



# **THE COURT MARTIAL AND THE SUMMARY APPEAL COURT GUIDANCE**

## **Volume 2: Guide for Court Members**

Version 7 – June 2015

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## Section 1: Foreword

1.1 This *Members’ Guide* is issued under the authority of the Judge Advocate General and the Director of the Military Court Service jointly and is for use by “lay” or board members of the Court Martial and the “lay” members of the Summary Appeal Court, that is those members of a court other than a Judge Advocate, who are referred to in the Guides as “members”.

1.2 The *Members’ Guide* is focussed on the duties and responsibilities of members and explains their relationship with the judge. It is applicable to all proceedings in the Court Martial and the Summary Appeal Court, which are held under the Armed Forces Act 2006. Court procedure generally is set out in *The Court Martial and the Summary Appeal Court Guidance – Volume 1: Guide to Procedure* published by the Judge Advocate General and the Military Court Service and distributed to all court users; copies are available to members for reference. There are other guides concerned with Practice and Sentencing, which members need not read.

1.3 The proper briefing of members in the Court Martial has been held by the European Court of Human Rights (ECtHR) to be one of the key methods of compliance with the European Convention on Human Rights (ECHR) Article 6 (Right to a fair trial), and this *Members’ Guide* is the main vehicle for that briefing. Thus you must ensure that you have a good understanding of what is expected of you. In particular, if you are a member who has not participated in a hearing in the Court Martial recently, please note that there have been significant changes to court procedures after 1997 and again in 2009, so it is important that you read the Guide carefully to be aware of what is required now. Also, changes were made to the Court Martial for trials of civilians as a result of an ECtHR case (*Martin v UK*). If you are a member at a trial of a civilian, there is relevant additional material in the Guide.

1.4 The Guide has a first section applicable to members of both the Court Martial and the Summary Appeal Court, followed by further sections dealing with the Court Martial only and the Summary Appeal Court only. Each section sets out general information about the duties and responsibilities of members. It is mandatory that members read the sections of the Guide that are relevant to the type of court of which they are to be members.

1.5 If you have any doubts about what is expected of you, or believe that you need additional advice prior to your duty, you should contact the Military Court Service as soon as possible. Once a court is in being, you should address any concerns to the judge or the Court Officer.

1.6 This Guide is not intended for use by Service legal staff, discipline staff or other Service or civilian specialist personnel who deal with courts and associated business (although it is open to them to see); they should refer to *The Court Martial and the Summary Appeal Court Guidance – Volume 1: Guide to Procedure* and *Rant on the Court Martial and Service Law* (OUP). This Guide is not confidential or classified and may be circulated freely.

**Judge Advocate General**

**Director, Military Court Service**  
June 2015

## Section 2: Introduction

### 2.1 Aim

The aim of this Guide is to brief members of the Court Martial and the Summary Appeal Court.

### 2.2 Constitution of Court

Every trial and sentencing hearing in the Court Martial comprises a judge (“the Judge Advocate”) specified by the Judge Advocate General to preside over it and the lay (that is, not legally qualified) members of the board who are officers and warrant officers, but may be civilians if the defendant is a civilian. In the Court Martial (but not in the Summary Appeal Court nor where the board are all civilians) the senior officer of the members is called the President of the Board. The President of the Board has important duties and functions in relation to Court Martial proceedings, which are explained at paragraphs 3.8 and 3.9.

### 2.3 Duty to read Members’ Guide

Being a member carries duties and responsibilities that help to ensure the fairness of the Service justice system, and it is most important that all members are aware of their duties and responsibilities. It is therefore **mandatory** that they read the relevant parts of this Guide prior to taking part in proceedings and before sitting they are required by the Court Officer to sign a certificate confirming that they have done so.

### 2.4 Interests of Justice

All Court Martial and Summary Appeal Court proceedings must be conducted in a way that is, and is seen to be, absolutely impartial and fair. The interests of justice take priority over all other considerations. Every defendant in the Court Martial is presumed innocent until such time as they either plead guilty to an offence, or are found guilty in the course of proceedings. Similarly although each appellant in the Summary Appeal Court has previously been found guilty at the summary hearing level, the court hears every appeal against conviction afresh disregarding the original finding of guilt.

