



The Army Prosecuting Authority
Her Majesty's Crown Prosecution Service
Inspectorate's follow-up report on
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ARMY PROSECUTING AUTHORITY MISSION STATEMENT

Under the day to day management of Brigadier Prosecutions, and independent of the chain of command, prosecuting officers of the Army Prosecuting Authority will determine whether cases referred to them by the chain of command should be directed for trial and will prosecute before military courts those cases which have been so directed. They may provide advice to police forces on matters concerning the prosecution of offences and will represent the Crown as respondent to appeals before Summary Appeal Courts and the Courts-Martial Appeal Court.

1 INTRODUCTION

- 1.1 This report details the findings of Her Majesty's Crown Prosecution Service Inspectorate arising from a follow up inspection of the Army Prosecuting Authority (APA) in November 2008. The APA is responsible for the review and prosecution of cases referred to it for trial by court martial in respect of persons subject to military law who are accused of a criminal offence. The APA is headed by a Major General who is also the Director General Army Legal Services (DGALS). Day-to-day operations are headed by the Brigadier Prosecutions who is based at the APA's Headquarters at Hillingdon House, RAF Uxbridge. This also houses the unit which is based in the UK. A second unit is based in Bielefeld in Germany. Both are headed by a Colonel (Prosecutions).

The APA and the military court system

- 1.2 The APA was created by the 1996 Act which amended section 83 of the 1955 Act. The 1996 Act provided that the term "prosecuting authority" should mean the officer appointed to the position. It is generally used within the military criminal justice system (MCJS) to mean the organisation as well as the appointee and is used as such in this report, unless otherwise indicated. The appointee must be an officer of the armed forces and a qualified lawyer. He may delegate his functions to officers appointed as prosecuting officers who must also be legally qualified.
- 1.3 The APA is located within the Army Legal Service (ALS) and the Director General Army Legal Service (DGALS) is also the prosecuting authority. Thus, DGALS has a dual role. As the prosecuting authority, he is responsible for prosecutions undertaken by the APA and reports directly to the Attorney General who has a non-statutory superintendence role. DGALS is also the Army's senior military lawyer but, to avoid conflict with his role as the prosecuting authority, he delegates to Brigadier Advisory the responsibility for providing disciplinary advice to the Army. Other than providing disciplinary advice, DGALS reports on all other ALS functions to the Adjutant General who has responsibility for the wide range of the Army's personnel services.
- 1.4 The APA deals with cases referred to it by the Army chain of command. Cases are investigated by the Royal Military Police (RMP), usually the Special Investigations Branch (SIB) which is the detective branch of the RMP. This report will refer to both as "the investigator" unless the context requires a distinction to be made. Once an investigation into an offence by a soldier is completed the investigator forwards a report to the Advisory Branch of the Army Legal Service and the accused's commanding officer (CO). Advisory Branch advises the CO whether the offence is one he can deal with or whether it should be referred by Higher Authority (HA), usually the Brigade Commander, to the APA for consideration of prosecution by court martial.
- 1.5 The APA has a number of options. It can decide not to institute court martial proceedings on evidential or public interest grounds, refer the case back to the CO for him to deal with (summary dealing), usually on a lesser charge, or direct trial by court martial. Court martial may be a District Court Martial (DCM) which has powers limited to a maximum of two years imprisonment, or General Court Martial (GCM), which has unlimited powers of punishment, subject to the statutory maximums.

- 1.6 A DCM comprises a Judge Advocate and three military members. A GCM comprises a Judge Advocate and five military members. The Judge Advocate is responsible for giving directions and rules on law and procedure. The military members decide on guilt or innocence in the event of a trial and return a verdict by simple majority. Sentence is determined by the Judge Advocate and the military members.
- 1.7 Courts martial are managed by the Military Court Service (MCS) which is responsible for listing cases at court martial centres principally in the UK and in Germany. The MCS is also responsible for warning witnesses in contested cases.
- 1.8 The APA also deals with Summary Appeal Court cases. These are cases in which an accused, who has been tried summarily by the CO, appeals against either conviction or sentence. The APA may determine not to contest the appeal.
- 1.9 The following table shows the APA's caseload for 2007 and for 2008 to July:

	Year to 31 December 2007	1 January to 31 July 2008
Total number of cases referred to the APA	1068	630
Cases directed for trial by Court Martial	644	405
Cases which were not directed for trial	238	149
Summary Appeal Court Cases	114	45
Cases which were discontinued following direction for trial	72	31

The inspection process

- 1.10 The original inspection, which took place in February 2007, specifically examined the quality of casework and casework processes. Aspects of performance relating to financial management and resource management were not considered although management performance which had a direct influence on the quality of casework was considered. Each aspect inspected was examined to establish whether appropriate systems were in place and whether they were operating effectively. Consideration was given to whether systems and processes were routinely reviewed so as to keep abreast of legislative and other changes. Ten recommendations and eight aspects for improvement were identified. The report also identified four strengths in APA performance. These are set out in annex A.
- 1.11 The purpose of this report is to assess the progress made in addressing the issues previously identified and to evaluate whether the strengths acknowledged are still present. The follow up inspection took place against the background of the proposed merger of the prosecuting authorities for all three services into one Service Prosecuting Authority, headed by the Director Service Prosecutions, which will be responsible for the conduct of all courts martial. However, this review solely addresses the performance of the APA and there has been no consideration of the work of the other single service prosecution authorities. The start date for the SPA has been deferred until October 2009, but the DSP became the head of each of the three Service Prosecuting Authorities on 1 January 2009. This report makes comment, where relevant, on particular issues that will have some bearing on the new single authority.

Methodology

- 1.12 The APA was asked to provide an assessment of the progress made against the recommendations and aspects for improvement detailed in the original report. This formed the basis of the interviews which were conducted with APA staff and other stakeholders.
- 1.13 Interviews were conducted with the Brigadier Prosecutions and his successor who took over in December 2008, the Colonel Prosecutions (Germany), prosecuting team leaders, prosecutors and administrators. Due to APA operational reasons most of the internal interviews were conducted with staff based in Germany, although some informal discussions took place with APA staff based at Uxbridge as part of file examination.
- 1.14 The inspection has also sought the views of other stakeholders and relevant practitioners, largely through questionnaires. Inspectors also spoke to judge advocates and other court users when attending courts martial. Details of representatives of other agencies who contributed their views are attached at annex B.
- 1.15 Inspectors examined 26 recently concluded files to assess the quality and timeliness of review and the effectiveness of review processes. The file sample comprised cases dealt with at District and General Courts Martial in the UK and Germany and Standing Civilian Courts in Germany. Case outcomes included guilty pleas, trials, cases which were not directed for court martial, discontinued cases and appeals against summary dealings by commanding officers. Files were examined using the same questionnaire that was used in the original inspection. Particular attention has been given to disclosure issues and case progression, two of the areas previously identified as requiring attention. The service provided to victims and witnesses was also reviewed and in particular measured against the standards established in the Victims' Code. Details of the file sample are shown at annex C. The results of file examination are shown at annex D.
- 1.16 In addition a small sample of current cases was examined specifically to consider performance on disclosure of unused material following the application of the Criminal Procedure and Investigations Act 1996 (CPIA) to the APA in April 2008. The results of this aspect of file examination were not recorded on the file questionnaire but are included in the overall findings on disclosure.

