

Ministry of Defence Response to the Service Justice System Review

1. The Ministry of Defence (MOD) welcomes the reports from HH Lyons following his review of the Service Justice System (SJS) and is very grateful to him for his thorough and detailed examination of the SJS. We are also grateful to Sir Jon Murphy for his contribution on the aspects of the reports dealing with the Service Police and Mark Guinness for his work on Domestic Abuse, Child Abuse and Victims and Witnesses.
2. Part 1 of the Review looked at the SJS as a whole to consider if it continues to be necessary, fair and efficient. The Part 1 Policing Report examined if the current structure and skill set of the Service Police organisations and the MDP matched the future requirements of the SJS. Following consideration of both Part 1 reports, further work was carried out in Part 2 to identify ways to improve the SJS.
3. The MOD has spent the time since submission of the reports considering carefully the recommendations made. We are in broad agreement with the majority of recommendations in the reports that seek to improve the SJS, making it more effective, efficient and to provide a better service for those who use it, in particular for victims and witnesses.

The Need for the Service Justice System

4. The MOD welcomes HH Lyons' unequivocal endorsement of the continuing need for the SJS as the critical facilitator for discipline on operations which is key to operational effectiveness. The SJS supports and regulates disciplinary behaviour through the service offences set out in the Armed Forces Act 2006 and ensures wider criminal wrongdoing is dealt with.
5. The Review also found that the SJS was fair and the MOD agrees that the measures identified by the Review should be considered further to make the system more aligned with current practice in the civilian justice system. The MOD recognises that we need more aligned governance in order to more rigorously demonstrate to others the fairness of this system, in order to maintain the Armed Forces' and public confidence in it.
6. While the Review noted that direct comparisons with performance of the civilian criminal justice system were not always possible or helpful, there is nevertheless always scope to improve the efficient administration of justice, whether for those

specifically subject to the SJS by virtue of their service to the nation, or for the public at large. The MOD agrees that more can be done to improve the efficiency of the SJS and will be actively taking forward the recommendations from the Review to improve performance throughout the SJS.

The Role of the Service Police

7. In relation to the Service Police (SP), Sir Jon Murphy noted that they conduct many other tasks in addition to policing and only operated exclusively as investigatory police when with their respective Special Investigation Branch. The MOD recognises the unique and specialised roles that the Service Police have and is taking steps to further explore the recommendation of a Defence Serious Crime Unit (DSCU) and other recommendations made by Sir Jon as ways to address these issues (more detail below).
8. During the early stages of the Review, Sir Jon Murphy identified potential areas of vulnerability in how the SP investigate allegations of Domestic Abuse, Rape and Serious Sexual Offences. This was not a criticism that these allegations were being investigated poorly but a question of consistency of approach and of the processes used by the SP. As a result, a separate audit of the processes undertaken in these areas by the SP was carried out by Mark Guinness, a retired Detective Superintendent with accredited experience in these specialist fields.
9. Overall, the audit found the SP to be very professional and to display immense flexibility on a day to day basis and deal with investigations that were at times complex and logistically challenging. It noted a focus on delivering a quality service to victims of crime and that the SP conduct their investigations expeditiously. The audit identified areas of business and processes where changes could be made to improve the quality of service provided to vulnerable victims and these are being considered further by the MOD and the SP forces.

Commentary on specific recommendations

10. **Victims and Witnesses** remain a priority for the SJS and the commitments to victims are set out in the Armed Forces Code of Practice for Victims of Crime which closely mirrors the civilian equivalent. The Armed Forces Code puts victims of crime first and sets out the minimum levels of service which victims can expect in the SJS. The MOD agrees with the recommendation to make the Code subject to periodic review and modification where necessary and changes are currently being

considered alongside changes to the civilian Code being undertaken by the Ministry of Justice. The MOD will explore the option of creating a power for the Code in primary legislation to mirror the civilian system and make it easier to review, refresh and update.

