

Chapter 14

The summary hearing sentencing guide

Commanding officers guide to sentencing at summary hearing

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Chapter 14

The summary hearing sentencing guide

Introduction

1. The impartial administration of discipline is essential to the morale and cohesion of a Service unit, and therefore will influence that unit's operational effectiveness. Fairness at Summary Hearing generates confidence in other aspects of unit management. This chapter offers detailed and specific advice on how to approach sentencing for each offence. The guidance is designed to assist in arriving at an appropriate, safe, fair and proportionate sentence. Whilst this guidance is very detailed the actual sentence that is awarded is a matter solely for the **discretion** of the CO based on his judgement of all the circumstances in which the offence was committed and any personal mitigation relating to the offender. Guidance on how to sentence for specific offences must always be read in conjunction with guidance on sentencing principles in [Chapter 13](#) (Summary hearing sentencing and punishments). A CO must bear in mind that whilst the guide is merely that, he will be required to provide a mandatory explanation¹ as to the reasons why he has imposed a particular sentence and therefore it must be justifiable. Details of such an explanation (reasons for sentencing) are required on the Record of Summary Hearing (RSH). See [Chapter 9](#) (Summary hearing and activation of suspended sentences of Service detention).
2. As this guidance is relevant for the purposes of deciding upon the appropriate sentence the CO must understand the sentence he is awarding. Relevant guidance on each punishment can therefore be found in [Chapter 13](#) (Summary hearing sentencing and punishments).

¹ Section 252 of the Act

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Quick guide

3. The following general instructions must also accompany guidance on each offence as it includes considerations applicable to every offence. The abbreviated sentencing guidance provided below does not excuse officers from consulting the full guidance in [Chapter 13](#) (Summary hearing sentencing and punishments);

4. The guide is structured as follows:

Quick guide AFA06 reference	Offence/type of offence
Charging reference	<ul style="list-style-type: none">Reference to corresponding offences section of the MSL.
Mitigating factors	<ul style="list-style-type: none">Mitigating factors affecting level of sentence – see table below at paragraph 5
Aggravating factors	<ul style="list-style-type: none">Aggravating factors affecting level of sentence – see table below at paragraph 5
Range of punishments	<ul style="list-style-type: none">An indication of typical sentence depending on severity by giving an entry point and low and high levels of seriousness. <i>With the exception of section 9 (AWOL) offences for which general guidance and a suggested tariff is provided, there are two entry points. The first is for use when the offence has been denied and subsequently found proved. No credit for admitting the offence has been given. The second entry point is on the basis of the offence being admitted by the offender at the earliest opportunity. This is calculated by the entry point above being reduced by the maximum 1/3rd discount. The 1/3rd discount will be appropriate if the offender admits the charge at the beginning of the summary hearing. This discount should be reduced on a sliding scale the later into the hearing he admits the charge.</i> It is stressed that this is guidance and merely that. Suggested sentences for the section 9 (AWOL) tariff and at Entry Points and according to level of seriousness are not fixed; however, they will assist the CO in arriving at a safe and fair sentence.
Sentencing guidance	<ul style="list-style-type: none">Specific factors to take into account when deciding the severity of the offence and which punishment may be appropriate e.g. whether to consider impact on unit, level of responsibility the offender held at the time etc.

5. Aggravating and mitigating factors in the accompanying tables over the remainder of this chapter are specific to each offence, however the following is a quick guide to the factors that are appropriate for every offence and therefore must be taken into consideration when deciding upon appropriate punishment if applicable. The list below is not exhaustive and neither are the lists for every offence provided below. Should the CO consider any other factors to be mitigating or aggravating then he must also take those factors into consideration.

Mitigating factors	<ul style="list-style-type: none">Admission of the offence.Substantial cooperation with investigators.Offender relatively young (usually under 21).Inexperienced Service person.
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	<ul style="list-style-type: none"> • Previous good character. • Good professional record. • Genuine remorse. • Serious illness. • Severe adverse effect of sentence on offender or family. • If the length of time since the commission of the offence has been significant and that time/delay has been of no fault of the offender.
Aggravating factors	<ul style="list-style-type: none"> • Previous Convictions • Unlawful prejudice (including race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability and age). • Common offence in unit. • Vulnerability of the victim. • Breach of trust. • Premeditation. • Operational environment. • Experienced Service person/offender in position of responsibility. • Alcohol (see full guidance above). • Group offence. • Gratuitous offending (especially violence). • Effect on Service discipline. • In public eye. • Repeat offence/relevant previous convictions. • In uniform

6. Where a CO records findings that two or more charges against a person have been proved, the award he must make is a single 'global' award (consisting of one or more of those punishments available to him) in respect of all the charges taken together². Care should be taken that the global total does not exceed the CO's maximum powers of punishment.

7. There will be occasions when it may be appropriate to award an offender a combination of punishments. In those circumstances the CO must ensure that only the permitted combination of punishments is awarded. See [Chapter 13](#) (Summary hearing sentencing and punishments);

8. **Co-accused from different units or sub-units.** Where a charge involves co-accused from different units, sub-units or the same charge is brought against two Servicemen in different units and it arises out of the same incident then COs should normally liaise and consult with each other in order that discipline is fairly and evenly administered and context is understood and taken into account. This spirit of cooperation is essential to ensure that any differences in the handling of discipline between units is minimised. See [Chapter 2](#) (Meaning of CO).

9. There are some offences which are unusual and not often dealt with. In those circumstances legal advice should normally be sought.

10. The CO passing sentence must explain in ordinary language the general terms of and the reasons for the sentence. For example, if the CO imposes a custodial sentence, he must

² Section 131 of the Act.

explain why the offence is sufficiently serious to warrant such a sentence³. He must include in his reasons, the following:

- a. Any reduction given for admitting the offence;
- b. Any aggravating or mitigating factors the CO regarded as being of particular importance;
- c. The effect of the sentence i.e. what punishments make up the sentence and what the consequences are (for example when the offender can expect to recover his rank/rate, impact on pay, pensions and bonuses, award of LS and GC medals etc). The detail on the effects of punishments are contained within [Chapter 13](#) (Summary hearing sentencing and punishments);
- d. Where the offender is required to comply with any order⁴ forming part of the sentence, the effects of any failure to comply with that order;
- e. Where the sentence consists of or includes a fine, the CO must explain the effects of failing to pay the fine (although fines will almost always be deducted direct from pay);
- f. Any power to vary or review any order forming part of the sentence on application⁵; and
- g. The amount of credit, if any, that has been given for any time spent in custody⁶.

³ Section 252 of the Act.

⁴ Eg a Service compensation order, order imposing a fine by deductions/installments, SSPO order, suspended sentence order etc.

⁵ Section 252 of the Act.

⁶ See [Chapter 13](#) (Summary hearing sentencing and punishments).