2 OVERVIEW

- 2.1 Casework review quality continues to be a strength although there are some issues over timeliness which need to be addressed. The results of file examination show an overall improvement, although inspectors examined fewer files than during the original inspection. All decisions in cases in the file sample accorded with the Code for Service Prosecutors (the Service Code), although there were some issues over the level of charging. Lawyers have been allocated specialisms in some types of serious and sensitive cases, consistent with the numbers of cases and available prosecutors.
- 2.2 The APA's progress towards implementing the recommendations and addressing the aspects for improvement in the original inspection report has been mixed. However, it is only fair to acknowledge that it has been affected, and in some instances overtaken, by the accelerating activity to establish the single Service Prosecuting Authority
- 2.3 Implementation of two recommendations has been fully achieved, substantial progress made in three, and limited progress in five others. The APA will in future formally record the ethnicity and gender of suspects but do not maintain data upon, or analyse, racially or religiously aggravated crimes. Whilst there is no suggestion of any sort of bias in its approach to casework, the recording of data would help to demonstrate this. The progress is similar in relation to the aspects for improvement that were identified: there has been substantial progress in two, limited progress in four, and no progress in two.
- 2.4 This report acknowledges, where relevant, the effects of transition to the SPA and its impact on the direction which the APA has been able to take in respect of some recommendations or aspects of improvement. Even so, in those aspects where activity may have stalled in some respects, senior managers continue to monitor the relevant issues and factors. They are determined to ensure that APA processes and procedures are effective and fit for purpose in the new single authority.
- 2.5 The level of early consultation during the investigation process between the APA and the RMP has increased since the implementation of a joint protocol dealing with the issue and will clearly improve when the Armed Forces Act 2006 comes into force providing for direct referral by the RMP to the APA in most serious cases. Better case building before referral to the APA will help to reduce subsequent delay.
- 2.6 There is a greater emphasis on advocacy training and mentoring for new prosecutors. Although the standard of advocacy is variable, the overall picture is a positive one. Prosecutors are monitored formally as advocates for appraisal purposes. Other training is more problematic, although training on standard topics continues to be delivered. There has been some recent informal collaboration with the Crown Prosecution Service (CPS) on training in disclosure and sexual offences which should be built upon.
- 2.7 The Criminal Procedure and Investigations Act 1996 (CPIA) disclosure regime has been applied to APA cases with effect from 1 April 2008. It is too early to make any proper assessment but initial indications are encouraging. Prosecutors make informed decisions on disclosure which are recorded on the relevant schedule. It is not yet clear to what extent the defence are engaged with the new procedures, having in the past been provided with copies of all available unused

material. Prosecutors are aware of their obligations and responsibilities, particularly in resisting “blanket” disclosure of all unused material regardless of relevance or whether it passes the test for disclosure (that is, whether it may undermine the case for the prosecution or assist the accused’s case).

- 2.8 The APA has made substantial progress in improving the service provided to victims and witnesses, both in terms of letters sent to them informing them of decisions and case progress, and engagement with witnesses at court. Technical problems with the Axxia case management system have hindered progress in flagging cases to generate an automatic victim and witness care “package” and these are being addressed.
- 2.9 Work is being undertaken to establish a more sophisticated performance regime, but the main stimulus for this is the establishment of the Service Prosecuting Authority. Contact has been made with other prosecuting organisations to see how they measure performance. Similarly, the new SPA is providing senior managers with a number of liaison forums in which to discuss issues at strategic level. Relationships at team and individual levels between agencies remain good.
- 2.10 The listing of cases is a judicial function. There are issues because all APA prosecutors in England are based in Uxbridge, whilst courts martial are held in three widely sited venues. There is no alignment of prosecutors to court martial centres. The APA has rejected the idea of a formal listing protocol with the MCS as being unlikely to have benefit. There is still a good level of co-operation between the two organisations which ensures that the most serious and sensitive cases are dealt with by the allocated lawyer, but the APA’s listing requirements have to compete with other priorities. There is greater use of video link for some preliminary and intermediate hearings but the approach to usage is inconsistent.
- 2.11 Comment is made in relevant parts of the report about the strengths which were previously identified and which have all been maintained. Case analyses continue to be well structured and detailed. The APA continues to take part in arrangements for monitoring the timeliness of the Army disciplinary procedures, although improvement is still needed in the timeliness of its own case reviews. The advocacy training course has been improved and Assistant Prosecuting Officers continue to provide a valuable service to prosecutors and witnesses at court.
- 2.12 Overall, the APA continues to carry out its functions to a good standard. Its casework review continues to be a strength. The quality of advocacy is more variable but comments from other court users were generally positive. Senior managers within the APA are currently heavily engaged in preparations for the new SPA and have been for some months. That has affected the extent to which some of the recommendations of the original report remain completely relevant. However, it has not affected the desire amongst managers to improve its level of service and performance in readiness for the challenges ahead.

3 THE QUALITY OF CASEWORK AND CASEWORK MANAGEMENT

The quality of casework

- 3.1 Case analysis continues to be a strength. The initial review decision accorded with the evidential test in the Service Code in all of the 26 cases within the file sample. The decision complied with the public interest test in all cases. Prosecutors were proactive in requesting further evidence or information in 17 out of 18 relevant cases (94.4%).
- 3.2 Although the decision in all cases within the file sample complied with the Service Code test, inspectors considered that one offender was charged prematurely before important witness information had been sought. This led to discontinuance of the case when the witness, who was not compellable, declined to attend trial.
- 3.3 Reviews are thorough and detailed displaying a sound knowledge of law and procedure. All cases are seen by or discussed with a senior lawyer who acts as mentor to the reviewer as experience is gained; all review notes are passed to the Colonel (Prosecutions) as a means of providing consistency and quality assurance. There was also evidence of a preparedness to seek the advice of a more senior officer where the lawyer was dealing with issues which were unfamiliar. Supportive comments as well as constructive criticism are to be found on both reviews and case disposal reports.

