

PROTECTED - MANAGEMENT

**THE INSPECTORATE'S REPORT
ON
THE SERVICE PROSECUTING
AUTHORITY**

UNDERTAKEN

JULY 2010

CHIEF INSPECTOR'S FOREWORD

I am pleased to be able to deliver an overall positive and encouraging report that reflects well on the progress made by the SPA in the short time following its establishment under the Armed Forces Act 2006. The report also recognises its continuing development as an effective prosecuting authority. That is not to say that performance cannot be improved in some respects. We have made recommendations where we consider that action needs to be taken urgently and highlighted other areas of concern of lesser significance but which require action as part of the process of development.

The quality of the SPA's decision making is sound. Decisions are clearly and logically set out. Cases are prepared to a high standard and uncertainties over the principles relating to disclosure of unused material are being addressed by training. The quality of advocacy is affected by the staffing arrangements for prosecuting officers. These make the DSP's aspiration of a cadre of more permanent experienced prosecuting officers more problematic and arrangements with the three Services Legal Service branches should allow for a more permanent career structure as a prosecuting officer for those identified as having the right skills. Although the standard of witness care is generally good, some prosecutors should engage more with victims and witnesses at court.

Management procedures are continuing to develop although there should be a greater focus on more strategic business planning and risk management. A more structured approach should be taken towards monitoring casework performance and communications within the SPA.

The SPA, like other public authorities, is moving into a period of some uncertainty and is looking at how to make efficiency savings in the light of cuts in its funding. It needs to consider carefully its approach in this respect but it has the structures and systems in place to meet these challenges and continue to be an effective organisation within the service justice system.

EXECUTIVE SUMMARY

Background

The Service Prosecuting Authority (SPA) was created by the Armed Forces Act (AFA) 2006. It provided for the fusion of the three separate Army, Royal Navy and Royal Air Force prosecuting authorities into one single Service Prosecuting Authority.

This inspection was undertaken less than a year after the SPA came into full operation, although the three single service prosecuting authorities had been operating together under the management of the Director of Service Prosecutions (DSP) since January 2009. The inspection must be viewed in this context.

The AFA 2006 not only introduced the single authority but it made a number of fundamental changes to the way that Service Justice is delivered. This required SPA managers to implement a comprehensive training programme for all levels of staff in the new Service Justice System as well as the management and procedural changes required for the new authority to function.

At the same time, the SPA was required to transfer its UK operations from its base at RAF Uxbridge to new premises at RAF Northolt. The change was managed well. Throughout the process, the SPA was able to carry out its core functions without disruption to the wider Service justice system.

The process of change continues although much has been achieved in a short time. New management processes and working practices have assisted in achieving a cohesive and consistent approach to service prosecutions. A review of training has been undertaken which will produce a more flexible approach to delivery. Legal Guidance which deals with law and policy matters, including the handling of victims and witnesses has been published. An SPA intranet has been developed which will act as a source of information for all staff and includes access to the Legal Guidance and other relevant policy and legal materials. The intranet and the Legal Guidance represent continuing projects which will develop according to the requirements of the SPA.

Managers are concerned about the impact of proposed cuts in expenditure upon the progress and development of the SPA but managers are working positively to identify areas where efficiency savings can be made.

Our findings recognise and reflect the current state of progress within the SPA. The recommendations we make take account of the still developing nature of the organisation and are intended to be a part of that process.

Summary of findings

The standard of decision making within the SPA is sound. Decisions are well reasoned and clearly set out in a detailed case analysis. The service police are seeking advice at an early stage of investigation in an increasing number of cases which assists case preparation. Decisions could, however, be made more quickly and although timeliness is monitored a more structured approach should be taken. There is a need for training of specialist prosecutors in the handling of offences of

rape and other serious sexual offences, which is now being addressed, although the quality of decision making is not a concern.

The standard of initial case preparation is such that cases are trial ready once the decision is made to direct trial at the Court Martial. Cases are listed straight to a plea and case management hearing and there is a high rate of compliance with directions and orders. Concerns about the understanding among some prosecutors of the principles relating to disclosure of unused material are being addressed and the procedure is becoming more embedded within the SPA.

The advocacy experience of prosecuting officers varies especially amongst those undertaking a first tour of duty in the SPA. Prosecutors attend an advocacy training course but this may be some months after they arrive. Consequently experience of trial advocacy is delayed. The SPA and the three Legal Services should work together to co-ordinate where possible assignment of officers to the SPA so that the benefits of the improved induction arrangements can be maximised.

Although the Military Court Service has the primary responsibility for witness care at court, the SPA notifies victims when a decision has been made whether to proceed against an accused, and keeps them informed of case progress and the result. Letters to victims are generally written to a high standard and show appropriate consideration and empathy. The level of engagement with witnesses at court could be improved upon in some instances although the SPA's assistant prosecuting officers are proactive in providing assistance. Communication with the MCS over witness arrangements could also be improved.

Change management has been handled very well. The restructuring of three separate prosecuting authorities into one SPA was followed by a move to new premises for the whole of the UK operations. Both were well managed. Business planning and management processes reflect the developing nature of the SPA and for the future there is a need to focus more on risk. Although much progress has already been made, the approach to management and monitoring performance needs to be tightened.

The importance of training is recognised and a new more flexible training programme has been devised which will be implemented in autumn 2010 with the appointment of a new training manager. This should ensure a more consistent and timely approach to providing officers with the right level of prosecuting and advocacy skills. Communications within the SPA need to be more formalised to ensure that information, including casework lessons, is made available to all appropriate staff.

Relationships with other service justice system organisations very much represent a continuation of the relationships established by the former individual prosecuting authorities. There is formal liaison at a more strategic level but, importantly, day to day liaison and relationships with partners ensure that business is generally efficiently managed.

Performance management processes and analysis in respect of casework quality and outcomes needs to be developed further to enable the SPA to have more informed discussions with partners. Staff performance is monitored formally for both Service and civilian staff and good performance is acknowledged informally on an individual basis where appropriate.

Finances are generally well managed and necessary savings have been made. The SPA finance manager produces monthly budget forecasts which are considered by the SPA management board. The SPA remained just within budget in its first full financial year, although a temporary accounting anomaly resulted in a large notional underspend.

The SPA needs to undertake an analysis of its changing caseload and the resource demands of the processes involved to assess whether or not these could be undertaken more efficiently and bring about savings in resources. Such an analysis, which should link directly to an assessment of staffing needs, may help to justify its case for at least minimising any reduction in budget provision and staffing levels in its response to the proposals for cuts in public spending. It also needs to be in a position to understand clearly the effect of any further proposed cuts in expenditure that might arise, so that it can make properly informed decisions for the future.

The arrangements for providing prosecutors to the SPA, referred to earlier, are problematic. The DSP is understandably concerned to ensure that the SPA is staffed by prosecutors who have the skills and experience to be able to handle the more serious and complex casework in a demanding environment. There are prosecutors within the SPA who have those abilities. However, there is also a constant stream of inexperienced prosecutors who need to be trained to the appropriate level. Training starts as soon as an officer's tour with the SPA commences. It takes time and is not always achievable in one tour. Many officers return but this may be after some years and they require some re-training. The DSP's desire for a cadre of more experienced prosecutors undertaking longer tours sometimes conflicts with the legal services' need to develop legal officers across the wider range of service law although is not an unreasonable expectation in the case of more senior officers. The situation needs to be resolved to ensure that the SPA continues to function as an effective prosecuting authority.

RECOMMENDATIONS AND STRENGTHS

Priority recommendations

There are five key recommendations which need to be implemented within three months. These are:

1. The SPA should identify prosecutors with the appropriate skills and experience to become rape specialists and ensure that their training is targeted to developing this specialist expertise including attendance on an appropriate course. (Paragraph 1.18)
2. The SPA should take steps to reduce overall delay in the decision-making process by adopting a more robust approach to monitoring delay between referral to the SPA and the decision. Targets should be set in individual cases according to agreed timescales for offence types. (Paragraph 1.29)
3. The SPA should make arrangements, where possible, for all first tour officers to spend their first month at SPA(UK) in order to enhance their induction which will include observation/participation in civilian court procedures and include mini-pupillages and CPS secondments where appropriate. (Paragraph 5.12)
4. The SPA should consider the performance information it needs to form a comprehensive suite of information to improve its performance and to inform its discussions with its service justice partners. (Paragraph 6.4)
5. The SPA, as part of its proposals for efficiency savings in current expenditure, should devise a process for determining a staffing model which links prosecutor numbers to caseload and casework activities. (Paragraph 7.29)

Other recommendations

There are a number of other recommendations that relate to improving and tightening processes and systems. Whilst not immediate priorities, they need to be implemented to improve the service offered by the SPA. We would expect these secondary recommendations to be implemented within the next 12 months.

1. The SPA should devise a consistent approach to recording supervision and checking of the case analysis which indicates that the relevant factors in the decision-making process have been considered and properly evaluated. (Paragraph 1.22)
2. The SPA should develop a business plan with objectives for delivery that are measurable and time-bound. This should be underpinned by: a delivery plan which is monitored on a regular basis and milestones recorded; and a risk register, identifying risks to delivery and appropriate countermeasures. (Paragraph 5.3)
3. The SPA should take a more proactive approach to communication and develop a consistent strategy which ensures that information, including casework lessons, are disseminated to all appropriate staff. (Paragraph 5.18)
4. The SPA should establish a joint performance management structure to facilitate the sharing of performance data, discussion of lessons learned for

continuous improvement and the identification of best practice with partners.
(Paragraph 6.14)

Strengths

1. The quality of the initial case analysis provides a detailed record of the strengths and weaknesses of individual cases and is a valuable tool in the review process and management of the case. (Paragraph 1.23)
2. Letters to victims at all stages of case progress are appropriately detailed and show an empathy which reflects a positive attitude to victim care. (Paragraph 3.6)
3. The pro-activity of Assistant Prosecuting Officers and the care they offer to victims and witnesses at court. (Paragraph 3.11)
4. The standard of file housekeeping and correspondence handling are consistently good. (Paragraph 2.3)

INSPECTION CONTEXT

Contextual factors and background

The SPA is responsible for the review and prosecution of cases referred to it for trial by court martial in respect of persons subject to service law or discipline who are accused of a criminal offence. Its territorial jurisdiction is worldwide. The SPA is headed by the Director of Service Prosecutions (DSP) who is a civilian. The Deputy Director of Service prosecutions (DDSP) is an Army Brigadier.

The SPA was formed by the incorporation of the Navy, Army and Royal Air Force Prosecuting Authorities into one single tri-service organisation. The SPA has its Headquarters at Royal Air Force Northolt in North West London which also accommodates the UK branch of the organisation. The SPA also has a branch based at Bielefeld, Germany.

The structure of the SPA

At the time of the inspection in July 2010, the SPA employed 73 permanent staff. The Headquarters SPA is based at Northolt and comprises the DSP, DDSP, Chief of Staff, Service Police Liaison Officers, Finance and IT managers, and executive and personal assistants. The prosecution unit at Northolt comprises three teams each headed by a managing prosecutor at OF5 level from each of the three services (Captain RN, Colonel, Group Captain). Each team comprises prosecutors at SO1 (Commander RN, Lieutenant Colonel, Wing Commander), SO2 (Lieutenant Commander, Major, Squadron Leader) and SO3 (Lieutenant RN, Captain, Flight Lieutenant) levels. There are 24 other prosecutors. Teams are supported by civilian administrators aligned to individual teams plus a Business Support Manager and registry staff. A trial arranger manages and co-ordinates court listings in conjunction with the Military Court Service. The SPA also employs five Assistant Prosecuting Officers some of whom are located in Court Martial centres.

The UK unit prosecutes cases in Court Martial centres principally at Bulford in Wiltshire, Catterick in North Yorkshire, Colchester in Essex, Plymouth in Devon and Portsmouth in Hampshire. Courts martial may also be held in Scotland, Northern Ireland and Cyprus.

The unit in Bielefeld has one team comprising the Managing Prosecutor, seven prosecutors, two Assistant Prosecuting Officers (APOs), six civilian administrators and one Service Police liaison officer. It prosecutes cases in the Court Martial centre in Sennelager.

In 2009-2010, the SPA's budget was £4,974,000. Details are shown at Annex A.

Caseload

The SPA reviews cases referred to it by the Service Police or Services' Chain of Command and prosecutes them at the Court Martial or Service Civilian Court where appropriate. The SPA will also act as respondent in the Summary Appeal Court and represents the Crown at the Court Martial Appeal Court. The DSP and the SPA act under the general superintendence of the Attorney General and remain fully independent of the Chain of Command.

