



# The Military Criminal Justice System

***Supporting Operational Effectiveness  
in the Military Environment***

***An article by the Adjutant General***



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**T**he high profile of disciplinary cases that have come out of Op TELIC has focused attention on the Military Criminal Justice System. In order to allow that system to continue to support operational effectiveness, and to minimise any potential damage to the Army's reputation, the Adjutant General has been delivering presentations to the Army to present the facts and dispel misunderstandings. He has written this article based on those presentations.

*‘The Military Criminal Justice System is necessarily separate and universally deployable – it is an intimate part of the fabric of the Army.’*

**The Army is required always, and wherever it serves, to act within the law as a disciplined force that is effective and successful on operations. It often serves where there is no law or where UK standards of law and justice are not applied. Self-regulation is therefore a pre-requisite for military operations. It enables the Army’s high standards of discipline and conduct lawfully to be upheld under all circumstances. The Military Criminal Justice System is therefore necessarily separate and universally deployable – it is an intimate part of the fabric of the Army. It delivers British standards of justice, which support the Army’s lawful conduct by calling to account all those who are found, after proper investigation to have fallen short of the Army’s standards.**

With this requirement as the context, it is critical that all serving personnel understand the support to operational effectiveness that the Military Criminal Justice System gives. This is particularly so against the context of the worrying impact that the debate by some commentators is having on another vital component of our operational efficiency, Reputation. Such is the importance of the issue, and such, sadly, is the apparent willingness of some people to undermine elements of our system, on the basis of incomplete knowledge of the facts, and often informed by the media whose agenda runs way beyond the Army, that I have been putting this message across to

all the key conferences, seminars and career courses since December 2005. The commanders of the Field Army and Regional Forces have been doing the same in their chains of command.

Our performance on operations, the investment in our equipment, our training, and the estate all resonate long and loud, within the Army and beyond, and they affect our Reputation. But the greatest challenge to Reputation lies in how the Army is leading, developing and supporting its people. It is where Reputation matters most, where confidence in the Army is most easily shaken, where trust can be questioned - in each other, in the chain of command, by our families and by the country.

All the good things we do that enhance our reputation such as acts of gallantry and high quality work by individuals on operations are forgotten overnight when we are seen to have let ourselves down. Incidents such as significant Compulsory Drug Testing results and allegations of abuse on operations or in the training organisation receive prominence in the media. Mostly, views are formed on the basis of what others say about us, picking and choosing the bits they want to make their case. My purpose therefore is to set out the facts and the context.

Iraq is the focus of the current significant media interest and is likely to remain so. Out of a total of over 100,000 Army Personnel deployed on Op TELIC since early 2003, this table shows how

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many cases, of varying types, have been investigated.

<b>Personnel Deployed on Op TELIC</b>	100,000
<b>Investigations of ALL types</b>	192
..of those, return of fire incidents	101
..Case closed (no action)	176
<b>Of the remaining 16</b> (Total investigations less those closed with no action):	
Cases dealt with summarily by the CO	3
Cases still being investigated	2
Cases with the chain of command for consideration	1
Cases with Army Prosecuting Authorities for consideration	1
Cases directed for trial	4
Trials already held	5

Table 1: Iraq investigations - the facts (as at 8 May 2006)

2 There have been 192 investigations. Of these, a majority, 176, having been properly investigated, have been closed without further action. The remaining 16 are shown in the bottom half of the table. The message here is one of proportion, and it is also important to differentiate between cases of alleged abuse, of which there are six, with those relating to shooting or other incidents, which comprise the majority.

### Shooting Incidents

Shooting incidents, first. We are dealing here with allegations concerning the application of lethal force, and we are on familiar territory after 30 years of Northern Ireland experience. The United Kingdom's shooting investigation policy in Iraq is clear, and is that, in any incident outside of warfighting, where shots are fired resulting in the death or serious injury of any person, a formal inquiry is required. The Commanding Officer reviews the case, including seeking legal and military police advice, within 48 hours, and assesses the requirement for a Service police investigation. He recommends one only where criminality is suspected. In all circumstances, including where he recommends that a Service police investigation should be delayed for operational reasons, he makes a recommendation to Higher Authority. In Iraq, this is at the Brigade level, where further police and legal advice is taken.

