



THE ARMY PROSECUTING AUTHORITY

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

JUNE 2007



THE ARMY PROSECUTING AUTHORITY

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

JUNE 2007

CONTENTS

1	Introduction	1
	The report, methodology and nature of the inspection	2
2	The military disciplinary system	3
	Military law	3
	The investigation and referral procedure	3
	Summary dealing	4
	Trial by court martial	4
	Standing Civilian Court	6
	The Army Prosecuting Authority	6
	The future of Service prosecutions	6
3	Summary of inspection findings and recommendations	7
	Overview	7
	The role of the APA in the investigation	8
	The quality of decision-making	8
	High profile cases	8
	The quality and timeliness of casework handling	8
	Presenting and progressing cases	9
	Disclosure	9
	The service to victims and witnesses	9
	Equality and diversity in casework	9
	Managing performance to improve	10
	Conclusions	10
	Recommendations and aspects for improvement	10
	Strengths	13
4	The role of the APA in the investigation	15
	The investigation process	15
	The chain of command and referral of cases	16
	Referral of cases to the APA	17
5	The quality of decision-making	19
	Allocation of cases to appropriate prosecutors	19
	The quality of decision-making	20
	The Service interest	21
	Venue	22
	Formal preliminary examinations	22
	Level and appropriateness of charges	23
	Timeliness of decision-making	23

6	High profile cases	25
	Background	25
	Case one	25
	Case two	26
	Conclusions	27
7	The quality and timeliness of casework handling	29
	Case preparation	29
	Progressing cases	30
	Cracked trials	30
	Foreseeability	31
	Discontinuance	31
	Learning lessons from casework	32
	Case management	32
8	Presenting and progressing cases	35
	Prosecuting cases in court	35
	The quality of advocacy	36
	Advocacy monitoring	37
9	Disclosure of unused material	39
	The duty of disclosure	39
	The disclosure procedure	40
	Recording the disclosure decision	40
	Service of unused material on the court	41
	Sensitive material	41
	Implementation of the Criminal Procedure and Investigations Act	42
10	The service to victims and witnesses	43
	The commitment to victim and witness care	43
	Communications with victims and witnesses	43
	Victim and witness care at court	44
	The Code of Practice and the Prosecutors' Pledge	45
11	Equality and diversity in casework	47
12	Managing performance to improve	49
	Accountability for performance	49
	Managing casework performance	49
	Performance management information	50
	Performance management within the APA	50
	Liaison with other agencies	51

Annexes

A	The Army Prosecution Authority inspection framework	53
B	Resources and caseloads	55
C	File sample	56
D	Key file examination results	57
E	Representatives of the Army chain of command, disciplinary system and Military Court Service who assisted in our inspection	58
F	HMCPSI vision, mission and values	60

“Discipline, comradeship, leadership, and self respect form the basis of morale and of military efficiency. Good discipline within the unit is the foundation of good discipline throughout the Army and is based on good man management. It is therefore essential that every soldier should be brought to understand not only the importance, but the purpose of discipline; that indiscipline has no place in the Army, and that in war it may have serious effects or even lead to disaster. All officers, warrant officers and NCOs are to maintain discipline over officers and soldiers of lower rank than themselves.”

Queen’s Regulations

I INTRODUCTION

I.1 This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPIS) report about the Army Prosecuting Authority (APA). 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. Its territorial jurisdiction is worldwide. The APA is headed by a Major General who is also the Director Army Legal Service (DALIS).

I.2 The day-to-day operations are headed by the Brigadier Prosecutions who is based in the APA's Headquarters at Hillingdon House, RAF Uxbridge, Middlesex, which also houses the UK unit. The units in the UK and Germany (based at Rochdale Barracks, Bielefeld) are each headed by a Colonel Prosecutions. At the time of the inspection in February 2007, the APA employed 58 full-time staff. The Headquarters at Uxbridge comprises the Brigadier Prosecutions, Chief of Staff and three civilian administrators. The UK unit comprises the Colonel Prosecutions, 13 prosecutors and ten civilian administrators. It also employs three Prosecutor's Assistants who are located in court martial centres. The unit prosecutes cases in court martial centres at Bulford in Wiltshire, Catterick in North Yorkshire, Colchester in Essex, and Alder Grove in Northern Ireland. The unit in Germany comprises the Colonel Prosecutions, nine prosecutors, three Assistant Prosecuting Officers (APOs) and five civilian administrators. It prosecutes cases in court martial centres in Gütersloh, Hohne, Osnabrück and Rheindahlen.

I.3 The APA's caseload in the year to December 2006 was:

Total number of cases referred to the APA	988
Cases directed for trial by General Court Martial	46
Cases directed for trial by District Court Martial	621
Cases dealt with in the Standing Civilian Court	19
Cases dealt with in the Summary Appeals Court	133
Cases which were not directed for trial	288
Cases which were discontinued following direction for trial	66

I.4 The majority of cases referred to the APA were dealt with by District Court Martial. Paragraph 2.14 deals in more detail with the difference between District Court Martial and General Court Martial. They are not the military equivalents of the magistrates' courts and the Crown Court. The distinction makes it clear that District Courts Martial do not deal simply with minor offences, but with many cases which would be dealt with in the Crown Court because of their serious nature. However, indictable only offences account for less than 1.5% of the APA caseload; summary only offences account for approximately 20% and cases of being absent without leave account for another 20%. A table showing caseload in relation to the APA's resources is at Annex B.

The report, methodology and nature of the inspection

- 1.5 The inspection process was based on the inspection framework summarised at Annex A, which is based upon common principles applying to all prosecuting authorities, but adapted to the role and circumstances of the APA. The chapter headings in this report relate to the standards, and the section headings relate to the criteria against which the APA was measured.
- 1.6 The scope of the inspection was limited to the quality of casework and casework processes. The inspection did not seek to assess management performance, save insofar as it had a direct influence on the quality of casework. Thus, aspects of performance relating to financial and resource management were not considered.
- 1.7 In relation to all the topics inspected, we sought to address them at two levels. The first was to establish whether the appropriate systems were in place and, second, whether they operated effectively in practice. This included consideration of whether systems and processes were routinely reviewed so as to keep abreast of legislative and other changes.
- 1.8 Our methodology combined examination of 91 case files and interviews with APA staff, officers in the Army chain of command and Army disciplinary system, including the Military Court Service (MCS), both in the UK and in Germany. Our file sample comprised cases in both counties dealt with at District Courts Martial and General Courts Martial and included guilty pleas, trials (convictions and acquittals) and other specific types of case outcomes. A detailed breakdown of the sample is included at Annex C and a table showing the results of file examination in key aspects of casework is at Annex D.
- 1.9 A list of individuals we met or from whom we received comments is at Annex E. The inspection team carried out observations of the presentation of cases and the delivery of service at courts martial in the UK and in Germany.
- 1.10 The purpose and aims of the Inspectorate are set out at Annex F.

2 THE MILITARY DISCIPLINARY SYSTEM

Military law

- 2.1 Section 205 of the Army Act 1955 (the 1955 Act) provides that all serving soldiers, and some civilians accompanying the Army, are subject to military law at all times and wherever they are serving. In addition to certain specific military offences, section 70 of the 1955 Act applies the criminal law of England and Wales to all persons subject to military law. This is subject to exception in respect of certain offences (including murder, manslaughter and rape) which must be tried by the civilian authorities if committed in the UK. All other criminal offences committed in the UK by persons subject to military law may equally be tried by the civilian authorities. Detailed jurisdictional arrangements, both in the UK and abroad, are set out in Queen's Regulations for the Army. In practice, much depends on the circumstances of the arrest.
- 2.2 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 amended the 1955 Act in respect of military disciplinary procedures. The 1996 Act was brought about following challenges in the European Court of Human Rights (ECHR) to the previous military justice system on the basis that it was not fair and independent. The ECHR concluded that, although the system was not unfair, it had the appearance of being so. This 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.

The investigation and referral procedure

- 2.3 The responsibility for investigating allegations is that of the Royal Military Police (RMP). The more serious allegations are dealt with by the Special Investigations Branch (SIB) which is the detective branch of the RMP. This report will refer to them both as "the investigator" unless the context requires them to be distinguished. When the investigation is completed, a report is sent to the Commanding Officer (CO) of the accused. At the same time, a copy is also forwarded to the Advisory Branch of the Army Legal Service (ALS). It is the Advisory Branch which is responsible for advising the CO on how the allegations may and should be dealt with.
- 2.4 If there is a prima facie case of an offence, Advisory Branch advises the CO on the appropriate charge. A prima facie case simply requires evidence which, if uncontested, would be sufficient to prove the offence. It is a lower evidential test than the realistic prospect of conviction test applied by the APA. The CO will also be given advice as to whether he can, and should, deal with the case summarily or if it should or must be referred via Higher Authority (HA), usually the Brigade Commander, to the APA for consideration of court martial proceedings. In some instances, application of the lower prima facie case test at this stage leads to eventual referral of cases to the APA which do not pass the stricter test of a realistic prospect of conviction (see paragraph 4.9).

- 2.5 The advice to the CO from Advisory Branch is in the form of a letter setting out the options. If the advice is to refer the case to the APA, the letter will also give appropriate advice to HA. HA's role is to consider the case papers and legal advice to determine whether the case meets the criteria for court martial. HA has a number of options, although he will usually act on the advice of Advisory Branch. If he considers that the case meets the criteria for court martial, he should refer the case to the APA within ten working days. Other options include referral back to the CO to deal with or dismiss the charge, if he thinks it appropriate.

