House of Lords
House of Commons

Joint Committee on Human Rights

Naval Discipline Act 1957 (Remedial) Order 2004

Ninth Report of Session 2003–04

HL Paper 59
HC 477

House of Lords
House of Commons

Joint Committee on Human Rights

Naval Discipline Act 1957 (Remedial) Order 2004

Ninth Report of Session 2003–04

Report, together with formal minutes and appendices

Ordered by The House of Lords to be printed 22 March 2004
Ordered by The House of Commons to be printed 22 March 2004

HL Paper 59
HC 477
Published on 29 March 2004 by authority of the House of Lords and the House of Commons London: The Stationery Office Limited
£0.00

JOINT COMMITTEE ON HUMAN RIGHTS

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bowness	Mr David Chidgey MP (Liberal Democrat, *Eastleigh*)
Lord Campbell of Alloway	Jean Corston MP (Labour, *Bristol East)* (*Chairman*)
Lord Judd	Mr Kevin McNamara MP (Labour, *Kingston upon Hull*)
Lord Lester of Herne Hill	Mr Richard Shepherd MP
Lord Plant of Highfield	(Conservative, *Aldridge-Brownhills*)
Baroness Prashar	Mr Paul Stinchcombe (Labour, *Wellingborough)*
	Mr Shaun Woodward MP (Labour, *St Helens South*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Current Staff

The current staff of the Committee are: Paul Evans (Commons Clerk), Ian Mackley (Lords Clerk), Professor David Feldman (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant) and Pam Morris (Committee Secretary).

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is jchr@parliament.uk.

Contents

Report

Summary

The Naval Discipline Act 1957 (Remedial) Order 2004 is an order made under special procedures set out in the Human Rights Act to allow for the speedy remedying of an incompatibility between UK law and the Convention rights established under that Act.

The Joint Committee on Human Rights is required to report to each House on each case of the use of these powers by a Minister.

This Report explains the background to the above remedial order, the Committee's deliberations in relation to it, and the Committee's conclusions.

The Committee reports to each House that, in its view, the Order is *intra vires* and is a justified use of the power conferred by section 10 of and Schedule 2 to the Human Rights Act 1998, and does not require to be drawn to the attention of either House on formal grounds.

The Committee recommends that the Order be approved.

1 The Order

Background

1. The Naval Discipline Act 1957 (Remedial) Order 2004,[1] has been made and laid before each House by the Secretary of State for Defence in accordance with the 'urgent' procedure under section 10 of and Schedule 2 to the Human Rights Act 1998. Its purpose is to remove an incompatibility between the provisions of the Naval Discipline Act 1957 governing the composition of naval courts martial and the right under ECHR Article 6.1 to a fair hearing before an independent and impartial tribunal in the determination of criminal charges. The incompatibility was established by a judgment of the European Court of Human Rights in *Grieves v. United Kingdom*.[2]

2. The basis of the finding of incompatibility was that naval courts martial instituted under the Naval Discipline Act 1957 lacked the independence and impartiality required by Article 6.1 of the European Convention on Human Rights (ECHR) in the determination of criminal charges. Article 6.1 provides, so far as relevant:

> In the determination … of any criminal charge against him, everyone is entitled to a fair … hearing … by an independent and impartial tribunal …

3. The Court had held in earlier cases that a court martial may be regarded as a tribunal determining criminal charges against the accused, and that its independence falls to be assessed by reference to (among other considerations) the manner in which its members are appointed, the guarantees against outside pressures on its members, and the extent to which it presents an objective appearance of independence and impartiality.[3] In the case of *Grieves*, the Court decided that the manner of appointment of Judge Advocates in the Royal Navy, their status as serving naval officers, and the reporting practices in operation at the time of the case deprived naval Judge Advocates of the necessary appearance of independence.

