

Chapter 27

The Summary Appeal Court

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Chapter 27

The Summary Appeal Court

Part 1 - Introduction

Audience

1. This Chapter provides guidance to all personnel who are involved professionally in processing appeals to the Summary Appeal Court (SAC). They include: the commanding officer (CO); the Director of Service Prosecutions (DSP) as the respondent to the appeal¹; Reviewing Officers (RO); unit administrative staff; and the Military Court Service (MCS). The appellant's legal representative and assisting officer may also derive benefit from its content². Comprehensive procedural guidance for units is contained in the Manual of Service Law (MSL), [Chapter 15](#) (Summary hearing review and appeal), Part 2.

Organisation of the chapter

2. The chapter outlines the constitution and fundamental features of the SAC and the procedures to be followed before, during and after appeals from summary and activation hearings in accordance with Part 6 of the Armed Forces Act 2006 (the Act) and the Armed Forces (Summary Appeal Court) Rules 2009. The earlier parts deal with general matters such as the membership of, and the constitution of the court, uncontested appeals and witness notification and summons. This is followed by the preliminary matters to the appeal hearing and then guidance is provided on the order of procedure at the appeal itself appropriately sub-divided to cover both types of appeal: those against punishment and those against finding. The latter parts cover miscellaneous matters including evidence and service of documents.

Summary Appeal Court – an overview

3. The purpose of the SAC is to hear appeals from summary hearings (including appeals against the activation of a suspended sentence of detention by a CO) where personnel have a universal right of appeal. Appeals may be made against both the finding and punishment, which may be contested or uncontested by the respondent³, or against the punishment only. The SAC is a standing court and may sit anywhere, whether within or outside the United Kingdom⁴, and in practice will usually sit in one of the Service courts centres. It works in conjunction with the Service prosecuting authority (SPA) headed by the DSP and the court administration officer (CAO). The key features of the court include: the universal right of appeal; the possibility of the RO referring a finding or punishment to the SAC on behalf of an offender (this requires the Judge Advocate General to give leave to refer the case, after which the appeal is treated as if it were brought by the offender), see [Chapter 15](#) (Summary hearing review and appeal); a complete re-hearing for an appeal against both finding and/or punishment and the restriction of the court's power to pass sentence, in the event the finding is confirmed, that is no more severe than the punishment awarded by the officer who heard the charge.

¹ Section 141(4) of the Act.

² [Chapter 9](#) (Summary hearing and activation of suspended sentence of Service detention) provides further detailed guidance.

³ See [Chapter 15](#) (Summary hearing review and appeal).

⁴ Section 140(2) of the Act.

The judge advocate

4. A judge advocate presides over the court and ensures that the proceedings are conducted in accordance with the law of England and Wales. Unlike in a CM trial the judge advocate participates in determining the facts and hence whether the finding should be upheld or quashed.

The court administration officer (CAO)

5. The CAO makes the administration arrangements for the SAC and exercises his functions (other than that of specifying the lay members for any proceedings) subject to the direction of the judge advocate. He may delegate any of his functions to a member of the MCS⁵.

Constitution of the SAC

6. The court consists⁶ of a judge advocate and two lay members except for preliminary and ancillary proceedings where there are no lay members⁷. The lay members may comprise 2 officers or one officer and one substantive WO. Officers must have held a commission for at least 3 years and be of the minimum rank of sub lieutenant, military or marine lieutenant or flying officer or have been a substantive WO immediately before receiving a commission. The senior member is to be of minimum rank of lieutenant commander, major or squadron leader. No member of the court is to be of junior rank/rate or junior in the same rank/rate to the appellant. Only one WO may sit as a member of a particular SAC hearing, and then only if he is of equivalent rank/rate or of senior rank/rate to the appellant. Where the court is to hear an appeal from co-appellants one of whom is an officer and the other is of the rank of WO or below, each member must be at least of equivalent rank to the most senior co-appellant. The ranks/rates referred to in this paragraph are substantive.