Summary dealing

- 2.6 The 1955 Act allows the CO of an accused soldier to investigate and deal with certain minor military and criminal offences himself, which is known as summary dealing. The CO's powers of punishment are limited. The Armed Forces Discipline Act 2000 introduced a range of procedures to ensure that summary dealings were conducted fairly. These include referral to a Judge Advocate if the accused is to be remanded in custody before summary dealing (or court martial), and advance information about the evidence against him.
- 2.7 The CO has power to dismiss any charge, however serious, but those to deal with charges and sentencing are limited. In any case in which the CO has power to deal summarily, the accused may elect to be tried by court martial. In that event, the case is referred to the APA.
- 2.8 Summary dealing follows the normal trial procedure. Evidence is called against the accused who may cross-examine witnesses and call witnesses in his own defence. The accused is not legally represented at a summary hearing, although an accused's adviser (who will be an officer, warrant officer or senior non-commissioned officer) is appointed to assist and advise the accused throughout the procedure. An accused who is dealt with summarily may appeal against both conviction and sentence to the Summary Appeal Court (SAC).
- 2.9 The SAC comprises a Judge Advocate and two military members who rehear the evidence if the appeal is against conviction. They may uphold the CO's finding or quash the conviction. If the appeal relates to sentence only they may uphold or vary it. The APA acts as respondent in SAC cases. It reviews the evidence and may, if appropriate, decide not to contest the appeal. At the hearing, it presents the case as it would a trial or sentencing hearing.

Trial by court martial

- 2.10 If the accused cannot be dealt with summarily, either because of his rank¹, the seriousness of the offence or because he has elected trial, the case will be dealt with by court martial. In these circumstances, the case is referred to the APA via HA.

¹ The CO cannot deal with a charge against an officer or warrant officer, although these ranks can be dealt with by an Appropriate Superior Authority under section 76A(4) of the 1955 Act

2.11 Once a case is referred to it, the APA reviews it and decides whether to direct trial by court martial and, if so, on what charges. When reviewing the evidence, it applies the Code for Service Prosecutors (the Service Code) which sets out the framework for decision-making, particularly the two tests which each case must satisfy - the evidential and public interest tests. Cases should proceed only if there is sufficient evidence to provide a realistic prospect of conviction and a prosecution is in the public (including the Service) interest.

2.12 The Service Code gives guidance on the meaning of the Service interest:

“The Service interest requires the maintenance of good order and discipline within Her Majesty’s Forces. Discipline is essential to the maintenance of morale and the maintenance of morale is a key component of operational effectiveness.”

The Service Code sets out some examples of public and Service interest factors in favour of and against a prosecution. The list is not exhaustive and they are essentially Service parallels of public interest factors in the Crown Prosecution Service (CPS) Code for Crown Prosecutors. They deal with issues such as bullying, bringing discredit upon the armed forces and conduct having an adverse effect on the morale of soldiers on operations.

2.13 The APA may refer the case back to the CO for summary dealing if that is considered a more appropriate means of disposal. As part of the decision-making process, the APA may request further information or evidence from the RMP. In some cases, the APA may have been consulted by the RMP in the initial stages of the investigation.

2.14 If the APA decides to proceed by court martial, it will determine whether it should be dealt with by a District Court Martial or General Court Martial. A District Court Martial comprises a Judge Advocate and three military members (the Board) whose maximum powers of punishment are two years’ imprisonment. A General Court Martial comprises a Judge Advocate and five military members and its powers of punishment are limited only by the statutory maximums for offences. An accused is entitled to legal aid, including representation during interview by the investigator, and may instruct solicitor and counsel of his choice. Court martial proceedings are conducted along similar lines to the Crown Court and are open to the public.

2.15 The role of the Judge Advocate is to give directions and rulings on law and procedure. At the conclusion of the evidence, the Judge Advocate sums up and advises the Board on matters of law. The Board comprises serving military officers who are outside of the accused’s chain of command and are appointed by the Military Court Service. The Board is responsible for returning a verdict, by simple majority, according to the normal burden of proof in criminal trials. Sentence is determined by the Judge Advocate and the Board.

Standing Civilian Court

- 2.16 The APA also prosecutes cases in the Standing Civilian Court (SCC). The SCC deals with civilians working for or accompanying the Army who commit offences outside the UK, for example, civilian administrators and the children and spouses of serving soldiers. The court comprises a magistrate sitting alone (who must be legally qualified and is usually a Judge Advocate). If the accused is under 17, two members or assessors also sit. It can deal with only those offences which can be dealt with in a magistrates' court in England and Wales and its powers of punishment are correspondingly restricted to six months' imprisonment, a fine of £5,000, or both.

The Army Prosecuting Authority

- 2.17 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.
- 2.18 The APA is located within the ALS and the Director Army Legal Service (DALs) is also the prosecuting authority. Thus, DALs has a dual role. As the prosecuting authority, he is responsible for prosecutions undertaken by the APA and reports directly to the Attorney General. He is also the Army senior lawyer and, as such, is responsible for the wide range of advisory services that the ALS provides to the Army and to individual serving soldiers. In this latter role, DALs reports to the Adjutant General who has responsibility for the wide range of the Army's personnel services, which include disciplinary policy.
- 2.19 Significantly, although DALs has overall responsibility for the ALS, his role does not include responsibility for the provision of advice to the Army chain of command in respect of disciplinary matters. This is the direct role of the ALS Advisory Branch which is headed by the Brigadier Advisory.
- 2.20 DALs's day-to-day operational prosecution functions are delegated to the Brigadier Prosecutions. APA prosecutors review cases which are referred by the Army chain of command, determine whether to direct trial by court martial and, if so, on what charges. The APA has no direct involvement in the provision of advice to the chain of command, however it can provide advice to the RMP or SIB during the investigation, if it is requested (see paragraph 4.1).

The future of Service prosecutions

- 2.21 Currently the three Services, the Army, the Royal Navy and the Royal Air Force, each have their own separate prosecuting authority. The Armed Forces Act 2006, which will come into effect in 2009, will merge the three into one overall Service Prosecuting Authority headed by a Director of Service Prosecutions.

3 SUMMARY OF INSPECTION FINDINGS AND RECOMMENDATIONS

Overview

- 3.1 It is essential that the Army should be regulated wherever it is serving. The military criminal justice system (MCJS) therefore, has to be separate from the civilian system and has to take into account the special circumstances in which the Army and individual soldiers operate. The Army Prosecuting Authority (APA) is an integral part of that system.
- 3.2 The APA undertakes its responsibilities in a thorough and professional manner, often in difficult circumstances. It is unique as a prosecuting authority in a number of ways. Based in two locations, the United Kingdom and Germany, its jurisdiction is worldwide. Although it prosecutes cases in certain fixed locations, which include from time-to-time Canada and Cyprus, as well as the UK and Germany, and it can be called upon to prosecute in any theatre of operations in which the Army is engaged.
- 3.3 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, who join the ALS at the rank of Captain, are Army officers first and lawyers and prosecutors second. 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. It also gives them credibility within that community.
- 3.4 As a prosecuting authority, it 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. It prides itself rightly on its independence but, given the inter-dependency of the organisations within the 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.
- 3.5 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.
- 3.6 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.
- 3.7 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

- 3.8 The APA provides advice to the Special Investigations Branch (SIB) 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 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 the APA no direct powers before formal referral.

The quality of decision-making

- 3.9 Prosecutors within the APA reflect a mix of experience; more experienced prosecutors 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. 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 venue. 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).

High profile cases

- 3.10 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.

The quality and timeliness of casework handling

- 3.11 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. 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

- 3.12 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 Court Service (MCS) 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.

Disclosure

- 3.13 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

- 3.14 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. Prosecutors generally comply with their responsibilities and communications are timely. The views of the victim in casework decision-making are not ignored, but they are not a substantial factor. 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.

Equality and diversity in casework

- 3.15 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

- 3.16 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 ensures that performance information is disseminated to APA staff and discussed with MCS 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

- 3.17 The APA has established itself as an integral part of the military criminal justice system 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.
- 3.18 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 SIB 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.
- 3.19 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

- 3.20 We make recommendations about the steps necessary to address significant weaknesses relevant to important aspects of performance which we consider to merit the highest priority. We have made ten recommendations to help improve the APA's performance:

-
- 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 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).
-
- 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).
-
- 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).
-

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).

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

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).

Strengths

3.22 We identified four strengths within the APA's performance.

- 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).

- 3 The standard and comprehensiveness of the APA initial advocacy training course prepares prosecutors for presenting cases in courts martial (paragraph 8.6).

- 4 Assistant Prosecuting Officers provide valuable assistance to prosecutors presenting cases in court and assist with witness care (paragraph 8.10).

4 THE ROLE OF THE APA IN THE INVESTIGATION

The APA provides advice to the Special Investigations Branch 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 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 the APA no direct powers before formal referral.

The investigation process

- 4.1 The APA has no direct role in the investigation of criminal and disciplinary offences. It does not become seised of any case until it has been validly referred by the Army chain of command. However, Schedule 1 of the Armed Forces Act 2001 amended the Army Act 1955 to allow the APA to give advice to police forces on all matters relating to offences under the 1955 Act, which include all civilian criminal offences under English law and specific military offences in the 1955 Act. Police forces include the Royal Military Police as well as civilian forces. Thus, the APA may give advice to the investigator on evidential matters, but cannot direct the investigation or influence the referral process. Any advice given by the APA at this stage is usually done with the knowledge of, or in conjunction with, Advisory Branch.
- 4.2 There is, however, lack of certainty about this aspect amongst investigators, which has led to an inconsistency of approach. There is a protocol between the ALS, the APA and the SIB which deals with the types of case and circumstances in which early consultation should take place between the APA and the SIB. Awareness of the protocol is limited, however. Most investigators, whether they know of the protocol or not, are aware that they may seek advice from the APA, but the circumstances in which this occurs and the extent to which it is done varies. The procedure in one SIB unit requires authority to be obtained from a senior officer before approaching the APA and this has been done on no more than six occasions in the last 12 months.
- 4.3 It is essential that the independence of the APA from the Army chain of command is fully recognised and this may have a bearing on the relationship. Independence is important, since it is the cornerstone of the APA's very existence. However, given the inter-dependency of the organisations within the MCJS, it is also important that others should not see it as an impediment to dialogue and co-operation at the critical early stages of investigations.
- 4.4 The CPS and the civilian police have now adopted a more collaborative approach to the investigation and charging of offenders, often working together in the same location without compromising either organisation. There is scope to develop this approach further in the military system of justice.

