

THE COURT MARTIAL BOARD SPECIFICATION

COURT MARTIAL BOARDS

1. The Director Military Court Service (MCS) places significant focus upon enacting their responsibility to fulfil the obligation to deliver a clear, open, and transparent process to provide lay members for Service Court Martial and Summary Appeal Court proceedings. The processes applied for selecting lay members must deliver the highest levels of confidence in how such members are selected.
2. The Director MCS delivers a fully compliant set of processes that provide all the necessary safeguards and quality assurance checks to ensure that members are selected in accordance with legislation¹. Reference may also be drawn from guidance within the Manual of Service Law².
3. Other than where the Judge Advocate deals with matters sitting alone, the court martial will consist of the Judge Advocate and other persons who sit as members of the court martial, known as 'lay members'³. In most cases the Board will consist of three lay members, however, in certain cases, for example where a defendant is charged with an offence listed in Schedule 2 of the Armed Forces Act 2006, the number of lay members will be at least five⁴.
4. Furthermore, where proceedings are expected to last more than ten court days (or five if the trial is to take place outside of the UK or Germany) and a Judge Advocate considers it necessary to do so, the number of lay members may be increased from five to six or seven⁵.
5. The Court Administration Officer (CAO) will specify an additional lay member for the Board to be known as a 'Waiting Member'⁶. This member will only be used if for any reason one of the other members are not available or otherwise discharged⁷.
6. The CAO specifies a maximum of 3 Army Boards according to requirement for each assize period. A reserve Board is also selected for the period. Royal Navy (RN) (including the Royal Marines) and Royal Air Force (RAF) Boards, one of each, are specified for alternate assize periods along with one reserve Board for each service.

¹ Part 7 of the Armed Forces Act 2006 and Chapter 1 (ss154-157), The Armed Forces (Court Martial) Rules 2009

² JSP 830, MSL, Version 2.0, Chapter 28

³ JSP 830, MSL, Version 2.0, Chapter 28, Para 5

⁴ rule 29 The Armed Forces (Court Martial) Rules 2009

⁵ rule 30 The Armed Forces (Court Martial) Rules 2009

⁶, The Armed Forces (Court Martial) Rules 2009, Part 4, Para 36(1)

⁷ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 35(4)

7. If additional members are required to resource a Board, members will normally be taken from the reserve Board or from a Board that only requires 3 members. The members for the Summary Appeal Court are also taken from these Boards.
8. Boards are usually specified 6 weeks before the commencement of the assize period. The notices specifying members to individual cases are then issued 5 to 10 working days before the assize starts. Board members are warned that, if a trial runs beyond the assize period, they are committed to the court until the matter is completed.
9. To ensure their independence, the Director MCS is appointed by the Defence Council⁸ as CAO. The CAO has a statutory function⁹ to give notice of court proceedings, specify lay members of the court and notify witnesses. These duties are conducted in accordance with the Armed Forces Act 2006 and related Statutory Instruments¹⁰.
10. The CAO will decide from which pool of potential lay members a board will be selected. The lay members can be drawn from MOD civil servants, members of the local ex-patriate community abroad, and members of the RN, RM, Army and RAF. This may include regulars, reservists, and recently retired members of the military. Having drawn the names at random from the selected pool and having checked that they are eligible for Board membership, the CAO will specify who the lay members should be.
11. The nomination of lay members is a matter entirely for the CAO¹¹.
12. The CAO may delegate any of their functions in relation to the court, to a member of the MCS, and in practice will delegate most of their administrative functions¹².
13. The Armed Forces Act 2006 sections 156 and 157 prescribes the qualifications and eligibility for officers and warrant officers to be members of the Court Martial. This is further amplified in Court Martial Rules 2009, Part 4 – Members of the Court, specifically rules 31 – 34. There is also detailed guidance in the Manual of Service Law, Volume 2, Chapter 28, Part 1 – Court Martial constitution.