The application of the policy has to strike a balance between the maintenance of operational effectiveness, including giving soldiers the confidence to be determined and robust, and the need to behave, and be seen to behave, within the law. Investigation is fundamental to this latter purpose. The aim of investigation is neutral - it is to establish the facts. The facts will exonerate those who have acted properly, but we cannot escape the duty to investigate any action in

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which soldiers of all ranks might have acted inappropriately. With our current policy we can justify, before a court, that not only are we doing what we should, but that our actions and procedures are lawful.

### **The Case of Trooper Williams**

Many cite the case of Trooper Williams as an instance of where the Army got the process wrong.

Acting in good faith, and on legal advice that there appeared to be no prima facie case, the Commanding Officer dismissed a case of unlawful killing against Trooper Williams, without a hearing, effectively closing the case within the Military Criminal Justice System. However, senior Army legal advisory officers reviewed that initial advice, concluding that there was a prima facie case that should have been considered by the Army Prosecuting Authority. Importantly the route under military law to examine serious allegations, through the Army Prosecuting Authority, was no longer open, because it had been closed by the Commanding Officer's dismissal of the case. Having legal advice to the effect that there was a serious allegation, which amounted to a prima facie case, in the interests of justice, in support of the Military Criminal Justice System, and as Trooper Williams remained vulnerable to prosecution by civilian courts, three members of the Army Board decided to refer the matter to the Attorney General for resolution. This was the only option

legally left available in view of the concurrent jurisdiction of the civilian authorities. The Attorney General asked the Director of Public Prosecutions, who is head of the Crown Prosecution Service, to consider the case. The Crown Prosecution Service then decided that the case should proceed to trial on a charge of murder. However, after a pre-trial hearing, they decided not to offer evidence and Trooper Williams was formally acquitted on the charge. After Trooper Williams's acquittal, the Attorney General re-confirmed his confidence in the Courts-Martial System and stated that only in the most exceptional cases will a Serviceman face trial in the English civil courts for offences on operations overseas. Otherwise the serviceman will be dealt with under military justice.

This was a wholly exceptional and unique case. It is worth remembering that as at 8 May 2006, not one single soldier has been tried in court for firing his weapon, in a tactical context, on operations in Iraq.

Work is in hand, in the Armed Forces Bill, to enhance the procedures used in such circumstances. Until it comes into force, close co-operation and other safeguards between the unit Commanding Officer, the Military Police and the Army Prosecuting Authority will ensure that this type of case should not happen again. In addition, recognising the vital part that legal advice plays for the commander in today's increasingly complex operational

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environment, the Army has created a Brigadier Operational Law post. The first incumbent was in place on 1st January 2006. He will provide much needed senior advice and support to deployed commanders and legal staff on issues of operational law. He is located at the Land Warfare Centre, and is involved in the training and education of our up-and-coming commanders, from sub unit to Division.

### **Allegations of Abuse**

Turning now to the cases of alleged abuse in Iraq, the facts are these. There have only been six cases involving allegations of abuse, two of which have been completed. One of the soldiers convicted has lodged an appeal against the finding, and that is currently being considered by the Court-Martial Appeal Court. The cases where convictions have occurred are very different from shooting incidents, involving as they do serious allegations of the deliberate mistreatment and abuse of civilians. It is essential to recognise the very different nature of these cases, and to take care not to connect them with those of shooting incidents and thus arrive at the wrong conclusion, as our detractors regularly and apparently deliberately do. Cases where convictions have occurred will continue to fuel comment and criticism in the media and elsewhere. Individual incidents of bad behaviour have happened before, and however unpalatable will, no doubt, happen again. When they do,

they have to be dealt with, thoroughly investigated and brought to trial, if appropriate.

