



# Judiciary of England and Wales

## Guide to Proceedings in the Court of Appeal, Criminal Division

May 2023

## **Foreword to the 2023 edition**

The Criminal Practice Directions 2023 require that parties comply with the guidance set down by the Registrar in this Guide (see at 10.1.1). An essential resource for Judges and Lawyers, it brings together relevant legislation, Criminal Practice Directions and Criminal Procedure Rules with an easy to read narrative. When providing materials for the Court, advocates should follow the detailed guidance in this fully digital edition (see the Practice Direction at 10.8.15), which reflects the Criminal Justice System's move away from paper to digital case files and is intended to assist the Court of Appeal and Criminal Appeal Office in providing a streamlined service to the professional Court user through to the Judiciary. It also provides useful points of contacts for Court users who wish to contact staff of the Criminal Appeal Office. We would like to thank Samantha White, CAO Complex-Casework Lawyer, for her time in editing this revised edition.

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**Lord Justice Holroyde, Vice-President of Court of Appeal, Criminal Division**

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## Introduction

The purpose of this guide is to bring together the relevant [Criminal Procedure Rules](#) (CrimPR), [Criminal Practice Directions 2023](#) (CPD), legislation and authorities<sup>1</sup> to provide guidance to practitioners on commencing proceedings (conviction, sentence and confiscation<sup>2</sup>) in the Court of Appeal, Criminal Division and the key stages of the appeal process including case management. The guidance is complemented by [annex 1](#) which contains practical assistance on the presentation, format and submission of documents.

The Registrar<sup>3</sup> has a duty of active case management (CrimPR 3.2 and 36.2 (2)) but there is also a duty on the parties to actively assist to progress cases<sup>4</sup> (CrimPR 36.2 (1)). Close contact between representatives, parties and the Criminal Appeal Office (CAO) is encouraged to facilitate the efficient preparation and listing of appeals, especially in complex cases and those involving witnesses.

It is important to note that practitioners **must** comply with the CrimPR and CPD which are the law and binding on the courts (CPD 1.1.3 – 1.1.5). The CPD also states that practitioners **must** comply with any additional guidance or direction set down by the Registrar in this guide (CPD 10.1.1, 10.8.15).

The Registrar is supported by a team of lawyers, summary writers, caseworkers and administrative staff. The CAO is paperless and uses two dedicated sections on the Digital Case System (DCS)<sup>5</sup>; CACD1 for relevant documents generated in preparation of the appeal. CACD2 contains private documentation for the judges. In non-DCS cases the CAO uses the eJudiciary Document Upload Centre (DUC).<sup>6</sup>

### **Users must not upload any documents to CACD1.**

On receipt of an appeal notice and accompanying documents, a file reference is generated, and the case is allocated to a lawyer and/or caseworker depending on the nature of the application (CrimPR 3.4 and 36.2 (3)).<sup>7</sup>

Terminology has evolved since the creation of the Court of Appeal, Criminal Division (CACD); for ease, this guide will use common terms which may not be exactly the same as the source material. For example, ‘applicant’ is used until such time as leave is granted and ‘appellant’ when leave has been granted. ‘Leave to appeal’ is in place of ‘permission to appeal’. ‘Application’ is used to encompass the ‘appeal notice’/‘notice of appeal’ and ‘form NG and grounds of appeal’. Occasionally terms are used interchangeably depending on the context.

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<sup>1</sup> Predominately CrimPR 36 & 39, CPD 10 and the [Criminal Appeal Act 1968](#). Where possible information on funding is given at the relevant stage.

<sup>2</sup> See notes to CrimPR 39.1 which contains a comprehensive list and [annex 2](#) for other types of appeal

<sup>3</sup> The responsibilities and powers of Registrar of Criminal Appeals are contained in the [Criminal Appeal Act 1968](#), CrimPR and CPD.

<sup>4</sup> See CPD 10.3.5 for CAO/CACD target times. See also [Review of the Year in the Court of Appeal, Criminal Division](#) for annual statistic.

<sup>5</sup> Users will be notified via an amended guide and other communication channels of any practical adjustments that may need to be made when the new Crown Court case management system goes live

<sup>6</sup> See [annex 1](#).

<sup>7</sup> [HMCTS personal information charter](#). The CAO reference looks like 202301234 A1. Conviction cases are managed by B group (B1 to B5). Sentence cases are managed by A group (A1 – A4). All communications must contain the CAO reference to avoid delay.

## A Pre application public funding

A.1. Provision for advice and assistance on appeal is included in the Crown Court representation order.<sup>8</sup> Immediately following the conclusion of the case, legal representatives should give oral advice to their client as to the prospects of a successful appeal (whether against conviction or sentence or both). If there are reasonable grounds, grounds of appeal should be drafted, signed<sup>9</sup> and sent to instructing solicitors as soon as possible and in sufficient time for the application to be lodged within the time limits<sup>10</sup>. On receipt solicitors should send a copy of the documents received from the advocate to their client.

A.2. Prior to the lodging of the application, the Registrar has no power to grant a representation order. The Crown Court can only amend a representation order in favour of fresh legal representatives if advice on appeal has not been given by trial representatives and it is necessary and reasonable for another legal representative to be instructed<sup>11</sup>. Where advice on appeal has been given by trial legal representatives, application for funding prior to the lodging of the application may only be made to the Legal Aid Authority (LAA) for example, if they wanted to instruct a fresh expert to support the appeal as that would be “exceptional work” and fall outside the ambit of the Crown Court representation order.

A.3. Once the form NG has been lodged, the Registrar is the relevant authority for decisions about whether an individual qualifies for representation for the purposes of criminal proceedings before the CACD.<sup>12</sup>

A.4. Where work of an exceptional nature is contemplated to settle grounds or where the expense will be great, legal representatives can contact the LAA for funding but this will mean the time will continue to run for the purposes of an extension of time until grounds of appeal have been lodged. Alternatively they should submit a form NG and provisional grounds of appeal with a note to the Registrar requesting a representation order to cover the specific work considered necessary to enable final grounds of appeal to be settled. The Registrar will then consider whether it is appropriate to grant funding for this purpose.