- 4.5 The APA clearly demonstrates a professional approach in its work and needs to place greater emphasis on encouraging discussion and dialogue with the RMP and SIB in the early stages of investigation. The process is beginning. The SIB have a Warrant Officer located in each APA office in the UK and Germany to assist with liaison and in obtaining further information and evidence in cases. There have been discussions about a reciprocal arrangement which would see an APA prosecutor located with an SIB office. This has resource implications for the APA, but a positive approach is being taken to the proposals.
- 4.6 The Armed Forces Act 2006, which will come into force in 2009, revises the current referral procedure. The Act provides for direct referral to the APA from the police in the most serious cases and in others in "prescribed circumstances" (which are yet to be determined). The existing protocol is in the process of being revised. The provisions of the new Act provide a good opportunity to consider in advance the effects of the legislation on the investigation and referral procedure and can provide a useful template for the format of the revised protocol.
- 4.7 In any event, the current uncertainty needs to be resolved to ensure that investigators have access to the APA for advice in all cases likely to be dealt with by court martial.

RECOMMENDATION

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.

The chain of command and referral of cases

- 4.8 The referral from the Commanding Officer (CO) to Higher Authority (HA) must comprise certain specified documents which are set out in regulations. These include the case papers, the RMP report, copy of the suggested charge and a letter from the CO to HA indicating that he wishes to refer it for court martial proceedings. The referral to the APA from HA comprises the above documents together with the referral form and letter from HA stating that he wishes to refer the case for court martial.
- 4.9 The ALS Advisory Branch advises HA, as well as the CO, in respect of his powers and the action to be taken. In providing advice, they apply the prima facie case test and although in many, if not most, instances there will also be a realistic prospect of conviction, there are some cases which are eventually referred to APA which do not pass the stricter Service Code test. This has led to contention in some instances.

- 4.10 The views of some HAs differ as to the purpose and effectiveness of the referral procedure. Some would like to see greater flexibility within the current procedure to be able to deal with more cases summarily - as a means of swift disposal - either as substantive criminal offences or as military disciplinary offences. Others believe that any delay that may be occasioned by referral is worth it to obtain a definitive decision and can be reduced if cases are immediately referred to the APA in accordance with the advice from Advisory Branch. Inspectors saw examples of cases which were not directed for trial and returned for summary dealing following referral to the APA in circumstances where the eventual result was a likely outcome. In each case, there had been dialogue between HA and the APA about the possibility of summary dealing, although each case was ultimately referred. On the other hand, inspectors were told of cases that had been inappropriately dealt with by COs and had led to protracted further complaints and consideration.
- 4.11 There needs to be greater clarity and consistency in this aspect of the referral procedure. The APA is separate from the disciplinary chain of command and it is difficult to make any recommendation that requires the APA to take the initiative in this respect. However, a properly formulated procedure which will allow for and ensure discussion in appropriate cases on the possibility of summary dealing and/or the use of military disciplinary offences as alternatives to substantive criminal offences, will allow those cases to be dealt with summarily and swiftly without the need for referral.
- 4.12 It is apparent from our discussions with the ALS and HA that there is a willingness to take this approach in appropriate cases. We hope that this report will encourage efforts in this respect and that the APA will take such steps as it can to encourage this.

Referral of cases to the APA

- 4.13 Both stages of the procedure must be validly completed otherwise the referral is invalid and, as such, would fail at court martial. It must be sent back to HA indicating why the referral is invalid and how it might be put right. All of the cases in our file sample were validly referred, the majority being so on initial submission. In the few instances where referral was initially invalid (in one instance a sergeant had purported to sign the referral as CO), the error was spotted by the APA and referred back to HA indicating the nature of the defect.
- 4.14 Although the APA has no authority to deal with or intervene in cases before referral, they are aware of cases reported to the CO. At the same time as the investigator sends the report to Advisory Branch and the CO, a courtesy copy is forwarded to the APA. The APA does not have the resources to consider the reports in any detail in every case and they are usually regarded as early notice of cases that may be referred. The reports do, however, provide an informal check to ensure that appropriate cases are being referred and allow the opportunity of making an initial assessment of the seriousness of the case.
- 4.15 Because of the APA's very specific role in the disciplinary process, any intervention before referral would occur only in extreme cases. In addition, it is not unusual in some instances for there to be dialogue between the APA and Advisory Branch about the appropriate procedure for dealing with a case if there were any issue of doubt. Such instances are rare and usually initiated by the Advisory Branch lawyer.

5 THE QUALITY OF DECISION-MAKING

Prosecutors within the APA reflect a mix of experience; more experienced prosecutors 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. The quality of decisions is sound and reflected in detailed case analyses, although these should deal more with issues of Service interest and reasons for venue. 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).

Allocation of cases to appropriate prosecutors

- 5.1 Cases are allocated to prosecutors by the Colonel Prosecutions in the UK and Germany respectively. They allocate cases on the basis of the experience of individual prosecutors and also try to balance workload to make sure there is an even spread.
- 5.2 The quality of decision-making and review is generally sound. We deal with this aspect in greater detail at paragraph 5.10. 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.
- 5.3 Frequent reference was made to the two year tour of duty within the APA undertaken by prosecutors, after which many were re-assigned and never returned to prosecuting. These views usually reflected the system of two years ago and there are still some vestiges remaining today. However, the current staffing arrangements of the APA are more developed.
- 5.4 All prosecutors are initially recruited to the Army Legal Service. This provides them with a varied career, dealing with a wide range of legal issues, of which prosecution work is one aspect. Lawyers are recruited from a variety of backgrounds including the private Bar and solicitors' private practice. Not all have experience in criminal law or advocacy. Although there is a limited scope to accommodate individual preferences, lawyers are posted to the various branches of the ALS for operational reasons.
- 5.5 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.

- 5.6 The length of tour for new prosecutors is determined very much on an individual basis and the annual appraisal system for APA officers assesses their performance as Army officers on an individual basis and not simply as prosecutors.
- 5.7 The current mix of experience within the APA reflects its staffing policy. There are sufficient prosecutors of long experience who can handle the more serious and complex casework and also provide advice and mentoring to the less experienced ones. This is not done on a structured basis but is ad hoc as the need arises.

ASPECTS FOR IMPROVEMENT

Senior officers within the APA should provide a more formal programme of induction and mentoring for prosecutors within the organisation.

- 5.8 The APA does not have designated lawyers to deal with cases of a specialist nature such as child abuse, rape or race hate crimes. The issue concerning the term of duty within the APA and the volume of casework may be factors which impact against this. However, assignment to individual prosecutors of specialisms such as rape, child abuse and hate crime would provide them with a focus for gaining experience and provide the APA with a body of in-house prosecutors who could pass on that experience to others informally as part of normal casework responsibilities and by more formal training.

ASPECTS FOR IMPROVEMENT

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.

The quality of decision-making

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

APA case outcomes 2006

	Numbers	%
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%

- 5.10 The quality of decision-making is generally sound. The initial review decision accorded with the Service Code evidential test in 87 of the 91 cases examined (95.6%) and accorded with the public (including Service) interest test in all relevant cases. The prosecutor was proactive in requesting further evidence or information before the initial decision in 92.8% of relevant cases.
- 5.11 All decisions are supported by a written case analysis by the reviewing lawyer. The analysis is recorded in Axia, the APA electronic case management system, and a copy attached to the paper file. The standard of case analyses is generally very good. They contain a comprehensive summary of the evidence as well as a detailed discussion of the issues, including any possible defence. Although some case analyses can be too lengthy, containing a précis of the evidence of each witness, this does not detract from the overall quality and standard, which indicate a thorough review and understanding of the issues in individual cases.

STRENGTHS

Case analyses are well structured and detailed and indicate a thorough review.

The Service interest

- 5.12 We have referred earlier at paragraph 2.12 to the Service interest. In the sample we examined, which was taken from cases finalised at the end of 2006, we rarely found any discussion of the Service interest. This is particularly important when prosecuting cases under military law because the Service interest imports issues that are additional to the public interest. The military context requires that some cases, which might not be prosecuted in civilian life, should be prosecuted within the court martial system as a means of enforcing Army discipline.
- 5.13 Although it was not always evidenced in writing, APA prosecutors took account of the Service interest in individual cases. In some instances, the CO or HA set out their views on the Service interest which was usually referred to in the case analysis. It was not always obvious, however, and should be specifically recorded.
- 5.14 In January 2007, the template for the case analysis was amended to include a heading which prompts specific consideration of the Service interest. We looked at some cases which had been reviewed since then and found reference to the Service interest noted in the analysis. In some instances the references were rather tentative and could have been more specific and direct. However, the sample was too small and too early to form any informed views. This is an aspect which senior managers within the APA will wish to monitor.

Venue

- 5.15 The decision on venue was appropriate in 72 out of 73 cases where it was relevant, but reasons for the decision were recorded on the file in only 27 cases (37%).
- 5.16 It is at the case analysis stage that the reviewing prosecutor considers the venue for trial. Although procedures are the same, a District Court Martial is limited in its sentencing powers to a maximum of two years' imprisonment. The sentencing powers of a General Court Martial are limited only by the statutory maximum for individual offences.
- 5.17 Although limited, the sentencing powers of a District Court Martial are relatively high compared with the powers of a magistrates' court. As a result, most cases are dealt with at that level and the question of venue is usually obvious. However, in some cases the decision is finely balanced and, in respect of certain offences such as actual bodily harm (ABH) and unlawful wounding which carry a maximum sentence of five years' imprisonment, some justification for the choice of District Court Martial as venue should be set out in the analysis.

ASPECTS FOR IMPROVEMENT

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.