Charging levels

- 3.4 There were some issues over the level of charges. There were three cases in the sample in which allegations of assault had been charged as assault occasioning actual bodily harm (ABH) when inspectors considered that the lesser offence of common assault and swift resolution of the cases would have been appropriate. The charges were not wholly unreasonable and inspectors were able to discuss the issues with the senior officer in charge of the unit. In these three cases, there were no issues over the court's sentencing powers but the level of charge on an accused's criminal record can have serious consequences for that accused later.
- 3.5 In another case, an assault which involved a serious injury was charged as causing grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. The reviewer had considered the more serious offence of causing grievous bodily harm with intent and gave reasons for not charging that offence, but furthermore directed trial by District Court Martial which restricts the court's sentencing powers to two years imprisonment. The maximum for the offence charged is five years. Having regard to the type of injury and its seriousness, inspectors considered that the court should have had the option of imposing a penalty greater than two years and the case should have been dealt with by General Court Martial. In fact, the judge advocate dealing with the case commented on the fettering of his sentencing powers.
- 3.6 We saw two examples where an offence of perverting the course of justice was preferred for contacting a witness. In one, no threat or harassment took place merely a suggestion of what should be said if spoken to by the police. Whilst this could satisfy the evidential requirements of the offence, the action would probably be seen as a serious aggravating factor in the criminality of the initial offence. Again, comment to this effect was made by the Judge Advocate at a preliminary hearing but the case was pursued and the defendant admitted the offence.

Timeliness of review

3.7 The APA sets itself a target of making a review decision within 30 days from referral, although it recognises that some cases will require longer because of their complexity. Prosecutors often refer files back to the investigator for further information or evidence which lengthens the period. APA data shows that 336 cases were referred for decision between 1 January and 31 July 2008. The time between referral and decision is shown in the following table:

Delay period in days	0-30	31-60	61-90	91-120	121-150	151-180	181+
Number of cases (total 336)	244 (73%)	54 (16%)	20 (6%)	8 (2%)	2 (1%)	3 (1%)	5 (1%)

3.8 Periods from referral to decision in cases within the file sample ranged from six to 231 days. The case which took 231 days related to a fatal road traffic collision outside the UK and involved difficult technical issues relating to speed and road condition. It was necessary to seek further expert evidence which added to the delay. The delay was the subject of comment by the Judge Advocate at trial.

3.9 It was difficult to form a judgment whether this and other cases within the sample could have been dealt with more expeditiously at particular stages. All of those in which there was especial delay involved further investigation after referral. The initial response from the APA was generally timely. In none of the cases, so far as inspectors could see, had there been any contact between the APA and the investigator before referral. The increased use of early consultation in such cases and the new direct referral procedures should help to reduce some delay post referral but this is something that the APA and the new SPA will wish to monitor closely.

Learning lessons from casework

3.10 The prosecutor attaches a report to all finalised cases. This sets out a number of details including an account of the final hearing. If the case outcome is an adverse one, the report goes into detail as to the relevant reasons for the result. In particular it will include any judicial comment. Often it is supplemented by a transcript of the hearing. These cases are carefully scrutinised by senior managers and any casework lessons are noted. Inspectors saw two cases which were prosecuted at different intervals which were remarkably similar in their facts. There was direct reference in the later case to the result of the earlier one which had influenced the way the later one proceeded.

Axxia case management system

3.11 The APA has recently experienced some problems with the Axxia case management system. During the period immediately preceding the review there had been a number of breakdowns which led to a loss of confidence amongst some lawyers who had lost work. To ensure that data was not lost the unit in Germany was running a dual system. This was a sensible temporary measure but not sustainable in the long term as it involves a duplication of work.

3.12 The APA are hopeful that significant changes to the system introduced at the end of November 2008 will prove successful in overcoming the difficulties. There was some optimism that the issues would be resolved in good time for the changed structure.

3.13 Problems with the system and historical action has led to differences in usage between Germany and the UK. Some of the variations are appropriate and the information captured helpful

particularly in respect of timeliness. However inconsistencies of practice within a small organisation should be avoided. Moreover reliance on the knowledge of individuals presents a risk to the organisation as a whole and important decisions and actions must be properly recorded.

Training

- 3.14 The usual tour of duty within the APA is two years. There are arrangements which allow prosecutors to stay longer and return within a short period but in many cases, operational requirements cut short the tour of duty. This makes it difficult logistically for the APA to deliver effective formal training on any regular basis.
- 3.15 Prosecution work is a specialist area of law requiring not only legal knowledge but ability as an advocate. Not all APA lawyers have a background in prosecution work; some may have preferences for other aspects of the law. A new prosecutor with little experience of advocacy in general and prosecution work in particular must become proficient very quickly. This report has already referred to the comprehensive advocacy course which provides an early introduction to prosecution work and identifies areas in individual lawyers which require particular development. Other training in criminal law and evidence, and new initiatives, is equally important.
- 3.16 Two recent training initiatives have seen the APA collaborating with the CPS. CPS specialists in disclosure and in sexual offences have assisted in the delivery of training on these topics. This is a useful initiative which should be built upon. The contact has also provided benefits in a recent case involving serious sexual allegations in which the APA prosecutor contacted the CPS rape specialist who had delivered the training to discuss the issues in the case. Such contact should be developed.

PROGRESS MADE AGAINST RECOMMENDATIONS

4 ADVICE AND CONSULTATION DURING THE INVESTIGATION PROCESS

RECOMMENDATION 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.

Achieved

- 4.1 The original report highlighted a lack of certainty among investigators as to the circumstances in which investigative advice could be sought from the APA prior to referral. This uncertainty may have been contributed to by the referral procedure itself which requires cases to be submitted initially by the RMP to the Advisory Branch of the Army Legal Service (ALS). Some investigators, therefore, saw the ALS as the first point of reference for investigative advice. However, it restricted the occasions when early consultation with the APA was sought. There was a need to ensure that investigators were aware of the facility and adopted a consistent approach when seeking advice.
- 4.2 Initial progress in encouraging early consultation was slow. In many of the cases within the file sample, there was evidence that lawyers were rightly requesting additional information and evidence, sometimes many months after the commission of the offence. This led to later delay in the case, much of which could have been avoided by early contact between investigator and prosecutor. The implementation of the Armed Forces Act 2006 in October 2009 will provide for direct referral to the APA by the RMP in most serious cases. This will help to consolidate the improvements already made in early contact between the investigator and the APA.
- 4.3 There is now a protocol in place between the APA and the RMP which defines the requirement for APA support in investigations, and there is a growing trend amongst investigators to seek early advice. In serious cases, APA officers have been deployed to support investigations on operations. In most instances, however, consultation is by telephone and a record of the contact and the advice given is maintained in a register. The prosecutor will continue to be involved until the need for early advice has ended. If deemed appropriate meetings with the investigator are arranged. The units in the UK and in Germany have an officer from SIB on attachment which helps to maintain good lines of communication between investigators and the prosecutors.