## B Application stage

B.1.1. Leave to appeal is required in all cases except:

- Where the trial or sentencing Judge has certified that the case is fit for appeal;
- Where the appeal has been referred by the Criminal Cases Review Commission (CCRC);
- Where the appeal is under [s13 Administration of Justice Act 1960](#) (contempt proceedings)<sup>13</sup>
- Where there is no provision for the grant of leave by a single judge; for example an appeal against an order for trial without jury<sup>14</sup>

B.1.2. Where leave to appeal is not required, the Registrar will usually grant a representation order for the hearing of the appeal.

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<sup>8</sup> For fresh representatives see [B.7 below](#)

<sup>9</sup> Can be an electronic signature

<sup>10</sup> See [here](#) (CrimPR time limits) and lodging form NG [B.2 below](#) and [annex 2](#) for other application types

<sup>11</sup> For a discussion on funding see 7-165 – 166 in Archbold Criminal Pleading Evidence and Practice 2023 Ed.

<sup>12</sup> ss.16(1) & 19(1) [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) and Reg. 8 [Criminal Legal Aid \(Determinations by a Court and Choice of Representative\) Regulations 2013](#).

<sup>13</sup> Usually a finding of contempt, sentence for contempt or failing to appear

<sup>14</sup> See [annex 2](#)

## B.2 Lodging form NG and grounds of appeal

B.2.1. The form NG, signed grounds of appeal and any accompanying applications/ forms must be **lodged directly with the Registrar**<sup>15</sup> (CrimPR 39.2, [s. 18 Criminal Appeal Act 1968](#)) within 28 days<sup>16</sup>. There is a different form NG for conviction, sentence and confiscation order and each must be drafted and lodged within the time limit as a stand-alone application.<sup>17</sup>

B.2.2. Applications must be sent via email to [applications@criminalappealoffice.justice.gov.uk](mailto:applications@criminalappealoffice.justice.gov.uk) (CPD 10.4.6). Representatives must not lodge the application or any documents in support by uploading directly onto DCS as this will not alert the CAO to the application and service in accordance with CrimPR 4.6 will not be effected.

B.2.3. In a DCS case it is necessary to email the form NG, grounds of appeal and ancillary applications only. The grounds of appeal must contain electronic links of relevant documents to DCS (CrimPR 39.3 (1)(f)). In a non-DCS case representatives should email the core application documents and relevant documents to the CAO.<sup>18</sup>

## B.3 Form NG and grounds of appeal

B.3.1. CrimPR 39.3 sets out in detail the information that must be contained in the appeal notice<sup>19</sup>.

B.3.2. The correct **form NG**<sup>20</sup> must be fully completed (including ticking the box if an application is being made for a representation order) for each substantive application. The form contains prompts to attach the grounds of appeal and, if relevant, other forms, applications and documents that need to be lodged:

- Extension of time application(s) (CrimPR 39.3(1)(e), 36.4) ([see B.4 below](#))
- Application for bail (Form B) (CrimPR 39.3(1)(e)) ([see B.9 below](#))
- Application to introduce fresh evidence (s.23 CAA) ([see B.8 below](#))
- Request for transcripts (section F) (CrimPR 39.3(1)(c), CPD 10.4.3)<sup>21</sup> ([see B.5 below](#))

B.3.3. Advocates should not settle or sign **grounds of appeal** unless they consider that they are properly arguable. Grounds must be carefully drafted and properly set out and particularised pursuant to CrimPR 39.3 (CPD 10.4.1)

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<sup>15</sup>Direct lodgement with the Registrar applies to all applications to appeal conviction, sentence and confiscation falling within CrimPR 39; for other types of appeal see [annex 2](#).

<sup>16</sup> See [annex 2](#) for applications not covered by this guide. Time runs from the date of the verdict or finding that is being appealed, from the date that the sentence is passed (or varied; s.385 (6) Sentencing Act 2020) or, if against an order it is from the date of the making of that order and whether or not leave to appeal is required (e.g. where a trial Judge's certificate has been granted).

<sup>17</sup> In practice this means that the time limits can start to run from different dates. Practitioners should not wait until every stage of the proceedings is complete to submit an application.

<sup>18</sup> See [annex 1](#) for practical guidance

<sup>19</sup> In practice this is the form NG and grounds of appeal. See [R v James and Ors](#) [2018] EWCA Crim 285 para 21

<sup>20</sup> Guidance notes on completing the form NG can be found [here](#).

<sup>21</sup> In a **privately funded** case the transcripts should be submitted with the application.

B.3.4. The grounds of appeal<sup>22</sup> must be concise and be contained within one document. In no more than the first two pages, they must contain a summary of the grounds so that what follows easy to understand (CrimPR 39.3(2)(a)).

B.3.5. The grounds must specify what the applicant wants to appeal; the conviction, verdict or finding; the sentence; the order, or the failure to make an order (CrimPR 39.3(1)(a) & 39.3(2)(b) and **must**;

- be numbered consecutively where there is more than one ground (CrimPR 39.3(2)(e))
- identify each ground on which the applicant relies (CrimPR 39.3 (1)(b)) and
  - the event or decision to which that ground relates (CrimPR 39.3(2)(b))
  - contain a summary of the necessary facts relevant to that ground so that the issue is clear (CrimPR 39.3(2)(c))
  - concisely outline each argument in relation to each ground (CrimPR 39.3(2)(d))
- in a sentence application, identify the relevant sentencing powers of the Crown Court (CrimPR 39.3(1)(d))
- identify any relevant document or thing and provide a hyperlink to it in DCS (CrimPR 39.3 (1)(f)). In addition practitioners must identify with particularity the sections of any such material the court needs to consider (CPD 10.4.1 c.). In non-DCS cases it is acknowledged that total compliance might not be possible but there must be identification of the relevant document, sections that need to be considered and where and how that might be found.
- identify any relevant authority and-
  - state the proposition of law that the authority demonstrates, and
  - identify the parts of the authority that support that proposition; and
- attach an electronic copy of that authority, or if two or more such authorities are identified, provide them as a single pdf bookmarked document (CrimPR 39.3(1)(g) & 39.3(2)(f), CPD 10.8.13) subject to the paragraph B3.6 below.