Officers and warrant officers not qualified or ineligible for membership of the court

7. Sections 143 and 144 of the Act make provision for the professional and particular circumstances when officers and warrant officers are either not qualified or ineligible for membership. In addition a person is ineligible for membership of the court if he has served on the same unit as the appellant since the commission of the offence that is subject to the appeal, or if he was a member of the SAC or of the CM for any previous proceedings involving the appellant⁸.

Specifying members of the court and notification of time and place for hearing of the appeal

8. The CAO is responsible for making arrangements for SAC proceedings, including preliminary proceedings if necessary, as soon as practicable after the receipt of advance information from the DSP⁹ (See [Annex A](#) Notice of application for a preliminary hearing T-SL-SAC03). For this purpose the CAO will notify relevant parties of the time and place of the

⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 21.

⁶ Section 142 of the Act.

⁷ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 34.

⁸ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 36.

⁹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rules 42 and 43.

hearing, specify court members and consult the Judge Advocate General who will specify a judge advocate for the proceedings.

Interpretation and Translation

8A. Where an appellant is due to attend a hearing, the court administration officer, unless satisfied that the appellant does not need interpretation, shall appoint an interpreter to act at the hearing. This and the detailed rules relating to interpretation, translation, and communication through an intermediary are contained in rule 29 of the Armed Forces (Summary Appeal Court) Rules 2009.

8B. Rule 21A of the Armed Forces (Summary Appeal Court) Rules 2009 requires the Court Administration Officer to appoint an interpreter for a complainant who is due to attend a hearing as a witness and who needs interpretation. This rule also gives the Court Administration Officer power to appoint an interpreter for any other witness, and gives the court a specific power to require a written translation of any document for a witness who needs interpretation.

Part 2 - Uncontested appeals

DSP to give notice of decision to contest appeal

9. Where the DSP is notified of an appeal¹⁰ against finding he must give written notice to the CAO, within 28 days, indicating whether or not he intends to contest the appeal¹¹. The DSP may apply to the Judge Advocate General to extend this period: an extension may be granted if it is considered in the interests of justice to do so¹².

10. Having given notice to contest an appeal in accordance with paragraph 9 above, the DSP may give notice to the CAO that he no longer wishes to contest the appeal. Where the DSP does not provide notice within 28 days to contest the appeal, the failure will be deemed notice that he does not intend to contest the appeal¹³.

Powers of the court in uncontested appeals

11. Where the DSP has given notice that he does not intend to contest an appeal against finding, the court must quash the finding against which the appeal was brought. The power of the court to quash such a finding¹⁴ may be exercised by the Judge Advocate General without a hearing¹⁵. Any decision of the Judge Advocate General in the exercise of these powers must be recorded in writing and signed by him. The CAO is responsible for notifying such decision to the appellant, the appellant's CO, the DSP and the reviewing authority if the appeal was referred by the reviewing authority¹⁶.

¹⁰ Armed Forces (Summary Appeal Court) Rules 2009/1211, rules 15, 16 or 17.

¹¹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 19(1).

¹² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 19(4).

¹³ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 19(3).

¹⁴ Under Section 147(1)(a) of the Act.

¹⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 20(2)(a).

¹⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 20(3)(d).

Part 3 - Witnesses and summonses

Notification of witnesses

12. Where any person is required to give evidence in any proceedings before the court¹⁷, the CAO is responsible for notifying that person of the date, time and place at which he is required to attend¹⁸.

13. If the appellant requests the CAO to notify a witness on his behalf, the appellant is to provide the CAO with adequate information in sufficient time to enable notification to be made. If the CAO is unable to notify a witness as requested, or if, in his opinion, it is not reasonable to notify a witness, he is to inform in writing the judge advocate and the appellant.