Formal preliminary examinations

- 5.18 Prosecutors have power to hold a formal preliminary examination (FPE) in cases where they think the evidence may be unsatisfactory in some respect, or if there are doubts about the credibility of the victim or other witnesses. The FPE is a formal hearing in front of the Judge Advocate with the defence present. Guidelines on the use of, and procedure for, FPEs are contained in the APA office instructions. They have been the subject of recent revision to clarify the circumstances in which they are appropriate. These are where:
- there is an unexplained conflict on a material issue;
 - there is an apparent weakness in the evidence which may be resolved by clarification or explanation;
 - there are concerns as to the credibility of a witness, particularly where the witness's evidence is crucial to the prosecution case, for example an allegation of rape or sexual assault;
 - it is necessary to assess the seriousness of the allegations, for example an allegation of bullying.
- 5.19 Because of these reasons and the procedure for FPEs, they raise certain sensitive issues in respect of the victim or other witnesses, especially if they result in the case not being proceeded with. Consequently, they should be used only when necessary, as the guidelines acknowledge. The file sample revealed one instance of an FPE in a rape case. The evidence on the prosecution statements was sufficiently clear to conclude that there was no realistic prospect of conviction and FPE was unnecessary. Proper adherence to the revised guidelines should avoid future instances.

Level and appropriateness of charges

- 5.20 There were five cases within our file sample which raised some issues relating to the appropriate charges or level of charging. The issues arose as part of the normal review process and, in each case, were resolved before the case was dealt with.

- 5.21 Under the referral procedure, the CO charges the accused on advice from the Advisory Branch lawyer and then, where appropriate, refers the charges to the APA via HA. There is a tendency, although no specific policy, for Advisory Branch to recommend the highest level of charge on which there is a prima facie case. It does this on the basis that it is better from the accused's point of view, if the charge is to be altered, to have it reduced in gravity, rather than increased. We noted some examples, particularly in respect of allegations of violence, where the APA had correctly reduced the level of charge proposed by Advisory Branch when directing trial. We were also given examples of cases which proceeded on the wrong level of charge, affecting the choice of venue and, consequently, the sentencing powers of the court. We were also told of some instances in which cases had proceeded on a purely military offence which should more appropriately have been dealt with as a substantive criminal charge. These cases were, however, acknowledged to be exceptional.

- 5.22 Although the practice of charging high may be acceptable in some circumstances, it can impact adversely on the victim or their relatives. The apparent reduction of the charge may cause consternation to the victims' relatives, whose expectation had been raised too high.

- 5.23 The CPS and the Association of Chief Police Officers (ACPO) have agreed a series of charging standards which provide guidance about levels of charge in certain types of offence. These include assaults, theft, public order and drugs offences. APA prosecutors are aware of the standards and are influenced by them in their decision-making. They are of limited application, however, because the military context often imports particular circumstances which require a different approach.

Timeliness of decision-making

- 5.24 The initial decision was made at the earliest opportunity in 82 of the 91 cases examined (90.1%). The APA has not set specific time targets for reviewing cases, but will endeavour to make a decision whether to direct trial within 30 days of the receipt of the case papers. We consider this to be relatively generous in the more straightforward cases, bearing in mind that the workload of each prosecutor averages 44.9 cases per year. We appreciate that prosecutors can spend lengthy periods presenting cases in court but believe that there is still scope to reduce delay, as the figures in the following paragraph show.

ASPECTS FOR IMPROVEMENT

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.

5.25 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> <i>(total 690)</i>	434 (62.9%)	125 (18.1%)	63 (9.1%)	22 (3.2%)	16 (2.3%)	13 (1.9%)	17 (2.5%)

5.26 The Army is very keen to ensure that military disciplinary procedures proceed promptly, since delay can have a detrimental effect on the individual and the unit. As such it has established time targets and guidelines for dealing with the various stages in the process. The Royal Military Police are under a duty to investigate offences promptly and report to the CO within 30 days. If this cannot be achieved, progress reports must be submitted every three weeks until the investigation is complete.

5.27 Once the RMP report is submitted to Advisory Branch, they are required to provide advice to the CO within ten days. If the CO thinks that court martial is appropriate, he must refer the case to HA within ten days of the advice. HA is also under a duty to refer the case to APA within ten days, if he considers it is suitable for court martial. The effect of this is that the APA should receive the case papers within one month from the submission of the final RMP report.

5.28 The Office of Standards in Casework (Army) (OSCA) monitors the timeliness of disciplinary casework to identify causes of delay in individual cases. This is done by means of a chart or spreadsheet which maps the progress of individual cases at various stages of the disciplinary process. OSCA holds regular meetings of the Adjutant General's Delay Action Group (AGDAG) which are attended by the Brigadier Prosecutions. Any case which is causing concern over delay is discussed in detail and action is taken to progress it.

STRENGTHS

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.

6 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.

Background

- 6.1 Following the involvement of the British Army in operations in Iraq since March 2003, there have been a number of high profile cases which have involved allegations of mistreatment of Iraqi civilians by British soldiers, in some instances leading to death. These cases have been the subject of comment by the courts and discussion in the media about the way in which cases involving soldiers on operations are investigated and prosecuted. They have prompted a statement by the Attorney General in Parliament about the courts martial system. They have also led the Adjutant General, who is responsible for the military discipline, to make a statement by way of an article, explaining the military justice system and referring to the issues in some of the cases.
- 6.2 Two cases that involved the deaths of Iraqi civilians fell within our file sample. Our inspection commenced before the recent case of *R v Payne and Others*² and we did not examine it specifically.
- 6.3 The files were examined as a normal part of our file sample and for no other specific purpose. These and some of the other high profile case were discussed with APA staff and others involved in the military justice system as illustrations of general issues which arose during our inspection. We did not undertake any specific enquiry or investigation into these two cases beyond that done in relation to the rest of our file sample. However, in view of their prominence and the currency of some of the issues raised, we feel that special consideration is merited in this report.

Case one

- 6.4 The first case concerned allegations that a number of Iraqi civilians, also suspected of being looters, were stopped by a British patrol and then assaulted. Most of them sustained only minor injuries but one suffered a violent blow to the head from which he eventually died. The deceased was buried by his family, in accordance with local custom, within 24 hours of the incident and before any investigation had properly started. The situation in that part of Iraq at the time was such that any attempt to exhume the body for post mortem examination was likely to lead to large scale disorder. This presented the investigators with significant difficulties which impacted on the eventual trial.

2 The trial, which was taking place at the same time as our inspection, involved the acquittal of all defendants except one who had pleaded guilty. One of those acquitted was the Commanding Officer of the other accused. Although not present when the offences were alleged to have been committed, he was prosecuted on the basis of his responsibilities as Commanding Officer.

- 6.5 The APA sought advice from leading counsel about the prospects of a successful prosecution. Counsel advised that there was sufficient evidence for a realistic prospect of conviction, although his advice was given in conference and was not put into writing. It was also necessary to seek the consent of the Attorney General for a prosecution against three of the soldiers because they had subsequently left the Army. Application was made for consent and was granted.
- 6.6 At the trial, the seven accused were all acquitted following a successful submission that there was no case for them to answer. The Judge Advocate General found that the civilian had died as a result of an assault and that six of the accused at least had been present at the assault. The case had been presented as a joint venture but the Judge Advocate General concluded that there was insufficient evidence to support this contention. He referred in his judgment to inadequacies in the investigation, whilst acknowledging the difficult circumstances in which it was made. There were other issues relating to the credibility of witnesses which were not fully apparent until trial. He made no criticism of the APA and remarked that it is perfectly proper to take a case to trial where, on the face of the case papers presented to the prosecutor, a serious crime appears to have been committed.
- 6.7 Our examination of the prosecution file shows that the APA was proactive in attempting to strengthen the evidence. However, this was made more difficult by the circumstances of the case and the fact that it was some 12 months between the start of the investigation and eventual referral, during which time the Special Investigations Branch had not consulted the APA. The eventual internal report on the case recognised the importance of early consultation between the SIB and the APA in such cases and generally.
- 6.8 We were pleased to note that lessons had been learned from the case to ensure that advice in such cases should be obtained in writing and that consultation between the SIB and the APA might be both valuable and proper during the course of an investigation.

Case two

- 6.9 The second case involved the death of an Iraqi civilian who was suspected of looting and it was alleged that he was taken, with three others, by a British patrol to a bridge over a canal and that all four were forced into the water at gunpoint. Three of them managed to escape, one of whom became a witness for the prosecution at the subsequent trial. The fourth drowned.
- 6.10 Following investigation into the events, the case was referred to the APA for a decision whether to prosecute and, if so, whom and for what offences. The APA took advice from leading counsel who advised in writing that there was a realistic prospect of conviction against four members of the British patrol on a charge of manslaughter. At the trial, one defendant was acquitted following a submission at the end of the prosecution evidence that there was no case against him. The remaining three were acquitted after full trial.
- 6.11 A number of issues arose during the investigation, preparation of the case for trial, and the trial itself, which had a direct impact on the eventual result. Some of these were anticipated, but others only arose during the trial. The file indicates that the APA had handled the case competently at all stages of progress and had liaised with the SIB and leading counsel appropriately, and as issues arose.

Conclusions

- 6.12 Both cases involved difficult issues of law and evidence. The investigations were made in difficult situations which can hardly be appreciated in the normal circumstances of civilian investigations. Both cases showed a proactive approach to review by the APA and a willingness to seek advice from leading counsel when it is appropriate. Both highlight the importance of close liaison and consultation between the prosecution team of investigator and prosecutor in the early stages of an investigation. Significantly, both involved the death of an Iraqi civilian in circumstances which gave rise to a suggestion of unlawful killing.
- 6.13 We concluded from our examination that the decision to prosecute in each case was justifiable within the terms of the Service Code and neither could be criticised as unreasonable. Each decision was finely balanced in terms of the evidence. 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.

7 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. Data on cracked trials is not collected within the military criminal justice system. 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.

