

**CHAPTER 39****CIVIL POWER**

*(MOD Sponsor: NAVY LEGAL-DISCIPLINE LAW SO1)*

This chapter has been equality and diversity impact assessed by the sponsor in accordance with Departmental policy. No direct discrimination or adverse impact was identified. This chapter is due for review at the next routine amendment exercise.

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## CHAPTER 39

### CIVIL POWER

#### 3901. Arrest by the Civil Power

1. **Commanding Officer's Responsibilities.** In the United Kingdom the Commanding Officer is to afford every facility to the civil power in detecting and apprehending persons serving on board whose arrest is required on any criminal charge, but the Commanding Officer is to require any constable, or other civil officer coming on board to search for or apprehend such persons, to produce their warrant or to show satisfactory evidence of the character in which they act.

2. No officer or rating in lawful custody on board can be claimed by the civil authorities for trial in a civil court, except on a writ of habeas corpus or on an order by the Secretary of State. They may, however, be surrendered voluntarily to answer a criminal charge if such charge is in respect of a civil offence more serious than the naval offence for which they are held in custody on board. Normally it would be inappropriate to refuse to surrender a Service person required to appear at a Crown court.

3. If the Commanding Officer refuses to surrender a person to a warrant, summons or other process, they are at once to report this fact to the Fleet Commander (or, in their absence, the senior officer present) giving his/her reasons and details of the offence, if any, with which the person is charged ashore and of the offence for which the person is under arrest or in custody on board.

4. In foreign ports the British Consul should be consulted; in countries which are members of the North Atlantic Treaty Organization reciprocal agreements will be in force regarding arrest and trial for offences committed on shore. (See also JSP 830, *Manual of Service Law Volume 1 and FLAGO Chapter 16.*)

5. **Criteria for Trials.** Where jurisdiction for an offence committed by a person subject to Service law may lie with both the Service authorities and the civilian authorities, there are established procedures and protocols that determine the exercise of jurisdiction. *Further information may be found in JSP 830 Manual of Service Law Volume 1, Chapter 3.*

6. **Divisional Officer's Duties.** Guidance on the Divisional Officer's duties in these circumstances is given in [Para 3903](#) and BRd 3(1) Chapter 20.

7. **Court Attendance.** Attendance of personnel at civil courts and the serving of writs, summonses, and other process is dealt with in Chapter 58.

#### 3902. Report of Arrest, Summons, Conviction or Caution by the Civil Power

1. Any officer or rating who is arrested by the civil power, or summoned on a criminal charge, whether in the United Kingdom or overseas, is to report such arrest or summons to their Commanding Officer without delay and is subsequently to report the outcome, including any award of a Police Caution, (See also [Para 3909](#)), Anti Social Behaviour Order (ASBO) or Football Banning Order (FBO). Motoring offences (including fixed penalty offences) need not be reported unless they result in a court appearance.

2. It is important that information about pending cases in civil criminal courts, in the UK or overseas, relating to Service Personnel be available to the Navy Command Secretariat, to enable Ministers and senior management to be informed as necessary and to enable accurate and timely responses to media inquiries. Commanding Officers are therefore to ensure that NAVY SEC-2 DISCIPLINE 1 is informed immediately either by telephone, e-mail, or by copying DCS-LAW-DIS1b on any signal raised of any pending civil criminal case, in the UK or overseas, which may attract adverse publicity or bring the Service into disrepute. Subsequently they are to provide regular and timely updates about the progress of the case to NAVY SEC-2 DISCIPLINE 1. Press reporting can take place at the arrest, charge, summons, appearance in court or conviction stages of an incident involving an officer, rating or other rank. Information should be provided as soon as practicable and as early in the process as possible (see BRd 3(1) Chapter 20 Section 17).

3. The types of offences that are likely to meet the “attracting adverse publicity” or “bringing the Service into disrepute” criteria are: murder, rape, cases involving serious or fatal injury, sexual or indecency offences involving children, making and/or possession of pornographic images of minors including on computer, drug or drug-linked offences, firearms offences and the committing of any offence that was racially motivated. **This list is not prescriptive or exhaustive** and if there is any uncertainty over what to report then advice should be sought from NAVY SEC-2 DISCIPLINE 1.