Offences

S.9 AFA 06	Absence without leave contrary to section 9 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-31
Mitigating factors	<ul style="list-style-type: none"> • Very short absence. • Attempted return. • Genuine reason e.g. domestic problems. • Returned voluntarily. • Whether offender asked for help in trying to resolve problems that led to absence. • Evidence of lack of support for offender's problems. • Low level of recklessness/negligence, for example a Service person who goes to sleep on a train when returning to duty and is carried past his station making him unable to return to his unit on time. • Made contact with unit. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Ship under sailing orders/unit on or about to be on operational deployment. • Wilful. • Long absence. • Absence in order to avoid other disciplinary action. • Intention to avoid arduous service. • Serious consequences for absentee's unit. • Failed to contact unit when plenty of opportunity. • Returned involuntarily as a result of arrest.
Range of punishments	<p>General guidance – for more detail see tariff below</p> <ul style="list-style-type: none"> • Low/1st offence – Admonishment for 1st offence. Restriction of privileges/stoppage of leave and/or fine (see below). • Entry point – Fine (see below) or disrating/reduction in rank. • High – Detention (see below)/SSPO
Sentencing guidance	<ul style="list-style-type: none"> • Absence without leave is one of the most commonly committed offences. Because of the importance of punctuality and attendance at place of duty, the deterrent element of the punishment should always be emphasised. • The impact of an offender's behaviour on his unit should always be considered, particularly if the ship/unit/establishment has been training for or conducting operations. • The table below is devised to ensure consistency across the Services. Although the table should be followed in most cases, it is not a rigid tariff, but a starting point for deliberation. It is not intended to imply a day's detention for a day's absence, and such an approach will rarely be appropriate. • For simple first offences of very short absence an admonition may be considered. • Stoppage of leave and restriction of privileges are available as an alternative to a financial penalty for the offender whose financial circumstances make a fine undesirable. Stoppage of leave is also appropriate for the persistent leave-breaker who needs an additional sanction to a fine and/or restriction of privileges combination. • Repetition of absence without leave should be treated more seriously. • For absences of over 7 days a sentence of detention should always be considered. As a guide this may range between 7 and 90 days

	<p>depending on all the facts of the case, including the actual length of absence.</p> <ul style="list-style-type: none"> • If the offender's disciplinary record is poor, or there is absence in conjunction with some other offence, detention may be considered appropriate for absences of less than 7 days. This may also be the case if the offender's motivation is to be absent long-term. A deterrent sentence may be appropriate even if he has been arrested and returned after only a short period of absence. • For details of suspension and forfeiture of pay as a result of absence see Chapter 10 (Absence and desertion) and Chapter 20 (Forfeiture and deductions). • Legal advice should always be sought in cases of absence over 120 days. • Where there are aggravating features and the offence is considered to be in the high category of seriousness then a sentence of detention would be appropriate in accordance with the tariff below.
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Guidance on the basis of an offence that has been denied and found proved (i.e. no credit given):

Period of Absence	Fine (days' pay)	Number of days detention
Up to 24 hours	Up to 6 days' pay	
Up to 2 days	Up to 9 days' pay	
Up to 3 days	Up to 13 days' pay	Consider short detention (up to 3 days)
Up to 7 days	Up to 16 days' pay	Consider short detention (up to 7 days)
8 – 14 days	17 - 21 days' pay	Consider medium term detention (up to 14 days)
15 – 21 days	22 - 28 days' pay	Consider medium term detention (up to 21 days)
22 – 28 days		Medium term detention (up to 28 days)
29 – 100 days		Consider longer term detention with extended powers (29 – 49 days)
Over 100 days		Detention with extended powers (50 – 90 days)

Examples of absences and punishments:

1. Short absence of up to 24 hours caused by negligence/stupidity: range from admonition to fine of 6 days' pay, no detention. (Alternatives stoppage of leave, restriction of privileges).
2. Short period of up to 3 days intentional absence which has not affected operational effectiveness: fine of more than 6 days' pay or short period of detention (up to 3 days), depending on culpability.
3. Medium-term absentee, i.e. over 8 days but caught within a month: Detention will often be appropriate rather than a fine. (Alternative – SSPO)
4. Long-term absentee: 90 days (with permission of Higher Authority).

5. The point on the punishment scale will depend on the facts of the case, e.g.
- (a) Offender going absent to sort out domestic problem – lower end;
 - (b) Offender deliberately absenting himself with no indication of intention to return in the short term – top end.

NB: The 'day for a day' correlation no longer applies; an assessment is made on the facts of each case.

s.15(1)(a) and s.15(1)(b) AFA 06	Failure to attend for a duty contrary to section 15(1)(a) and unauthorised leaving of duty contrary to section 15(1)(b) of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-46
Mitigating factors	<ul style="list-style-type: none"> • Genuine attempt by individual to inform superiors that he would be late for duty. • Simple forgetfulness. • Lack of supervision. • Lack of timely relief. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Previous offence(s) of a similar nature. • Avoiding arduous duty. • If degree of planning involved. • Operational environment or security implications. • If offender knew how serious the consequences of his failure would be.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave • Entry point - 5 – 10 days fine • High - 4 - 10 days detention <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave • Entry Point - 3 – 7 days fine • High - 1 - 7 days detention
Sentencing guidance	<ul style="list-style-type: none"> • The circumstances and consequences or likely consequences will determine the seriousness of the offence. • The wider deterrent effects on other members of the unit should be considered. • Leaving place of duty when on guard duty will always be more serious and, an offender should be punished accordingly. For this type of offence at its most serious, a short sentence of detention should be considered of up to 7 days. • For first offences of failure to attend the place of duty the entry point for the sentence should be 2 days' restriction of privileges and/or stoppage of leave or 1 day's fine. • For failing to attend a "special muster or parade" (eg; a muster or parade already required by restriction of privileges) the entry point should be 4 days' restriction of privileges and/or stoppage of leave or 2 days' fine.

s.15(1)(c) and s.15(2) AFA 06	Failure to perform or attend, leaving without permission and neglect of duty contrary to S15 AFA06
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-46
Mitigating factors	<ul style="list-style-type: none"> • Operational situation which reduces opportunity to exercise usual care and competence. • Good professional record. • One-off or momentary lapse. • Trivial consequences. • Poor training. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Deliberate act or omission. • Gross negligence — accused falls well below the level of a competent and careful person of his age, rate/rank, experience etc. • Negligence threatening to life and limb of others, i.e. safety implications. • Actual severe consequences, when foreseeable. • Poor professional record indicating general lack of professionalism.
Range of punishments	<p>Punishment after denial of offence</p> <ul style="list-style-type: none"> • Low – Restriction of privileges and/or stoppage of leave for able rate, marine, soldier or airman or small fine for offenders in position of responsibility. • Entry Point - Fine on sliding scale of seriousness or reprimand for those in position of responsibility. • High – Disrating/reduction in rank or 24 days + detention or 60 day SSPO. <p>Punishment after admission of offence</p> <ul style="list-style-type: none"> • Low – Restriction of privileges and/or stoppage of leave for able rate, marine, soldier or airman or small fine for offenders in position of responsibility. • Entry Point - Fine on sliding scale of seriousness or reprimand for those in position of responsibility. • High – Disrating/reduction in rank or 21 days + detention or 30 day SSPO.
Sentencing guidance	<ul style="list-style-type: none"> • The CO should focus on the negligence or failure itself. The consequences of the negligence or failure great or small clearly provide some indication of the seriousness of the offence as well as the foreseeability that harm would flow from that negligence or failure. It is possible however for gross negligence to result in minor harm by some stroke of luck and for minor negligence to result in great harm. The proper approach is to imagine an average Service person of the offender's age, rank/rate and experience in the same situation and to consider what he should have realised was likely to happen as a result of his act or omission.
Negligent discharge	<ul style="list-style-type: none"> • Care should be taken to distinguish cases involving accidental discharge due to a defect in the weapon (not an offence) and negligent discharge which involves human error (an offence). • Different standards of competence are expected depending on levels of experience and the first consideration is the stage of career the Service person is at. For the purposes of this guide a person is considered to be in a training environment prior to completion of phase 1 training. <p>Mitigating factors</p> <ul style="list-style-type: none"> • Offence committed in the training environment

- Momentary lapse
- No harm caused
- Lack of supervision
- Very inexperienced Service person
- Extreme fatigue
- Poor conditions
- Limited training on weapon concerned
- Genuine remorse.

Aggravating factors

- Ignoring proper procedures
- Horseplay
- Injury caused
- In close proximity to others
- Tampering with weapon belonging to another

Range of punishments

- Restriction of privileges in all very minor cases where mitigating factors are present. Otherwise:
 - In a training environment - fine of 2 days' pay.
 - Trained personnel whilst on range practice/phase 2 - Fine of 3 - 7 days' pay.
 - In operational environment/on duty - Up to 28 days' pay or 1 – 7 days detention.
- A Service compensation order, see [Chapter 13](#) (Summary hearing sentencing and punishments) may be appropriate where neglect of duty results in damage to property.