Case preparation

- 7.1 Following the initial review and analysis of the case, further reviews, for example following the receipt of further evidence, are carried out as the need arises. Thus, there are no formal records of continuing reviews, as with the initial case analysis, but they are reflected in minutes to the investigator requesting further information or evidence, or a file note recording the decision following consideration of further evidence by the prosecutor.
- 7.2 Such notes are contained in the correspondence bundle in the file in sequential order and, because of this, the response and further review are unlikely to be found adjacent to any connected request for evidence. Nevertheless, the notes found in the file sample indicate good evidence of a proactive approach to review.
- 7.3 When the initial direction for trial is made the prosecutor prepares the prosecution bundle, which includes a list of prosecution witnesses, together with their statements. Arrangements for trial, including witness requirements for prosecution and defence, are usually dealt with at directions or pre-trial hearings. The prosecution record of the arrangements is made in a file note of the hearing prepared by the prosecutor, often supplemented by a court transcript of the hearing supplied by the Military Court Service (MCS). Any amendments to the arrangements are also dealt with by notes or letters filed in the correspondence bundle.
- 7.4 The method of recording further reviews, actions and court hearings in the correspondence bundle means that it is more difficult to get a grasp on the case history when reviewing the case or dealing with queries. It would be helpful to have a means of recording brief details of reviews and actions, including court hearings, which is immediately apparent to anyone dealing with case enquiries or preparing the case for court and obviates the need for a time consuming and frustrating search through the file. The APA file jacket is underused in this respect - it contains a few case details largely restricted to the defendant's name, file number, offences and some details of file movement, and the rear cover is blank. The file jacket can provide a useful means of recording brief details of court hearings and key reviews and actions so that case progress is immediately apparent.

ASPECTS FOR IMPROVEMENT

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

Progressing cases

7.5 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%)

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

7.7 Once a decision has been made by the APA to direct trial by court martial, it notifies the MCS accordingly and forwards them a copy of the case papers. The MCS fix an initial directions hearing for the case. These are dealt with in chambers and, although a plea can be indicated, the case cannot be dealt with as a guilty plea hearing. It is usual for the MCS to list a case in a later assize (in the event that it is to be a guilty plea), at the same time as it fixes the initial hearing. If an accused pleads not guilty, the case is adjourned to a pre-trial hearing in open court when issues surrounding the trial are discussed and witness requirements dealt with.

7.8 The system is such, therefore, that the Judge Advocate becomes seised of the case at an early stage. Although events and issues in some cases do lead to delay, the court can maintain close control of case progress through directions hearings. The APA was ready for the directions or pre-trial hearing in 95.5% of relevant cases in our file sample and directions were complied with in 98.2%.

7.9 The APA trial arrangers located at Uxbridge (UK) and Bielefeld (Germany) liaise with the MCS over the listing of cases and chase outstanding actions likely to have an effect on case progress. If a case is to go to trial, the APA assigns an Assistant Prosecuting Officer (APO) to the case, who then has responsibility for a range of matters connected to the specific trial, which include liaising with the MCS over arrangements for trial, witnesses etc.

Cracked trials

7.10 Although the APA maintains casework data by reference to outcome, this is largely restricted to the recording of guilty pleas and convictions or acquittals after trial. It does not maintain any data on specific outcomes such as cracked and ineffective trials or judge ordered and judge directed acquittals. Neither the APA nor the MCS have identified the need to maintain figures on such outcomes. The principal issue appears to be in respect of cases arranged for trial which result in a late plea of guilty by the accused. There is some element of overlisting by the MCS to compensate for this.

- 7.11 Some partners in the military criminal justice system referred to a readiness by some prosecutors to accept pleas to lesser offences, or to proceed on agreed bases of plea, which might not fully reflect the gravity of the offending. There were ten cases in our file sample in which the APA accepted pleas of guilty to reduced charges. This was justified in nine of them and in five pleas were accepted by the prosecution on the day of trial. The file sample showed that it is more usual for such issues to be raised and resolved between prosecution and defence before the Judge Advocate at a directions or pre-trial hearing.
- 7.12 These are just some of the issues which can impact on the effectiveness of trials and case progress. The MCS and the APA both manage cases very closely and issues likely to affect trials are identified and dealt with promptly. However, it is in the interests of both organisations to have some information which allows them to look at reasons why cases do not proceed.

Foreseeability

- 7.13 There are some cases in which more proactive case management can avoid an adverse outcome such as discontinuance or acquittal, whether by direction or verdict.
- 7.14 There were two cases in our sample in which the defendant was acquitted and the result was foreseeable. Earlier action by the prosecutor to clarify issues raised at the trial could have avoided the acquittal in one of these. Two other cases were dismissed following a submission that the prosecution had not proved its case. Again, action by the prosecutor before trial to clarify issues which were clearly relevant to the presentation of the case could have avoided the results in one case.
- 7.15 It is difficult to interpret the effect of these figures on the standard of continuing review and case management. It may be a concern that, although the numbers are small, the incidence of occurrence of lack of proactivity in review to the outcome is high in percentage terms. However, it cannot be said that they are indicative of the general standard of review and case management, which our file sample showed to be more positive.

Discontinuance

- 7.16 In the year to 31 December 2006, the APA discontinued 66 cases after direction for trial, which represents 9.9%. There were eight discontinued cases in our file sample and the decision to discontinue accorded with the Service Code in each. The decision to discontinue was the result of further evidence or information in five cases, which amounted to a material change of circumstances in four of those.
- 7.17 There was appropriate consultation with the investigator before the decision to discontinue in seven cases, however, the victim's views were sought in only two.
- 7.18 There were three cases in which the reasons for the eventual discontinuance were apparent at the time of direction for trial and further evidence obtained before direction, or earlier action after, could have prevented the result. The decision to discontinue was taken at the earliest possible opportunity in six cases.

Learning lessons from casework

- 7.19 The APA has no structured system for learning lessons from its casework. Once a case is finalised, the prosecutor at the last hearing prepares a final report on the case which sets out the charges, details of plea, the evidence or facts outlined and any issues or events at the trial or plea hearing. Like the initial case analysis, they tend to be very detailed documents. Copies of the reports are forwarded to the Colonel Prosecutions and to the Brigadier Prosecutions. In this way, they are used as a general means of learning lessons from casework and any issues of concern will be dealt with as appropriate, either with the prosecutor or by wider dissemination. In some instances, where required, there may be correspondence or discussion with the investigator. However, the reports are not part of any formal system of learning casework lessons, an aspect we deal with later in Chapter 12.

Case management

- 7.20 Other MCJS representatives mentioned difficulties they had experienced in contacting prosecutors to deal with queries. There was also perceived to be a general reluctance in others to deal with queries on cases which they were not managing. The file sample confirmed that correspondence was not always answered promptly, although in most instances, the delays were not completely unacceptable. The problems in this respect are generally due to prosecutors' assize commitments, which can take them out of the office for extended periods. However, there are usually no early acknowledgments or holding replies, which could be dealt with routinely by administrators.
- 7.21 Although prosecutors' duties will take them away from their desk, often for days at a time, it is important that the defence or other organisation needing to discuss issues in a case can obtain a response promptly. It is a matter of efficient case management, and in everyone's interests, that such matters are dealt with expeditiously. The APA should have systems in place to deal with this.

RECOMMENDATION

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.

- 7.22 The APA has its own computerised case management system - Axia. It provides a means of managing individual cases and recording casework functions and actions electronically. It is available to all prosecutors and administrators, giving them immediate access to information about any case. It provides a ready means for anyone to respond to queries in individual cases without always having recourse to the paper file. It is not yet, however, installed in every court centre.

- 7.23 It is, however, like any other electronic information system, only effective if information and actions are recorded immediately. There are no specific instructions as to who is responsible for recording events, although this generally tends to follow responsibility for the action, for example review, telephone conversation etc. There are, however, some issues over the readiness of lawyers to update the system promptly, leading sometimes to an incomplete case record. It is essential to the efficient functioning of the system that responsibilities for recording actions and events are clearly defined.

ASPECTS FOR IMPROVEMENT

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

- 7.24 Axia has a series of review and letter templates dealing with the more common aspects of file preparation and casework actions. However it is apparent that, over time, a number of templates have been revised or introduced in the UK or Germany, according to changed circumstances, without reference to the other centre.
- 7.25 Clearly, there will be some occasions where the individual requirements of one system will lead to a different approach and require different templates. Equally, there are other occasions where an amendment to a template in one centre will be of equal value to the other. In the absence of a proper change control mechanism, inconsistencies have developed. In Germany, a different method of case management was being used to process some aspects of casework outside Axia, at the same time as other functions on Axia were being maintained. A consistent approach should be maintained and properly controlled.

ASPECTS FOR IMPROVEMENT

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.

8 PRESENTING AND PROGRESSING CASES

Courts martial are prosecuted in fortnightly assizes held in various centres in the UK and Germany - and at other centres less frequently. 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 Court Service would help in this respect. Prosecutors come from varied backgrounds and have a mix of experience. 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.

Prosecuting cases in court

- 8.1 The MCS operate a system of fortnightly assizes which will comprise a mix of directions hearings, pleas, trials and summary appeal cases. Assize lists are issued by the MCS and provided to the APA, enabling the APA trial arranger (whose responsibilities include managing case progress and liaising with the MCS over listing arrangements) to assign prosecutors to cases in sufficient time to allow proper preparation. Wherever possible, prosecutors will be assigned to deal with their own cases, but listing arrangements are not always compatible with this aim. In any event, the principal factor in assigning cases is the experience of the prosecutor.
- 8.2 The location of the court centre is also a factor in determining who will prosecute a case. In the UK, the court centres nearer Uxbridge (Bulford and Colchester) allow greater flexibility to assign individual prosecutors to appropriate cases because they are within reasonable daily travelling distance. In respect of the centres at Catterick, which is more than 250 miles from Uxbridge, and Alder Grove in Northern Ireland, it is usual to assign one prosecutor for the whole assize, unless there are exceptional circumstances.
- 8.3 The court centres in Germany are generally nearer to Bielefeld and prosecutors are able to attend court on a daily basis, although some may stay overnight at the more distant centres.
- 8.4 The combination of the different factors means that, despite best efforts, it is not always possible to have cases prosecuted by the case owner, leading to some duplication of time and effort. This should not, however, be seen as an inevitability in every case and there are some instances when representations from the APA to the MCS have led to more sympathetic listing. Nevertheless, it is clear overall that the MCS regards court listing as very much its own function and about which others may make representations, but have no real influence in. On the other hand, cases which are prosecuted by lawyers who have had charge of the case from an early stage is a more effective use of court time. We cannot, and do not seek to, change the responsibilities for court listing. We do, however, think that an approach which is more informed by a sharing of information will benefit both the MCS and the APA.