Privileges of witnesses and others

14. A witness before the SAC or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court in England and Wales¹⁹.

Issue of witness summons on application to a judge advocate

15. A party who wishes the judge advocate to issue a witness summons must apply as soon as practicable after becoming aware of the grounds for doing so²⁰ using the form of application for a summons to witness (T-SL-CM04) which can be found at [Chapter 29](#) (Court Martial proceedings), alternatively the application may be made orally²¹. The party applying must serve the application²² on the CAO in the manner directed by the judge advocate. Where the application is made in writing it must contain the same declaration of truth as a witness statement. Where a person is served with a witness summons, he is entitled to be reimbursed the expenses incurred in respect of his attendance²³. Application to withdraw a witness summons may be made under Rule 53 and oral applications in respect of the attendance of witnesses under Rule 54 of the Armed Forces (Summary Appeal Court) Rules 2009.

Warrant to arrest

16. If the judge advocate is satisfied by evidence on oath that a witness summons would not procure a person's attendance, he may issue a warrant to arrest that person and bring him before the court. In addition a judge advocate may issue a warrant to arrest a witness who has failed to attend SAC proceedings²⁴. Where a person has been arrested under a warrant to arrest in these circumstances he is to be transferred to Service custody and brought before a judge advocate for a review of custody as soon as is practicable. If he has not been brought before a judge advocate within 48 hours of his arrest he must be released²⁵. If the person is retained in custody a periodic review will take place before a judge advocate²⁶.

¹⁷ See [Chapter 29](#) (Court Martial proceedings) Annexes G and H.

¹⁸ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 49(1).

¹⁹ Section 150 of the Act.

²⁰ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 50(4).

²¹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule s 50, 51 and 54.

²² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 50(8).,Rule 50(5) provides guidance on the content of the application.

²³ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 57.

²⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 55.

²⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 55(6)(b).

²⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 56.

Part 4 - Preliminary proceedings

Listing of proceedings

17. When the CAO has received advance information²⁷ he must forward it to the judge advocate general and request him to determine whether preliminary proceedings are necessary and to specify a judge advocate for the appeal proceedings (See [Annex A](#) Notice of application for a preliminary hearing T-SL-SAC03). The CAO must then appoint a time and place for the preliminary or appeal proceedings as required²⁸.

Listing of further preliminary proceedings

18. At the direction of a judge advocate or on receipt of an application from the DSP or appellant, the CAO is to appoint the date, time and place at which the preliminary hearing will take place²⁹ and issue an appropriate notice in writing to those concerned. (See [Annex A](#) Notice of application for a preliminary hearing T-SL-SAC03). During preliminary proceedings the judge advocate may give directions as appear to him to be necessary to secure the proper and efficient management of the appeal³⁰. The judge advocate may make an order or ruling on any question as to the admissibility of evidence; any question as to joinder or severance of charges; and any other question of law, practice or procedure relating to the appeal³¹.

19. Unless the judge advocate directs otherwise, preliminary proceedings will take place before the judge advocate in open court. The judge advocate may direct that the preliminary hearing take place in chambers and without notice to the appellant³² where he is satisfied it is necessary or expedient in the interests of justice.

Power of the court to hear more than one appeal at the same time - joinder of appeals

20. The court may decide to hear two or more appeals at the same time where it appears to be in the interests of justice to do so. The court may decide this of its own motion or on the application of the respondent or an appellant in one or more of the appeals to which the application relates. The power of the court to make a determination will be exercised by a judge advocate sitting alone.

21. Before refusing an application or making a determination in accordance with paragraph 20, the judge advocate will allow the respondent and the appellant in any of the appeals, to which the application or determination relates, the opportunity of making representations to him. Where a judge advocate makes such a determination, he will direct the CAO to specify the time and place for the hearing of each of the appeals to which the determination relates.

²⁷ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 42.

²⁸ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 43(b).

²⁹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 44(1). There is no prescribed form for such an application.

³⁰ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 47(1).

³¹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 47(2).

³² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 45.

Part 5 - Procedure for hearing an appeal

22. This part provides guidance on matters relating to the administration of the court and some of the matters that may arise before and during the appeal itself.

Sittings of the court

23. Generally the SAC must sit in open court unless the judge advocate directs the court to sit behind closed doors ('in camera')³³ on the grounds that it is necessary or expedient in the interests of the administration of justice to do so. Where the SAC sits in closed court only the members of the court and any person under instruction may remain present. If it appears to the judge advocate necessary in the interests of justice, proceedings may be adjourned from time to time. The court must not sit other than on a business day unless in the opinion of the judge advocate it is necessary to do so. After the commencement of the proceedings the judge advocate will direct the times and days on which the court shall sit³⁴.

