



Ministry of JUSTICE

National Offender
Management Service

| Implementation of the Armed Forces Act 2006 | | |
|--|--|-----------------|
| This instruction applies to :- | | Reference :- |
| Court Martial Report Service (CMRS) Directors of Offender Management (DOMs) Probation Areas/Trusts | | PI 06/2009 |
| Issue Date | Effective Date | Expiry Date |
| 31 October 2009 | 31 October 2009 | 31 October 2013 |
| Issued on the authority of | NOMS Agency Board | |
| For action by | Court Martial Report Service (CMRS), Probation Areas/Trusts and Directors of Offender Management (DOMs) | |
| For information | NOMS, Ministry of Defence | |
| Contact | Sarah Winwin Sein Offender Management Team SarahWinwin.Sein@justice.gov.uk | |
| Associated documents | PC 21/2003 Guidance on dealing with the current military conflict PC 25/2007 Case Transfers – community orders, suspended sentence orders and licences. Guidance on soldiers appearing in civilian courts (EPIC) | |
| Replaces the following documents which are hereby cancelled :- none | | |
| Audit/monitoring : | | |
| Directors of Offender Management will monitor compliance in their region with the mandatory actions set out in this Probation Instruction. Probation Areas and Trusts must demonstrate compliance with these actions when required to do so by Directors of Offender Management. | | |

CONTENTS

| Section | Subject | Applies to |
|--------------------|---|-------------------------------|
| 2. – 2.13 | Responsibilities of the Court Martial Report Service Probation Officer | CMRS |
| 2.14 – 2.18 | Responsibilities of the receiving area/trust | Probation areas/trusts |

1. Executive summary**Background**

- 1.1 The power for the Court Martial to sentence a Service person to a Service Community Order (SCO) or a Suspended Sentence Order comes into force on 31st October 2009. Under the Armed Forces Act 2006 section 178 the Court Martial will have available to it all of the Community Orders (with the exception of a mental health treatment requirement) listed in the Criminal Justice Act 2003 section 177, but these sentences can only be awarded with dismissal. Such orders will be managed by probation areas/trusts.
- 1.2 Pre-Sentence reports for the Court Martial are prepared by the Court Martial Report Service (CMRS) under an Agreement between the Ministry of Defence and the NPS/NOMS. The reports are prepared by selected probation officers in the areas/trusts in which the Court Martial is located (Hampshire, Wiltshire, Essex and North Yorkshire).

Desired outcomes

- 1.3 To implement the Armed Forces Act 2006 as required by the legislation and to manage and rehabilitate the offenders sentenced.

Application

- 1.4 CMRS
 1.5 All probation areas and trusts.
 1.6 NOMS
 1.7 DOMs

Mandatory actions

- 1.8 *The Court Martial Report Service probation officer preparing the pre-sentence report must seek information about where the offender intends to live in all cases where dismissal and a community or suspended sentence order are possible sentencing options.*
- 1.9 *The CMRS probation officer must make such arrangements with the relevant probation area/trust as are necessary to ensure the effective assessment and commencement of the proposed sentence.*
- 1.10 *Probation areas/trusts must provide such facilities as are required to enable the CMRS to assess the case and propose an appropriate sentence.*
- 1.11 *Probation areas/trusts must provide offender management for cases sentenced by the Court Martial to a community or suspended sentence order and dismissal from the armed forces (Army, RAF, Navy).*

Resource Impact

- 1.5 See Resource Impact Assessment.

2. Operational instructions

Responsibilities of the Court Martial Report Service Probation Officer

- 2.1 The CMRS prepares pre-sentence reports in standard delivery report format to the timescale requested by the court. In cases where dismissal is a possible outcome, up to fifteen working days may be necessary.
- 2.2 The CMRS officer will seek information at the earliest possible opportunity about where the offender intends to live in all cases where dismissal and a community order or suspended sentence order are possible sentencing options, based upon the court's expressed intentions or the assessment of seriousness of the offence. If the offender cannot supply an address, the CMRS officer will seek to provide assistance in liaison with the receiving area/trust. However, occasionally there may be circumstances in which the court will be offered an alternative sentence which may be custody.
- 2.3 Communication and liaison throughout the report preparation period are key to protecting the public, reducing the risk of reoffending and ensuring a smooth transition from pre-sentence report assessment to order commencement.
- 2.4 The CMRS officer should contact the receiving area/trust at the earliest opportunity, initially by telephoning probation headquarters to ensure that contact is established with the local delivery unit.
- 2.5 They should ensure that initial contact is made at the appropriate level of management, at either SPO/ACO level dependent upon the risk/tier of the case. If the case is assessed as high or very high risk of serious harm, the case notification should take place at senior management level. Additionally, if the case will need to be managed at MAPPA level 2 or 3, the arrangements must be considered within the MAPPA framework.
- 2.6 The CMRS officer must take all reasonable steps to confirm the availability and suitability of the proposed address, including any victim issues. This may include requesting the receiving area/trust to undertake a home visit where there is a high or very high risk of serious harm and in cases where the address is relevant to managing risk eg with offenders who present child protection or domestic abuse concerns.
- 2.7 Case information should be sent to the receiving area/trust at the earliest opportunity by secure email box or recorded delivery/ fax according to data protection requirements.