### 2.5 Law

Court Martial and Summary Appeal Court proceedings are ECHR compliant and are conducted in accordance with the law of England and Wales, even if the proceedings take place elsewhere. This Guide does not provide guidance on the law as that is the responsibility of the judge.

### 2.6 Military Court Service

The Military Court Service is independent of the chain of command and is staffed by civil servants. The Director of the Military Court Service is the Court Administration Officer who has the function, by his staff, of arranging court proceedings and handling administrative matters such as arranging for witnesses to attend court. An important task of the Court Administration Officer is specifying members.

### 2.7 Qualification and Eligibility

The defendant/appellant is (or was formerly) a member of the Services in most Court Martial proceedings and all Summary Appeal Court proceedings. When this is the case, the members of the court are also Service personnel. To be able to sit, each member of such a court must be both **qualified** and **eligible**, i.e. satisfy a two-stage test.

2.7.1 To be **qualified** to sit, each member **must**:

- be an officer who has held a commission in any of Her Majesty's naval, military or air forces for not less than three years, or for periods amounting to not less than three years; or
- be a substantive warrant officer; or
- have been a warrant officer immediately prior to being commissioned.

2.7.2 To be **eligible** to sit, each member **must not**:

- be or have been the Commanding Officer of the defendant/appellant at any time from the date of the alleged offence;
- serve or have served in the same unit as the defendant/appellant at any time from the date of the alleged offence;
- have taken part in any investigation or inquiry relating to the charge;
- be the Court Administration Officer or a member of his staff;
- be a person with a general legal qualification in England, Scotland, Northern Ireland or a Commonwealth country;
- be a Service Policeman;
- be a member of, or on the staff of, the Service Prosecuting Authority; or
- be a member of the Royal Army Chaplains' Department or the Royal Air Force Chaplains' Branch.

2.7.3 If you think that you may not be qualified or eligible to be a member of the Court Martial or the Summary Appeal Court, or if you know the defendant/appellant in another capacity or have been in contact with him for any reason, or if you know any of the witnesses in the case or the prosecution or defence legal representatives, you must contact the Military Court Service as soon as possible and prior to attending for duty, or inform the judge or Court Officer if you realise this after proceedings start.

## 2.8 **Civilian Defendant**

If the defendant in the Court Martial is a civilian, the board is likely to be differently constituted than for a defendant who is a member of the Services. All of the members will be civilians, unless exceptionally it is found appropriate for them to be mixed civilians and Service personnel or all Service personnel. Civilian members are randomly specified from a pool of people. If there are any Service members, they are specified in the same way as when the defendant is a member of the Services. Just as for Service members, any civilian member who knows or has been in contact with the defendant or any witnesses in the case should not sit, but should inform the Military Court Service about the concerns as soon as possible prior to attending court, or tell the judge or Court Officer as soon as this becomes known.

### **2.9 Reporting for Duty**

When you report to the Military Court Centre for duty as a member, you are to report direct to the Court Officer and must not discuss anything with any other persons. If you disregard this direction you might inadvertently speak with, for example, a lawyer or a witness and this could result in you becoming ineligible to take part in proceedings, or in the case being prejudiced. If someone does speak to you and you have any doubts about your position in this respect, you should tell the judge about it before the case starts.

### **2.10 Members Not Reported Upon**

Most officers, and many warrant officers, serve as members of the Court Martial or the Summary Appeal Court at some time during their service. To do so is both a professional obligation and part of their wider Service education. However, the performance of a member will not be considered or evaluated in the preparation of any personal report, assessment or other document used in whole or in part for the purpose of determining whether that officer or warrant officer is qualified to be promoted or suited for particular appointments or training. The same applies to a Crown servant who serves as a civilian member of a court.

### **2.11 No External Influence**

Members of the Court Martial or the Summary Appeal Court must not be subjected to any external influence or pressure prior to, during, or after the proceedings. It is an offence under the criminal law of England and Wales (and consequently under Service law) to do anything to pervert the course of justice, or to attempt to do so, such as any interference with or attempt to influence any members of boards or juries, or witnesses in court proceedings. Anyone who becomes aware of any such attempt must report it to the judge immediately.