Objections to lay members

24. At the commencement of any proceedings, the names of the persons specified to sit as lay members of the court (including any person specified as a waiting member) and the name of any interpreter must be read to the appellant. Any party to the proceedings may object to any lay member on any reasonable ground³⁵.

25. The judge advocate must rule on any objection to a lay member before the lay member is sworn. If an objection to a lay member is upheld, the judge advocate must discharge him.

26. Any waiting member in respect of whom no objection has been made or allowed shall take the discharged lay member's place³⁶; and, if there is no such waiting member, the hearing of the appeal is to be adjourned. If an objection to the interpreter is allowed³⁷, the judge advocate must adjourn proceedings until the CAO has appointed a replacement.

Oaths and affirmations

27. After the appellant has been given the opportunity to challenge the members of the court, oaths must be administered to each of the lay members, and to any person in attendance under instruction, in the presence of the appellant³⁸. The form and manner of the oaths are outlined at Schedule 1 to the Armed Forces (Summary Appeal Court) Rules. Any interpreter appointed by the CAO must have an oath administered to him before he acts³⁹; see [Annex B](#) for oaths and affirmations.

Termination of proceedings

28. The judge advocate must terminate any proceedings with lay members if he considers it in the interests of justice to do so or a lay member dies or is unable to continue to attend proceedings; lay members shall be discharged under these circumstances. The

³³ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 90(1).

³⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule s 22(2).

³⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 37(2).

³⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 38.

³⁷ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 29(3).

³⁸ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule s 28 and 39.

³⁹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 29(2).

termination of proceedings for the reasons outlined above does not bar further appeal proceedings in relation to the relevant appeal⁴⁰.

Procedure to be adopted where more than one appeal against finding

29. Where at a hearing it is necessary for the court to determine more than one appeal against finding, those appeals must be heard at the same time and must be determined before any appeal against punishment, awarded in respect of any finding, is heard.

⁴⁰ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 32(5).

Part 6 - Appeal against punishment

30. This part provides guidance in relation to the practice and procedure of the court with respect to the exercise of its powers for the hearing of an appeal against punishment in relation to: any proceedings where the court has upheld a finding that a charge has been proved; any proceedings where the court has substituted a finding that another charge has been proved⁴¹; and an appeal against punishment⁴².

Information provided by DSP before punishment

31. Where the proceedings relate only to any punishment awarded, or previous sentencing in respect of the appellant was terminated⁴³, the respondent must address the court on the facts of the case. Where practicable the respondent must inform the court of:

- a. The appellant's name, rank or rate, name, age and unit.
- b. The appellant's Service record.
- c. Any recognised acts of gallantry or distinguished conduct and any decoration to which he is entitled.
- d. Any previous convictions⁴⁴ of the appellant for Service and civilian offences and any sentence in respect of such an offence. Relevant offences⁴⁵ committed in another member state are also to be included. Those offences that are spent under the Rehabilitation of Offender's Act are to be indicated as such.
- e. Particulars of any formal police cautions.
- f. The appellant's rate of pay (including allowances and deductions), terminal benefits and pension entitlements⁴⁶.
- g. Whether the CO had extended powers⁴⁷.
- h. The punishment awarded by the CO.
- i. Whether the CO made an activation order, if so, the previous offence and the punishment awarded for that offence.
- j. Where the offender is no longer subject to Service law refer to Armed Forces (Summary Appeal Court) Rules 2009, rule 86(5).
- k. Any statement to the effect of the offence on the victim, the victim's family or others. This is generally known as the Victim Personal Statement. See further information in JSP 839.

⁴¹ Section 147(1)(b) of the Act.

⁴² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 83.

⁴³ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 86.

⁴⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 86(2)(d).

⁴⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 86(2)(d)(iii).

⁴⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rules 86(2)(f) and 86(5).

