



# Courts martial system 'designed to make problems go away' and avoid scandals

WHEN Diane Byrne was assaulted on duty, she had a choice. The captain in the air corps was cleaning up the mess hall following a social event when a male colleague pinned her to a wall. "We were on duty," she says. "There was no alcohol or anything like that involved. I managed to get away from him, but what was I to do afterwards?" Her choices were: To pursue the matter — which would quite possibly culminate in her colleague's court martial — or she could just do nothing, because pursuing the matter would be more trouble than it was worth.

"I didn't want to destroy his career," she says. "But he needed a slap on the wrist. He needed to be pulled up on it. But the only thing I could do was to go to my CO [commanding officer], lodge a complaint, and watch it routed through a circus." The "circus" she references is the court martial system, the internal justice mechanism availed within the Defence Forces. Byrne and her colleagues in the Women of Honour group of serving and former female Defence Forces personnel have no confidence in court martials. Others believe the system is not just robust, but necessary. But for many who have been through it, the system bears only a very distant relationship with anything approaching justice.

"If I had gone through it, everybody's life would have been destroyed and my career would have been over," says Byrne.

"This was something that was fairly minor, but his cards should have been marked. If that was done, and if he later was accused of anything, it would have been on his record. For instance, we have, in the Defence Forces, some gang rapists. They didn't start doing that, they were led there because they had repeatedly got away with lesser stuff. It develops and that is where it ends up."

Diane Byrne's experience is not an outlier. The *Irish Examiner* has spoken to a number of Defence Forces personnel, both male and female, who do not have faith in the system that is supposed to dispense justice. One source in the forces compares the system of court martials to that of Canon Law as deployed by the Catholic Church, a system of rules that ostensibly exercises judgement, but in

One of the aims of a bill currently going through the Oireachtas is to ensure that gardai, and not the military, will have sole jurisdiction within the State to investigate alleged sexual offences committed by those subject to military law, writes **Mick Clifford**



reality is more concerned with shutting down awkward inquiry.

Courts martial are an integral part of military law. The system of dispensing justice is, in theory at least, necessary and fortified by safeguards. The defendant is tried before a military judge in the least serious offences, and various boards in the more serious. (See panel).

Unlike the civilian courts, the "board" does not consist of a jury of the defendant's peers, unless the defendant is a commissioned officer. Some see this as the operation of a club mentality, a system designed for officers rather than military personnel as a whole.

"It's self-investigating, self-ruling, and under self-control," says Byrne. "It's a boys' club and you have to be one of the boys — although

girls can be one of the boys — but you have to be one of the chosen, accepted few."

The Defence Forces are disciplined organisations, so the standard of conduct required is higher than would be expected in the workplace in civilian life. What might be considered small issues can easily lead to a court martial.

One serving member tells of an incident in which a colleague of his was cleaning up the mess — which was in a mess — the morning after a function. This recruit was going around drinking the slops from other glasses. He was spotted, and it was decided he needed to be pulled up. He was then subjected to a summary court martial within his unit.

"It was done as a kind of wake-up call," this recruit says. "We didn't have a bible,

so somebody got a dictionary and put a brown paper cover on it and he put his hand on it and swore to tell the truth, knowing no better. He was summarily found guilty and given a fine. That kind of thing is done to act as a wake-up call, which isn't necessarily what it was designed for. Other times the system could be used for targeting people who speak up about problems."

Byrne says the court martial system is far more integral in keeping a lid on things rather than dispensing justice without fear or favour.

"I know of cases where a sexual assault was downplayed to unauthorised access to a person's room before it came before the court martial. What happens when a person is charged is they're asked: 'Do you accept the charges?' The person can accept and go to court martial if they want to. But the victim has no say. He or she can't say they are not satisfied that he's charged with that. The whole thing is designed to make a problem go away."

This scenario was echoed by a serving male member within the forces. He was witness to a case in which a male enlisted member sexually assaulted a female colleague in the early hours of the morning and sexually assaulted him. The charges were downgraded to unauthorised entry. The offender got it with a slap on the wrist. The main rea-

## Court martial system

**Mick Clifford**  
The court martial system comprises of three effective grades — summary, limited, and general. In some ways, the system mirrors the civilian courts, in that different formats are deployed depending on the seriousness of charges. The summary court martial is for less serious offences. The director of military prosecutions decides on what offences can be dealt with here, and matter is decided by a military judge sitting alone. All personnel, up to and including the commissioned rank of commandant, can be tried in this court.