4. The Court concluded that there were objectively justifiable doubts about the independence of naval Judge Advocates for the following reasons.

a) Naval Judge Advocates were serving naval officers, performing other duties besides acting as Judge Advocate at courts martial, and as such were part of the normal command and disciplinary structure of the Navy.

b) The Chief Naval Judge Advocate, a senior naval officer appointed by the First Sea Lord and accountable to the Second Sea Lord, took the lead in the appointment of naval Judge Advocates, identifying suitable candidates, conferring with the Judge Advocate of the Fleet (an experienced civilian lawyer who at the relevant time was a circuit judge) and, with the agreement of the Judge Advocate of the Fleet, 'ticketing' the successful candidates to act as Judge Advocates.

1 S.I. 2004, No. 66.

2 App. No. 57067/00, judgment of 16 December 2003 (Grand Chamber).

3 See e.g. *Findlay v. United Kingdom*, Eur. Ct. HR, judgment of 25 February 1997, RJD 1997-I, at para. 73; *Incal v. Turkey*, Eur. Ct. HR, judgment of 9 June 1997, *Reports* 1998-IV, para. 71.

c) At the time of the case, comments on the performance of Judge Advocates could be passed to the Chief Naval Judge Advocate and to the Judge Advocate's service reporting officer.

5. In *Grieves*, the Court held that the combination of those factors undermined the objective independence of Royal Navy courts martial. There was no objective justification for the absence of a civilian involvement in naval courts martial, having regard to the fact that all naval courts martial since 1986 have been held on land. The Court also considered that the absence from the Royal Navy of a post of Permanent President of Courts Martial with no hope of promotion and no effective fear of removal deprived naval courts martial of a significant guarantee of independence. In addition, the Court considered that the relative lack of detail and clarity in the briefing notes sent to members of naval courts martial as compared with those provided for Royal Air Force courts martial, deprived the courts martial of another effective safeguard for the independence of ordinary members of naval courts martial from inappropriate outside influence.[4] Accordingly the Court found that there had been a violation of Article 6.1.

6. After the court martial in question, certain changes had been made to the rules governing naval Judge Advocates in the light of judgments of the European Court of Human Rights relating to courts martial in the Army and the Royal Air Force. In particular, Queen's Regulations, Royal Navy (QRRN) 3630 made the civilian Judge Advocate of the Fleet solely responsible for acting as the reporting officer in respect of naval officers' performance of their duties as Judge Advocates.

7. However, the naval Judge Advocates (unlike those in the Army and Royal Air Force) continued to be serving officers, and the method of appointment remained the same.

8. Section 10 of the Human Rights Act 1998 provides, so far as is relevant, that if—

> … it appears to a Minister of the Crown … that, having regard to a finding of the European Court of Human Rights … a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention … he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

Schedule 2 to the Act, goes on to set out the procedure for making such remedial orders, either by an urgent or non-urgent procedure.

9. The judgment of the Court meant that it was impossible to conduct a naval court martial in accordance with the provisions of the Naval Discipline Act 1957 without it violating Article 6.1 of the ECHR. The Minister therefore considered that it was appropriate to amend the Naval Discipline Act 1957 to bring the method of appointing naval Judge Advocates into line with the requirement of independence contained in Article 6.1. The importance and urgency of the situation was considered to justify the Minister in making the amendment by means of a remedial order under section 10 of the Human Rights Act 1998, and in using the urgent procedure under Schedule 2 to the Act whereby the Order can be made and come into effect without prior parliamentary scrutiny, but ceases to have

4 See App. No. 57067/00, judgment of 16 December 2003 (Grand Chamber), paras. 74–91.

effect if not approved by an affirmative resolution of each House within 120 sitting days[5] of being made.

The Order

10. The Order was made on 14 January 2004, laid before each House on 15 January and came into effect on 16 January. It amends the relevant provisions of the Naval Discipline Act 1957 and related legislation to allow only the Judge Advocate of the Fleet (a civilian circuit judge) to appoint Judge Advocates in naval matters.