5 HANDLING EXTERNAL ENQUIRIES

RECOMMENDATION 2

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

Limited progress

- 5.1 The original inspection identified concerns amongst other military criminal justice system (MCJS) agencies about difficulties in contacting prosecutors to deal with case queries and a reluctance by prosecutors to deal with enquiries about their colleagues' cases. Following the recommendation in the report, specific office instructions were issued to ensure that enquiries, including those relating to cases of absent prosecutors, are dealt with promptly.
- 5.2 There is no doubt that the situation has improved since the last inspection but there are still some residual problems. The issue is not as significant as it was but may be greater than is appreciated by APA managers.
- 5.3 The ability of prosecutors to assist with enquiries in their colleagues' cases is helped by the teamwork approach within each unit. There is a lot of discussion between prosecutors about each other's cases during the advice stage as well as after direction. Experienced prosecutors mentor recent recruits and the team leader or Colonel Prosecutions signs off prosecutors' review decisions. This approach ensures that prosecutors can take over the responsibility for a case in the absence of the reviewer and deal more readily with casework queries.
- 5.4 Ad hoc enquiries from other agencies and casework discussions are an important part of effective case management. It is something which should be monitored to minimise, if not completely obviate, the frustrations of others.

6 PRESENTING CASES

RECOMMENDATION 3

The APA should discuss with the MCS 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.

Limited progress

- 6.1 Listing is regarded by the Courts as a judicial function. The APA has rejected the idea of a protocol with the MCS as being unlikely to add benefit. Its view is that the extent of the problem has reduced and that any listing issues are now an issue for the Director Service Prosecutions and the recently established Services Justice Executive Group which includes representatives of all three prosecuting authorities in discussions to establish the unified service. This may be true but, again, some residual problems persist. An agreement or protocol which reflects a greater understanding by each agency of the other's priorities and problems in their working relationship could lead to greater efficiencies for both.
- 6.2 Although cases are frequently discussed between prosecutors to the extent that most have some awareness of each other's cases, the APA encourages the concept of case ownership. The file sample confirmed that serious or sensitive cases are almost always prosecuted by the lawyer handling the case. This approach is likely to have a positive effect on the outcome of the case and also provides a level of continuity for witnesses and victims. It is especially important for victims' families in cases which involve fatalities. Requests to the MCS for cases to be fixed to allow this continuing prosecutor involvement are sympathetically considered. Only rarely, for example in a particularly long and complex case which is likely to attract high media interest, is external counsel instructed.
- 6.3 Generally, however, the system of fortnightly sittings coupled with the distances between court centres in England and the unit's base in Uxbridge makes the listing of officers to conduct their own cases problematic although in reality this is little different from difficulties experienced in civilian courts.
- 6.4 Given the relatively small numbers of cases prosecuted, the wide geographical spread of Court Martial centres, and the situation that prosecutors are not aligned to a particular centre, inevitably it will never be possible for all lawyers to prosecute their own cases. The APA trial arrangers in the UK and Germany, who have a sound knowledge of the commitments and experience of the lawyers within their section, endeavour to ensure that where possible an appropriate lawyer is listed. Where hearing dates are changed or cases transferred, liaison takes place with MCS. This is done on an ad hoc and case by case basis.
- 6.5 Inspectors are aware that consideration has been given to locating UK based prosecutors in the new SPA at the three principal court martial centres in England. Indeed this was discussed at the time of the original inspection in respect of the APA itself. It has, however, been decided to accommodate prosecutors in one central location away from a court martial centre. It is difficult to make informed comment in this report on that decision. Inspectors are unaware of the

arguments, and arrangements for the new SPA are outside the scope of the inspection. However, some restructuring along these lines would go a long way towards overcoming the difficulties that are currently being experienced.

- 6.6 There were also discussions at the time of the original inspection about the possibility of aligning prosecution teams in some way to particular court centres. This would increase the possibility of individual prosecutors dealing with their own cases in court, and should certainly increase the chances of cases being handled by a prosecutor with some prior knowledge of them. This option had also been rejected as being impracticable for a number of operational reasons. There are significant resource demands on prosecutors travelling from London to assize sessions in Bulford, Colchester and Catterick. If prosecutors are not to be based there permanently, there may be advantages in having them aligned to the centres. It would not provide a complete solution but the increase in the number of prosecutors which the unified SPA will provide might allow greater flexibility for such a scheme to be reconsidered and tested.
- 6.7 The APA are keen to increase the use of video links for preliminary and interim hearings so that the reviewing lawyer can deal with the case. Inspectors observed a hearing at the Catterick Court Martial Centre which was handled by the reviewing lawyer through a video link with Uxbridge. The defendant pleaded guilty and the case was adjourned until the afternoon for sentence and prosecuted by the APA lawyer covering the assize, the case papers being faxed by the reviewing lawyer. This was dealt with efficiently and it was a sensible use of the technology.
- 6.8 The Office of the Judge Advocate General has issued Collected Memoranda on Practice in Courts Martial which includes guidance on the circumstances in which the use of video link is appropriate. It depends largely on advance preparation for the PCMH by the prosecution and defence. The attendance of advocates in person may be dispensed with by the judge advocate if the form JAG DH1 – Directions of Judge Advocate has been agreed between the parties and copied to the court martial centre where the PCMH is listed. In these circumstances, use of the facility is a matter for the discretion of the Judge Advocate and requests are dealt with on a case by case basis. However, the familiarity of the reviewing lawyer with all aspects of the case in dealing with preliminary or pre trial issues can provide clear benefits in respect of timetabling, disclosure and other directions. Nevertheless, there will always be a need to have an APA lawyer present in court who can take over in the event of technical difficulties or deal with issues which cannot properly be resolved by video link.

RECOMMENDATION 4

The APA should implement a structured system of advocacy performance monitoring and feedback to individual prosecutors.

Substantial progress

- 6.9 Lawyers joining the APA have very variable advocacy experience. Some have had previous prosecution or advocacy experience; others are relatively inexperienced. The full inspection report commented favourably on the APA advocacy training course which forms part of the induction programme. Lasting one week, it provided an intensive programme of lectures and practical training. The course has now been extended to two weeks and the numbers attending each

course ensure that a solid grounding is given, allowing individual attention to the needs of attendees. The tutor is a senior officer within the APA who also makes an assessment of individuals' developmental needs.