⁴⁷ Under Sections 133(1) & (2), 134(1), 135(1), or 136(1)(b) of the Act.

Determining disputes on facts (Newton Hearing)

32. Where, on an appeal that relates only to the award of punishment, there are disputed facts in the case, any issue of fact may be tried by the court⁴⁸. Where an issue of fact is tried, the judge advocate may direct the respondent to call any witness to give evidence, and the respondent and the appellant may, with the leave of the judge advocate, adduce evidence. The court (consisting of both the judge advocate and the members) will sit in closed court while deliberating on its findings on the issue of fact and any such issue will be determined by a majority of the votes of the members of the court. The decision of the court on the issue of fact, and the reasons for it will be announced in open court by the judge advocate.

Mitigation of punishment

33.. The appellant may call witnesses in mitigation of punishment or as to character and may personally address the court in mitigation. The appellant may also produce to the court any document or written report. Unless the respondent requires otherwise, any document or report need not be adduced in compliance with the strict rules of evidence.

Pre-sentence report and previous convictions

34. Where the CAO has arranged for a pre-sentence report to be prepared prior to the proceedings, he must provide the DSP and the appellant with a copy before the start of the hearing. Similarly, where the DSP has obtained a record of the appellant's previous convictions in advance of the proceedings, he is to provide the CAO and the appellant with a copy prior to the hearing⁴⁹.

Deliberation on, and pronouncement of, punishment

35. The court (consisting of the judge advocate and the members) shall close to deliberate on its decision on any punishment awarded. No other person may be present except a person in attendance for instruction⁵⁰. The vote of each member of the court should be given in reverse order of seniority and before the vote of the judge advocate. Any such decision, and the reasons for it, will be announced in open court by the judge advocate.

⁴⁸ Armed Forces (Summary Appeal Court) Rules 2009/11211, rule 84.

⁴⁹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 85(2).

⁵⁰ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 27(2).

Part 7 - Appeal against finding

36. This part applies to the hearing of an appeal against a finding at a summary hearing that a charge has been proved.

Address to the court

37. Where the appeal is against finding, the respondent and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court⁵¹. If the respondent is to address the court he must do so immediately before adducing any evidence; the appellant may address the court immediately after the close of his case or, where there is more than one appellant, after the close of the case of each of the appellants. The respondent or appellant may, with the leave of the court, address it at any time during the hearing on any matter relating to the appeal or the charges that are being heard by the court. Also see Rule 75(4), Armed Forces (Summary Appeal Court) Rules 2009, in respect of the exercise of the Court's powers under Section 147(1)(b) where the court wishes to substitute another finding.

Provisions that are to apply where there are two or more appellants

38. The following provisions⁵² apply where the court has decided to hear appeals by more than one appellant at the same time. The respondent's case on each of the charges before the court must be put before the case of any of the appellants, and the respondent may generally make only one address.⁵³ Where the same legal representative represents two or more appellants, he may make only one address to the court. The judge advocate must decide immediately before the hearing of the appeals the order in which the appellants are to put their case and to address the court.

39. The court must not close to deliberate on its decision in relation to any of the findings until the close of the case for each of the appellants and each of the appellants has had the opportunity to address the court.

Presence of witnesses

40. Except where the person is the appellant, or is present to give expert evidence or evidence as to a person's character, a person who is to be called to give evidence must not, except by leave of the judge advocate, be present at the hearing of an appeal against a finding until he is called to give evidence and examined⁵⁴.

41. If while a witness is under examination a question arises as to the admissibility of an answer following a question put to him or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

42. The judge advocate may direct any person, who is to give expert evidence or evidence as to a person's character, to withdraw from the court if he considers that the person's presence is undesirable.

⁵¹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 75.

⁵² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 76.

⁵³ In pursuance of Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 75(1).

⁵⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 78.

Examination of witnesses

43. The judge advocate may question any witness or put to a witness a question from a lay member. The judge advocate must give direction on the examination and cross-examination of witnesses. If it appears to the judge advocate to be in the interests of justice, he shall allow postponement and the recall of witnesses by any party⁵⁵.