### **2.12 Forms of address**

The Judge Advocate is addressed as “Your Honour” in court. On the rare occasion when a High Court Judge presides he is addressed as “My Lord”. The Court Officer provides advice on this to members.

## **Section 3: The Court Martial**

### **3.1 Types of Court Martial Proceedings**

For preliminary proceedings and proceedings at which a defendant is arraigned (required to plead), the judge sits alone. For trial proceedings and sentencing proceedings, the judge sits with a board of lay members. For variation proceedings (the “slip rule”), the judge sits with the board or with as many as are available and may sit alone if their attendance cannot be reasonably arranged.

### **3.2 Constitution of the Court Martial**

The constitution of the Court Martial for trial proceedings comprises the judge and the board of lay members. There are a minimum of three and a maximum of seven members, depending on the seriousness of the alleged offence and directions of the judge.

### **3.3 Waiting Member**

For each Court Martial at least one “waiting member” is nominated. He or she stands by at the beginning of the first proceedings in each case and is ready to take the place of a member (other than the President of the Board) who has to stand down, for example following a successful objection, or because of illness, or because of knowing the defendant.

### **3.4 Role of Members**

Your role as a member of the Court Martial is similar – but not identical – to that of a juror in the Crown Court in England and Wales, as you and the other members are solely responsible for deciding the guilt or innocence of a defendant at contested trial proceedings, based on the evidence that is presented to you. The judge does not take part in your private deliberations, when deciding guilt or innocence.

### **3.5 Role of Judge Advocate**

The judge decides questions of law, practice and procedure and gives directions on these matters that are binding on you and all members of the board and parties to cases. It is important to listen carefully to any directions that the judge gives. Failure by you to follow a crucial direction might jeopardise a trial, either causing the judge to order a retrial before a different board, or resulting in the terminating of proceedings, or the later quashing of a conviction which might be unfair to an alleged victim.

### **3.6 Questions to Witnesses**

If you or your fellow members have any questions during the course of the proceedings that you would like to have put to a witness (including the defendant, but only while he or she is giving evidence), you may do so only through the judge. You should write down the question and pass it to the judge via the Court Usher. The judge decides whether it is appropriate for the question to be asked, and if so, asks it on your behalf. Bear in mind that the prosecution and defence are informed about the question in any event.

### **3.7 President of the Board**

The members of the Court Martial include a President of the Board. When some or all of the members are Service personnel, the President of the Board is the senior officer present, and is nominated in the notice from the Court Administration Officer specifying the members. If the



members are all civilians, a foreman is elected from among their number in the same way as the foreman of a jury is elected by fellow jurors in the Crown Court.

### 3.8 Duties of the President of the Board

The role of the President of the Board includes that of the foreman of a jury but with additional functions. This means that the President of the Board must have an understanding of Court Martial procedure as explained further below. The President of the Board has some functions that derive from the special context of a Service court, in which there is no equivalent of the Crown Court Jury Bailiff. Most importantly, the President of the Board is charged with the responsibility of securing that the integrity of the deliberative process for finding is protected by ensuring that there is no external contact, that the board remains together, and that any questions are raised in writing with the judge in open court. The President of the Board does not “preside” over the Court Martial; it is the Judge Advocate who presides over the court at all times, including over the deliberative process for sentencing (see paragraph 3.18). The following table sets out the functions and duties of the President of the Board when some or all of the members are Service personnel, and of the foreman when they are all civilian personnel.

**TABLE 3.8**

<b>DUTIES OF THE PRESIDENT OF THE BOARD</b>	<b>DUTIES OF THE FOREMAN OF THE BOARD</b>
<b>All Service Members or Mixed</b>	<b>All Civilian Members</b>
1. Chair the discussions during deliberations on finding	Chair the discussions during deliberations on finding
2. Ensure that all the members have an equal voice and vote	Ensure that all the members have an equal voice and vote
3. Protect the integrity of the deliberative process for finding by ensuring that there is no external contact, that the board remains together, and that any questions are raised in writing with the judge in open court	Protect the integrity of the deliberative process for finding by ensuring that there is no external contact, that the board remains together, and that any questions are raised in writing with the judge in open court
4. Take votes on finding in reverse order of seniority	Decides upon the order in which votes will be taken, save that he shall vote last
5. Announce each finding in open court	Announce each finding in open court
6. Sign the record of findings of the court	Sign the record of findings of the court
7. Participate in the deliberations on sentence along with the other members of the board, under the chairmanship of the judge.	n/a

