

# Discipline and General Legal Issues

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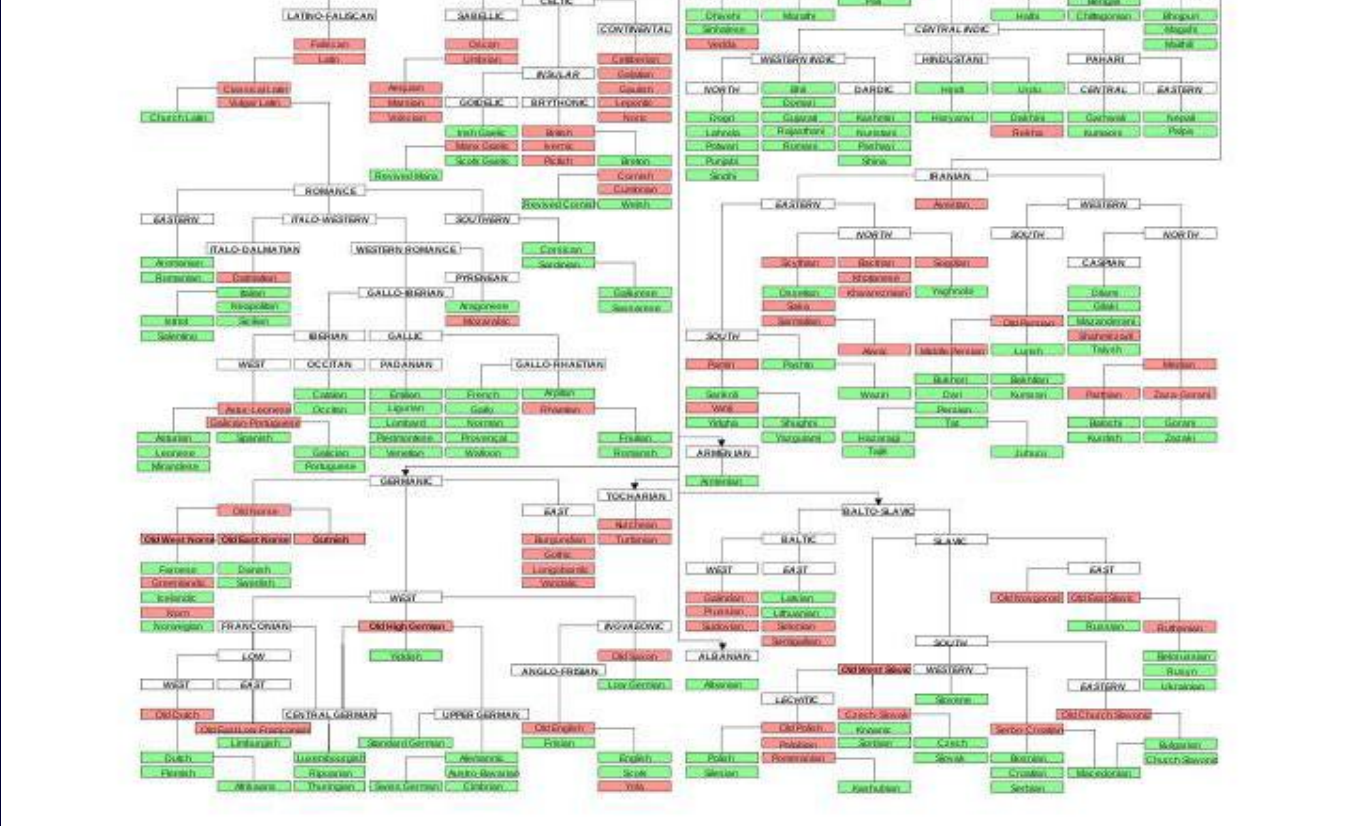
*“How To Deal with People Stuff  
when People Stuff Goes Wrong”*

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# The Naval Disciplinary Process - Overview



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# Relax!