5 On the meaning of this term, see below, para. 12.

2 The Committee's responsibilities

11. Under our order of appointment from the House of Lords and Standing Order No. 152B of the House of Commons, we have two functions in relation to remedial orders. First, we act as guarantor of the propriety of the use of the power to make remedial orders under section 10 of and Schedule 2 to the Human Rights Act 1998. Secondly, we act in the place of the Joint Committee on Statutory Instruments to ensure that the order meets the criteria of formal propriety which normally fall within the purview of that committee. We explained our responsibilities in detail in our Seventh Report of 2001–02.[6]

12. When a remedial order is made by the urgent procedure, we are required to report at least once during the 120 days within which the Order must be approved by affirmative resolution of both Houses if it is not to lapse. In practice, we report in the first 60 days, so that the Minister can take account of our report when deciding whether to withdraw the order and make and lay a new one. The matters on which the Committee must report are:

a) whether the order imposes a charge on public revenues or requires payments to be made to a public authority;

b) whether there is doubt as to whether it is intra vires;

c) whether it appears to make unusual or unexpected use of the power under which it is made;

d) whether for any reason its purport calls for elucidation;

e) whether its drafting appears to be defective;

f) whether there appears to have been unjustifiable delay in the publication or laying of the order, or in notifying the Speaker and Lord Chancellor where the instrument has come into force before being laid; and

g) whether the order should be approved in the form in which it is originally laid before Parliament, or should be replaced by a modified order, or should not be approved.

13. In practice we also report whether we consider that it was proper to proceed by remedial order. Section 10(2) of the Human Rights Act provides that a Minister should only proceed to remedy the incompatibility by means of a remedial order, rather than by primary legislation, if he or she "considers that there are compelling reasons" to do so.[7] We also consider whether, in our view, it was proper to use the urgent procedure.[8]

6 Seventh Report of 2001–02, *Making of Remedial Orders*, HL Paper 58, HC 473.

7 We discuss the nature of "compelling reasons" in our Seventh Report of Session 2001–02, op cit, at paras. 32–34.

8 ibid., paras. 36 and 37.

3 Our consideration of the order

14. When we conducted our preliminary examination of the order, we formed the following provisional views as to the matters listed in paragraphs 12 and 13 above.

a) The order imposes no charge on the public revenues, and does not require payment to a public authority.

b) There was no doubt in our minds that the order is within the power conferred by section 10 of the Human Rights Act 1998, and that the procedural requirements of section 10 and of Schedule 2 to that Act have been complied with.

c) The purpose for which it is made is precisely that for which the power was intended.

d) No aspect of it appeared to us to call for elucidation.

e) The drafting appeared to us to be clear and accurate.

f) The order had been laid before Parliament on 15 January, the day before it came into force, and there had been no undue delay between the making of the order on 14 January and its laying on 15 January.

g) The Order seemed to us to be justified, and the use of the urgent procedure also seemed to us to be justified. There was in effect a freeze on naval disciplinary hearings as a result of the judgment of the European Court of Human Rights, and there was an urgent need to amend the Naval Discipline Act 1957 so far as necessary to allow disciplinary hearings to resume in a manner which complies with the judgment. The amendments made to the Act by the Order went no further than is necessary to remedy the incompatibility between the legislation and Article 6 of the ECHR identified in the judgment of the Court. It would have been impracticable to wait until a Bill could be introduced to deal with the matter.[9]

15. At the same time, we wanted to satisfy ourselves that appropriate non-legislative steps were being taken to ensure that the operation of naval courts martial would not continue to be incompatible with Article 6 of the ECHR on account of arrangements which were not required by legislation and so had not been amended by the remedial order. We noted that the European Court of Human Rights in *Grieves v. United Kingdom* had attached significance to three factors which were not the result of the legislation (see paragraphs 80–90 of the Judgment). These were:

a) the use of serving naval officers as judge advocates with a pivotal role in the court martial (paragraphs 85 and 87 to 89 of the Judgment);

b) reporting practices in relation to the performance of naval judge advocates before Queen's Regulation RN 3630 came into force (paragraph 86 of the Judgment); and

9 The Ministry of Defence are currently preparing a "Tri-Service" Discipline Bill to replace and update the existing separate Acts for each Service. This is unlikely to be introduced much before the expiry of the current Acts in 2006.

c) the level of detail in briefing notes sent to members of naval courts martial (paragraph 90 of the Judgment).