COLLATING BOARD MEMBER NOMINATIONS

14. Effective management over how Board members are selected is essential to reduce the risk of members being selected where the law does not allow for such a selection¹³. To achieve this, there is a robust and effective random selection process from a Service nomination list with an effective de-confliction procedure

⁸ Armed Forces Act 2006, Chapter 52, Part 18, Court Officials, Section 363

⁹ The Armed Forces (Court Martial) Rules 2009, Part 3

¹⁰ Armed Forces Act 2006, s155(6) and s163(3)(n)

¹¹ JSP 830, MSL, Version 2.0, Chapter 28, Para 11

¹² The Armed Forces (Court Martial) Rules 2009, Part 3, Para 15(2)

¹³ The Armed Forces (Court Martial) Rules 2009, Part 3, Para 32

by the MCS to ensure the potential lay member meets both the eligibility and specification criteria (Appendix 1 and 2).

15. Once the assize programme has been published, each Service will be aware of their commitment to support each relevant assize period. This will include the total number of Service personnel they need to provide to the MCS for the final Board selection process to be concluded.
16. The annual assize programme is the means by which the MCS requests each Service to provide a pool of available officers and warrant officers six weeks before each assize period, from which the Boards are then specified. Each Service coordinator will provide a full list of nominations to MCS in advance of the assize period, affording enough time for the de-confliction process to be completed and for final selection to occur.
17. The CAO recognises that each Service has all current and future operational demands to factor when seeking to complete their nominations list. The Services must select and deconflict potential lay members against the eligibility criteria (Appendix 1).
18. For each assize period, the nominations are to be provided in the following ranks and numbers: -

Service	Total Staff	Rank	Rank	Rank
Army	24	12 x Major	8 x Capt	4 x Lt/WO
RN	12	6 x Lt Cdr	3 x Lt	3 x SLt/WO
RAF	12	6 x Sqn Ldr	3 x Flt Lt	3 x Fg Offr/WO

19. Additionally, these nominations must include the following female nominations: Army 4, RN 2 and RAF 2, in accordance with the CAO specification criteria (Appendix 2).

MCS SELECTION FROM SERVICE NOMINATIONS

20. Once the MCS receive the Services' nominations lists, the MCS employ a detailed de-confliction process from the list provided.
21. The MCS will utilise a technology-based programme¹⁴ to quality assure that the Services have provided nominations that are not exempt to sit as a Board member against the eligibility criteria. The MCS will then randomly select the Board president from the pool provided and go on to randomly select the remaining Board members in the same manner. Random selection means the allocation of a number to a person with numbers drawn out using a random number generator application.
22. In addition to complying with the legal requirements to show impartiality and fairness, and to specify members as widely as possible from within each Service, the CAO will apply additional measures known as the CAO Specification Criteria (Appendix 2), when specifying Board members.

¹⁴ Joint Personnel Administration system

23. The MCS will utilise technology platforms, declarations, and answers to questionnaires (Appendix 3) from potential Board members to ensure adherence to the criteria. This includes a full deconfliction relating to associations and knowledge of other potential Board members.
24. If at any time the MCS identify an ineligible nomination another number is drawn, and the selection process is repeated until the required number of Board members is selected and de-conflicted.
25. Unlike the nominating Service, the MCS will be fully sighted on the identities of defendants, and witnesses to inform the wider case de-confliction requirements.
26. Should there be any identified concerns between Board members, then the final step for Board selection concludes with ratification by at least two of the four-member Board Selection Panel. The permanent panel members are the Director, Deputy Director MCS, C2 Policy and Administration and the assigned staff member nominated to perform Board selection duties. Board selection is certified by the Director MCS / Deputy Director MCS once completed.
27. A certified copy of the members selected, will be sent to the Court Officer. The court team will conduct a random selection for the waiting member for each hearing that the board are assigned to within the assize period.

CIVILIANS

28. Where civilian members are required for a Board, Defence Business Services are tasked to provide an electronically generated random list of the names of 100 MOD civil servants.
29. There is no legal power to compel any civilian to be a member of the Court Martial.
30. The MCS will select 20 of the nominations using a random number generator. The individuals are then contacted to establish the individual's availability and willingness to be a Board member.
31. From those identified as willing participants, the MCS will randomly select 8 members who will then be sent a questionnaire to de-conflict against Court Martial Rules 2009 rule 33 and the defendant/s, witnesses, and other Board members.
32. The questionnaire is destroyed if the member is no longer required or when proceedings with the Board members commence, whichever is earlier.

