



What is appropriate?





Who do you believe?

Edwin Mee: Serving British soldier 'raped and molested young female recruits' on three military bases

17:13, 27 February 2015 | By Kit Sproson

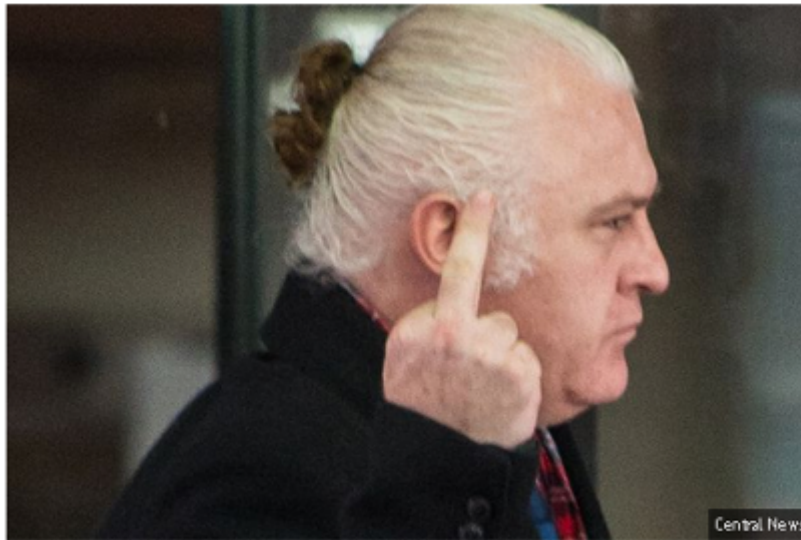
Edwin Mee, 45, is accused of targeting 11 victims, aged between 15 and 25, on bases in Cheam, Surrey and Croydon, south London

Share



Enter your e-mail for our daily newsletter

Subscribe



Central News

Accused: Edwin Mee gestures at photographers at Southwark Crown Court

★ Recommended In News



PRINCESS CHARLOTTE
Princess Charlotte: Can you spot why people are laughing at the royal birth certificate?



JAIL BREAKS
Killer and 'Shawshank Redemption' prisoner who went on the run in 1959 is finally caught by police



RIO FERDINAND
Rio Ferdinand trolled over death of his wife Rebecca by supporters of John Terry on Twitter



NAUGHTY BOY
Louis Tomlinson and Zayn Malik fight on Twitter over 'swipe at Naughty Boy over studio photo'



DISABILITY
Horrified mum who parked in Tesco disabled bay found this



Soldiers pose with anti-Muslim flag

A picture showing a British soldier posing in front of an EDL flag in Helmand province is among those being investigated. EDL supporters, inset, campaign against Islam



High Profile Cases

Coroner criticises Army chiefs' for their 'unforgivable failings' over the rape case corporal who killed herself

- Corporal Anne-Marie Ellement, 30, was found hanged in October 2011
- Coroner ruled that bullying, break-up and work related despair played part
- He has now called on MOD to review its care for vulnerable soldiers
- Family welcomed the ruling, adding that they are delighted with verdict
- Inquest also heard that she had been raped before, at age of 18

By IAN DRURY FOR THE DAILY MAIL

PUBLISHED: 12:31, 3 March 2014 | UPDATED: 00:30, 4 March 2014



62 View comments

A coroner criticised the Army yesterday after ruling that a vulnerable soldier had been driven to kill herself by bullying colleagues and the 'lingering effects' of an alleged rape.

Corporal Anne-Marie Ellement hanged herself two years after telling her superiors that she had been raped by two fellow soldiers during a drunken night out in Germany.

But she felt 'betrayed' when the Army dropped its investigation into the incident, the three-week inquest in Salisbury heard. She was subsequently ruthlessly tormented over the incident by Royal Military Police colleagues.

Coroner Nicholas Rheinberg ruled yesterday in a narrative verdict that the bullying had contributed to her death. A previous hearing that was not told of the rape allegation had recorded



Site Web Enter your search Search

Like Daily Mail Follow @dailymailuk

Follow Daily Mail +1 Daily Mail

DON'T MISS

► 'We miss her already, so much': Tears of actress Lynda Bellingham's Loose Women colleagues as they remember her brave final battle



► Tributes for 'gorgeous' Lynda Bellingham as stars remember 'courageous person who always left you feeling better about life' after she dies aged 66



► Cheryl leaves X Factor studios with husband JB... as her two acts Chloe Jasmine and Stephanie put on a brave face following elimination



► So much for taking a break! TOWIE's Chloe Sims and Elliott Wright head to dinner in Essex... following recent split Closure... or a reunion?





Command Culture

“It is bedrock to the British Army’s philosophy that a commanding officer is responsible for what goes on within his command”

Gen Sir Mike Jackson 7 Jun 10 Baha Mousa PI

Sir William accepted the officer’s evidence that he did not know prisoners were being beaten up by men under his command but said he ought to have known. He said Col Mendonça bore a heavy responsibility for the violence meted out to Mr Mousa and stated that his failure to prevent his soldiers using interrogation methods such as sleep deprivation, hooding and putting detainees in stress positions was “very significant”.

Baha Mousa Public Inquiry – Chairman’s Report



Attitudes

- Discipline is core business. It underpins Operational Effectiveness and you are personally accountable.
- You must be actively involved - disciplinary decisions and judgements are taken by you. Allow private challenge
- Discipline must be treated as a priority- do as you would be done by
- Maintain your independence
- Team game- SSA/Adjt/RSM



Delay

- Delay is unfair and unjust – it threatens the Army's right to own it's own justice system
- It is the personal duty and responsibility of the CO to minimise delay
- Always a CO in country 2ic to carry on
- Can be done on exercise.



Police Cautions – CoC awareness

- Personnel awarded a Formal Police Caution between Dec 08 and Sep 11 may have been wronged if they received an administrative sanction in relation to that offence
- Ministerial announcement made 2 Feb 15
- 1000 personnel written to. ABN published
- Serving personnel complain via their RCMO
- Non serving personnel complain via SCW helpline PersSvcs-PS2-SC-Helpline@mod.uk
- APC conduct career reviews



RCMO action – serving personnel

- Speak to individual
- Obtain copies of Police caution and what sanction took place
- Contact the SCW helpline PersSvcs-PS2-SC-Helpline@mod.uk to request career review. Attach copy of documents
- Helpline instruct career review from APC
- APC write to soldier after career review; info unit and helpline
- RCMO to confirm whether soldier is content and lets APC know outcome. APC inform SCW outcome
- If not content then soldier to submit Annex F to helpline
- If former soldier contacts unit – direct them to helpline



PS2 Top Tips for Commanding Officers

- Follow the process / ask for advice (& use PS2 web page)
- Train your staff – particularly Adjt, SSA, RSM & OCs – It is a team game – Use JPA
- Allow private challenge – take an interest.
- Establish relationships early with RMP, Legal, Bde DCOS/G1 Disc, PS2
- Understand your powers (and their limits)



PS2 Top Tips for Commanding Officers

- Check sub units, and your unit G1 Disc chain are doing as they should/directed.
 - Turn stones occasionally
- Your concerns
 - CDT – Steroids understand the rules, education
 - Alcohol - Barrack Discipline and initiation ceremonies.
 - Sexual assault
 - Victim support
- Timeliness - delay is the biggest threat



Service Custody & Detention

Commanding Officer Military Provost Staff Regiment

&

Commandant Military Corrective Training Centre



OFFICIAL

Tier 1 Service Custody Facilities (SCFs)



- SCF Scotland (Edinburgh) FOC
- SCF North (Catterick) FOC
- SCF NI (Aldergrove)
- SCF Midlands & Wales (Bramcote)
- SCF East (Colchester) FOC
- SCF London (Woolwich) IOC
- SCF South (Bulford) FOC





OFFICIAL

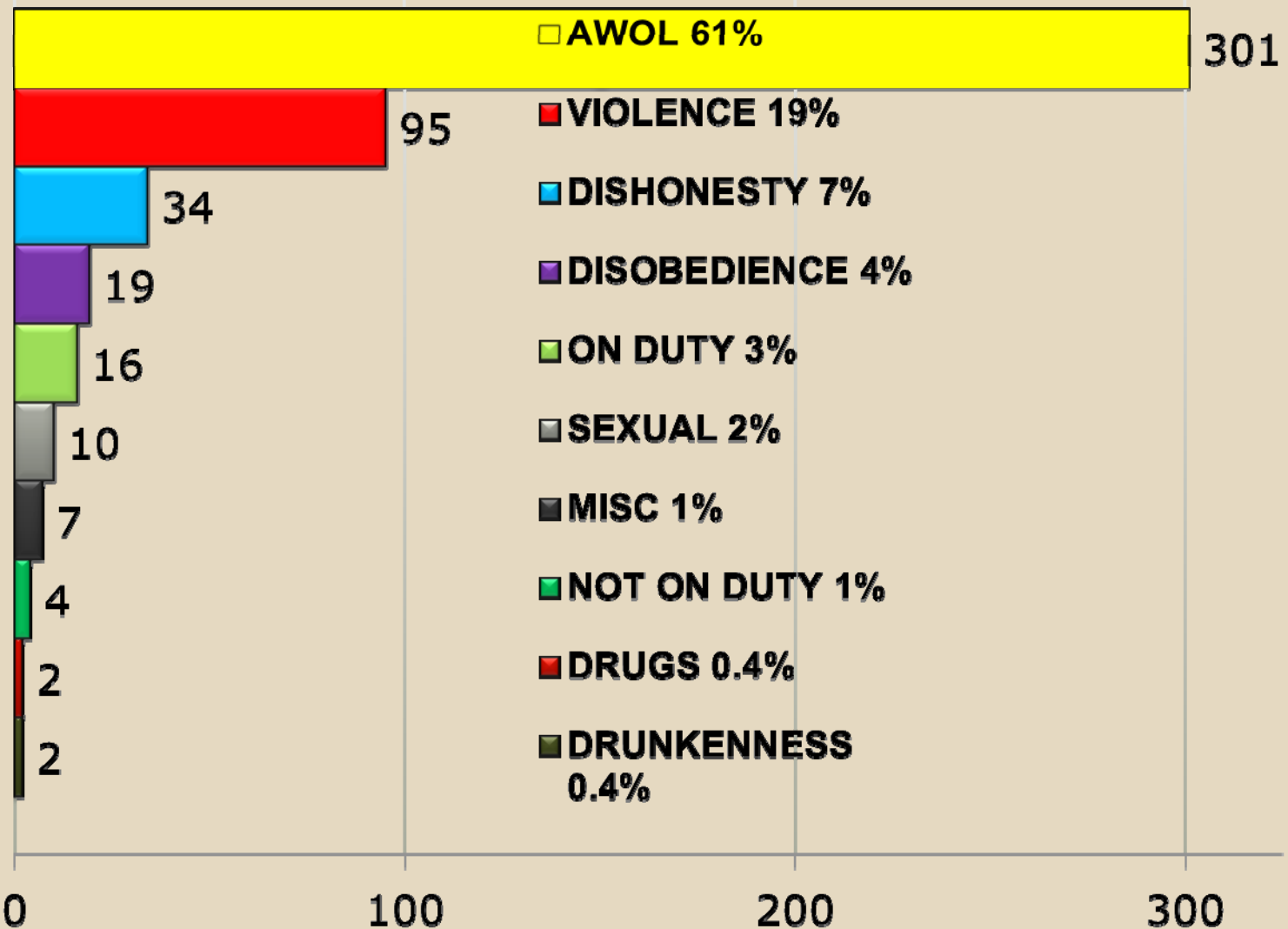
What are the MCTC offences? (Jan 14 – Jan 15)