16. Our Chair therefore wrote on 4 February 2004 to the Parliamentary Under-Secretary of State for Defence, Mr Ivor Caplin MP, asking what steps were being taken to ensure that the factors would not in future compromise the capacity of the naval discipline system to operate in a manner compatible with Article 6.1 of the ECHR, and whether reasonable steps had been taken to publicise the making of the remedial order to all ranks of the Royal Navy and other interested parties to enable representations to be made within 60 days.[10]

17. We also thought it appropriate to invite anyone with an interest in the matter to submit evidence to us to inform our deliberations. Our Chair wrote on 4 February 2004 to the Chairman of the House of Commons Select Committee on Defence, the Rt Hon Bruce George MP, and to Admiral the Lord Boyce GCB, OBE, who had spoken on the subject on the floor of the House of Lords, asking whether the Select Committee and Lord Boyce wished to contribute to comment on the remedial order.[11] In addition, we issued a press notice inviting anyone with an interest to submit evidence.[12]

18. Admiral the Lord Boyce replied to our Chair's letter on 16 February 2004.[13] He made no substantive comment on the remedial order itself, but drew attention to the fact that the naval discipline system, despite having been held to be incompatible with Article 6.1 of the ECHR, had in fact worked well and fairly for many years, and that the acquittal rate at naval courts martial had been at least as high as in criminal trials in ordinary courts. He pointed out that operating the new arrangements and compensating anyone held to have been unfairly and unsafely convicted would impose costs which would be likely to be at the expense of the front line without any improvement in the quality of justice delivered by courts martial. If future judgments of the European Court of Human Rights threatened operational effectiveness, he suggested that it might be necessary to seek exemptions for the Armed Forces. Nevertheless, he understood the reasons for making the remedial order and had no doubt that the Royal Navy was taking the necessary action to comply with the Court's judgment.

19. The Clerk of the Defence Committee responded to our letter on 17 March[14] reporting his Committee's concerns that delays in courts martial arising from the ECtHR's judgement could have adverse effects on discipline and morale in the Royal Navy, and that the decision could call into question the proceedings of previous courts martial. The Defence Committee is pursuing these issues separately with the MoD. As regards the first point, we note that the use of the urgent procedure for remedial orders allowed the incompatibility to be resolved very quickly after the decision in *Grieves*—in fact within one month of the court's finding, including the Christmas break. We make no direct comment on the Defence Committee's second concern, but we do not consider that it is a ground for delaying approval of the remedial order. We note, however, that the Select Committee on

10 See Appendix 1.

11 See Appendices 3 and 5.

12 Press notice dated 12 February 2004 available on the Committee's website at www.parliament.uk

13 See Appendix 6.

14 See Appendix 4.

the last quinquennial Armed Forces Bill reported, in relation to legislative changes made in 2000 arising from decisions of the Strasbourg Court, that—

> The general view [within the armed forces] was that, with only a few months' experience of the new procedures, it was too early to make a full assessment but that the impact had been much less dramatic than had been anticipated and that the effects had been mainly positive.[15]

20. The Minister's reply, sent on 18 February 2004,[16] informed us that the use of naval officers as Judge Advocates and judicial officers had ceased with effect from the date of the Judgment of the European Court of Human Rights, and had been replaced with civilian judge advocates appointed by the civilian Judge Advocate of the Fleet. The post of Chief Naval Judge Advocate had lapsed. As no serving officers were acting as Judge Advocates, Article 3630 of the Queen's Regulations for the Royal Navy (which set out the reporting arrangements for naval judge advocates) was no longer applicable and had been removed from the publication. The briefing notes for members of naval courts martial had already been reviewed and reissued in late 2002. They are no longer deficient and are kept under regular review. Finally, steps which seem to us to be appropriate had been taken to bring the remedial order to the attention of all personnel (both service and civilian) in the Royal Navy.