Sentencing guidance

- Notwithstanding punishment guidelines above, cases with strong mitigation might attract an admonition only, whilst extreme cases of negligence, e.g. when the discharge creates serious risk of injury, may well call into question the offender's fitness to hold his rank or rate.
- In the most serious of cases, where warnings as to appropriate procedures or behaviour have been ignored and serious risk of injury created, detention may also be appropriate.

s.13 AFA 06	Contravention of standing orders contrary to section 13 of the Armed Forces Act 2006 (General guidance)
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-41
Mitigating factors	<ul style="list-style-type: none"> • New to unit/theatre. • Genuine lack of appreciation of the consequences of the contravention. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Order related to security of ship or unit. • Premeditated. • Order was well promulgated and/or repeated. • Wilful.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low – Admonishment or restriction of privileges and/or stoppage of leave. • Entry Point – 5 – 10 days fine. • High – Reduction in rank/disrating or 4 – 10 days detention. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low – Admonishment or restriction of privileges and/or stoppage of leave. • Entry Point – 3 – 7 days fine. • High – Reduction in rank/disrating or 1 – 7 days detention.
Sentencing guidance	<ul style="list-style-type: none"> • The key principles of sentencing this offence are to assess both the consequences of the contravention as well as the impact of the offender's actions and his appreciation of his actions • For offences involving contravention of orders in relation to road traffic matters see guidance below. Legal advice should always be sought in cases involving excess alcohol and driving/being in charge of a vehicle etc.
Loss of ID cards	<ul style="list-style-type: none"> • Disciplinary action is <i>only</i> applicable where <i>culpable negligence</i>/blame can be proved. Failure to report the loss may be an offence contrary to Standing Orders. • If an administrative charge (applicable to RN and Army only) is applied this must be taken into account in any punishment awarded, particularly as to the offender's ability to pay any fine. • Where the offence is prevalent in the unit or there is a significant degree of culpability attaching to the loss, a fine of 2 or more days pay may be an appropriate entry point. • Offences which impact on security (e.g. wilful surrender of an ID Card to a non-Service person resulting in a security breach) may attract more serious punishment.
Breach of no-touching rule (applicable to RN only)	<ul style="list-style-type: none"> • For a first time offence of a minor nature restriction of privileges and/or stoppage of leave or an admonition may be appropriate, otherwise a small fine or reprimand for those in positions of responsibility. For second time offences and offences of an intimate nature, a fine of 3 to 10 days pay would be appropriate depending on the overall seriousness. • Those in positions of trust, duty or seniority should be sentenced more severely and this may merit a larger fine or reduction in rank/disrating. In the case of the latter punishment extended powers would need to be applied for.

	<ul style="list-style-type: none"> • Offences committed in the training or operational environment may be considered to be more serious.
In improper place, eg male in female accommodation	<ul style="list-style-type: none"> • Offences committed in the training or operational environment may be considered to be more serious than those in other establishments. • First offence: a low sentence of restriction of privileges and/or Stoppage of Leave.
Abuse of toxic substances – e.g. glue sniffing	<ul style="list-style-type: none"> • Given the wide range of possible circumstances, COs should seek advice on individual cases.
Weapons offences	<ul style="list-style-type: none"> • See specific guidance below.

	Road traffic and driving offences	
Charging reference s.3, s.5, s.25, s.28, s.29 RTA 88	MSL Chapter 8 - Criminal conduct offences pages 1-8-52 to 1-8-63	
Specific points to note about this offence	<ul style="list-style-type: none"> • Offences committed in UK. Where the offence is committed on a road to which the public has access primary jurisdiction falls to civil authorities who have powers to make orders a CO cannot, such as awarding penalty points and disqualifying from driving. In the unlikely event that jurisdiction is relinquished to COs, legal advice should be taken. Preferably a Service offence should be found to capture the offence, but Road Traffic offences with penalties are listed below in case they are needed. • Offences committed overseas. The starting point is that guidance for offences committed in the UK should be followed, however legal advice is essential at the sentencing stage. Different national rules on drink-related driving offences may require careful consideration for sentence. 	
Mitigating factors	<ul style="list-style-type: none"> • No harm or damage caused. • Impulsive behaviour in perceived emergency. • Level of training. • Lack of supervision. • Genuine remorse. 	
Aggravating factors	<ul style="list-style-type: none"> • On duty. • Consuming alcohol whilst driving. • Bad driving manner. • Intentional offence or careless regard of the law. • Harm or damage caused. • Previous offences of a similar type. • In uniform. 	
Sentencing guidance	<ul style="list-style-type: none"> • The duration of the offence, the speed driven and whether an accident was caused are all factors that should be taken into consideration when sentencing. • Because detention and/or disrating/reduction in rank may have a very significant financial impact, a CO may wish to take legal advice. As a guide to determining sentence once legal advice has been sought, if a civilian court would have imposed a custodial sentence, the CO should impose a sentence of detention. If a civilian court would have imposed a community order, a sentence of detention or a large fine are the options which will need careful consideration. • COs may wish to consider withdrawing car passes as accompanying administrative action. • If damage is caused a Service compensation order may be appropriate. 	
Range of punishments	Dangerous Driving	Detention
	Drink driving	Detention or disrating/reduction in rank for readings three and a half times over the limit (if alcohol level available): Otherwise max £1000 fine
	Driving without due care and attention	Up to £800 fine
	Driving whilst disqualified by court	Detention or disrating for high level offence, otherwise maximum of £800

		fine
	Failing to stop after accident	Up to £800 fine
	Failing to report incident	Up to £800 fine
	Driving without insurance	Up to £1000 fine
	Forgery, alteration, use, loan or allowing the use of motor vehicle documents, driving licence, insurance certificate, with intent to deceive	Up to £500 fine for low level offence
	Fraudulent alteration or use, or lending or allowing to be used by another, of vehicle licence or registration documents	Up to £500 fine for low level offence
	Defective brakes/tyres/steering	Up to £150 fine per item
	Failure to comply with traffic lights	Up to £200 fine
	Driving without current MOT	Up to £150 fine
	Failure to stop at a pedestrian crossing	Up to £100 fine
	Failure to comply with double white lines	Up to £100 fine
	Failure to comply with stop sign	Up to £100 fine
	Failure to comply with directions of Police officer or traffic warden	Up to £100 fine
	Failure to comply with other traffic signs	Up to £100 fine
	Driving without a licence	Up to £200 fine
	Probationary licence holder driving without plates/unsupervised/carrying unqualified passenger	Up to £50 fine
	Speeding	Up to £10 per mph over speed limit

s.11 AFA 06	Misconduct towards a superior officer contrary to section 11 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-36
Mitigating factors	<ul style="list-style-type: none"> • Provocation (not associated with professional duties). • Impulsive rather than pre-meditated. • Lack of appreciation of seriousness of actions. • Welfare difficulties leading to loss of self-discipline. • Absence of any other Service personnel. • Language not intended to be heard by superior. • Stress imposed by the situation/Service life. • Single blow or slap. • No injury caused. • No knowledge that victim was a superior, but should have known. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Aggression based on disagreement with lawful requirement of the Service. • Offence committed in front of colleagues/juniors. • Mode of attack (e.g. head butt or kicking). • Use of weapon. • Injury caused. • Warning to control situation not heeded. • Part of pattern of insubordination. • Flagrant contempt.
Range of punishments	<p>Punishment after denial of offence:</p> <p>For offences under s.11(1) (involving violence):</p> <ul style="list-style-type: none"> • Low - If detention is disproportionate in the circumstances an SSPO (if appropriate to rank/rate) or 10 - 24 days fine. • Entry Point - 28 days detention. • High - 36 – 72 days detention. <p>For offences under s.11(2) (no-violence):</p> <ul style="list-style-type: none"> • Low - 4 – 10 days fine. • Entry point – 10 - 16 days fine. • High – short period of detention/17 – 28 days fine. <p>Punishment after admission of offence:</p> <p>For offences under s.11(1) (involving violence):</p> <ul style="list-style-type: none"> • Low - If detention is disproportionate in the circumstances an SSPO (if appropriate to rank/rate) or 7 - 21 days fine. • Entry point - 21 days detention. • High - 28 – 60 days detention. <p>For offences under s.11(2) (no-violence):</p> <ul style="list-style-type: none"> • Low - 1 – 7 days fine. • Entry point – 7 - 14 days fine. • High – short period of detention/14 – 28 days fine.
Sentencing guidance	<ul style="list-style-type: none"> • Insubordinate language and contemptuous behaviour may not amount to serious misconduct depending on the full circumstances of the offence and language used however use of violence to a superior officer usually counts as serious misconduct and should therefore be dealt with by the CO rather than a subordinate commander. • Detention will be appropriate in most cases or an SSPO. • If detention is not awarded, a large fine will usually be appropriate.

