

THE ARMED FORCES BILL 2026

Introduction

1. The Centre for Military Justice (CMJ) is a small, independent legal charity established in 2019 to advise current and former members of the Armed Forces or their bereaved families who have suffered serious bullying, sexual harassment, sexual violence, racism, other abuse or neglect. We offer an advice and signposting service, as well as full legal advocacy and legal representation services, where we act for clients in formal complaints processes, in Employment Tribunals, in the civil courts and the Coroner's Court. The CMJ also undertakes educational and outreach work within the armed forces sector, promoting the rule of law, equality and human rights law and access to justice. Supporting women that have experienced gender-based violence and other discrimination, harassment or victimisation due to their sex continues to be a priority area for us.¹
2. We are very grateful to the Committee to be invited to make this submission. We will confine our observations to the parts of the Bill of most relevance to our work, which are the provisions to improve protection and support for victims of crime, and the provisions to improve the ability of the Service Police and Commanding Officers to respond to reports of crime.

DOMESTIC ABUSE PREVENTION ORDERS, SEXUAL RISK ORDERS, STALKING PROTECTION ORDERS

Protection from sexual and violent behaviour, domestic abuse, stalking and harassment (Clauses 5 – 9)

3. In 2021, in our submission to the Defence Committee Inquiry into Women in the Armed Forces, we expressed concern that the Service Police did not have the same powers to deal with domestic abuse as the civil police and, in particular, that they could not issue a Domestic Violence Protection Notice, Domestic Violence Protection Order or Stalking Protection Order. That concern has long been expressed by other campaigners too, most notably the specialist domestic abuse charity, [Aurora New Dawn](#), that has worked closely with the armed forces community for years. The provisions now contained in the Bill, as we set out below, are highly welcome and long overdue.
4. The Committee may wish to remind itself of the concerns expressed by the [independent reviewer of the Service Justice System \(SJS\)](#), Judge Shawn Lyons, published in 2020, that domestic abuse cases were at the time of his review being too often inappropriately dealt with as 'disgraceful conduct' or 'ill-treatment' cases by commanding officers in summary proceedings.² We return to this point below. As a

¹ www.centreformilitaryjustice.org.uk

² From the SJS Policing Review (which was part of the Lyons Review): 'Concern emanates primarily from those cases where it appears that the CO retains jurisdiction, often out with the knowledge of the Service Police. Although emanating from incidents of Domestic Abuse / Violence, it is reported that cases are sometimes dealt with by other headings such as battery or fighting without any documented reference to their domestic origin.'

consequence, it was the view of the judge at that time that such cases would be better and more safely dealt with through the Civilian Justice System (CJS).

5. That recommendation was rejected by the last government but, as a way to address some of the concerns, in 2021, it passed legislation requiring the establishment of a [new protocol regarding the exercise of criminal jurisdiction between the Director of Public Prosecutions and the Director of Service Prosecutions](#). That CPS/SPA Protocol, finalised in 2023, noted a number of factors that tended to suggest that, in domestic abuse cases, the civilian jurisdiction would be more likely to be appropriate because the SJS lacked the appropriate powers.
6. In particular, the CPS/SPA Protocol pointed out that victims or witnesses might '*require a multi-agency approach, which may be more difficult to achieve in the service jurisdiction*', suggesting such cases ought to be directed to the CJS.
7. This appears now to be addressed by Clause 9 which amends the Multi-Agency Public Protection Arrangements (MAPPA) provisions contained within the Criminal Justice Act 2003 and creates a legal duty on the Secretary of State for Defence to co-operate with MAPPA arrangements and imports convictions achieved within 'the service courts' into the MAPPA scheme (where previously this could not happen). It is important to note that convictions achieved in 'service courts' (and so which will now fall to be considered under the MAPPA scheme as appropriate) does *not* appear to include convictions following a summary hearing before a Commanding Officer. This is potentially a problem because a Commanding Officer can hear a wide range of serious criminal and service cases at a summary hearing, including ABH, which is an offence that is obviously relevant in a domestic abuse context and one that potentially falls within the MAPPA scheme. Therefore if ABH convictions (with domestic origins) arising from summary hearings before Commanding Officers are excluded from the scheme, this would appear to prevent those convictions from being considered under MAPPA arrangements.

Recommendation: we recommend that either the power of a Commanding Officer to hear an allegation of ABH is removed entirely when there is a domestic abuse element to the allegation; or (if the power is retained) that the MAPPA scheme should be amended to be able to incorporate convictions for ABH before a Commanding Officer where there is a domestic abuse element.

8. The CPS/SPA Protocol also pointed out '*the range of ancillary and civil orders available within the service and civilian jurisdictions noting, for example, that: although there is power to impose a service restraining order under the AFA 2006, an order cannot be imposed should the person be dismissed from or no longer serving in the armed forces; nor is there power to enforce an existing service restraining order should the person leave or be discharged from the armed forces during the currency of the order.*'
9. This problem is also now addressed by Schedule 3 Part 6 of the Bill which makes arrangements for orders made by service courts to be treated as if they had been issued by the Crown Court, if the subject ceases to become subject to service law.