- 6.10 At the time of the last inspection, advocacy monitoring was informal and haphazard, relying on consideration of court transcripts and the views of other court users to supplement observations of team leaders when they attended court as prosecutors. This has now been put on a more formal basis. Each prosecutor is the subject of an annual appraisal procedure which assesses their performance. This is principally in their capacity of Army officer, but also in their specific role of a prosecutor within the APA. In order to complete the appraisal and Officer Professional Development Plan for each individual prosecuting officer, managers have to ensure that they are adequately informed to be able to provide individual feedback. In respect of advocacy ability, managers are required to observe each prosecutor. This will be included in the discussion between the officer and manager as part of the appraisal system. Managers still rely on comments and observations of others, but have some foundation from their own experience on which to base discussions. Team leaders were able to demonstrate that they had a detailed knowledge of the experience and capabilities of their team and allocated the cases accordingly.
- 6.11 During this follow up inspection, inspectors received comments from other court users on the quality of advocacy within the APA. The standards varied from prosecutor to prosecutor, but the overall picture was a positive one. Inspectors are aware that prosecutors within the Navy Prosecution Authority are required to serve a short period of pupillage in barristers' chambers. There has been no requirement for APA prosecutors to do the same or, for example, spend a short period of time in another organisation where the pace of work is more intensive. More than one person spoken to during this inspection commented on the desirability of such an approach as part of induction training. It is understood that something along these lines may be planned for prosecutors in the new SPA. There may be some logistical difficulties in arrangements, but the results in terms of experience will make efforts worthwhile.

7 DISCLOSURE

RECOMMENDATION 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.

Substantial progress

RECOMMENDATION 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 RMP should include, in cases in which there is no sensitive unused material, specific confirmation to that effect.

Achieved

- 7.1 The issues relating to disclosure of unused material apparent at the time of the full inspection have been changed by the application to the APA of the Criminal Procedure and Investigations Act 1996 (CPIA) as amended by the Criminal Justice Act 2003 with effect from 1 April 2008. Prior to that date, it had been APA practice to serve automatically on an accused all unused material revealed to it by the SIB. Now the CPIA requires the APA to disclose material relevant to the investigation which might reasonably be considered capable of undermining the prosecution case or of assisting the defence. This “blanket” disclosure of all unused material is no longer appropriate or required.
- 7.2 Prosecutors complied with their initial duty of disclosure in all relevant cases within the file sample. In none of the cases was there a defence statement following initial disclosure but circumstances arose in three cases which should have given rise to specific consideration of continuing disclosure. In one of the cases, the prosecutor decided not to disclose material which was capable of assisting the defence case. Ultimately, however, the accused pleaded guilty and the non-disclosure was unlikely to have affected the outcome of the case.
- 7.3 The file sample was comprised largely of cases where the investigation had commenced before 1 April 2008 and revealed a sharp contrast between those few where the investigation commenced after that date. The earlier files reflected the blanket disclosure principle of the old system. Those cases to which the CPIA procedure applied showed a more positive picture of prosecutors applying their minds to issues of relevance but they were few in number. Consequently inspectors looked at five randomly selected more recent (and current) cases to which the CPIA regime had been applied.
- 7.4 The schedules of non-sensitive and sensitive unused material received from the SIB were comprehensive and described the items adequately. The lawyer had carefully reviewed the items listed and made appropriate decisions as to what should and should not be disclosed. The template letters were satisfactory and sent within acceptable timescales. Implementation of the

CPIA has also resolved the issue referred to in recommendation 6 above. Inspectors noted on files schedules provided by the SIB confirming that there was no sensitive unused material.

- 7.5 One officer has taken on the responsibility for the production of a comprehensive desk top instruction and for the training of his colleagues. He has liaised closely with the SIB liaison officer and is making significant progress with improving the details of disclosure provided by the investigators. Effectively this officer has become the APA lead on disclosure and is a valuable source of advice for colleagues. Initial training has already been provided with the assistance of a lawyer from the CPS and further training, particularly for investigators, will be considered as and when the need arises.
- 7.6 There appear to be some developing issues over the timeliness of disclosure. In the civilian courts, the trigger for statutory disclosure is generally a plea of not guilty in the magistrates' court or committal or sending of the case to the Crown Court. In the military courts, disclosure must be made in every case which is directed for trial by court martial. Prosecutors are required to disclose unused material "as soon as is reasonably practicable after the charge is preferred". Court martial proceedings follow more closely Crown Court proceedings and the APA prepares all its cases to the standard of a case which would be heard in the Crown Court. Disclosure, in these circumstances, should ideally be dealt with at the same time as the prosecution papers are prepared for service on the accused. There are some instances, however, where disclosure is delayed because, for example, an amended schedule is required from the SIB. In the specific sample of disclosure files we saw cases in which the accused pleaded guilty before disclosure had been made. This is not of concern provided that the accused's plea is properly advised and unequivocal, but it frustrates the aim of APA prosecutors to carry out their obligation to deal with disclosure early in every case. This is an issue they are aware of and will address with the investigators.
- 7.7 The files considered during the on site phase to which the CPIA applied had not progressed sufficiently to assess any interaction with the defence or the courts in respect of disclosure. No defence statements (which should set out the nature of the accused's defence in the event of a trial) had been served and there were no challenges to prosecutors' decisions. Prosecutors are cautiously optimistic, although there are concerns that some defence solicitors may persist in requests for material to which they are not entitled under the CPIA regime. Lawyers are encouraged to take an appropriate stance with other court users to ensure that the principles of the CPIA are adhered to and blanket disclosure ceases. It is too early to assess how the new regime will work in practice; external influences can impact upon success. Initial indications are, however, positive. In any event, there are proposals for an early review of the new procedure once it has become established.
- 7.8 There is one issue which needs proper resolution. The original inspection report commented on the APA practice of serving on the judge advocate via the MCS a copy of all unused material. The report pointed out that the practice of service on the court of any unused material was improper unless the court were being asked to rule on its materiality or to withhold it on the grounds that disclosure is not within the public interest. In other circumstances it has the potential to compromise the judge advocate if he has to rule on other issues in the case.

7.9 The report identified the following aspect for improvement:

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.

7.10 The APA position is that it continues to serve the material as a matter of course. The Court Martial (Army) Rules 2007 which governed procedures in courts martial before the CPIA was applied to service prosecutions requires only that a list of unused material (now the form 6C) be served. It appears from the follow up inspection that judge advocates do not read the material which is forwarded to them. However, service on the court or judge advocate is not a legal or procedural requirement and could compromise the conduct of the case. The point now has added force following the implementation of the CPIA which means that the defence no longer receive all the unused material. It is not proper, save in well defined circumstances of public interest immunity applications, for the prosecution to place material before the trial judge to which the defence do not have access. Inspectors repeat their view that the practice should stop.