RECOMMENDATION

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.

The quality of advocacy

- 8.5 APA prosecutors present the great majority of their cases at court. Counsel are rarely instructed; this is usually in the more serious, complex or high media profile cases, of which there are relatively few. Courts martial are a very testing and demanding environment and require prosecutors to have a thorough knowledge of the criminal and military law, as well as a detailed knowledge of the cases they are prosecuting. In addition, prosecutors regularly deal with more serious casework than found generally in magistrates' courts. Because of this, prosecutors are careful to ensure that they prepare their cases thoroughly. They also have a good knowledge of sentencing provisions and guidelines and are frequently called upon to advise the court in this respect and other matters of law and procedure.
- 8.6 The experience of lawyers coming into the APA is mixed. Some have had previous advocacy experience either in the magistrates' courts or in the Crown Court, while others have had no previous advocacy experience. The APA places great emphasis on ensuring that newly recruited lawyers are equipped to handle prosecutions in court. The induction for them includes a rigorous one week advocacy training course which is run by the Colonel Prosecutions (UK) and is a mix of lectures and practical training in different courtroom situations. Conducting an actual court martial is a different experience, but the course gives new lawyers some idea of what situations may arise when prosecuting.

STRENGTHS

The standard and comprehensiveness of the APA initial advocacy training course prepares prosecutors for presenting cases in courts martial.

- 8.7 We 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	3+	2
of advocacy	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

- 8.8 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. We have dealt with this issue in detail in paragraphs 5.3-5.6.
- 8.9 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. Some files contained a detailed preparation note for trials which set out the opening arguments, details of the points to lead in evidence and cross examination issues for individual witnesses and closing speeches. These were usually handwritten and prepared by the prosecutor listed to undertake the trial. Although circumstances might change as the case progressed, the notes were especially useful if, for any reason, another prosecutor was ultimately given the conduct of the prosecution.
- 8.10 Prosecutors are assisted in court by the APO, whose numerous duties and responsibilities include liaising with witnesses before court and assisting the prosecutor in court with papers, production of exhibits etc.

STRENGTHS

Assistant Prosecuting Officers provide valuable assistance to prosecutors presenting cases in court and assist with witness care.

- 8.11 The facilities at court for prosecutors vary, although each has a room or office for them. Facilities are limited, however, and photocopying, faxing etc generally relies on MCS assistance. Prosecutors do not have access to the Axia case management system at all court martial centres. However, the situation over court accommodation is improving in the UK, with the new court centres at Bulford, Colchester and Catterick (which is due to open shortly).

Advocacy monitoring

- 8.12 There is no formal system of advocacy monitoring. Informal monitoring may occur when the team leader or Colonel is at court and happens to see another prosecutor; but this is infrequent and incidental. The only other method of monitoring depends on reports from other court users. The tendency is for poor performance to be reported, but not all reports are negative; good performance is also highlighted. The transcripts of directions hearings which set out verbatim arguments put forward by prosecutors on a variety of legal matters can provide a useful monitoring tool, though they do not appear to be used for this purpose.
- 8.13 The resources invested in advocacy training indicates the APA's keenness to equip its prosecutors with the right skills to present serious and complex cases in court. This should be supported by a more structured and formal system of monitoring to assist in developing individual performance.

RECOMMENDATION

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

9 DISCLOSURE OF UNUSED MATERIAL

The common law rules on disclosure 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 served on 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. 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 will be applied to courts martial in December 2007, following a six month training period in the statutory regime for prosecutors and investigators.

The duty of disclosure

- 9.1 The Criminal Procedure and Investigations Act 1996 (CPIA), as amended by the Criminal Justice Act 2003 (CJA), which regulates disclosure provisions in most criminal investigations has not yet been applied by Parliament to proceedings by court martial. This means that the common law rules on disclosure still apply to prosecutions undertaken by the APA. The common law principles arise out of a series of cases decided largely in the first half of the 1990s.
- 9.2 It is not necessary to go into those principles in detail for the purposes of this report but they allow the defence access to material that is "material" (relevant) to the case. It is for the prosecuting authority to determine what is relevant; there is no duty to disclose material which is not. The prosecution may withhold certain relevant material on public interest immunity (PII) grounds if an application to the court to do so is upheld.
- 9.3 It follows, therefore, that the duty of disclosure requires the prosecutor to consider and assess the material to determine if it is relevant and whether there is any impediment to disclosure. The APA office instructions emphasise that "the more is disclosed the better" and make it clear that if the Crown has material in its possession which is equivocal or damages its own case or supports that of the defence, that material must also be disclosed. It is important for the proper functioning of the disclosure regime that that should not lead to automatic disclosure irrespective of whether the test is met.
- 9.4 The instructions also refer to the continuing duty of disclosure throughout the life of an individual case. This is a particularly important aspect because, although the same principle applies to statutory disclosure, the common law does not require the accused to provide a defence statement setting out the nature of his defence. Under the statutory procedure, the defence statement serves as a reminder to the prosecution to reconsider disclosure in the light of its contents and to ask the police if the defence statement gives rise to disclosure of any other material not previously disclosed.

The disclosure procedure

- 9.5 When a case is referred to the APA it is accompanied by the case papers, including unused material which is listed on a schedule with a certificate from the senior investigating officer that, to the best of his knowledge and belief, the schedule contains all material not disclosed elsewhere. If, following review by the APA, it is decided to direct trial by court martial, the prosecutor writes formally to the investigator asking for all unused material to be forwarded. This, of itself, may produce no further material, but any which does come to light is forwarded to the APA and considered for disclosure.
- 9.6 When the case is initially reviewed, the prosecutor should consider the unused material to determine whether it is disclosable. If it is, then copies of the material are forwarded to the accused with a schedule which is separately prepared by the APA. The file sample showed that APA compliance with the duty of disclosure is high, at 98.6% of relevant cases, in the sense that relevant material is disclosed. In one case, information that might have assisted the defence was not disclosed. It was received when the prosecutor was considering the offer of a plea by the accused to a lesser charge but should still have been disclosed.

Recording the disclosure decision

- 9.7 When the prosecutor directs trial by court martial, the case papers are prepared for service on the accused. These comprise separate bundles of copies of witness statements, documentary exhibits and unused material. Each bundle is accompanied by a schedule prepared by the prosecutor indicating the contents. Although it may be apparent from this that the prosecutor has looked at the material, the APA schedule often simply lists all material supplied to it by the Royal Military Police and is not of itself an indication that the prosecutor has made a considered decision on whether individual items are relevant and disclosable.
- 9.8 Exceptionally, if there is an issue over the relevance of material or other issue relating to its disclosability, the file contains a note dealing with this aspect. In none of the cases in the file sample was there a record of the prosecutor's decision other than by implication from the fact of its service on the accused. There was, however, a record or other indication that material which might potentially undermine the prosecution case or assist the defence had been properly considered in five of the 67 relevant cases.
- 9.9 Regardless of whether the disclosure procedure is statutory or common law, it is important to record on the file the decision in respect of disclosure. There are two aspects to each decision. The first is in respect of the material that is disclosed and the second aspect, equally if not more important, relates to the reasons why particular material is disclosed or withheld.

RECOMMENDATION

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.

Service of unused material on the court

- 9.10 Following direction for trial, at the same time as the papers are served on the accused, the APA provides the MCS with a copy of the full prosecution bundle, including unused material, and they in turn provide the Judge Advocate with a complete copy.
- 9.11 There is no obligation upon the prosecution to provide the court with copies of unused material as a matter of course. The court should not be provided with unused material unless it is being asked to rule on the issue of its materiality or to withhold material on grounds of PII. In both circumstances, the issues would be dealt with separately as they arise. Service on the court in any other circumstances is unnecessary and may appear to compromise the Judge Advocate if he has to make a ruling of fact on any issue, for example an application that there has been an abuse of process.

ASPECTS 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.

Sensitive material

- 9.12 It is not the practice of the RMP to confirm, when files are referred, that there is no sensitive material. If there is, the file will contain reference to it. Prosecutors are generally alive to circumstances which may give rise to the possibility of there being sensitive material and will seek information in any case where its possible existence has not been revealed. However, this is not a matter which should be left to the intuition of the prosecution to identify any gap. Prosecutors and investigators need to be assured of each other's understanding in this respect. The Disclosure Manual - which provides guidance to the civilian police and Crown Prosecution Service (CPS) on the statutory procedure - requires, in cases in which there is no sensitive unused material, specific confirmation from the police to that effect. It is likely that this will also apply to proceedings by court martial when the legislation is implemented and is of sufficient significance to be given early consideration.

RECOMMENDATION

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.

- 9.13 There were three cases in the file sample which gave rise to issues of sensitive material. In two of these it was dealt with properly and there was evidence that the prosecutor had given proper consideration to its relevance and potential impact on the prosecution case. Two of the cases gave rise to considerations of PII in its being disclosed, but an appropriate application to the court was made in only one.

- 9.14 There were concerns about the arrangements for storing sensitive material in one case in which a PII application was made. The file still contained a copy of the application to the court and a further copy of a precedent from a previous case. Both documents made reference to informants, in particular; the precedent application made direct reference to the informant's name.

Implementation of the Criminal Procedure and Investigations Act

- 9.15 Arrangements are in hand to bring the military criminal justice system within the CPIA regime in December 2007. The CPIA (as amended by the CJA 2003) imposes a strict regime of disclosure on both the prosecution and the defence. It is important to have structured systems in place to handle the demands of the legislation and comply with the duty of disclosure. APA senior officers are aware of the implications and are involved in arrangements to ensure that they are prepared for the new provisions when they are introduced. The likely effect is the need for a more structured regime with prosecutors assessing material against the statutory criteria.
- 9.16 The APA is currently involved with the Ministry of Defence in formulating a code of practice for the Service Prosecuting Authorities and investigators in disclosure handling arrangements. The Government has decided that there will be a six month training period between the signing of the statutory instrument which will apply the provisions and commencement. This is to allow sufficient time to provide necessary training to APA staff and investigators in dealing with disclosure under the new regime.