The following table shows the SPA's caseload.

	2008	2009	Rolling year to 30 June 2010
Total number of cases referred to the SPA	1171	1227 (+4.8%)	1168 (- 4.8%)
Cases directed for trial by Court Martial	780	795 (+1.9%)	676 (- 15%)
Cases dealt with in the Service Civilian Court	38	29 (- 28.9%)	11 (- 62.1%)
Referrals resulting in no further action (Summary Appeal cases not included)	353	403 (+ 14.2)	481 (+ 19.3%)
Cases dealt with in the Summary Appeals Court	91	125 (+37.3%)	77 (- 38.4%)

The increase in case load to the end of 2009 has been steady since the establishment of the SPA. The reduction in caseload shown for the rolling year to the end of June 2010 is largely accounted for by a significant decrease in offences of being absent without leave, which are down from 397 to 320, a reduction of 19.4%. There has also been an increase in the more serious (and more time consuming) offence categories, particularly serious sexual offences and frauds. The Armed Forces Act 2006 has given the SPA jurisdiction in rape cases and homicides in the UK which means that the SPA is likely to see an increase in its more serious casework, certainly in the next few years. The figures shown do not include the numbers of cases in which formal early advice is provided to the service police. Advice is recorded separately; the figures for the nine months to July 2010 are 112 cases in the UK and 28 in Germany.

The table below compares the caseload in the UK with that in Germany.

	2007	2008	2009	Rolling year to 30 June 2010
UK	751	849 (+13%)	945 (+11.3%)	862 (- 8.8%)
Germany	353	322 (-8.8%)	282 (-12.4%)	306 (+ 8.5%)
Totals	1,104	1,171 (+6.1%)	1,227 (+4.8%)	1168 (-4.8%)

The previous steady decline in cases which are referred to SPA Germany has now reversed. This again is largely due to an increase in the more serious offences

The following table shows results of cases directed for trial in the Court Martial in 2009.

Guilty pleas	667	83.8%
Convictions after trial	56	7%
Acquittals after trial	73	9.2%

Total cases	796	100%
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A table showing caseload in relation to the SPA's resources is at annex B.

The report, methodology and nature of the inspection

The inspection process was based on the inspection framework summarised at Annex C. The framework is based upon common principles applying to all prosecuting authorities, but adapted to the role and circumstances of the SPA. The chapter headings in this report relate to the standards, and the section headings relate to the criteria against which the SPA was measured.

Our findings recognise and reflect the current state of progress within the SPA. The recommendations we make take account of the still developing nature of the organisation and are intended to be a part of that process.

Our methodology combined examination of 99 case files, which were selected by inspectors, and interviews with SPA staff, officers in the chain of command and others concerned in the wider Service disciplinary system in the UK and in Germany. Details of the file sample are attached at Annex D. We also sought the views of solicitors who represent accused persons in Court Martial proceedings and counsel who represent the SPA. Our file sample comprised cases in the UK and Germany and included guilty pleas, trials (convictions and acquittals) and other specific types of case outcomes. A table showing the results of file examination in key aspects of casework is at Annex E.

A list of individuals we met or from whom we received comments is at Annex F. The inspection team would like to thank them all for their assistance and for the kindness with which the inspectors were received. The inspection team carried out observations of the presentation of cases and the delivery of service at courts martial in the UK and in Germany.

The purpose and aims of the Inspectorate are set out at Annex G.

THE SERVICE DISCIPLINARY SYSTEM

Background

The disciplinary system for each of the three services was, for more than 50 years, set out in separate Service Discipline Acts. They dealt with offences that were unique to the Armed Forces but also applied the criminal law of England and Wales to persons subject to military law.

Further legislation in the mid 1990s amended some aspects of the earlier legislation following challenges to the system of military discipline in the European Court of Human Rights.

The current legislation, the Armed Forces Act 2006 (the AFA 2006), made further changes and brought Service discipline under the one Act. It also created the single Service Prosecuting Authority headed by the Director Service Prosecutions (DSP), replacing the three individual Service prosecuting authorities.

Service law

The Service disciplinary system is designed to ensure that Service personnel, wherever they are serving, will be dealt with by a system of justice that they are familiar with, whether they are dealt with by the commanding officer by way of summary hearing or by a judge advocate in the Court Martial.

Section 367 of the AFA 2006 provides that every member of the regular forces is subject to service law at all times. Members of the reserve forces are subject to service law in the circumstances set out in section 367 (2). Section 370 of the Act makes provision for certain civilians, including those who work in support of Her Majesty's forces to be subject to service discipline

In addition to certain specific military offences, section 42 of the Act applies the criminal law of England and Wales to all persons subject to service law or service discipline wherever they may be.

The investigation and referral procedure

The basic principle of service justice is that discipline is the prime responsibility of the Commanding officer (CO) who retains power to deal with certain offences. The CO must refer allegations relating to certain offences to the service police for investigation. Such allegations may relate to offences set out in Schedule 2 to the 2006 Act (Schedule 2 offences) or to offences committed in "circumstances of a prescribed description" (prescribed circumstances).

Schedule 2 offences comprise the more serious service and criminal law offences. Prescribed circumstances relate to allegations which amount to or are connected with bullying. They may arise in a number of circumstances set out in Regulation 3 of the Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations.

With all other allegations, the CO must ensure either that the matter is appropriately investigated (the CO has certain initial powers to deal with allegations) or ensure that the service police are notified so that they can investigate.

Once an allegation has been investigated by the service police and they consider that there is sufficient evidence to charge, they must, in accordance with section 116 AFA 2006, refer the matter to the CO. If the offence is a Schedule 2 offence or one committed in prescribed circumstances, the service police must refer the case direct to the SPA although the CO must be notified of that fact.

When a case is referred to the CO, the service police forward a copy of the report to the relevant legal Service Advisory Branch which is responsible for advising the CO on how the allegations should be dealt with.

If there is a prima facie case of an offence, Advisory Branch advises the CO on the appropriate charge. A prima facie case simply requires evidence which, if uncontested, would be sufficient to prove the offence. It is a lower evidential test than the realistic prospect of conviction test applied by the SPA. The CO will also be given advice as to whether he can, and should, hear the case summarily or if it should or must be referred to the SPA for consideration of court martial proceedings.

The SPA is not formally involved in the process of investigation although it may, and increasingly does, give early advice to investigators when requested.

Summary hearing

The AFA 2006 allows the CO of an accused soldier to investigate and deal with certain military and criminal offences. This is known as summary hearing. The CO's powers of punishment are limited. The CO must comply with certain procedural matters. These include referral of the case to a Judge Advocate if the accused is to be remanded in custody before summary hearing (or court martial), and advance information about the evidence against him.

In any case in which the CO has power to hear the case summarily, the accused may elect to be tried by the Court Martial. In that event, the case is referred to the SPA.

Summary Appeal Court

An accused who is dealt with summarily may also appeal against both conviction and sentence to the Summary Appeal Court (SAC). The SAC comprises a Judge Advocate and two military members who rehear the evidence if the appeal is against conviction. They may uphold the CO's finding or quash the conviction. If the appeal relates to sentence only the SAC may uphold or vary it although it cannot increase it. The SPA acts as the respondent in SAC cases. It reviews the evidence and may, if appropriate, decide not to contest the appeal. At the hearing, it presents the case as it would a trial or sentencing hearing.

The Court Martial

The Court Martial is now a standing Court like the Crown Court in England and Wales. It may, however, sit anywhere in the world. The Court Martial comprises a judge advocate and a board of between three and five lay members who must be officers or warrant officers in the armed forces. Provision is made for a board of up to seven lay members, or none at all, in certain proceedings.

The SPA

If the accused cannot for any reason be dealt with summarily, the case is referred to the SPA for consideration of proceedings in the Court Martial. The SPA reviews the evidence and decides whether to direct trial by court martial and, if so, on what charges. When reviewing the evidence, it applies the Code for Crown Prosecutors

(the Code) which sets out the framework for decision-making, particularly the two tests which each case must satisfy – the evidential test and the public interest test. Cases should proceed only if there is sufficient evidence to provide a realistic prospect of conviction and a prosecution is in the public (including the service) interest. In appropriate cases, a prosecutor should consider consulting the chain of command for information that might help to assess the seriousness of the offence within its Service context.

The SPA may refer the case back to the CO for summary hearing if that is considered a more appropriate means of disposal. As part of the decision-making process, the SPA may request further information or evidence from the service police. In some cases, the SPA may have been consulted by the service police in the initial stages of the investigation.

An accused is entitled to legal aid, including representation during interview by the investigator and may instruct solicitor and counsel of his choice. Court martial proceedings are conducted along similar lines to the Crown Court and are open to the public.

The role of the Judge Advocate is to give directions and rulings on law and procedure. At the conclusion of the evidence, the Judge Advocate sums up and advises the Board on matters of law. The Board comprises serving military officers who are outside of the accused's chain of command. They are appointed by the Military Court Service. The Board is responsible for returning a verdict, by simple majority, according to the normal burden of proof in criminal trials. Sentence is determined by the Judge Advocate and the Board.

Service Civilian Court

The SPA also prosecutes cases in the Service Civilian Court (SCC). The SCC deals with civilians working for, or accompanying, the Service who commit offences outside the UK. It can sit anywhere outside the UK. Civilian administrators and the children and spouses of service personnel can be tried by SCC. The SCC can also deal with civilian contractors working for the armed forces on operations. The court comprises a single judge advocate. The SCC's powers are limited to 12 months imprisonment.

The Court Martial Appeal Court

The Court Martial Appeal Court is a separate division of the Criminal Appeal Court and hears all appeals from the Court Martial. It sits at the Royal Courts of Justice in London and has the same powers as the Court of Criminal Appeal.

SECTION ONE

THE INSPECTION REPORT

CASEWORK ADVICE, REVIEW AND DECISION MAKING

Early advice and consultation

- 1.1 HMCPSP's report of the inspection of the Army Prosecuting Authority (APA) published in June 2007 highlighted some uncertainties about the circumstances in which early advice could be sought from the APA by the Special Investigations Branch (SIB). Although there was a protocol dealing with the issue between the APA, ALS and the SIB, few investigators were aware of it. A follow up inspection undertaken in November 2008 showed an improvement in the situation in response to a specific recommendation in the original report.
- 1.2 Since then, the level of early consultation between the SPA and the Service Police has continued to increase. It has been given new impetus by the provisions for direct referral to the SPA, rather than through the commanding officer, in the more serious cases. There are well established direct lines of communication between the three branches of the Service Police and the SPA as well as a formal system for requesting initial advice from the SPA.
- 1.3 We examined a selection of early advices to the Service Police. The quality of the advice is very good. Requests set out the circumstances of the case and issues on which advice is sought. The advice is given clearly and addresses the specific issues raised by the Service Police and any other relevant points identified by the prosecutor.
- 1.4 A duty prosecutor is available at all times outside normal working hours to provide telephone advice to investigators. Early consultation regularly occurs in the more serious investigations and has included an early visit to the scene of a homicide. Nevertheless, the SPA and the Service Police recognise that the facility of early advice and consultation could be used more widely and are taking steps to address this despite some of the practical and geographical difficulties.

The quality of decision-making

- 1.5 The quality of decision making is sound. The decision in 93 out of 96 cases accorded with the evidential test of the Code for Crown Prosecutors (the Code). The decision accorded with the public and Service interest test in 91 out of 92 cases. The charges directed were appropriate, enabled the proper presentation of the case and allowed the court sufficient sentencing powers in 54 out of 56 relevant cases. There was compliance with relevant policies in all instances.
- 1.6 The quality of investigation and case building by the Service Police is generally very thorough. There are occasions, however, when further information or evidence is required. Prosecutors are proactive in identifying these instances. There were 40 cases in our sample in which further information was required. It was identified and requested in each case.
- 1.7 This process is assisted in the UK by having three Service Police liaison officers – a Warrant Officer from the Royal Military Police, a Master at Arms from the Royal Navy Police based at Northolt and a Royal Military Police

Warrant Officer located at Rochdale Barracks. They use their contacts in their respective forces to ensure that enquiries progress as quickly as possible. The RAF has a slightly different system. A lawyer with the RAF Legal Service is assigned to the RAF Police to act as liaison.