21. We received no other evidence or representations in connection with our examination of the remedial order. The Minister wrote to the Chair of this Committee on 17 March indicating that he too had received no representations within the 60 day period.[17]

15 Select Committee on the Armed Forces Bill, First Special Report, Session 2000–01, HC 154-I, para.22.

16 See Appendix 2.

17 See Appendix 7.

4 Our recommendation

22. The evidence which we have received confirms us in our initial view that the remedial order was properly made, satisfies the requirements of section 10 of and Schedule 2 to the Human Rights Act 1998, and does not give rise to any concern of the kind which would lead the Joint Committee on Statutory Instruments to draw a statutory instrument to the attention of either House. In the light of this, we are also satisfied that appropriate steps, both legislative and non-legislative, have been taken to bring the system of naval discipline into line with the requirements of the Judgment of the European Court of Human Rights in Grieves.

23. We do, however, have one general point to make about the context in which the need for this remedial order arises. It seems to us unfortunate that the Ministry of Defence waited for the adverse finding in *Grieves* before making the changes necessary to bring the Royal Navy's court martial system into line with those of the other two armed services in respect of this particular issue of compliance. In our view a more dynamic approach to giving effect to previous adverse decisions of the ECtHR[18] would have led it to the conclusion that this latest finding of incompatibility was very likely, and that further recourse to Strasbourg probably could have been avoided had the opportunity been taken in the Armed Forces (Discipline) Act 2000 or the Armed Forces Act 2001 to apply to the Royal Navy the prophylactic measures introduced for the Army and the Royal Air Force which were held in *Cooper v. United Kingdom*[19] to satisfy the requirements of ECHR Article 6.1.

24. We therefore report to each House our recommendation that the Naval Discipline Act 1957 (Remedial) Order 2004, S.I. 2004, No. 66, should be approved in the form in which it was originally made and laid before each House on 15 January 2004.

18 See, for example, *Findlay v. United Kingdom* (1997) 24 EHRR 221, Eur. Ct. HR; *Incal v. Turkey* judgment of 9 June 1998, *Reports* 1998-IV; *Hood v. United Kingdom* (1999) 29 EHRR365, Eur. Ct. HR; *Smith and Ford v. the United Kingdom*, App. Nos. 37475/97 and 39036/97, judgment of 29 September 1999, Eur. Ct. HR; *Moore and Gordon v. the United Kingdom*, Apps. Nos. 36529/97 and 37393/97, judgment of 29 September 1999, Eur. Ct. HR; *Morris v. United Kingdom* (2002) 34 EHRR 1253, Eur. Ct. HR.

19 App. No. 48843/99, judgment of 16 December 2003, Eur. Ct. HR.

Formal Minutes

Monday 22 March 2004

Members Present:

Jean Corston MP, in the Chair

Lord Bowness
Lord Judd
Lord Lester of Herne Hill
Baroness Prashar
Mr Paul Stinchcombe MP

The Committee deliberated.

Draft Report [Naval Discipline Act 1957 (Remedial) Order 2004], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 24 read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to each House.

Ordered, That certain papers be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Prashar do make the Report to the House of Lords.

[Adjourned till Monday 29 March at half past Four o'clock.

Appendices

1. Letter from the Chair to Ivor Caplin MP, Parliamentary Under Secretary of State, Ministry of Defence

You wrote to me on 14 January drawing the attention of the Joint Committee on Human Rights to the making of the Naval Discipline Act 1957 (Remedial) Order 2004. The Committee is required by its terms of reference and Standing Order to report to each House on the above Order, laid before each House on 15 January 2004, and entering into force on 16 January 2004.

In examining a Remedial Order, the Committee discharges both its particular responsibilities in respect of human rights and the duties normally discharged by the Joint Committee on Statutory Instruments in relation to other Orders.