<b>DUTIES OF THE PRESIDENT OF THE BOARD</b>	<b>DUTIES OF THE FOREMAN OF THE BOARD</b>
<b>All Service Members or Mixed</b>	<b>All Civilian Members</b>
8. Formally pronounce the sentence	n/a
9. Sign the record of sentence of the court	n/a
10. May make additional remarks to the offender about the effects of the sentence on the defendant’s Service career and of the offence on the Service, but only if permitted by the judge.	n/a

3.9 It is important that the President of the Board, who is an officer of the Services, does not use the authority of his rank to influence other members when they are deciding upon finding. When some or all members are Service personnel the President of the Board has the role of formally announcing the sentence of the court after the judge has explained the reasons for it. If the judge permits, the President of the Board may make additional remarks about the effects of the offence and of the sentence.

### 3.10 Oaths and affirmations

Before you sit as a member of the Court Martial in trial proceedings you are asked to take an oath or affirm in the manner set out in Annex A of this Guide. This is governed by the Oaths Act 1978. It is suggested you read the oath or affirmation to familiarise yourself with the wording, but there is no need to memorise it as copies are provided in court. In accordance with the terms of this oath or affirmation you must not discuss the proceedings with anyone other than your fellow members, and even with them only when you are all together in the retiring room.

### 3.11 Contact with People Involved in the Court

If you have contact with anyone involved in the Court Martial such as the defendants, any witnesses, or the prosecution or defence legal representatives, you must inform the judge and Court Officer immediately. You should not initiate contact directly with the judge outside the courtroom. If there is a need to contact the judge, for example on administrative matters such as the days and times at which the court will sit, you should communicate through the Court Officer or the Court Usher.

### 3.12 Duty not to Discuss the Case

When you are not actually sitting in the Court Martial, for example waiting in the members’ retiring room, you may undertake work unrelated to the trials and you may contact your unit or place of work. You may return home or to your unit each night if practicable, or the Military Court Service will arrange accommodation. Wherever you are staying, you must at all times adhere to the rule that you must not discuss any aspect of a case that you are hearing with anyone apart from the other members, and then only when all the members are together.

### 3.13 **Media**

If you are approached by the media to discuss a case you must make no comment, and you must report the approach to the Court Officer as soon as possible. The Court Officer informs the judge what has occurred.

### 3.14 **Deciding Case only on Evidence Presented**

Your decision as to the guilt or innocence of a defendant must be based solely upon the evidence that is presented to you during the Court Martial proceedings. You must therefore pay close attention to what is said by the prosecution and defence legal representatives, the witnesses and the judge during the proceedings. It is a matter for the judge to decide what evidence is admissible and he will prevent you from hearing anything which might prejudice your ability to render a fair verdict, or might appear to do so. It is important that all participants in the trial see and hear the same evidence as that upon which you make your findings of guilt or innocence.

### 3.15 **Improper Knowledge of Case**

You must not make any attempt to discover any details about the listed court cases prior to attending for duty, and after you are allocated to a court you must make no attempt to find out further information about any particular case or the parties or witnesses involved. If documentation relating to a case is inadvertently left where you may have access to it, you must not look at it, and you must report the matter to the Court Officer immediately. You must not visit the scene of the alleged offence either before or during the trial unless a site visit is ordered by the judge. If during the course of the trial you realise that you know the location being discussed you should inform the judge of this by note. Failure to exercise due caution in respect of the principle that the guilt or innocence of a defendant must be decided solely upon the evidence presented in court is likely to have serious consequences, for example the need to terminate the proceedings and hold a re-trial, or the subsequent quashing of a conviction.

### 3.16 **Documents and Telephones**

You must not bring into the courtroom a mobile telephone, own notebook, reference documents (except the *Guides*), or similar items. These items may be left in the members' retiring room. If the board has retired to deliberate you must ensure all mobile telephones are switched off. You must not remove any materials from the courtroom during the trial. At the end of the trial nothing may be removed from the courtroom except for those exhibits and notes which the judge permits to be taken to the members' retiring room during deliberations.