- 1.8 In a small number of cases, we considered that there was a suggestion of risk averseness or excess of caution in the approach to decision-making. This was most noticeable in cases of violence where minor inconsistencies in the evidence of some witnesses, which are a general feature in unexpected violent incidents, were seen as being potentially fatal to a successful prosecution. It was illustrated by two of the cases referred to above where we considered the decision did not comply with the code evidential test.
- 1.9 Once charges have been directed, cases usually proceed to trial on the original charges. There were three cases in our sample in which a plea was accepted to a lesser charge. In each case, the circumstances justified the reduction and it followed appropriate consultation.

Discontinuance

- 1.10 The standard of decision-making and case analysis means that few cases are formally discontinued after charge. There were three cases in our file sample where charges were discontinued. In one instance, the proceedings related to some of the accused in a multi-handed case. The decision to discontinue was correct in each case and followed a change of circumstances affecting the original decision.
- 1.11 Despite, or because of, their rarity, discontinued cases are looked at individually. Apart from cases where there has been a change of circumstances relating to the nature of the case, a minority are the result of a different view being taken following a change of prosecutor. The SPA ensures, when this occurs, that the court is notified immediately and then investigates the circumstances to learn any lessons.
- 1.12 Although no specific data is kept in respect of such cases, the prosecutor's report which is completed at the conclusion of each case, deals with the issue and allows opportunity for any lessons to be learned. The UK business support manager is currently working on a system which will combine UK and Germany case data to make it easier to monitor and analyse issues in discontinued cases and other case outcomes.

Allocation of cases and specialisms

- 1.13 All cases referred to the UK unit are seen initially by the Deputy Director Service Prosecutions (DDSP). The DDSP allocates the file to one of the three teams, taking account of current caseload and any specialist expertise required. Each team is assigned one of the three specialist areas of casework: fraud, sexual offences and computer pornography. Managing Prosecutors allocate cases within teams. Prosecuting officers deal with cases from any of the three services unless there are circumstances which make individual service knowledge advantageous.
- 1.14 In Germany, where there is only one team, cases the Managing Prosecutor allocates all cases and ensures that cases requiring specialist attention are allocated to individuals who are regarded as having appropriate experience and expertise.

Rape and other serious sexual offences

1.15 Although the SPA aims for continuity of case ownership, four lengths of prosecutors and other factors do not always ensure that cases are dealt with throughout by the assigned specialist. This may be less essential in cases of fraud and internet crime but there are more compelling issues relating to the handling of rapes and serious sexual assaults.

1.16 Following recommendations in a joint thematic report on rape conducted by Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, the CPS have fundamentally overhauled the way these cases are dealt with compared to less sensitive crime. All prosecutors handling rape files must be trained specialists. The CPS Policy Statement on Rape, included in the SPA Legal Guidance document, emphasises the importance in rape cases of:

"building cases, rather than merely identifying their evidential weaknesses. A proactive approach to prosecuting is what is required of prosecutors, and this perhaps represents a cultural shift".

1.17 For the SPA, the issue is not one of legal knowledge or experience. The cases involving allegations of serious sexual offences in our file sample showed a clear and logical approach to decision-making. However, it is no longer the case that simply being a lawyer with great experience of the criminal law and casework is sufficient of itself to be able to handle rape cases appropriately. The prosecution of rape and serious sexual offences imports other considerations to ensure that cases are dealt with sensitively and with appropriate empathy. The Bar and the Judiciary have accepted this approach and all who prosecute or try these cases must have undertaken the same training.

1.18 Managers within the SPA have accepted the principle that prosecutors handling rape cases should be appropriately trained. Some cases within the file sample gave some indication that the need for properly trained specialists within the SPA should be prioritised. Although development of officers may be inhibited by such issues as tour length or location, it is important that potential specialists are identified and trained urgently. At the time of our inspection, no officer had attended a CPS course although arrangements were in progress. Two officers have since attended and two more will attend a course in November 2010. The SPA should ensure that it can always deploy sufficient officers trained as specialists, because of that we make the following recommendation.

PRIORITY RECOMMENDATION

The SPA should identify prosecutors with the appropriate skills and experience to become rape specialists and ensure that their training is targeted to developing this specialist expertise including attendance on an appropriate course.

Recording of casework decisions

- 1.19 The decision in each case is recorded by the prosecuting officer in a written case analysis. These are very detailed and contain a summary of the evidence, an assessment of the strengths and weakness and the reasons for the decision. Prosecutors also discuss ancillary matters such as the vulnerability of witnesses and the need for special measures, and bad character or hearsay evidence. We assessed the case analyses within our file sample as excellent in nine cases, good in 70, fair in 15 and poor in only one case.
- 1.20 Every case analysis is checked by another, usually senior, officer. In many cases, the process of supervision is more than just a re-read of the case by the supervisor. It often involves discussion of the case and issues between the reviewer and supervisor. These are not always recorded in full on the file, nor would we expect them to be. We would, however, expect there to be some indication that a discussion had occurred and evidence of the supervisor's considerations attached to the case analysis in order to justify and verify the process.
- 1.21 We found evidence of the checking in only 54 out of 62 cases. Evidence of checking varied between a simple acknowledgment and signature and a detailed endorsement of the views of the checking officer. Although the thoroughness of the checking tended to equate with the complexity of the case, there were two cases in which an apparent difference of view was reflected in the letter to a victim but was not recorded on the file.
- 1.22 Having regard to the significance of the case analysis and the importance attached to supervision in the overall process of decision making, a more consistent approach in recording that supervision should be adopted. Even where there is complete agreement with the review decision, the supervising officer should highlight the criteria which have influenced the decision so that it appears as more than just rubber-stamping.

RECOMMENDATION

The SPA should devise a consistent approach to recording supervision and checking of the case analysis which indicates that the relevant factors in the decision-making process have been considered and properly evaluated.

- 1.23 These issues should not detract from the quality of the case analysis and its value in the overall review process and case management. We believe that the case analyses continue to be a strength in the prosecution process.

Strength

The quality of the initial case analysis provides a detailed record of the strengths and weaknesses of individual cases and is a valuable tool in the review process and management of the case.

Timeliness of decision-making

1.24 The SPA has a self-imposed target of 30 days between referral of the case and decision in all types of offence. This is achieved in most cases but there are clearly some offences such as high tech crime cases, JPA¹ frauds and homicides with complex operational law issues which will require greater attention and time. Although there is an expectation that the less serious and complex cases will be dealt with sooner there are no “graded” limits within the 30 days for minor offences.

1.25 The following table shows in percentage terms the SPA’s case handling times in days from referral to decision for 2008 and 2009.

	0-30	31-60	61-90	91-120	121-150	151-180	180+
2008	62%	18%	12%	4%	2%	1%	1%
2009	67%	24%	7%	1%	1%	0%	0%

1.26 The table clearly shows improvements in overall timeliness with 91% of cases being dealt with within 60 days in 2009 as opposed to 80% in 2008. This is an impressive achievement but it clearly brings added pressure in casework handling.

1.27 Within our file sample, there were examples of simple public order and minor assault and theft cases taking longer than the 30 days. In the more serious cases, the average time from referral to decision was 29.3 days with variations between 2 and 108 days. The average time in JPA frauds was 42.3 days with variations between 15 and 97 days. In volume crime, the average delay was 23.9 days with variations as wide as one day and 150 days.

1.28 In the UK, delay in individual cases is monitored at the weekly case management meetings conducted by the DDSP and attended by the Managing Prosecutors, Chief of Staff, Service Police liaison officers and trial arranger. The DSP also attends these meetings when he is available. Cases over 30 days are more closely monitored and enquiries made of the MPs into reasons for delay. Delays are influenced by prosecutor’s other commitments, such as leave and courts. Cases where further evidence is awaited are expedited by the Service Police Liaison Officers.

1.29 The meetings are helpful in providing a spur to action in some cases. However, in order to ensure that cases are dealt with promptly, there is a need to take a consistent and proportionate overall approach to the monitoring of delay which takes account of case types and reflects the nature and complexity of individual cases.

PRIORITY RECOMMENDATION

The SPA should take steps to reduce overall delay in the decision-making process by adopting a more proportionate approach to monitoring delay between referral to the SPA and the decision. Targets should be set in individual cases according to agreed timescales for offence types.

¹ The Joint Personnel Administration system (JPA) is a computer system which allows all service personnel to make claims and receive payment electronically for expenses incurred as part of their duties.

Custody cases

- 1.30 Unlike the civilian criminal courts where the CPS has specific responsibilities for monitoring cases where an accused is detained in custody, the SPA is not directly concerned with such cases.
- 1.31 Cases where the accused is detained in custody relate largely to AWOL or desertion cases. Unlike the civilian criminal justice system, the question of custody is not a matter for the prosecuting authority but is a decision of the commanding officer who will take advice from the Army Legal Service advisory branch. The CO may authorise custody before charge for 12 hour periods up to a maximum of 48 hours. Thereafter custody must be authorised by a judge advocate for a period not exceeding 96 hours, after which custody must be further reviewed. After charge, custody must be authorised by the judge advocate, again subject to periodic review. The commanding officer is represented at custody hearings before and after charge by advisory branch and not the prosecuting authority.
- 1.32 Where a referral to the SPA relates to a custody case, the file is clearly marked as such and specifically monitored for timeliness. None of the cases within our file sample gave us any concerns in this respect.

THE MANAGEMENT, PROGRESSION AND PRESENTATION OF CASES AT THE COURT MARTIAL

Case progression

- 2.1 Once a decision has been made to direct trial by Court Martial, cases progress quickly. The Military Court Service is notified and a Plea and Case Management Hearing (PCMH) is fixed. The standard of case preparation at direction is such that the SPA is generally prepared for the hearing. Special arrangements are made to fast-track offences of being absent without leave (AWOL) and these are usually disposed of at the first hearing.
- 2.2 Following the PCMH, the SPA trial arrangers in the UK and Germany receive a copy from the court of all directions and orders made. These are followed up and monitored. The compliance level is high. The MCS have introduced a system of compliance reports which warn the SPA or defence as appropriate that a hearing will be fixed for mention if compliance is not timely. There is no section on the file for recording court hearings but the SPA receives a full transcript of the PCMH and other proceedings. This is attached to the case file as a complete record of events.
- 2.3 The standard of file housekeeping is consistently good. Correspondence is dealt with promptly in both offices. Applications to the court, for example for special measures for a witness or to admit hearsay evidence, are drafted accurately and appropriately. Case conferences, telephone calls and case discussions with investigating officers are recorded properly.

Strength

The standard of file housekeeping and correspondence handling are consistently good.

Prosecuting cases in court

- 2.4 The widespread locations of court centres in the UK impact upon the arrangements for the allocation of lawyers to courts. In the UK there are regular Courts Martial held at Bulford, Catterick, Colchester and Portsmouth, all of which are a significant distance from the SPA offices in Northolt. Courts are held less frequently at Plymouth, Alder Grove in Northern Ireland and on military bases in Scotland. In Germany the new Court Martial Centre at Sennelager is more conveniently located. Courts can be held anywhere in the world where there is a UK military presence. These instances are, however, rare.
- 2.5 The trial arranger, who is responsible for allocating lawyers for each court, will endeavour to send the case lawyer to intermediate hearings although practical difficulties, including distance, often make this impossible. It is also acknowledged that it is an inefficient use of resources to send more than one prosecutor to the same court.

- 2.6 To address these practical problems, the SPA, along with the Military Court Service and the office of the Judge Advocate General, have promoted the use of hearings conducted via video link between the court and SPA headquarters. This allows case owners to be more proactive in management of their cases. Court observations verified the benefits of this. It is not unusual to have video links between three different locations to accommodate the defence as well. Some minor technical difficulties following the move to the new SPA headquarters have caused some disruption but the situation is improving.

Case ownership

- 2.7 Staffing arrangements and working patterns can make continuing case ownership difficult, particularly in the more serious and complex cases. Where necessary a comprehensive “handover” document is usually prepared which deals with potential issues. Care is taken to ensure that trials are prosecuted, wherever possible, by the case owner, although there may be some cases where a prosecutor with greater experience may be required for a particular trial. When assigning prosecutors to courts, the trial arrangers are assisted by assessments recorded in the case analysis by the supervising prosecutor about the level of experience (rather than the individual) required to handle the case depending on whether it is to be contested or not. The MCS is increasingly taking account of case ownership in arrangements for listing trials.
- 2.8 Greater consideration should be given to continuity in respect of serious sexual cases to take account of the assigned lawyer’s tour of duty. One such case in our file sample had passed between four prosecutors. The individual reasons for transferring the case, which included the prosecutor’s reassignment, were valid at each stage. However, one lawyer, who was later reassigned, had met with the victim and established a rapport. This was lost. The time which these cases naturally take to come to a conclusion means that such occurrences are not completely avoidable. However, officers’ reassignment, and other factors, which can impact on case ownership, need to be carefully considered when cases are allocated.
- 2.9 Prosecuting officers are assisted in court by assistant prosecuting officers who are lay members of staff; the assistant helps with the late preparation and copying of documents, and provides assistance with witnesses. The more experienced ones provide valuable procedural advice to less experienced prosecutors. This role is sometimes taken by a newly inducted lawyer and provides a learning opportunity.