Military offences: 347 (71%)

Civilian offences: 143 (29%)

Total counts: 490





OFFICIAL

Army offender throughput (Jan 14 – Jan 15)



Branch	Number	Percentage
Infantry	182	60%
Royal Logistics Corps	29	10%
Royal Artillery	17	6%
Royal Armoured Corps	17	6%
Royal Signals	17	6%
Royal Electrical and Mechanical Engineers	14	5%
Royal Engineers	11	4%
Royal Horse Artillery	6	2%
Army Medical services	4	1%
Royal Military Police	2	1%
Training Establishments	2	1%
Army Air Corps	2	1%



OFFICIAL

Infantry offender throughput (Jan 14 – Jan 15)



Cap Badge	Total	Percentage
Royal Regiment of Scotland	26	14%
Yorkshire Regiment	26	14%
Duke of Lancaster's Regiment	25	14%
Foot Guards	23	13%
The Rifles	19	10%
The Mercian Regiment	16	9%
Princess of Wales' Royal Regiment	14	8%
Royal Welsh	10	5%
Parachute Regiment	7	4%
The Royal Regiment of Fusiliers	7	4%
Royal Anglian	6	3%
Royal Irish	3	2%



OFFICIAL

What you can do for MCTC?



- If in doubt phone MCTC before committal
- Prepare the soldier for arrival
 - Watch MCTC DVD / YouTube video
- CO's committal report: the background to detainee and offence is critical:
 - HARDFACTS
- CO's intent: retain or discharge, as there is a very different regime for each?
 - If the latter, 130A is not an MCTC responsibility
 - For short sentences the soldier may RTU before discharge
- Visits
 - COs always welcome, especially before assuming command
 - For 'soldier on' a unit visit to MCTC has a disproportionate effect on a soldier's morale



Service Criminal Justice System

XXXXXXXXXXXX



Overview

- AFB 15 and AFA 16
- AFA 06 and AFA 11
- Impact of HRA
- Key message



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- Custody
- Summary Hearing
- Appeals



Key players

- CO – Definition
- Subordinate Commanders
- Higher Authority¹



Outline

- Key Players
- **Jurisdiction**



Jurisdiction (MSL Ch 3)

- Who can CO investigate?
 - Regular personnel
 - Reserve personnel?
 - Civilians?
- Time limits



Jurisdiction scenarios

- LCpl (Regular) serving in UK
- Bdr (Regular) serving in Afghanistan with USAF
- Lt Col (Reserve) walking to local Reserves Training Centre for Drill Night
- Ex SSgt (Regular) leaves service on 1 Feb 13; allegation comes to light on 15 Jun 13
- Embedded journalist waiting to board military flight in departure lounge at RAF Brize Norton
- 15-yr old step-son living with Pte (Regular) in Cyprus
- Civilian NAAFI employee working in Germany



Outline

- Key Players
- Jurisdiction
- **CO's powers to investigate**



Investigation

When **must** there be an investigation?

- Schedule 2¹; or
- Prescribed circumstances

What must happen?

- CO **must** notify Service Police
- Service Police **must** investigate
- Only SPA can switch off

Other allegations

- CO may invite Service Police to investigate
- Service Police may decline
- If so, CO must carry out 'appropriate' investigation



The Prescribed Circumstances* – 1 of 2

(a)(i) Is there an allegation, or circumstances indicating, that a **PSSL** has been the victim of a **course of conduct** involving on **at least two occasions** an assault by a person under CO's command?

Yes

(a)(ii) Is there an allegation, or circumstances indicating, that a **person under CO's command** has committed an offence of putting a PSSL in fear of violence contrary to **s.4 Protection from Harassment Act 1997**?

Yes

(b) Is there an allegation, or circumstances indicating, that a person under the CO's command has, **whilst otherwise carrying out his duties, assaulted** a PSSL of inferior rank, causing **serious injuries**?

Yes

Prescribed Circumstances exist – notify Service Police

*The Armed Forces (Part 5 of the Armed Forces Act 2006) Regs 2009, Reg 3 & MSL Vol 1, Ch 6, Annex E

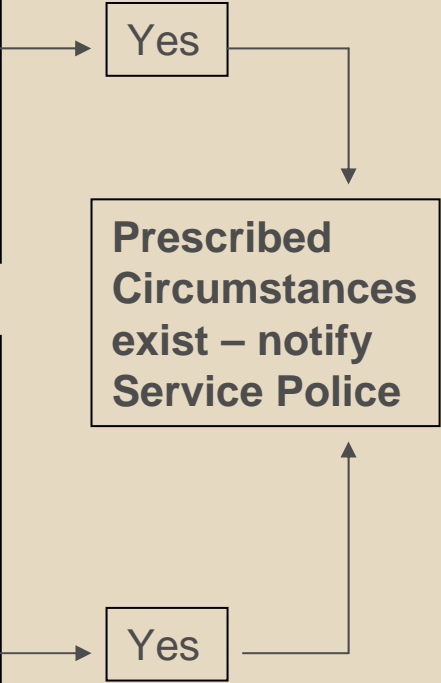


The Prescribed Circumstances* – 2 of 2

(c) there are reasonable grounds to believe the **death of any person**, or **serious injury to a relevant person**, has occurred in a **relevant place**, unless the CO is satisfied there is no allegation which would indicate to a reasonable person, or circumstances which would indicate to a reasonable person, that the death or injury was, or may have been, the result of a Service offence committed by a person of whom he is the CO.

(d) the **death of a person** has occurred and:

- (i) it appears to the prescribed officer that the person had **at any time** been held in a relevant place in service custody; **and**
- (ii) there are reasonable grounds to believe that the misconduct, during the period that person was in such custody, of a PSSL or a civilian subject to service discipline **may** have caused (directly or indirectly), or **may** have contributed to, the death.



*The Armed Forces (Part 5 of the Armed Forces Act 2006) Regs 2009, Reg 3 & MSL Vol 1, Ch 6, Annex E



RESTRICTED



ARMY

XXXXXXXXXXXX

XXXXXXXXXXXX



HQ PM(A)



RESTRICTED

AGENDA

- What we do
- RMP v SIB Investigations
- Case load and Current Issues
- What you want to know about the RMP
- The Independence of the RMP
- Reporting responsibilities
- Top Tips





RESTRICTED

TECHNICAL - Investigations & Policing

- Development and maintenance of RMP investigations and policing doctrine
- Staffing of legislative and statutory requirements
- Oversight and surety of RMP investigations
- Monitoring and maintenance of performance and standards through continuous assessment of MP investigations
- Development of RMP and CIVPOL interface within the firm base





RESTRICTED

RMP INVESTIGATIONS

- RMP investigations ensure the Army meets its domestic and international legal obligations (principally through the enforcement of the Armed Forces Act 2006); matters of concern are investigated effectively and lawfully; discipline is maintained and, **in addition, provide individuals with the protections and safeguards afforded to them by law; all of which contribute to operational effectiveness**
- As the Army's police, the RMP provides a deployable and firm base investigatory and policing service meeting the Nation's overseas operational and firm base treaty and other obligations such as any SOFAs, MOUs with other hosting nations and in operational theatres, in compliance with UK policing standards and practices, **without which the Army could not deploy or operate effectively in the firm base.**





RESTRICTED

Royal Military Police Investigative Responsibilities

- **Provost Companies**

deal with Volume service offences; anything from Barrack room theft, Absence and Desertion, through to assaults and possession of drugs. They are also, in the main, the first responders to all reported incidents.