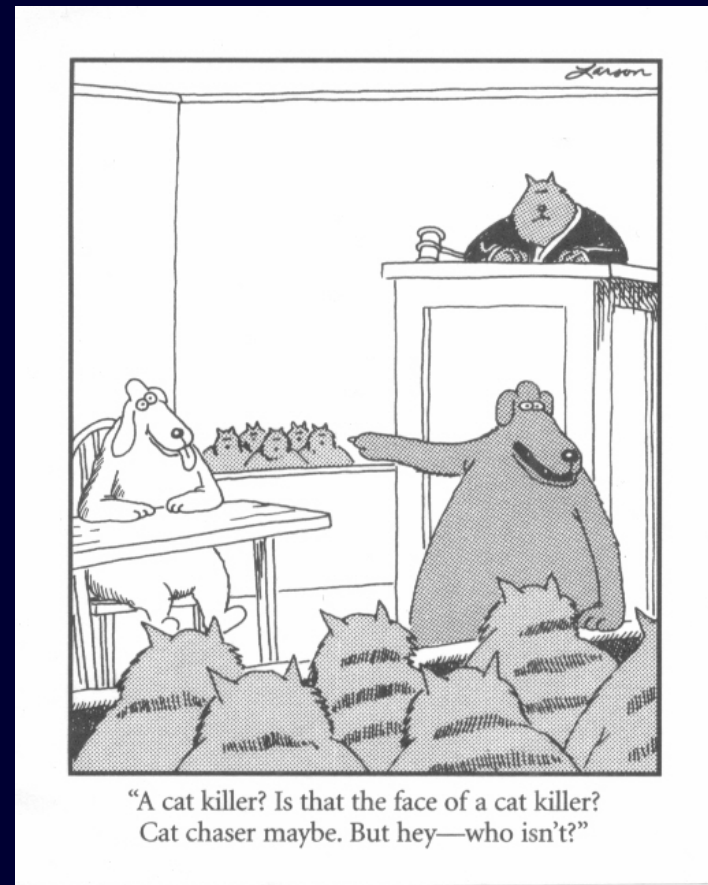
- This is not going to be a brief about PROCESS. Well, not much.
- That is because, with some exceptions, how you decide to deal with something is within your discretion as CO (exceptions arise when a crime or injury is very serious).
- BUT, while you have a lot of discretion in how to respond to N1 issues, the point to remember is this - once you have decided how you will deal with something, the PROCESS associated with the chosen method is non-discretionary. So think ahead about how you want to deal with it.
- Take advice.
- As COs and XO's, you have people who will advise you on both PROCESS and the correct application of LAW and POLICY.

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# Because This is Not Just About Discipline!

- **Its about:** Thinking holistically about why People do what they do - and consider how best to deal with it.
- **It's about:** Leadership
- **It's about:** Knowing your people
- **It's about:** Taking responsibility for them
- **It's about:** Recognising where you have some **discretion** to act
- **It's about:** Recognising where you don't



“A cat killer? Is that the face of a cat killer?  
Cat chaser maybe. But hey—who isn't?”

# The next 45 minutes

- Aim of the Brief
- Sources of Legal Advice
- Understanding the relationship between law and policy
- Typical Issues for those in Command
  - Dealing with aberrant behaviour
  - Handling Service Complaints
  - Investigations into Incidents

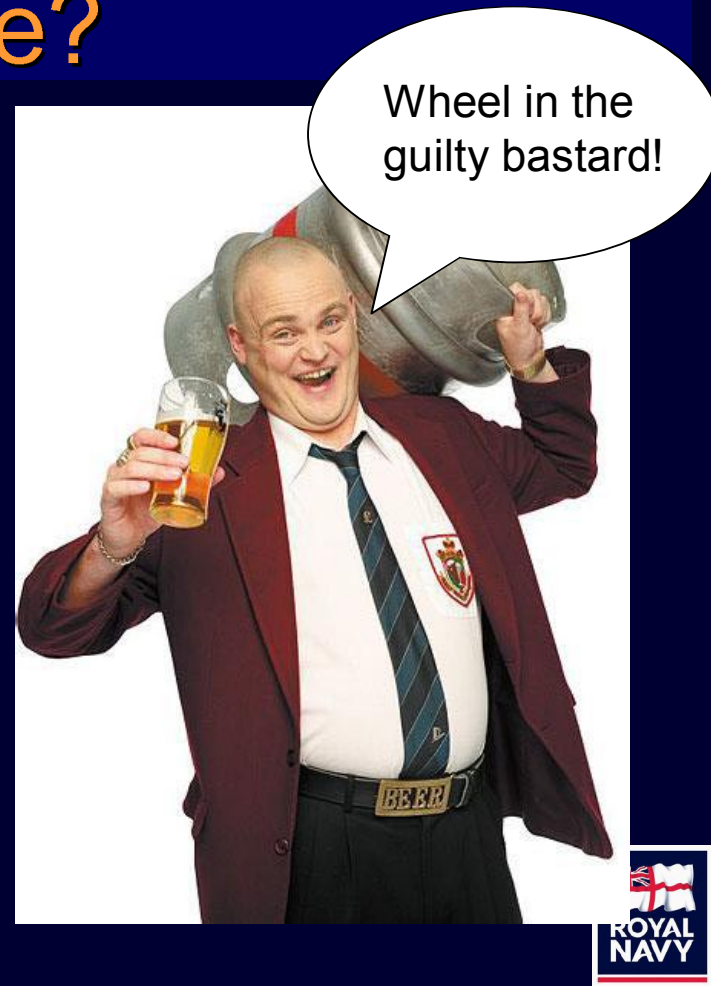
# AIM

- This brief is intended to achieve 3 things:
  - To give you the ability to **recognise** when legal issues and principles arise
  - To instil within you the instinctive desire to **consult** with a lawyer when that happens
  - To remind you to **be confident** about the system. If in doubt, ask!