Training and induction of prosecutors

- 2.10 The high guilty plea rate affects the trial experience of all prosecutors. Some new officers may have to wait several months to conduct a trial. Most prosecutors will have early experience of plea and case management hearings and uncontested hearings, but the few opportunities for trial advocacy affect their development. The uncertainty with which some prosecutors approach trials was reflected in some files by evidence of a degree of over preparation.
- 2.11 Senior managers have long been aware of the issues and are making efforts to improve the process of induction in a number of ways which include the newly devised training programme. Recently agreed arrangements allow new prosecutors in the UK to spend a fortnight or so sitting with a District judge in a local magistrates’ court observing the proceedings. Other arrangements allow

them to spend a short time prosecuting in a CPS office or undertaking a mini pupillage with London Chambers. This is a positive approach but is currently only available to prosecutors in the UK.

Cracked trials

2.12 The high rate of guilty pleas includes a number of late pleas, some of which occur on the day of trial causing the trial to crack. An accused may plead guilty to all original offences, sometimes on an agreed basis of plea or plead to reduced charges which are accepted by the prosecution.

2.13 These incidences are few but are frustrating for all court users, particularly witnesses who may have travelled a long way and for whom elaborate arrangements may have been made to ensure their attendance. These will inevitably attract judicial comment and the SPA is keen to learn any appropriate lessons from those cases in which the result might have been avoided, for example by an earlier discussion of whether a plea to reduced charges might be acceptable.

2.14 The SPA does not maintain data on cracked trials although individual cases are reviewed where issues arise. The prosecutor’s report provides a detailed account of events at the final hearing as well as commenting on other aspects of case management. They are full, detailed and frank in their assessment of where any blame may lie. The proposed unified system of data collection for the UK and Germany will provide the SPA for better information in respect of cracked trials and other case outcomes.

The quality of advocacy

2.15 Throughout the inspection, we attended as many Court Martial hearings as we could to reflect all aspects of advocacy, as well as visiting different court centres. We were frequently frustrated by contested trials turning to guilty pleas at a late stage, sometimes on the day set for trial. Although these could not have been anticipated by the SPA, they demonstrate the difficulties in arranging trial experience for prosecuting officers as well limiting our opportunities for observations.

2.16 We observed 11 prosecutors. Our assessments are largely based on part hearings of trials, sentencing hearings and some adjournment hearings although the last can be quite demanding on the prosecutor in some instances. We saw no examples of exceptional advocacy – opportunities were few – but neither did we see lawyers who were less than competent. Our assessments are shown in the following table.

Advocacy Standard	Number achieving the standard
1 Outstanding	0
2 Very good, above average in many respects	0
3+ Above average in some respects	5
3 Competent in all respects	3
3- Technically competent but lacking in presence	3
4 Less than competent in many respects	0
5 Very poor, entirely unacceptable	0

- 2.17 The Court Martial is a difficult environment in which to learn basic advocacy skills. All cases have to be prepared to a consistently high standard. The advocate must possess knowledge of criminal and military law. Judge Advocates expect the prosecutor to have a detailed knowledge of the cases they are presenting together with an ability to advise the court on sentencing provisions and other matters of law and procedure.
- 2.18 We were told by other court users representing partner agencies that over the last twelve months advocacy skills have ranged both above and below what is regarded as an acceptable standard. Some prosecutors were described as outstanding whilst others were said to lack appropriate experience for the case they were handling, particularly in respect of skills such as cross examination or dealing with unanticipated issues. Our own observations confirmed these comments to some extent.
- 2.19 The SPA advocacy course provided a good starting point for an inexperienced criminal lawyer but the timing did not always coincide with the arrival of a new officer. Moreover the opportunity to deal with a contested case came many months after attendance on the course. Advocacy monitoring has been limited and insufficiently targeted at those who would benefit from the advice of a mentor. Recent developments in the approach to the training and monitoring of new SPA prosecutors are dealt with at paragraphs 5.10 and 5.11

THE SERVICE TO VICTIMS AND WITNESSES

The commitment to witness care

- 3.1 The SPA's responsibilities towards victims and witnesses are set out in the Code of Practice to be provided by the Armed Forces to Victims of Crime which is modelled on the equivalent Home Office Code. The SPA are also signatories to the Prosecutors Pledge and signatories to the Prosecutors Convention. The Code represents the minimum standard of service which is to be applied across the service justice system. The SPA's responsibilities include notifying victims or their families of key stages and events throughout the prosecution process and, where appropriate, meeting with victims or their families to explain their decisions. The Code also deals with special measures applications and engagement with witnesses at court and after the conclusion of cases in accordance with the Prosecutor's Pledge. The Code of Practice is generally applied although there are some aspects which could be improved.
- 3.2 These issues are all set out in the SPA Legal Guidance which has separate sections distinguishing between specific duties of care to victims of crime and responsibilities to witnesses generally.

Meeting the needs of victims and witnesses

- 3.3 Overall, the treatment of victims and witnesses is good. File analysis showed that the needs of victims and witnesses are considered at an early stage and recorded in the initial case analysis. Special Measures were properly considered and later applied for correctly in all three of the cases where this was appropriate. Victims were kept informed of case progress including the decision whether to direct in 24 out of 26 relevant cases; meetings were offered in all five cases where this was required.
- 3.4 There were some examples of exceptionally good witness care. In one sensitive case where initial contact with the victim was by telephone, the prosecutor, immediately on learning that she was to be reassigned, arranged to meet the victim that same day at a police station some distance away in order to explain the reasoning behind his decision.
- 3.5 During the trial preparation stage a victim personal statement was obtained in 14 out of 16 qualifying cases. The views of the victim were considered at relevant stages including when it was proposed to discontinue a case, or where the accused offered to plead guilty on an agreed basis or reduced charges, in four out of six cases. In one case, a meeting was held to discuss the meaning and effect of a Newton hearing (where evidence is heard on disputed facts following a plea of guilty). The victim's views directly contributed to the decision made to refuse to accept the basis of plea initially offered.
- 3.6 Victims are also notified of the result of cases in which they are involved. The quality of information provided was generally very good. Most letters showed appropriate sensitivity and explained events in some detail. They routinely contained practical advice, for example in relation to obtaining compensation, and offered further assistance where appropriate. Although we saw two files which contained letters which lacked appropriate empathy in some respects,

the general quality of letters to, and engagement with, victims reflects a professional attitude to victim care generally.

Strength

Letters to victims at all stages of case progress are appropriately detailed and show an empathy which reflects a positive attitude to victim care.

Victim and witness care at court

- 3.7 The administrative arrangements for securing the attendance of witnesses at court rest with the Military Court Service (MCS). This is sometimes a complex activity, often with witnesses potentially being anywhere in the world, and requires a practical appreciation of the logistical difficulties in securing attendance.
- 3.8 We were told of some lapses of communication by the prosecutor with the court about witness arrangements although none was represented in our file sample. While most prosecutors are aware of the need for accurate and up-to-date information, we were told that some are less perceptive and are not sufficiently responsive to requests for information from the MCS.
- 3.9 There are also instances where discussions with the defence to determine whether a witness needs to attend in person to give evidence either did not occur or occurred too late to prevent complicated arrangements for attendance. Prosecutors are not always proactive in phasing the attendance of witnesses in the bigger trials. The growing use of witnesses giving evidence by video link works well but relies on the prosecutor making timely arrangements.
- 3.10 The facilities provided for witnesses at court are without exception very good. Support from a local witness service office is arranged where necessary and this will be arranged even for cases heard outside the UK.
- 3.11 We observed and were told of good examples of prosecutors engaging with witnesses at court to explain court procedures and to keep them informed of events. A few prosecutors, however, show a reluctance to engage with witnesses despite this being a requirement of the Prosecutor's Pledge which has been adopted by the SPA and reinforced in the legal guidance. This responsibility is in any event undertaken by the Assistant Prosecuting Officers who are very proactive in looking after witnesses at court. However, contact between the prosecutor and witnesses does not conflict with the prosecutor's professional duties or their duties to the court. The failure by some to engage may be a legacy from the time when contact with witnesses was seen as compromising independence but this is no longer the case.

Strength

The pro-activity of Assistant Prosecuting Officers and the care they offer to victims and witnesses at court.

DISCLOSURE OF UNUSED MATERIAL

Disclosure performance

4.1 The SPA is generally fulfilling its obligations under the CPIA to disclose unused material to the defence. Initial disclosure was dealt with properly and in a timely manner in 15 out of 18 relevant cases in our file sample. The duty of continuing disclosure was properly carried out in eight out of nine cases and was timely in each instance. Often, however, the procedure is routine and is not undertaken in a challenging environment. This is something the SPA cannot always influence. The relatively low numbers of contested cases make defence statements and challenges to the prosecution's decisions on disclosure rare.

Timeliness of disclosure

- 4.2 A recent internal review of the handling of unused material identified some delays in dealing with initial disclosure. This was the result of the Service Police practice of sending schedules only when Court Martial was directed and arises from apparent inconsistencies in the Code of Practice dealing with disclosure procedures in service prosecutions.
- 4.3 In the civilian courts, disclosure is triggered by a plea of not guilty in the magistrates' courts or by committal or sending of the case to the Crown Court. In the case of service prosecutions, disclosure of unused material should occur in every case in which trial by the Court Martial is directed.
- 4.4 Article 6 of the Service Code of Practice on disclosure requires the service police disclosure officer to prepare a disclosure schedule in circumstances which include where trial at the Court Martial or Service Civilian Court is directed by the SPA. Article 7 of the Code requires the disclosure officer to provide the DSP with disclosure schedules prepared in accordance with Article 6. Article 7 further provides that provision of the schedules should be done "wherever practicable" at the same time as the service police report is provided (which is at the time of referral to the SPA) or "as soon as is reasonably practicable after it becomes clear that a charge is to be tried by the Court Martial" (which is essentially when a decision by the SPA to direct is made).
- 4.5 These two triggers for provision of the schedules might be interpreted as inconsistent although the words "wherever practicable" may be seen as limiting the circumstances in which the earlier disclosure might occur.
- 4.6 There are different views on whether articles 6 and 7 are incompatible and it is not our function to form an opinion in this respect. However, a decision whether to direct trial should be based not just on the available evidence but a knowledge of material or information that is likely to undermine the prosecution case or assist the defence.
- 4.7 When a case is referred to the SPA, the Service Police liaison officers immediately send a standard letter to the relevant service police force asking for standard documentation which includes the disclosure schedules and any relevant material. However, the delay in provision of the material means that some cases are directed and PCMH is held before initial disclosure can be

made. We saw no evidence, however, that this resulted in any unfairness or prejudice to the accused.

Sensitive material and public interest immunity

- 4.8 The service police provide confirmation when disclosure documents are sent to the SPA whether there is sensitive material relevant to the case or not. There were two cases in our file sample in which the sensitivity of particular material or information was an issue. In a homicide case which was not directed for trial, the reviewing officer was given access to sensitive information which was likely to have been the subject of an application to withhold its disclosure on grounds of public interest immunity (PII), had the case proceeded to trial. The nature of the material made the prospects of a conviction unlikely. In another case, potential issues of PII were resolved without application to the court to withhold being necessary. Both cases indicated an understanding of the issues around sensitive material.

The disclosure audit trail

- 4.9 Until recently it was the SPA practice to place disclosure documents with the rest of the case papers in the file. Our file sample confirmed that schedules and other documents were stored randomly, often mixed in with the correspondence and making location of a specific item problematic. In just six out of 18 cases were the documents stored in a separate identifiable bundle. We found a clear audit trail of disclosure (in that the correspondence accurately reflected the events) in only ten out of 25 cases.
- 4.10 However following a review of disclosure procedures a new system of file housekeeping has been introduced which includes the introduction of a file record sheet. Disclosure schedules and documents are now retained in a separate folder within the case file for easier location and reference. Although these changes were too recent to apply to the cases examined in the file sample, a random check of live files during the inspection showed a significant improvement.