8 VICTIMS AND WITNESSES

RECOMMENDATION 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;
- letters are sent to victims in all cases in which charges are substantially altered or dropped.

Substantial progress

- 8.1 The APA's responsibilities towards victims and witnesses are set out in a code of practice which represents a minimum standard of service to be applied by the various organisations in the military criminal justice system. In respect of the APA, it includes notification to victims or their families and witnesses of key stages and events in the prosecution process, as well as providing for meetings with victims' relatives in cases involving deaths. It also deals with special measures applications and engagement with witnesses at court. The original inspection showed that, although the code of practice was generally applied, the APA could improve some aspects of its engagement with witnesses.
- 8.2 At that time, the CPS had recently introduced the Prosecutors' Pledge for victims of crime which included many of the responsibilities then undertaken by the APA but which were more wide-ranging and specific. Inspectors considered that adoption of the Prosecutors' Pledge, which was under consideration by the APA, would provide a more consistent strategy for witness care.
- 8.3 There is an obvious awareness within the APA of the need to engage with victims and witnesses and to keep them informed of events as the case progresses and at court. The file sample shows that lawyers give consideration to witness needs and are proactive in addressing the need for special measures to assist witnesses in giving evidence at court. They also take account of the views of victims in determining how cases are prosecuted, in so far as this is practicable and consistent with their responsibilities under the Service Code. In one case, within the file sample, where a basis of plea would have significantly reduced the seriousness of an offence the lawyer discussed this with the victim before rejecting the defence account.
- 8.4 There is a growing acceptance of the need to engage at an early stage with the families in cases where there are fatalities or where complaints have been made. Equally, there is an obvious willingness to hold meetings where appropriate. The file sample contained a number of cases where contact with victims' families and witnesses had taken place although the quality of contact lacked consistency. Some letters were of a very high standard, but others were very brief and lacked empathy, although this criticism has to be put in the context of a small file sample. In the less serious or sensitive cases, communications were more routinely worded. In the more sensitive cases (involving, for example, allegations of a sexual nature or cases involving a fatality which sometimes require explanations of law and the communication of difficult decisions) letters were well composed and offered further communication by telephone or through a meeting in appropriate cases. Complaints from victims or their families about their treatment are dealt with by a senior officer to ensure that there is a full and open investigation.

- 8.5 Victims are properly identified by the investigator on case files and this information is transferred to the Axxia case management system. Once entered on Axxia, the system produces template letters designed to keep witnesses fully informed of the progress in the case. Inspectors were unable to verify the extent to which this was done because of IT problems being experienced in Germany at the time of the visit.
- 8.6 The service provided to victims and witnesses is an important aspect of the prosecutor's responsibilities. Even in the more straightforward cases, it is important to victims and witnesses to receive information about case progress regularly and promptly at key stages. Unlike the civilian courts where witnesses are warned by the prosecution team witness care unit, arrangements for warning witnesses for courts martial are the responsibility of the MCS rather than the APA. Once a witness attends court, however, most witness care arrangements are undertaken by the Assistant Prosecutor who is usually a retired Army or RMP officer. Their role generally was considered a strength of the APA at the time of the full inspection. This continues to be the case. Inspectors observed one court martial hearing at which the Assistant Prosecutor dealt with those witnesses present with great professionalism, understanding and sensitivity. Prosecutors themselves also contribute and show a readiness to engage with the witnesses by introducing themselves before a case and discussing the result.

9 EQUALITY AND DIVERSITY

RECOMMENDATION 8

The APA should:

- maintain and analyse data relating to the ethnicity and gender of defendants and prospective defendants;
- maintain 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.

Limited progress

- 9.1 The original inspection considered whether casework decisions demonstrated a freedom from bias in respect of equality and diversity issues. There were very few cases which involved any accused from a minority ethnic background and no evidence of any bias in the way such cases were handled. Prosecutors showed an awareness of cultural differences in respect of the accused which might affect the decision-making process and were also aware of certain offending patterns amongst different ethnic, cultural and demographic groups.
- 9.2 There are similar influences amongst victims of crimes and prosecutors are equally aware of their impact upon decision-making. Offences involving allegations of racially or religiously offences are rare. There was one case in the file sample which involved an allegation of religiously aggravated criminal damage. The file showed that everyone involved in the referral procedure was fully aware of the sensitivities in the case which received full consideration.
- 9.3 Cultural and ethnic issues are taken into account in casework decisions insofar as they are compatible with the Service Code. However, the absence of data on these issues made it difficult for the APA to demonstrate clearly its complete freedom from bias in the decision making process. There is still no available data.
- 9.4 The ethnicity and gender of an accused are recorded by the investigator on the case papers submitted to the APA. Most witness details also contain this information. However, none of the information is transferred to the APA's case management system or is currently made use of in any other way.
- 9.5 The problems with the Axxia system discussed elsewhere in this report have been a key inhibitor to progress being made on this issue but delays in implementation of the recommendation are not solely due to this. However, a new field was added to the system at the end of November 2008 which will record the ethnicity and gender of defendants. The APA is confident that the data will be recorded once the difficulties with the system have been resolved, but no decisions have been taken as to the analysis and use of the information.
- 9.6 Prosecutors' awareness is currently measured by experience and by anecdote. Converting the information into hard data will allow managers to assess more accurately the groups offending and particular offences committed. Whilst we saw no evidence in the file sample of any type of bias, confidence in the fairness and impartiality of the military justice system is important and

should be measurable and fully transparent. It may also provide the APA, and the Army in general, with information to address particular offending patterns amongst particular groups of personnel.

- 9.7 All public bodies have a number of obligations under race relations legislation to promote equality and eliminate discriminations and bias. The Army regards equality and diversity as a key ingredient in operational effectiveness. Collection of data on the gender and ethnicity of offenders and outcomes in hate crimes will enable the APA to demonstrate that it is fulfilling its statutory obligations. Implementation should be a priority.

10 PERFORMANCE MANAGEMENT

RECOMMENDATION 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;
- sharing performance information with relevant MCJS partners.

Limited progress

- 10.1 At the time of the initial inspection, the APA's approach to management of performance was not consistent or structured. Although data was collected on case numbers and outcomes, managers' understanding and perception of overall casework performance and that of individual prosecutors was based on their own experience rather than being informed by hard data.
- 10.2 The concept of a comprehensive performance management regime is still in its infancy and has not been a priority on its own. Managers do have a solid appreciation of casework performance and performance of their staff but this is still unstructured and insufficiently supported by data. The analysis of casework by data is an important management tool which can identify strengths and weaknesses in performance.
- 10.3 Data on casework numbers and outcomes is maintained now as it was at the time of the original inspection, but it is not considered as part of any longer term casework strategy. However, preparation for the new SPA is bringing greater urgency to this aspect. Specific consideration is being given to the type of data that will best support the business of the new authority. Initial contact has already been made with the CPS Business Development Directorate for their advice and assistance, but this has not been actively pursued. Whilst the needs of the APA and future SPA are clearly different than the much larger CPS some basic assistance in developing a bespoke model fit for the needs of the SPA will provide a starting point.