# From Where Do I Get Legal Advice?

- Beware the opinionated amateur (caution: may include your 1RO)
- Law and policy can change quickly.
- Regional Legal Offices N, W and E in all 3 MOB areas (and TAS, tied to MOB for legal advice)
- Duty lawyer via DFC
- Naval Legal Services





# What We Can Do for You

- **Advice** which is pragmatic and which helps you to achieve the Command Aim
- Backed by lots of **experience** – seagoing, operational planning, all arms of the Service, courts and tribunals, etc
- **Articulation of Risk**
  - “what could happen if you don’t do this. What could happen if you do that” etc

RLAs – mandated and provide an audit trail to protect you

BUT - if you want more detailed advice, ask for it

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# Developing an Awareness of legal issues – a simple guide

- Law = “must do” on pain of legal sanction – enshrined in Laws passed by Parliament
- Policy = “what we want you to do” on pain of administrative sanction – reflected in BRs
- Policy and law are 2 separate things, but policy is often dictated by law.

So, if you want to discharge a Reservist, BR 64 is not the authority to do so. The authority to do so can be found in the Reserve Forces Act 1996. All the BR does is outline the policy to be followed in doing so.

- The problem is this: Policy is frequently mis-applied by the Jobsworth because the legal basis for it is not properly understood.



## Olympics Security Operations

Requirement is set by POLICY

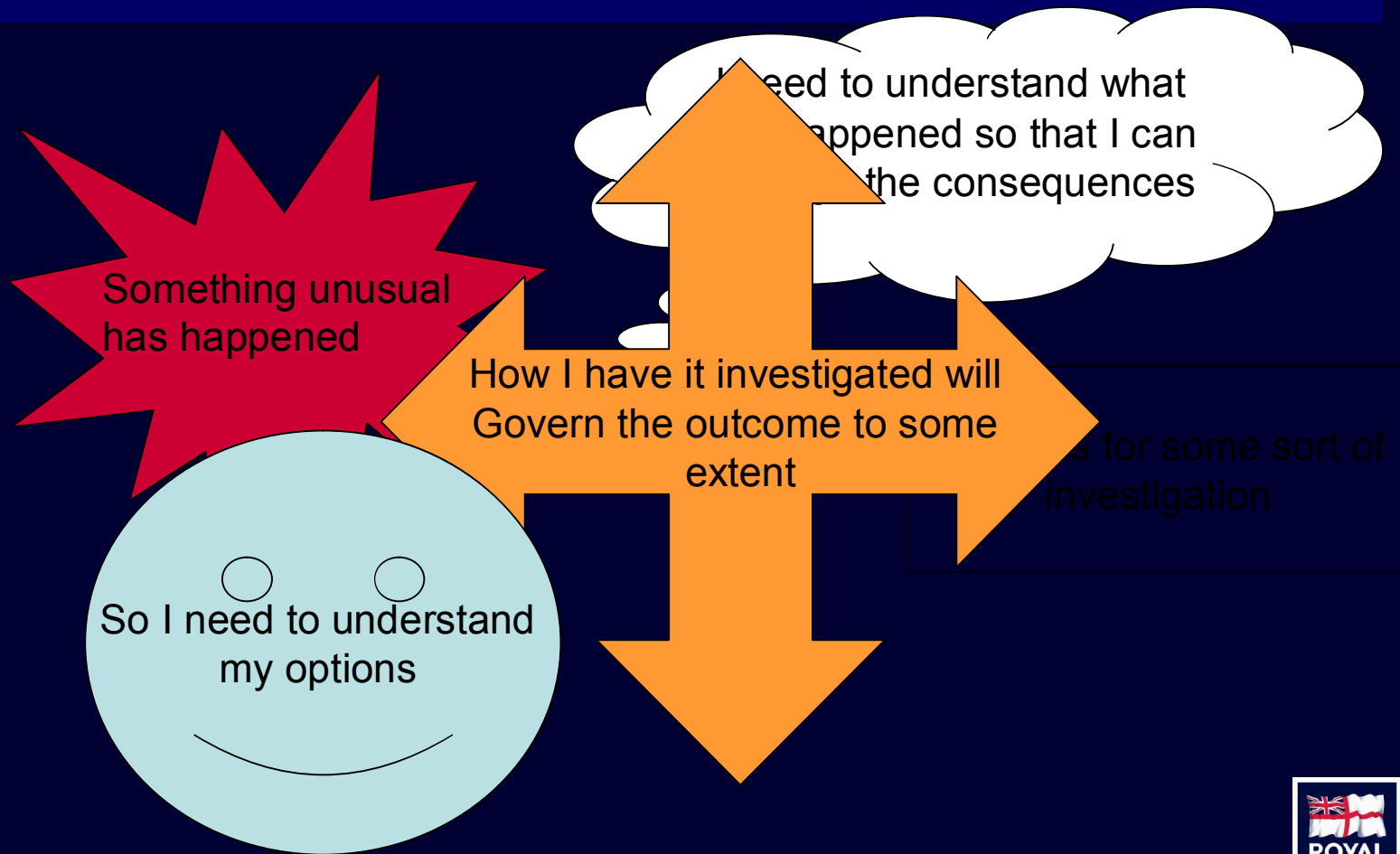
Extent of your ability to act is set by the capabilities at your disposal