4. Where a conviction has resulted, the individual's CO must decide whether or not to take administrative action, which may range from censure to administrative discharge (See also [Para 3906](#), [Para 3908](#), [Para 3909](#) and [J.5808](#).) The decision should not be delayed because the individual is required to report the conviction to a professional body such as the General Medical Council or the Bar Council. The Commanding Officer may, upon any representation submitted by the individual, consider whether there are any exceptional reasons relating to the offence or the offender to justify delaying administrative action until after any decision of a professional body. If administrative action is taken before the decision of a professional body, any subsequent decision of those bodies may result in further and separate administrative action by the Service. In determining whether or not administrative action may be appropriate where an individual under their command has been convicted of a civil offence, Commanding Officers must seek legal advice.

5. **Officers.** When forwarding reports of officers convicted by the civil power, or awarded a Police Caution, full details of the circumstances leading to the conviction or Police Caution should be reported together with any necessary comments and with recommendations. The officer concerned is to be invited to submit a representation and where he/she does so this representation is to be forwarded in accordance with the procedure in Article **3804.4**. If the officer declines to do so, this should be stated.

6. **Sexual Offences.** If a civil offence has been committed that results in an officer, rating or other rank being subject to the notification requirements of the Sex Offender's Act 2003, NAVY SEC-2 DISCIPLINE 1 is to be informed as soon as practicable (see BRd 3(1) Chapter 20 Section 22 for further guidance).

### **3903. Trial by the Civil Power - Attendance of Officer**

1. **Attendance.** The attendance of an officer or senior rating to watch the civil trial of an officer or Service person in the United Kingdom is at the discretion of the accused's Commanding Officer, who is to consider the gravity of the charge, the distance from the ship to the court and the exigencies of the Service. An officer ought normally to attend trial before a Crown court and the more serious cases tried by courts of summary jurisdiction. Where a rating is being tried and it is appropriate for an officer or rating to attend the trial, it is preferable for the person's Divisional Officer or Divisional Senior Rating to attend the trial. Attending officers are to comply with the provisions of BRd 3(1) Chapter 20 Section 18 in the conduct of their duties.

On occasion it may be more convenient for an officer or senior rating to attend from a ship or establishment nearer to the court than the accused's ship. A temporary Divisional Officer from the RN Recovery Cell would normally attend court if the individual was landed. Unless requested by the civil authorities, the attendance of an officer or senior rating in court is not necessary when an officer or Service person is charged before a Magistrate's Court in the United Kingdom with any minor traffic offence committed in respect of a privately-owned vehicle. If a Service vehicle is involved an officer or senior rating should, if possible, attend.

2. **Testifying.** If called upon by the court to testify to the general character of the accused, the officer or senior rating who attends is not to give information of minor offences against the discipline of the Service unless specially required by the court to do so, since the nature of these offences is liable to be misunderstood to the prejudice of the accused. The rating's Conduct Record and/or Formal Discipline Record is not to be handed to the court. Further guidance on testifying is contained in BRd 3(1) Chapter 20 Section 18. Officers and senior ratings attending trials should make it clear to the accused that they are not there in a defending capacity but only to observe proceedings and to record any relevant information for the attention of the accused's Commanding Officer.

3. **Information to be Obtained.** Before leaving the court, the officer or senior rating is to obtain sufficient information from an official, who will normally be the clerk of the court or one of their staff, to enable Form C.57 to be completed in accordance with BRd 3(1) Chapter 20 Section 18.

4. **General Character References.** Where an officer or senior rating does not attend the court, the police should be informed of the general character of the accused and be requested to communicate the decision of the court in due course.

5. **Trials Abroad.** The principles relating to consideration of administrative action should also apply, as far as possible, to convictions arising in other parts of the Commonwealth and in foreign countries.

### **3904. Service Personnel Remanded On Bail Abroad**

1. When an officer or rating has been arrested by the civil power and afterwards remanded on bail abroad, and the ship to which the individual belongs leaves the port before he/she is dealt with, the Commanding Officer of the individual must seek legal advice prior to sailing regarding the handling of the individual.

2. Sureties or Securities for bail cannot be provided from naval funds in the United Kingdom.

### **3905. Expenses of Rejoining Ship after Trial**

1. An officer or rating who is left behind by their ship because of proceedings against them in a civil court, if they are subsequently convicted, is liable for the whole cost of rejoining the ship. In cases where the individual is acquitted, the cost of rejoining the ship will be met by public funds.

### **3906. Consequences of Conviction by the Civil Power**

1. **Time in Custody.** When a rating appears before a civil court and is convicted of an offence he/she may be liable to forfeit pay for the time spent in post-charge civil custody and he/she may incur a Service Penalty under the provision of this article.