The inevitable consequence of this is failure to complete the necessary risk assessments and inability to identify repeat victims and repeat offenders.'

This means they can be enforced after the perpetrator leaves service and is a very welcome change.

10. Finally, the CPS/SPA Protocol recalls *'the requirement in the civilian jurisdiction that a production order pertaining to sensitive material (such as medical or therapy notes) must be served on the subject of the material (in addition to the holder of the material) where a judge so directs (CrimPR 17), which is not a requirement of the relevant rules in the SJS.'*
11. As far as we can see, this remains a significant gap in the SJS and is not addressed by the present Bill. The (civil) Criminal Procedure Rules, Rule 17.5, requires a production order to be served not only on the person doing the producing, but also the subject of the material (following the case of *TB v Stafford (2006) EWHC 1645*, where a victim of sexual abuse had not been notified that her doctor had been ordered to disclose her medical records to the police). This requirement is not reflected in the equivalent provisions for the Court Martial, the Armed Forces (Powers of Stop, Search, Seizure & Retention) Order 2009 (Sch 1). The CMJ had a case where a production order was issued in the SJS, ordering a therapist to disclose to the Service Police confidential therapy notes, and that order was not served on the subject. We note the new Code of Practice for Victim Information Requests (which applies to the Service Police as well as the Civilian Police), introduced on 12 January 2026, sets out best practice when police are seeking to access highly sensitive records such as therapy or medical notes as part of their investigation and makes clear that the victim is to be informed that a third party request is being made. The contents of the code are not legally binding however, and the Court Martial rules ought to be amended to bring them into line with the civil Criminal Procedure Rules.

Recommendation: the Bill presents an opportunity to amend the Armed Forces (Powers of Stop, Search, Seizure & Retention) Order 2009 to require the person to whom the material relates, that is the subject of an application for a production order, to be given notice of it, and an opportunity to object to it, mirroring the civilian provisions (and reflecting policy).

12. The Bill provides for the first time for a Provost Marshal to make an application for a Sexual Harm Prevention Order (by applying ss122A-122I of the SOA 2003). That enables action to be taken where the 'defendant has done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a sexual risk order to be made'. What kinds of 'acts of a sexual nature' is governed by Schedule 3 or 5 of the Sexual Offences Act 2003, which would appear to exclude service offences such as disgraceful conduct of an indecent kind, misconduct through alcohol etc. For Sexual Risk Orders, our understanding is that the person must have committed a single act of a sexual nature, which is not defined and seems like a broader definition. Clarity would be welcome as to what offences are captured and whether it would include service offences such as those mentioned above where they are of a sexual nature.
13. The Service Police will be able to apply for a Domestic Abuse Prevention Notice and Domestic Abuse Protection Order where the subject has 'been abusive' within the meaning of s1 Domestic Abuse Act 2021 (which includes 'physical or sexual abuse', 'CCB' and 'other abuse' so appears on the face of it to encompass abusive conduct resulting in service offences being charged (such as disgraceful conduct of an indecent

kind, misconduct through alcohol etc)). Again, clarity would be welcome. These orders can be applied for even upon acquittal which is positive.

14. The power to apply for a Stalking Prevention Order includes that any requirements contained with the order 'must, so far as practicable, be such as to avoid ... interference with the defendant's work or attendance at an educational establishment'. In a military context, a SPO is likely to restrict the subject's work arrangements to some extent, particularly where the victim works at or is based at the same location. For example, in a case where a junior soldier is being stalked and harassed by her line manager, his being subject to a SPO and a requirement that he be removed from the immediate location would undoubtedly have negative implications for his work. What guidance could be designed to ensure that work requirements don't unfairly outweigh the needs and rights of the victim? A code of practice may present an opportunity to make clear that this should not be at the expense of the rights or interests of the victim.

Concluding remarks on the Orders

15. In order for all or any of these orders to be as impactful as is clearly intended, there must be widespread awareness of them, and it is imperative that their rollout is accompanied by comprehensive training. We note that those tasked with supervising compliance with these orders (which is presently unspecified, see s236H) will need suitable training and supervision themselves. Who will be conducting the supervision and supporting Service Police staff to confidently apply for these orders? The nature of military life makes continual and repeated training a necessity to ensure ongoing effectiveness. Most importantly of course, these orders will only protect victims if they are enforced. We know that in the civilian system there are systemic challenges with ensuring the effective enforcement of orders like these and it is vital that the SJS does not fall into the same pattern. This is an unprecedented opportunity for the SJS to demonstrate how seriously it takes these cases.
16. It will also be vital from the outset to ensure that there is accurate monitoring and data collection so that the use and impact of the orders can be assessed and measured.