Your actual response to the threat is governed by LAW and POLICY

# What are the issues you may come across? In terms of frequency...

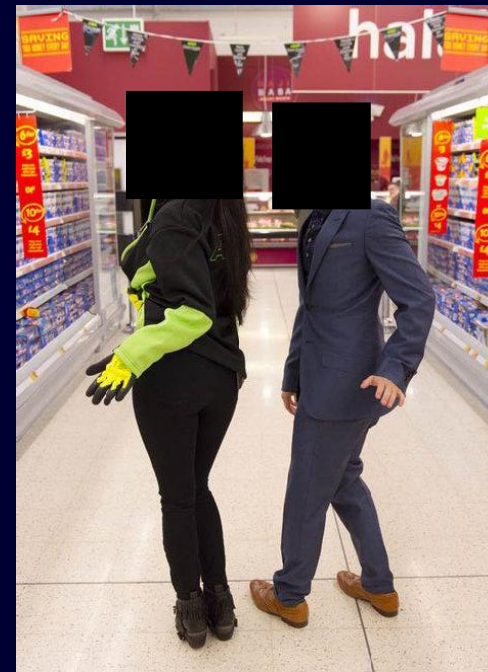
- Administrative or criminal investigations which aim to establish facts pertaining to **aberrant** behaviour by individuals or groups
- The investigation and correct handling of **complaints**
- Unit Investigations into **loss** of materiel, injuries and (even) some circumstances surrounding a death.
- Some combination of the above

# An Instinctive Approach



# Understanding Discipline

- What if we'd all gone to work for **ASDA** instead?
- Discipline (staff handbook)
  - Working hours
  - Uniform
  - How to complain
- Criminal Law
- Jurisdiction across international boundaries





# Now - compare Service Personnel

- Policy affecting terms and conditions of Service
  - BRs, DINs etc
- Discipline
  - Partly policy (eg MAA)
  - Partly enshrined in law (Armed Forces Act)
- Relationship with Criminal Law
- Jurisdiction across international boundaries



# The International Angle

- Jurisdictional issues abroad when ashore
- Different standards of justice and incarceration
- Priority is to get them back onboard
- **SEEK LEGAL ADVICE**
- Get consular staff and ship's agent involved early on.