- **Special Investigation Branch**

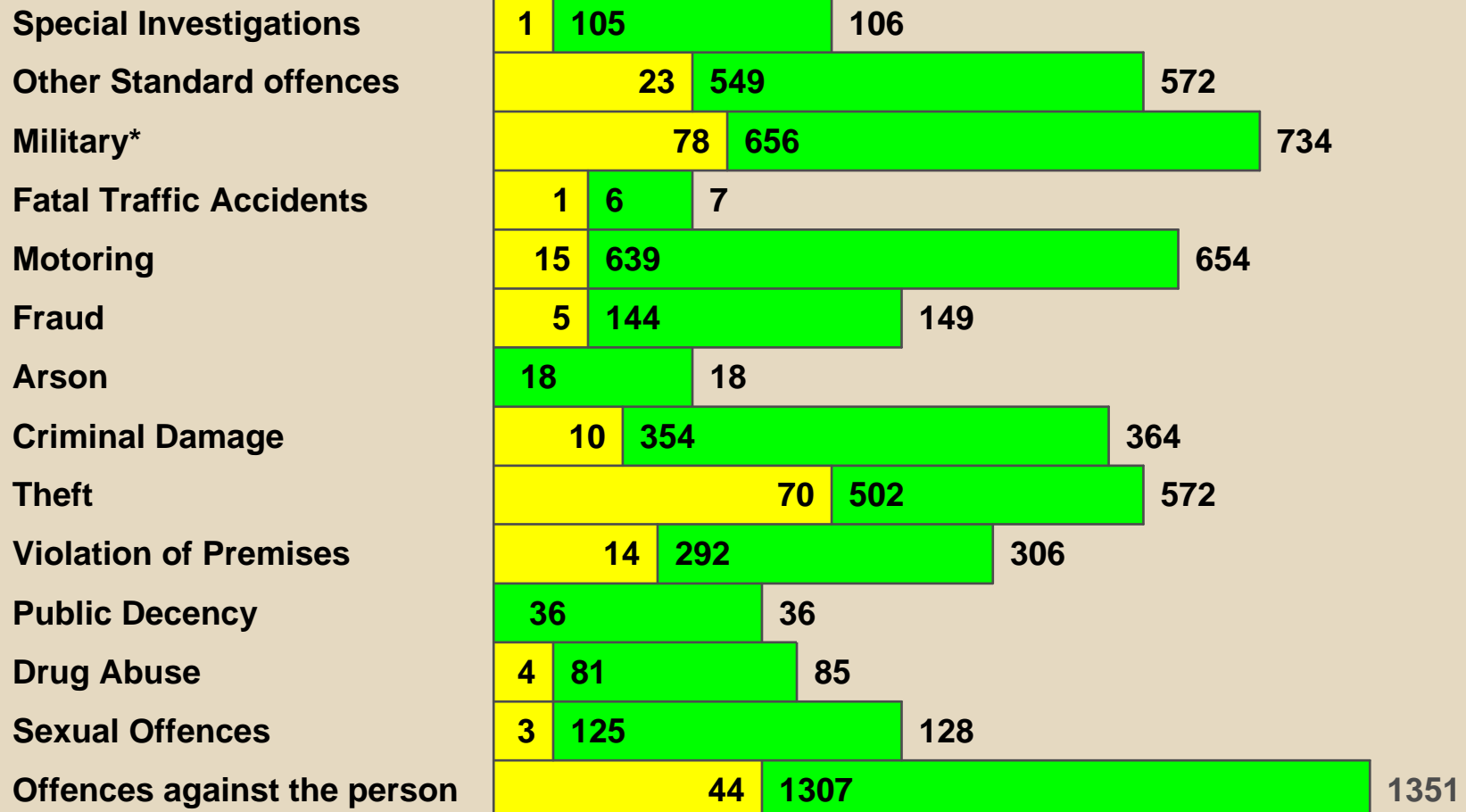
deals with serious and complex service offences; anything from homicide, Coronial investigations, serious assaults (including detainee abuse and ill-treatment of subordinates), serious sexual offences (including child pornography), firearm incidents, fraud, and other special investigations (such as incidents that could undermine the standing of the Army, i.e. 'leak' enquiries).





RESTRICTED

Investigative Workload – 2012



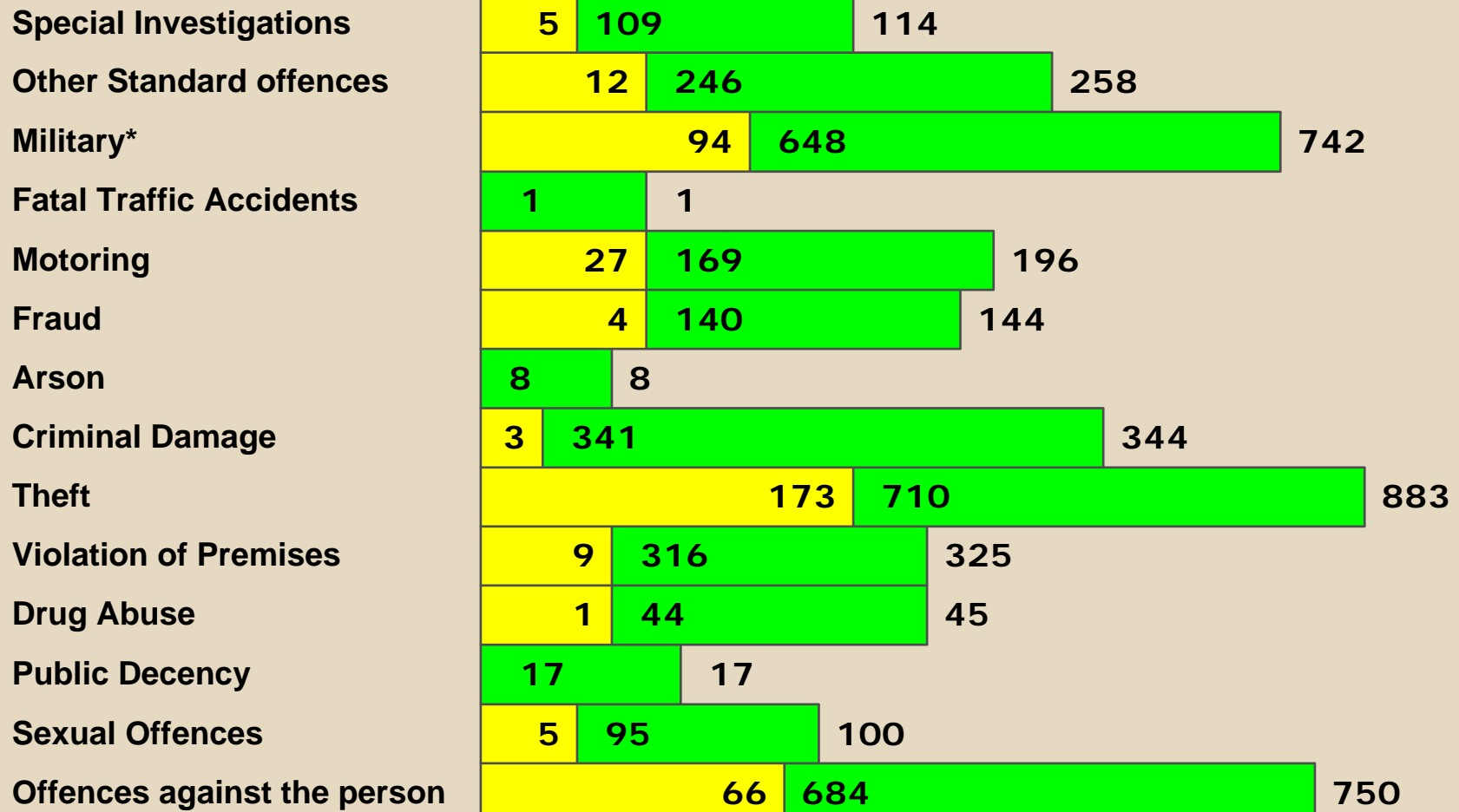
Green – Firm Base; Yellow – Operations; Final figure = total investigations

TOTAL: 5,082
2011 Total 6,230



RESTRICTED

Investigative Workload – 2013



Green – Firm Base; Yellow – Operations; Final figure = total investigations

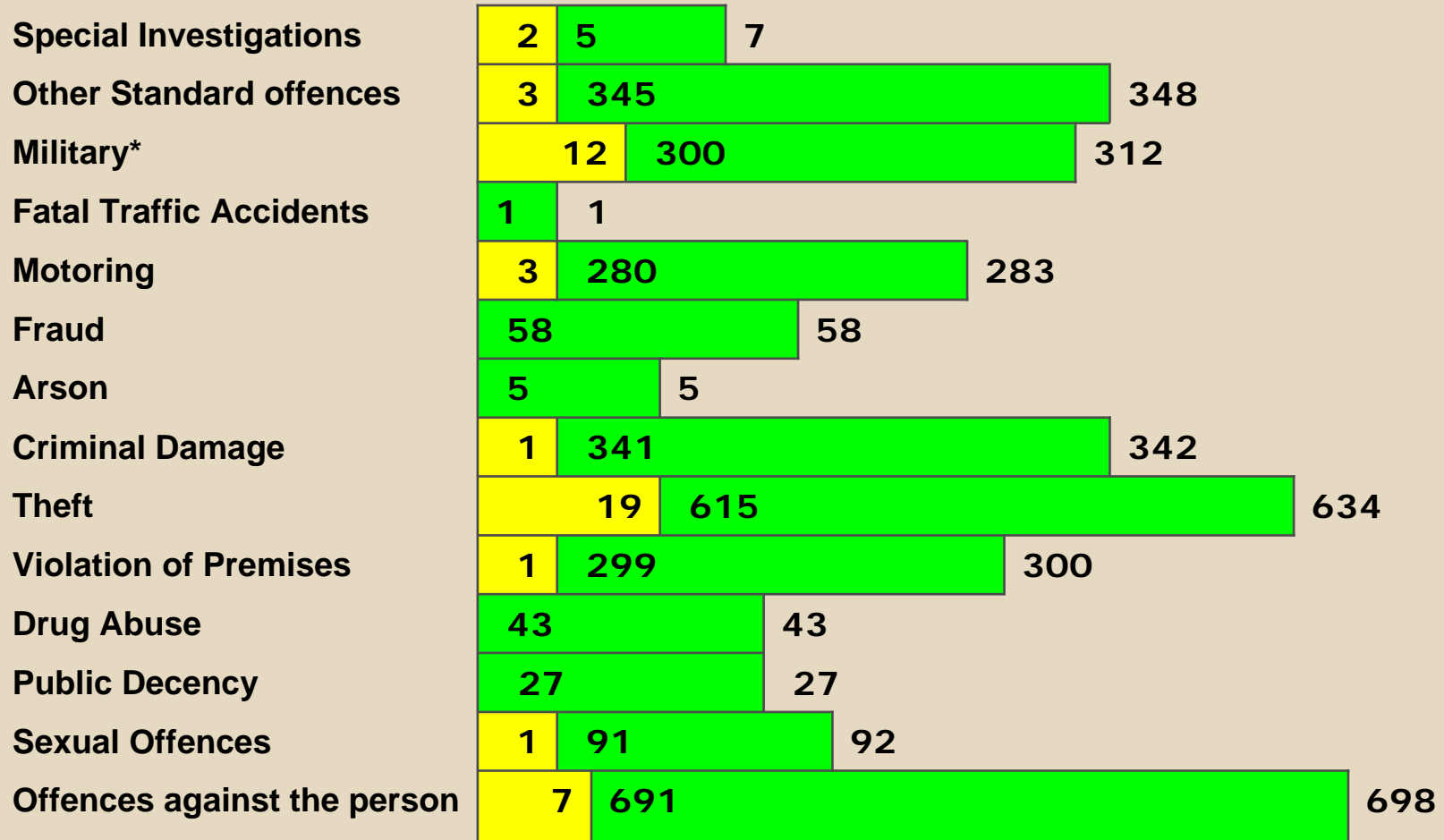
TOTAL: 3,927
2012 TOTAL: 5,082





RESTRICTED

Investigative Workload 2014



TOTAL: 3,150
2013 TOTAL: 3,927

Green – Firm Base; Yellow – Operations; Final figure = total investigations





RESTRICTED

What is Going on at the Moment

- Overall crime reported to RMP down by 20% during 2014.
- Theft and violent crime accounts for over 40% of all RMP investigations during 2014.
- Decrease in Sexual Offences although;
 - Slight increase in IIOC, 9 RMP investigations, 10 HOPF investigations involving Servicemen. This can be attributed to the level of technology now employed in identifying offenders.
 - Historical offence reporting has levelled out with no significant increase this reporting period.