Witness not called by respondent

44. Where the respondent does not intend to call as a witness:

- a. Any person whose statement has been served on the appellant as part of the evidence for the respondent; or
- b. Any person in respect of whose evidence he has served notice as part of the respondent's papers,

unless the appellant waives the requirement, the respondent is to serve notice in writing on the appellant that he does not intend to call that person or tender that person at the hearing of the appeal for cross-examination by the appellant.

Submission of no case to answer

45. At the close of the respondent's case, the appellant may submit, in respect of any charge, that the respondent has failed to establish a case for him to answer. The judge advocate must hear and rule on such a submission in the absence of the lay members. If the submission is allowed, the judge advocate must direct the court to quash the finding⁵⁶.

Finding for the appellant before conclusion of the case for the appellant

46. The court may at any time after the close of the case for the respondent find for the appellant, provided that the respondent has been given an opportunity to address the court on whether such a finding should be made⁵⁷. This power may only be exercised at the invitation of the judge advocate.

The case for the appellant

47. Only when the evidence of the respondent's witnesses has been heard, may the appellant give evidence should he choose to do so; he is not obliged to do so. In the event that he chooses to give evidence he will be liable for cross examination by the respondent and questioning by the judge advocate. Where he does so, the appellant must give evidence first before any other witnesses for the appellant are called.

Evidence in rebuttal

48. With the leave of the judge advocate, the respondent may call or recall a witness to give evidence on any matter raised by the appellant in relation to a charge which the

⁵⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 77(2).

⁵⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 79(3).

⁵⁷ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 81.

respondent could not properly have dealt with or foreseen before the appellant disclosed his case.

Deliberation on finding

49. When the court deliberates on its finding in relation to each charge no other person may be present, except a person in attendance for instruction⁵⁸. During its deliberation on any such finding, the court shall not separate until the decision on the finding has been reached, unless the judge advocate directs that, in the interests of justice, the court may separate.

50. The vote of each member of the court must be given orally; and the vote of each member of the court should be given in reverse order of seniority and before the vote of the judge advocate.

Substituted finding – power to convict for offence other than that charged

51. The court has the power to acquit the appellant of the charge specifically charged in the charge sheet but if the facts still amount to an allegation of another Service offence, the court may convict on that other offence. If the court exercises the power to substitute a finding it shall specify the charge that has been proved.

Record of decision of the court on finding

52. The decision of the court on each finding, and (except where the decision is to quash the finding) the reasons for it, will be announced separately in open court by the judge advocate. The decision on each finding and the reasons for it, will be recorded in writing. The trial result notification form (T-SL-TRN2) found at [Annex C](#) may be used for this purpose.

Punishment

53. If the appeal is against finding and punishment, the court will consider the finding first and then go on to consider the punishment in light of their decision. If the finding on any charge is confirmed the court will be presented with information relating to the appellant's previous convictions, formal discipline record etc and mitigation, see Part 6.

Wasted costs and closing the court

54. Before closing the court the judge advocate deals with costs, if appropriate. The jurisdiction of the court to make an order:

- a. As to the payment of costs incurred by a party to proceedings as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings⁵⁹; or
- b. Disallowing or ordering the legal or other representative⁶⁰ to meet the whole or any part of any wasted costs

⁵⁸ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 27.

⁵⁹ As described in section 26(1) of the Armed Forces Act 2001.

⁶⁰ As defined in section 27(3) of the Armed Forces Act 2001.

may be exercised by the judge advocate sitting alone, and he may direct the other members of the court to withdraw for the purpose of exercising the jurisdiction.

Part 8 - Powers of the court

Appeal against finding

55. **Contested appeal.** Where the DSP opposes an appeal against finding, the proceedings take the form of a rehearing of the charge. The SAC may confirm a finding, quash it or substitute it with a finding that another charge has been proved. Where the SAC quashes a finding it must also quash any accompanying punishment. After rehearing the evidence in respect of punishment, the SAC may confirm the punishment or quash it and substitute another punishment. The SAC cannot substitute a punishment unless the substituted punishment was capable of being awarded by the hearing officer who awarded the original punishment at the summary hearing⁶¹ and it is a punishment that the SAC considers is no more severe than the original punishment. Where the appellant was convicted of multiple charges and decides to appeal against finding and/or punishment on one of the charges, the SAC, should it allow the appeal, will adjust accordingly the global sentence that the appellant originally received⁶².