11. **Domestic Abuse** has no place in our society or including in the Armed Forces and we remain committed to creating an environment where abusive and coercive behaviour is simply not tolerated. It is of utmost importance that domestic abuse is correctly recognised and the Armed Forces will deal with it as a criminal matter whenever possible. The MOD will continue to raise awareness in the ways this crime manifests itself, such as through its strategy 'No Defence for Abuse'. The recommendations arising from the Process Audit of Domestic Abuse, Rape and Serious Sexual Offences have been incorporated into the MOD Domestic Abuse Action Plan wherever possible. The Action Plan is implementing the 'No Defence for Abuse' strategy under the three core pillars of prevention, intervention and partnering. Priorities include raising awareness of domestic abuse and inappropriate behaviour, improving coherence and consistency of policy and training across Defence, reducing the rate and impact of domestic abuse and increase the safety and wellbeing of all those affected.
12. **The Jurisdiction of the SJS** - the MOD believes that the SJS is a system capable of dealing with the most serious offences and should be able to continue to do so, it would not be appropriate to limit the jurisdiction of the Court Martial. Cases should be investigated and tried in the most appropriate jurisdiction, civil or military, and the current legislation allows for this.
13. Therefore, we do not accept the Review's recommendations on legislative changes to the jurisdiction for the offences of Murder, Manslaughter and Rape, and also for Section 2 (sexual assault with penetration) Sexual Offences Act 2003 offences when committed in the UK. However, the MOD will adopt the alternative approach identified in the Review of assessing the Prosecutors' Protocol and relevant supporting documents to ensure they support the principle that the SJS should deal only with those cases where there are good reasons for doing so. That is, cases will ordinarily be tried in the civilian system unless there are good reasons why they should be in the SJS. Some cases are more appropriately dealt with in the SJS and some are more appropriately dealt with in the civilian system, the main principle in

deciding who has primacy is whether the offence has any civilian context; especially a civilian victim. This review will also consider the arrangements for the jurisdiction of Domestic Abuse and Child Abuse offences.

14. The MOD has started scoping work for the recommendation of a **Defence Serious Crime Unit (DSCU)** as recommended by Sir Jon Murphy. This work will be led by a former Detective Superintendent who has extensive experience of working with both Counter Terrorism Policing and Serious and Organised Crime. They will be working closely with the MOD and the Provost Marshals on the DSCU and will look at the other policing recommendations from the Review, such as working more closely with the Home Office police and secondments.
15. A number of the recommendations from Part 2 of the Review are being considered as **legislative proposals for inclusion in the next Armed Forces Bill**. In particular the power for the Judge Advocate General (JAG) to request that a puisne judge (High Court Judge) be nominated to sit as a judge advocate should be extended to include the ability to nominate a Circuit Judge; that the Armed Forces Act 2006 is amended so that the right to appeal against orders and rulings in preliminary proceedings in the Court Martial is restricted to those occasions in which it is available in the Crown Court; and a 'slip rule' power is created similar to that contained in the Magistrates' Courts Act 1980 that allows the Commanding Officer to take any remedial action necessary when a sentence passed contains a "technical" illegality e.g. an impermissible combination of punishments.
16. We are also considering the recommendations made on **changes to the size and ranks available for Court Martial Boards and the move from a simple majority to the use of qualified majority verdicts**.
17. The MOD accepts the need for additional **independent oversight of complaints about the Service Police**. In line with the recommendation in the Review, the MOD accepts that a body independent of the MOD is needed to deliver this and we are considering further how best to do so, including the Review recommendation of creating a new niche body.

Next Steps

18. We have established a new Service Complaints and Justice Transformation team to take forward the work on the recommendations from the Review, along with

implementing changes from the Wigston report on Inappropriate Behaviours and wider changes to Service Complaints.

19. As already noted, the MOD will be considering further those recommendations made by the Review that will require legislation for possible inclusion in the Armed Forces Bill which must be passed by Parliament by the end of 2021.
20. The scoping work on a DSCU and related policing recommendations is expected to complete its first stage by Spring 2020.