RESTRICTED

What is Going on at the Moment 2

- Volume of ammunition recovered far exceeds that reported lost/stolen.
 - The number of firearms reported lost has increased by a total of 4 since 2013.
 - There has been 1 firearm stolen in 2014 from a Cadet Unit in Hampshire. This rifle remains outstanding.
 - Rise in incidents involving “Tasers” and “Stun Guns” (8 possession offences)
 - 2014 CDT positives stand at 542, decrease of 24 in the last reporting period.
 - Cocaine most commonly detected and investigated.
 - “Legal High” usage increase.





RESTRICTED

EVERYTHING THAT YOU WANTED TO KNOW ABOUT THE RMP BUT WERE AFRAID TO ASK

- Do the RMP need my permission to arrest one of my soldiers or have to tell me if they have arrested one of my soldiers?
- Do the RMP have to tell me if they have one of my soldiers under surveillance?
- Do the RMP have to have my authority to enter my Barracks?
- Can I tell them that I don't want an investigation or want it terminated?
- What should I expect in terms of RMP reports when an investigation has commenced?





RESTRICTED

RMP Reporting Responsibilities

- INREP; within 24 hrs and details investigation responsibilities
 - CO loses his powers to deal
 - May be handed back to CO on INREP
- Progress Report; every 28 days
- Interim Investigation Summary; in exceptional circumstances (such as death or rape) when RMP determine the CoC needs an up-date
- Service Police Charge Referral (SPCR); Service Police Investigation Summary (SPIS) or a HM Coroner Report





RESTRICTED

INDEPENDENCE OF THE MP

No civil servant, let alone a Minister can be permitted to have any influence whatsoever. It is clear that in making such a decision the police are constitutionally independent of the Executive and of any local authority or official to which they are accountable in other matters... They must be able to make their decisions entirely independently of the Secretary of State for Defence, any civil servant in that Ministry and, even more importantly, of anyone in the hierarchy of the armed forces.

SPI 2 Judgement 24 May 13



HQ PM(A)



RESTRICTED

Top Tips (1)

- Early direct engagement and communication with RMP; and remain open-minded about what you hear from your unit personnel
- Understand your Statutory Responsibilities and limitations
- Understand RMP powers and capabilities; we are still having to explain our investigative independence and our duty to comply with National policing standards and the limitations imposed by investigative resourcing (people, forensic...).
- Don't be too frustrated by how our investigation is progressed and that you cannot dictate investigative activity or shape its outcome; but do communicate any concerns you have with the appropriate Military Police Unit
- Support the investigative process; in particular:
 - Delay – ensure the availability of witnesses and other personnel (such as Adjt and SSA)
 - Delegation – ensure CO powers are formally delegated as required (principally with regards to custody)





RESTRICTED

Top Tips (2)

Given the sort of crime that you might have to deal with, and conscious of incidents that attract CoC interest, I would take a particular interest in how your unit:

- Sexual offending
- Sexual harassment
- Manages Firearms and ammunition
- Controls its financial accounts
- Supports any victims, witnesses or suspects





RESTRICTED

Top Tips (3)

- Alcohol and Drunkenness
- Steroids (dietary supplements?) and Illegal Substances – Read and understand AGAI 64 Substance Misuse
- Sexual Offending
- Harassment
- Leaks
- Bullying/Initiation Rites
- CO's responsibility in signing CEA Eligibility Forms
- Social media postings
- Ebay sales (Theft and or Fraud)
- Reputational issues





RESTRICTED

SUMMARY

- Understand your CO's responsibilities
- Get to know your local RMP/SIB commanders
- Have the contact details of RMP/SIB Duty Officers to hand and report incidents to us immediately
- Engage early and take advice from MP
- We are not independent of the armed forces but **we are independent for investigations**
- Don't destroy evidence, don't hide evidence or suspects, tell us everything





RESTRICTED

Questions



The Royal Military Police

“Not Even Our Mothers love Us”

(The RMP Motto)



HQ PM(A)



RESTRICTED

Special Investigation Branch Regiment

Investigating Serious and Complex Crime worldwide, within the Military Community

RHQ Vision

An RHQ which understands the needs of our officers and soldiers and supports them appropriately, within the context of our worldwide footprint. Together providing an investigative service to the Army, which is second to none.

Main Effort

The prompt and effective investigation of allegations into serious and complex crime



HQ PM(A)

Mission

To provide an efficient and effective investigative service throughout the United Kingdom and in overseas theatres, in order to contribute to the Moral Component of Fighting Power and support the Service Justice System.

Intent

To provide effective support to the prosecution of Service offenders, whilst reducing incidents of serious and complex crime.

Scheme of Manoeuvre

Our Mission will be achieved through:

- Efficient lay down of troops throughout the worldwide AOR.
- Effective employment of experienced commanders in appropriate locations.
- Proper provision of specialist support where it is required.

End State

A well established and properly trained unit of high quality investigators, who are robust and deployable around the world, across the spectrum of conflict.



Commanding Officer's Powers



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- **Arrest and Search**



Arrest & Search*

- Arrest & Search
 - Arrest of person reasonably suspected of committing or having committed a Service offence (S.67 AFA 06)
 - Arrest of person reasonably suspected of being about to commit a Service offence (S.69 AFA 06)
 - Search on arrest:
 - Service Police
 - Non-Service Police

** MSL Vol 1, Ch 4, Part 1*



Stop & Search

- Stop & Search
 - Generally a Service Police power
 - CO-directed stop & search

** MSL Vol 1, Ch 4, Part 2*



Entry, Search & Seizure*

- Entry, Search & Seizure
 - Service Police powers
 - CO's powers

* *MSL Vol 1, Ch 4, Part 1, pages 1-4-22 to 1-4-26*



Scenarios: Search or inspection?

- RQMS reports that the SLA is in an appalling state, with broken lockers and issued kit 'all over the place'. He hands Adjt an entry for Pt 1 Orders stating that there will be a block inspection on Mon 18 Mar 13
- OC A Sqn has heard that there might be some soldiers in one of his Tps dealing in illegal drugs. He wants to conduct an inspection of the Tp accommodation to see if it is a red herring or not



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- **Custody**



Custody – MSL Ch 5

Two forms of Service Custody:

1. Custody without Charge – up to 48 hours
2. Custody after Charge



Custody without charge – delegations

- Custody decisions to be made by CO
- However CO may delegate his powers for all custody matters to a substantive Captain or above, under his command. Should be published in writing
- Custody decisions made by someone with such delegated powers must be reported in writing to CO



Authorisation by CO of Custody without charge*

CO must be satisfied that there are reasonable grounds for believing that custody is necessary to :

Secure or preserve evidence

and/or

Obtain evidence by questioning suspect

AND

The investigation is being conducted diligently and expeditiously

* S.99(4) AFA 06, MSL Vol 1, Ch 5, Part 2



Custody without charge

If CO satisfied the grounds exist, he may authorise custody:

1. For as long as the grounds will continue to exist;

and/or

2. Until the next mandatory review (not more than 12 hours after authorisation given)

Whichever is the sooner



Custody without charge – after 48 hours

- Application made by CO to Military Court Service
- VTC or Court Martial Centre
- Div Legal Officer (with Unit rep - policy)
- Judge Advocate Powers*:-
 1. Refuse the application
 2. Adjourn the hearing (if pre-48hr point)
 3. Approve custody up to max of 96hrs

* S.101 AFA 06



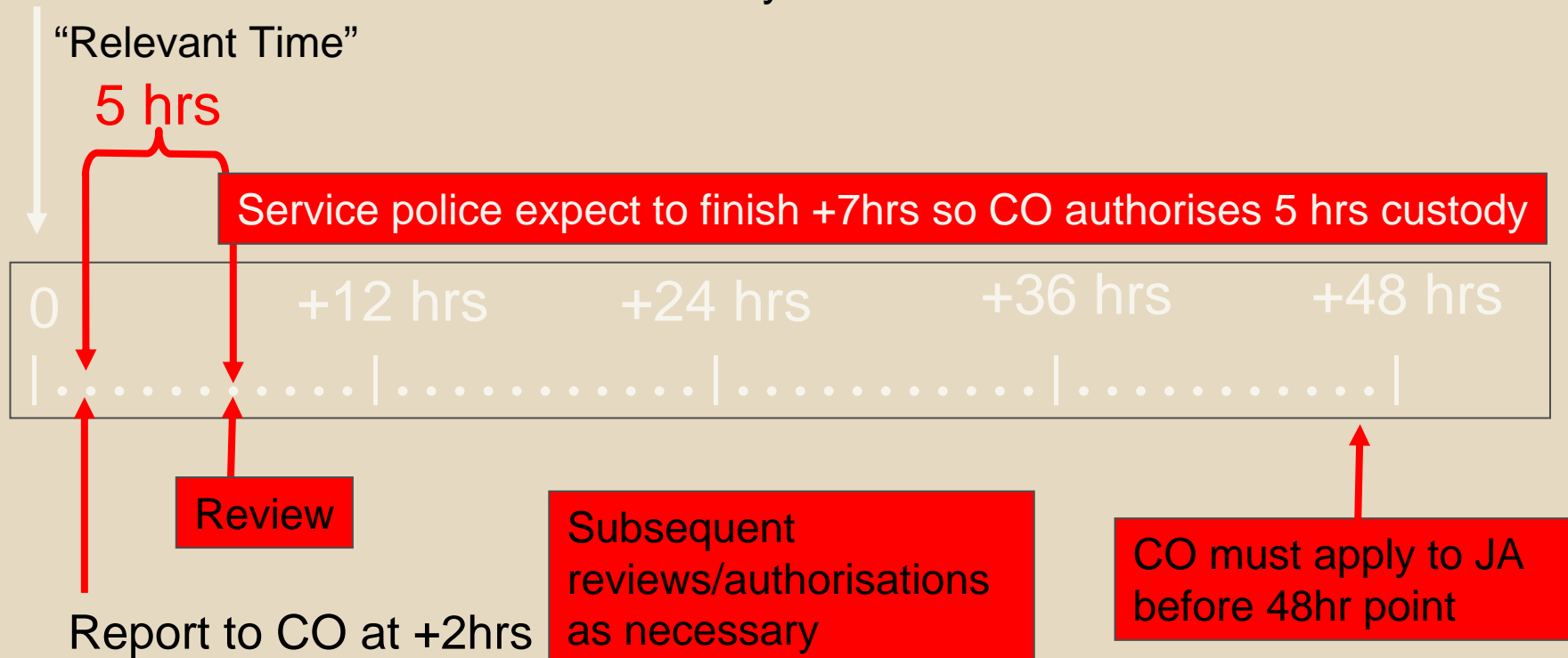
Custody without charge – worked example

- Gnr Jones is arrested by the RMP for a string of alleged sexual offences on a minor. His time of arrest is 1200hrs. He is taken to the local RMP station.
- After the RMP have processed him and contacted his lawyer, they phone the unit at 1400hrs.
- The CO (or officer delegated to deal with custody on his behalf) asks the RMP what time they first arrested Gnr Jones and how long they need to hold him in custody. The RMP SSgt says they need at least 5 hours to question him.
- The CO authorises custody without charge for 5 hours and telephones his Divisional legal office to put them on notice that a hearing may be required.