RECOMMENDATION 10

The APA should identify in relation to each of its 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.

Limited progress

- 10.4 Liaison with other military criminal justice agencies takes place at a strategic level. Additionally, when issues are raised relating to the conduct of individual cases this is responded to promptly by senior staff. This was evident on several files where immediate investigation of concerns, notably issues of delay, were properly examined and dealt with by the Brigadier. Delay in casework actions is also addressed through the Adjutant General's Delay Action Group.
- 10.5 At unit level much of the liaison concerns individual casework issues, particularly listing and witness issues. This is normally done by a small number of key staff. Relationships between the agencies appear to be satisfactory but could be more structured rather than dealing with each issue in an ad hoc way. The original inspection report commented that there were sufficient issues of mutual relevance between the APA and the MCS to justify regular court user group meetings. They would also promote consistency and certainty in dealing with casework issues.
- 10.6 Little has been done in this respect since the original report. However, the establishment of the new SPA imports a need to form effective working relationships with other MCJS agencies and this is providing a spur to activity in this respect. The APA has already achieved a number of good working practices which can be consolidated by a more structured approach within the new authority.

11 PROGRESS AGAINST ASPECTS FOR IMPROVEMENT

- 11.1 Inspectors identified eight aspects for improvement and some progress has been made. Substantial progress has been made in two, limited progress in four but there has been no progress in one. In the remaining one the move towards new Service Prosecuting Authority has made this, to a degree, less necessary. Inspectors consider that more progress could have been achieved, even allowing for the focus on transition to the Service Prosecuting Authority.
- 11.2 Improvements have been made to the induction arrangements for newly assigned prosecutors and prosecutors have been assigned specialisms in some of the more serious and sensitive types of casework.
- 11.3 Although the timeliness of review has shown some improvement overall, and delay continues to be monitored, there is still a substantial number of cases which exceed the APA's target of 30 days from referral to decision. Despite recent problems with the system, there has been an improvement in the recording of actions on Axxia and a more consistent approach to its use has developed. There are also signs of improvement by prosecutors in the recording of reasons for their decisions on venue in the case analysis.
- 11.4 APA managers have taken a decision not to redesign the file jacket because it suits their purpose in its current format. Nevertheless, some form of running sheet on or inside the file cover, showing the current state of progress, would assist in dealing with casework enquiries. It is still APA practice to provide the judge advocate with copies of unused material. This is not appropriate, as we stated earlier in paragraphs 7.8-7.10.
- 11.5 The following table sets out the position in greater detail.

	Aspect for improvement	Progress
1	Senior officers within the APA should provide a more formal programme of induction and mentoring for prosecutors within the APA.	Substantial progress The APA initial advocacy course has been extended from five to ten days providing a more comprehensive introduction to advocacy and relevant law. Team leaders play a mentoring role and ensure that new prosecutors are assigned to cases which are appropriate to their experience and which will allow them to progress as their experience develops.
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.	Substantial progress The comparatively small numbers of cases which the APA handles in any specific category do not always justify appointment of specialist prosecutors. Nevertheless, senior officers have recognised that some cases, because of their complexity or sensitivity, require consideration by a lawyer of appropriate experience and legal knowledge. It has already designated prosecutors as specialists in sexual offences, fraud and computer-based crime (dealing, for example, with offences of child pornography). In relation to sexual offences, APA managers

2	cont.	<p>established contact with a rape specialist within the CPS who provided a training session to prosecutors in Germany. Following the application of the Criminal Procedure and Investigations Act to APA disclosure procedures, one senior prosecutor has assumed responsibility for disclosure issues and has arranged training from a CPS lawyer.</p>
3	<p>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.</p>	<p>Limited progress</p> <p>It is required practice within the APA that prosecutors should set out reasons for the choice of District or General Court Martial when directing trial. Although the decision on venue was correct in 14 out of 15 relevant cases in our file sample, the reasons were given in only seven cases (46.7%). This represents an improvement on the position at the time of the initial inspection, although the file sample then was much larger. It is difficult to draw any firm conclusions in this respect and the situation should be closely monitored to ensure that improvement can be sustained and built upon. In the majority of the other eight cases, the choice of venue was obvious although we were told of some serious assaults which were directed for DCM when greater sentencing options should have been made available to the court than DCM allowed. We saw one example of such a case in our file sample which was the subject of comment from the Judge Advocate trying the case.</p>
4	<p>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.</p>	<p>Limited progress</p> <p>We comment on the timeliness of review in the main text of this report. The APA has set targets for referral to decision periods of five days for cases of AWOL and 30 days for other cases. We comment in the original report that 30 days is rather generous in the more straightforward cases and the target was achieved in only 62.9% of cases in the year ending 31 December 2006. The situation has improved with the latest figures showing 73% compliance.</p> <p>Delay nevertheless remains an issue and should be closely and proactively monitored within the APA itself. Data showing delay periods in individual cases is discussed at meetings of senior managers held two or three times a month. This provides the opportunity to ensure that cases are dealt with promptly but it can only be effective if direct action follows. The Office of Casework Standards (Army) (OSCA) continues to monitor the timeliness of disciplinary cases and cases are discussed at meetings which include the Director OSCA and the Brigadier Prosecutions. One file within our sample was the subject of intervention by OSCA and was being dealt with by the Brigadier Prosecutions. The case related to seven suspects arrested after a public order incident. The evidence was complicated and</p>

