



The Army Prosecuting Authority
Her Majesty's Crown Prosecution Service
Inspectorate's follow-up report on
The Army Prosecuting Authority

Executive Summary

February 2009

The report details the findings of Her Majesty's Crown Prosecution Service Inspectorate (HMCPST) arising from a follow-up inspection of the Army Prosecuting Authority (APA) in November 2008. The APA is responsible for the review and prosecution of cases referred to it for trial by court martial in respect of persons subject to military law who are accused of a criminal offence. The APA is headed by a Major General who is also the Director General Army Legal Services. Day-to-day operations are headed by the Brigadier Prosecutions who is based at the APA's Headquarters at Hillingdon House, RAF Uxbridge. This also houses the unit which is based in the UK, with a second in Bielefeld, Germany. Both are headed by a Colonel (Prosecutions).

The Army Prosecuting Authority and the military court system

The APA was created by the Armed Forces Act 1996 which amended the pre-existing legislation. The 1996 Act provided that the term "prosecuting authority" should mean the officer appointed to the position. However the expression is generally used within the military criminal justice system to mean the organisation as well as the appointee and is used as such in this report, unless otherwise indicated. The appointee must be an officer of the armed forces and a qualified lawyer. He may delegate his functions to officers appointed as prosecuting officers, who must also be legally qualified.

The APA is located within the Army Legal Service (ALS) and the Director General Army Legal Service (DGALS) is also the prosecuting authority. Thus DGALS has a dual role; as the prosecuting authority he is responsible for prosecutions undertaken by the APA and reports directly to the Attorney General, who has a non-statutory superintendence role. DGALS is also the Army's senior military lawyer but, to avoid conflict with his role as the APA, he delegates to Brigadier Advisory the responsibility for providing disciplinary advice to the Army. Other than disciplinary advice DGALS reports on all other ALS functions to the Adjutant General, who has responsibility for the wide range of the Army's personnel services.

The APA deals with cases referred to it by the Army chain of command. These are investigated by the Royal Military Police, usually by its Special Investigations Branch which has a detective function. The report refers to both as "the investigator" unless the context requires a distinction to be made. Once an investigation into an offence by a soldier is completed the investigator forwards a report to the Advisory Branch of the ALS and the accused's commanding officer. Advisory Branch informs the commanding officer whether the offence is one he can deal with or whether it should be referred by Higher Authority, usually the Brigade Commander, to the APA for consideration of prosecution by court martial.

The APA has a number of options. It can decide not to institute court martial proceedings on evidential or public interest grounds; refer the case back to the commanding officer for him to deal with (summary dealing), usually on a lesser charge; or direct trial by court martial. This may be by a district court martial which has powers limited to a maximum of two years' imprisonment, or general court martial which has unlimited powers of punishment, subject to the statutory maximums.

Courts martial comprise a Judge Advocate, who is responsible for giving directions and rules on law and procedure, and military members - three for district and five for general. The military members decide on guilt or innocence in the event of a trial and return a verdict by simple majority. Sentence is determined by the Judge Advocate and members.

Courts martial are managed by the Military Court Service which is responsible for listing cases at court martial centres principally in the UK and Germany. The Military Court Service is also responsible for warning witnesses in contested cases.

The APA also deals with summary appeal court cases. These are ones in which an accused, who has been tried summarily by the commanding officer, appeals against either conviction or sentence. The APA may determine not to contest the appeal.

Recent caseload

	Year to 31 December 2007	1 January - 31 July 2008
Total number of cases referred to the APA	1,068	630
Cases directed for trial by court martial	644	405
Cases which were not directed for trial	238	149
Summary appeal court cases	114	45
Cases which were discontinued following direction for trial	72	31

The inspection process

The original inspection, which took place in February 2007, specifically examined the quality of casework and casework processes. Aspects of performance relating to financial and resource management were not considered, although management performance which had a direct influence on the quality of casework was. Ten recommendations and eight aspects for improvement were identified, along with four strengths.

This report assesses the progress made in addressing the issues previously identified and evaluates whether the strengths acknowledged are still present.

A single Service Prosecuting Authority

The follow-up inspection took place against the background of the proposed merger of the prosecuting authorities for all three services into one Service Prosecuting Authority (SPA), headed by the Director Service Prosecutions, which will be responsible for the conduct of all courts martial. However this review solely addresses the performance of the APA and there has been no consideration of the work of the individual service prosecution authorities. The start date for the SPA has been deferred until October 2009, but the Director Service Prosecutions became the head of each of the three service prosecuting authorities on 1 January 2009. This report makes comment, where relevant, on particular issues that will have some bearing on the new single authority.

Casework quality

Casework review quality continues to be strength although there are some issues over timeliness which need to be addressed. The results of file examination show an overall improvement although inspectors examined fewer files than during the original inspection. All decisions in cases in the file sample accorded with the Code for Service Prosecutors although there were some issues over the level of charging. Lawyers have been allocated specialisms in some types of serious and sensitive cases, commensurate with workload and available prosecutors.