s.12 AFA 06	Disobedience to lawful commands contrary to section 12 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-39
Mitigating factors	<ul style="list-style-type: none"> • Lack of appreciation of seriousness of actions/words. • Late compliance – where order is complied with later than the deadline given for obeying the order. • Genuine remorse. • Welfare difficulties leading to loss of self-discipline. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Premeditated. • On operational duty. • Disobedience may have actually or potentially caused a security risk or put the safety of individuals at risk. • Warnings and opportunity given to comply. • Offence committed in front of colleagues/juniors. • Flagrant or deliberate contempt.
Range of punishments	<p>Punishment after denial of offence:</p> <p>Reckless:</p> <ul style="list-style-type: none"> • Low - In exceptional or minor cases another punishment that does not require extended powers may be appropriate such as 7 – 10 days fine or restriction of privileges and/or stoppage of leave. • Entry point - 10 – 17 days fine • High – 17 – 28 days fine <p>Intentional:</p> <ul style="list-style-type: none"> • Low - 10 – 17 days detention • Entry point - 21 – 28 days detention. • High - 36 days detention. <p>If offender is in position of responsibility disrating or reduction in rank will usually be appropriate.</p> <p>Punishment after admission of offence:</p> <p>Reckless:</p> <ul style="list-style-type: none"> • Low - In exceptional or minor cases another punishment that does not require extended powers may be appropriate such as 3 – 5 days fine or restriction of privileges and/or stoppage of leave. • Entry point - 7 – 14 days fine • High – 14 – 28 days fine <p>Intentional:</p> <ul style="list-style-type: none"> • Low - 7 – 14 days detention • Entry point - 14 – 24 days detention. • High - 28 days detention. <p>If offender is in position of responsibility disrating or reduction in rank will usually be appropriate.</p>
Sentencing guidance	<ul style="list-style-type: none"> • The authority of superior officers and those authorised to give lawful orders must be upheld and therefore there should always be a deterrent element to any sentence awarded. • Generally intentional ('wilful') disobedience counts as serious insubordination and should be treated as such; reckless disobedience may be treated as slightly less serious depending on the circumstances. It is important to examine the effect of the insubordinate behaviour. • For the sake of consistency all accused charged with disobedience should be dealt with by the CO.

s.10 AFA 06	Failure to cause apprehension of deserters and absentees contrary to section 10 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-34
Mitigating factors	<ul style="list-style-type: none"> • Accused finally confesses or acts. • Reported as soon as possible. • Lack of appreciation of seriousness of actions. • Limited opportunity to apprehend. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Knowledge that deserter or absentee's absence compromises operational effectiveness of unit. • Continued opportunity to apprehend.
Range of punishments	Punishment after denial of offence: <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave. • Entry point - 5 – 10 days fine. • High - 10 – 21 days detention (AWOL)/28 days detention (Deserter) Punishment after admission of offence: <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave. • Entry point - 3 – 7 days fine. • High - 7 – 14 days detention (AWOL)/28 days detention (Deserter)
Sentencing guidance	<ul style="list-style-type: none"> • As this is an offence that is little used it is advisable to seek advice prior to awarding punishment. • An offence of failing to apprehend a deserter will always be more serious than any offence of failing to apprehend an absentee. • The length of period of knowledge that the offender had regarding the absentee or deserter will be a factor to consider when determining the seriousness of the offence. • This offence is akin to being an accessory therefore there must be a deterrent element in the punishment.

s16(1)(a) and s16(1)(c) AFA 06	Malingering contrary to section 16(1)(a) or 16(1)(c) of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-49
Mitigating factors	<ul style="list-style-type: none"> • If offender relatively inexperienced and little appreciation of consequences of actions • If offence occurs after period of heavy commitment such as a lengthy operational tour. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • In operational environment • Intention to avoid Service on operations/deployment • Intention to avoid arduous duty or military training assessments • Repeat or long term malingering
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave • Entry point - 5 – 10 days fine • High - 21 – 28 days detention <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave • Entry point - 3 – 7 days fine • High - 14 – 28 days detention
Sentencing guidance	<ul style="list-style-type: none"> • The following factors should determine the seriousness of the offending: <ul style="list-style-type: none"> ○ The extent of the waste of medical and administrative resources used in treating the pretended illness or injury; ○ The operational consequences of that person's actions; and ○ The importance of the duty being avoided.

s.17 AFA 06	Disclosure of information useful to an enemy contrary to section 17 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-52
Mitigating factors	<ul style="list-style-type: none"> • Accidental. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • If information actually reached enemy or certainty that information could reach an enemy. • Operational environment where security may be compromised. • Premeditated.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 9 – 17 day fine • Entry point - 17 – 24 day fine • High - 36 days detention <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 7 – 14 day fine • Entry point - 15 – 19 days' fine • High - 28 days detention
Sentencing guidance	<ul style="list-style-type: none"> • When assessing the seriousness of the offence the degree of usefulness of the information to the enemy and the extent of the disclosure should be considered. • As this is an offence that is little used it is advisable to seek advice prior to awarding punishment. • It will be usual for the CO to hear this offence rather than a sub-ordinate commander.

s.19 AFA 06	Conduct prejudicial to good order and discipline contrary to section 19 of the Armed Forces Act 2006 (General guidance)
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-58
Mitigating factors	<ul style="list-style-type: none"> • Genuine misunderstanding. • Relative youth/inexperience. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Threat of injury. • Operational effectiveness compromised.
Range of punishments	<ul style="list-style-type: none"> • Minor offences – Entry point - 3-7 days' restriction of privileges and/or stoppage of leave.
Sentencing guidance	<ul style="list-style-type: none"> • Most s.19 offences are low level, however it is possible to deal with serious offences under s.19 and for there to be a correspondingly serious sentence, e.g. lying for financial gain not charged under the Theft Act. • The degree to which the Service was brought into disrepute must be taken into consideration when sentencing.
	(Sample offences – not exhaustive)
Possession of property belonging to another without authority where a charge of theft is inappropriate	<p>Mitigating factors</p> <ul style="list-style-type: none"> • Condition of the property on return to the owner. • Temporary borrowing of another person's property a common practice in the unit. • Genuine remorse. <p>Aggravating factors</p> <ul style="list-style-type: none"> • Previous offences of the same nature. • In uniform. <p>Range of punishments</p> <ul style="list-style-type: none"> • 1 – 7 days fine or restriction of privileges and/or stoppage of leave. <p>Sentencing guidance</p> <ul style="list-style-type: none"> • Consideration should be given to the value of the property as well as how long the property was in the offender's possession.
Use of a vehicle without authority where a charge of TWOC is inappropriate	<p>Mitigating factors</p> <ul style="list-style-type: none"> • Genuine misunderstanding of orders or instructions. • Compassionate circumstances. • Genuine remorse. <p>Aggravating factors</p> <ul style="list-style-type: none"> • Encouraging others to take part in the offence. • In uniform. <p>Range of punishments</p> <ul style="list-style-type: none"> • A minor punishment would be appropriate for a low level offence otherwise a fine or reprimand. <p>Sentencing guidance</p> <ul style="list-style-type: none"> • The extent to which the vehicle has been used over and above that which was authorised will be a consideration. • An assessment of any costs incurred to represent the loss to the Service or damage done will need to be made and the appropriate amount claimed through a Service Compensation Order.
Failure to clean Service kit	<p>Mitigating factors</p> <ul style="list-style-type: none"> • Relatively young/inexperienced/welfare. • Genuine remorse.