4 cont.	conflicting and there were issues over identification. The file showed constant activity by the prosecutor during the decision-making process and a high standard of review which was reflected in the case analysis.
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.	<p>No progress, but to a degree less necessary in the prospect of the new Service Prosecuting Authority</p> <p>The APA, having considered this issue, has decided not to make any changes to the design of the jacket. This is on the basis that case information is recorded on the Axxia case management system and is available within the file jacket. Axxia was not working in Germany at the time of the follow up inspection and prosecutors do not always record actions on the system, preferring to do this within the paper file.</p> <p>Inspectors were told that cases and case enquiries are largely handled by the allocated prosecutor although sometimes urgent enquiries require attention from a colleague and cases are likely to be prosecuted in court by any officer. Prosecutors were universally happy with the file jacket. They emphasised that cases were generally discussed between them and prosecutors usually had a good knowledge of their colleagues' cases and state of progress.</p> <p>This is clearly a matter for the APA and the design of file covers will be a matter for consideration by the new Service Prosecuting Authority. In this connection, inspectors repeat their view that either the file jacket, or a specific place within the file, can provide a useful means of recording events and actions so that case progress is apparent at a glance.</p>
6 APA managers need to reinforce the importance of recording actions on the Axxia case management system contemporaneously and define responsibilities for updating.	<p>Limited progress</p> <p>We report on the Axxia case management system in greater detail at paragraphs 3.11-3.13 in this report. Managers have emphasised the importance of ensuring that Axxia is updated promptly with all individual case events and actions. However, the issue is one of individual performance with some prosecutors being more conscientious than others in this respect. Axxia is currently being overhauled in connection with preparations for the unified SPA. With an increased casework load and more prosecutors potentially requiring access to files, it is even more important that the system should reflect the accurate state of the case.</p>

7	A change control mechanism should be put in place to monitor and control changes to the Axxia case management system to ensure consistency of application.	Limited progress The original report commented on some different templates and data spreadsheets within Axxia that had been developed in Germany which were not used or replicated in the UK. This continues to be the case. Although the use of a different database outside Axxia for recording case progress and outcomes in Germany was of great value when the recent IT problems were being experienced, it is still vital for the effective management of the system that any changes or differences are sanctioned by senior managers. This is something that will require even greater emphasis when the new SPA combines case management systems of three separate organisations.
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.	No progress The APA continue to send the bundle of unused material to the office of the Judge Advocate General. This is not required by law or procedure rules, and is not appropriate. We deal with the position relating to this aspect of disclosure in the main text at paragraphs 7.8-7.10.

ANNEX A: RECOMMENDATIONS; ASPECTS FOR IMPROVEMENT; AND STRENGTHS FROM THE 2007 REPORT

Recommendations

- 1 The APA should revise, in conjunction with the ALS 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.
- 2 The APA should introduce structured arrangements within each office which ensure that casework queries and issues are dealt with in the absence of the assigned prosecutor.
- 3 The APA should discuss with the MCS 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.
- 4 The APA should implement a structured system of advocacy performance monitoring and feedback to individual prosecutors.
- 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.
- 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 RMP should include, in cases in which there is no sensitive unused material, specific confirmation to that effect.
- 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;
 - letters are sent to victims in all cases in which charges are substantially altered or dropped.
- 8 The APA should:
 - maintain and analyse data relating to the ethnicity and gender of defendants and prospective defendants;
 - maintain and analyse information on the numbers of, and outcomes in, race, religious and other hate crimessufficient to enable it to demonstrate that its casework is free from bias.
- 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;
 - sharing performance information with relevant MCJS partners.

- 10 The APA should identify in relation to each of its 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 allow issues to be addressed and enable joint initiatives to be taken forward.

Aspects for Improvement

- 1 Senior officers within the APA should provide a more formal programme of induction and mentoring for prosecutors within the APA.
- 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.
- 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.
- 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.
- 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.
- 6 APA managers need to reinforce the importance of recording actions on the Axxia case management system contemporaneously and define responsibilities for updating.
- 7 A change control mechanism should be put in place to monitor and control changes to the Axxia case management system to ensure consistency of application.
- 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.

Strengths

- 1 Case analyses are well structured and detailed and indicate a thorough review.
- 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.
- 3 The standard and comprehensiveness of the APA initial advocacy training course prepares prosecutors for presenting cases in courts martial.
- 4 Assistant Prosecuting Officers provide valuable assistance to prosecutors presenting cases in court and assist with witness care.

ANNEX B: REPRESENTATIVES OF OTHER MILITARY CRIMINAL JUSTICE SYSTEM ORGANISATIONS WHO ASSISTED IN OUR INSPECTION

Office of the Judge Advocate General

HH Judge Blackett, Judge Advocate General
Judge Advocate Camp, Assistant Judge Advocate General
Mr Byrne, Deputy Judge Advocate
Mr Carroll, Deputy Judge Advocate
Mr P Fisher, Policy Adviser

Military Chain of Command

Colonel (Retired) D Cummings

Military Court Service

Mr M Crowley
Lieutenant Colonel (Retired) M Brook

Defence Solicitor

Mr P Bradford

ANNEX C: FILE SAMPLE

Case category	UK	Germany	Total
Guilty plea	5	5	10
No case to answer		1	1
Non-direction	5	3	8
Discontinued	1	1	2
Conviction after trial	1	1	2
Acquittal after trial		1	1
Summary appeal cases		2	2
Totals	12	14	26

ANNEX D: KEY FILE EXAMINATION RESULTS

Initial review decisions	July 2007 Report	Follow up inspection
Initial review decisions complying with the evidential test in the Service Code	95.6%	100%
Initial review decisions complying with the public/service interest test in the Service Code	100%	100%
Cases in which the prosecutor was proactive in identifying and remedying evidential defects	92.8%	94.4%
Case preparation		
Decisions to proceed to trial or guilty plea complying with the evidential test	95.7%	100%
Decisions to proceed to trial or guilty plea complying with the public/service interest test	100%	100%
Cases with timely trial or guilty plea review that were properly recorded	95.7%	100%
Cases ready for directions and pre-trial hearings	95.5%	92.3%
Court orders complied with on time	98.2%	100%
Correspondence from the defence dealt with appropriately	98.6%	100%
Level of charge		
Charges that proceeded to trial or guilty plea on the correct level of charge	92.8%	93.7%
Cases that were determined by the prosecutor and proceeded without significant amendment	87.6%	100%
Discontinuance		
Discontinuance was timely	75%	100%
Decisions to discontinue complying with the Service Code tests	100%	100%
Discontinued cases where the prosecutor properly sought additional evidence/ information before discontinuing the case	75% (3 out of 4 cases)	100%
Adverse outcomes		
Cracked or ineffective trials that were foreseeable and the APA took action to avoid the outcome	40% (2 out of 5 cases)	
No case to answers that were foreseeable and the APA took action to avoid the outcome	50% (1 of two cases)	
Disclosure		
Cases in which the primary or initial duty of disclosure was complied with	98.6%	100%
Cases in which the secondary or continuing duty of disclosure was complied with	94.1%	66.6% (2 out of 3 cases)
Cases in which sensitive material was handled properly	66.6% (2 out of 3 cases)	
Victim and witness care and communication		
Cases in which victims were informed of charges being altered or dropped	46.7%	75% (3 out of 4 cases)
Cases in which the victim's views were sought before discontinuance	25%	100% (1 case)

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