B.3.6. Advocates **must** comply with the provisions in CPD 10.8.9 – 10.9.12 and are expected to provide<sup>23</sup> only the **essential authorities** to determine the issue(s). The Vice-President, Court of Appeal, Criminal Division may, from time to time, publish<sup>24</sup> a list of [‘frequently cited authorities’](#) which practitioners need **not** supply within their bundles. Advocates may assume that the single judge/full Court will have a copy of these judgments; if any of these authorities are relied on, practitioners need only cite the case and the relevant paragraph number(s). For citation of Hansard, practitioners must comply with CPD 10.8.16 – 10.8.17.

B.3.7. Failure to comply with the requirements in CrimPR 39 and the CPD referred to above, may result in a direction from the Registrar that the defects be remedied within a directed period and prior to the case being allocated to a single judge. Failure to revise might lead to the single judge/court refusing leave (CPD 10.4.2).<sup>25</sup>

### **B.3.1 Criminal Cases Review Commission (CCRC)**

B.3.2.1. On a reference by the CCRC<sup>26</sup>, the Registrar will serve notice that the CCRC has referred a conviction or sentence. Representatives should serve<sup>27</sup> the form NG and grounds not more than 28 days after and explain how each ground of appeal relates (if it does) to the reasons for the reference. If no form NG and grounds are

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<sup>22</sup> See [annex 1](#) for practical guidance.

<sup>23</sup> If the constitution hearing the case require a paper bundle, this will be communicated to the party by the CAO.

<sup>24</sup> It will be incumbent on practitioners to check the website for the most recent version.

<sup>25</sup> This applies equally to perfected grounds; see [B.6 below](#)

<sup>26</sup> See [Part II Criminal Appeal Act 1995](#) and [s. 16C Criminal Appeal Act 1968](#)

<sup>27</sup> Via email to [applications@criminalappealoffice.justice.gov.uk](mailto:applications@criminalappealoffice.justice.gov.uk)



served within the required period, then the reference shall be treated as the appeal notice (CrimPR 39.5 (2)). No extension of time is required as the effect of the referral is the same as the granting of leave.

B.3.2.2. The Registrar will serve the appeal notice on any party directly affected by the reference and will almost certainly direct that a form RN is lodged.

### **B.3.2 Insufficient weight given to assistance to prosecution authorities**

B.3.2.1. Where a ground of appeal against sentence is that the judge has given insufficient weight to the assistance given to the prosecution authorities, the “text” which had been prepared for the sentencing Judge. Grounds of appeal should be drafted in an anodyne form with a note to the Registrar alerting her to the existence of a “text” which will be obtained by the CAO. The single judge will take it into account when considering leave, as will the full Court before the appeal hearing and it need not be alluded to in open Court.

B.3.2.2. If the representatives wish to make oral submissions in relation to any confidential material, any application to list the case anonymously or in camera must be made to the Registrar in advance of the appeal hearing to ensure the appropriate recording equipment is in place and the case is listed correctly.

### **B.3.3 Applications based on a change in law**

B.3.3.1. If an application based on a change in law is lodged within time, the test to be applied by the full Court is whether the conviction is unsafe.<sup>28</sup>

B.3.3.2. If it is lodged outside of the time limits, **exceptional leave** will be required. Exceptional leave will only be granted if the applicant would otherwise suffer “substantial injustice” due to the change in law. Grounds of appeal should therefore set out why the substantial injustice test is met.<sup>29</sup>

## **B.4 Extensions of time generally<sup>30</sup>**

B.4.1. Time limits are intentionally strict<sup>31</sup> and an application for an extension of the 28-day period in which to make an application **must** be served with the form NG<sup>32</sup>. It is not enough to simply tick the relevant box and the application must always set out cogent reasons for the delay (CrimPR 36.4<sup>33</sup>). A chronology can be useful to assist the narrative of the application where a long extension of time is being sought.<sup>34</sup>

B.4.2. If the Registrar/single judge or full Court on a renewed application, consider there are merits in the application for leave there is likely to be a referral to the full Court to determine the application for time and the application for leave.

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<sup>28</sup> [R v Johnson & Ors \[2016\] EWCA Crim 1613](#)

<sup>29</sup> *R v Johnson & Ors* *ibid*. For examples of how the Court of Appeal has applied these principles see: [R v Uthayakumar](#) [2014] EWCA Crim 123, [R v Jogee; Ruddock v The Queen](#) [2016] UKSC 8, [2016] UKPC 7, para 100.

<sup>30</sup> The CrimPR refers to ‘business days’ and the Criminal Appeal Act 1968 refers to ‘days’; the periods are the same.

<sup>31</sup> [Gabbana \[2020\] EWCA Crim1473](#).

<sup>32</sup> [S.31 \(2\)\(b\)](#) and [s.31A \(2\)\(a\)](#) Criminal Appeal Act 1968 gives the power to extend time to the Court and the Registrar. In practice the Registrar/ single judge will not grant long extensions of time for leave to appeal or renew but will refer them to the single judge/full Court. However discretion may be exercised on very short extensions required.

<sup>33</sup> *Wilson* [2016] EWCA Crim 65 and see [R v James & Ors](#) *ibid* at [23] – [28] which provides a helpful summary of the authorities and Extensions of time for leave to appeal against a conviction or sentence in the Court of Appeal, Criminal Division; Sarah Bergstrom, Archbold Review Issue 3 28 April 2023

<sup>34</sup> See also fresh representatives see [B.7 below](#)

## B.5 Transcripts and notes of evidence

B.5.1. In **publicly funded** conviction cases, the Registrar will obtain the summing up and proceedings up to and including verdict as a matter of course. There is an obligation for advocates to identify any further transcript which they consider essential to the issues and to provide a note of dates and times to enable an order to be placed with the transcription company (CrimPR 39.3(1)(c)). Whether further transcript is required is a matter for the judgment of the Registrar or her staff. Transcripts of evidence are not usually ordered and, in some cases, it may be appropriate for the advocate to provide an agreed note of evidence.