	<p>Aggravating factors</p> <ul style="list-style-type: none"> • Operational consequences of the failure. <p>Range of punishments</p> <ul style="list-style-type: none"> • A wide range of punishments may be appropriate from an admonishment to detention/SSPO depending on what the failure relates to and how many times the offender has committed this offence. <p>Sentencing guidance</p> <ul style="list-style-type: none"> • The consequences of an offender's actions and any actual or potential risk to others must be examined to determine the seriousness of the offending.
Misbehaviour in ship/base/camp	<p>Mitigating factors</p> <ul style="list-style-type: none"> • Uncharacteristic lapse. • Genuine remorse. <p>Aggravating factors</p> <ul style="list-style-type: none"> • Offence committed in front of subordinates. • Effect on the local community. • In uniform. <p>Range of punishments</p> <ul style="list-style-type: none"> • A wide range of punishments may be appropriate from an admonishment to a short period in detention depending on the circumstances of the offence. <p>Sentencing guidance</p> <ul style="list-style-type: none"> • To determine the seriousness the level of thoughtlessness involved in committing the offence must be considered

s.20 AFA 06	Unfitness through alcohol or drugs contrary to section 20 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-61
Mitigating factors	<ul style="list-style-type: none"> • Off duty. • No other offence committed. • Lack of supervision. • Led astray by more senior ranks/rates. • 1st offence of drunkenness in a training environment. • No disturbance/placid behaviour. • No intention to reach actual level of drunkenness. • Welfare problems behind drinking. • Effort made to return on board from ashore/back to base or camp. • Drunkenness in Service club or in single living accommodation. • Illness – where offender has alcohol dependency/alcoholism. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • On duty/unable to perform a planned duty. • On board a ship at sea/on exercise/in operational environment. • Official function. • Activity involving loaded weapons. • Aggressive behaviour/rowdiness. • Failure to heed warnings. • Offence committed under stoppage of beer/alcohol restriction rule. • Intention to get drunk/wilful disregard of worsening condition. • In uniform.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 5 days fine or 5 – 10 days restriction of privileges and/or stoppage of leave. • Entry point - 7 – 10 days fine or 10 days restriction of privileges and/or stoppage of leave. • High - 10 – 14 days fine or 14 days restriction of privileges and/or stoppage of leave. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 days fine or 3 – 5 days restriction of privileges and/or stoppage of leave. • Entry point - 5 – 7 days fine or 7 days restriction of privileges and/or stoppage of leave. • High - 8 – 10 days fine or 10 days restriction of privileges and/or stoppage of leave.
Sentencing guidance	<ul style="list-style-type: none"> • For offences by senior rates/SNCOs their status may be an additional aggravating feature. • In very serious cases, e.g. drunk on duty or when safety or operations are imperilled, an SSPO, disrating/reduction in rank or 14 – 28 days detention should be considered. Legal advice should be sought in these circumstances. • Whilst the guidance above should generally be followed for the sake of consistency, the CO's powers (up to his maximum permitted) to award stoppage of leave and/or restrictions of privileges are not fettered. • It will usually be the case that an offence under s.20(1)(a) will be more serious than one under s.20(1)(b) therefore someone unable to do his duty will usually be sentenced more severely than someone who behaves in a disorderly manner.

s.21 AFA 06	Fighting or threatening behaviour contrary to section 21 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-65
Mitigating factors	<ul style="list-style-type: none"> • Incident overall not serious. • Provocation. • Started by acting in self defence (see Chapter 12 – Defences, mitigation and criminal responsibility) but then went on beyond self defensive actions. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • High degree of force used. • Injuries caused. • Protracted fight. • In front of subordinates. • Many parties involved. • In uniform.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 5 – 10 days fine or restriction of privileges and/or stoppage of leave. • Entry point - 10 – 14 days fine. • High - 14 – 28 days detention/60 day SSPO. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 – 7 days fine or restriction of privileges and/or stoppage of leave. • Entry point - 7 – 10 days fine. • High - 7 – 28 days detention/30 day SSPO.
Sentencing guidance	<ul style="list-style-type: none"> • The punishment should reflect the degree of the accused's involvement as well as his position, level of responsibility and amount of Service experience. • For those of the lowest rank or rate a punishment of 7 days' restriction of privileges and/or stoppage of leave (or equivalent Fine or combination of punishments) would be appropriate for a first offence. Those holding rank/rate above should be punished more severely. • If fighting parties are from different units then there should be consultation between units to ensure a consistent punishment is awarded. • The effect of the threatening behaviour on the victim must be taken into consideration when considering the seriousness of the offence.

s.22 AFA 06	Ill treatment of subordinates contrary to section 22 of The Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-68
Mitigating factors	<ul style="list-style-type: none"> • Inexperience. • Absence of malice. • Horseplay. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Initiation rights. • Course of conduct/systematic. • In front of others. • Serious injury caused: psychological or physical. • Abuse of position. • Motivated by prejudice (race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability or age). • Accompanied by an assault. • In uniform.
Range of punishments	<p>Punishment after denial of offence:</p> <p>For offence committed intentionally:</p> <ul style="list-style-type: none"> • Low - If detention is disproportionate in the circumstances an SSPO (if appropriate to rank/rate) or 10 - 24 days fine. • Entry point - 28 days detention. • High - 36 – 72 days detention. <p>For offence committed recklessly:</p> <ul style="list-style-type: none"> • Low - 4 – 10 days fine. • Entry Point – 10 - 16 days fine. • High – short period of detention/ 17 – 28 days fine. <p>Punishment after admission of offence:</p> <p>For offence committed intentionally:</p> <ul style="list-style-type: none"> • Low - If detention is disproportionate in the circumstances an SSPO (if appropriate to rank/rate) or 7 - 21 days fine. • Entry point - 24 days detention. • High - 28 – 60 days detention. <p>For offences committed recklessly:</p> <ul style="list-style-type: none"> • Low - 1 – 7 days fine. • Entry point – 7 - 14 days fine. • High – short period of detention/14 – 28 days fine.
Sentencing guidance	<ul style="list-style-type: none"> • This offence will almost always have arisen out of prescribed circumstances therefore will usually be dealt with at CM, however a CO may still deal with this offence if the circumstances dictate or the DSP refers the charge to the CO. • This offence should not be dealt with by a subordinate commander and advice as to punishment should always be sought. • The effect of the ill treatment on the victim must be taken into consideration when considering the seriousness of the offence. • Any element of bullying, intimidation or harassment will always make an offence more serious therefore, if any of these elements are present, a more severe punishment will be appropriate

s.23 AFA 06	Disgraceful conduct of a cruel or indecent kind contrary to section 23 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-71
Mitigating factors	<ul style="list-style-type: none"> • Consensual activities not intended to be made public. • Single incident. • Genuine ignorance of proper animal care. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Deliberately cruel. • Two or more persons acting together. • Service personnel whose duty it is to care for animals. • Initiation rites. • Abuse of rank or position. • Violence. • Bullying or intimidation. • Coercion. • In uniform.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave. • Entry point - 5 – 10 days fine. • High - 36 days detention or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Restriction of privileges and/or stoppage of leave. • Entry point - 3 – 7 days fine. • High - 28 days detention or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • The effect of the disgraceful conduct on the victim must be taken into consideration when considering the seriousness of the offence. • If the behaviour led to a lowering of moral standards in a Service unit it must be taken into consideration when determining the seriousness of the offence. This will particularly be the case in an operational environment. If the offender holds rank or rate consideration must be given to determining whether an offender is fit to be in a position of responsibility. • This offence will be used rarely therefore it will almost always be appropriate for a CO to hear this offence to seek advice when considering appropriate sentence.