ADMINISTRATION

33. Once a Board is specified, the members are notified in writing. Service members are sent copies of "The Court Martial and the Summary Appeal Court Guidance" Volumes 1 and 2. Civilian members are sent a copy of Volume 2.
34. Before sitting as a member of the court, the member must certify (signing the Board member's certificate) that they have read the Guide(s) and understands their duties and responsibilities as a member. Subsequently, the notice(s) of the Board with proceedings and any witness list(s) are served on the members. If a member knows a defendant, another member, or any witness, they must declare it to the court.
35. The detailed administration of attendance at court is then managed by the Military Court Centre staff. The Court Officer will brief the Board members on their arrival at the Court Centre.

BOARD MEMBER ELIGIBILITY CRITERIA

36. In accordance with The Armed Forces (Court Martial) Rules 2009 and AFA 2006, Part 7 chapter 1 paragraphs 155-157, the following eligibility criteria for officers and warrant officers apply:
1. Subject to subsections (2) to (4), an officer or warrant officer is qualified for membership of the Court Martial if he is subject to service law.
 2. An officer is not qualified for membership of the court unless:
 - a) They have held a commission in any of Her Majesty's forces for at least three years, or for periods amounting in the aggregate to at least three years; or
 - b) immediately before receiving their commission, they were a warrant officer in any of those forces.
 3. A warrant officer is not qualified for membership of the court if they are an acting warrant officer.
 4. A welfare service officer or warrant officer is not eligible.
 5. An officer or warrant officer is not qualified for membership of the court if— they are a member of the Military Court Service.
 - a) They are a member of or on the staff of the Service Prosecuting Authority.
 - b) They are a service policeman.
 - c) They are a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch.
 - d) They are an advocate or solicitor in Scotland.
 - e) They are a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland; or
 - f) They have in a relevant territory rights and duties like those of a barrister or solicitor in England and Wales and is subject to punishment or disability for breach of professional rules.
 6. In this section “relevant territory” means—
 - a) any of the Channel Islands,
 - b) the Isle of Man,
 - c) a Commonwealth country; or
 - d) a British overseas territory.
 7. Persons ineligible for membership in particular circumstances.
 - (1) A person is ineligible for membership of the court for any trial proceedings if, at any time since the date of the commission of any offence charged, they and any defendant were serving in the same unit.

- (2) A person is ineligible for membership of the court for any sentencing proceedings if, at any time since the date of the commission of any offence for which an offender falls to be sentenced, they and the offender were serving in the same unit.
- (3) A person is ineligible for membership of the court for any variation proceedings if they were not a member of the court for the proceedings in which the sentence that falls to be varied was imposed.
- (4) A person is ineligible for membership of the court for any appellate proceedings if at any time since the date of the commission of any offence to which the proceedings relate, they and any appellant were serving in the same unit.
- (5) A person is ineligible for membership of the court for any activation proceedings if at any time since the date of the commission of the offence for which the original sentence was passed, they and the offender were serving in the same unit.
- (6) A person is ineligible for membership of the court for any proceedings if they were a member of the court for any previous proceedings to which any person to whom the proceedings relate was a party; but this is subject to paragraphs (7) to (9).
- (7) A person is not ineligible for membership of the court for sentencing proceedings by virtue of having been a member of the court for any trial or appellate proceedings in which any offender was convicted of any offence for which they fall to be sentenced.
- (8) A person is not ineligible for membership of the court for variation proceedings by virtue of having been a member of the court for—
 - (a) any trial or appellate proceedings in which the offender was convicted of any offence for which the sentence that falls to be varied was imposed; or
 - (b) the proceedings in which that sentence was imposed.
- (9) For the purposes of paragraph (6) a person is not to be regarded as having been a member of the court for any previous proceedings if those proceedings were terminated under rule 25(2) by virtue of subparagraph (b) of that paragraph (successful objections exceeding the number of waiting members).
- (10) In relation to a person who at any time was not subject to service law, references in this rule to a unit in which the person was at that time serving are to be read as references to a unit to which he was at that time attached.
- (11) This rule does not apply to the judge advocate.

CAO SPECIFICATION CRITERIA

37. BOARD STRUCTURE

Board members will ordinarily come from the Service of the defendant(s). If there are defendants from more than one Service, the Board should have at least one member from the Service of each defendant¹⁵. The Director MCS may exercise their right to draw upon officers/warrant officers from any Service to complete a Board if all normal avenues to complement a Board have been exhausted.