B.5.2. In sentence cases, the prosecution opening of facts<sup>35</sup> and the sentencing remarks are usually obtained. In other types of appeal, transcript relevant to the issue will be obtained by the Registrar unless it is a prosecution application in which case transcript is obtained by the prosecution authority.

B.5.3. If the Registrar and the advocate are unable to agree the extent of the transcript to be obtained, the Registrar may refer that matter to a judge or the full Court.

B.5.4. In certain circumstances the costs of unnecessary transcripts may be ordered to be paid by the applicant<sup>36</sup>. Where a transcript is obtained otherwise than through the Registrar, the cost may be disallowed on taxation.

B.5.5. If an appellant is **paying privately** for legal representation, an order for the summing up to verdict and other relevant transcripts should be placed directly with the transcription company.<sup>37</sup> If further transcripts are directed by the Registrar, they should also be obtained by the solicitor privately and lodged with the CAO on receipt. If the Registrar has already obtained transcript in a private case, the applicant's legal representatives will be required to pay the cost of the transcripts before they are released to them.

B.5.6. In all cases, where the trial/sentencing judge has provided a relevant written ruling or sentencing remarks these should be hyperlinked (or noted/attached if a non-DCS case) within the grounds of appeal so that the Registrar may consider whether this avoids the necessity to obtain transcript<sup>38</sup>.

## B.6 Perfection of grounds of appeal

B.6.1. The purpose of perfection is (a) to save valuable judicial time by enabling the Court to identify at once the relevant parts of the transcript and (b) to give the advocate the opportunity to reconsider the original grounds in the light of the transcript. Perfected grounds should consist of a fresh document which supersedes the original grounds of appeal and contains *inter alia* references by page number and letter (or paragraph number) to all relevant passages in the transcript and hyperlinks to the relevant page.<sup>39</sup>

B.6.2. In conviction or confiscation appeals, the Registrar will almost certainly invite the advocate to perfect grounds to assist the single judge or full court. Generally, the advocate will not be invited to perfect the grounds of appeal in a sentence case. Where an advocate indicates a wish to do so, the Registrar will consider the

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<sup>35</sup> Where there has been a guilty plea

<sup>36</sup> S.29 Criminal Appeal Act 1968 and see [Kirk](#) [2015] EWCA Crim 1764

<sup>37</sup> CrimPR 5.5 and CPD 2.6.10, 2.6.18-2.6.22 provides guidance and assistance.

<sup>38</sup> It is of assistance if the advocate could indicate whether the transcript should be obtained and a note for the reasons why, i.e. the judge departed significantly from the written document.

<sup>39</sup> See [annex 1](#). Non-DCS cases will not be expected to have hyperlinks and it will not be necessary for the transcript to be attached if already with the CAO.

request and will only invite perfection if it is considered necessary for the assistance of the single judge or full Court.

B.6.3. If perfection is appropriate, the advocate will be sent a link to the transcript and asked to perfect the grounds, usually within 14 days<sup>40</sup>. In the absence of any response from the advocate, the existing notice and grounds of appeal will be placed before the single judge or the full Court without further notice. If an advocate does not wish to perfect the grounds, an email to that effect will ensure that the case is not unnecessarily delayed.

B.6.4. If, having considered the transcript, the advocate is of the opinion that there are no valid grounds, the reasons should be set out in a further advice and sent to the instructing solicitors. The Registrar should be informed that this has been done, but the advocate should not send the Registrar a copy of that advice. Solicitors should send a copy to the applicant and obtain instructions, at the same time explaining that if s/he persists with the application the court may consider whether to make a loss of time order<sup>41</sup>.

## **B.7 Applications by fresh legal representatives**

B.7.1. Provision for advice and assistance for fresh representatives is limited and requires good reason and to apply for prior authority to exceed the initial limit will need to meet the sufficient benefit test.<sup>42</sup>

B.7.2. In **all** cases where fresh representatives are instructed, they must, before grounds of appeal are settled and lodged, make specific inquiries of the legal representative(s) who appeared and acted at the trial/plea hearing in order to ensure that the factual basis for each of the grounds of appeal (actual or prospective) is correct. Where necessary, further steps should be taken to obtain objective and independent evidence to substantiate the factual basis for those grounds.

B.7.3. To ensure compliance with this duty (CPD 10.4.4)<sup>43</sup>:

- a. New legal representatives **must** confirm **within the grounds of appeal** that the duties set out in [McCook](#) and associated authorities<sup>44</sup> have been complied with.
- b. If these queries result in privileged information being included within, or as an attachment, to the grounds of appeal (including but not limited to, explicit or implied complaints about the conduct of trial representatives), then a signed waiver of privilege **must** also be lodged with the grounds of appeal. Failure to lodge a signed waiver of privilege may mean that the single judge and/or the Court will not have sufficient information to determine whether the grounds of appeal are arguable. Grounds of appeal may be dismissed on that basis<sup>45</sup>.
- c. If trial representatives have failed to respond to these inquiries within a reasonable time, fresh representatives should instead seek other objective independent evidence to substantiate the factual basis for the grounds as far as they are able. A statement confirming that the trial representatives

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<sup>40</sup> And must be compliant with the CrimPR and CPD.