s.18 AFA 06	Making false records contrary to section 18 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-54
Mitigating factors	<ul style="list-style-type: none"> • Misguided motive to disguise another's negligence/wrongdoing. • Coercion by others. • Lack of supervision. • One-off offence. • Consequence of falsification slight. • No personal gain. • False entry due to poor record keeping. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Intent to deceive. • Motive to disguise offender's own negligence/wrongdoing. • Repeat offences or evidence of system. • Premeditation. • Abuse of position of trust. • Safety or operational implications. • Other serious consequences of falsification.
Range of punishments	<p>Punishment after denial of offence :</p> <ul style="list-style-type: none"> • Low - Admonishment or restriction of privileges and/or stoppage of leave. • Entry point - 10 – 28 days fine. • High - SSPO or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Admonishment or restriction of privileges and/or stoppage of leave. • Entry point - 7 – 21 days fine. • High - SSPO or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • Any offence where the accused is proved to have intended to deceive will always be more serious. • The extent to which the falsification covers up a failure or neglect of duty should be considered when sentencing. • Serious cases will often cast doubt on the suitability of those in a position of responsibility to hold their current rank or rate. • Very serious cases may attract a sentence of detention.

s.25 AFA 06	Misapplying or wasting service property contrary to section 25 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-77
Mitigating factors	<ul style="list-style-type: none"> • Low/inconsequential value. • No advantage to the accused. • Consequence of misapplication slight. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Premeditated. • Planned to gain advantage. • Evidence of system over time. • Concealment of actions. • Abuse of trust. • High value (operational or financial) of property.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Admonishment or restriction of privileges and / or stoppage of leave. • Entry point - 10 – 28 days fine. • High - SSPO or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Admonishment or restriction of privileges and/or stoppage of leave. • Entry point - 7 – 21 days fine. • High - SSPO or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • Despite it not being necessary to prove there was any dishonesty misapplying or wasting Service property should be considered a serious offence as it is the duty of Service personnel to protect Service property and not display a careless attitude towards it. • Dependent on the value of Service property misapplied or wasted, a financial penalty will generally suffice.

s.28 AFA 06	Resistance to arrest contrary to section 28 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-84
Mitigating factors	<ul style="list-style-type: none"> • Provocation (not associated with professional duties). • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Offence committed in front of colleagues/juniors. • Mode of attack (e.g. head butt or kicking). • Use of weapon. • Injury caused. • If arrest is for serious act/s of violence. • Warning to control offender not heeded. • In uniform.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low – Short period of detention or 10 – 28 days fine. • Entry point - 10 – 28 days detention. • High - 28 – 90 days detention. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low – Short period of detention or 7 – 21 days fine. • Entry point - 7 – 28 days detention. • High - 21 – 60 days detention.
Sentencing guidance	<ul style="list-style-type: none"> • The CO should place appropriate weight on any violence aimed at an arresting officer. Such violence should not be considered an occupational hazard and should be treated with the seriousness that it deserves.

s.42 AFA 06 AND s1(1) TA 68	Theft contrary to section 42 of the Armed Forces Act 2006 namely 1(1) of the Theft Act 1968
Charging reference	MSL Chapter 8 - Criminal conduct offences pages 1-8-19 This offence is complicated therefore close consultation with the corresponding offences section in the MSL is essential.
Mitigating factors	<ul style="list-style-type: none"> • Low/inconsequential value. • Special personal or domestic circumstances lying behind theft. • Opportunistic theft not premeditated. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • If theft involves breach of trust, theft from employer or theft in Service accommodation (see below for specific guidance). • Premeditated. • High value. • Victim shares single-Service accommodation with offender. • Consequential damage to property as a result of an offence. • Adverse effect on morale and discipline in unit. • Acting in concert with another.
Range of punishments	<ul style="list-style-type: none"> • The appropriate punishment for a theft can vary significantly. Where the value of the theft is low (under £300) and the overall level of dishonesty is not high (e.g. single instance, opportunistic, unpremeditated and no subsequent deceit) the CO may consider his powers of punishment sufficient. • Where there has been a breach of trust, detention will be virtually inevitable, the length of which will be dependent on the level of trust reposed. • In those very minor cases where detention is not considered appropriate, a fine or restriction or privileges/stoppage of leave will usually be appropriate or disrating/reduction of rank where the offender is in a position of responsibility. • Consideration should be given to Service compensation orders. • Advice must be sought in all but the most simple cases.
Sentencing guidance	<ul style="list-style-type: none"> • Theft in the Service community is a serious offence. It undermines mutual trust and respect in a close-knit team and therefore impacts on operational effectiveness. The financial value of an item stolen will always be an important factor in sentencing however, in some circumstances, it may be of little consequence in comparison to the effect of a breach of trust between comrades. • The seriousness of the offence should be gauged by assessing the value of the item stolen, the extent of the dishonesty and the breach of trust, if any, between Service personnel. • The impact on the Service person's unit must always be considered. • A deterrent sentence should always be considered bearing in mind the close-knit Service community. • Theft from employer. This is a very serious offence, which, in a civilian context, would usually lead to dismissal for gross misconduct. As a direct parallel, a presumption of dismissal as a means of dealing with such misconduct is similarly created in the Services therefore most cases will be referred to the DSP for trial by CM. Where the amount stolen from the employer is small and the Service interest merits it, an offender's behaviour may not necessarily warrant dismissal from the Service and a CO may hear the charge. However, any punishment is likely to be severe and involve a sentence of detention. The same

	<p>approach should be adopted for all forms of dishonesty for personal gain practised against an employer including travel claim fraud and Service telephone misuse.</p> <ul style="list-style-type: none"> • Breach of trust. Where an individual has used his position in order to defraud or steal then there is a presumption that such behaviour will be met with a sentence of detention in addition to any other sentence that might be considered necessary. • Theft in Service accommodation. Theft from colleagues who share Service accommodation undermines the mutual respect and comradeship that form the ethos of Service life. It may also represent a breach of a position of trust, which will invariably mean that a sentence of detention is merited.
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s.42 AFA 06	Dishonesty offences other than theft
Charging reference	For a dishonesty offence other than theft see each offence for civil legislation reference MSL Chapter 8 - Criminal conduct offences pages 1-8-24 to 1-8-42 Note: Some offences outlined below are to be charged under the Fraud Act 2006 which substitutes many offences previously charged under the Theft Acts.
Mitigating factors	Apply relevant theft criteria.
Aggravating factors	Apply relevant theft criteria.
Sentencing guidance	<ul style="list-style-type: none"> See guidance for theft and specific guidance below:
Fraud by false representation or failing to disclose information	<ul style="list-style-type: none"> Such cases are often distinguishable as more serious than mere opportunistic theft as they reveal clear premeditation and a dishonest course of conduct.
Fraud by abuse of position	<ul style="list-style-type: none"> The level of seriousness is aggravated by the deceit, premeditation and dishonest course of conduct by someone in a position of trust.
Making off without payment	<ul style="list-style-type: none"> Making off without payment from a restaurant or taxi is akin to theft in that it involves dishonesty and an intention to avoid payment. Owners of businesses vulnerable to this form of dishonesty deserve protection. Furthermore, it brings the Service into disrepute. Therefore the sentencing criteria for 'theft' outlined above should be applied robustly. This offence, however, involves neither 'theft from employer' nor 'abuse of trust'. Where the payment avoided was not high a large fine or short period of detention would be appropriate.
Taking a vehicle or pedal cycle without consent of owner	<ul style="list-style-type: none"> The circumstances surrounding the taking; who owned the vehicle (Service or private); and anticipated method of recovering loss for damage (Service compensation order) are all factors to be taken into consideration when sentencing these offences. Whilst the specific element of 'dishonesty' is not included in this offence, it is an aggravating feature if a Service vehicle is taken without consent or if the driver of that Service vehicle has wilfully exceeded the authority granted, by using it for private purposes. This is because he has benefited at his employer's expense. As such, dependent on the level of culpability proved and any detriment to the Crown, the sentencing guidelines outlined for 'theft from employer' should be consulted. In very minor cases, a large fine may suffice otherwise a short sentence of detention would be appropriate. Where damage is caused a Service compensation order may be appropriate.