56. **Uncontested appeal.** If the appeal is uncontested, where the DSP as respondent does not oppose the appeal, the finding being appealed against will be quashed⁶³ by the SAC. Where the appeal is uncontested the powers of the SAC are exercised by a judge advocate sitting alone and the Court Administration Officer (CAO) is responsible for informing the appellant, the appellant's CO and the DSP of the outcome.

Appeal against punishment

57. The powers of the court on an appeal against punishment are:

- a. To confirm the punishment awarded; or
- b. To quash the punishment and award in substitution for it any punishment that it would have been in the powers of the officer who held the summary hearing to award and in the opinion of the court is no more severe than the punishment originally awarded. This will be recorded on the trial result notification T-SL-TRN02 ([Annex C](#))

⁶¹ See section 147(3)(b)(i) of the Act.

⁶² [Chapter 13](#) (Summary hearing sentencing and punishment) provides guidance on global sentences.

⁶³ Rule 20(1) of the Armed Forces (Summary Appeal Court) Rules 2008.

Part 9 – Evidence

Rules of evidence

58. The rules as to the admissibility of evidence before the SAC are governed by the Armed Forces (Summary Appeal Court) Rules 2009. The rules of evidence applicable in a trial on indictment in England and Wales generally apply⁶⁴, but there are procedures which are particular to the SAC. See Part 11 of Armed Forces (Summary Appeal Court) Rules 2009, for full details on evidence at the SAC. The following paragraphs summarise a few of the important differences to the civilian system.

59. **Attendance or giving evidence by live link.** Any person, who is not in the place where the proceedings are being held, may attend by live link if the judge advocate so directs. This includes witnesses who may give evidence. An application may be made to the judge advocate for permission to attend by live link or the judge advocate may direct such a course of action⁶⁵.

60. **Use of documents to refresh memory.** The Criminal Justice Act 2003 section 139 does not apply to the SAC, however a person giving oral evidence may refresh his memory from a document made or verified by him at an earlier time or a transcript of a sound recording⁶⁶.

60A. Special measures are a procedure whereby a witness (including a defendant), the value of whose evidence may be diminished due to young age, incapacity (mental or physical), fear or distress can give evidence other than when facing the defendant from the witness stand. Special measures are always under the control of the judge advocate and must be conducted fairly so as not to prejudice any defendant. This includes giving the lay members of the SAC such direction as he considers necessary to prevent prejudice⁶⁷.

60B. The special measures available depend upon in relation to whom and for what reason the special measures direction is given. The provisions of the Youth Justice and Criminal Evidence Act 1999 are applied to the SAC⁶⁸, and the Rules⁶⁹ describe the procedural requirements and safeguards for the application of special measures as well as some of the factors to be taken into consideration by a judge advocate when deciding whether to make a special measures direction. Special measures may be taken in conjunction with live links⁷⁰, see paragraph 59.

⁶⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 59.

⁶⁵ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 25.

⁶⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 63.

⁶⁷ Armed Forces (Summary Appeal Court) Rules 2009 rule 74O.

⁶⁸ Youth Justice and Criminal Evidence Act 1999 (Application to the Armed Forces) Order 2009, as amended.

⁶⁹ Armed Forces (Summary Appeal Court) Rules 2009 rules 74D-74O.

⁷⁰ Armed Forces (Summary Appeal Court) Rules 2009 rules rule 27.