<sup>41</sup> See C.5 [below](#)

<sup>42</sup> Clause 11.5 of the Standard Crime Contract Specification states: "If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, you must consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work may be undertaken." See also [preventing audit issues section 15](#)

<sup>43</sup> See also [Criminal Appeals – Duties to the Court to Make Enquiries](#) published by the Bar Council ethics committee

<sup>44</sup> [R v McCook](#) [2014] EWCA Crim 734, [R v Grant-Murray & Others](#), [2017] EWCA Crim 1228, [R v Lee](#) [2014] EWCA Crim 2928, and [R v Achogbuo](#) [2014] EWCA Crim 567.

<sup>45</sup> [R v Frost-Helmsing](#) [2010] EWCA Crim 1200

have failed to respond to their McCook inquiries should be lodged with the grounds of appeal, along with a signed waiver of privilege.

- d. Fresh representatives must consider obtaining other objective independent evidence if the information provided by the trial representatives contradicts the applicant's instructions.

B.7.4. If there are exceptional circumstances and good and compelling reasons not to comply with this duty; these must be specified. Such exceptional circumstances would be very rare<sup>46</sup>. In cases where **fresh representatives** seek to adduce **fresh evidence**<sup>47</sup> that was not adduced at trial, not only will the fresh representatives be required to comply with their duties pursuant to McCook; a signed waiver of privilege must also be lodged by new legal representatives in all fresh evidence cases, further to [R v Singh](#)<sup>48</sup> (CPD 10.4.4 e.).

B.7.5. The Court has confirmed that the duties of fresh representatives are not limited to conviction applications, but also include sentence cases.<sup>49</sup>

B.7.6. The duties set out above apply at whatever stage the fresh representatives are instructed. Where instruction occurs post single judge, representatives should consider whether they are required to make an application to vary the notice of appeal (CrimPR 36.14(5) and CPD 10.4.5) and/or an application for an extension of time (CrimPR 36.4) to renew<sup>50</sup>.

## **B.8 Applications to adduce fresh evidence**

B.8.1. Where grounds of appeal rely upon fresh evidence that was not adduced at trial, an application pursuant to [s.23 Criminal Appeals Act 1968](#) must be made. If the fresh evidence is provided by a witness, representatives should obtain a statement from the witness in the form prescribed by [s9 Criminal Justice Act 1968](#). If the fresh evidence is documentary or real evidence, the representatives should obtain statements from all those involved formally exhibiting the evidence. A [form W](#) should be lodged with respect to each witness dealing with the fresh evidence<sup>51</sup>.

B.8.2. A supporting s.9 witness statement or an affidavit from the applicant's solicitor should accompany the fresh evidence setting out why the evidence was not available at trial and when and how it has come to light.<sup>52</sup> This will implicitly require fresh representatives to comply with [McCook](#).<sup>53</sup>

B.8.3. The form W should indicate whether there is an application for a witness order. The Registrar or single judge may direct a witness order but only the Court hearing the appeal may give leave for a witness to be called and only the full Court can formally receive the evidence<sup>54</sup>.

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<sup>46</sup> [R v McCook](#) *ibid*

<sup>47</sup> See applications to adduce fresh evidence [B.8](#)

<sup>48</sup> [2017] EWCA Crim 466

<sup>49</sup> See [R v Roberts & Ors](#) [2016] EWCA Crim 71, at Para. 40 and [R v Lea](#) [2021] EWCA Crim 65, at Para. 43

<sup>50</sup> See applications to renew [D.6 below](#)

<sup>51</sup> In cases where there may be numerous documents or it might not be clear who should or can produce them, the CAO case lawyer should be contacted for advice.

<sup>52</sup> The statement is also known as the Gogana statement and must address the criteria in s.23 Criminal Appeal Act 1968; [R v Gogana](#) The Times 12/07/1999 where the Court said that provenance of the fresh evidence was extremely relevant to credibility. It can also have the dual purpose of supporting an application for extension of time.

<sup>53</sup> See applications by fresh representatives [B.7](#)

<sup>54</sup> [R v Cross](#) [2014] EWCA Crim 96

B.8.4. Prior to the full Court hearing, the practice of the Registrar is to seek the written views of the parties as to agreement or not on whether the Court will be invited to receive the witness(es) evidence orally or in writing. The presiding judge's views are then sought, and directions may be given if appropriate. If the judge indicates that the court is likely to require a witness to give evidence or is unable to give an indication it is the responsibility of the solicitors for the party seeking to rely on the fresh evidence to ensure witness availability and attendance at court.

B.8.5. Solicitors are reminded that where a representation order has been granted for counsel<sup>55</sup>, counsel should make an application to the Registrar for that to be extended for the purposes of this work. If it is anticipated that an application for a witness to give evidence via CVP might be made, it is helpful for that request to be made as soon as practicable<sup>56</sup>.

B.8.6. The Registrar and single judge have power to make an order under [s.23 \(1\)\(a\) Criminal Appeal Act 1968](#) for the production of evidence etc. necessary for the determination of the case.

## **B.9 Bail pending appeal<sup>57</sup> (CrimPR 39.8)**

B.9.1. Bail may be granted (a) by a single judge or the full Court or (b) by a trial or sentencing judge who has certified the case fit for appeal. In the latter case, bail can only be granted within 28 days of the conviction or sentence which is the subject of the appeal and may not be granted if an application for bail has already been made to the Court of Appeal.<sup>58</sup>

B.9.2. An application for bail pending appeal must be supported by a completed [form B](#). The application for bail must be served on the Registrar and the prosecution. An application cannot be decided without giving the prosecution the opportunity to make representations (CrimPR 39.8).

B.9.3. In practice, single judges will require the relevant transcripts to be available so they may consider the merits of the substantive application at the same time as the bail application. Where an application is urgent because of a short EDR<sup>59</sup>, age of the applicant and/or vulnerability etc. practitioners should highlight this in the accompanying email to the CAO.

B.9.4. Where bail is granted pending appeal, the Court may attach any condition that must be met before the party is released and may direct how such a condition must be met. The Registrar must serve a certificate recording any such condition on the party, the party's custodian and any other person directly affected by the condition (CrimPR 39.9). A condition of residence is always attached.