10 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, and when charges are dropped or substantially altered. Compliance with these responsibilities by prosecutors could be improved, although communications to victims are generally timely. The views of the victim in casework decision-making are not ignored, but they are not the principal factor. 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 commitment to victim and witness care

- 10.1 The responsibilities of the APA in respect of victims and witnesses are set out in the "Code of Practice on Services to be Provided by the Armed Forces to Victims of Crime" (the Code of Practice). It is modelled on the Home Office Code issued under section 32 of the Domestic Violence, Crime and Victims Act 2004 and is mandatory across the Armed Forces.
- 10.2 The Code of Practice represents a minimum level of service, setting out the circumstances in which it applies and identifies those persons entitled to services under the Code. It also sets out what is required of the various organisations by way of victim care. The responsibility of the APA is to ensure that victims are informed of charging decisions. In particular, the APA will notify the victim of the following decisions within five working days:
- Direction for trial.
 - Decision that there is insufficient evidence to direct trial.
 - Decision to substantially alter or drop charges.
 - Referral back to the Commanding Officer.
 - Decision not to oppose appeal to the Summary Appeal Court or Court Martial Appeal Court.
- 10.3 The Code of Practice also provides for meetings with victims' relatives in any case involving a death, deals with special measures applications for vulnerable or intimidated witnesses and emphasises the importance of prosecutors' introducing themselves to witnesses at court, where circumstances permit.

Communications with victims and witnesses

- 10.4 There is some scope for improvement in the APA's approach to victim and witness care and some aspects need to be reconsidered and strengthened if the APA is to present itself convincingly as an organisation which puts victim and witness care as a priority.

- 10.5 The file sample confirms that the APA sends an initial letter to victims telling them of the decision to direct trial. However, the letter also explains that as the victim is a potential witness in the case, any further contact should be with the RMP or MCS rather than the APA. Whether or not the RMP or MCS can assist the victim will depend on the nature of any enquiry, but the tone of the letter appears rather negative and peremptory and could usefully be re-drafted. To cut off an avenue of enquiry for victims in this way is against the spirit of the Code of Practice and inconsistent with the general level of care that should be provided to victims by all criminal justice agencies.
- 10.6 In another instance, a victim in a case which involved an allegation of a sexual nature had, for unspecified reasons, declined to make a victim personal statement. She was told in a letter from the APA that the court would assume that the incident had no long term impact on her. It is not always easy to express empathy in writing and the same message can sometimes be interpreted differently. However, the tone of some communications with victims is inconsistent with other aspects of victim and witness care provided by the APA.
- 10.7 The file sample contained 15 cases in which charges were either reduced or dropped. We found evidence of the victims being informed in only seven cases, although the letters were sent in good time.
- 10.8 Reasons for decisions to reduce the level of, or drop, charges are initially couched in vague terms, although more information is given later if requested. The Code of Practice permits this in cases in which the APA think it inappropriate or unnecessary to give reasons. The APA, however, have adopted this as a policy because sometimes the explanation may be embarrassing to, or critical of, the victim. In some instances this may be the case but in many, if not most, cases the victim can be given a full explanation at the outset as a matter of courtesy consistent with respecting their right to know what is happening in a case.

Victim and witness care at court

- 10.9 The MCS 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.
- 10.10 Witness requirements are usually confirmed at directions or pre-trial hearings between the court, APA and defence. Any amendments will be dealt with administratively between the APA and MCS. Organisation can be complicated by a number of factors as witnesses potentially come from all over the world. In some cases, arrangements are made to receive evidence via video link. Arrangements for staggering witness attendance are made in bigger cases with co-operation of the defence and APA, and are done nearer the trial date.
- 10.11 At court, prosecutors and APOs are proactive in introducing themselves to witnesses and putting them at their ease. They will show them their statement and also the courtroom if they wish. They also keep them regularly informed of events if the case is delayed.

10.12 In courts martial in Germany, the MCS arrange interpreters when required. German witnesses are compellable only once so specific arrangements have to be made for their attendance to ensure their evidence is heard.

10.13 Special measures are applied for in appropriate cases. These are considered by prosecutors as part of the review process, but are also discussed at directions hearings.

The Code of Practice and the Prosecutors' Pledge

10.14 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 Service Code. 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 before discontinuance, through the Special Investigations Branch, in only two out of the eight cases in the file sample.

10.15 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.

10.16 The 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.

10.17 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. We recommend that the APA adopt them as part of a strategy to strengthen its approach to victim and witness care.

RECOMMENDATION

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.
-

II 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.

- 11.1 The inspection considered whether the impartiality of the APA in its decision-making processes extended to issues of equality and diversity and demonstrated a freedom from bias.
- 11.2 The Army itself is determined to recruit and retain more men and women from minority ethnic backgrounds. In 2004, 2.8% of serving soldiers came from a minority ethnic background; by 2006 the proportion had risen to 6.6%. The Army is determined to promote equality and diversity, which it regards as a key ingredient in operational effectiveness.
- 11.3 The Service Code emphasises the need for prosecutors to be fair, independent and objective when handling cases. In particular, their personal views about ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation of the suspect, victim or witnesses must not influence their decisions. It also cites these matters as public and Service interest factors in favour of a prosecution where they form the basis of the accused's motivation against the victim.
- 11.4 The Army has a number of soldiers and civilian employees who are British citizens from minority ethnic backgrounds. In addition, there is currently a high number of Fijians deployed in the UK and in other countries. The ethnicity and gender of an accused person are recorded by the RMP on the case papers referred to the APA, but no data is maintained on either aspect. Prosecutors are, however, generally aware when reviewing cases of the defendant's ethnicity and gender and take account as far as possible of any cultural differences, where this is compatible with the Service Code.
- 11.5 We saw very few cases which involved any of the above issues in respect of an accused or victim in a case. There was no evidence or suggestion in any of these of any bias in the decision-making process or handling of the case. However, the APA has no data or information about such cases which could provide assurance to itself and others that casework review and handling processes are free from bias. Although there may be very few cases, this does not obviate the likelihood of potential problems.

- 11.6 In the absence of specific data dealing with these matters, it becomes more difficult for the APA to demonstrate that the way in which its casework is dealt with is free from bias. Collecting and maintaining data about the ethnicity of accused persons and the numbers of cases referred in which there is a racial or other form of hate motive will assist in promoting and demonstrating transparency in these aspects of decision-making. This is equally important in relation to all cases referred to the APA, regardless of their outcome and should therefore include cases which are not directed for trial and cases subsequently discontinued.

RECOMMENDATION

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.
-

12 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 MCS 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.

Accountability for performance

- 12.1 Responsibilities for operational effectiveness, quality assurance and continuous improvement are dealt with to some extent in APA office instructions. This document, which is currently in draft form, deals with the organisation and structure of the APA and sets out office procedures from handling mail to case review and analysis. It also sets out the responsibilities of team leaders and other individuals in respect of the various office and casework procedures. In this respect, the instructions form a useful document which is workable in its current state. However, it should be finalised and made generally available with a proper change control mechanism to ensure that it remains current and consistent, and reflects legislative changes as well as changes in office systems and procedures.

Managing casework performance

- 12.2 A structured system of casework performance management is important in two principal respects. It allows managers to monitor the casework of individuals in order to identify strengths and areas improvement and so assist their development. It can also provide a means of monitoring case outcomes to learn lessons from casework in order to improve the overall standard. The APA does not currently have any formal system of casework performance management in respect of either function.
- 12.3 APA office instructions require that all initial case reviews are checked by another lawyer. This should be - and is usually - a more senior lawyer, although the emphasis on avoiding delay means that another lawyer of equal rank may check in some instances. Files contain evidence of such checking, but the process is not part of any formal quality assurance. In some instances it will generate dialogue between the lawyer and team leader. Cases being reviewed are often discussed among colleagues, and with team leaders, which means that some issues are resolved informally before a final decision is reached. In addition, cases are often dealt with at directions hearings by another lawyer, which acts as a further check.

- 12.4 The case reports prepared by the prosecutor who deals with the final hearing are seen by the Colonel Prosecutions and Brigadier Prosecutions and a selection is sent to the Director Army Legal Service. The reports give details not only of the plea, case result and sentence, but also provide a detailed account of the prosecution and defence case, and arguments and remarks of the Judge Advocate. They may raise issues for discussion with individual prosecutors as well as more general learning points but dissemination, as with other performance information, is ad hoc. They are, however, a potentially useful tool in both aspects of casework quality monitoring, especially when considered in conjunction with the initial case analysis.
- 12.5 Action to correct and improve the performance of individual prosecutors is not taken on any formal basis. Managers may take action if it is felt that there is a need to improve performance, but this is done informally and is not recorded, although it may be included in discussions as part of the annual performance appraisal.
- 12.6 Prosecutor team meetings are held, but the frequency varies and they tend to be informal discussion of current issues without formal agenda and without discussions being minuted. There may be some discussion of performance issues at meetings but there is no consistent approach. Greater use could be made of team meetings as a means of discussing team and APA casework performance. Minutes or notes of discussions would ensure that information is disseminated to a wider audience.

Performance management information

- 12.7 Performance information currently maintained by the APA is incidental to other casework processes and is not structured in a way that easily assists improvement in casework standards and the development of individuals. It relates largely to case numbers, broken down into simple outcomes, such as cases which result in a guilty plea, trials resulting in conviction or acquittal, non-directions and discontinued cases. Data on timeliness is also maintained to show intervals between referral and direction for trial, and direction for trial and trial.
- 12.8 The information is helpful in looking at casework performance in respect of outcomes and in measuring timeliness of review and case progression, but it is very basic as it is currently presented. Case numbers are compared with the other Service Prosecuting Authorities, but there is no comparison of performance. There is comparison with some aspects of CPS case data, such as conviction, acquittal and discontinuance rates, as a rough means of assurance.
- 12.9 Axia, the APA case management system, is capable of producing a wider variety of casework information and reports can be tailored to the requirements of managers. As a simple example, the information referred to above can be broken down into offence type.