Training and guidance

- 4.11 At the time of the current inspection, the CPIA had been in force in respect of service prosecutions for some two years and procedures were becoming more embedded. SPA managers themselves, however, have some concerns about less experienced prosecutors' understanding of the principles of disclosure and their duty and responsibilities in respect of unused material as training is not provided to service lawyers in this difficult aspect of the criminal law until officers commence their tour with the SPA. Some prosecutors were concerned that practical assistance in respect of individual cases was not always readily available and some had not had the benefit of any formal training because of other commitments. These uncertainties were more likely to result in unnecessary disclosure rather than withholding of material, however.
- 4.12 A number of measures have been taken to deal with the concerns. Some managing prosecutors carry out informal training with prosecutors to ensure they understand their responsibilities and there have been three formal training sessions provided by a CPS disclosure expert in the last 18 months. A recent joint training event with the three branches of the service police included disclosure as a topic to raise awareness among investigators' of the principles and their responsibilities. A prosecuting officer has been appointed as disclosure champion to co-ordinate the SPA approach to disclosure training and disclosure issues generally. Desktop instructions on disclosure procedure

are available to all prosecutors and the SPA Legal Guidance contains a comprehensive section on disclosure. Prosecutors also have access to the Disclosure Manual used by the Home Office police and the CPS.

LEADERSHIP AND MANAGEMENT

Strategy and planning

- 5.1 The Director of Service Prosecutions (DSP) was appointed in May 2008 and became head of the three service prosecuting authorities in January 2009 in readiness for the transition to a tri-service prosecution body to comply with the Armed Forces Act 2006. The DSP has delivered two business plans during his appointment.
- 5.2 The Service Prosecuting Authority (SPA) publishes an Annual Report and Business Plan; these are combined in one document. The report deals with performance in the previous year and sets out the targets and objectives for the next, although it does not detail how these will be achieved, identify the risks to achievement and there is no additional supporting documentation. The targets are discussed, monitored and progressed in the management board meetings but there is no delivery action plan against which progress is recorded.
- 5.3 The management systems and strategies reflect and are commensurate with the developing nature of the organisation. A key objective for 2009 was to create a tri-service philosophy which allowed the business to move over seamlessly. The objectives for the current year are directed at developing the supporting mechanisms for the delivery of business, such as training and reviewing the protocols and budget priorities; however, these are not measurable or time-bound. As the tri-service organisation embeds and the performance management framework becomes more sophisticated the SPA needs to develop targets and objectives relating to the delivery of core business which are captured in a way that enables progress and milestones to be recorded and measured.

RECOMMENDATION

The SPA should develop a business plan with objectives for delivery that are measurable and time-bound. This should be underpinned by: a delivery plan which is monitored on a regular basis and milestones recorded; and a risk register, identifying risks to delivery and appropriate countermeasures.

Change management

- 5.4 Change management has been handled well. The challenges posed by the move to a single service involved a major restructuring for each of the three former service prosecuting authorities as well as dealing with a new legal regime. This was followed swiftly by a move to new office premises. Both were managed largely by the SPA Chief of Staff, an Army officer, who acts as the SPA business manager. The transition to a single service was achieved smoothly; equally the move from RAF Uxbridge to new offices in RAF Northolt was completed successfully.
- 5.5 The way in which these major changes were tackled provides reassurance for the future management of the SPA. Although some aspects may not be as

sophisticated as they could be, this simply reflects the current position of the SPA in its development. The progress and achievements give cause for optimism that that development will continue.

- 5.6 Senior managers are keen to improve and look towards other prosecuting authorities for ideas as to how SPA casework and business can be better managed. They also recognise that there is a need to exercise caution because not all systems and processes developed elsewhere are suitable or transferrable to an organisation that prides itself on high quality throughput of a small caseload. This process of looking for best practice has been assisted by the appointment of a training manager on a one year secondment from the Crown Prosecution Service (CPS) who has assisted in establishing business contact between the two organisations in addition to undertaking a comprehensive review of training needs.
- 5.7 There is an awareness of risks to achievement of targets but these have not been formally identified or recorded and have tended to focus on the arrangements for provision of prosecuting officers by the three services. There has been no proper assessment of individual risks to delivery or identification of action and countermeasures to mitigate possible consequences. The inevitable budgetary pressures are an opportunity to develop a more rigorous approach to risk management.

Training and development

- 5.8 Many aspects of training and development have been positive with legal training on current relevant issues being delivered by respected and acknowledged authorities. The SPA has benefitted from the contacts the DSP developed and nurtured in the civilian world. The constructive relationship with the CPS has provided opportunities for attendance on legal courses and access to the CPS Prosecution College distance learning programmes.
- 5.9 The training manager has carried out a review of training and made recommendations for a phased programme of training for prosecutors. This is to be taken forward in October of 2010 with the appointment of an officer who will have responsibility for implementation of the programme. Although this is very positive, it is apparent that some training was put on hold where there were opportunities for quick wins pending the outcome of the review and some staff feel they have been overlooked in terms of training they view as necessary to perform effectively their role as prosecutors.
- 5.10 Advocacy training is delivered twice a year; this has been very effective and informs SPA managers about individual prosecutors' strengths and weaknesses. However, it needs to be supplemented with practical experience of court work to embed the learning. There are examples where the first opportunity to present a case was months after the initial training; early exposure to advocacy is vital to hone skills and build confidence.
- 5.11 The new training programme adopts a phased approach to advocacy induction dealing initially with advocacy in uncontested cases and later with trial advocacy. It can also be more flexibly delivered to fit in better with the arrival of new prosecuting officers. The programme has also built in a system of monitoring according to a competency framework similar to the National Standards of Advocacy adopted by the CPS and the private Bar. Prosecutors are to be formally assessed at the end of each stage of their advocacy training.

The training programme also acknowledges the importance of assessment as part of performance management and sets out a requirement for regular audited assessment by managing prosecutors which will include feedback from partners in the service justice system.

- 5.12 The SPA is now running an induction course every six months. The induction process is sometimes frustrated by the timing of courses and some prosecutors are well into their tour before attending the advocacy course. The SPA and the three Legal Services should work together to co-ordinate where possible assignment of officers to the SPA so that the benefits of the improved induction arrangements can be maximised. This would aid the efficient deployment of staff both at the time of their assignment and subsequently.
- 5.13 In the UK, prosecutors have the opportunity to attend local magistrates' courts and the Crown Court to observe advocates and some opportunities to marshal for the judiciary. Although procedures are different from those in the Court Martial, this provides the opportunity to observe the variety of advocacy styles and a significant number of prosecutors. They also have the opportunity of doing mini-pupillages at the Bar or spending a short period in a CPS office which includes prosecuting in the magistrates' courts, in particular summary trials. This is not available to new prosecutors who are assigned immediately to Germany although other arrangements are being considered.
- 5.14 It would be helpful in the induction and development of all new prosecutors if they were to spend at least the first month of their tour in the UK. This training can then be built upon in Germany where ultimately they will be exposed to more testing advocacy in the most serious cases the SPA prosecutes. Desk side training and development on analysis of cases is not utilised and there is limited use of mentoring.

PRIORITY RECOMMENDATION

The SPA should make arrangements, where possible, for all first tour officers to spend their first month at SPA(UK) in order to enhance their induction which will include observation/participation in civilian court procedures and include mini-pupillages and CPS secondments where appropriate.

- 5.15 The DSP undertook a personal comprehensive induction programme to become familiar with the roles of each service and to gain awareness of general service issues and the service context. The DSP has continued to engage with the chain of command in each service. He provides advice in more serious cases and is ready to provide advice and assistance to all prosecutors on aspects of casework.

Communication and corporacy

- 5.16 Although senior managers understand what needs to be delivered, the message to staff is not always clear; this has resulted in inconsistencies of approach across the organisation. Staff are fully aware that there is a tri-service approach and that independence is sacrosanct. However, staff are not fully aware of the aims of the organisation, and some believe the military role has primacy over their professional legal duties. The DSP encourages a climate of

openness and self criticism but, at times, the rank structure and the progression in terms of the military legal services can be impediments to this.

- 5.17 The SPA management team has regular meetings to discuss and monitor performance and other issues; although these meetings are recorded, the minutes are not circulated to all staff. There is an expectation of dissemination of key messages by line managers but this is not consistently done. Some teams hold prosecutor meetings; however, where they are held they are irregular, infrequent and no formal record is kept. Those lawyers whose commitments prevent their attendance have no mechanism to learn of events subsequently. Other teams do not have meetings although the managing prosecutors and team leaders make themselves available to staff. There are regular administration team meetings which are minuted.
- 5.18 There is some reliance on the smallness of the office in both the United Kingdom and Germany to ensure that messages are circulated; however, the dangers in such dependence give rise to the “rumour mill” and the assumption staff are fully aware of all key issues which is not always the case. E-mail is often used as a means of communication on significant messages and is sent to all staff.
- 5.19 There is some degree of separation and lack of corporacy between the units in the United Kingdom and Germany caused largely by geographical considerations. The video link is used to encourage inclusiveness and senior managers visit the unit in Germany but time and budgetary considerations impact on this; these methods have not fully overcome the feelings of exclusion.
- 5.20 The inconsistency across the teams extends to the ad hoc approach to learning lessons. There is no formal mechanism within a team and across the organisation to learn lessons from casework to drive improvement. One team has a float which incorporates the case analyses of the team enabling some learning from casework by others. In all cases a prosecutor’s report is produced after each hearing, these are detailed and a valuable tool in learning casework lessons; however, little use is made of them and they are rarely disseminated. Junior prosecutors would particularly benefit from the sharing of detail about decision-making, the tactical approach and how this impacted on the eventual outcome of a case.

RECOMMENDATION

The SPA should take a more proactive approach to communication and develop a consistent strategy which ensures that information, including casework lessons, is disseminated to all appropriate staff.

- 5.21 Good performance by staff is highlighted on an individual basis. The performance appraisal system is used to discuss performance on a formal basis and feeds into and forms the basis for the appraisal system for the military legal services.

Ethics, behaviours and values

- 5.22 There is a general awareness of equality and diversity issues and of dignity at work principles. Senior managers are aware of their responsibilities and staff at

all levels treat each other with respect. Equality has not been specifically addressed in any strategies or plans and is dealt with through the chain of command based on the expectations and understanding of officers under the rank structure. There have been one or two minor issues between prosecutors and support staff but these have been resolved informally. A recent formal complaint has now been settled.

MANAGING PERFORMANCE

Performance management systems and processes

- 6.1 The SPA has no formal internal structure in place for assessing its performance and only limited performance data is available. Casework and performance data is currently restricted to caseloads, case types, case handling times and some case outcomes. The data that is available is not broken down by unit or team. Timeliness of decision-making and case progress is considered at management board meetings but performance is not regularly discussed within the teams and there is some lack of awareness about performance amongst staff.
- 6.2 The performance data that is available does not of itself provide an effective means of learning lessons from casework and there are no formal mechanisms for learning from experience across the organisation on day-to-day service delivery and casework handling.
- 6.3 Managers are aware of some performance issues. Managing prosecutors are aware of individual cases through the weekly case management meetings and discuss cases with prosecutors. If particular issues arise at court, they will be reported back to the appropriate managing prosecutor but there is no certainty that they will be disseminated throughout the SPA. The prosecutor's reports completed, at the finalisation of a case, provide a useful learning tool but they are not used consistently in this way.
- 6.4 A more comprehensive suite of data is required which would take a more analytical approach to casework outcomes and take account of joint performance issues, enabling trends to be captured and benchmarking of performance. The SPA business support manager in the UK is currently working to combine the casework information from UK and Germany cases in a single database. This will allow more detailed information on particular case outcomes as well as the more basic information on results that is currently captured. However, this needs to be accompanied by a process of analysis which allows casework lessons to be drawn from the data. More formal structures are needed to facilitate discussion and effective casework management within and across the teams, and with service justice partners where appropriate.

PRIORITY RECOMMENDATION

The SPA should consider the performance information it needs to form a comprehensive suite of information to improve its performance and to inform its discussions with its service justice partners.

- 6.5 There are some examples of using internal review and process examination to learn from experience; this was driven by the move to a tri-service authority. However, more work is required to assess systems and processes to improve

performance; the SPA has looked to the Crown Prosecution Service (CPS) in some instances for a solution.

- 6.6 It is unclear whether there is any formal check on the accuracy of data but data is basic and numbers are small. There have been some issues in Germany over the operation of Axxia to the extent that it has not been used for some time. The trial arranger used his own system which can produce casework data but its capabilities are limited. The two systems are now being standardised and all data will be produced centrally in the United Kingdom.