There are still three trials that have been directed and yet to come; two trials with charges that do not amount to abuse provisionally scheduled for the next two months; and then seven individuals who deployed as part of the 1 QLR Battle Group on Op TELIC 2, which is scheduled for September 2006. On 24 April 2006 the trial of four soldiers who were part of the Irish Guards Battle Group began in Colchester. All soldiers facing allegations in those cases will continue to be given the full legal, welfare and career support they require, and are presumed innocent unless and until proven otherwise.

This is all high profile and very public at the moment and it is important to continue to stress two points in all discussions, inside and outside the Army. First; to maintain operational effectiveness we must operate within the law; secondly, no single soldier has been prosecuted by the Army for a decision made in the "agony of the moment".

The most recent case, of course, is that involving soldiers of 3 PARA. It is not currently possible to give a full report of the consideration of the outcome of that trial, but I have given the Chief of the General Staff and Ministers my initial review of the case. This review included the considerations of the Provost Marshal (Army), the Army Legal Services, the Military Court

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Service and the Director of Personal Services (Army), following the Judge's determination. The Army Prosecuting Authority is submitting its own, separate report to the Attorney General on the prosecution aspects, as he exercises general superintendence over them.

In the context of the contrary comments made by the Judge Advocate in the 3 PARA trial, it is worth reinforcing the point that the Royal Military Police provides a competent and professional investigative service, benchmarked against Home Office standards and subject to Peer Review by Home Office police forces. They are required to conduct investigations in challenging environments, something that no civilian police force has to contend with. Southern Iraq is not Surrey, Maysan is not Middlesex. In conducting its investigations, the Royal Military Police is independent of the chain of command, to avoid any allegation that it has received inappropriate direction, but works in support of the Military Criminal Justice System to establish the facts. They are not responsible for charging anybody – this remains with the Commanding Officer and the Army Prosecuting Authority.

While a very small number of soldiers have, or are facing charges, as a result of incidents in Iraq, Royal Military Police evidence has enabled commanding officers and the Army Prosecuting Authority to exonerate the vast majority of soldiers from any allegation of wrongdoing. This has protected them

from further prosecution, so protecting the good name of their Regiment in the spotlight, and also the wider reputation of the Army. In short, "thorough and professional" should never be confused with "over zealous". I speak to all Brigade commanders returning from operations, to confirm that the Chain of Command is content with the quality of all personnel support given by all agencies to the deployed force, including the Special Investigations Branch – to date, all of them have replied that they are.

The review of the 3 PARA case shows that the Military Criminal Justice System is far from being flawed. But the system has been, and still is, subject to a number of challenges. The most recent challenges at Judicial Review and the European Court of Human Rights that have been concluded have been rebutted; there is currently one judgment from Judicial Review that is to be concluded. However, external scrutiny and media criticism as a result of current high profile cases have, on the one hand, expressed concern over the lack of independence of the Military Criminal Justice System and, on the other, asserted that individuals are being "hung out to dry". It has also been claimed that, in some cases, the Army Prosecuting Authority's decision to prosecute was driven by "political correctness" or political interference. This is despite the trial Judge Advocate in the 3 PARA case making it clear that the prosecution was properly

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brought. As in the civilian system, it is inevitable that some prosecutions will fail; this does not mean that they should not have been brought to trial in the first place. No system of justice could operate effectively if prosecutors pursued only those cases where there was an absolute certainty of conviction.

### **Communication**

What the 3 PARA report highlights is the pressing need for an active Information Campaign, driven from the Ministry of Defence with the Headquarters of the Adjutant General, Land Command and others in support. Targeted at external and internal audiences, this campaign needs to create a better understanding of the Military Criminal Justice System, the operational context and the background to current cases but without breaching sub-judice conventions. Merely reacting to criticism in the press is not enough.

- 6 It is vital that all serving personnel, particularly those with command responsibility promote the need for the Military Criminal Justice System and its role in preserving operational effectiveness. It does this through our doctrine of exercising discipline at the point of command. It ensures fairness of treatment and justice, whilst enabling us to deal properly with those accused of serious mis-behaviour. In protecting the Military Criminal Justice System, the Chain of Command, and particularly senior officers, must avoid saying or

doing anything that might damage an individual's defence or prejudice the prosecution. This is frustrating, both for those commanders, and also for the wider Army, but the line that is trodden here is very thin - we are damned if we do, damned if we don't. Throughout the process every soldier facing charges is presumed innocent and receives full legal and welfare support. There is no policy or intent to hang people out to dry.