Custody without charge – worked example

Custody Timeline



ALWAYS CONTACT A LEGAL ADVISER



Custody after charge*

Conditions A – D.

Condition A – Judicial Officer – substantial grounds for believing that if accused released from custody he may:

Commit an
offence if
released

and/
or

Fail to attend
a hearing

and/
or

Interfere with
witnesses or
obstruct justice

*S.105 & 106 AFA 06, MSL Vol 1, Ch 5, Part 3



Custody after charge

- Condition B: protection of accused or, if under-17, the accused's welfare
- Condition C: JA needs more time
- Condition D: JA needs further inquiries/reports



Custody after charge – Reviews* - (1 of 2)

- Reviewed by JA no later than the end of each period of authorisation, normally 8 days.
- If Accused agrees and is legally represented can agree custody without review for 28 days.
- If CO aware of change of circumstances must release or request review.

** S.108 AFA 06, MSL Vol 1, Ch 5, Part 3, para 50 et seq*



Custody after charge – Reviews* - (2 of 2)

- JA can release subject to requirements* (“bail conditions”)
- “Such requirements as appear to be necessary” to
 - secure attendance
 - prevent commission of an offence
 - interfere with witnesses
 - protection or welfare
- CO/accused can apply to discharge or vary

* S.107 AFA 06



Scenario

- Pte Xerox returns to camp at 0300hrs after a drunken night out in town, bad mouthing his girlfriend who has just broken up with him. The gate guards try to help him calm down but he is abusive towards them and accuses one of them of sleeping with his girlfriend. He starts generally shouting abuse and threatening to kick heads in if people come near him. The Guard Commander phones the Adjt to ask if they can lock Pte Xerox in the Guardroom until he sobers up



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- Custody
- **Summary Hearing**



Summary Hearing or refer?

Depends on:-

- Type of offence
- Rank of accused (2 rank rule)
- Powers of punishment
- Evidential complexity



Summary Hearing or refer? Type of Offence

- **Non-criminal conduct offences** (s.1-41 AFA 06; MSL Ch 7)
- **Criminal conduct offences** (s.42 AFA 06; MSL Ch 8)
- Three types:
 - Schedule 1, Part 1 offences can be dealt with by CO without HA permission
 - Schedule 1, Part 2 offences; CO requires HA permission (unless CO is a 2*)
 - Unlisted offences; CO cannot deal – can refer to SPA or take no action



Summary Hearing or refer? Rank of accused

- 2 rank rule – CO (Lt Col) can only deal with accused up to rank of Capt
- Role of HA – Bde Comd can deal with Maj and Lt Col
- Colonel plus, no SH



Summary Hearing or refer? Powers of punishment

- Will powers of punishment fit the crime (bearing in mind the rank of the accused, previous convictions and the allegations)?
- Just because you can, may not mean you should



Summary Hearing or refer? Evidential problems

- Multiple witnesses
- Co-accused
- Civilian witnesses (not compellable)
- Absent witnesses
- Overseas witnesses
- Complex evidential issues (e.g. hearsay or disputed facts)



Some examples

- LCpl Jones is accused of battery (punching) LCpl Allen in the Jnr Ranks' bar. He has raised self defence. There are three eye-witnesses, all serving in a neighbouring unit, which is due to deploy shortly
- Capt Jennings is accused of fraud (false JPA claims x 12) to the value of £1,200 approx. He has admitted the offence in police interview
- Pte Grant is accused of causing criminal damage in a bar outside camp in Sennelager – there are 3 eye-witnesses, 2 of whom are German civilians. All give slightly different descriptions of the person they saw committing the offence
- Maj Blake is accused of theft of a pair of binoculars from QM stores
- LBdr Spinney is accused of AWOL (146 days). He is an otherwise exemplary soldier, who had an unfortunate welfare issue to deal with before he went absent. He returned voluntarily



Finding

- CO must be sure of guilt before finding a charge proven
- Separate findings for each charge
- 1/3 credit



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- Custody
- Summary Hearing
- **Sentencing**



Punishments available to CO*

- Detention
- Forfeiture of seniority
- Reduction in Rank
- Fines
- Reprimands
- Service Supervision and Punishment Order (SSPO)
- Minor Punishments
- Service Compensation Order

* S.132 AFA 06; MSL Vol 1, Ch 13



Detention*

- Up to 28 days, or up to 90 with extended powers
- LCpls can be reduced and detained. Separate punishments. HA permission required to award detention to a LCpl.
- Suspended Sentence
 - 3-12 months operational period

* Ss.132 & 133 AFA 06; MSL Vol 1, Ch 13, paras 34-67



Reduction in Rank*

- WOs and NCOs
- One rank – acting or substantive
- CO only (not OC)
- Extended Powers required (except LCpl)

** S.135 AFA 06; MSL Vol 1, Ch 13, paras 94-104*



Fines – Gross Pay*

- Up to equivalent of 28 days gross pay
- Can be by instalments
- Announced in pounds sterling
- Limits for Subordinate Commanders (see MSL Ch 13, Annex A)

** S.136 AFA 06; MSL Vol 1, Ch 13, paras 105-121*



Reprimands*

- Officers, WOs and NCOs
- Career consequences single-Service

* S.132 AFA06; MSL Vol 1, Ch 13, paras 122-125



Service Supervision and Punishment Order*

- Awarded for 30/60/90 days
- Mandatory and discretionary elements
- Initial and subsequent periods
- CO only (not OC)
- Pte soldiers only

**S.173 AFA 06; MSL Vol 1, Ch 13, paras 68-84*



Minor Punishments*

- Stoppage of Leave
 - Not WO
 - Confined to barracks (not more than 14 days)
- Restrictions of Privileges
- Admonition

**The Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations 2009;
and MSL Vol 1, Ch 13, paras 126-151*



Service Compensation Order*

- Compensation for PI/loss/damage (limit £1000)
- Evidence of value of loss/damage
- Not for bereavement or damage of Service property by private vehicles
- Can be paid by instalments
- Guidelines for PI compensation (MSL Ch 13, para 172)
- Actioned after appeal period (14 days)
- CO may discharge or reduce
- Reasons for **not** awarding must be given by CO

* S.175 AFA 06; MSL Vol 1, Ch 13, paras 152-179



Permitted combinations of punishments

Punishments awarded	Permitted accompanying punishment/s
Detention	SCO ; reduction in rank or disrating
Suspended sentence of detention	Disrating/reduction in rank; SCO.
Forfeiture of seniority	Severe reprimand or reprimand; SCO.
Disrating/reduction in rank	Detention SCO.
Fine	Severe reprimand or reprimand; Stoppage of leave; Restriction of privileges; SCO.
Severe reprimand or reprimand	Forfeiture of seniority; Fine; Stoppage of leave; SCO.
SSPO	SCO only.
Stoppage of leave	Fine; Severe reprimand or reprimand; Restriction of privileges; SCO.
Restriction of privileges	Fine; Stoppage of leave; SCO.
Admonition	Service compensation order only.

S.138 AFA 06; MSL Vol 1, Ch 13, para 32



Sentencing – Principles*

- Have regard to the purpose of a sentence:
 - Punishment
 - Deterrence/Reduction of crime
 - Reform and rehabilitation
 - Protection of the public
 - Reparation by offender to persons affected
- Sentencing Guide (MSL, Ch 14)
- Punishments cannot be standardised - no 'going rate'
- Sentences must be fair
- **Must** justify sentence with written reasons

**MSL Vol 1, Ch 13, paras 4-25*



Reasons for Sentence*

- Legal requirement
- Global sentence
- Must explain why the offence merits the sentence
- **Credit for admitting offence**
- Particularly important aggravating & mitigating factors
- Effect of sentence and non-compliance

* s.252(1)(a) AFA 06



Post Summary Hearing

CO to notify the accused “promptly” in writing of

- Finding(s)
- Global Award and reasons
- Right to appeal to SAC
- Entitlement to Legal Aid and Legal representation at SAC



Other issues - Election

- Election for trial by Court Martial
 - Election on one charge will cause all charges to be referred
 - Court martial will face sentencing restrictions
 - DSP cannot refer charge back to the accused's CO without consent in writing
 - Re-commence Orders following consent



Outline

- Key Players
- Jurisdiction
- CO's powers to investigate
- Arrest and Search
- Custody
- Summary Hearing
- **Appeals**



Right of Appeal

- Against Finding
- Against Punishment
- Against Finding and Punishment
- 14 Day Time Limit
- Entitlement to legal representation and to apply for legal aid
- Lodging an appeal will automatically suspend any detention until determination of appeal
- Returned to “normal duties”



Summary Appeal Court

- Judge Advocate and two members
- **Cannot impose a greater sentence**
- Can uphold/vary/quash finding and/or punishment
- Can substitute any other punishment (provided it is no more severe than the CO's award).
- Appeal against finding = new hearing



Service Prosecuting Authority (SPA)

CODC

SPA Managing Prosecutor





CHARACTERISTICS

- Independent of chain of command
- Tri-service
- UK and Germany
- Follows CPS policy + Inspected by HMCPSI
- Accountable to the Attorney General





STRUCTURE

- DSP is a civilian - Andrew Cayley QC
- DDSP - Brigadier Stuart Lythgoe
- 27 Army prosecutors, 5 RN, 4 RAF –
- 4 Prosecuting teams (3 in UK & 1 in Ger)
- No service ‘stove pipes’ – any case can be prosecuted by any prosecutor
- SPA includes Army and Navy Service Police Liaison Officers





SPA PROCEDURES

- **Form 3: Pre-referral advice to Service Police**
- **“Case” or “Charge” referred by Commanding Officer or Service Police**
- **First sight : DDSF sees all UK files & allocates to 1 of 4 Prosecuting Teams**
- **Managing Pros of Team allocates case file to an individual prosecutor**
- **SPA will also brief external counsel in very serious/complex or conflict cases**