SUPPORT FOR VICTIMS OF CRIME

Support for victims of service offences (Clauses 10-11)

Statutory Code of Practice

17. The Bill contains a welcome and broad definition of 'victim' and provides for a new statutory code of practice as to the services to be provided to victims of service offences by persons having 'functions of a public nature'. We assume that it is intended to apply to Commanding Officers and clarity would be welcome on this question, due to the key function/role that commanding officers can play following a report of serious crime.
18. While there has long been a [code of practice for victims of crime](#) in the armed forces, together with a policy on victims of crime more widely, it has never been on a statutory footing before as far as we know, and the armed forces' vast often unwieldy documents can be inaccessible to lots of people and the most useful parts of it are, in our experience often overlooked. For example, there is an incredibly useful, user-friendly short document which sets out clearly what steps a Commanding Officer must ensure

are taken when one of their service personnel reports a serious crime and in almost all of our cases, this is routinely ignored, even though our clients raise it time and time again in their Service Complaints. The same document sets out the same steps from the victim's perspective, and acts as a useful checklist for them (if it is drawn to their attention before things go off the rails, which it almost never is). This document was drawn up as long ago as 2014 after the inquest into the death of Cpl Anne-Marie Ellement exposed a lack of victim care for those reporting rape in the Army. It is desperately frustrating to see it more often than not ignored or overlooked, 12 years on. We have also been told that it cannot be applied where a case is being taken forward in the CJS (even though the needs of the victim in terms of support, markers etc³, are in lots of ways unaffected by whether the case is a CJS or SJS case and we say more about this below). We **attach** a copy of the document to this submission so the Committee can see how practical and accessible it is (though it may need updating). The new code of practice must ensure that all the relevant information is in one place and is accessible, particularly to those with little or no experience which will be the case for many commanding officers.

19. The Code must also make clear that the services to be provided to victims are not optional; and that, by providing support to the victim, it does not mean that a commanding officer is indicating a position on whether the alleged act occurred or not.⁴ It is positive that it has been made clear that the fact that an offence has not been reported nor a person charged or convicted is not relevant to the question of a person's entitlement to victims' services. CMJ has also had reports from women to the effect that, once the criminal case is over or dropped, their entitlement to support needs to come to an end.
20. Do the new protections for 'victims of service offences' include victims who are serving but whose cases are being taken forward in the CJS (where the perpetrator may also be serving)? Some service men and women will be victims of offences that are being dealt with in the CJS and they are just as entitled to support and need to be included within the provisions (though they will of course at the same time also be eligible for services under the civil victim's code). We have had cases where victims have been told the relevant guidance mandating support in the armed forces does not apply because their criminal cases are not being dealt with within the SJS, yet their needs in lots of respects are identical to those whose cases are dealt with in the SJS. As long as there is concurrent jurisdiction, the code will need to be applied flexibly and as needed, regardless of where the final case is being heard.
21. The Code may restrict the application of its provisions to victims of specified descriptions. We suggest that all sexual and domestic abuse offences must always be included within the scope of the Code and it will be helpful to state that on the face of the Bill.

³ The policy requires that consideration be given to applying 'markers' to victims' and suspects' files to guard against the risk that they may be posted to the same location in the future, if they remain in service. There is very little awareness of this right; and it has been suggested to CMJ that it can only be considered when a case is being handled in the SJS, not the CJS.

⁴ A frequent refrain is along the lines of, 'I have to be seen to be impartial' in the context of aftercare and support to victims, causing victims to feel as though they are not entitled to support.

Recommendation: Clause 10, s327C, add a line at (c): ‘but the application of the code may not be restricted to exclude victims of sexual offences or domestic abuse offences’.

Parliamentary Commissioner for Administration

22. There is a new right to complain to the Parliamentary Commissioner for Administration (PCA) for breaches of the victim’s code of practice at Clause 11. This is a completely independent route of complaint and is a very positive development in principle. The PCA, like the new Armed Forces Commissioner, is completely independent of the MoD and, as far as we are aware, does not even benefit from MoD funding so is truly institutionally and financially independent. This ought to lend real confidence to the scheme and it is enormously encouraging to see. However it is important to note that the PCA is only the final stage for unresolved complaints and complainants are usually expected to exhaust the complaints process of the organisation in question first. For service personnel, this is likely to mean the Service Complaints process, a process repeatedly deemed neither ‘effective, efficient nor fair’ by the Service Complaints Ombudsman for the Armed Forces (SCOAF). This raises the prospect of a victim of crime at most getting a finding that there was a breach of the code, years after the event.