2. **Forfeiture of Pay.** Any Service person may be liable to have his pay forfeited or have deductions made from his pay in certain specified circumstances in consequence of the provisions of The Armed Forces (Forfeitures and Deductions) Regulations 2009 ('the Regulations') made under the Armed Forces Act 2006. Pay may be forfeit for any period of absence from duty specified in the Regulations. Further guidance and policy on implementing, effecting and enforcing forfeitures and deductions is contained in JSP 754 (Tri-Service regulations for pay and charges). Forfeiture of pay cannot be awarded simply for attending court.

3. **Spare.**

4. **Service Penalties.**

a. These penalties are based on the principle that any employer is entitled to take action when one of their employees is convicted by a civil court of an offence which may reflect on the employee's character, trustworthiness or reputation.

b. In the light of a civil conviction, an employer will consider whether:

- (1) They can continue to employ the offender.
- (2) The offender is fit to hold a position of trust or command.
- (3) The offence needs to be reflected in any reference the employer may give.
- (4) The offence is serious enough to warrant an entry on the employer's records relating to the offender.

c. Similar considerations apply to Service personnel. A Commanding Officer may not punish a rating again for an offence for which they have already been convicted by the civil power. Nor may he/she take any action based on his/her opinion about the adequacy of the sentence.

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However, the nature of the offence may show, either by itself, or when taken in conjunction with an unsatisfactory naval record that the rating:

- (1) Is not fit to remain in the RN; or
- (2) Is not fit to continue to hold their current rate; or
- (3) Can no longer be regarded as of good character or conduct so that it would be unfair to those with unblemished records if this were not reflected in a Career Check.

d. If one of the foregoing considerations is judged by the Commanding Officer to apply in any particular case then legal advice must be sought prior to one or more of the following actions being initiated:

- (1) Discharge SNLR.
- (2) Discharge SHORE.
- (3) Reversion with the option of discharge SHORE.
- (4) A Career Check.

Service Penalties may only be awarded by those officers authorised to do so in accordance with BRd 3(1) Annex 54A, who must take into account the related guidance contained in BRd 3(1) Chapter 20 Section 19 and seek legal advice.

e. Discharge SHORE will normally be appropriate in the case of c(1) above if the civil offence had no connection with the RN, unless the offence was serious and brought the Service into disrepute.

f. No naval penalty is to be initiated if:

- (1) None of the considerations in Para c [sub para \(1\)](#)–[sub para \(3\)](#) above applies.
- (2) The rating is committed to prison for default in payment of court orders or for other forms of contempt of court. In these circumstances, however, forfeiture of pay and service will apply for the time spent in custody.

g. An application for Discharge SNLR is to be made in all cases involving conviction for misuse of drugs. See JSP 835 Chapter 4.

5. **Service Penalties - Consequences.** Attention is drawn to the following facts:

- a. Discharge SNLR as a Service Penalty will automatically incur a Career Check.
- b. Reversion as a Service Penalty automatically incurs a Career Check.

c. A conviction may lead to the deferral of the award of the Long Service and Good Conduct Medal and may result in forfeiture of the medal, if held, if a sentence of more than 6 months' imprisonment is imposed. (see JSP 761 Honours and Awards in the Armed Forces). Dependent upon a rating's length of service and previous record, it may also preclude promotion/advancement for 6 months, the award/ restoration of Good Conduct Badges..

6. **Admission of Guilt Without Appearance in Court.** Some minor offences may be dealt with by Magistrates' Courts in the United Kingdom on the basis of a plea of 'Guilty' submitted by letter without the attendance of the accused. This is to be treated as a conviction for the purposes of Service Penalty action.

7. **Completion of Form C.57.** The award of a Service Penalty is to be recorded on Form C57 and submitted to the Summary Hearing Review Cell within 5 days of its award. Prior to the award of a Service Penalty, the rating is to be informed that consideration is being given to the imposition of a Service Penalty and is to be given the opportunity to make any representations he/she may wish on the subject. Any such representations are to be considered by the officer authorised to award the Service Penalty. Where the officer authorised to award the Service Penalty determines that the proper penalty is Reversion, he/she must give the rating the option of Discharge SHORE. Before this can be done, the approval of the appropriate authority must be obtained in accordance with BRd 3(1) Annex 54A. In such a case the C.57 should indicate the rate to which it is proposed that the rating is reverted. On receipt of the necessary authority, the Commanding Officer should inform the rating that approval has been given for him/her to be reverted to the particular rate, but that, if they prefer, they may be discharged SHORE instead and that they have forty-eight hours in which to make up their mind. At the end of that period the rating is to be discharged or reverted accordingly without further reference to higher authority. Where a civil conviction has resulted in the award of a custodial sentence, whether suspended or committed, the decision as to what Service Penalty should be awarded is to be taken at no lower than Flag Officer level.