HMS ILLUSTRIOUS, Turkey 2009  
Courtesy: Daily Mail



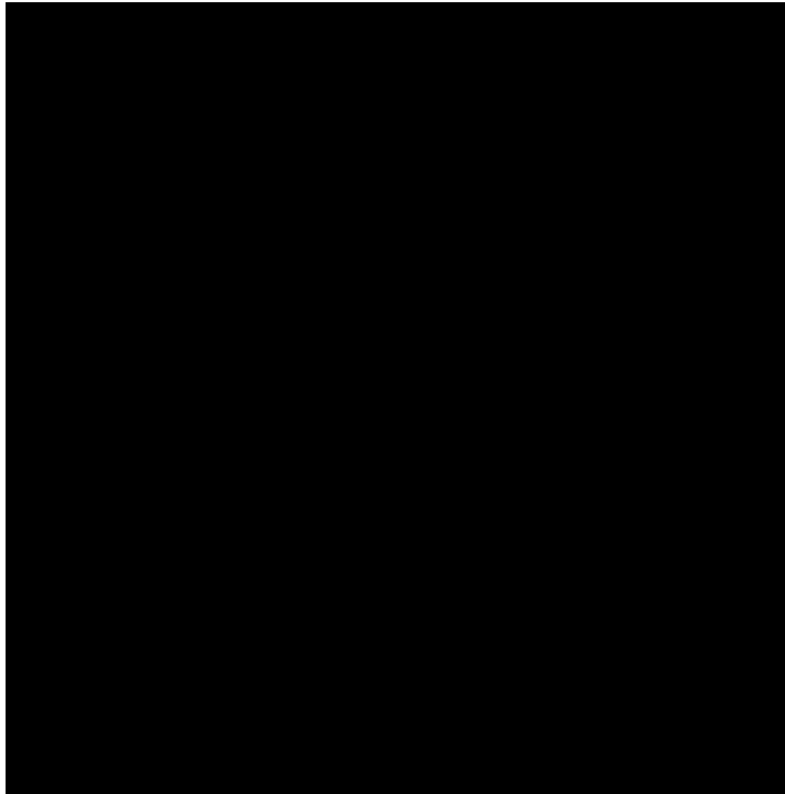


# Discipline Profile - RN

- Most commonly committed offences?
- Most frequently dealt with Where?
- Most frequently awarded Punishment?
- “Different ships. Different routines.”
  - Reflects environmental and cultural differences
  - Reflects the tone set by the Command
- What is the factor that links virtually all offending in the RN?

# Discipline - Trends

## Summary Hearing Offen

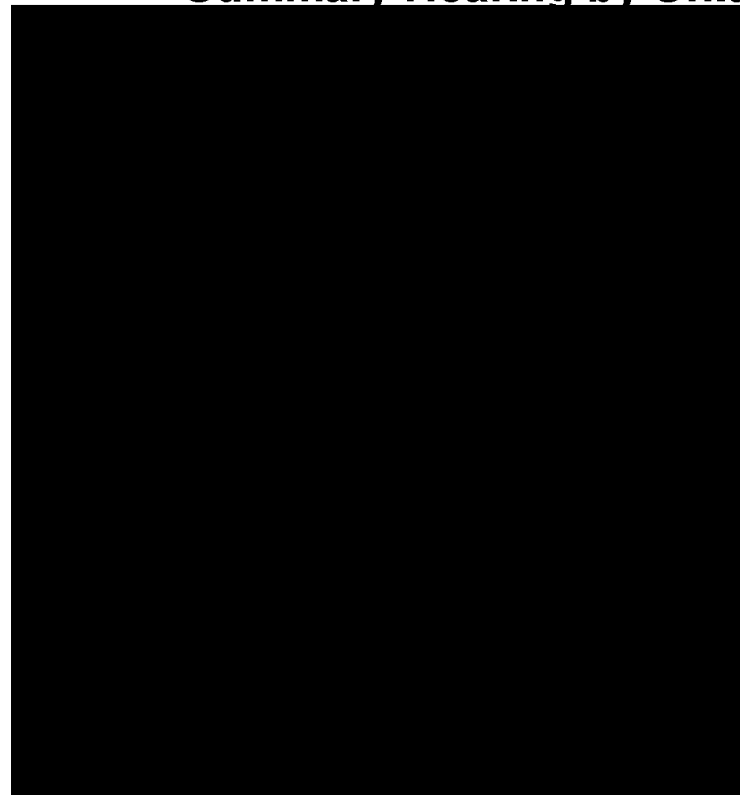


- Absence without leave
- Misconduct Towards a Superior Officer
- Disobedience to Lawful Commands
- Contravention of standing orders
- Failing to attend, leave, perform or neglect of a duty
- Making a false record
- Conduct Prejudicial to Good Order



# Current Trends

## Summary Hearing by Units

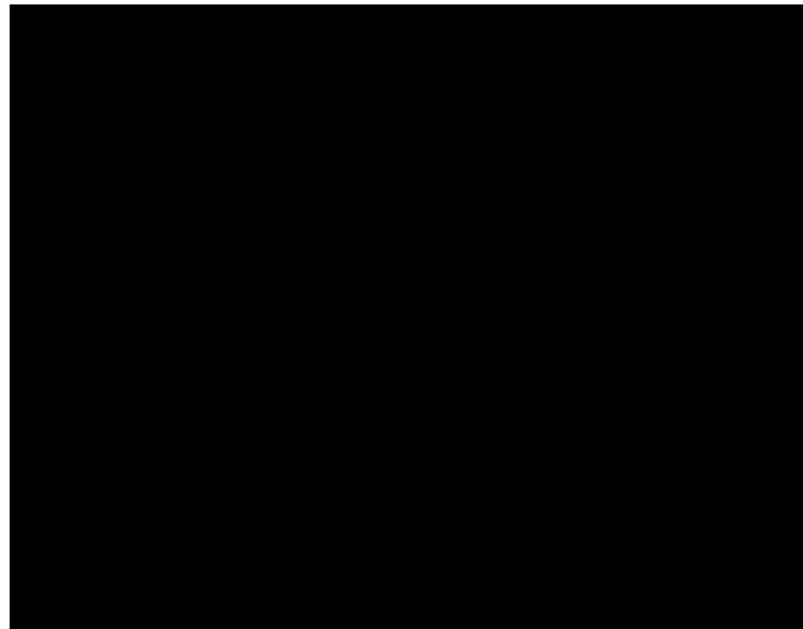


- MCMV's
- SM
- GS
- Shore
- Army
- RM
- RFA



# Current Trends

## Summary Hearing Punishments



- Reduction in Rank
- SCO
- Fine
- Detention
- SSPO
- Suspended Detention
- ROP/SOL
- Admonition
- Not Proved