Service Policing Protocol

23. There will be a new Service Policing Protocol with the objective of ensuring that all service police investigations are free from improper interference. That principle has long been enshrined in the legislation and is not new, though we have seen cases where there has been close contact between the Chain of Command (CoC) and the service police which was not justified by the facts of the case and which has caused deep alarm to victims. In one of our recent cases the victim, having reported rape to the Service Police (Defence Serious Crime Unit (DSCU)), also made a complaint about her line manager’s behaviour towards her, following her report of rape. The victim learned that the line manager had contacted the investigating officer at the DSCU about the complaint she had made, and the investigating officer provided some advice about it. In another case, an Officer Commanding pro-actively emailed the Service Police to offer his view on an allegation that had been made by a female against an accused male soldier in his unit. The existence of a statutory bar on this kind of activity did not stop it happening in those cases.

Custody

24. The power to approve pre-charge custody is an important and significant change, and ought to improve confidence in the SJS. Similarly the new powers granted to the Judge Advocates to impose requirements on accused post charge, breach of which can constitute an offence, are very welcome. This is particularly important for those who have left the services but are subject to criminal investigations after they have left and for whom the ability of a commanding officer to order their compliance with directions/orders may be reduced.

Time limit for charging certain offences

25. This is relevant to domestic abuse and related harassment cases. We have had several cases where the victim has been informed there was a realistic prospect of

conviction but because of a delay in charging the case, proceedings had to be dropped. Presently, the SJS is not bound by the rule in s127 of the Magistrates Courts Act 1980 that requires a summary offence to be laid within 6 months of the offence (or for commons assault/battery cases, within 6 months of it being reported and two years of the date of the offence). We understand it to be the practice of the SPA to follow the civil approach unless there are exceptional reasons to deviate which is a perfectly proper approach. That exceptionality is preserved in principle in the Bill now with a reference to the 'unique nature of the services'. We hope this would include a scenario where a victim had not been able to report because she had been deployed for example. It appears that s58A(3)(b) may reflect the domestic abuse provision effectively extending time where there has been a delay in reporting harassment amounting to domestic abuse and confirmation would be welcome. We also hope that bringing the SJS into line with the CJS in respect of the time limit will remove any uncertainty and ensure that Service Police deal with such cases efficiently and swiftly, now cognisant of the clear limitation period. Again, training and education will be vital to ensure this happens.

Powers of Commanding Officers

26. We welcome the new provision requiring *any* commanding officer to refer an alleged serious offence to the Service Police (regardless of whether the accused or victim is within their CoC. We suggest that the Bill presents an opportunity for other important amendments to be made regarding the powers of commanding officers.
27. What is a 'serious offence' requiring a commanding officer to refer a matter to the Service Police is set out in Schedule 2 of the AFA 06. Notably, that Schedule does not include the following offences:
 - a. Common assault where there is a domestic abuse context (and this may still be dealt with summarily by a CO on the basis that a CO can deal with a common assault/battery).
 - b. Actual Bodily Harm where there is a domestic abuse context (and this may also be dealt with summarily by a CO, albeit permission is required).
 - c. Disclosing private sexual photographs and films with intent to cause distress ('revenge porn') (s. 33 Criminal Justice and Courts Act 2015).
 - d. Possession of extreme pornographic images (s.63 Criminal Justice and Immigration Act 2008).
 - e. Controlling or coercive behaviour in an intimate or family relationship (s.76 Serious Crime Act 2015);
 - f. Voyeurism: additional offences ('up skirting') (s.67(A) Sexual Offences Act 2003); and
 - g. Any service offence where there is a domestic abuse context (which can also be dealt with summarily by a CO).
28. These offences should be added to Sch 2 as soon as possible to require their referral in all cases by any commanding officer to the Service Police.
29. Sch 1 of the AFA 06 should also be amended to remove the power of a commanding officer to hear summarily any allegation of domestic abuse. The practical challenge of course is that there is no criminal offence of 'domestic abuse' but it can feature in a whole range of other criminal offences, such as assault, ABH, criminal harassment, threatening behaviour and/or multiple service offences, such as ill-treatment of a

subordinate, misconduct through alcohol, assault, or disgraceful conduct of an indecent kind. However it is critical that this is addressed, particularly if the Service Police are to have before them all relevant information when considering whether to apply for any of the domestic abuse/sexual harm orders contained in the Bill.

30. In 2018, the power of commanding officers to deal with sexual assaults was finally removed after years of campaigning by victims and the AFA 06 Sch 2 amended to that effect. We suggest that the same must now happen *in relation to domestic abuse* and the *additional sexual offences* listed above. It is our understand that the Judge Advocate General would support such a proposal in principle.

Recommendation: to amend Schedule 2 of the Armed Forces Act 2006 to include the listed offences above; and to amend Schedule 1 of the Armed Forces Act 2006 to prevent commanding officers dealing with any domestic abuse matter at a summary hearing.