Progress in relation to the 2007 report

Progress towards implementing the recommendations and addressing the aspects for improvement in the original inspection report has been mixed. However it is fair to acknowledge that this has been affected, and in some instances overtaken, by the accelerating activity to establish the single SPA.

Implementation of two recommendations has been fully achieved, substantial progress made in three, and limited progress in five others. The APA will in future formally record the ethnicity and gender of suspects but does not maintain data upon, or analyse, racially or religiously aggravated crimes. Whilst there is no suggestion of any sort of bias in its approach to casework, the recording of data would help to demonstrate this. Progress is similar in relation to the aspects for improvement that were identified: substantial progress in two, limited in four and none in two others.

This report acknowledges, where relevant, the effects of transition to the SPA and its impact on the direction which the APA has been able to take in respect of some recommendations or aspects of improvement. Even so, in those areas where activity may have stalled in some respects senior managers continue to monitor the relevant issues and factors. They are determined to ensure that APA processes and procedures are effective and fit for purpose in the new single authority.

Relationship with investigators

The level of early consultation during the investigation process between the APA and Royal Military Police (RMP) has increased since the implementation of a joint protocol dealing with the issue and will clearly improve when the Armed Forces Act 2006 comes into force, providing for direct referral by the RMP to the APA in most serious cases. Better case building before referral to the APA will help to reduce subsequent delay.

Training

There is a greater emphasis on advocacy training and mentoring for new prosecutors. Although the standard of advocacy is variable, the overall picture is a positive one. Prosecutors are monitored formally as advocates for appraisal purposes. Other training is more problematic, although for standard topics continues to be delivered. There has been some recent informal collaboration with the Crown Prosecution Service on training in disclosure and sexual offences, which should be built upon.

Duties of disclosure of unused material

The Criminal Procedure and Investigations Act 1996 disclosure regime has been applied to APA cases with effect from 1 April 2008. It is too early to make any informed assessment but initial indications are encouraging. Prosecutors make informed decisions on disclosure which are recorded on the relevant schedule. It is not yet clear to what extent the defence are engaged with the new procedures, having in the past been provided with copies of all available unused material. Prosecutors are aware of their obligations and responsibilities, particularly in resisting 'blanket' disclosure of all unused material regardless of relevance or whether it passes the test for disclosure (that is whether it may undermine the case for the prosecution or assist the accused's case). Inspectors re-emphasised that unused material should not be sent routinely to the Judge Advocate with the evidence in the case.

Service to victims and witnesses

The APA has made substantial progress in improving the service provided to victims and witnesses, both in terms of letters sent informing them of decisions and case progress, and engagement with witnesses at court. Technical problems with the Axxia case management system have hindered progress in flagging cases to generate an automatic victim and witness care package and these are being addressed.

Performance management

Work is being undertaken to establish a more sophisticated performance regime, but the main stimulus for this is the establishment of the SPA. Contact has been made with other prosecuting organisations to see how they measure performance. Similarly the new authority is providing senior managers with a number of liaison forums in which to discuss issues at strategic level. Relationships at team and individual levels between agencies remain good.

Court martial hearings

The listing of cases is a judicial function. There are issues because all APA prosecutors in England are based in Uxbridge, whilst courts martial are held in three widely sited venues, and there is no alignment of prosecutors to court martial centres. The APA has rejected the idea of a formal listing protocol with the Military Court Service as being unlikely to have benefit; these issues are now being addressed positively by the new Director Service Prosecutions, with a view to achieving greater levels of case ‘ownership’ and continuity of case handling and presentation. There is still a good level of cooperation between the two organisations which ensures that the most serious and sensitive cases are dealt with by the allocated lawyer, but the APA’s needs have to compete with other priorities. There is greater use of video links for some preliminary and intermediate hearings but the approach to usage is inconsistent.

Strengths

The strengths which were previously identified have all been maintained. Case analyses continue to be well structured and detailed. The APA continues to take part in arrangements for monitoring the timeliness of the Army disciplinary procedures, although improvement is still needed in the timeliness of its own case reviews. The advocacy training course has been improved and Assistant Prosecuting Officers continue to provide a valuable service to prosecutors and witnesses at court.

Conclusions

Overall the APA continues to carry out its functions to a good standard. Its casework review continues to be a strength. The quality of advocacy is more variable but comments from other court users were generally positive. Senior managers within the APA are currently heavily engaged in preparations for the new SPA and have been for some months. That has affected the extent to which some of the recommendations of the original report remain completely relevant. However it has not affected the desire amongst managers to improve the level of service and performance in readiness for the challenges ahead.

The full text of the report may be obtained from the Corporate Services Group at HMCPST Inspectorate (telephone 0207 210 1197) and is also available online at www.hmcpst.gov.uk.