Performance management within the APA

- 12.10 The current approach to managing performance lacks a proper structure. Although APA managers are aware of the standard of performance of individual prosecutors, information is generally gathered by informal means and is incidental to their role as managers. Similarly, they are aware of the more general information from case outcomes but the means of disseminating the wider lessons is informal and inconsistent. A more formal approach to monitoring would allow the APA to learn lessons from its casework and share those lessons with its MCJS partners. The foundations for a more structured system are in place and can easily be built upon.

RECOMMENDATION

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.
-

Liaison with other agencies

12.11 There is regular and routine liaison with the Army chain of command, military disciplinary authorities and MCJS partners. Most of this is informal, either ad hoc to deal with particular issues as they arise, or routine as part of the APA's day-to-day functions. There is some formal liaison through groups such as the Adjutant General's Delay Action Group and with the SIB through the Provost Marshal (Army). The Brigadier Prosecutions is currently involved in formal discussions and liaison with the Ministry of Defence and the Royal Navy and Royal Air Force Prosecuting Authorities in respect of the arrangements for the new unified Service Prosecuting Authority.

12.12 In most instances, the nature of the liaison is sufficient and commensurate with the needs and requirements of the agencies involved. The inspection has, however, highlighted a number of instances in which a more formal or structured liaison (with established terms of reference) would benefit the APA and other agencies in their joint objectives. We mention, as one example, the MCS. Court user group meetings are not held as such, although we understand that in some centres they were until recently. We believe there are sufficient issues of relevance between the APA and the MCS to merit regular discussion on a structured and formal basis rather than individually as they arise. Although this may be effective in the particular instance, there are often underlying issues which need to receive greater attention at a more formal level. Similar considerations apply equally with other partners.

RECOMMENDATION

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.

ANNEX A: THE ARMY PROSECUTING AUTHORITY INSPECTION FRAMEWORK

STANDARDS AND CRITERIA

1 The quality of decision making

Standard: Advice and decisions are of high quality.

Criterion 1A: All cases the APA handles have been validly referred and are allocated to a prosecutor of appropriate experience.

Criterion 1B: All cases are advised on and decisions made in accordance with the Code for Service Prosecutors, charging standards and policy guidelines and are accurately documented and recorded.

2 The quality and timeliness of casework handling

Standard: Cases are prepared and managed to high standards so that successful outcomes are high and hearings are effective.

Criterion 2A: Case preparation is of high quality and successful outcomes are high/increasing.

Criterion 2B: Cases progress at each court appearance.

Criterion 2C: The APA contributes effectively to reducing cracked and ineffective trials and increasing the proportion of effective trials.

Criterion 2D: APA case management procedures contribute to the effective management of cases.

3 Presenting and progressing cases

Standard: Prosecution advocates ensure that hearings are effective and that cases are presented fairly, thoroughly and firmly, and defence cases are tested rigorously.

Criterion 3A: Advocates are active at court in ensuring cases progress and hearings are effective.

Criterion 3B: The standard of advocacy is of high quality.

4 Disclosure

Standard: The APA complies with the prosecution's duties of disclosure of unused material and disclosure is handled scrupulously.

Criterion 4A: The APA's decision-making and handling of unused material complies with the prosecution's duties of disclosure.

5 The service to victims and witnesses

Standard: The APA considers the needs of victims and witnesses, and provides appropriate liaison, information and support.

Criterion 5A: The APA considers the needs of victims and witnesses and there is timely and appropriate liaison, information and support throughout the prosecution process.

6 Casework equality and diversity issues

Standard: *Casework decisions are made fairly without bias or discrimination.*

Criterion 6A: The APA demonstrates a commitment to equality and diversity in casework and casework handling.

7 Managing performance to improve

Standard: *The APA systematically monitors, analyses and reports on performance, and uses performance information to promote continuous improvement and inform future decisions.*

Criterion 7A: Senior officers within the APA are accountable for performance.

Criterion 7B: Performance management arrangements enable a complete assessment of APA performance and information is accurate, timely, concise and user-friendly.

Criterion 7C: Internal systems for ensuring the quality of casework are robust and founded on reliable and accurate analysis.

ANNEX B: RESOURCES AND CASELOADS

APA caseload receipts 2006

Total cases referred to APA	988
Prosecutors in post (excluding Brigadier Prosecutions)	22
Cases referred per prosecutor	44.9
Cases not directed for trial per prosecutor	13.1
Cases directed for trial by General Court Martial per prosecutor	2.1
Cases directed for trial by District Court Martial per prosecutor	28.2
Summary Appeal Court cases per prosecutor	6
Formal Preliminary Examinations per prosecutor	0.9

ANNEX C: FILE SAMPLE

Case category	UK	Germany	Total
Guilty plea	29	20	49
Late guilty plea/cracked trial	2	0	2
Non-direction	5	2	7
Discontinued	5	3	8
Conviction after trial	6	2	8
Acquittal after trial	2	4	6
Summary appeal cases	11	0	11
Total	60	31	91

ANNEX D: KEY FILE EXAMINATION RESULTS

Initial review decisions	
Initial review decisions complying with the evidential test in the Service Code	95.6%
Initial review decisions complying with the public/Service interest test in the Service Code	100%
Cases in which the prosecutor was proactive in identifying and remedying evidential defects	92.8%
Case preparation	
Decisions to proceed to trial or guilty plea complying with the evidential test	95.7%
Decisions to proceed to trial or guilty plea complying with the public/Service interest test	100%
Cases with timely trial or guilty plea review that were properly recorded	95.7%
Cases ready for directions and pre-trial hearings	95.5%
Court orders complied with on time	98.2%
Correspondence from the defence dealt with appropriately	98.6%
Level of charge	
Charges that proceeded to trial or guilty plea on the correct level of charge	92.8%
Cases that were determined by the prosecutor and proceeded without amendment	87.6%
Discontinuance	
Discontinuance was timely	75%
Decisions to discontinue complying with the Service Code tests	100%
Discontinued cases where the prosecutor properly sought additional evidence/ information before discontinuing the case	75% (3 out of 4 cases)
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 2 cases)
Disclosure	
Cases in which the primary or initial duty of disclosure was complied with	98.6%
Cases in which the secondary or continuing duty of disclosure was complied with	94.1%
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%
Cases in which the victim's views were sought before discontinuance	25%

ANNEX E: REPRESENTATIVES OF THE ARMY CHAIN OF COMMAND, DISCIPLINARY SYSTEM AND MILITARY COURT SERVICE WHO ASSISTED IN OUR INSPECTION

Office of the Judge Advocate General

HH Judge Blackett, Judge Advocate General

HH Judge Elsom, Judge Advocate

HH Judge Hill, Judge Advocate

HH Judge Seymour, Judge Advocate

Adjutant General Headquarters

Major General M Mans, Deputy Adjutant General

Brigadier A Faith, Director of Standards in Casework (Army)

Colonel J Donnelly

Military Chain of Command

Brigadier J Everard CBE

Brigadier J Henderson

Brigadier J Jackson

Colonel R Nisch

Major J Hones

Colonel (Retired) A Postance

Major (Retired) F Hardy

Major (Retired) M Russell

Captain (Retired) R Newman

Mr M Kinsey

Provost Marshal (Army)

Colonel E Forster-Knight

Lieutenant Colonel M Grainger

Lieutenant Colonel L Wassell

Major K Miller

Major S Wilson

Captain A Moorhouse

WO1 D Aaron

Staff Sergeant P Mullaney

Mr M Allen

Directorate of Army Legal Services

Major General D Howell, CB OBE, Director Army Legal Service

Brigadier M Conway

Lieutenant Colonel M Culver

Military Court Service

Colonel (Retired) P Scott

Lieutenant Colonel (Retired) D Christie

Mrs C McLevy

Army Criminal Legal Aid Authority

Ms C Hendrick

Defence Solicitors

Mr C Hill

Counsel

Mr N Bashir

ANNEX H: HMCPSI VISION, MISSION AND VALUES

Vision

HMCPSI's purpose is to promote continuous improvement in the efficiency, effectiveness and fairness of the prosecution services within a joined-up criminal justice system through a process of inspection and evaluation; the provision of advice; and the identification of good practice. In order to achieve this we want to be an organisation which:

- performs to the highest possible standards;
- inspires pride;
- commands respect;
- works in partnership with other criminal justice inspectorates and agencies but without compromising its robust independence;
- values all its staff; and
- seeks continuous improvement.

Mission

HMCPSI strives to achieve excellence in all aspects of its activities and in particular to provide customers and stakeholders with consistent and professional inspection and evaluation processes together with advice and guidance, all measured against recognised quality standards and defined performance levels.

Values

We endeavour to be true to our values, as defined below, in all that we do:

consistency	Adopting the same principles and core procedures for each inspection, and apply the same standards and criteria to the evidence we collect.
thoroughness	Ensuring that our decisions and findings are based on information that has been thoroughly researched and verified, with an appropriate audit trail.
integrity	Demonstrating integrity in all that we do through the application of our other values.
professionalism	Demonstrating the highest standards of professional competence, courtesy and consideration in all our behaviours.
objectivity	Approaching every inspection with an open mind. We will not allow personal opinions to influence our findings. We will report things as we find them.

Taken together, these mean:

We demonstrate integrity, objectivity and professionalism at all times and in all aspects of our work and that our findings are based on information that has been thoroughly researched, verified and evaluated according to consistent standards and criteria.

HM Crown Prosecution Service Inspectorate
26 – 28 Old Queen Street
London SW1H 9HP

Report is also available on the website:
www.hmcp.si.gov.uk

Published in June 2007

© Crown copyright 2007