OTHER MISCELLANEOUS MATTERS (VICTIM SUPPORT AND POLICING)

Independent Legal Advocacy

31. Though not in the Bill, we thought it would be helpful to offer a view on the following important matter which has recently been announced by the MoD.
32. The government has announced a pilot to provide legal support to anyone who has reported a sexual offence by someone subject to service law. It will be provided by 'specialist solicitors from outside the MoD', complemented by pastoral care from the Victim Witness Care Unit (VWCU). It will run for 12 months from Spring 2026. In principle it is another very positive change.
33. We strongly urge the MoD, however, instead of creating a new pilot from scratch, to work with and alongside the existing work already being undertaken to provide legal support to victims in the civil system. Building on the Northumbria pilot some years ago set up by Vera Baird KC, and a similar scheme set up in Northern Ireland following the Gillen Review, an independent legal advice pilot has been running across London for the past 18 months, funded by the London mayor's office and run by the voluntary sector. It has been subject to a successful academic evaluation and is going to roll out nationally. It has been designed and set up as an advice-based model and offers information and advice on a range of common issues of relevance to victims of serious offences (e.g. decisions to take No Further Action by police, Victim's Right of Review processes, complaints against police, prosecutors or defence counsel, advice on police requests to access the personal data of victims etc). Victims use the service as and when they need to and as particular questions arise. Anyone needing full legal representation/litigation services is referred out to a private solicitor (outside of the scheme) in the usual way. The pilot advisers work closely with ISVAs (in this context, this would be the VWCU as well as any assigned ISVAs) to ensure they (the ISVA/VWCU) are aware of the need for and appropriateness of advocacy on any particular issue.
34. We suggest that it will be more sensible and cost effective for this new provision for service personnel to form a part of that wider work, with a 'military specialism' being offered as needed. This will enable victims of crime in the armed forces and their

advocates to really benefit from the huge amount of work and expertise that exists already in the civil scheme, tailored to the armed forces as needed.

35. The potential problem with engaging a private firm of solicitors is that solicitors in private practice operate in a very particular way and we think will very quickly will run out of capacity to operate a general advice service. It will also be vital that whoever provides the advice service is trauma-informed and works closely with specialists who work with sexual violence/domestic abuse survivors and who can support them to undertake advocacy on behalf of the victim. There will also perhaps inevitably be a risk that private firms will focus on possible civil claims (ie the most serious cases) at the expense of the time consuming but less profitable general advice function.
36. Effective governance of the scheme will also be vital. We suggest it should be led by the voluntary sector with significant input from those with ISVA experience. We have consulted with Vera Baird KC about this proposal and she has indicated she would be happy to discuss the proposal further with the Committee or MoD.

Service Police Complaints Commissioner (SPCC)

37. We are encouraged so far by the work of the new SPCC.
38. The SPCC has already produced one highly critical report into an investigation into the DSCU's handling of rape, sexual assault and CCB for one of our clients and recommended its reinvestigation due to the extent and seriousness of the failings identified. That case has now been handed to a civilian police force.
39. We have also struggled in two of our recent cases to ensure that there are genuinely independent arrangements for the investigation of police complaints. The SPCC can only investigate allegations arising after 19 June 2023, when the office was established. Prior to that, there was no independent scheme to investigate allegations against Service Police at all, at most there was a 'tri-services protocol' whereby one Service Police branch could investigate another. However, that scheme was disbanded upon the inception of the DSCU, leaving people who wish to raise complaints, some of which have elements which arise before 19 June 2023, without any available independent scheme at all. Legal proceedings had to be threatened to ensure one very serious complaint about the DSCU was referred outside of Defence Serious Crime Command (which sets policy and strategy and is the command HQ for the DSCU), and has, as a consequence been passed to a civilian constabulary for investigation; and a second remains under discussion at the time of writing.

JURISDICTION

Guidance on exercise of criminal jurisdiction (Clause 25)

40. The Bill requires the Secretary of State to issue guidance on what information must be given to victims of crime to enable them to come to an informed view on whether they would prefer an offence to be tried in a military or civilian criminal court. The guidance must set out the similarities and differences of the respective proceedings and may include other information. There has to be consultation with the Commissioner for Victims and Witnesses (for both England and Wales and Scotland) among others.

41. It is vital and welcome that this guidance/information will be placed on a statutory footing. If it is not, we are concerned that it simply will not happen. In our experience, MoD is good at offering assurances that important information will be provided in certain circumstances, but can be little oversight (and no consequences) when this does not happen.⁵
42. More critical is that there is meaningful independent assurance over the data to be provided. Providing victims with accurate and fair information is absolutely vital if this section is not going to become simply an opportunity for victims to be persuaded that they should elect to 'support' ⁶ the SJS on the basis that it is (undeniably in most cases) quicker than the CJS.
43. At the outset we should make clear that there is good evidence that Service Police refer domestic abuse and sexual assault matters to SPA prosecutors at a higher rate than their civilian counterparts and that these referrals result in charges being brought against suspects in greater proportions than in the CJS. ⁷ The SPA has also recently had a positive [independent review](#) of its work by HMCPSP which was a far cry from the previous independent review, 14 years prior.