"The military judge decides on all issues of law and fact arising before the summary court martial," states the Defence Forces website.

"The maximum sentence of imprisonment, which may be awarded by the summary court martial, is six months. In civilian terms, this forum would relate closest to the district court.

The limited court martial (LCM) moves things up a notch. This consists of a military judge and board of at least three members of the forces. At least two of these must be commissioned officers, while the third can be non-commissioned. There is nothing to preclude all three being commissioned officers. The board effectively performs the equivalent function of a jury in civilian courts. The LCM can only hear cases where the accused holds non-commissioned rank.

"The military judge decides on all issues of law arising, and the court martial board decides all issues of fact."

states the website. "Findings of fact will require a two-thirds majority. The military judge decides the sentence, if any, to be imposed. The maximum sentence, which may be awarded by an LCM, is two years. Serious offences are dealt with by a general court martial (GCM). This has the requisite military judge and a board consisting of at least five members of the Defence Forces. One of these may be a non-commissioned officer, but if the accused is a commissioned officer, all members of the board must be also. As with the LCM, the GCM operates on the basis that the board decides the fact, while the judge deals with the law. Findings of fact require a two-thirds majority, although two-thirds of five personnel is a tricky one to calculate.

"The military judge decides the sentence, if any, to be imposed," states the Defence Forces website. "A GCM may award sentences of imprisonment up to and including imprisonment for life."

All of the courts martial can be held inside or outside the State, which allows for situations when Defence Forces personnel are serving abroad.

The Independent Review Group report into the Defence Forces, published last July, recommended that legislation should be enacted to ensure that military law no longer has jurisdiction over some of the more serious criminal offences, including rape and aggravated sexual assault, "in order to ensure that such offences are not dealt with under military law or in the court martial system."

from the Defence Forces or any less punishment available by a court-martial and, if a man, to suffer imprisonment or any less punishment available by a court martial."

In 1954, there was no express provision for women in the military. Thus, Section 168 is a catch-all, which can be used to cover any range of offences. It keeps everything tight and ensures there is a huge level of discretion left to the military judge to decide on the sanction.

While the system is highly criticised by some, others who have served in the military believe it is both necessary and appropriate.

CATHAL BERRY is an Independent TD for Kildare South, but previously served for 23 years in the Defence Forces as an infantry officer and subsequently in a medical capacity.

He does not accept that a huge emphasis is placed on keeping a lid on public criticism or that potential crimes are downplayed in the system.

"It's not unusual in civilian law to have bargaining," he says. "Equally, coverage of the Defence Forces in the last few years would suggest that those in charge don't care about public reaction to bad publicity. They are far more mindful that justice is done and the evidence of the last two or three years would support that."

He also disputes the idea of a boys' club centred on the officer class. "I'd actually say that officers are held to a higher standard," he says. "There is expectation that those in charge are expected to perform to a higher standard. If a commissioned officer is be-

ing heard through a court martial. In that forum, the perpetrators are "pressured to withdraw from the court martial by pleading guilty to a lesser charge, being advised that they are going to be found guilty in any event".

One outcome from the review is the enactment of a new law to ensure that the gardai will have sole jurisdiction within the State to investigate alleged sexual offences committed by those subject to military law.

That piece of legislation is currently going through the Oireachtas, but one lacuna in the new law concerns what happens when an incident arises where military personnel are serving overseas.

"This is a significant issue, because obviously people are much more vulnerable [overseas] and lots of sexual assaults happen on tour," says Byrne.

"We need to understand what laws are going to apply, but right now they seem to be rushing this through without proper debate. There have been significant issues where people have been let down overseas."

The independent report did not recommend any change to the system as applied overseas.

Whether the forthcoming bill can go towards restoring faith among the Defence Forces in its own justice system remains to be seen. But it is difficult to envisage that the power of court martials will be diluted in anything but the most serious cases of criminality.



Independent TD Cathal Berry served in the Defence Forces.

**“You surrender your rights as a citizen when you enlist so you need a system to administer justice in an appropriate manner”**



Diane Byrne was serving in the Defence Forces when a male colleague pinned her to the wall.