### **Policy Developments**

Continuing with the theme of supporting individuals, my own view is that there is one area of policy that needs further attention. Recently some officers have found themselves the subject of unwarranted and unfair public criticism that is based on assumptions and incorrect facts. This criticism has damaged their credibility and integrity and questioned their professionalism. As a result, it has had a direct impact on the operational effectiveness and reputation of the Army. Currently, legal support is only considered where the problem arises as a result of criminal proceedings or a formal inquiry in the context of allegations relating to the conduct of a serviceman's duty. I am therefore looking at the case for extending eligibility for legal support to take account of media scrutiny.

Returning to Criminal Justice, the Army does not help itself by having a process that is all too often subjected to lengthy delay, at every stage. Even



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straightforward cases can take months, sometimes years from being reported to being dealt with. I have briefed the Executive Committee of the Army Board that my aim is to reduce this time to, at most, eight months by the middle of 2006, through, an Army-wide action plan. I chair a Court-Martial Delay Action Group which looks at the difficult cases, either those badly delayed or particularly sensitive, and directs remedial action by the chain of command, the Royal Military Police, the Director of Personal Services (Army) and the Army Legal Services as appropriate, to make sure progress is made. My purpose here is to improve the process; it will not be to discuss or influence in any way the detailed investigation or prosecution of the case.

The Chief of the General Staff has directed a review of recent events in Iraq and their impact on our Reputation; to examine what might have gone wrong, why, and what we might do about it in the future. The Director of Army Personnel Strategy is leading this work, which will be published when the current high profile Iraq-related cases have concluded. He has already identified three areas of focus; training, education and leadership. But the issue is not just about how we behave when deployed. What we do and how we behave at home has a direct relevance for when we do deploy.

A unit that has a good disciplinary record in barracks, that has high morale and team spirit, that looks after and

knows itself well, will be better able to maintain those qualities once deployed. Such qualities are, of course, helped by regular training and education sessions, but it flows just as much from how the unit lives its life on a daily basis, how the command team sets out its stall, how it creates the regiment's ethos and how it enforces its standards.

### **The Core Values**

- Selfless Commitment
- Courage
- Discipline
- Integrity
- Loyalty
- Respect for Others

### **Values and Standards**

**M**ore must be done by the chain of command to educate and remind everyone that the actions of any one individual at home can have an effect on the Regiment and on the whole Army. This leads on to Values and Standards. By now you will have seen the revised Individual Training Directive package - called Military Annual Training Tests - in which the clear message is that Values and Standards apply in all circumstances and environments, on and off operations. How many of our Officers and SNCOs really know and promote the six core values: Courage, Discipline, Integrity, Loyalty, Respect for Others, Selfless Commitment? If they don't, Junior Non-Commissioned Officers and soldiers cannot be expected to know how to behave either. Properly applied

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through good leadership, the Army's Values and Standards will do much to support our soldiers' motivation, commitment, trust and willingness to follow the flag.

**Conclusion**

**B**y way of a conclusion, my comprehensive review of the aftermath of the trial of seven current and former soldiers of 3 PARA concluded that the Military Criminal Justice System is far from being flawed. It supports operational effectiveness, it delivers justice and most importantly in many ways, it ensures fairness to everyone in the Army. That fairness is underpinned by the independence of key elements of the system, in particular the Army Prosecuting Authority and the Royal Military Police when they are conducting their investigations. It is however, not an issue that can be left to the lawyers, policemen and discipline staffs. Good leadership and discipline underpin operational effectiveness and are therefore everyone's business, in particular the chain of command, in maintaining that operational effectiveness and fulfilling the Military Covenant for example. Every soldier, regular, territorial and reservist has a critical role to play in this.

## ***Core Values***

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