Part 10 – Miscellaneous

Custody during proceedings

61. Custody during proceedings is addressed at Volume 1 [Chapter 5](#) (Custody).

Proof of service facts and records

62. **Service of documents.** The appeal process as a whole is time-critical and consequently there are strict time constraints that must be complied with when transmitting documents between parties to the appeal. Documents may be served by a number of acceptable methods including: personally, by post, DX, FAX and other electronic means. The judge advocate may also direct service by any other method if the particular circumstances demand. Proof of service may be achieved in a number of ways. The Armed Forces (Summary Appeal Court) Rules 2009, Part 2 lays out the various time constraints and acceptable methods for the service of documents.

63. **Record of proceedings.** A record must be made of any proceedings. The Armed Forces (Summary Appeal Court) Rules 2009, rule 30 details the contents of the record and the responsibilities of the CAO with regard to despatching the record of preliminary proceedings to the Judge Advocate General and the parties to the appeal. The record of proceedings is to be kept in the custody of the Judge Advocate General for not less than six years from the conclusion of the appeal proceedings or the conclusion of the preliminary proceedings where there are no further proceedings⁷¹. A copy of the record of proceedings, or any part of it, shall be provided to any party to the proceedings without charge. A charge may be levied by the Judge Advocate General for the provision of a copy of the proceedings to any other person⁷². There are exceptions to the provision of copies of the proceedings that were held in camera and disclosure may also be restricted for reasons of security⁷³.

Exhibits

64. Exhibits must be marked sequentially with a number or letter and signed by or on behalf of the judge advocate. If the exhibit cannot be signed, a label is to be attached to it for this purpose. Exhibits are to be kept with the record of proceedings unless the judge advocate directs otherwise⁷⁴.

Application to the court to state a case

65. An application may be made to the SAC to have a case stated for the opinion of the High Court on the grounds that any decision of the SAC is wrong in law or is in excess of jurisdiction. It is to be made in writing and served on the CAO and the appellant or the DSP, as the case may be, within 21 days after the date of the decision in respect of which the application is made. The application is to state the grounds on which the decision of the court is questioned. The CAO is to serve the application on the judge advocate, who presided over the proceedings to which the application relates, as soon as it is practicable for him to do so⁷⁵.

⁷¹ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 30(5).

⁷² Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 30(6)(b).

⁷³ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 30(7) & (8).

⁷⁴ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 31(3).

⁷⁵ Under section 149(2) of the Act; see Armed Forces (Summary Appeal Court) Rules 2009/1211, rules 92 to 94, for further detail on applications and procedure.

OATHS AND AFFIRMATIONS⁷⁶

Part 1 - Manner of administering oaths and affirmations

1. The person taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat after the person administering it, the oath provided in Part 2 of this annex for that category of person.
2. If any person to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying or repeating after the person administering it, the Scottish oath provided in Part 3 of this annex for that category of person.
3. If a person objects to swearing an oath he shall be permitted to make a solemn affirmation instead of taking an oath as provided in Part 4 of this Annex. In a case where it is not reasonably practicable, without convenience or delay to administer an oath in the manner appropriate to a person's religious belief, he shall be permitted to make a solemn affirmation instead of taking an oath. Moreover, in such a case the person may be required to make a solemn affirmation.

Part 2 - Forms of oath

Lay members

I swear by Almighty God that I will well and truly try the appellant before the court according to the evidence; I will duly administer justice according to law and without partiality, favour or affection; and I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Summary Appeal Court, unless required to do so in due course of law.

Persons in attendance for instruction

I swear by Almighty God that I will not on any account, at any time whatsoever, disclose the vote or opinion of any member of the Summary Appeal Court, unless required to do so in due course of law.

Witness

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

Interpreter

I swear by Almighty God that I will well and faithfully interpret and make true explanation of all such matters and things as shall be required of me according to the best of my skill and understanding.

Part 3 – Form of Scottish oath

The form of Scottish oath for a witness is 'I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth'⁷⁷

⁷⁶ Armed Forces (Summary Appeal Court) Rules 2009/1211, rule 28(3) and Schedule 1.

⁷⁷ For Scottish oaths in criminal proceedings see the Act of Adjournment (Criminal Proceeding Rules) 1996/513.

Part 4 - Form of solemn affirmation

I [full name] do solemnly, sincerely and truly declare and affirm the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.