SPA PROSECUTOR ROLE

- Validate CO's referral
- Conduct Case Analysis: Apply CPS "Full Code Test"
 - 1) Evidential **RPOC**
 - 2) Public & **Service Interest**
- Further enquiries: CO, SP 3rd P's Etc
- Decision –
 - 1) Direct for Court Martial or SCC
 - 2) Refer back to CO (for Summary Dealing/Admin Action)
 - 3) Discontinue case
- Liaise with complainant / victim
- Conduct Summary Appeal Court hearing (SAC) on behalf of Cof C





UNIT RESPONSIBILITIES

- CO, Adj and SSA
- Legal advice (ALS Div Legal)
- Know & apply policies (or where to look)
- Understand your obligations:
 - Accused: **MSL Vol 1, Chapter 6, Annex G**
 - Victim: **JSP 389: Code of practice on services to be provided by the Armed Forces to victims of crime**





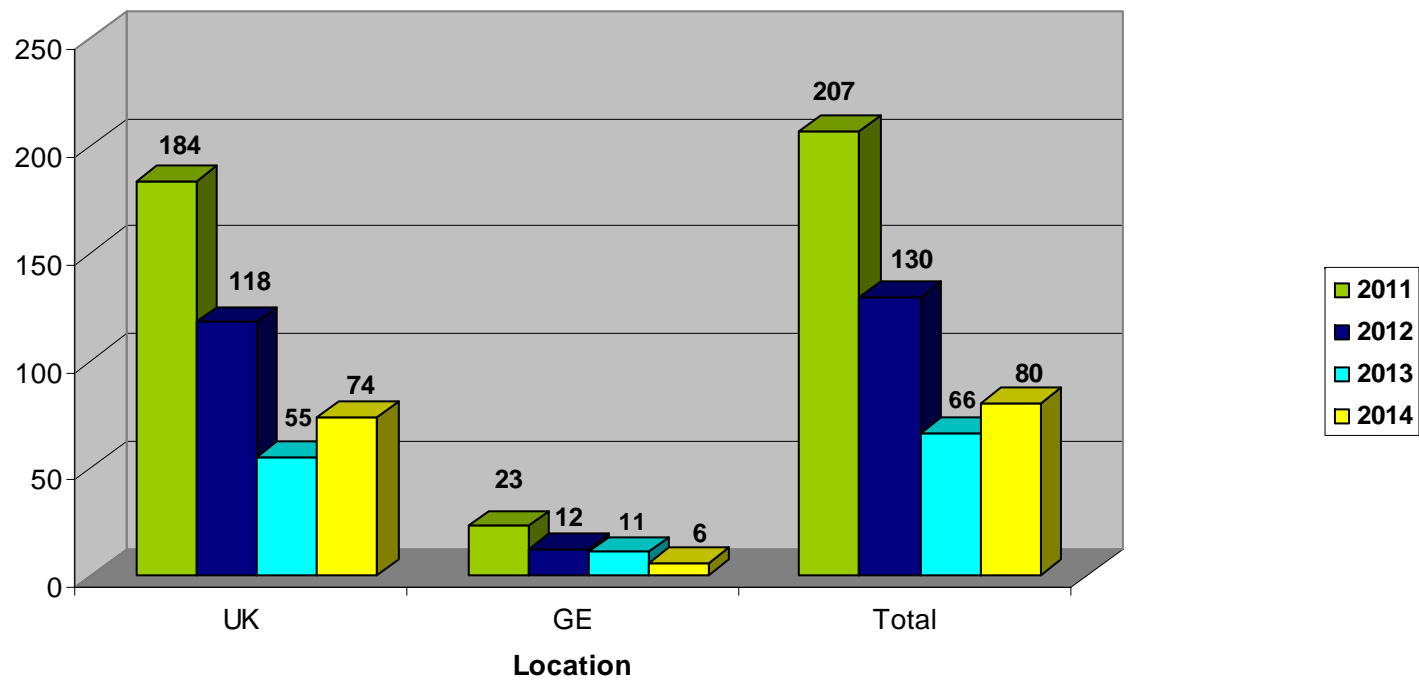
SPECIFIC ISSUES

- 1) Summary Dealing **or** Ct Martial Referral
- 2) Custody – Liaise Div Legal (SPA Resp is post referral)
- 3) Unit Investigations & Disclosure
- 4) Unit references & dodgy mitigation
- 5) Paperwork / Delay : Exercise, Ops, Block leave,
- 6) Initiation ceremonies: CofC
- 7) JPA Fraud:
- 8) Violence: Background: bullying, alcohol, racism etc
- 9) RASSO
- 10) AWOL / Desertion



Comparison of AWOLS – 2011 to 2014

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
UK	184	118	55	74
GE	23	12	11	6
TOTAL	207	130	66	80





SPECIFIC ISSUES (Cont)

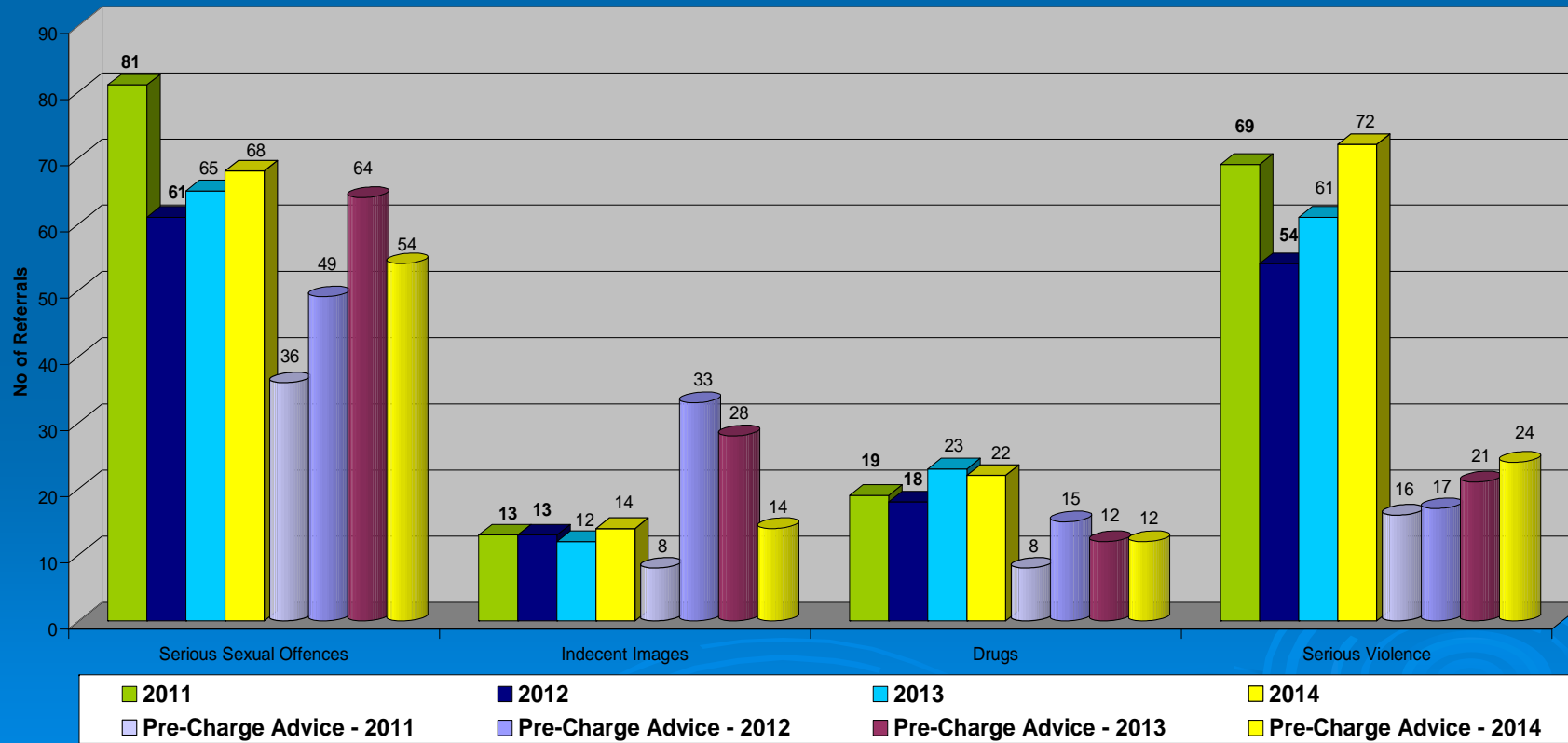
AWOL

- CO can award up to 90 days with extended powers - 140 days a guideline
- Evidence of beginning and end
- What steps have unit taken to recover Sol?
- Find out the reasons for the absence
- Effect of Absence on Unit?
- Beware dodgy mitigation
- Desertion cases – RMP investigation
- Fast Track procedure



Comparison of complex and more serious referrals – 2011 to 2014 Serious Sexual offences, Indecent Images, Drugs and Serious Violence

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>PCA – 2011</u>	<u>PCA – 2012</u>	<u>PCA - 2013</u>	<u>PCA - 2014</u>
Serious Sexual Offences	81	61	65	68	36	49	64	54
Indecent images	13	13	12	14	8	33	28	14
Drugs	19	18	23	22	8	15	12	12
Serious violence	69	54	61	72	16	17	21	24



“10” Useful References

1	The MSL – It’s written <i>for COs and Adjts</i> www.gov.uk/government/collections/manual-of-service-law-msl
2	Custody After Charge – Ch 5, Appendix 3 (Information to assist commanding officer’s application for custody after charge T-SL-CUS03)
3	Referring a Case to DSP – Ch 6, Para 84-86 and 147-154 [<i>make sure it’s valid</i>]
4	Summary Hearing – Ch 9, Annex C (Record of Summary Hearing T-SL-SH01) [<i>There are no excuses for not following the script</i>]
5	Brief for Accused Assisting Officer – Ch 9, Annex G [<i>Make sure he or she is briefed and understands their role</i>]
6	Absence – Ch 10, Annex B, C and G (Certificates of Absence, start and stop)
7	Sentences and Punishments available to a CO Permitted Combinations of Sentences – Ch 13, Para 32 Compensation for Injuries Ch 13, Para 172 Summary Table of Punishment Powers – Ch 13, Annexes A and B (including limitations on Subordinate Commander’s powers) CO Sentencing Guidance – Ch 14
8	PS2(A) Policy Letters: 15/2009 - Delegation of CO powers to Sub Comd, 19/2009 - Absence Summary Dealing, 08/2010 - JPA Fraud, 01/2013 - Cyber Bullying
9	OTHER REFERENCES: Queens Regulations, (AGAI 062): Chpt 62 - Discipline Policy, Land SO’s
10	Victims: JSP 839



QUESTIONS?