Rape-flagging

44. It is very important to understand the basis on which the MoD now asserts that conviction rates for rape and sexual offences are broadly the same or even better in the SJS than in the CJS. The CMJ's position on this issue is frequently misunderstood by individuals inside MoD and misrepresented. It is therefore helpful to set out in this short note how conviction rates can be calculated in the Crown Court, what the conviction rates are in the Court Martial when using similar methodologies and possible reasons why the two systems differ. The bottom line is that genuinely independent research is needed on this issue and we urge the Committee to make that recommendation.

⁵ An excellent recent example of this is in relation to the question of ensuring that children in the armed forces are made aware of their right to report crimes to the civilian police (as well as the service police). The Army gave sworn evidence at the Inquest into the death of Pte Sean Benton at Deepcut Barracks in 2018 that it would ensure all recruits and trainees would henceforth receive this information as part of their initial inductions and training. In exchange for this assurance, the Coroner declined to issue a Prevention of Future Deaths report. In 2021, the bereaved family concerned made a freedom of information request for the induction training materials and [were very disappointed to see that the promised information was not being provided](#). MoD offered an apology and agreed to address the issue again. Notwithstanding those repeated assurances, a highly critical [report published last month](#) into the Army training estate further revealed that the promised information was still not being provided to trainees/recruits. It is due to experiences like this that CMJ is cautious about relying on assurances provided by MoD that quality information will be provided to its people at the right time to enable them to make informed choices.

⁶ In two recent cases of ours, DSCU investigators have referred to the fact that the victim has or has not decided to 'support the SJS' by indicating her preference. It is important not to read too much into anecdotal accounts like these, however these service women were made to feel somehow disloyal if they did not elect the SJS over the CJS.

⁷ See, for example, [2022 HMICFRS inspectorate reports of rape](#), serious sexual assault and domestic abuse investigations by the Royal Military Police, RAF Police, Royal Navy Police - though note the caveat that 'no accurate comparison can be made between the proportion of domestic abuse and RASSO cases discontinued by the civilian police and the service police' because of the different standard of proof test applied by civilian and service police respectively: [Royal Military Police - Rape, serious sexual assault and domestic abuse investigations - His Majesty's Inspectorate of Constabulary and Fire & Rescue Services](#) etc.

45. The MoD's position, [as of 14 January 2026, is](#) that 'The conviction rate in the Court Martial for (adult rape flagged investigations) (excluding guilty pleas), is 51% from 2022 to 2024 compared to 36% in the Crown Court.'
46. We submitted a FOIA to better understand how they were defining the 'conviction rate' and received the **attached** response. The [link in the letter](#) reveals that MoD had recently adopted a new way of reporting outcomes in rape cases, explaining that they were now using a 'rape-flagging' method. This is the heavily criticised method that has historically been used by the CPS.
47. The MoD explains, 'Rape flagging is a monitoring process usually used by the CPS to identify and monitor cases involving rape. The flag is applied at any point during the prosecution process where a rape offence is suspected to have occurred, and is maintained even if the final charging decision or case outcome relates to a non-rape offence.' So put simply, if a person is charged with, for example, assault, false imprisonment and rape, but is only convicted of a single assault, that would still be 'rape-flagged' and recorded on the system as a conviction for a rape-flagged case. CMJ does not know if the 'rape-flagging method' would, in the SJS, also include cases charged as rape but which resulted in a conviction solely for a service offence (e.g. misconduct through alcohol, or disgraceful conduct of an indecent kind). The MoD states that, applying the rape-flagging method, the conviction rate for adult-rape-flagged cases irrespective of plea for the three years between 2022 and 2024 was 53% and excluding guilty pleas was 51% in the SJS. We note that the submissions received by the Armed Forces Bill Committee from the Judge Advocate General and Director of Service Prosecutions now also cite the rape-flagging method.
48. There are reasons why a rape conviction rate might be substantially different in Courts Martial as compared to juries in the Crown Court. This could include different approaches to investigation, charging and prosecution decision-making in the SJS as compared to the CJS. It could include reasons connected to the different compositions of and approaches to courts martial boards as compared with juries sitting in the Crown Court.
49. What is wrong is to use CPS rape-flagged data as a comparator to Courts Martial rape conviction rates. This is for several reasons, including CPS's own admission that:
 - The CPS data does not show jury conviction rates in the civilian courts;
 - The CPS admits that their "rape-flagged" statistics include charges that are not proceeded with; and
 - The CPS data cannot distinguish between defendants and charges.
50. The practice of 'rape-flagging' has also been [heavily criticised](#), not least by the head of the Office for Statistics Regulation who wrote to the then head of the CPS about it in 2023.⁸

⁸ [Letter from Ed Humpherson to Max Hill KC](#), dated 18/07/23: 'CPS's case flagging system may lead to inflated figures for the number of charges and conviction data for rape. This is because where a defendant is charged with rape and sexual assault, but then the rape charges are dropped or the defendant is only convicted of sexual assault, they are still included in the charges and conviction data for rape'.