s.42 AFA 06 AND s.39 CJA1988 or s.47 OAPA 1861	Common assault or battery contrary to section 42 of the Armed Forces Act 2006 namely section 39 of the Criminal Justice Act 1988 and assault occasioning ABH contrary to section 42 of the Armed Forces Act 2006 namely section 47 of the Offences Against The Person Act 1861
Charging reference	MSL Chapter 8 - Criminal conduct offences pages 1-8-5 to 1-8-13
Charging standards	<p>In order to assess the seriousness of the offence it is beneficial to understand the charging standards which are as follows:</p> <ul style="list-style-type: none"> • Common assault. The statutory offence of assault covers both common assault, i.e. causing another to apprehend immediate unlawful violence, and battery, i.e. the application of unlawful force. Common assault does not require any physical harm. However battery is charged for: grazes; scratches; abrasions; minor bruising; swellings; reddening of the skin; superficial cuts; a black eye. • Assault occasioning actual bodily harm. Actual bodily harm need not be permanent, but must be more than merely transient or trifling. ABH should generally be charged to cover: • Loss or breaking of a tooth, temporary loss of a sensory function (e.g. loss of consciousness); extensive or multiple bruising; minor fractures; minor, but more than superficial, cuts requiring medical treatment.
Mitigating factors	<ul style="list-style-type: none"> • Impulsive action. • Provocation. • Stress imposed by situation. • Single blow. • Minor or no injury. • Recklessness rather than intention. • Suffering from welfare/medical difficulties. • No intent to cause harm. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Hospital/medical premises. • Group action. • Premeditated. • Unprovoked. • Offence committed in front of others. • Civilian victim. • Degree of injury. • Use of weapon, e.g. glass. • Mode of attack, e.g. head butt or kicking. • Motivated by prejudice (race, ethnicity, religion, belief, sex, gender identity, sexual orientation, disability or age) • Victim vulnerable. • Any element of bullying. • Victim superior officer, duty man or provost staff. • Victim performing a public Service. • Intention to cause harm. • In uniform.
Range of punishments	<p>Assault: Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Fine and or restriction of privileges/stoppage or leave.

	<ul style="list-style-type: none"> • Entry point – 21 – 28 days detention or disrating/reduction in rank, SSPO. • High – 36 – 60 days or detention/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Fine and or restriction of privileges/stoppage or leave. • Entry point – 14 – 28 days detention or disrating/reduction in rank, SSPO. • High – 28 – 36 days or detention/reduction in rank. <p>ABH:</p> <p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low – 36 days detention or detention/reduction in rank. • Entry point – 42 – 56 days detention or detention/reduction in rank. • High - 72 – 90 days detention or detention/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low – 28 days detention or detention/reduction in rank. • Entry point – 36 – 42 days detention or detention/reduction in rank. • High - 60 – 72 days detention or detention/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • Other offences involving violence may benefit from this guidance including: Misconduct towards a superior officer, fighting and certain public order offences (e.g. affray) see page 1-13-31. • Sentencing in all cases of violence must contain a strong element of deterrence, particularly when the victim is a superior officer or a vulnerable victim. • The persistence and duration of the assault must be taken into account when sentencing. • A sentence of detention is appropriate for all but low seriousness offences of violence. Low level offences are those with a preponderance of mitigating features and no serious aggravating features present. • As the circumstances of assaults and ABH offences are diverse, the length of detention will be governed by weighing the seriousness of the offence as well as any aggravating and mitigating factors. • Consideration must be given to the award of a Service compensation order for personal injury to the victim if appropriate see Chapter 13 (Summary hearing sentencing and punishments) for further detail.

s.42 AFA 06 AND s.1(1) CDA 1971	Criminal damage contrary to section 42 of the Armed Forces Act namely section 1(1) of the Criminal Damage Act 1971
Charging reference	MSL Chapter 8 - Criminal conduct offences page 1-8-46
Mitigating factors	<ul style="list-style-type: none"> • Impulsive action. • Minor damage. • Provocation. • Voluntary compensation. • Committed recklessly. • Genuine lack of understanding of the consequences of the action which caused damage. • Genuine remorse.
Aggravating Factors	<ul style="list-style-type: none"> • Deliberate. • Serious damage. • Damage or loss caused danger to others. • In uniform. • Encouragement of others to engage in activity causing damage.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 5 – 18 days fine. • Entry point - 18 – 28 days fine. • High - 10 – 36 days detention or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 – 7 days fine. • Entry point – 7 - 14 days fine. • High - 7 – 28 days detention or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • In assessing the seriousness of the offence the value of the property, the extent of the damage, the reason for the damage and any effect on a victim (owner of the property) should be considered. • A Service compensation order should always be considered. • Any voluntary payment of compensation can be taken into account as mitigation in subsequent disciplinary action.

s.24 AFA 06	Damage to or loss of Service property contrary to section 24 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-73
Mitigating factors	<ul style="list-style-type: none"> • Impulsive action. • Minor damage. • Provocation. • Committed recklessly. • Genuine lack of anticipation of the potential consequences of the action which caused damage. • Level of professional competency. • Operational situation which reduces opportunity to exercise usual care. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Deliberate. • Serious damage. • Operational efficiency affected. • Damage or loss caused endangered others. • In uniform. • Encouragement of others to engage in activity causing damage.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 5 – 18 days fine. • Entry point - 18 – 28 days fine. • High - 10 – 36 days detention or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 – 13 days fine. • Entry point - 14 – 24 days fine. • High - 7 – 28 days detention or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • In cases of Service property both the monetary and operational values of the items must be considered. • A Service Compensation Order should always be considered. • Any voluntary payment of compensation can be taken into account as mitigation in subsequent disciplinary action.

s.13 AFA 06 OR s.42 AFA 06 AND s.139 CJA 88 or s.1 PCA 53	Contravention of standing orders (weapon offence) contrary to section 13 of the Armed Forces Act 2006 or having offensive weapon in public place contrary to section 42 of the Armed Forces Act 2006 namely section 1 Prevention Of Crime Act 1953 or having article with blade or point in public place contrary to section 42 of the Armed Forces Act 2006 namely section 139 Criminal Justice Act 1988
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-41 MSL Chapter 8 - Criminal conduct offences pages 1-8-14 to 1-8-18
Mitigating factors	<ul style="list-style-type: none"> • Not premeditated. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Group action or joint possession. • Weapon actually produced. • People put in fear. • Premeditated.
Range of punishments	Punishment after denial of offence: <ul style="list-style-type: none"> • Low – 21 – 28 day fine. • Entry point – 21 – 60 days detention. • High – 60+ days detention. Punishment after admission of offence: <ul style="list-style-type: none"> • Low – 14 – 21 day fine. • Entry point – 14 – 42 days detention. • High – 42+ days detention.
Sentencing guidance	<ul style="list-style-type: none"> • If a weapon is actually used in a public place the charge will usually be serious enough to warrant CM. However this will not always be the case and this offence may be heard by the CO. In these circumstances a sentence of detention will usually be appropriate unless there are substantial mitigating circumstances. • Offences against Standing Orders may attract a fine if there are no aggravating features, for example a flick knife in a locked personal locker.

s.27 AFA 06	Obstructing or failing to assist a Service policeman contrary to section 27 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-81
Mitigating factors	<ul style="list-style-type: none"> • Temporary or momentary obstruction or failure to assist. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Serious consequences from offender's action. • Offence committed in public. • Operational environment. • Group offence.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - 5 - 10 days fine and/or restriction of privileges/stoppage of leave. • Entry point - 14 – 24 days fine. • High - 24 – 28 days fine or disrating/reduction in rank. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 - 7 days fine and/or restriction of privileges/stoppage of leave. • Entry point - 8 – 21 days fine. • High - 22 – 28 days fine or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • The consequences of the intentional act should always be considered as well as how much appreciation of those consequences the offender had. • Consider whether those in a position of responsibility are fit to hold their rate or rank.