B.9.5. The Registrar can vary the conditions of bail only if the Respondent does not object to the variation (s.31A (2)(c) & (3)).

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<sup>55</sup> Counsel also refers to solicitor advocates

<sup>56</sup> See remote hearings [D.10](#) and [D.11](#) below

<sup>57</sup> [S.19 Criminal Appeal Act 1968](#)

<sup>58</sup> [s.81 \(1D\) & \(1E\) Senior Courts Act 1981](#)

<sup>59</sup> Earliest date of release

## B.10 Respondent's Notice

B.10.1. In all cases, the Registrar will notify the relevant prosecuting authority of the case name, reference number and Crown Court (CPD 10.2.1). The appeal notice<sup>60</sup> will be served on any party directly affected by the appeal (usually the prosecution) if the Registrar or Court directs or invites a Respondent's Notice (RN) or on a party who wishes to do so<sup>61</sup>(CrimPR 39.6(1) - (2), CPD 10.2.2).

B.10.2. CrimPR 39.6(4)(a) states that the RN must be served within 14 days. However, the practice of the Registrar is to allow 21 days unless the case is urgent (in which case the Registrar may impose a deadline shorter than 14 days). The RN must be served on the Registrar and any other party on whom the Registrar served the appeal notice.

B.10.3. The RN must be in the specified [form RN](#) (CrimPR 39.6(5)) and must set out the grounds of opposition and include the information set out in CrimPR 39.6(6). It should be noted that hyperlinks must be included (CrimPR 39.6 (6)(g)). In non-DCS cases it is acknowledged that compliance may not be possible<sup>62</sup>. Authorities must be identified and an electronic copy of that authority. If two or more such authorities are identified, they are to be provided as a single pdf bookmarked document (CrimPR 39.6(6)(e) & (h)).<sup>63</sup>

B.10.4. In practice, this procedure primarily applies prior to consideration of leave by the Single Judge. However, a RN may be sought at any time in the proceedings including at the direction of the Single Judge.

B.10.5. The Registrar will always direct a Respondent's Notice in all *conviction and sentence applications* involving a fatality including attempted murder.

B.10.6. Other examples of when the Registrar might direct a Respondent's Notice include:

- Where an assertion is made in the grounds of some irregularity that happened during the trial that cannot be fully reflected in the transcript.
- The grounds are legally complex, or the facts of the case are complicated and an RN might assist.
- There is a complaint about the prosecution and their conduct of the trial.
- Derogatory remarks are made about the credibility of a victim.
- There is fresh evidence not produced at trial.
- One of the grounds of appeal is that there were inconsistent verdicts.
- The grounds raise a juror irregularity or other conduct which might require investigation by the police.
- The grounds have not been considered by a single judge and there is an application to vary the notice of appeal before the full Court pursuant to [R v James and Ors](#) [2018] EWCA Crim 285.<sup>64</sup>
- The grounds raise points of general public importance which require a co-ordinated approach from the prosecution.

The CPS will always be invited to lodge a Respondent's Notice in the following conviction cases:

- All those involving, a fatality, rape, attempted rape or a serious sexual offence.
- Where a CPS Complex Casework Unit dealt with the case, or the case was high profile

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<sup>60</sup> In practice a link to CACD1 is provided. In non DCS cases the Form NG, grounds of appeal, ancillary applications and any available transcript will be securely emailed or link provided for secure download.

<sup>61</sup> If a party wishes to submit a RN, they should contact the CAO and the necessary arrangements for service will be made.

<sup>62</sup> See [annex 1](#) for guidance on submission of documents

<sup>63</sup> Note [B.3.6 above](#) regarding the 'frequently cited list of authorities'.

<sup>64</sup> See applications to vary [D.6 below](#).

- Where the offence was perverting the course of justice, misconduct in public office and any conspiracy.

### **B.10.1 a. Attorney General's reference of an unduly lenient sentence or reference of a point of law on an acquittal<sup>65</sup>**

B.10.1.1. If the defendant wishes to make oral representations to the Court, a RN **must** be served within 14 days of the Registrar serving the application. There is no specific form available, but the document must be compliant with the CrimPR and CPD in terms of layout and hyperlinks etc. A representation order is usually granted to the offender for counsel to respond to the reference.

B.10.1.2.

### **B.11 Case Management**

B.11.1. Case management powers are exercisable by the Registrar and single judge<sup>66</sup>. They can and will make procedural directions for the efficient and effective preparation of an application or appeal<sup>67</sup>.

B.11.2. Where the Registrar refuses an application by an applicant to exercise case management powers in the appellant's favour, the applicant is entitled to have the application determined by a single judge. There is no provision for any appeal against a procedural direction given by a single judge and thus such decisions are final.

## **C The s.31/leave stage**

### **C.1 Referral by the Registrar**

C.1.1. Where leave to appeal is required, the Registrar, having obtained the necessary documents, will usually refer the application(s) to a single judge for a decision (on the papers).

C.1.2. The Registrar has power to refer an application<sup>68</sup> for leave directly to the full Court and will also refer an application for an extension of time, if one is required.<sup>69</sup>

### **C.2 Oral applications for leave to appeal**

C.2.1. All applications for leave (together with any ancillary applications) are normally considered by a single judge on the papers, unless it can be demonstrated that there are exceptional reasons why an oral hearing is required. Representatives may request an oral hearing which must be supported by written reasons as to why the case is exceptional and any reasons why that hearing should be expedited<sup>70</sup>. The application should be copied to the prosecution. The single judge determining the substantive application will then decide whether an oral hearing should be arranged. An advocate may make an application for a representation order at the hearing itself. Oral applications for leave and bail are usually heard in Court but in chambers at 9.30am before the normal Court sittings. Advocates appear unrobed. If the advocate considers that an application may take longer than 20 minutes, the Registrar must be notified. If the single judge declines to hear the application at an oral hearing, the application will then be considered on the papers by that judge.

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<sup>65</sup> See [annex 2](#)

<sup>66</sup> See Criminal Appeal Act 1968 for the Registrar ([s.31A](#)) and for the single judge ([s.31](#)).