Why CPS Data and Rape-flagged cases should not be compared with Courts Martial cases

51. The CPS itself acknowledges that it does not maintain official data on what happens in civilian criminal courts and that 'official statistics relating to criminal courts are maintained by the Ministry of Justice'. The Crown Court conviction rate information cited below is from the Crown Court data provided by the Ministry of Justice.
52. The CPS itself explains in its data summary quarterly reports each year: ⁹
- a. 'The CPS does not publish official statistics. CPS data is operational management information, which can be used as an indicator of CPS performance. Official statistics relating to criminal courts are maintained by the Ministry of Justice.'
 - b. Rape-flagged cases are allegations that police and CPS flag in order to provide specialised support to complainants. They were originally designed to 'flag' to a police officer that a victim had reported having been raped, so that particular care could be taken when dealing with him/her. It had no bearing on the official monitoring arrangements for establishing the final outcome of the offences the victim had reported. The CPS states, 'Due to the nature of CPS systems, flagged cases will include cases where the eventual outcome may not relate to the flagged offence'.
 - c. 'CPS data are dependent upon lawyers and administrative staff identifying and correctly applying the monitoring 'flags' or case-markers to applicable cases that are recorded on the CPS' electronic Case Management System (CMS).'
 - d. 'Monitoring flags are applied at case level. The flag may apply to only one suspect/defendant (in cases where a number of suspects/defendants are considered together) and equally may apply to only one offence a suspect/defendant is charged with (if a suspect/defendant is charged with more than one offence). It is not possible, other than by manually examining CPS case files, to say whether the flag applies to either one or more suspects/defendants or whether it applies to one or more offences.'
 - e. 'A flag remains in place, even if a decision is taken to charge an alternate offence or where a charge is subsequently amended.'
53. It is therefore wrong for MoD to seek to use the CPS rape-flagging method as a reliable source of comparative data.
54. However, a comparison could legitimately be made between jury conviction rates in adult rape cases in Crown Court with Courts Martial board conviction rates in the military courts.

⁹ [CPS data summary Quarter 4 2023-2024 | The Crown Prosecution Service](#)

55. At the CMJ, we have extracted the data from all court martial centres that has been published and combined it into a single data set. The data is detailed and includes a breakdown of every offence charged and heard at trial at Court Martial and the outcome of each charge between January 2010 and the end of December 2025. This means that we now have more than 15 years of data to draw upon. There were more than 6650 Defendants recorded, many of them with multiple charges which were heard at Court Martial. While the data set is not perfect, there are some useful indicators.
56. Based on our review of the Court Martial data set, we can see that, of all rape charges over 15 years, guilty verdicts for rape were recorded in 22% of cases. In all Sexual Assault By Penetration (SABP) charges, guilty verdicts for SABP were recorded in 42% of cases. And in all Sexual Assault charges (not including rape/SABP charges), guilty verdicts were recorded for sexual assault in 42% of cases. Considering these three categories of sexual offences together resulted in convictions for the charged offences in around 38% of cases.¹⁰
57. By contrast, Professor Cheryl Thomas of UCL has confirmed that Crown Court jury conviction figure (by which we mean jury outcomes after deliberation on rape charges) for adult rape was 73% in 2022, 62% in 2023 and 68% in 2024 giving an overall conviction rate for that period of 67%. This builds upon UCL's [work undertaken in 2023](#), which showed that once a rape case reaches Crown Court, juries were much more likely to convict than acquit a defendant, and that this had been the case for at least 15 years. The analysis showed that over a 14 year period (2007-2021), the jury conviction rate for all rape charges had steadily increased from 55% to 75% and the jury conviction rate for all sexual offences had also steadily increased rising from 58% in 2007 to 75%.
58. Critics of these military and civilian court comparisons like to say it is not fair to compare the two systems. However, that is exactly what MoD is doing now, in relation to the highly criticised CPS 'rape-flagging' method which it is retrospectively applying to its own conviction data, and in relation to the delay-issue. The more time that passes, the more data we have, and the more apparent it seems to be that military boards in Court Martials do not convict in most rape cases, unlike Crown Court juries where the opposite is true.
59. We do not know what accounts for the difference. And while it is possible to speculate on possible reasons for the difference in Court Martials and jury conviction rates, what is absolutely clear is that careful in-depth research is needed, along the lines of the UCL research to identify the reasons for the lower conviction rates in the military court system.
60. As long as jurisdiction remains with the SJS, and especially if victims are increasingly going to be able to express a choice as to jurisdiction, we need to understand what is