38. PRESIDENT OF THE BOARD

(1) Subject to complying with Court Martial Rules 2009 rule 34, the default rank for the President of the Board will be a substantive Lt Cdr, Maj or Sqn Ldr¹⁶.

(2) Where two or more lay members are so qualified, the most senior of them shall be the president of the board¹⁷.

(3) For any defendant of or below the rank of Lt Cdr, Maj or Sqn Ldr, the President of the Board will be superior in rank to that of the defendant/s¹⁸.

(4) For any defendant of the rank of Cdr, Lt Col or Wg Cdr up to and including the rank of Capt (RN), Col or Gp Capt, the President of the Board will be of superior rank to that of the defendant¹⁹.

(5) For any defendant of or above the rank of Cdre, Brig or Air Cdre, the President of the Board will be of or above the rank of the defendant or senior within the same rank as the defendant²⁰.

39. OFFICERS

An officer should not be appointed as a lay member unless that officer is of or above the rank of sub-lieutenant, military or marine lieutenant or flying officer²¹ unless they are so qualified by statute²².

¹⁵ JSP 830 MSL, Chapter 28, Para 13

¹⁶ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 34 (3)(a)

¹⁷ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 34 (7)

¹⁸ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 34 (3)(c)

¹⁹ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 34 (3)(c)

²⁰ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 34 (4)(a)

²¹ JSP 830 MSL, Chapter 28, Para 16

²² Part 7 of the Armed Forces Act 2006 and Chapter 1, ss156

40. **FEMALE SERVICE NOMINATIONS**

A Service nomination list for an assize period, or for any other previously unscheduled requirement to form a Board, must include female officers/warrant officers within the nomination list to meet the Service gender proportionality split. These personnel will be within the pool for random selection as a board member.

Army – 4 females in the nomination
Navy – 2 females in the nomination
RAF – 2 females in the nomination

41. **WARRANT OFFICERS**

For any proceedings with lay members where every person to whom the proceedings relate is of or below the rank or rate of warrant officer, the number prescribed for the purposes of section 155(3) of the Armed Forces Act, (that is to say, the number of lay members who may be warrant officers rather than officers) is two for a five-person Board and one for a three-person Board²³.

42. **RESERVES**

Reserve officers and warrant officers may be specified in the same manner as their regular Service counterparts, noting that their participation is voluntary, and any costs incurred will be the responsibility of the nominating unit.

43. **FULL-TIME RESERVE SERVICE (FTRS)**

FTRS full commitment, limited commitment, and home commitment²⁴ are eligible to be Board members, provided they satisfy the criteria set out in the Board member eligibility criteria at Appendix 1 to Annex B above.

44. **CAP BADGE/BRANCH/SPECIALISATION.**

There are no restrictions on Board members being the same cap badge, branch or specialisation as any defendant, witness, or complainant, as this will be addressed in the deconfliction process.

²³ The Armed Forces (Court Martial) Rules 2009, Part 4, Para 31 (1)

²⁴ FTRS home commitment personnel cannot be compelled to sit as Board members, although they may volunteer.

BOARD MEMBER QUESTIONNAIRE

FROM:

IF YOU KNOW ANOTHER MEMBER / DEFENDANT / WITNESS PLEASE COMPLETE THE FOLLOWING (please complete a separate questionnaire for each person known):

NAME OF PERSON KNOWN:

Do you know this person on a professional basis only?

If yes, please explain on what basis and include any relevant information, such as any current or historic line management/chain of command responsibility (please also include periods of contact so we can assess your professional contact position).

Is it the case that you simply know of the person but have not had any enduring contact or professional regular engagement with him/her?

If no, please explain your contact out of a professional capacity - i.e. – do you consider the person a personal friend/socialise with the person, or otherwise engage on an out of work capacity?

Please include over what time period you had historical contact and the extent of that contact, including extended family contact, if relevant.

Do you have links with the person on any social media platforms – if you do what are they?

Is this person a friend on social media platforms and do you communicate on a regular basis, if so, please provide details.

ADDITIONAL COMMENTS:

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FOR MCS USE ONLY

Nomination Accepted/Rejected:

Rationale:

Reviewed by:

1.

2.

Date:

Signature: