



THE ARMY PROSECUTING AUTHORITY

HER MAJESTY'S CROWN PROSECUTION
SERVICE INSPECTORATE'S REPORT ON
THE ARMY PROSECUTING AUTHORITY

EXECUTIVE SUMMARY

JUNE 2007

Introduction

This is the report of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPIS) inspection of the Army Prosecuting Authority (APA). The inspection was carried out on a non-statutory basis at the invitation of the Director Army Legal Services. The framework for the inspection was based upon common principles applying to all prosecuting authorities, but adapted to the role and circumstances of the APA. The inspection concentrated on the quality of the APA's casework and the management of its casework performance, included presenting cases in court and its role in relation to victims and witnesses.

The Army Prosecuting Authority

The APA is responsible for reviewing and prosecuting cases referred to it for trial by courts martial of persons subject to military law and also handles appeals from summary adjudications. Its territorial jurisdiction is worldwide. Although it prosecutes cases in fixed locations, usually in the UK and Germany, and sometimes in Canada and Cyprus, it can be called upon to prosecute in any theatre of operations in which the Army is engaged. APA prosecutors are part of the Army Legal Service (ALS) and, as such, can gain a varied experience of legal work in addition to prosecuting criminal and military disciplinary cases. Its prosecutors join the ALS at the rank of Captain and are Army officers qualified either as barristers or solicitors. Each one of them is required to undertake a short tour of duty as a soldier with the regular Army. Some of the existing prosecutors within the APA have served as Army officers in Iraq and Afghanistan. This enables them to become familiar with the unique community they serve and gives an understanding of the military context.

The Head of the APA is a Major General who is also the Director Army Legal Services. Day-to-day operations are headed by the Brigadier Prosecutions who is based at the APA's Headquarters at RAF Uxbridge, Middlesex. There are units in the UK (also based at Uxbridge) and Germany (at Rochdale Barracks, Bielefeld) which are each headed by a Colonel Prosecutions. At the time of the inspection in February 2007, the APA employed 58 full-time staff.

In the year to 31 December 2006, 988 cases were referred to the APA and, of those, it directed trial by court martial in 667.

The military disciplinary system

All serving soldiers, and some civilians accompanying the Army abroad, are subject to military law at all times and wherever they are serving.

The current system of military justice was introduced by the Armed Forces Act 1996 (the 1996 Act) which was implemented on 1 April 1997 and followed challenges in the European Court of Human Rights (EHCR) to the previous military justice system. These led to a complete review of Army disciplinary procedures and to the creation of the APA, which was made independent of the military chain of command.

Offences are investigated by the Royal Military Police (RMP). They report to the Commanding Officer (CO) of the accused, who is advised as to how to proceed by the ALS Advisory Branch. The CO has power to deal summarily with some offences, but the more serious ones are referred to the APA via Higher Authority (usually the Brigade Commander).

Once a case is referred to it, the APA reviews the evidence and decides whether to direct trial by court martial and, if so, on what charges. The APA may also refer the case back to the CO for summary dealing, if it concludes that is the more appropriate method of disposal.

Overview

Inspectors concluded that the APA carries out its duties competently and professionally; the standard of its casework decisions is generally high; and records of its decisions show a real attention to detail. The APA prides itself rightly on its independence but, given the inter-dependency of the organisations within the military criminal justice system (MCJS), it is also important that it should not be an impediment to dialogue and co-operation at the critical early stages of investigations, nor should it be used by others as a reason not to contact the APA where appropriate.

Most of the APA's cases are prosecuted by its own lawyers. Counsel are instructed usually only in very serious and complex cases or those with a high media profile.

Its approach to the care of victims and witnesses is adequate, but requires a more formal and structured approach to provide the level of care that is commensurate with that provided in the magistrates' courts and the Crown Court.

The APA also needs to adopt a more strategic approach to managing casework performance to ensure that proper arrangements exist to learn lessons from casework and improve performance at organisational and individual levels.

The role of the APA in the investigation

The APA provides advice to the RMP in some cases during the investigation process before referral. There is, however, some lack of clarity amongst investigators as to the circumstances in which this can occur, which has led to inconsistent approaches and a lesser take up of this facility than might be appropriate. The Army chain of command would like greater dialogue with the APA to discuss possible alternative methods of case disposal in the Service interest before referral and they should not feel inhibited from doing so, whilst recognising the clear independence of the APA and the current statutory procedure which gives it no direct powers before formal referral.

The quality of decision-making

The quality of decisions is sound and reflected in detailed case analyses, although these should address more clearly issues of Service interest and reasons for decisions as to whether proceedings should be at District Court Martial or General Court Martial level. Cases generally proceed on the right charges and casework decisions are usually timely. Delay is monitored by the APA and in conjunction with the Adjutant General (who is responsible for Army discipline). The initial review decision accorded with the Service Code evidential test in 87 of the 91 cases examined (95.6%). The decision accorded with the public (including Service) interest test in all relevant cases.

The following table shows the APA's cases by outcome for the year to 31 December 2006:

<i>APA case outcomes 2006</i>		
	Numbers	Percentage
Guilty pleas	597	79.4%
Convictions after trial	44	5.8%
Acquittals after trial	45	6.0%
Cases discontinued	66	8.8%
Total outcomes	752	100%

Prosecutors are aware of the significance of delay and the consequences it may have on proceedings at a later stage. The APA maintains its own data in respect of the timeliness of review. The following table shows the breakdown of time taken between referral and direction for trial in the year to 31 December 2006:

Delay period in days	0-30	31-60	61-90	91-120	121-150	151-180	181+
<i>Number of cases</i>	434	125	63	22	16	13	17
<i>(total 690)</i>	62.9%	18.1%	9.1%	3.2%	2.3%	1.9%	2.5%

Prosecutors within the APA reflect a mix of experience; more experienced staff are available to mentor recent recruits, but this could be more formalised, and a cadre of specialist lawyers for the more serious offences would assist in this respect. However, concerns - representing a wide cross-section of views from both within the APA and from other stakeholders - were expressed that the current system of induction for prosecutors within the APA does not allow all to gain sufficient experience to deal with some of the more complex cases. It should be emphasised at this point that experience and ability are distinct and comments made referred to the former and not the latter.

Staffing policy at the APA was changed in 2003 to address the issues referred to above. The principal changes were:

- an increase in the ratio of experienced prosecutors to new ones;
- the ability for those who demonstrate an aptitude for prosecuting to spend the majority of their career within the APA, although shorter tours of duty elsewhere may intervene;
- shortened tours elsewhere for those who wanted a break from prosecuting;
- re-assignment of those who consider themselves, or are considered, unsuited to prosecution work;
- the introduction of a three year tour of duty for those in mid-stream.

High profile cases

A number of high profile cases have attracted attention to the investigation and prosecution of British soldiers on operations in Iraq for offences involving the deaths of Iraqi civilians. Two such cases formed part of our file sample, although they were not examined as apart of any specific brief to do so. In each one, the decision to prosecute had been taken with the benefit of leading counsel's advice that the evidential test was met. Although the prosecution failed in both cases, the APA had reviewed and handled the cases appropriately, being proactive in trying to re-inforce evidential deficiencies which stemmed from investigations undertaken in difficult circumstances. Both cases highlight the importance of close liaison between the prosecution team of investigator and prosecutor in the early stages of an investigation.

Inspectors concluded from their examination that the decision to prosecute in each case was justifiable within the terms of the Code and neither could be criticised as unreasonable. Each decision was finely balanced in terms of the evidence and each case was considered by experienced APA prosecutors and by leading counsel. The decisions were taken by the APA in the context of much high profile media attention, but each was taken independently of, and free of influence from, this attention.

The quality and timeliness of casework handling

Continuing case reviews, including trial preparation, are usually included in formal notes on the file. Many of the arrangements for trial are dealt with at directions hearings. Details of court hearings are found on notes within the correspondence file. Greater use of the file jacket could be made to record court hearings and out-of-court actions and reviews. Following direction for trial, the court is able to manage and monitor case progress through directions and pre-trial hearings.

Progressing cases

The following table shows the breakdown of delay between direction and trial in the year to 31 December 2006:

Delay period in days	0-30	31-60	61-90	91-120	121-150	151-180	181+
<i>Number of cases</i>	84	151	116	106	52	22	53
<i>(total 584)</i>	14.4%	25.8%	19.9%	18.1%	8.9%	3.8%	9.1%

There are no formal arrangements for case progression within the courts martial system. The Military Courts Service and the court have the principal role in progressing cases, although this involves close and regular liaison with the APA.

Data on cracked trials is not collected within the MCJS. Many accused plead guilty on the day of trial and there is some suggestion of an over readiness by the APA to accept pleas to reduced charges. Decisions to discontinue accord with the Service Code, but some could be avoided by a more proactive approach to review. The APA needs to put in place arrangements to deal with case queries in the absence of the case 'owner'. A change control procedure should be implemented to ensure consistency in the usage of Axia, the case management system, and guidance should be issued to set out responsibilities for updating casework details.

Presenting and progressing cases

Courts martial are prosecuted in fortnightly assizes held in various centres in the UK and Germany. Prosecutors present their own cases wherever possible but listing arrangements, and the location of some courts, are not always compatible with this aim. A listing protocol with the Military Courts Service would help in this respect. Prosecutors come from varied backgrounds and some have no experience of advocacy. Induction training includes a one week advocacy course. The standard of prosecutors is generally good and they prepare cases in some detail.

A formal system of advocacy monitoring would help the development of individual prosecutors. Assistant Prosecuting Officers provide valuable assistance before trial and at court.

Inspectors observed a total of 11 prosecutors in courts martial in the UK and in Germany. The quality of advocacy varies but the overall picture is a positive one.

Advocacy	Outcome Level	Number
Assessed as above	1	0
normal requirements	2	1
Against professional standards of advocacy	3+	2
	3	8
	3-	0
And those assessed as less than competent	4	0
	5	0

Assessment: 1 = Outstanding; 2 = Very good, above average in many respects
 3+ = Above average in some respects; 3 = Competent in all respects; 3- = Technically competent, but lacking in presence or lacklustre
 4 = Less than competent in many respects; 5 = Very poor indeed, entirely unacceptable

Similarly, the views of other court users were generally positive, although concerns were again expressed that the APA's staffing arrangements meant that some prosecutors were unable to reach the required level of experience in the time available.

Prosecutors are generally professional in court and prepare their cases thoroughly, but the relatively low number of contested cases per prosecutor per year (four on average) means that some necessarily lack experience initially.

Disclosure

The common law rules on disclosure of unused material currently apply to court martial proceedings. Investigators provide a schedule of unused material which is considered by prosecutors. All material supplied, which is not part of the prosecution case, is disclosed to the accused. Files, however, contain no evidence that the material has been considered and there is no record of the prosecutor's decision on disclosure. It is current practice to provide the court with a copy of all unused material served on the accused. Material should not be served on the court unless it is being asked to determine an issue of materiality or public interest immunity (PII). Prosecutors are alive to issues relating to sensitive material, but there are concerns about arrangements for its storage. It is anticipated that the Criminal Procedure and Investigations Act 1996 will be applied to courts martial in December 2007, following a six month training period in the statutory regime for prosecutors and investigators.

The service to victims and witnesses

The APA's responsibilities in respect of victims include notifying them when cases are directed for trial or that there is insufficient evidence to proceed, or when charges are dropped or substantially altered.

The Military Court Service warns witnesses for court and assumes responsibility for arranging witness care at court. They have a standing arrangement with the Witness Service at Guildford Crown Court, who will provide a volunteer to attend courts martial in Germany to give support to any witness who requires it.

Prosecutors generally comply with their responsibilities and communications are timely. Prosecutors and Assistant Prosecuting Officers are proactive in introducing themselves to victims and witnesses at court and assisting them by showing them copies of their statements and the courtroom, if requested. However, the approach to witness care lacks a clear strategy and consistency and needs to be improved.

The Code of Practice and the Prosecutors' Pledge

The views of the victim are not the paramount consideration in the decision-making process. The Code of Practice emphasises that decisions are based on the evidential and public (including Service) interests in the Code for Service Prosecutors. The latter document addresses various factors relating to victims, and prosecutors try to take them into account and accord them proper importance as the Code of Practice makes clear, and there is no suggestion that they are completely ignored. However, the views of the victim were sought, through the Special Investigations Branch, before discontinuance in only two out of the eight cases in the file sample.

Although, in general there is adherence to the Code of Practice, it is not consistently or clearly applied in each case. Even within the Code, the APA could do more in providing a full service of care to victims and witnesses and giving them greater emphasis in the prosecution process. This can be easily achieved without any compromise of independence.

The Crown Prosecution Service (CPS) has adopted the Prosecutors' Pledge for victims of crime. This is a series of ten pledges or promises to victims about the level of service they can expect from the CPS. Some of the pledges are reflected in the APA's responsibilities set out in the Code of Practice. Others, such as providing assistance to victims at court, relate to actions which the APA already undertake. They are, however, more wide ranging and specific, and give more detailed guidance to prosecutors about their duties and responsibilities in respect of derogatory mitigation and other attacks on the character of victims, for example.

They are a set of principles which supplement and provide guidance on the APA's existing responsibilities in relation to care of victims and witnesses. Inspectors recommend that the APA adopt them as part of a strategy to strengthen its approach to victim and witness care.

Equality and diversity in casework

There is a commitment to equality and diversity principles within the Army and the number of recruits from minority ethnic backgrounds is increasing. The APA does not record details of the ethnicity and gender of defendants, although they are aware of, and take into account, cultural differences. Similarly, the APA has no special arrangements for monitoring the number and outcomes of race and other 'hate' crimes. Data should be collected in order to evidence freedom from bias and provide transparency in decision-making.

Managing performance to improve

Office instructions define responsibilities for operational effectiveness and improving performance. All initial casework decisions are checked by a second, usually more senior, prosecutor. Final case reports provide a useful means of learning lessons from casework and should be refined to identify strengths and aspects for improvement, and to assist the development of individuals and provide assurance of casework quality. Although casework data is maintained, this gives only limited information about performance, and dissemination of information is ad hoc and limited. The APA needs to develop a more structured performance management regime which provides information on key aspects and ensure that performance information is disseminated to APA staff and discussed with Military Court Service partners. Although the APA liaises with its key partners and stakeholders on a regular basis, most liaison is issue-led and a more structured framework should be developed.

Conclusions

The APA has established itself as an integral part of the MCJS and adds value in terms of the overall quality of its casework review and handling. Residual issues over the experience which the APA offers prosecutors in criminal casework and advocacy are gradually being diminished by the improved arrangements for staffing and career progression.

This has included achieving recognition of its independence within the MCJS. However, some misperceptions by others outside the APA on this aspect have contributed to misunderstandings over arrangements for early contact between the APA and the Special Investigations Branch during the investigation process. The overall extent of the APA's engagement with victims and witnesses is, nevertheless, developing to be more open and direct.

The quality of the APA's casework can be improved further by a more robust casework quality assurance and performance management programme. The need to demonstrate freedom from bias over race, gender and other equality issues in its decision-making requires procedures for monitoring cases in which such issues arise.

Recommendations and aspects for improvement

Inspectors made ten recommendations about the steps necessary to address significant issues relevant to important aspects of performance which they considered to merit the highest priority.

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- 1 The APA should revise, in conjunction with the Army Legal Service and Provost Marshal (Army), the guidelines dealing with the circumstances in which investigators may, and should, seek advice from the APA in the course of an investigation into a criminal offence, and ensure that they are widely promulgated within each authority (paragraph 4.7).

 - 2 The APA should introduce structured arrangements within each office which ensure that casework queries and issues are dealt with in the in the absence of the assigned prosecutor (paragraph 7.21).

 - 3 The APA should discuss with the Military Court Service a protocol for listing which puts an emphasis on ensuring that lawyers prosecute their own cases as often as possible and avoids late transfer of cases (paragraph 8.4).