Pre-sentence the CMRS officer should provide the receiving area/trust with information to include:

- Full details of the defendant, the offence(s) and victim information (where necessary)
 - Intended address and planned circumstances, including relevance to risk issues
 - Completed OASys and additional assessments
 - Pre-sentence report
- 2.8 The CMRS officer should engage the receiving area/trust in discussion of the assessment process and proposed sentence, taking into account that areas/trusts may have different sentencing options available and arrangements for assessment for specific requirements. They must ensure that the sentence proposed is realistic and manageable within the receiving area/trust.
 - 2.9. In most circumstances it will be possible for the CMRS officer to make the assessment for sentencing options, ensuring that all eligibility criteria are met (eg.OGRS thresholds for

accredited programmes). If this is not the case, it is expected that the military units will release the defendant to travel to the home area/trusts for the purposes of a specialist assessment (eg CSOGP).

- 2.10 The CMRS officer will check arrangements and timescale for dismissal and ensure that a first appointment with the receiving area/trust is provided to the court and the offender. The offender will be provided with a travel warrant by the military services to his/her home address.
- 2.11 Prior to the sentencing date, the CMRS officer will send a letter or email which sets out the arrangements agreed, including confirmation of first appointment.

A copy should be sent to:

- Offender
- Home area/trust senior probation officer or offender manager
- Offender's unit discipline officer
- The Court Officer at the sentencing court martial.

- 2.12 Post sentence the CMRS officer should provide the receiving area/trust with information to include:
- Court result
 - Copy of order
 - Confirmation of process of dismissal, timeframe and offender first reporting instructions.
- 2.13 All contacts should be recorded to ensure an audit trail.

Responsibilities of the receiving area/trust

- 2.14 Probation areas/trusts should aim to allocate an offender manager at the earliest opportunity in the report preparation period. If this is not possible, areas/trusts must provide an identified point of contact at the appropriate level of knowledge and skills to provide professional input into the assessment and sentence planning process.
- 2.15 The identified point of contact or offender manager must provide information to the CMRS officer to ensure that the proposed sentence is appropriate and that interventions are available to meet sentence plan objectives within the receiving area/trust.
- 2.16 The area/trust must take reasonable steps to confirm the suitability of the proposed address, including commenting on any victim or risk of serious harm issues. This may include undertaking a home visit where there is a high or very high risk of serious harm and in cases where the address is relevant to managing risk eg with offenders who present child protection or domestic abuse concerns. This includes consideration of MAPPA referral in suitable cases.
- 2.17 Area/trust responsibility for the offender management and enforcement of the case will commence at sentence.
The case must be allocated to an offender manager within national standards timescales. It is most important that a first appointment has been arranged in line with dismissal procedures and timescales*. This will be confirmed in writing (letter or email) by the CMRS officer prior to sentence to ensure an effective sentence commencement.
- 2.18 All contacts should be recorded to ensure an audit trail.

***Footnote**

It is noted that military procedures for dismissal normally take between one week and ten days. Therefore, it will not always be possible to meet national standards timescales for a first appointment. In such circumstances, senior probation officer approval should be sought within the receiving area/trust to suspend national standards and such a decision clearly recorded within the recording system.

This may have a small impact upon National Standards monitoring (NSMART). The current National Standards question is as below:

| | | |
|--|----------------|---|
| 14. (C) Did the first appointment with the offender manager <u>take place</u> within the appropriate timescale? (2c.6) | Yes | 1 |
| <ul style="list-style-type: none"> • If Community Orders/SSOs with DRRs: Within one working day of sentence, this can include contact at court. (2d.9.2) Otherwise; | No | 2 |
| <ul style="list-style-type: none"> • Tiers 1, 2 & 3: Within five working days of sentence | Not applicable | 3 |
| <ul style="list-style-type: none"> • Tiers 4: Within two working days of sentence | | |

If areas/trusts make the decision to vary national standards for these cases it would be reasonable to answer 3, Not applicable which would be treated neutrally for National Standards performance (ie excluded).

3. Policy and strategic context

It should be noted that the offender may have difficulties relating to the impact of dismissal and/or as a result of experience of military conflict. Contact details for an organisation which provides assistance for veterans are provided below.