# Understanding Investigations

- RN Police will investigate where they have jurisdiction (time, person, place, offence)
- A (RN) Police investigation enables a **criminal**, disciplinary or **administrative** disposal
- But it can be time consuming and elaborate

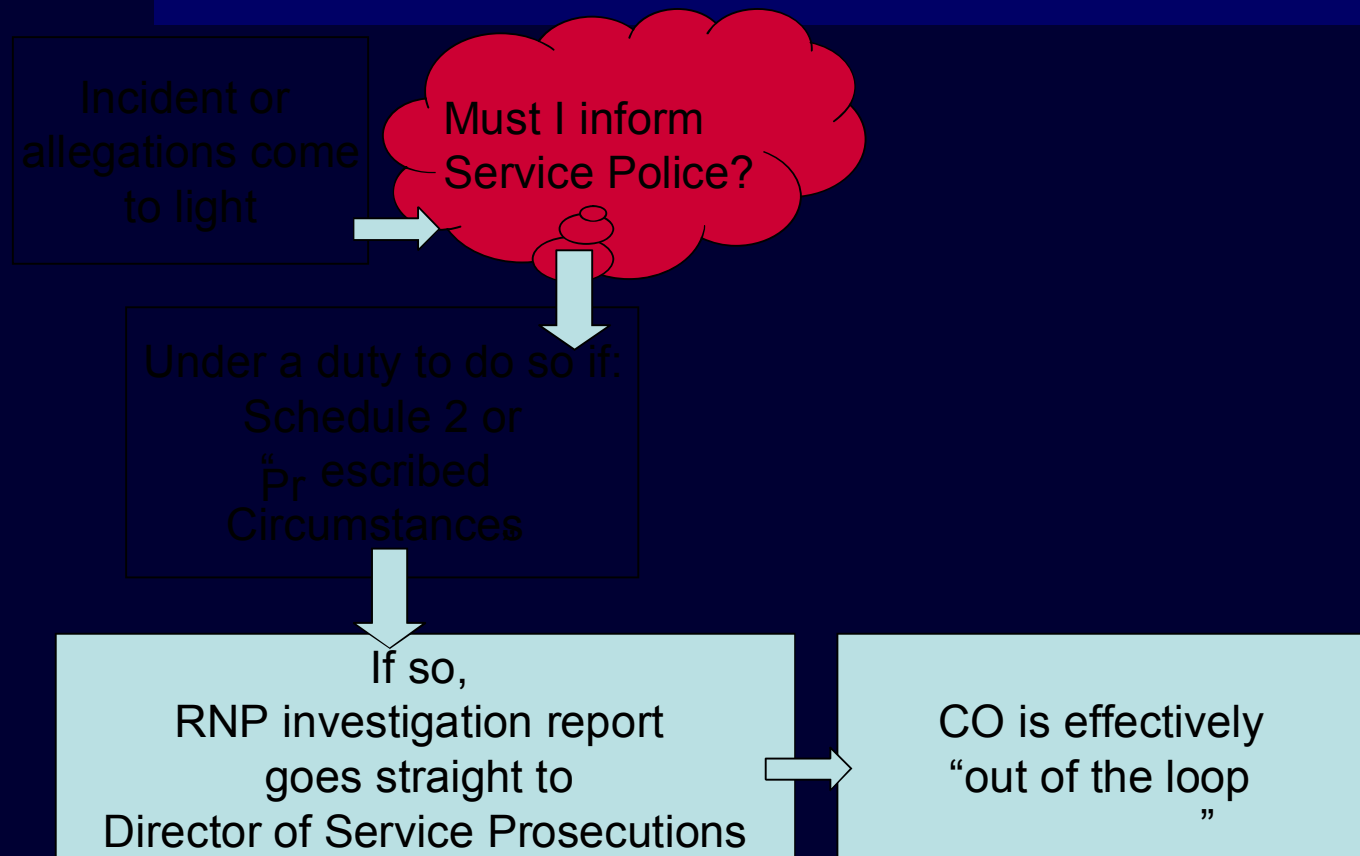


# OK. So what are the options?

- Where it is considered appropriate, it may make more sense to conduct an administrative investigation. **SEEK LEGAL ADVICE**
  - Where behaviour or culpability not sufficient to attract a criminal or high-end disciplinary punishment
  - Where the facts are not complex
  - Where CO is not under a statutory duty (ss 113-4 Armed Forces Act 2006) to inform Service Police of an alleged offence:
    - › Schedule 2 offences (serious)
    - › Prescribed circumstances (death in custody, bullying, abuse of position)
  - But CO's responsibility can always be satisfied by ensuring that Service Police are aware
- An administrative investigation can only support administrative disposal
  - Sanctions are not criminal
  - Lower burden of proof required
  - Sanctions are largely within the discretion of the Service, but usually applied in accordance with an established policy e.g. Minor Admin Action