AGAI 67

Administrative Action



Discipline

- There are **only** two ways a soldier may be punished or sanctioned:
 - Following Summary Hearing, or Court Martial.
 - Following administrative action in accordance with the procedures contained in AGAI 67 and AGAI 69

These do not preclude appropriate verbal correction.

But does preclude informal systems ie Mess Fines, "Voluntary" Duties etc.



AGAI 67 - Overview

- Principles
- Key issues for MAA
- Suspension/Removal
- Remember AGAI Contains
 - 2 Sanctioning actions (Minor Admin, Major Admin)
 - 2 Non Sanctioning (Formal Warning, Removal from Appointment)



The CO's Responsibilities

- CO's Roles
 - Minor Admin Action Supervision
 - Major Admin Action Deciding Officer
 - Pte to Capt.
 - Major Admin Action Intermediate Officer
 - **Which Circumstances?**
 - Major Admin Action Originating Officer
 - **Which Ranks?**



The CO's Responsibilities

- CO's Roles
 - Minor Admin Action Supervision
 - Major Admin Action Deciding Officer
 - Pte to Capt
 - Major Admin Action Intermediate Officer
 - **All ranks for Dismissal**
 - Major Admin Action Originating Officer
 - **Maj**

[Annex B to Part 3]



Principles

- Why have it?
 - To address professional failings
 - Complement discipline – area of overlap
- Who does it apply to?
- What law applies?
- What is the standard of proof?
- What is the test?
 - *'Have the actions or behaviour...adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the service?'*



Minor Admin Action Supervision

- Are the records kept?
- Are the records signed regularly by OC and you?
- Are the sanctions lawful?
- Are the sanctions equitable?
 - Between individuals
 - Between companies
- Are there trends of failings?
- Are problems addressed or just sanctioned?



AGAI Process – Decision Hot Spots

Initial Assessment.*

Appoint an Assisting Officer.

Initial Interview.

Suspension or Removal.

Investigating the Facts.

Concluding the Investigation.

Apply the Service Test.

Category of Failing.

The Report.

Take External Advice.

Take External Advice.

Prepare the Report.

Disclose the Report.

Interview the Serviceman.

Forward the Report.

Take legal advice.

Interview by Deciding Officer.

Deciding a Case.

Sanction by Deciding Officer.

Soldier Discharge.

Promulgation.

Review.



Initial Assessment - The Discipline Estimate

- Role
- Schedule 2 /Prescribed Circumstances
- Civilian Jurisdiction
- RMP or Unit Investigation
- Discipline or Administrative action
- Minor or Major
- Suspension



“Jurisdiction”

You command a Reserve Regiment and you find that when they are duty officer your Regular Adjt and your Reserve 2IC have been persistently failing to close the Reserve centre bar by 2300hrs, as per your written order. What action can you take against them.

The Regular Trg Maj on attempting to close the bar one night at 2300 finds that the Reserve RSM refuses to leave when ordered to do so. The RSM ceased his period of duty at 2130 when he attended the “sign off” parade. What action can be taken against him



“Jurisdiction”

You command a Reserve Regiment and you find that when they are duty officer your Regular Adjt and your Reserve 2IC have been persistently failing to close the Reserve centre bar by 2300hrs, as per your written order. What action can you take against them.

Either disciplinary or administrative action against either. The Adjt is subject to Service Law at all times, the 2IC is subject when on duty

The Regular Trg Maj on attempting to close the bar one night at 2300 finds that the Reserve RSM publicly refuses to leave when ordered to do so. The RSM ceased his period of duty at 2130 when he tended the “sign off” parade. What action can be taken against him.

In this case the RSM is not subject to Service Law but is subject to AGAI 67 at all times. You can take admin action.

[Paragraph 67.010]



Initial Interview

- Assisting Officer
- Opportunity to explain
- Non verbatim record
- Appropriate interviewer
- Keep your opinion to yourself
- Care and welfare
- Inform investigation
- Revise Estimate



Suspension or Removal

- Suspend.
 - Other Work
 - Accommodation
 - Authority MS
- Not a Sanction
- Grounds
 - Position untenable
 - Duty of care
- Removal without prejudice



Suspension

On taking command you find that the Provost Sgt has been suspended for 3 months by your predecessor for impertinence to the RSM. He still has 1 month to run but has applied to come back and has offered a full apology. The Adjt tells you it was something the old CO did from time to time as the embarrassment and isolation was highly effective in bringing recalcitrant NCOs into line.

It seems to have worked but will you continue the practice?



Suspension

On taking command you find that the Provost Sgt has been suspended for 3 months by your predecessor for impertinence to the RSM. He still has 1 month to run but has applied to come back and has offered a full apology. The Adjutant tells you it was something the old CO did from time to time as the embarrassment and isolation was highly effective in bringing recalcitrant NCOs into line.

It seems to have worked but will you continue the practice?

[Annex A to Part 5]



Grounds for Major Administrative Action

- Inefficiency
 - Failure to respond to Formal Warning
- Misconduct
 - A wide variety of failings:
 - Professional
 - Social
 - Civil or military conviction including a formal police caution
 - Conduct revealed in civil court or at court martial



Misconduct

"....behaviour that undermines trust and cohesion thereby damaging morale and undermining discipline"

- Religious, racial or sexual harassment
- Bullying and Harassment
- Dishonesty or deceit
- Substance misuse
- Irresponsible Indebtedness
- Unauthorised contact with the media
- Bringing the Army into disrepute
- Any non criminal breach of the Service Test
- Following civil or military conviction



Gross Misconduct

Behaviour or performance which involves any or a combination of the following failings deserving of termination of service

- Unacceptable social misconduct with serious or multiple aggravating features (eg coercion, violence, taking advantage of age, rank or appointment, linked to operational considerations).
- Unacceptable inefficiency.
- Serious cases involving harassment, bullying or discrimination.
- Convictions listed in Table 2 of Annex L to Part 3(next slide)
- Any other Conduct that merits the most serious sanction of Termination of Service.



Gross Misconduct – Criminal Conviction

Gross Misconduct. Acts so serious in themselves or have such serious consequences that, if proven, dismissal will be the start point for consideration of sanction for a first offence. These are listed in Annex L to Part 3 .

- Conviction in a civil court or Court Martial for:
 - Homicide, serious assault (excluding common assault, battery and ABH).
 - Racially, sexual alignment, or gender aggravated offences.
 - Serious sexual offences.
 - Firearms and explosive offences.
 - Offences of serious dishonesty.
 - Road traffic offences involving death.
 - Arson and other instances of serious criminal damage.
 - Serious public order offences (riot, violent disorder).
 - Cultivation, importation, possession and supply of drugs.



Social Misconduct

"....behaviour that undermines trust and cohesion thereby damaging morale and undermining discipline"

- A direct military connection,
- Conduct which breaches the Service Test (including consensual behaviour).
- Actual, or potential, adverse impact on the efficiency or operational effectiveness of the Service.
- Not to impose one person's morality on another: simple disapproval is not enough to justify Administrative Action.
- An Originating Officer must state and a Deciding Officer must be satisfied of, a real or potential impact on efficiency or operational effectiveness.
- The sanction may be different depending, among other factors, upon the rank of the serviceman against whom the Administrative Action is taken or any position of trust or responsibility which he holds.
- Divisional G1 and written Legal advice is to be obtained in all cases of alleged social misconduct.



Type of Conduct covered

You have posted to you an MTO on commissioning. He was until recently a popular and highly effective RSM. After 6 months he has not really transitioned to his new role the vehicles are clean and smart but they are all overdue service and inspection and availability is low. The drivers are all applying to leave MT citing too much drill and no trade courses. The culmination is that a VIP visitor is not picked up as arranged.

You decide to take Admin action, but on what grounds? You really don't want to adversely effect the career of a soldier who has given good service. Perhaps commissioning him was a mistake.

Discuss



Effects of ROA 74 changes on AGAI procedure

- Every conviction to be a Discipline Entry Immediately.
- No Admin Action on conviction unless these sanctions are likely to result in:
 - Reduction in rank
 - Forfeiture of seniority
 - Discharge
- Other Admin Action taken as normal
- Admin Action for other misconduct and inefficiency “spent” after a year
- No Admin Action on Spent Convictions
- Timeliness
 - Nothing once spent
 - Other MAA Normally timed out after a year
 - Filibustering



Sanctions

- Sanctions:
 - Minor sanctions - Recording
 - Censure (No Disc Entry)– No effect.
 - Censure (Disc Entry)– 1 Year only.
 - Reduction in rank – NCOs only.
 - Forfeiture of seniority – Officers only.
 - Discharge.
- Non Disclosure – Becomes a Standing Order Offence and could be seen as an Aggravating Factor by Deciding Officer.



The Originating Officer's Initial Decision

- Is this criminal misconduct? If no, start admin action.
- If criminal is it spent? If yes, take no further action.
- Has a discipline entry been made? If no, make one.
- Are reduction, forfeiture or dismissal appropriate? If yes, take admin action.
- Are there circumstances which demand a response? If Yes, take admin action. If no, take no major action, consider minor admin action.



Apply the Service Test

Have the actions or behaviour of a serviceman adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Army?

- A. Religious, racial or sexual harassment
- B. Bullying and Harassment
- C. Dishonesty or deceit
- D. Substance misuse
- E. Irresponsible Indebtedness
- F. Unauthorised contact with the media
- G. Bringing the Army into disrepute
- H. Any non criminal breach of the Service Test
- I. Following civil or military conviction



Service Test Exercise

Service Test Exercise



Service Test Exercise – Cpl Stoner

Cpl Stoner has been arrested by the civil police and convicted by the magistrates for possession of crack cocaine. He admits having it but states that he had been given it by a friend thinking that he (Stoner) would not be searched. Stoner denies vehemently ever having taken any drug and was negative when the police took a urine sample at the time. He has a clean CDT record.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – Cpl Stoner - answer

Cpl Stoner has been arrested by the civil police and convicted by the magistrates for possession of crack cocaine. He admits having it but states that he had been given it by a friend thinking that he (Stoner) would not be searched. Stoner denies vehemently ever having taken any drug and was negative when the police took a urine sample at the time. He has a clean CDT record.

There is a conviction so the CoC can see whether the Service Test has been breached. Additionally it is also a substance misuse. This offence amounts to Gross Misconduct, therefore QR 9.404 is applicable.