### 3.17 **Deliberations on Findings**

The law permits a board in the Court Martial to reach a finding of guilt or innocence by a simple majority, but it is preferable and desirable for any finding to be unanimous if possible. If there is equality of votes, the court must acquit the defendant. There is no casting vote at this stage. Before the board retires to deliberate on its findings, the judge gives directions on this point and on other matters. Until after a finding of guilt has been announced in open court, no discussions whatsoever of sentencing options or implications, no matter how general or hypothetical, are to take place before or during any trial proceedings or in the absence of the judge.

### 3.18 Sentencing Stage

If a defendant pleads guilty to a charge, or the board decides on the evidence that the defendant is guilty of a charge, you will join with the judge to decide upon the appropriate sentence. The judge, who chairs the sentencing deliberations, provides guidance to the members about the range of sentencing options available in law, the applicable sentencing guidelines, the way aggravating and mitigating factors are taken into account, and the way those factors relate to the facts of the offence and the circumstances of the offender. Each member and the judge has a vote on sentence, and if there is an equality of votes the judge has a casting vote. At this stage the role of a member differs significantly from that of a juror in the Crown Court, who plays no part in sentencing. If you are a member of the Services you may bring a Service perspective to sentencing for an offence committed in a Service context. However, if you are a member of an all civilian board, you will take no part in the sentencing stage.

### 3.19 Order of Voting

When the members are Service personnel, if a vote is taken upon findings the President of the Board must invite the most junior member to vote first and proceed to take the remaining votes in reverse order of seniority. When voting on sentence the judge also takes the votes in reverse order of seniority and then votes himself after the members have cast their votes.

### 3.20 *Newton* Hearings

Sometimes following a Guilty plea there is a dispute about the factual basis of the plea, which may affect subsequent sentencing considerations and which needs a hearing to resolve (known as a *Newton* hearing) as part of the sentencing proceedings. Under these circumstances the judge and the members all take full part in the hearing to decide the issue. The finding is by a majority of votes (judge and members combined). If there is equality of votes, the court must resolve the issue in favour of the offender.

### 3.21 Service Dress and Uniforms

The President of the Board is responsible for ensuring that military personnel in the court maintain a proper standard of dress, and should address any comments about this via the judge. However, the President of the Board should not make any comment on the turn-out or dress of the defendant; any issues in relation to a serving defendant are handled by the Court Officer via the defendant’s unit. In hot weather the President of the Board may permit shirt sleeve order to be worn.

### 3.22 Head-dress

Head-dress is worn by all Service personnel in the courtroom at the beginning of the hearing until oaths are taken. The Judge Advocate gives instructions as to the removal and replacing of head-dress when required. Head-dress is replaced and worn during the announcement of findings, during the passing of sentences and at the conclusion of a case when the judge and board leave the courtroom. The Court Usher uniquely keeps head-dress on throughout proceedings.

### 3.23 After End of Trial

Even after the court proceedings are concluded you remain bound by the oath, so whilst you may discuss with others matters of fact that were disclosed in open court and so are part of the public

record, you must do so only with great care. You must not discuss the deliberations as to findings or sentence with anyone unless you are required to do so in due course of law. If you have a concern or complaint relating to your service as a member of the court which cannot be resolved with the judge or with the Court Officer during the course of your duty, you should write personally to the Director of the Military Court Service (who is the Court Administration Officer) at Building 398, Trenchard Lines, Upavon, Pewsey, Wiltshire, SN9 6BE who will respond with advice, having consulted the Judge Advocate General if necessary. It is important that you do not raise such concerns or complaints with your chain of command as that might breach your oath.

### **3.24 Difficulties in carrying out duties or abiding by instructions**

If you have any concerns about your ability to carry out these duties and responsibilities, and to follow the instructions given, you should contact the Military Court Service as early as possible prior to starting your court duties. If you become concerned about this after the proceedings start you must inform the judge as soon as possible.

### **3.25 Offences relating to members of the Court Martial**

Please ensure that you read and understand Annex B, which gives details of new offences relating to members of the Court Martial.