# A flow chart to “point of charge”

See MSL Ch 6 Annex A for detail (JSP 830)



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If under no obligation,  
you can decide  
whether or not to tell RNP.  
I recommend you do



Is it serious?  
Is it complicated?  
Do I want to keep my  
options open?  
Do I need external assistance?

No

Administrative  
investigation

Satisfied that  
the facts are  
established  
on a balance  
of probabilities?

Yes

No

NFA

Yes

RNP investigate  
May Produce Police report  
May Recommend charges

Admin sanction



RNP investigate  
Produce Police report  
Recommend charges

Is a charge likely?  
Or should I decide NFA?

If charge likely

Summary Hearing  
Or  
Court Martial?

Are my powers of  
Punishment sufficient?  
Is it complex?  
Is it serious?  
Have I power to compensate  
the victim?

CM

May be heard summarily

Refer to DSP



May be heard summarily

(Still)  
3 options  
for CO

NFA

Admin  
sanction  
only

Charge

Provided that you are satisfied of 2 things:

1. Realistic prospect of conviction
2. It's in the Service interest

Follow Summary Hearing Process  
iaw BR3 Chapter 20 and  
Manual of Service Law Chs 11-13

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## Some current issues: Minor Admin Action

- Success and wide use of Minor Admin Action
  - JSP 833
  - BR 3 Ch 20 – use MAA sensibly, don't allow it to be used to duck responsibility for aggravated offences
  - Used properly, it's very effective
  - Empowers LHs and above
  - Note the need to review and provide a route of appeal
  - Repeated use of MAA not always helpful -

# Consequential Naval Penalties For Cautions

- CNPs are a creature of policy, not law
- Advice from MoJ is that CNPs are not to be awarded in respect of Cautions
- Relevant to civil police cautions primarily for possession of Class C and B drugs
  - Also for serious assault (!)
  - Sexual grooming (!!)
  - Domestic Burglary (!!!)
- Look for other bases for admin action or do nothing for now.
- Awaiting further advice from the Centre.

# Management of Sex Offenders

- Unlikely to have a convicted sex offender borne on the books
- Possible you will have a suspected sex offender at some point
- Innocent until proved guilty
- Use NCHQ management expertise – SCART
- Need for discretion to protect life and limb
- Effect of SO Prevention Orders on employment
- Welfare needs
- BR 3 Ch 20

# Alcohol Testing

- Not random
- Reasonable Cause needed
- Safety critical duties
  - Some are defined
    - Being a CO in relation to his duties as CO (upper limit 35mg)
    - Pilot (lower limit 9 mg)
    - Upper Deck Sentry (9 mg)
  - Some can be specified at CO's discretion
    - Ammunition ship (upper limit 35 mg)
- Testing ordered by CO BUT....
- Conducted by SP
- Limited use of MAA to deal with (not for lower limit offences)

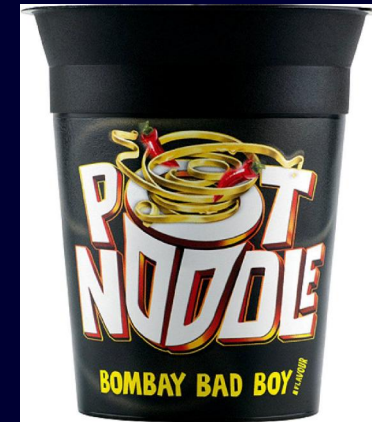


# Relationship with the Offence of Drunkenness

- S20 AFA 06 “drunkenness” remains
- Likely to stay as main charge for alcohol – if there is evidence to troop for drunkenness, then do it!
- Breath tests for RN only preliminary
- Evidential testing will be blood or urine
- Some delay while awaiting results is inevitable

# Getting Discipline Right

- If you want to prevent ill-discipline
  - Set the tone from the top. Demand high standards from your officers.
  - Support your LHs and SRs
  - Regulate Drinking
  - Take corrective measures which impact on **Leave**, rather than on **Pockets**.
  - Consider using disciplinary and administrative solutions together.
    - Follow and record the **PROCESS**
    - Be receptive to **LEGAL ADVICE**



# After Action

- Don't forget, the case isn't closed once Jack's been weighed off.
- What about the victim? Victim's charter = tell them what has happened, what the outcome of the hearing was.
- Make sure you're confident that the punishment has been actioned e.g. has the fine gone through on JPA? Is Jack mustering for punishment as he should be?