<sup>67</sup> See [s.31B Criminal Appeal Act 1968](#)

<sup>68</sup> See funding for grant of leave or reference to full court [D.4 below](#)

<sup>69</sup> See time limits generally [B.4 above](#)

<sup>70</sup> Expedition will be a matter for the Registrar

### C.3 Powers of the Single Judge

C.3.1. The single judge may grant the application for leave, grant limited leave, refuse it or refer it to the full Court<sup>71</sup>. The single judge may also grant, refuse or refer any ancillary applications.<sup>72</sup>

C.3.2. Where the single judge considers a fresh evidence application is potentially arguable, a referral to the full Court will be made rather than a grant of leave.<sup>73</sup>

### C.4 Refusal by the Single Judge

C.4.1. Where the single judge refuses leave to appeal, the Registrar sends a notification of the refusal to the applicant and advises that any renewal<sup>74</sup> notice for the application(s) to be considered by the full court **must** be served on the Registrar within 14 days from the date the notice was served on the applicant (CrimPR 36.5). The application automatically lapses after 14 days if there is no renewal.

C.4.2. The single judge<sup>75</sup> may indicate that the full Court should consider loss of time or a costs order in the event that the application is renewed. Where the applicant is not in custody the single judge has the option of considering whether to make any directions in respect of costs, which could include the prosecution costs (usually in providing a RN).<sup>76</sup>

### C.5 Directions for loss of time

C.5.1. An appeal is not built into the trial process and must be justified on properly arguable grounds. To deter unmeritorious applications which waste precious time and resources the court will consider using their power<sup>77</sup> to direct that time spent in custody after lodging their application shall not count towards sentence or an order for costs (CPD 10.4.5 h., 10.5.1). In order not to deter litigants in person from lodging their own grounds of appeal, it is now the practice of the Court not to make loss or time orders at the single judge stage. However, where an application is wholly without merit and has been renewed to the full Court, the applicant is clearly at risk of such an order being made. Renewal on the advice of legal representatives is no protection on the use of these powers.<sup>78</sup> Where an applicant is released from custody an order for costs will be considered.<sup>79</sup>

C.5.2. Such an order may not be made where leave to appeal or a trial judge's certificate has been granted, on a reference by the CCRC or where an appeal has been abandoned.

### C.6 Abandonment

C.6.1. An application or appeal which is abandoned is treated as being a final determination of the full Court (CrimPR 36.13(4)(c)).

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<sup>71</sup> This generally done on the papers.

<sup>72</sup> See [s.31 Criminal Appeal Act 1968](#); see time limits generally [B.4 above](#) for extensions of time

<sup>73</sup> [R v Singh](#) [2017] EWCA Crim 466

<sup>74</sup> A renewal form is provided to the applicant with the refusal notification

<sup>75</sup> [S.31 Criminal Appeal Act 1968](#). Absence of such an indication does not deprive the full court of the power

<sup>76</sup> see [Kirk](#) [2015] EWCA Crim 1764

<sup>77</sup> [S.29 Criminal Appeal Act 1968](#)

<sup>78</sup> [R v Gray and Ors](#) [2014] EWCA Crim 2372.

<sup>79</sup> [s.18 Prosecution of Offences Act 1985](#)



C.6.2. An appeal or application may be abandoned without leave by lodging [form A](#) at any time before the hearing. An oral instruction or letter indicating a wish to abandon is insufficient. At the hearing, an application or appeal can only be abandoned with the permission of the Court (CrimPR 36.13(2)(b)).

C.6.3. A notice of abandonment cannot be withdrawn, nor can it be conditional. A person who wants to reinstate an application or appeal after abandonment must apply in writing to the Registrar with reasons (CrimPR 36.113(5)). The Court has power to allow reinstatement only where the purported abandonment can be treated as a nullity and the applicant must provide the Court with the relevant information to determine the application (*R v Medway* (1976) 62 Cr App R 85 and *R v Zobotka* [2016] EWCA Crim 1771).

C.6.4. An application to treat the abandonment as a nullity is heard by the full Court. If the Court does agree to treat the abandonment as a nullity, the status of the application is restored as if there had been no interruption.

## D Preparation for the full Court hearing

### D.1 Notice to the prosecution

D.1.1. The Registrar will notify the relevant authority when (CPD 10.2.3):

- leave to appeal against conviction or sentence is granted by the single judge; or
- the single judge or the Registrar refers an application for leave to appeal against conviction or sentence to the full Court for determination; or
- there is to be a renewed application for leave to appeal against sentence only.

D.1.2. If the prosecution authority had not previously been served with the appeal notice and transcript, these will be served with the notification and the form SJ containing the comments of the single judge/Registrar (CPD 10.2.4). The prosecution may be directed to attend but if they are not they should notify<sup>80</sup> the Registrar without delay if they wish to be represented at the hearing<sup>81</sup> and should be aware that the case may be listed at short notice (CPD 10.2.5).

D.1.3. In a conviction case, where the prosecuting authority is attending the full Court hearing (and no RN has previously been lodged), the Registrar will direct service of a RN or a skeleton argument.<sup>82</sup>

### D.2 Limited leave

D.2.1. Where limited leave<sup>83</sup> has been granted advocates must notify the Registrar within 14 days whether any of the grounds upon which leave has been refused are to be renewed before the full Court (CrimPR 36.14<sup>84</sup>). If a representation order is granted, public funding will only cover grounds of appeal which the single judge or the full Court say are arguable.<sup>85</sup>

### D.3 Renewal

D.3.1. The Crown Court representation order will not cover advice to the applicant on whether to renew. A late renewal notice must be accompanied by an extension of time application giving cogent reasons (CrimPR

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<sup>80</sup> See Notice to the prosecution [D.1 above](#). The advocate's details and a time estimate must also be provided (CPD 10.2.6)

<sup>81</sup> Unless the application/appeal is to be heard on the papers; see attendance [E.1 below](#)

<sup>82</sup> There is normally no need for both.