Individual performance management and quality assurance

- 6.7 Senior managers have a clear view of what should be delivered and managers' roles and responsibilities are clearly defined; this is based on the principles of the chain of command although there are no written expectations and standards. There is some evidence of a bias towards casework management in some individuals rather than other performance and personnel management issues.
- 6.8 Management responsibilities are assigned according to rank rather than individual prosecutor ability and experience. Although this has not presented as a significant concern, it has the potential to cause an issue where the senior rank has limited prosecutorial experience and is responsible for supervising and counter-signing decisions.
- 6.9 Performance appraisal is undertaken in accordance with the officers' joint appraisal review (OJAR) process. The foundation of the appraisal system is the development of the individual as an officer in the services and, within the SPA, looks at individual aspects of prosecution work. Officers are given a mid point appraisal report which looks at strengths and weaknesses; this provides an opportunity to address shortcomings before the OJAR is completed. Administrators are also appraised according to a formal annual system of appraisal and are set individual objectives.
- 6.10 The quality of casework supervision and the need to ensure a consistent and proportionate approach to monitoring the time taken between referral of a case to the SPA and the decision are referred to in Chapter 1. The need to ensure early training for advocates is referred to in Chapter 2.

Joint performance management

- 6.11 The liaison structures between the SPA and service justice partners are becoming more formalised, for example the meetings between the Director of Service Prosecution and the Judge Advocate General, and the inaugural conference involving the service police and the SPA which was held in Germany. However, some communication, particularly at a lower level is more ad hoc and could be improved. Individual units would like more information about case progress whilst decisions are awaited, to take account of the dual role of welfare as well as discipline undertaken by commanding officers.
- 6.12 Some performance data limited to caseload and case outcomes is published in the SPA annual report and as such is available to partners but is not used in any joint performance management meetings. There are no formal mechanisms to discuss joint performance or lessons learned with partners, that is the service police, the Court Martial centres and the three legal services. The different service police organisations report that they would welcome more

detailed analysis and face –to –face discussion of adverse outcomes as an opportunity to learn lessons for future investigations. Such scrutiny may also inform further potential joint training opportunities.,

RECOMMENDATION

The SPA should establish a joint performance management structure to facilitate the sharing of performance data, discussion of lessons learned for continuous improvement and the identification of best practice with partners.

6.13 There have been recent attempts to improve file quality by holding a joint training workshop with the service police. This was very well received by all participants and future activity is being planned. Consideration may need to be given to splitting the strategic analysis from the operational instruction to ensure the right messages are received by the appropriate individuals. The RMP have found the recently prepared Service Prosecution Legal Guidance a useful reference tool and the SPA Guide to the Investigation and Prosecution of JPA Fraud was prepared in consultation with the Service Police.

RESOURCING THE SPA

Managing financial resources

- 7.1 The SPA is funded as part of the general defence budget. In 2009-10, the SPA's budget was £4,973,000. The budget is devolved to the SPA by the top level budget holder which is the Management Group of the Deputy Chief of the Defence Staff (Personnel) - DCDS (Pers) within the Ministry of Defence. The DSP has fully delegated powers of spending to meet the SPA's budgetary requirements in line with departmental and government financial regulations. There is no further devolution of budget within the SPA.
- 7.2 The SPA budget is subject to financial transfers from each of the three services for the first four years of operation. However, this has led to an actual underfunding to the extent of £175,000 per annum. In the financial year 2009/10, much of this was absorbed by cutting back on subsistence allowances. Officers prosecuting Courts Martial are required to stay at the nearest mess accommodation if available. Hotel accommodation is allowed only in restricted circumstances.
- 7.3 The SPA finance manager advises the DSP on departmental financial regulations and monitors spending to make the best use of the devolved budget. The financial manager also produces monthly budget forecasts which are considered by the SPA management board. The forecasts highlight any aspects of spending which exceed or are likely to exceed the delegated budget, setting out reasons for the overspend and any planned remedial action.
- 7.4 The majority of budget is staff salaries (92%). Travel allowances amount to some 2% but further savings are being sought by increased use of video link to Court Martial centres for some PCMHs.
- 7.5 During the financial year, a number of financial controls were placed on the SPA by the MOD Management Group as a result of a predicted top level budget overspend. This principally affected travel arrangements and had a knock-on effect on the management of the Germany unit. Commercial air travel was restricted. The alternative of taking an available troop flight takes managers and other personnel away from their normal duties for four days rather than the two they would normally require. Although this is not cost effective in management terms, the restriction continues despite representations from the SPA.
- 7.6 Budgetary performance in the same financial year was further affected by the failure of the Land Forces (Army) to transfer salary costs from its budget to DCDS (Pers) for the SPA. This resulted in a notional underspend of some £2.7 million as opposed to the projected underspend of £27,000. In addition, no provision was made for the transfer to the SPA of training responsibility for prosecuting officers from the three former prosecuting authorities.

Management of staffing resources

- 7.7 The SPA is provided with prosecuting officers by the three Service Legal Services and does not have full control over its manpower provision. It is

essential to the effectiveness of the SPA as a prosecuting authority that it can provide experienced prosecutors to handle criminal casework (including specialist casework) and advocacy in a professionally demanding environment.

- 7.8 Arrangements for recruitment and training of legal officers vary between Services. Officers from the Naval Legal Service are recruited as naval officers. Those identified as being suitable are offered the opportunity to become barristers within the legal service. This involves undertaking pupillage in a civilian chambers which includes advocacy experience.
- 7.9 RAF and Army Legal Officers join their respective legal services as qualified lawyers on short service commissions – four years for an Army officer and six for an RAF officer. Their background and experience varies. If they aspire to longer commissions (four years for an Army Officer and six years for an RAF officer), they must have wider experience in all aspects of service law. Competition for longer commissions is fierce. This places a duty on the individual legal services to ensure that officers gain the wider experience they will need. It also affects the length of time they can undertake in any particular discipline.
- 7.10 Each service has to develop its lawyers as officers able to handle all aspects of service law. These are wide ranging. They include operational law which is currently of particular significance as well as aspects of the general civil law such as employment and matrimonial work in addition to criminal advocacy.

Assignments to the SPA

- 7.11 A tour of duty with the SPA is regarded as a demanding and challenging assignment. Many officers do not want to undertake prosecution work but view it as a necessary part of their development. Most, however, find the experience rewarding and the working environment friendly and encouraging.
- 7.12 The length of an officer's assignment within the SPA varies according to the particular arrangements with each Service and affects the ability of the SPA to train individual officers to the required competency as a prosecutor. Some have no experience of criminal law or advocacy. Consequently, the training needs of officers joining the SPA for a first tour vary.
- 7.13 Responsibility for training of all prosecuting officers is that of the SPA. In the case of most if not all other assignments in the services, officers are trained prior to taking up their assignment so that they are able to assume their new duties immediately. Officers come to the SPA on a first assignment without any training in prosecution work or advocacy other than that which they may have gained prior to their becoming an officer.
- 7.14 Training starts immediately upon joining the SPA although it may be some months before officers are able to undertake formal advocacy training. The process of training takes up work time of both the trainee and the trainer and, as such, impacts considerably on available resources. Legislative changes to the general and service criminal law which include the disclosure provisions of the Criminal Justice Act 2003 have increased training demands. Officers who have already undertaken a tour with the SPA require retraining according to the extent of their previous experience as a prosecutor and any changes in the criminal law since their last tour. This reinforces the case for longer tours.

- 7.15 The length of individual tours is also a factor which impacts on the overall effectiveness of the SPA. The Services provide the SPA with a mix of barristers and solicitors, and in the case of the latter some have limited or no advocacy or criminal law experience. Army and RAF officers can initially be assigned to the SPA for periods ranging between 12 months and three years. Naval officers will normally complete a one year tour but the Naval Legal Service has agreed to provide a managing prosecutor for four years.
- 7.16 Some officers, however, are reassigned before completion of their tour with the SPA. For example, three officers provided by the Army Legal Service were recently reassigned before completing their agreed tour – two after eight months and one, on a three year assignment, after 20 months. There are no doubt cogent reasons for reassignments but the uncertainty makes it difficult for the SPA to plan and manage its resources efficiently.
- 7.17 A further issue relates to the staffing arrangements for prosecutors at SO2 level who are essentially officers at the middle rank within teams. Out of an establishment of eleven such posts, two are currently being held vacant, and five are at acting rank which means they are in effect first tour prosecutors rather than those with previous experience.
- 7.18 The Army is the biggest provider of prosecuting officers. The ALS provides an assignments forecast on a regular basis which sets out proposed assignments for all legal officers including those to be assigned to the SPA. This is subject to negotiation between the ALS and the SPA. The ALS tries to accommodate the specific requirements of the SPA which may relate to length of tour, experience of individuals and location. However, it must also balance this with other considerations such as the wider requirements of the ALS and the development and wishes of individual officers. Individuals may indicate their own preferences but this is only one factor, and not necessarily the prime one, for consideration.
- 7.19 Understandably the SPA wants to develop a professionally effective group of prosecuting officers. This requires individuals building up experience and ability over a number of years. Some will not be suitable and there needs to be a mechanism for identifying and reassigning these individuals at an early stage. A protocol has been drawn up by the SPA to tackle these issues and specify agreed tour lengths. As yet arrangements have not been finalised and may in fact have been abandoned.
- 7.20 The imperative to come to a workable solution remains. The positions of both organisations are supported by cogent reasoning but the failure to reach agreement over arrangements that satisfy the requirements of both is affecting the ability of the SPA to build the service to the level of professionalism it wants.

Staffing numbers and caseload

- 7.21 Before the establishment of the tri-service authority, the MOD's Defence Management Consultancy Services (DMCS) carried out a survey of the individual service prosecuting authorities and reported in August 2006. The DMCS report considered in some detail the working practices and procedures of each authority and looked at staffing numbers in order to recommend a structure for the new SPA. It was concerned to ensure that the transition to the single authority would be cost neutral but also that staffing numbers would

support the business needs. Adjustments to proposals were made subsequently, prior to the establishment of the SPA.

- 7.22 Since 2009, the SPA has sought to adjust its staffing complement between the UK and Germany but there has been no formal review of staffing numbers against caseload. The SPA caseload for the calendar year 2009 showed an increase of 11.1% since 2007 (combined service prosecuting authorities' figures). There has been a significant increase in more serious offences within these figures and casework activities have increased, especially in respect of disclosure of unused material. Caseload for the rolling year from July 2009 to end of June 2010 shows a reduction of 4.8% on the 2009 figure. Much of the reduction, however, relates to offences of being absent without leave which are down from 397 in 2009 to 320 in the year to the end of June 2010, a reduction of 19.4%. These cases are not particularly resource intensive because of fast-tracking processes. The more serious cases continue to rise. In the same period, non-JPA fraud cases have risen from 91 to 107 cases. Sexual offences have increased from 61 to 71. Additionally, the SPA caseload figures do not include the number of cases in which formal advice is provided to the service police during the course of an investigation.
- 7.23 Like other public service organisations, the SPA is required to make proposals for spending cuts. The SPA is currently engaged in a value for money study to present its suggestions for savings to the MOD. It is considering a number of options but there are some uncertainties which make forecasting difficult. At the time of the inspection there were 85 cases (and this is increasing) relating to allegations of human rights abuses by military personnel in Iraq and Afghanistan awaiting judicial review. The SPA is involved in providing advice in those cases. The Royal Military Police have been provided with additional funding to investigate the allegations but no additional resources have been provided to the SPA. The MOD have been informed that the SPA is likely to need additional money to instruct independent counsel in the cases but so far the issue remains unresolved.
- 7.24 The SPA response to proposals for cuts in prosecutor numbers rightly considers the increased workload per prosecutor that would result from any change. It has considered overall caseload numbers in determining the effect of cuts.
- 7.25 Comparison of SPA work with other prosecution authorities is inexact. CPS prosecutors have a far greater individual caseload than SPA prosecutors but casework processes in the magistrates' courts are less demanding and the majority of cases in the Crown Court are still prosecuted by independent counsel. All SPA cases, including straightforward cases which are likely to be admitted, are prepared as potential trials and prosecuted to Crown Court standards before a Judge Advocate. SPA prosecutors generally prepare and prosecute their cases in the Court Martial; independent counsel is rarely used. SPA prosecutors prepare a comprehensive report in each case once they are finalised.
- 7.26 The future is, nevertheless, uncertain. The SPA is competing with the three service legal branches and other organisations to maintain effective staffing levels amid the need for efficiencies. It is independent of the services chain of command and considers it should be treated as a separate entity. Its position is being considered separately from other organisations in the service justice

system and proposals for savings do not take account of the effect on partner agencies.