Breach Service Test? Yes Category? Drug Misuse



Service Test Exercise – Cpl Grey

Cpl Grey is given a Police Caution for punching the girl in the local chip shop. As a result, all soldiers are banned from the shop.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – Cpl Grey - Answer

Cpl Grey is given a Police Caution for punching the girl in the local chip shop. As a result, all soldiers are banned from the shop.

Whilst this is a breach of the Service test and is at least criminal conduct if not precisely a civil offence.

NO action can be taken



Service Test Exercise – RQMS

The RQMS calls every female member of staff “Sweet Cheeks”. Most of the women don’t mind as he is otherwise pleasant but LCpl Brown has asked him not to call her that, she has even written to him and the QM saying that she thinks it is demeaning and asking him to stop. She eventually makes a Service Complaint and you are forced to concede that he has continued to use the term to her.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – RQMS - Answer

The RQMS calls every female member of staff “Sweet Cheeks”. Most of the women don’t mind as he is otherwise pleasant but LCpl Brown has asked him not to call her that, she has even written to him and the QM saying that she thinks it is demeaning and asking him to stop. She eventually makes a Service Complaint and you are forced to concede that he has continued to use the term to her.

Sexual Harassment can be apparently benign but if the victim is harassed on the basis of their gender that is sexual harassment and is not benign. You have an obligation to provide a working environment free from harassment so you must take action. Sanctioning guidance is in Annex M to Part 3.

Breach Service Test? Yes Category? Harassment



Service Test Exercise – Master Driver

The Divisional Master Driver loses his licence on a tot-up of penalties from an automated speed camera. He pleaded guilty at court.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – Master Driver - Answer

The Divisional Master Driver loses his licence on a tot-up of penalties from an automated speed camera. He pleaded guilty at court.

The normal range of sanctions following a civil conviction are contained in Annex L to Part 3, however in this case because this is a series of road traffic offences committed by the person responsible for road safety a more serious sanction may be considered.
[67.021]

Breach Service Test? Yes Category? Conviction



Service Test Exercise – Recruiting Sgt

The new recruiting Sergeant (a Royal Engineer) who wears a maroon beret and para wings goes down a storm with potential recruits with his tales of operational jumps and special ops. You become suspicious and do some checking, you find although he has done P Coy, he has never been part of a Para Sqn, or jumped operationally. When you challenge him his defence is that its just a bit of window dressing to get recruits interested.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – Recruiting Sgt - Answer

The new Recruiting Sergeant (a Royal Engineer) who wears a maroon beret and para wings goes down a storm with potential recruits with his tales of operational jumps and special ops. You become suspicious and do some checking, you find although he has done P Coy, he has never been part of a Para Sqn, or jumped operationally. When you challenge him his defence is that its just a bit of window dressing to get recruits interested.

The dishonesty is obvious but if the effect has been positive, has the Service Test been breached? Apart from a moral revulsion the adverse effect of disclosure that we were recruiting on a known untruth would be significant. That is a clear breach of the Service test.

Breach Service Test? Yes Category? Dishonesty



Service Test Exercise – Ops Capt

Your Ops Captain suddenly announces that he is engaged to be married to a LCpl from the HQ and Signal Sqn in the next door barracks.

Is it a breach? Look at 67.019 b. to d. and choose a category.



Service Test Exercise – Ops Capt - Answer

Your Ops Captain suddenly announces that he is engaged to be married to a LCpl from the HQ and Signal Sqn in the next door barracks.

Relationships across a rank divide only become misconduct if there is some chain of command link. Had the LCpl been in a position which could have been shown some special treatment by the officer then the position would be different and admin action may have been appropriate

Breach Service Test? No



AGAI Process – Decision Hot Spots

Initial Assessment.

Appoint an Assisting Officer.

Initial Interview.*

Suspension or Removal.*

Investigating the Facts.

Concluding the Investigation.

Apply the Service Test.

Category of Failing.

The Report.

Take External Advice.

Take External Advice.

Prepare the Report.

Disclose the Report.

Interview the Serviceman.

Forward the Report.

Take legal advice.

Interview by Deciding Officer.

Deciding a Case.

Sanction by Deciding Officer

Soldier Discharge.

Promulgation.

Review.



Originating Officer Interview

- Disclose the file (Less Legal advice)
- Copy of the AGAI
- Information
 - Representation
 - Consultation
 - Recommendation
 - Interview
 - Review
- “No Breach” decision



AGAI Process – Decision Hot Spots

Initial Assessment.

Appoint an Assisting Officer.

Initial Interview.

Suspension or Removal.

Investigating the Facts.

Concluding the Investigation.

Apply the Service Test.

Category of Failing.

The Report.

Take External Advice.

Take External Advice.

Prepare the Report.

Disclose the Report.

Interview the Serviceman.

Forward the Report.

Take legal advice.

Interview by Deciding Officer.*

Deciding a Case.*

Sanction by Deciding Officer.*

Soldier Discharge.

Promulgation.

Review.



Deciding Officer Interview

- Disclosure
- Representation
- At Least 24 hours' Notice
- Oral Hearings
- Legal Representation
- Assisting Officer



Decision and Sanction

- Thorough and fair investigation
- Allegation true - balance of probabilities

Service Test

- Sanction is appropriate, reasonable and necessary
 - Financial
 - Career and employability
 - Special Considerations



Sanction Exercise



Sanctioning Exercise - Cpl White

Pte Ali is a devout Muslim of Somali parentage. He takes time from work each day to carry out his ritual prayers. He also encourages two other Muslim soldiers in the squadron to do the same. Cpl White, the section Cpl, starts a regime of bullying calling Ali "the black trade union boss" and the Muslim soldiers the "Taliban patrol" and the "Black part timers". He also asks the Muslim soldiers personal questions about how they treat their wives. Despite being told to stop by the Pl Sgt (who did not do more about it) White persisted. White also actively encourages Pte Green, a new young soldier, to call the Muslims names and orders him to march the Muslims to the prayer room each day giving orders such as "Black Squad Quick March". Green thinks this is funny and does as he is told.

White is 38 ½ years old, married with 3 children. A satisfactory if rather limited soldier. He did however win an MC 12 years ago for an act of extraordinary courage, although he has been living off it ever since. His representation does not deny any of the facts but claims it was all just a bit of fun and blames Ali's foreign culture for not recognising a joke



Sanctioning Exercise - Cpl White Answer

Entry Point Reduction in Rank [Annex M to Part 3]

Aggravation

More than one misconduct

Senior rank influencing others

Previous Warning

Mitigation (No)

Sanction Dismissal



Sanctioning Exercise - LCpl Blades

Blades was convicted in Court for Grievous Bodily Harm. He was in a pub fight when he punched a man once who had been taunting Blades friend. The man hit his head on the corner of a table and suffered a fractured skull. The court did not accept a plea of self defence as Blades and his friend could have backed off and left the pub. The magistrate awarded Blades a 3 month suspended sentence and expressed a hope that the incident would not end his career.

Blades is an enthusiastic young LCpl who always gives 100%. Brave, loyal, a bit of a lad but not given to brawling. His representation expresses regret and surprise that one punch had had such an effect.



Sanctioning Exercise - LCpl Blades Answer

Entry Point

Dismissal [Table 2 Annex L to Part 3]

Aggravation (No)

Mitigation

Wholly out of character [Table 1 Annex L to Part 3]

A junior rank or inexperienced soldier

Early Frank Admission

Sanction Reduction in Rank

(CO will have to discuss retention with his HA)



Sanctioning Exercise - Lt Henry

Lt Henry is a Pl Comd in an ATR. His Pl Sgt came across him in a nightclub with one of his female recruits and reported the fact. During the subsequent investigation the girl states that he had made it plain to her that if she did not go out with him she would fail the course. It also comes to light that he had done the same thing with another girl in his previous platoon. Although he had slept with the first of the girls neither had been willing to give evidence to support a prosecution for a criminal offence. It had been impossible to prove that Henry had ever had an explicit order not to date the trainees. Legal advice was to take administrative action. Lt Henry is 30 years old. He is a good enough Pl Comd but never appears to show much enthusiasm for his job. In his representation he regrets his actions but pleads that the girls rather throw themselves at him.

Q 13 to 16

DPS(A)



Sanctioning Exercise - Lt Henry Answer

Entry Point

Forfeiture [Annex E to Part 3]

Aggravation

All of them

Mitigation (No)

Sanction

Dismissal



Removal from Appointment

- Suspend
 - AGAI 67 Part 5 Annex A
 - Para 6.015 QRs 1975
- Non Removal Moves



Grounds for Removal from Appointment

- Unsuitability
- Inefficiency
- Misconduct
- Breach of the Service Test

“Have the actions or behaviour of the individual adversely impacted *or are they likely* to impact on the efficiency or operational effectiveness of the Service”



Types of Removal from Appointment

- Non-blameworthy
 - Premature removal from appointment under circumstances that do not involve misconduct or inefficiency
- Without Prejudice
 - Unusual to remove prior to conclusion of CM or MAA
 - May be required if investigation is likely to be protracted or a key appointment for which a replacement is required
 - Removal may be required irrespective of finding of MAA, eg intrusive press interest
- Blameworthy
 - At the conclusion of CM process or MAA



Removal from Appointment

- Suspend?
- Clear the removal with MS and C of C
- Inform Serviceman at Interview that you intend to apply for his removal
- Appoint AO
- Offer right to representation within 10 days
- At second interview inform serviceman that you intend to go ahead
- No removal without Admin Action
- Not NRPS Officers



Questions?



The Service Test

"Have the actions or behaviour of an individual adversely impacted or are they likely to impact on the efficiency or operational effectiveness of the Army?"

*Note that the Service Test encompasses **the potential** for adverse impact and does not necessarily require proof of actual impact*



The Service Test - Factors to Consider

- Have the individual's action(s) adversely affected:
 - Standards, effectiveness or reputation
 - Confidence in the individual, his/her integrity or suitability
 - Command relationships
 - Personal relationships of others
 - Morale, discipline, trust or unit cohesion
 - The Army as a corporate body



Examples of Misconduct

- Civil or military conviction
- Social misconduct or inappropriate relationships
- Religious, racial or sexual harassment or discrimination
- Substance misuse
- Contact with the Media/Extreme Views/ Social Networking Sites
- Bullying
- Prejudice as a result of Sexual Orientation
- Irresponsible Indebtedness



The Commander's Estimate

- The options:
 - Disciplinary route
 - Administrative route
 - No third way!
- Factors:
 - The nature of the offence
 - The individual(s)
 - The maintenance of good order and military discipline
 - Service/public interest
 - Sentencing powers