s.29 AFA 06	Escaping from lawful custody or using violence or threatening behaviour against a person in whose custody an offender is contrary to section 29 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-88
Mitigating factors	<ul style="list-style-type: none"> • Opportunist. • Poor supervision of detainee. • Poor treatment of detainee. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Planned. • Operational environment. • Injury caused. • Damage caused. • Use of weapon. • Use of force.
Range of punishments	<p>Punishment after denial of offence: Entry point is detention due to the offender being in custody.</p> <ul style="list-style-type: none"> • Low/Medium – 21 days detention. • High – 36 days detention. <p>Punishment after admission of offence: Entry point is detention due to the offender being in custody.</p> <ul style="list-style-type: none"> • Low/Medium – 14 days detention. • High – 28 days detention.
Sentencing guidance	<ul style="list-style-type: none"> • Any violence used whilst in custody will always be considered more serious than if it had been used when not in custody. • Legal advice must always be sought when a weapon is involved.

s.30 AFA 06	Allowing escape of prisoners contrary to section 30 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-91
Mitigating factors	<ul style="list-style-type: none"> • Lack of Service experience. • Force or threat of force by prisoner. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Experienced Serviceperson. • Operational environment. • Severe consequences of allowing escape. • Multiple escapees. • Gross negligence.
Range of punishments	<p>Offence committed deliberately:</p> <p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low - Fine and/or restriction of privileges and/or stoppage or leave. • Entry point – 14 – 28 days detention or disrating/reduction in rank, SSPO. • High – 28 days + days or detention or disrating/reduction in rank, SSPO. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low - Fine and/or restriction of privileges and/or stoppage or leave. • Entry point – 7 - 14 days detention or disrating/reduction in rank, SSPO. • High – 14 - 28 days or detention/reduction in rank. <p>Offence committed negligently:</p> <p>Punishment after denial of offence</p> <ul style="list-style-type: none"> • Low – Restriction of privileges and/or stoppage of leave for able rate, marine, soldier or airman or small fine for offenders in position of responsibility. • Entry point - Fine on sliding scale of seriousness or reprimand for those in position of responsibility. • High – Disrating/reduction in rank or 24 days + detention, SSPO. <p>Punishment after admission of offence</p> <ul style="list-style-type: none"> • Low – Restriction of privileges and/or stoppage of leave for able rate, marine, soldier or airman or small fine for offenders in position of responsibility. • Entry point - Fine on sliding scale of seriousness or reprimand for those in position of responsibility. • High – Disrating/reduction in rank or 14 days + detention, SSPO.
Sentencing guidance	<ul style="list-style-type: none"> • The level of training and experience of the accused should be taken into consideration. • This is a very serious offence because it requires an offender to release or allow escape of a prisoner whilst the offender is in a position of authority therefore it will always be the case that the offender's position should be reviewed. • Any punishment awarded must include a deterrent element.

s.34 AFA 06	Low flying contrary to section 34 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-104
Mitigating factors	<ul style="list-style-type: none"> • Distraction. • Impulsive action. • No damage or distress caused. • No Intent. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Very low height. • Serious deviation from authorised height. • Pilot in executive position. • Damage or injury caused. • Carrying Ordnance.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low – Reprimand/fine. • Entry point – Severe reprimand and up to 14 days fine. • High – Forfeiture of seniority and Severe reprimand, Reduction in rank for NCO Aircrew or up to 28 days fine. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low – Admonition, Reprimand. • Entry point – Up to 10 days fine, Severe reprimand. • High – Up to 14 days fine or Forfeiture of seniority, reduction in rank for NCO Aircrew.
Sentencing guidance	<ul style="list-style-type: none"> • Sentencing must contain a large element of deterrence for such a risky activity particularly if the offender was in a position of authority.

s.35 AFA 06	Annoyance by flying contrary to section 35 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-107
Mitigating factors	<ul style="list-style-type: none"> • Impulsive action. • Not prolonged annoyance. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Actual distress caused. • Offence took place over a prolonged period. • Offence took place in front of large number of people/in public eye. • Intentional.
Range of punishments	<p>Punishment after denial of offence:</p> <ul style="list-style-type: none"> • Low – Reprimand or fine. • Entry point – Severe reprimand and up to 14 days fine. • High – Up to 28 days fine or Forfeiture of seniority. <p>Punishment after admission of offence:</p> <ul style="list-style-type: none"> • Low – Reprimand. • Entry point – up to 10 days fine or Severe reprimand. • High - up to 14 days fine or forfeiture of seniority, reduction in rank for NCO aircrew.
Sentencing guidance	<ul style="list-style-type: none"> • The seriousness will be determined by the level of compromise to public safety or the exposure of this offence to the general public. This includes any noise nuisance that may affect those who are vulnerable such as children, elderly people or animals. • The sentence must contain a large element of deterrence for such a risky activity – particularly if the offender was in a position of authority.

s.36 AFA 06	Inaccurate certification contrary to section 36 of the Armed Forces Act 2006
Charging reference	MSL Chapter 7 - Non-criminal conduct (disciplinary) offences page 1-7-109
Mitigating factors	<ul style="list-style-type: none"> • One-off offence. • Consequence of inaccurate certification slight. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Intentional. • Motive to disguise offender's own negligence/wrongdoing. • Multiple offences. • Abuse of position of trust. • Safety or operational implications. • Serious consequences of falsification.
Range of punishments	<p>Punishment after denial/admission of offence:</p> <ul style="list-style-type: none"> • Low - 5 – 28 days fine and/or restriction of privileges/stoppage of leave. • Entry point – 24 – 28 days fine or disrating/reduction in rank. • High – 21 – 28 days detention or disrating/reduction in rank. <p>Punishment after denial/admission of offence:</p> <ul style="list-style-type: none"> • Low - 3 – 21 days fine and/or restriction of privileges/stoppage of leave. • Entry point – 18 – 24 days fine or disrating/reduction in rank. • High – 14 – 24 days detention or disrating/reduction in rank.
Sentencing guidance	<ul style="list-style-type: none"> • If consequences could be potentially catastrophic or safety has been compromised all options should be considered. • The level of training and experience of the accused should be taken into consideration.

s.42 AFA 06 AND s.5(2) MDA 71	Possession of a controlled drug contrary to section 42 of the Armed Forces Act 2006 namely section 5(2) of the Misuse of Drugs Act 1971
Charging reference	MSL Chapter 8 - Criminal conduct offences page 1-8-46 JSP 853 – Alcohol and substance misuse and testing
Mitigating factors	<ul style="list-style-type: none"> • Very small quantity. • Youthful experimentation. • Absence of knowledge as to the true nature of the substance possessed. • Possession away from Service environment. • Young age of offender. • Genuine remorse.
Aggravating factors	<ul style="list-style-type: none"> • Amount other than very small. • In a Service environment. • Corruption of others. • Operational environment. • Class A drug.
Range of punishments	Punishment after denial of offence: <ul style="list-style-type: none"> • Low – 36 days detention. • Entry point – 48 days detention. • High – 72+ days detention. Punishment after admission of offence: <ul style="list-style-type: none"> • Low – 28 days detention. • Entry point – 42 days detention. • High – 60+ days detention.
Sentencing guidance	<ul style="list-style-type: none"> • The tri-Service policy on drug misuse should always be followed and all Service personnel who misuse drugs should expect to be removed from the Service by disciplinary or administrative means. • There may however be exceptional circumstances in which a CO could determine that the retention of an offender is desirable. In those circumstances a sentence of detention will be inevitable. • A suspended sentence of detention should be reserved for the most exceptional cases. • The possible consequences for others in the unit should always be considered.