## **Section 4: The Summary Appeal Court (SAC)**

### **4.1 Origins and Purpose**

The SAC was established in 2000, after it was found that summary trial (Royal Navy) or summary dealing (Army/RAF) procedures were not of themselves ECHR compliant. It is the right to appeal to the SAC (which is an ECHR compliant court), together with the unfettered right to elect trial in the Court Martial, which makes the summary hearing process as a whole compliant. Everyone who is dealt with summarily has a right to appeal to the SAC, and a person may appeal against either the finding and punishment, or the punishment only.

### **4.2 Nature of Hearings**

An appeal against finding and punishment is an entire re-hearing of the facts, but in an appeal against punishment only the facts of the case are usually read to the court as undisputed. The court hears any submissions or evidence on mitigation from the appellant, before considering the punishment. On rare occasions in an appeal against punishment only, the appellant may accept that he committed the offence, but dispute the alleged facts as presented at the summary hearing. In such circumstances although the appeal is only in respect of punishment, there is held a ‘*Newton* hearing’. A *Newton* hearing is a limited hearing of only the evidence relevant to the disputed facts of the offence, so that the court can decide upon which facts the punishment should be based.

### **4.3 Constitution**

The SAC comprises a Judge Advocate who is specified by the Judge Advocate General to conduct the hearing, and two “lay” members (referred to in this Guide as members) who are officers or warrant officers qualified and eligible to sit (see paragraph 2.7). There is no President of the Board in the SAC.

### **4.4 Role of Members**

The duties and responsibilities of the members of the SAC are set out below. Many of the paragraphs given above for the Court Martial apply equally to the SAC. Refer to paragraphs 2.1-2.12, 3.5, 3.10-3.13, 3.15-3.16, and 3.21-3.24. The role of a member of the SAC is similar to that of a lay magistrate in England and Wales sitting with a judge in the Crown Court to hear an appeal from a Magistrates’ Court. It is the judge who presides at a hearing of the SAC, and it is important that members pay careful attention to any directions that the judge gives.

### **4.6 Findings**

As mentioned, an appeal against finding (or a *Newton* hearing) is a fresh hearing of the relevant evidence. At the conclusion of an appeal against finding the court decides whether to confirm the original finding or quash that finding. On rare occasions another option may exist, that of substituting a different offence in place of the offence in the original finding, and the judge advises if this option is possible. If the court quashes a finding, it follows that the original punishment awarded is also quashed and the appellant is free to go. If the court confirms the finding of guilt, or substitutes a finding that a different offence is proved, the court then proceeds to consider the punishment. If there is a *Newton* hearing the court decides the facts upon which the punishment is to be based.

#### **4.7 Punishment Only Appeals**

If the appeal is against punishment only and the facts of the case are not disputed, they are presented to the court by the respondent (that is, the prosecution).

#### **4.8 Consideration of Punishment**

Before the court decides upon the appropriate punishment, the respondent addresses the court on matters such as antecedents and any time already spent in custody, and the appellant has an opportunity to present matters in mitigation, including the evidence of character witnesses. There may also be reports on the appellant to consider. The court (that is, the judge and the two members together) retires to decide what punishment to award. The options are limited to confirming the original punishment, or substituting a punishment that is no more severe than the original punishment awarded at the summary hearing.

#### **4.9 Oaths and affirmations**

Before you sit as a member of the SAC you are asked to take an oath or affirm in the manner set out in Annex A of this Guide. It is suggested you read the oath or affirmation to familiarise yourself with the wording, but there is no need to memorise it as a copy is provided. You may be asked to take the oath or affirm in the courtroom, or in the judge’s chambers before the court sits.

#### **4.10 Duty Not to Discuss Proceedings**

In accordance with the terms of the oath, you must not discuss the proceedings with anyone other than the judge and the other member, and even with them only when all three are together. Whilst most appeals are short enough to be concluded within one day, it is nevertheless important to remember this duty if there is an adjournment.

#### **4.11 Decisions Based on Evidence Presented**

Decisions as to whether findings should be confirmed, substituted or quashed, and the appropriate punishment, must be based upon the evidence that is presented to you during the SAC proceedings. It is a matter for the judge to decide what evidence is admissible and if any evidence is brought to your attention which should not have been because it is inappropriate or irrelevant to the matters in issue, the judge will instruct you to disregard it. It is important that all participants in the appeal see and hear the same evidence as that upon which you make your decision.