8. **Representations.** If the Service Penalty proposed is one which the Commanding Officer can personally approve, the rating is to be given the opportunity to make oral representation at this stage and before final decision is made and communicated to him/her. Every Service person is to be told formally by their Commanding Officer of any penalty imposed upon them. When the person appears before the Commanding Officer for this purpose, they should not be treated as a defaulter but should keep their cap on and be dealt with after 'Requestmen'. If the rating is in a civil prison, the decision should be communicated to him/her in writing.

9. **Records.** Particulars of Service Penalties and forfeitures of pay are to be noted on the Unit Record and recorded in JPA Discipline under Warnings and Sanctions so that details appear in the rating's Formal Discipline Record in accordance with the instructions contained in JSP 754 Tri Service Regulations for Pay and Charges and in BRd 3(1) Naval Personnel Management.

10. **Numbering of Records.** Forms C.57 should be numbered consecutively throughout the commission. Ships in permanent commission should start a new series on the 1<sup>st</sup> of January of each year.

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Where forfeiture of pay and service is not involved and no Service penalty is awarded, the Commanding Officer is to record 'nil Service penalty' along with any observations he or she may wish to make at section B of Form C57.

11. **Royal Marines, Soldiers and Airmen.** These arrangements also apply to Royal Marines, found guilty by the civil power (see also BR 1283, Royal Marines Instructions).

12. **Appeal to Higher Court.** When notice of appeal to a higher court against conviction is given, any decision regarding Service Penalty action should be deferred pending the result of the appeal. Action should not be deferred if the conviction is established and the appeal is against sentence only, unless in the Commanding Officer's opinion it is not practicable to decide on a Service Penalty without knowing the court's final decision on sentence. In these circumstances, approval for this course of action is to be sought from the Naval Secretary. If the conviction is upheld on appeal, any Service Penalty which may then be approved should take effect as if there had been no appeal.

### **3907. Bearing of Ratings in Civil Custody**

1. Ratings against whom an offence has been found proved by the civil power, whether sentenced to imprisonment or not, are normally to continue to be borne on the books of the ship to which they belong unless they have been discharged or re-assigned.

### **3908. Accounting Action Following Civil Conviction of an Officer**

1. The Commanding Officer is to ensure that any necessary accounting action is taken following the civil conviction of an officer.

### **3909. Police Cautions (formerly known as Formal Police Cautions)**

1. **Award of Police Cautions.** The civil police of England, Wales and Northern Ireland have the discretion in certain circumstances not to put a case to the Crown Prosecution Service, but to award a Police Caution instead. Cautions can be administered in two forms: as a **simple caution** or as a **conditional caution**, which has specific conditions attached that the offender must satisfy. Police Cautions are not categorized as convictions, and can only be issued when an offender admits the offence, consents to the caution and signs a document to that effect.

2. **Comparison with Service Discipline.** A number of factors are taken into account by the police before a Police Caution is issued, including the seriousness of the offence. However, use of Police Cautions is being made in cases which would be regarded as having a serious effect on naval discipline—for example, gross indecency, theft and unlawful possession of drugs.

3. **RN Policy on FPCs.** Commanding Officers are to comply with the policy laid down in BRd 3(1) Chapter 20 Section 19 regarding the approach to be taken when a Service person is awarded a Police Caution. In addition, the following applies when a Police Caution has been issued:

a. Personnel are required to report to their Commanding Officer any Police Caution which has been awarded to them in the same way as they are to report any arrest.

b. No Service prosecution under the AFA 06 shall be instituted for an offence for which a Police Caution has been awarded. The Police Caution is to be regarded as having disposed of the disciplinary aspects of that offence.

c. Legal advice should always be sought in regard of Service Penalty action.

4. **Security Aspects.** Commanding Officers are to consider the possible personnel security implications of offences that result in the award of a Police Caution. In cases which indicate an offence of potential security concern the submission of a security after-care report to PSyA.