



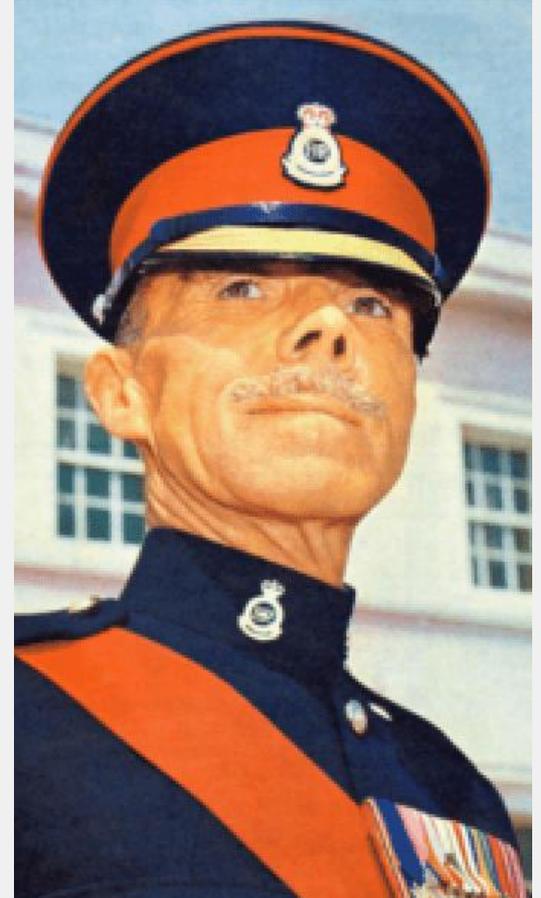
# ACCOUNTABILITY FOR MISCONDUCT DURING MILITARY OPERATIONS

COL NIGEL HEPPENSTALL  
DACOS LEGAL FIELD ARMY  
BRITISH ARMY

**The views expressed in this presentation are the personal views of the presenter and do not reflect the official position of the UK Army or MOD.**

## INTRODUCTION

- Fundamental need for *disciplined* Armed Forces.
- Conduct of operations in accordance with the IHL.
- Prevention of breaches
  - Training and education.
- Command responsibility.
- Reporting of suspected breaches.
- Proper investigation of alleged breaches.
- Enforcement
  - IHL and domestic law - prosecution.
  - Domestic law (less serious) - summary hearing.
  - Military values & standards - administrative action.



## The Armed Forces Act 2006, section 42

### Criminal conduct

- (1) A person subject to service law, or a civilian subject to service discipline, commits an offence under this section if he does any act that
- (a) is punishable by the law of England and Wales; or
  - (b) if done in England or Wales, would be so punishable.

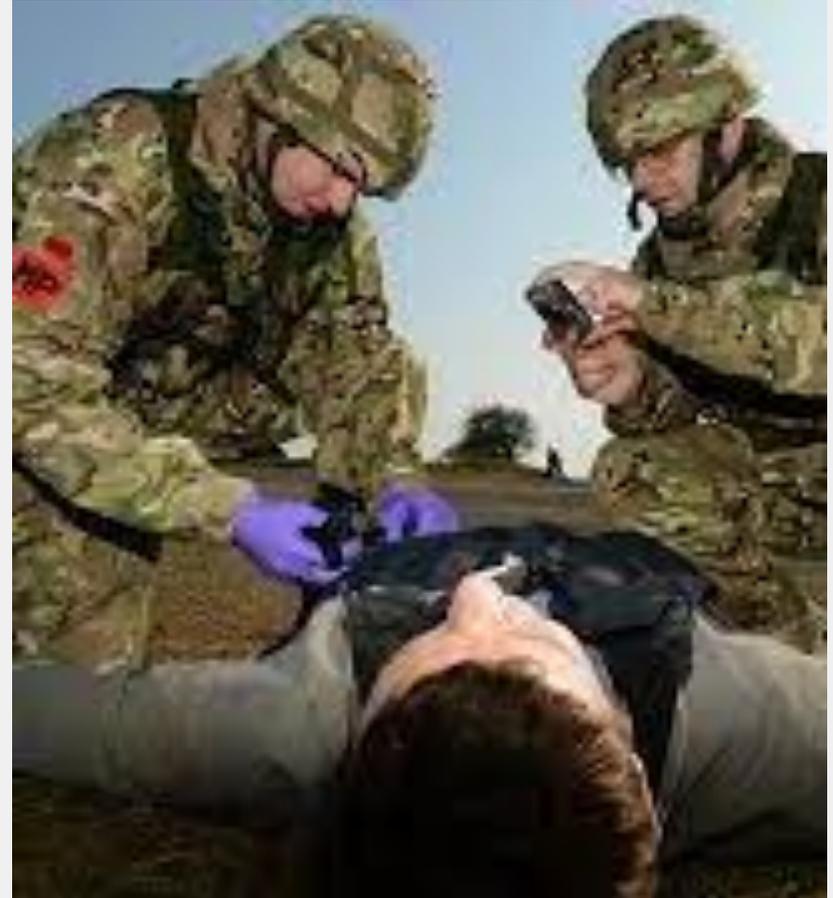


- International cases: SOFA, MOU
- Shared / primary jurisdiction
- ICC

# INVESTIGATIONS

## Introduction of the Defence Serious Crime Unit (DSCU)

- Formed, following several independent reviews, to replace the Special Investigation Branches of the single Services.
- Investigators and specialist teams from across the Royal Navy, Army and Royal Air Force, supported by civil servants and contractors.
- Works with other components of the Service Justice System including the Victim and Witness Care Unit, and the Service Prosecuting Authority.



## DSCU teams:

- Operations Team - high readiness to deploy globally.
- Special Response Team - trained to deal with serious sexual offences and incidents involving children, ensuring victims are safeguarded, supported and referred to support organisations.
- Major Investigation Team - trained to deal with Critical Incident Management and larger major crime investigations.

## THE COURT MARTIAL



- Civilian Judge Advocate.
- Service panel members (some exceptions).
- Jurisdiction over all offences under UK law.
- UK based but may travel.
- Use of video links facilitates overseas evidence.

ACCOUNTABILITY

# THE BAHA MOUSA TRIAL & INQUIRY



ACCOUNTABILITY

# THE SGT BLACKMAN TRIAL



## SUMMARY HEARINGS

### Summary hearings

- Conducted by Commanding Officers and Subordinate Commanders.
- Limited range of offences.
- Limited sentencing powers.
- Relatively swift.
- Portable.
- Rights to elect Court Martial and to appeal findings and punishments.



## ADMINISTRATIVE ACTION

- Employment law basis.
- Civil standard of proof.
- Breaches of the 'Service Test': impact on operational effectiveness.
- Sanctions include possible termination of service.

**Importance of maintaining values and standards.**