The Committee has examined the Order and formed the preliminary view that:

— the Order is within the powers conferred by the Human Rights Act 1998, section 10;

— the requirements of Schedule 2 to that Act have been complied with;

— the making of the Order by way of the 'urgent' procedure was justified;

— the Order appears to take the necessary action to remedy the incompatibility established by the judgment of the European Court of Human Rights in *Grieves v. United Kingdom* so far as it resulted from the provisions of legislation, and has no implications going beyond the scope of that judgment; and

— the Order complies with the tests specified in Standing Order No. 151 of the House of Commons, so far as they are applicable.

Standing Order No. 152B of the House of Commons, and the analogous sessional order of the House of Lords, permit the Committee to report to each House on "any matter arising from its consideration" of an Order. Before reporting to each House on this Order, therefore, the Committee wishes to satisfy itself that appropriate steps are being taken to ensure, so far as possible, that the naval discipline system does not continue to be in breach of the requirements of ECHR Article 6.1 by reason of the other factors taken into account by the European Court of Human Rights in *Grieves v. United Kingdom* which did not arise directly from the terms of the legislation.

The Committee has noted particularly the significance accorded to the following factors by the Court, set out in §80–§90 of its judgment—

— the use of serving naval officers as judge advocates with a pivotal role in the court martial (§85, §87–§89);

— reporting practices in relation to the performance of naval judge advocates before Queen's Regulation RN 3630 came into force (§86); and

— the level of detail in briefing notes sent to members of naval courts martial (§90).

1. In the light of these considerations, the Committee wishes to be informed of the steps which are being taken, including the effect of implementing QRRN 3630, to ensure that the factors identified by the Court do not in future compromise the capacity of the naval discipline system to operate in a manner compatible with ECHR Article 6.1.

2. The Committee also wishes to know whether reasonable steps have been taken to publicise the making of the Order to all ranks of the Royal Navy and other interested parties so as to enable representations to be made to Ministers within the period of 60 days after which it is possible to replace the Order.

The Committee would wish to report on the Order before the end of the statutory 60-day period, which will expire around the middle of March. It would therefore be grateful for a reply to this letter by 19 February at the latest.

4 February 2004

2. Reply from Ivor Caplin MP, Parliamentary Under-Secretary of State, Ministry of Defence

Thank you for your letter of 4 February in which you advised that the Joint Committee on Human Rights has examined the Naval Discipline Act 1957 (Remedial) Order 2004. I was pleased to note that the Committee had formed a preliminary view that it was content with the Order and its making by my Department, subject to the further information you requested.

You indicated that the Committee wished to be informed of the steps that were being taken to ensure that the naval discipline system would operate in a manner compatible with ECHR Article 6.1, and to publicise the making the Order to all Royal Navy personnel and other interested parties.

As you would expect, my Department has taken urgent steps in this regard. As I reported at the outset to Parliament (Official Report 5 WS refers), we immediately ceased using serving naval officers as judge advocates for courts-martial, summary appeal courts and as judicial officers. This decision took effect from the date of the judgement. We have put in place arrangements for civilian judge advocates to sit on naval courts-martial, in the naval Summary Appeal Court and as judicial officers. The appointment of judge advocates by the Chief Naval Judge Advocate has ceased, and that post has lapsed. Judge advocates are now appointed by the Judge Advocate of the Fleet. It follows that Article 3630 of the Queen's Regulations for the Royal Navy, which set out the arrangements for reporting on the performance of naval judge advocates, is now no longer applicable and has been removed from the publication.

You asked what action had been taken to amend the briefing notes sent to members of naval courts-martial used in the Grieves case, which the ECtHR regarded as less than fully effective. These had, in fact, been reviewed and re-issued in late 2002 (a year or so before the Grieves judgement was issued) as part of the normal process. They are, therefore, no longer deficient and are, in any case, kept under regular review (for example, they are currently being updated to reflect the appointment of civilian judge advocates, and are being compared with those of the Army and RAF to ensure maximum possible consistency across the three Services).

