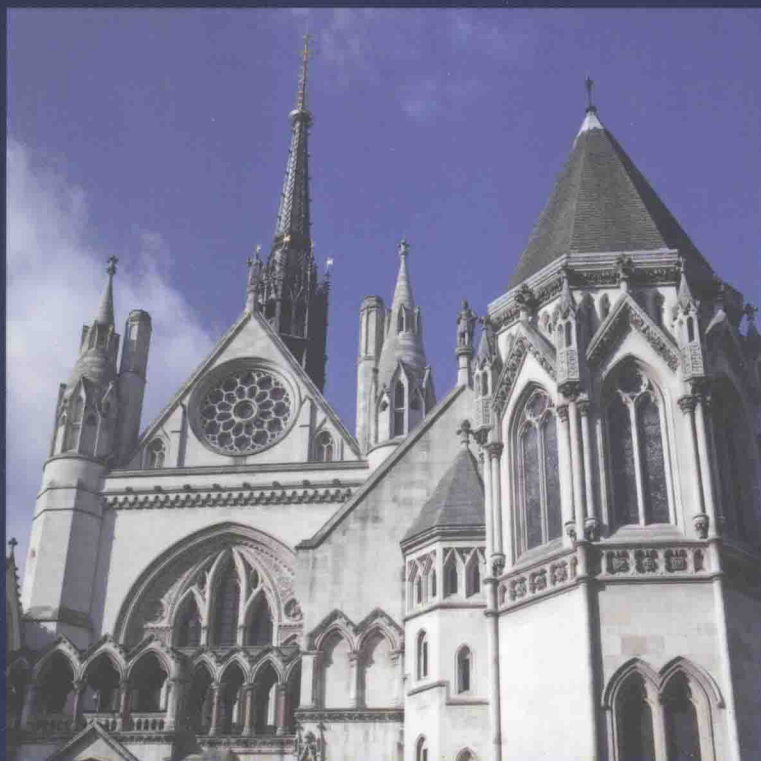




# Criminal Appeals Handbook



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B L O O M S B U R Y

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# Criminal Appeals Handbook

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# Foreword

Apart from a few specialists, advocates practising in crime spend the vast majority of their time dealing with criminal cases in the Magistrates' and Crown Courts. Forays to the Court of Appeal Criminal Division can be few and far between and I suspect these infrequent appearances often engender feelings of uncertainty and apprehension. I vividly recall the challenge that is presented when all three members of the court are seemingly unimpressed by an argument, and proceed to fire difficult questions in rapid succession. The advocate can feel very lonely and ill equipped. Furthermore, appellate proceedings are in many ways a wholly different exercise to conducting first instance cases, and the procedure, the conventions and the jurisprudence are voluminous and can feel positively byzantine, especially to the uninitiated.

In order for the Court of Appeal Criminal Division to function efficiently and effectively, it is crucial that the advocates understand and apply the rules, and that the procedures of these courts are loyally followed. A relatively small number of judges deal with a high volume of work, and this is only possible if the applicants/appellants and the respondents prepare and present these cases in accordance with the established *modus operandi*. There are many elephant traps lying in wait for those who have not done their homework in advance. For the judiciary, it is a joy when cases are properly prepared, presented and economically argued and there is a risk that good points may be obscured if the court is forced to wrestle with a chaotically prepared case or when unfocussed submissions fail to distinguish between good and bad points.

This book is a wholly welcome addition to the relatively few guides that are available for advocates in this field. One of its great strengths is that it has been presented in a rigorously practical and intelligent way, and as a consequence it provides an impressive mix of purely practical assistance on basic procedure, along with detailed insight into some of the more legally challenging issues. The layout of the book means that it will be easy to use – the different stages are clearly delineated and it provides 'cradle to grave' assistance. It offers a clear route through the labyrinth and it is packed with excellent legal analysis. In the result, I suspect that many members of the judiciary will have it close at hand as a critical point of reference.

*The Rt. Hon. Lord Justice Fulford*  
*Deputy Senior Presiding Judge*

# Preface

Appealing against a conviction or a sentence that was imposed in the Crown Court can be a daunting business. There is a striking contrast to be found between the ease with which an appeal can be brought against a decision of the Magistrates' Court and the difficulties and uncertainties involved in appealing from the Crown Court.

A defendant who wishes to appeal against a conviction or a sentence that was imposed in the Magistrates' Court simply has to lodge a notice of appeal. He is then entitled to a complete re-hearing in the Crown Court. In contrast, appealing a conviction or sentence that was imposed in the Crown Court, which is always to the Court of Appeal, requires an application to be made for leave to the Court of Appeal. If leave is allowed, what is being granted is the right to a hearing at which the appellant has the opportunity to persuade the Court to allow the appeal. That opportunity is a narrow one. It often consists of a short hearing before a Court that has read the papers and may already have formed a clear preliminary view of the merits of the case.

This is a process that poses particular challenges for defendants and their lawyers. Defendants who have acclimatised themselves to the pace and formality of the Crown Court find themselves having to adjust to new and very different proceedings; there is a new set of legal terms to grapple with, further delays, a process from which they seem to be excluded, and that may culminate in a hearing at which trials that may have lasted for weeks are considered in minutes, and matters that seemed so crucial at trial are barely mentioned.