- 7.27 However, the SPA has not yet undertaken its own analysis, for example to re-examine processes and the time taken to prepare cases or whether they could be undertaken more efficiently and whether or not there are ensuing efficiency savings to be had. Such an analysis, which should link directly to an assessment of staffing needs, is particularly important given the changing balance in caseload and the increase in advice cases, more serious cases, and those involving judicial review. The duty to disclose unused material which must be undertaken in every case is a relatively recently introduced procedure in SPA case preparation. The proper exercise of the duty has resource implications which have not been formally assessed or accounted for.
- 7.28 The SPA needs to do this urgently so that it can evidence the staffing levels it needs to carry out its functions in relation to its current and expected caseload. It also needs to be in a position to understand clearly the effect of any proposed cuts in expenditure that might arise, so that it can justify any case for minimising reductions, and make properly informed decisions for the future.
- 7.29 Even when the current efficiency exercise is concluded, the SPA will still have to submit details of its budgetary needs on a continuing annual basis. It will be better prepared in this respect if it can evidence those requirements on a more detailed basis.

PRIORITY RECOMMENDATION

The SPA, as part of its proposals for efficiency savings in current expenditure, should devise a process for determining its staffing model which links prosecutor numbers to caseload and casework activities

PARTNERSHIP WORKING

Liaison with Service Criminal Justice (SCJ) partners

- 8.1 Each of the three individual service prosecuting authorities had already established its own relationships with partner agencies in the service justice system, some of whom were common to each authority. HMCPSI had commented upon the APA's contact with its partners in the inspection report of 2007 although this issue had not been considered in particular detail. The inspection then had focussed on the quality of casework. Nevertheless, a recommendation was made for the development of a joint structured approach to liaison designed to promote a joint approach to performance improvement in the SJS. The follow up report in February 2009 reported only limited progress in this respect whilst observing that the establishment of the SPA would reinforce the need to form more effective working relationships with partners.
- 8.2 The SPA has in fact performed well in this respect and, whilst acknowledging that it is still work in progress, continues to develop its relationships at an informal as well as a formal level. There have been difficulties. The principle of a single prosecuting authority was not universally welcomed by the individual services and there was concern that the SPA would be dominated by Army issues to the exclusion of the interests of the RN and the RAF. The appointment of a civilian as DSP was equally viewed with some suspicion by those who considered that the appointment of someone with service experience was vital in understanding the principles of service discipline and the service context.
- 8.3 The DSP personally has played a significant role in breaking down actual or perceived barriers and in establishing the ethos for effective liaison. He has been well supported in this respect by the DDSP and his Chief of Staff, both Army officers, in providing the Service perspective. The transition to the tri-service authority has been a relatively smooth one and relations with partners are generally effective at all levels. The SPA is seen as approachable and largely efficient. The DSP has achieved this whilst at the same time maintaining the independence of the organisation.
- 8.4 The DSP is a member of the Service Justice Board which is chaired at ministerial level and provides strategic direction for those working within the Service Criminal Justice system. The DDSP sits on the Service Justice Executive Group which includes representatives of key partners. There are also forums with the Military Court Service (MCS), Royal Military Police (RMP) and the office of the Judge Advocate General (JAG) where in addition to strategic issues more practical matters are raised.
- 8.5 The DSP and DDSP are regarded as being very accessible and respond promptly to individual issues when they are made aware of concerns. This approach is replicated at the operational level. Good working relationships exist between SPA lawyers and administrators and partner agencies on a day to day basis. Requests for early advice, queries on individual casework or listing issues are generally dealt with without delay. The DSP has made himself available for consultation by the service police in particularly serious cases.

Likewise individual lawyers are proactive in arranging meetings over specific cases and there are few complaints over the accessibility of lawyers to answer queries over casework both from the police and from the MCS.

- 8.6 RMP Warrant Officers based with the SPA fulfil a key liaison role as a conduit between both the SPA lawyers and both the service police and the chain of command. These police officers bring an awareness of the logistical difficulties in the preparation of a case which assists the less experienced SPA lawyers. Additionally they routinely train new recruits to the Service police and this is designed to raise the profile of the SPA as well as giving information which will improve the standard of the files received.

The wider service community

- 8.7 Although opportunities for the SPA to engage with the service community are limited there has been good interaction between the Adjutant General's Office (PS2) and in turn with Commanding Officers through the chain of command. SPA officers use opportunities to promote and inform members of the service community of the work of the SPA whenever they have the chance.

Liaison with external prosecution agencies

- 8.8 The DSP is a member of the Whitehall Prosecutors Group. He also has regular contact with the DPP and members of the private bar. These relationships have been instrumental in improving the performance of the SPA through organised training. Specialist prosecutors and advocates have delivered training on many key areas. The CPS has provided a seconded training manager, and advice on administrative systems has been sought.
- 8.9 The DSP is formalising arrangements with three CPS areas for SPA officers to spend a short period of secondment to gain prosecuting experience in a busy CPS office. This will also establish lines of communication at an operational level. Assistance from lawyers in specialist casework has been sought and avenues for liaison established. Some beneficial training opportunities have been identified. However, the DSP is aware that a "one size fits all" approach is not always appropriate and there is a need to be selective in the adoption of procedures and working practices of other organisations.

Jurisdiction in criminal casework

- 8.10 The civilian police and prosecuting authorities often have concurrent jurisdiction with the service police and SPA in investigating and prosecuting offences both in the UK and in Germany. The AFA 2006 gave the service authorities jurisdiction in rape and homicide cases committed in the UK as well as such offences committed abroad. Protocols exist between the service police and the civilian police in Germany and the UK relating to the investigation of offences. Longstanding arrangements and working practices ensure that offences are investigated promptly by the appropriate police force. The SPA and the civilian prosecution authorities may be consulted over jurisdictional issues in some cases to discuss tactical issues but this is rare.
- 8.11 There has been a series of recent cases in Germany involving allegations against persons subject to service law of rape or serious sexual offences which have quite properly been investigated by the service police and referred to the SPA for consideration of proceedings and where the SPA have concluded that there is insufficient evidence to prosecute. However, section 72 of the Sexual Offences act 2003 also gives the courts in England and Wales jurisdiction to try

certain sexual offences committed abroad by a British citizen. As such, the CPS can also deal with these cases.

8.12 In order not to prejudice any course of action open to the victims in these cases, the SPA in Germany has referred some rape allegations to the CPS to consider whether it would wish to proceed. Whilst there has been no disagreement with the SPA decision, CPS senior lawyers have recently expressed the view that once jurisdiction in an individual case has been determined, the case should remain with the relevant authority whose decision would be final.

8.13 A protocol between the SPA and the CPS is in the early stages of preparation. It was drafted before this issue arose and does not specifically cater for the situation. It does, however, present an opportunity to put matters on a formal basis. It is particularly important, in respect of allegations of serious sexual offences, that a swift decision is taken as to who will have conduct of the case and that the decision whether to proceed is taken equally promptly.

Relationship with the media

8.14 There are no formal arrangements for dealing with the media. All media enquiries are handled by the DSP or the DDSP and where it is appropriate to do so the SPA use the experience of the Ministry of Defence Press Office.

SECTION TWO

THE ANNEXES

ANNEX A

2009/10 Budget

Element of spend	Budget
Military pay	£3,311,400
Civilian pay	£1,305,400
Running costs	£130,800
Training	£35,000
External professional fees	£90,000
Travel and allowances	£100,400
Total	£4,973,000

ANNEX B

RESOURCES AND CASELOADS

SPA Caseload receipts

	2009
Total cases referred to SPA	1227
Prosecutors in post (excluding DSP and DDSP) ²	35
Cases referred per prosecutor	35
Cases where no further action taken per prosecutor (432 cases)	12.3
Cases directed for trial by Court Martial per prosecutor (795 cases)	22.7
Guilty pleas per prosecutor (667 cases)	19
Trials per prosecutor (129 cases)	3.7
Summary Appeal Court cases per prosecutor (125 cases)	3.6
Service Civilian Court cases per prosecutor (29 cases)	0.8

² The figure does not take into account leave, training, including other military training and sickness.

ANNEX C

INSPECTION FRAMEWORK

STANDARDS AND CRITERIA

1. Casework advice, review and decision-making

Standard: advice and decisions are of high quality and contribute to improved casework outcomes, and are delivered efficiently and in a way that meets the circumstances of the case.

Criterion 1A: The quality of decision-making contributes to improving casework outcomes

Criterion 1B: Decision-making processes are efficient and effective

2. The management, progression and presentation of cases at the Court Martial

Standard: cases are reviewed, prepared and managed to high standards so that hearings are effective, and the proportion of successful outcomes increases. Prosecution advocates are prepared and proactive in prosecuting cases fairly, thoroughly and firmly, and ensure that cases progress at all hearings.

Criterion 2A: Cases are prepared and progressed effectively

Criterion 2B: Advocates are active at court in ensuring cases progress and hearings are effective, and advocacy and case presentation are of a high standard.

3. The service to victims and witnesses

Standard: The SPA considers victims' and witness' needs throughout the entirety of the prosecution process, and appropriate support is provided at the right time

Criterion 3A: The SPA ensures timely and effective consideration and progression of victim and witness needs, and the service to victims and witnesses is improving.

4. Disclosure

Standard: The SPA complies with the prosecution's duties of disclosure of unused material and disclosure is handled scrupulously.

Criterion 4A: There is compliance with the prosecution's duties of disclosure

5. Leadership and management

Standard: Senior managers engage with and inspire SPA staff and SJS partners to achieve SPA objectives, and drive performance improvements and change.

Criterion 5A: The management team has a clear understanding of what needs to be delivered to meet SPA and SCJS priorities, underpinned by effective planning and change management.

Criterion 5B: The management team communicates the vision, values and direction of the SPA well. Senior managers act as role models for the ethics, values and aims of the SPA, and demonstrate a commitment to equality and diversity policies

6. Partnership working and community confidence

Standard: The SPA is engaging positively and effectively with the agencies it works with and communities it serves.

Criterion 6A: The SPA is committed to engaging with partners and jointly improving levels of service.

Criterion 6B: The SPA is working pro-actively to secure the confidence of the community.

7. Managing performance

Standard: The SPA systematically monitors, analyses and reports on performance, and uses performance information to promote continuous improvement and inform future decisions

Criterion 7A: Managers understand and are held accountable for performance.

Criterion 7B: There is an effective and proportionate approach to managing performance at individual, team and unit level

8. Resourcing the SPA

Standard: The SPA allocates and manages resources to deliver effective performance and provide value for money

Criterion 8A: The SPA seeks to achieve value for money, and operates within budget.

Criterion 8B: All SPA staff are deployed efficiently.

ANNEX D

FILE SAMPLE

File sample by offence type	UK	Germany	Total
Homicide	4	0	4
Rape/serious sexual offences	6	4	10
Serious violence	5	3	8
Dishonesty	3	2	5
JPA fraud *	4	3	7
Child pornography	2	0	2
Other violence or public order	10	11	21
AWOL/desertion	16	5	21
Other Service offences	12	2	14
Other	5	2	7
Total	67	32	99

File sample by case result	UK	Germany	Total
Guilty plea	21	15	36
Conviction after trial	2	3	5
Acquittal after trial	0	2	2
Discontinued	3	0	3
No further action/not directed	27	8	35
Referral to CO	9	0	9
Summary appeal allowed	3	4	7
Summary appeal dismissed	2	0	2
Total	67	32	99

* The Joint Personnel Administration system (JPA) is a computer system which allows all service personnel to make claims and receive payment electronically for expenses incurred as part of their duties. Although individual claims are not checked, periodic audits are carried out from time to time on sample claims.