¹⁰ The court martial data set includes guilty pleas, which means that the figure for convictions of the specified offence by a Court Martial Board can only go down once those are included in the figures. Independent research shows that sexual offences, especially rape, do not tend to attract guilty pleas in significant numbers however so there is no reason to think that this is likely to affect the overall figures to any large extent. Analysis of all pleas on all sexual offences in the Crown Court over 14 years found that defendants pleaded guilty on only 15% of all rape charges, compared for instance with a 83% guilty plea rate in all drugs offences. See Cheryl Thomas "Juries, Rape and Sexual Offences in the Crown Court 2007-21" [2023] Criminal Law Review, Issue 3.

happening inside Court Martials and – insofar as we can – inside military boards, that makes convictions for rape hard to achieve. This work must be undertaken in an open way and not a defensive one. Is it still an issue with the military police and the way they are investigating sexual crime? At the CMJ we continue to see shocking behaviours by some military police in the way they investigate sexual crime – but we fully acknowledge that [our friends and colleagues](#) working in the civil system would say they see the same in the CJS and we acknowledge we only see cases that have gone wrong. We also want to acknowledge the huge amount of work that has gone on inside the MoD to improve the SJS and to address the concerns of victims since the Lyons Review reported in 2020.

61. Some have speculated in private conversations with the CMJ that perhaps rape cases are less likely to result in a conviction in the military context because of the age profile of the defendant (which tends to be younger) and/or because they are, coming from the military, more likely to be cases involving people that already know each other, where the act of sex is not denied, the issue instead is whether consent was given and whose word is to be believed. But the CPS has published data which shows that in 90% of the rape and sexual assault cases it handles, the complainant and the suspect are acquainted with each other, so that potential explanation does not appear to be as significant as suggested.¹¹ And UCL's 2023 research makes clear that civilian juries are not in fact more reluctant to convict younger defendants than older ones.
62. The anecdotal experiences as reported by our clients has been more along the lines of, and to put it very simply, 'that military board of uniformed officers was never going to convict that uniformed man of rape'. In relation to our wider experience of supporting women in the military experiencing a whole range of problems we continue to see appalling misogyny and ignorant attitudes displayed towards women particularly after they have reported a sexual offence and it comes as no surprise to us that those attitudes may be coming out in the quiet and privacy of the military board room and manifesting in poor outcomes for complainants. Putting more women on court martial boards will also not necessarily improve things – regrettably [our research indicates](#) that women in the military can be as affected by misogynistic rape myths as men.
63. Projects like the UCL Jury Project have demonstrated over the last 20 years that detailed jury research is possible and crucial to understanding the fairness of the system.¹² We would urge detailed and independent research to be conducted into this issue with court martial boards, which is conducted by independent experts. This will produce independent verifiable data that will be invaluable to victims in deciding which jurisdiction they wish to express a preference for.

Recommendation:

Independent academic research into rape conviction rates in the SJS is urgently needed and should be prioritised, along with jury/court martial board research on how boards consider and make decisions in rape cases.

¹¹ [Key facts about how the CPS prosecutes allegations of rape | The Crown Prosecution Service](#)

¹² While there are clear limits to what researchers may be able to do in the context of jury research, some research is possible and has been conducted in the civilian system. See here: <https://onlinelibrary.wiley.com/doi/10.1111/jols.12494>; and here: <https://www.ucl.ac.uk/laws/trial-jury>

We recommend that the Ministry of Defence and the Ministry of Justice should work with the National Statistician in order to find a way of presenting SJS data that enables comparisons to be made of the outcomes for various offences (including with the CJS) and makes clear what conclusions can and cannot be drawn from those data.

SERVICE COMPLAINTS

64. Views have not been sought in relation to the operation of the Service Complaints system, however we consider this to be within the remit of the Bill.

65. We wish to alert the Committee to an issue that continues to affect Service Personnel's access to justice. This is the fact that, in order to bring a claim in the Employment Tribunal (which they may only do for a limited range of matters (mainly discrimination claims)), they must 'make and not withdraw' a Service Complaint (the services internal workplace grievance scheme). This traps them within a scheme that the Service Complaints Ombudsman for the Armed Forces has found to be neither 'effective efficient nor fair' for every year of her office's existence; and also means that the Respondent in any ET claim (which is always the MoD) can effectively act as gatekeeper to the ET. We find that service personnel are frequently unaware of the requirement and their claims (or significant parts) risk failing for this reason, not because their claims are not meritorious. It is unfair and a requirement that is only in the interests of the MoD, never the Service Person. It also builds in inordinate delay. We prepared a briefing on this and other barriers to Service Personnel accessing justice in 2024 which we link to again [here](#). Further information and detailed evidence on this issue can be provided if helpful.

Recommendation: The Armed Forces Bill should amend the relevant provisions of the Equality Act 2010 which restrict the jurisdiction of the ET for armed forces personnel, to cases where the person concerned has 'made and not withdrawn' a Service Complaint and remove that restriction.

11 March 2026
Centre for Military Justice