Their lawyers must seek to persuade a Court in which the swift, sometimes brutal dispatch of business and a ruthless focus on essentials replaces the comparatively relaxed pace of life in the Crown Court. It requires a different approach and even a different set of skills in order to achieve the best result for their clients.

The aim of this book is to assist those who seek to challenge a conviction or sentence, including a confiscation order, which was imposed in the Crown Court. It is intended for defence lawyers but also for defendants and their families who want a better understanding of the appeal process. For those who choose to represent themselves we hope to provide assistance. But it is not our intention to encourage anyone to do so. The need for effective legal representation is never more important than at the appeal stage. That effectiveness can only be increased when clients understand what they should expect of their lawyers and both lawyers and clients appreciate and can focus on the questions that will be of importance to the Court.

Because convictions and sentences that have been imposed on the Crown Court can only be appealed to the Court of Appeal, the focus of this book is largely on appealing to that Court. Chapter 1 provides a brief introduction to the Court, its judges, constitution, rules and administration. Chapter 2 considers the sources of law that it applies. Chapters 3 and 4 consider the tests for appeal, potential grounds and the powers of the Court in relation to conviction and sentence (including confiscation), respectively.

Chapters 5 to 8 then address the practicalities of appealing. Chapter 5 considers the important but often overlooked question of defence investigations, often the source of new material that provides the basis for an appeal. Chapter 6 deals with the practicalities of preparing the case; applying for leave, renewal of such applications and extensions of time, whilst Chapter 7 considers preparation for hearings. Chapter 8 deals with applying for legal aid to cover legal advice or representation whilst touching on the other ways of obtaining legal assistance, through private instruction, innocence projects and charities.

One of the most important features of the appeals process is the Criminal Cases Review Commission, which has the power to refer cases back to the Court of Appeal that have previously been considered and refused. Chapter 9 focuses on applying to the Commission whilst Chapter 10 sets out the procedure for appealing from the Court of Appeal to the Supreme Court.

Although a decision of the Court of Appeal or, very occasionally, the Supreme Court, will conclude the domestic appeal process, it need not always exhaust the search for justice. If a defendant's rights have been violated, he may apply for the case to be heard by the European Court of Human Rights. Chapter 11 addresses when and how such an application can be made and what can be achieved by doing so.

We have concluded with three chapters on subjects with which the defence practitioner will occasionally have to grapple. Chapter 12 deals with interlocutory appeals. Chapter 13 addresses the issue of responding to prosecution appeals against sentence (or 'Attorney General's references') and against acquittal. Chapter 14 deals with appeals against certain findings and orders made in the Crown Court against defendants who are found to be suffering from serious mental disorders.

In retaining the focus on appeals in relation to serious criminal offences we have deliberately omitted two topics. First, appeals from the Magistrates' Court. As already indicated, the process of appealing from the Magistrates' Court to the Crown is straightforward. Lawyers will find what they need to know in the general criminal practitioner's textbooks. Self-representing should also be able to comply with the procedural requirements for an appeal, perhaps with some assistance from the local Crown Court in relation to the completion of the relevant forms and time limits for doing so.

## *Preface*

The second topic is that of judicial review of the decisions of the Magistrates' Court and judicial review of certain decisions of the Crown Court.<sup>1</sup> It is a topic of considerable scope and complexity. The law is covered briefly in the established practitioner's textbooks but more extensively in judicial review textbooks and now in a textbook devoted to judicial review in criminal proceedings.<sup>2</sup> We could not hope, in the limited space that might have been devoted to the topic in this book, to match the guidance that is to be found in such publications.

It should by now also be obvious that this book is not intended to be a comprehensive guide to the Court of Appeal and its wide array of powers. It is intended for those who act for those who have suffered a miscarriage of justice in the Crown Court and who seek redress. It was Parliament's purpose in creating the Court of Appeal to ensure that when such injustices occurred in the Crown Court there should be a remedy. We seek to assist defendants and their representatives to make best use of the rights of appeal that Parliament has provided.

Any practitioner in the criminal courts will have had the experience of getting a bad result, either the loss of a trial that should have been won or a sentence far harsher than predicted. Very soon, someone will ask, 'What next?' By combining our experience, knowledge and ideas in this book, we hope to assist in arriving at the right answer.

*Joel Bennathan QC  
Gregory Stewart  
Daniel Jones  
February 2015*

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- 1 Decisions in relation to trial on indictment may only be appealed to the Court of Appeal by virtue of the Senior Courts Act 1981, s. 29(3). However, decisions in relation to bail at an early stage in criminal proceedings (*R (M) v Isleworth Crown Court* [2005] EWHC 363 (Admin)), custody time limits, production orders and decisions in relation to appeals from the Magistrates' Court fall outside the scope of that section and may be challenged by way of judicial review.
  - 2 Von Berg, P. (ed.) (2014) *Criminal Judicial Review*, Oxford: Hart Publishing.

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