4. Guidance

Veterans UK provides advice and information concerning issues of relevance to military veterans. There are links to other organisations from the website.

Website address: www.veterans-uk.co.uk

Telephone Helpline: 0800 169 22 77



Phil Wheatley
Director General, NOMS.

Policy Resource Impact Assessment Template

Annex B

A. SCREENING DETAILS

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|---|
| 1. Title of Instruction |
| Implementation of the Armed Forces Act 2006 |

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|--|
| 2. Notes on the reliability of the costing below and issues for Operational Policy Group to consider. |
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It is estimated that the number of cases which may be sentenced by court martial to community order and dismissal will be approximately 50 per annum, although it is not possible to anticipate the sentencing pattern of courts with any certainty. The cases are likely to be Tier 3 or 4 and therefore the assumption is that they will be supervised by a Probation Officer Offender Manager.

Costs are based upon the figures used for the workload measurement tool. This takes the annual time allowance which would be given to an OM to manage a one year order (not using different weightings for requirements).

3. Method

| Identification of Task | (a) Additional Time to Perform Task (hours) | (b) Number of Times Task Performed Annually Nationally | (c) National Increase in Hours (a x b = c) | (d) Hourly Cost (determine d by grade of staff) £ | (e) National Annual Total Cost (c x d = e) £ |
|--|--|---|--|--|---|
| Offender management of a community order sentenced by courts martial. Tier 3 is assumed for the purpose of costs estimation. | WMT indicates 38 hours required p.a for offender management of tier 3 case. | 50 cases | 1900 hours | PO OM costs £32 per hour | £60,800 |
| Total £60,800 | | | | | |

STAGE 1 – INITIAL SCREENING

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it.

The equalities issues that you should consider in completing this screening are:

*Race;
Gender;
Gender identity;
Disability;
Religion or belief;
Sexual orientation;
Age (including younger and older offenders).*

Aims

What are the aims of the policy?

To implement the Armed Forces Act 2006, which comes into force on 31st October 2009 and requires NOMS to instruct probation areas/trusts to manage offenders who are sentenced under section 178.

Effects

What effects will the policy have on staff, offenders or other stakeholders?

The Act provides for a Court Martial to sentence a service person to a Service Community Order (SCO) or Suspended Sentence Order and dismissal. Such orders will be managed by the area/trust to which the individual returns following dismissal from the armed forces.

Evidence

Is there any existing evidence of this policy area being relevant to any equalities issue? Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments) / Inspectorate and other relevant reports / complaints and litigation / relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?

No evidence of negative impact upon any group. The policy will increase the sentencing options available to courts martial on dismissal of the defendant. This could result in increased protection of the public because the offenders will now be able to be supervised by the Probation Service on their return to their home area.

Stakeholders and Feedback

Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?

a) Work has been ongoing with the following:

Charles Bullough, MoD Bills Unit
Judge Advocate General office
Court Martial Report Service and Board
OMT
Probation areas/trusts
DOM offices

b) Consultation on the draft probation instruction is planned to take place between 20.8.09 and 14.9.09 with the following:

MoD
JAG office

| | | |
|---|------------|------------------|
| CMRS Board Probation areas/trusts DOMs NOMS depts HMIP NAPO/UNISON | | |
| Impact | | |
| <p><i>Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?</i></p> <p>No, in fact it will make community orders available to a group of military personnel on dismissal which has not been possible before.</p> | | |
| Local Discretion | | |
| <p><i>Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?</i></p> <p>Probation areas/trusts are required to supervise community orders according to national standards and national and local policies. They are accountable to the Directors of Offender Management for compliance with equalities legislation. This will apply to these cases in the same way as cases sentenced in civilian courts.</p> | | |
| Summary of Relevance to Equalities Issues | | |
| Strand | Y/N | Rationale |
| Race | N | As above |
| Gender (inc. gender identity) | N | As above |
| Disability | N | As above |
| Religion or Belief | N | As above |
| Sexual Orientation | N | As above |
| Age (younger offenders) | N | As above |
| Age (older offenders) | N | As above |
| <p>If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.</p> <p>If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.</p> | | |
| Monitoring and Review Arrangements | | |
| Describe the systems that you are putting in place to manage the policy and to monitor its operation and | | |

outcomes in terms of the various equalities issues.

State when a review will take place and how it will be conducted.

The Courts Martial Report Service provides equality monitoring information to the Board where it is scrutinised on a quarterly basis.

The first report will take place in December (Board meeting date not yet decided) following implementation of the Act.

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|--------------------------|-----------------------|
| Policy Lead | Date |
| Sarah Winwin Sein | 17.8.09 |
| Head of Group | Date |
| Sarah Mann | 19 August 2009 |