ANNEX E

FILE EXAMINATION RESULTS

Charging decision/initial review			
The case was referred/directed to the appropriate venue			98.9%
The charges selected were appropriate to enable the case to be presented clearly and give the sentencing body sufficient power			96.4%
The decision to charge/refer was made at the earliest opportunity			77.2%
The charging decision was made in accordance with the service code evidential test			96.9%
The charging decision was made in accordance with the service interest test			98.9%
The prosecutor was pro-active in requesting any outstanding documents or information and in remedying any evidential defects identified			100%
The quality of the charge decision:			
Excellent: 9.4%	Good: 73.9%	Fair: 15.7%	Poor: 1.4%
Trial review and case progression			
The decision to proceed to trial complied with the service code evidential test			100%
The decision to proceed to trial complied with the service interest test			100%
The SPA was ready to proceed at the first and subsequent hearings			97.5%
All orders were complied with on time			100%
The charges /indictment proceeded without significant amendment			72.4%
Where the accused was in custody, the case was monitored and handled to avoid unnecessary delay			85.7%
Trial			
If pleas were accepted to a lesser offence this justified and there was there appropriate consultation			100%
If the case was cracked or ineffective (including pleas being accepted on the day of trial) the SPA could have taken action to resolve the matter sooner (2 cases)			100%
Discontinuance			
The discontinuance was justified and in accordance with the service evidential code test			100%
The discontinuance was justified and in accordance with the service interest test			100%
If there was a decision to discontinue any consultation was properly recorded?			100%
Lessons learned were properly identified			100%
The initial duty of disclosure was properly met			88.2%
The non-sensitive schedule was completed properly			78.6%
There was evidence that the lawyer had considered any potentially undermining material before initial disclosure was made			93.4%
The continuing duty of disclosure was properly complied with			88.9%
There was a clear audit trail of all disclosure decisions and actions			40%
All initial disclosure actions were timely			87.5%
All continuing disclosure actions were timely			100%
Disclosure materials were stored separately on the file			33.3%
Serious, Sexual and Hate crime including domestic violence			
All cases were allocated appropriately for the seriousness and sensitivity of the case			100%
Where appropriate, meetings were offered and properly arranged			100%
Where appropriate, applications for and any subsequent arrangements made for special measures were completed properly			100%
Victim and witness care and communication generally			
Victims and witnesses were notified at key stages of the case in a timely and appropriate manner			92.3%
The victims views were considered at relevant stages particularly over whether to discontinue			66.7%
A Victim Personal Statement was requested or present			87.5%

Special measures were considered at the earliest opportunity	100%
Where appropriate the applications for and any subsequent arrangements made for special measures were completed properly?	100%
Case management generally	
All correspondence was acknowledged and responded to appropriately	98.4%
Any additional evidence/disclosure received from the Police was logged, reviewed and if appropriate served in a timely way	96.2%
Casework preparation was timely	98.2%
There was evidence of supervision / second opinion in relevant cases	87.1%
There was continuity of prosecutor where appropriate	88.6%
There was consideration of the appropriate use of Video link for interim cases to assist continuity	100%
If there was avoidable delay, the SPA took appropriate action to avoid or reduce the delay	45.5%
There was a properly completed adverse outcome form and evidence that any lessons learned would be disseminated	71.4%
The standard of file endorsement:	
Excellent: 2.9%	Good: 88.4%
Fair: 7.2%	Poor: 1.4%

ANNEX F

REPRESENTATIVES OF THE SERVICES, SERVICE JUSTICE SYSTEM AND DEFENCE ADVOCATES WHO ASSISTED IN OUR INSPECTION

Office of the Judge Advocate General

HH Judge Blackett, Judge Advocate General
HH Judge Camp, Judge Advocate
HH Judge Elsom, Judge Advocate
HH Judge Hill, Judge Advocate
HH Judge McGrigor, Judge Advocate

Ministry of Defence

Vice Admiral P Wilkinson, CVO BA FCIPD
Mr H Morrison
Ms F Nash

The Law Officers' Department

Ms S Patten
Mr J Grealis

Royal Navy

Naval Legal Service

Capt A Spence

Service Police

Cdr A West
Master at Arms P Boddy

Army

Chain of Command

Lieutenant Colonel D Wheeler, 2nd Royal Welsh Regiment
Captain M Adams, 2nd Royal Welsh Regiment
Captain R Arden, 2nd Royal Welsh Regiment
Captain M Shercliff, 5th Battalion, The Rifles
Sergeant K Cooney, 5th Battalion, The Rifles

Office of the Adjutant General

Brigadier R Aitken, Director of Standards in Casework (Army)
Colonel Chamberlain, PS2
Lieutenant Colonel A White, PS2
Ms S Pool, PS2

Army Legal Service

Major General D Howell, OBE, Director General Army Legal Service
Brigadier N Jones
Colonel R Batty
Colonel (Retired) R Barnes
Ms J Scott

Military Court Service

Mr M Crowley, Director
Colonel (Retired) P Scott
Colonel (Retired) G Guest
Mr D Rainey
Ms K Rees
Ms K Stevens

Army Criminal Legal Aid Authority

Ms C Sollis

Service Police

Lieutenant Colonel M Grainger
Major J McAllister
Warrant Officer P Cooper

Royal Air Force

RAF Legal Service

Group Captain S Kell
Squadron Leader G Birtwistle
Flight Lieutenant Ward

Service Police

Group Captain J Whitmell
Squadron leader J Brock
Sergeant K Potter

Crown Prosecution Service

Mr K Caley, CCP Essex
Mr N Hawkins, CCP Hampshire and the Isle of Wight
Mr T Palfrey
Ms D Rayner

Defence Solicitors

Mr I Flynn
Mr C Hill
Mr R Williams

Counsel

Mr D Richards

ANNEX G

HMCPsi PURPOSE AND VALUES

Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi) was established by the Crown Prosecution Service Inspectorate Act 2000 as an independent statutory body. It seeks to enhance the quality of justice through independent inspection, and provide assurances to ministers, government and the public.

The Chief Inspector is appointed by the Attorney General and HMCPsi works in partnership with criminal justice agencies, including the CPS itself, and other inspectorates. Inspection teams comprise legal and business management inspectors, and also experienced volunteers, able to provide a lay dimension to the process and who give their time freely. For this service, the Chief Inspector is most grateful.

The inspectorate's reports make priority recommendations, other recommendations, identify compliance issues and also draw attention to any strengths and good practice found by the team. Progress against recommendations is then monitored and measured, forming a basis for follow-up inspection. All our reports are available on our website www.hmcp.si.gov.uk.

Purpose

HMCPsi's purpose is to enhance the quality of justice through independent inspection and assessment which improves the effectiveness of prosecution services, and provides assurances to ministers, government and the public. In order to achieve this we want to be an organisation which:

- performs to the highest possible standards;
- inspires pride;
- commands respect;
- works in partnership with other criminal justice inspectorates and agencies but without compromising its robust independence;
- values all its staff; and
- seeks continuous improvement.

Mission

HMCPsi strives to achieve excellence in all aspects of its activities and in particular to provide customers and stakeholders with consistent and professional inspection and evaluation processes together with advice and guidance, all measured against recognised quality standards and defined performance levels.

Values

We endeavour to be true to our values, as defined below, in all that we do:

- consistency** Adopting the same principles and core procedures for each inspection, and apply the same standards and criteria to the evidence we collect.
- thoroughness** Ensuring that our decisions and findings are based on information that has been thoroughly researched and verified, with an appropriate audit trail.
- integrity** Demonstrating integrity in all that we do through the application of our other values.
- professionalism** Demonstrating the highest standards of professional competence, courtesy and consideration in all our behaviours.
- objectivity** Approaching every inspection with an open mind. We will not allow personal opinions to influence our findings. We will report things as we find them.

Taken together, these mean:

We demonstrate integrity, objectivity and professionalism at all times and in all aspects of our work and that our findings are based on information that has been thoroughly researched, verified and evaluated according to consistent standards and criteria.

ANNEX H: GLOSSARY

ADVERSE CASE	A case where there has been an unsuccessful outcome because it has been discontinued or the case stopped at the close of the prosecution case.
ARMED FORCES ACT 2006	The Service Prosecuting Authority (SPA) was created by the Armed Forces Act (AFA) 2006. It provided for the fusion of the three separate Army, Royal Navy and Royal Air Force prosecuting authorities into one single Service Prosecuting Authority. The AFA 2006 not only introduced the single authority but it made a number of fundamental changes to the way that Service Justice is delivered.
ASSISTANT PROSECUTING OFFICER	Lay members of staff who help with the late preparation and copying of documents, and provide assistance with witnesses.
COMMANDING OFFICER	The chain of command in the military services. The commanding officer is responsible for discipline and welfare and retains power to deal with certain offences.
COURT MARSHALL	The venue for cases referred for trial by the SPA of persons subject to service law or discipline who are accused of a criminal offence. The Court Martial is now a standing Court like the Crown Court in England and Wales but may sit anywhere in the world. It comprises a judge advocate and a board of between three and five lay members who must be officers or warrant officers in the armed forces. Provision is made for a board of up to seven lay members, or none at all, in certain proceedings.
COURT MARSHALL APPEAL COURT	The Court Martial Appeal Court is a separate division of the Criminal Appeal Court and hears all appeals from the Court Martial. It sits at the Royal Courts of Justice in London and has the same powers as the Court of Criminal Appeal.
CODE FOR CROWN PROSECUTORS (THE CODE)	The public document that sets out the framework for prosecution decision-making. Crown Prosecutors have the DPP's power to determine cases delegated, but must exercise them in accordance with the Code and its two stage test – the evidential stage and the public interest stage. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest (see also "Threshold test")
CRACKED TRIAL	A case listed for a contested trial which does not proceed, either because the defendant changes his plea to guilty, or pleads to an alternative charge, or the prosecution offer no evidence
DEPUTY DIRECTOR SERVICES PROSECUTION	The Deputy works to the Director but is a member of the services; the current Deputy is a Brigadier.
DIRECTOR SERVICES PROSECUTION	The Director of Service Prosecutions is head of the SPA and is a civilian.

DISCLOSURE	The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may be relevant to an issue in the case.
EVIDENTIAL STAGE	The initial stage under the Code test – whether there is sufficient evidence to provide a realistic prospect of conviction on the evidence.
GOOD PRACTICE	An aspect of performance upon which the Inspectorate not only comments favourably, but considers that it reflects a manner of handling work developed by an Area which, with appropriate adaptations to local needs, might warrant being commended as national practice
INEFFECTIVE TRIAL	A case listed for a contested trial that is unable to proceed when it was scheduled to start, for a variety of possible reasons, and is adjourned to a later date
JOINT PERSONNEL ADMINISTRATION (JPA) FRAUD	The Joint Personnel Administration system (JPA) is a computer system which allows all service personnel to make claims and receive payment electronically for expenses incurred as part of their duties. JPA fraud cases arise out of dishonest misuse of the system.
JUDGE ADVOCATE	The role of the Judge Advocate is to give directions and rulings on law and procedure. At the conclusion of the evidence, the Judge Advocate sums up and advises the Board (military personnel) on matters of law.
JUDGE DIRECTED ACQUITTAL (JDA)	Where the judge directs a jury to find a defendant not guilty after the trial has started
JUDGE ORDERED ACQUITTAL (JOA)	Where the judge dismisses a case as a result of the prosecution offering no evidence before a jury is empanelled
MG6C, MG6D ETC	Forms completed by police relating to unused material. MG is the national manual of guidance used by police and the CPS.
NO CASE TO ANSWER (NCTA)	Where magistrates dismiss a case at the close of the prosecution evidence because they do not consider that the prosecution have made out a case for the defendant to answer
SERVICE INTEREST STAGE	The second stage under the Code test – whether it is in the service interest to prosecute this defendant on this charge.
RECOMMENDATION	This is normally directed towards an individual or body and sets out steps necessary to address a significant weakness relevant to an important aspect of performance (i.e. an aspect for improvement) that, in the view of the Inspectorate, should attract highest priority
SENSITIVE MATERIAL	Any relevant material in a police investigative file not forming part of the case against the defendant, the disclosure of which may not be in the public interest
STRENGTHS	Work undertaken properly to appropriate professional standards i.e. consistently good work

SERVICE CIVILIAN COURT (SCC)	The SCC deals with civilians working for, or accompanying, the Service who commit offences outside the UK. It can sit anywhere outside the UK. Civilian administrators and the children and spouses of service personnel can be tried by SCC. The SCC can also deal with civilian contractors working for the armed forces on operations. The court comprises a single judge advocate. The SCC's powers are limited to 12 months imprisonment.
SUMMARY APPEAL COURT (SAC)	An accused who is dealt with summarily may also appeal against both conviction and sentence to the Summary Appeal Court. The SAC comprises a Judge Advocate and two military members who rehear the evidence if the appeal is against conviction; they may uphold the commanding officer's finding or quash the conviction.
SUMMARY HEARING	The AFA 2006 allows the CO of an accused soldier to investigate and deal with certain military and criminal offences; this is known as summary hearing.