 - 4 The APA should implement a structured system of advocacy performance monitoring and feedback to individual prosecutors (paragraph 8.13).

 - 5 The APA should ensure that prosecutors endorse all case files to show what unused material is disclosed to the defence and the reasons why material is disclosed or withheld (paragraph 9.9).

6 The APA should agree with the Provost Marshal (Army) that current procedures dealing with the revealing of unused material to the APA by the Royal Military Police should include, in cases in which there is no sensitive unused material, specific confirmation to that effect (paragraph 9.12).

7 The APA should devise its own strategy for victim and witness care, which includes adoption of the Prosecutors' Pledge, to ensure that:

- the needs of victims and witnesses are considered on an individual basis and, as such, are a priority consideration at all stages of case progress; and
 - letters are sent to victims in all cases in which charges are substantially altered or dropped (paragraph 10.17).
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8 The APA should:

- collate and analyse data relating to the ethnicity and gender of defendants and prospective defendants; and
 - collate and analyse information on the numbers of, and outcomes in, race, religious and other hate crimes sufficient to enable it to demonstrate that its casework is free from bias (paragraph 11.6).
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9 The APA should develop a structured performance management regime which includes:

- monitoring casework performance of individual prosecutors to inform discussion in the appraisal process and identify training and development needs on an individual, and wider unit and authority basis;
 - collating and analysing data on successful and adverse case outcomes, including cracked and ineffective trials;
 - information on the quality and timeliness of casework and casework processes and identifies actions for improvement for discussion within the APA; and
 - sharing performance information with relevant military criminal justice system partners (paragraph 12.10).
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10 The APA should identify in relation to each of its military criminal justice system (MCJS) partners and the Army chain of command those issues for appropriate regular discussion, and develop a framework for a joint, structured approach to liaison which will drive up performance in the MCJS and promote a joint approach to MCJS initiatives (paragraph 12.12).

Inspectors additionally identified eight aspects for improvement within the APA's performance.

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- 1 Senior officers within the APA should provide a more formal programme of induction and mentoring for prosecutors within the organisation (paragraph 5.7).

 - 2 The APA should assign prosecutors to key specialisms, in particular offence types, who will be the principal reference point for dealing with such cases and will provide advice, assistance and training to other prosecutors (paragraph 5.8).

 - 3 The initial case analysis should include the factors determining why court martial is considered the appropriate method of dealing and the reasons for the choice of venue (paragraph 5.17).

 - 4 The APA should look at the reasons for delay in reviewing cases to identify how improvements to timeliness can be made, and set more demanding timetables (paragraph 5.24).

 - 5 The APA should redesign the current file cover to provide a record of all court hearings and key out-of-court actions and decisions (paragraph 7.4).

 - 6 APA managers need to re-inforce the importance of recording actions on the Axia case management system contemporaneously and define responsibilities for updating (paragraph 7.23).

 - 7 A change control mechanism should be put in place to monitor and control changes to the Axia case management system to ensure consistency of application (paragraph 7.25).

 - 8 The APA should exclude from the bundle of prosecution papers served on the court material which it does not intend to use as part of the prosecution case (paragraph 9.11).
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Strengths

We identified four strengths within the APA's performance.

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- 1 Case analyses are well structured and detailed and indicate a thorough review (paragraph 5.11).

 - 2 The APA's participation in the arrangements for monitoring the timeliness of the Army disciplinary procedure, which includes high level attendance at regular meetings to discuss progress in individual cases and helps to minimise delay in the referral and trial procedure (paragraph 5.28).
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- 3 The standard and comprehensiveness of the APA initial advocacy training course prepares prosecutors for presenting cases in courts martial (paragraph 8.6).
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- 4 Assistant Prosecuting Officers provide valuable assistance to prosecutors presenting cases in court and assist with witness care (paragraph 8.10).
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The full text of the report may be obtained from the Corporate Services Group at HM Crown Prosecution Service Inspectorate (telephone 020 7210 1197) and is also available on line at www.hmcpsi.gov.uk.

HMCP
June 2007