Your second point concerned publicity given to the remedial Order. This took place through the medium of a "Galaxy" briefing note which was sent out on 3 February 2004. A "Galaxy" briefing note is the normal medium of internal communication used when we

wish to draw the attention of all personnel, service and civilian, to information that is of wider interest to the Royal Navy and those associated with it, and which needs to be circulated quickly.[20] A copy is enclosed for your information. You are aware that the remedial Order has been laid before both Houses, which will enable Members to make representations should they so wish. You may also wish to be aware that the Lord Chancellor, the Department of Constitutional Affairs, the Office of the Judge Advocate General and the Judge Advocate of the Fleet have all been heavily involved in the action taken as a consequence of the *Grieves* judgement.

I hope this response provides the Committee with the reassurance that it sought in relation to the actions that we have and are taking in response to the ECtHR judgement.

18 February 2004

Annex: Galaxy Briefing Note

Future arrangements for RN Courts-Martial and Summary Appeal Courts and change of title of the Chief Naval Judge Advocate

The European Court of Human Rights handed down its judgement in the case of *Grieves v UK*, on 16 December 2003. The upshot of this judgement is that serving naval officers will no longer be able to sit as Judge Advocates in naval courts-martial. The ECtHR ruled that naval Judge Advocates did not give the perception of independence and impartiality (unlike their civilian counterparts who sit in Army and RAF courts-martial), but was at pains to point out that there was no suggestion that naval judges acted in any improper way or were biased in the way they performed their duties. In fact neither Grieves, nor his legal adviser, suggested that naval judge advocates were anything other than scrupulously fair.

As a result of this judgement the use of serving officers ceased with immediate effect and courts-martial and summary appeals scheduled for January 2004 were postponed pending changes to the Naval Discipline Act. These changes, implemented through a Remedial Order under s10 of the Human Rights Act, substitute the Chief Naval Judge Advocate with the Judge Advocate of the Fleet (JAF—a civilian Circuit Judge) as the authority to appoint judge advocates and judicial officers. USofS signed the Remedial Order on 14 January, thus enabling courts-martial and SACs to run from 16 January 2004.

With immediate effect, therefore, civilians appointed by JAF will sit as judge advocates in naval courts-martial and summary appeal courts. There will be some other changes to the courts process which flow from this change—all courts-martial and summary appeal courts will be held in an "assize" each month (ie a block of one or two weeks), their location dependent upon requirements; those officers who are randomly selected to sit on courts-martial and summary appeal courts panels will be required to sit for longer than before (but not longer than two weeks), and for courts-martial there may be some changes to the layout of the court room and the trial procedure. However, in all other respects the trials will remain substantially the same. Most importantly, none of these changes effect summary investigation or trial, which should continue exactly as before.

One consequence of the Remedial Order is that the title "Chief Naval Judge Advocate" no longer has statutory authority or relevance and has been discontinued with affect from 15 January 2004. CNJA has been re-titled "Director of Naval Legal Services" (DNLS). A DCI will be issued in due course.

20 Galaxy briefing notes contain information which may be relevant to all staff, both service and civilian. They should be cascade briefed or disseminated as widely and as quickly as possible.

3. Extract from letter from the Chair to Rt Hon Bruce George MP, Chairman, Defence Committee

The Joint Committee on Human Rights is required by its terms of reference and Standing Order to report to each House on the making of the Naval Discipline Act 1957 (Remedial) Order 2004. The Order was laid before each House on 15 January 2004, and entered into force on 16 January 2004.

* * * * *

I know the Defence Committee takes a close interest in matters of military discipline. I am therefore writing to invite the Committee to comment on the remedial order to my Committee, if it wishes, before the JCHR reports formally to each House.

The Committee would wish to report on the Order before the end of the statutory 60-day period, which will expire around the middle of March. It would therefore be grateful for any reply to this letter to arrive by 19 February at the latest.

4 February 2004

4. Letter from the Clerk of the Defence Select Committee to the Clerk of the Joint Committee on Human Rights

You wrote seeking the views of the Defence Committee on the Naval Discipline Act 1957 (Remedial) Order 2004.