## So. Key points.

- Discipline is a tool. It governs and influences behaviours.
- Discipline is one of many tools at your disposal.
- Resort to discipline carries **Command** responsibilities....
- ....but also bestows safeguards for the individual and an audit trail for the Command. Provided it is done properly.

# One Stop Shop

- BR 3 Chapter 20
- Outlines the totality of the measures at your disposal
- Well-written
- Summary of numerous other publications
- So read it.

# Investigations into Loss

- Loss of life, limb, aircraft, ammo, equipment, the hazarding of vessels
- Administrative investigations
- Limited investigative expertise?
- But very clear procedures



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# Hierarchy of “Loss” Investigations

- Unit investigation (or “Technical Investigation” if confined to plant and propulsion)
  - Usually called by CO
  - Can be directed by HQ
  - BR 172
- Service inquiry (formerly “Board of inquiry”)
  - Convened by Chain of Command
  - Statutory Basis
  - JSP 832





# Case Study – USS Bennington 1953



# Deck Landing



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# Some considerations

- Injuries/death?
- Evidence?
- Gross negligence?
- Adequacy of reactions?
- Protecting the rights of individuals
- Lessons Identified?
- Criminal, disciplinary or administrative action: or all 3?
  - In respect of individuals
  - In respect of recommendations to prevent a recurrence

# Getting it Right

- Seek **Legal Advice** early on
- Consider how best to **keep your options open** as things unfold
  - Don't make your mind up until you've seen the evidence!
- Inculcate a culture of getting to the truth in order to **improve** things
  - Let others have their say
- Discourage the blame game
- Don't engage in a "cover up" culture.

## What My Lawyers Tell Me about Ship's Investigations

- Massive variety in quality
- Best when CO takes a personal interest
- Consider composition of the team carefully
- Service Inquiries mandatory for all deaths in service – but can be dispensed with – if Ship's Investigation gets it right
- Expect these to be published under FoI and/or used to determine MOD Liability when sued by the injured or by Next of Kin of the deceased



# Most common causes of complaints

- **Maladministration** (JPA errors affecting entitlements and promotion)
- **Frustrated expectations** (TaCoS, assignments)
- **Being treated badly** (perception is reality)



## Bottom Line

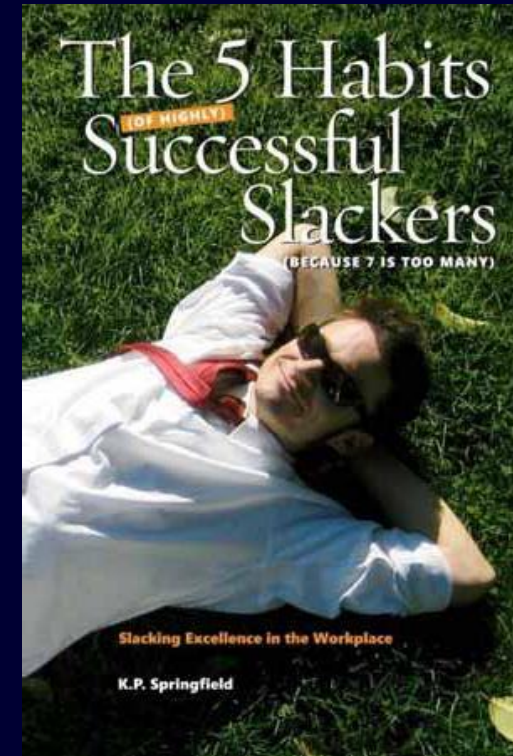
- Complaints can very quickly suck up Unit capacity
- Chain of Command should have vested interest in OC and in dealing fairly and expeditiously with complaints
- Informal resolution where possible (audit trail!)
- Worst thing you can do is ignore it

# How Can You Solve their Problem?

- Initial response always sets the tone for what follows
  - Investigate quickly
  - Seek external help if necessary (e.g. harassment issues)
- Lowest level commensurate with powers to resolve
  - Classic schoolboy error is to take on the complaint when you don't have the power to grant the redress sought, with *the express intention* of rejecting it.
- Failure to seek legal advice always compounds problems. So **SEEK LEGAL ADVICE**
- **Follow the Form – designed for the Army**

# So. Key Points

- Complainants are not to be regarded as whining slackers
- Take the complainant seriously
- Don't hide things from the complainant (or the respondent)
- Seek to resolve informally where possible (positions can become entrenched very quickly if it becomes formal)
- Communicate with everyone involved, frequently
- Be an honest broker
- Read the guidance
  - JSP 831 – Service Complaints
  - JSP 763 – Equality and Diversity
- **SEEK LEGAL ADVICE**
- Pay attention to that advice



# Questions

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