## ANNEX A

### OATHS AND AFFIRMATIONS

1. As a member of the Court Martial or the Summary Appeal Court you are required to swear an oath or affirm in the manner set out below.

#### PART 1

##### MANNER OF ADMINISTERING OATHS AND AFFIRMATIONS

2. The person taking the oath shall hold the appropriate Holy Book in his uplifted hand and shall say, or repeat after the person administering it, the oath provided in Part 2 of this Appendix for that category of person.
3. 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 Appendix.
4. If none of the forms of oath provided in this Appendix is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such a form and manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.
5. A person making a solemn affirmation instead of taking an oath shall say or repeat after the person administering it the affirmation provided for in Part 4 of this Appendix.

#### PART 2

##### FORM OF OATH

###### **Member of the Court Martial or the Summary Appeal Court**

6. I swear by Almighty God that I will well and truly try the defendant(s)/appellant(s) 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 Court Martial/Summary Appeal Court, unless required to do so in due course of law.

###### **Person under instruction**

7. 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 Court Martial/Summary Appeal Court unless required to do so in due course of law.



**PART 3**  
**FORM OF SCOTTISH OATHS**

8. The form of Scottish oath shall in each case be the same as the form of oath set out above for the relevant category of person except that for the words:

“I swear by Almighty God...”

there shall be substituted the words:

“I swear by Almighty God and as I shall answer to God at the Great Day of Judgement...”.

**PART 4**  
**FORM OF SOLEMN AFFIRMATION**

9. The form of affirmation shall in each case be the same as the form of oath set out above for the relevant category of person except that for the words:

“I swear by Almighty God...”

there shall be substituted the words:

“I solemnly, sincerely and truly declare and affirm...”.

**ANNEX B****OFFENCES RELATING TO MEMBERS OF THE COURT MARTIAL****GENERAL**

1. This annex provides information regarding legislative changes which came into force on 13 April 2015 and which create 4 new Service offences relating to members of the Court Martial and their deliberations. The effect of the changes is described below.

**BACKGROUND**

2. The Criminal Justice and Courts Act 2015 (CJCA15) received Royal Assent on 12 February 2015 and the relevant provisions came into force on 13 April 2015. Sections 71 – 74 of the CJCA 15 created 4 new offences of jury misconduct for civilian jurors. Section 76 and Schedule 14 of the CJCA 15 make equivalent provision for the Service justice system. Schedule 14 amends the Armed Forces Act 2006 (AFA 06) by inserting a new section 163A and new schedule 2A to AFA 06, which create new offences relating to members of the Court Martial and their deliberations.

**NEW OFFENCES**

3. The following 4 new offences relating to members of the Court Martial and their deliberations have been created:

- a. Research by lay members (subject to specified exceptions, intentionally seeking information relevant to the case including asking a question, searching an electronic database, visiting or inspecting a place or object, conducting an experiment or asking another person to seek the information).
- b. Sharing research with other lay members.
- c. Engaging in other prohibited conduct.
- d. Disclosing information about members' deliberations (subject to specified exceptions, intentionally disclosing information about statements made, opinions expressed, arguments advanced or votes cast by members of the Court Martial during their deliberations; or soliciting or obtaining such information).

4. Details of the offences including potential punishments are contained within the new schedule 2A to AFA 06. The Court Martial may impose any of the punishments set out in the Table in AFA 06 section 164, but the maximum sentence of imprisonment that can be imposed is 2 years.

5. The offences at paragraphs 3a-c above can be committed by a lay member of the Court Martial, which means any lay member whether or not that lay member is a person subject to Service law or civilian subject to Service discipline.

6. The offence at paragraph 3d above (disclosing information about members’ deliberations) can be committed by anyone.

### **JURISDICTION TO TRY THE NEW OFFENCES**

7. The Court Martial has the jurisdiction to try all 4 offences. In relation to the offence listed at paragraph 3d (disclosing information about the members’ deliberations), the Court Martial’s jurisdiction is limited to when the offence is committed by a member of the Court Martial, or someone who, at the time the offence was committed, was a person subject to Service law or civilian subject to Service discipline. The Crown Court has jurisdiction to try the offence if it is committed in England and Wales by someone else. The new offences cannot be dealt with at summary hearing or by the Service Civilian Court.