The Committee has discussed the background and purpose of the order. Members noted that successive committees on the quinquennial Armed Forces bills had considered the arrangements for courts martial and had endorsed their composition.

The Committee expressed two concerns over the effects of the judgment on the Armed Forces. These were firstly that the delays to naval courts martial which the ECHR' s judgment has occasioned could have an adverse effect on the good running of the Royal Navy and the morale of personnel, and secondly that those who had been involved in naval courts martial before the judgment should not believe that those proceedings were either devalued or in any way rendered invalid by the judgment.

The Committee will be writing to the MoD to seek to establish the extent of its first concern and whether there are grounds for its second. We will also ask whether they intend to take any action on issues where the court expressed concern but did not rule against the MoD.

17 March 2004

5. Extract from letter from the Chair to Admiral the Lord Boyce GCB OBE

The Joint Committee on Human Rights is required by its terms of reference and Standing Order to report to each House on the making of the Naval Discipline Act 1957 (Remedial) Order 2004. The Order was laid before each House on 15 January 2004, and entered into force on 16 January 2004.

* * * * *

Lord Lester of Herne Hill, a member of the JCHR, suggested that, in the light of remarks you had made on the floor of the House, you may have decided views on the Order. I am therefore writing to invite you to comment on the remedial order to my Committee, if you wish, before the JCHR reports formally to each House. Of course, this invitation extends to any of your other former military colleagues with whom you may wish to associate your views, or who you are aware may have views of their own to express.

The Committee would wish to report on the Order before the end of the statutory 60-day period, which will expire around the middle of March. It would therefore be grateful for any reply to this letter to arrive by 19 February at the latest.

4 February 2004

6. Reply from Admiral the Lord Boyce GCB OBE

Thank you for your letter dated 4 February 2004 and the opportunity to comment on the Naval Discipline Act 1957 (Remedial) Order 2004.

I have no comment as such on the Remedial Order itself. I understand how it has come about following the ECHR opinion arising from the *Grieves v. United Kingdom* hearing and I have no doubt that the Royal Navy is taking the necessary action to comply.

I would, however, make the following general observations, which I realise may have little weight but which I nonetheless wish to place on record.

— Firstly, it seems a pity to change a system that has worked well and fairly for many years, noting that many Naval Judge Advocates have also held part time civilian judicial appointments, and the acquittal rate at Courts Martial is at least as high as in civilian courts.

— The changes required to comply with the Remedial Order will be financially costly in terms not only of implementation but also for compensation payments if the CMAC take the view that all convictions since 2 October 2000 were unfair and unsafe. Such costs will almost certainly be at the expense of the front line—and the justice delivered in the future will certainly be no better

— Further challenges—often politically motivated—seem inevitable and I have to wonder how far we should allow these to go. If future judgements from the ECHR threaten to undermine Operational Effectiveness, then there might be a compelling case to seek exemptions for the Armed Forces.

Once again, thank you for the chance to provide my views on this issue.

16 February 2004

7. Further letter from Ivor Caplin MP, Parliamentary Under-Secretary of State, Ministry of Defence

You will recall that I wrote to you on 14 January (Reference: D/US of S/IC 5/1/1) when I had signed emergency legislation in the form of a remedial order to amend the Naval Discipline Act 1957. The Naval Discipline Act 1957 (Remedial) Order 2004 came into force on 16 January 2004, pursuant to the "urgent" procedure prescribed in paragraph 4 of Schedule 2 to the Human Rights Act 1998.

You will wish to know that I have received no representations to date concerning the Order. I therefore believe that there is no requirement for the Order to be amended or replaced and I intend to make a short written statement to that effect, after the 60-day point of 23 March 2004. On the basis of the timetable provided for such Remedial Orders, the debate on the Order is due to be held before 12 June 2004.

I am grateful for your committee's consideration of the Order and I shall be pleased to receive your views.

17 March 2004