<sup>83</sup> I.e. leave to argue some grounds but not others.

<sup>84</sup> CrimPR 36.3 enables the court to extend the 14 day period (*R v James* *ibid*)

<sup>85</sup> *R v Cox & Thomas* [1999] 2 Cr App Rep 6 and *R v Hyde and Ors* [2016] EWCA Crim 1031

36.4). An application for an extension of time to renew will normally be considered by the full Court at the same time as the renewed application for leave to appeal.

D.3.2. Where the applicant is to be represented at the renewed hearing, the CAO must be notified in writing as soon as practicable whether this is on a privately instructed or on a pro bono basis.

D.3.3. Whilst a representation order is not granted by the Registrar in respect of a renewed application for leave, the advocate may apply at the hearing to the Court for a representation order to cover that appearance and any further work done in preparation of the renewal retrospectively. In practice, this is only granted where the application for leave is successful.

D.3.4. The form SJ (renewal) includes a box for the applicant to give reasons why an order for loss of time or costs should not be made, whether or not an indication has been given by a single judge<sup>86</sup>.

#### **D.4 Public funding for grant of leave or reference<sup>87</sup> to full court**

D.4.1. In the CACD only the interests of justice test is applied and there is no means testing<sup>88</sup>. Where leave is granted or the application referred to the full Court, it is usual to grant a representation order<sup>89</sup> for the preparation and presentation of the appeal. This is usually limited to named junior counsel only and will normally be the advocate who settled grounds of appeal. The single judge and/or Registrar will consider and determine an application for a representation order by virtue of the appropriate box being ticked on form NG.

D.4.2. If the appellant is a litigant in person, an advocate may be assigned by the Registrar. In such cases the Registrar will provide a brief but does not act as a solicitor.

D.4.3. The Registrar may assign one advocate to represent more than one appellant if appropriate. If it is considered that a representation order for two advocates and/or solicitors is required, the advocate must apply<sup>90</sup> to the Registrar or single judge and provide written justification in accordance with [Criminal Legal Aid \(Determinations by a Court and Choice of Representative\) Regulations 2013 \(S.I. 2013/614\)](#). In respect of an application for solicitors, counsel should outline the work that is required to be done by the solicitor and why the work cannot be undertaken by counsel as an order is likely to be restricted to the work identified. The application could be for a general representation order for solicitor to assist with the preparation of the application/appeal or for a limited and specified purpose. There is no prescribed form for an application, and it can also be made directly by solicitors and at any stage in proceedings once an effective application has been lodged.”

D.4.4. Common scenarios for granting representation orders to solicitors are:

- there are complex issues of disclosure, and the solicitor has to liaise with the CPS/Prosecutor.
- In fresh evidence cases where the solicitor must take and lodge witness statements, instruct experts etc.

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<sup>86</sup> See Refusal by a single judge [C.4 above](#)

<sup>87</sup> On a referral, the applicant does not become an appellant until such time as the full Court grant leave to appeal. For ease appellant will be used.

<sup>88</sup> Practitioners should note that the Court has the power in some circumstances to grant a recovery of defence costs order; The [Criminal Legal Aid \(Recovery of Defence Costs Orders\) Regulations 2013 \(SI 2013/511\)](#). The CAO summary will alert the court in relevant cases.

<sup>89</sup> Practitioners should note work that a representation order can cover; [R v Tredget](#) [2022] EWCA Crim 1894

<sup>90</sup> There is no prescribed form and a note to the Registrar will suffice.

- Where the applicant is particularly vulnerable, young or has mental health issues.
- In other complex cases, such as special courts or where directions hearings are required.

D.4.5. If solicitors are assigned, it should be noted, that by virtue of regulation 12\_a representation order can only be issued to a solicitor if they hold an LAA Standard Crime Contract. A solicitor not holding such a franchise may apply to the LAA for an individual case contract (ICC) by virtue of which the solicitor is employed on behalf of the LAA to represent an appellant in a given case.

D.4.6. In cases where the Registrar refers an application to the full court a representation order for junior counsel is usually granted. Where an application is referred because an unlawful sentence has been passed or other procedural error identified, a representation order will ordinarily be granted where the presence of counsel is necessary. Where there is a technical issue that the court can resolve on the papers without oral argument, a representation order will not be granted.

D.4.7. A presiding Lord/Lady Justice giving directions on a case can grant a representation order.

D.4.8. A representation order can be retrospective to the date the application was lodged (regulation 8(2)) but cannot include work undertaken before the application was lodged.

D.4.9. A representation order can be revoked by the Registrar/full Court; where the individual does not agree to the terms of the funding; the individual asks that the order is withdrawn; the person/firm representing them under a representation order declines to act<sup>91</sup>. Where the order is withdrawn, the provider can claim to the date of withdrawal.

D.4.10. There is no right to a transfer of a representation order, but an application can be made to the Registrar/Court if the original provider has had to withdraw under their rules of professional conduct or be unable to represent the applicant/appellant through circumstances out of their control which must be determined before a transfer can take place.<sup>92</sup> Practitioners should note that the test is a strict one.<sup>93</sup>

D.4.11. Mixed public and private funding is impermissible<sup>94</sup> but it is open to the Court to grant a retrospective representation order where there has been private funding. In *Gittins & Khan* [2007] EWCA Crim 806, the Court held that the principle that public and private funding could not co-exist only applied **after** the making of a representation order and where the Court made a retrospective representation order, advocates must forego and repay any fees they have received under a private funding arrangement. The Court needs to be informed of such an arrangement and the representation order should be on terms which ensure repayment of any sum paid privately (in that case counsel was also required to provide proof of repayment of fees received).

## D.5 Referrals

D.5.1. In practice the CAO will prepare and list cases in the same way as a full appeal hearing where leave has been granted and if the Court conclude that no directions are required, normally the application for leave would be determined followed immediately by consideration of the appeal itself in a “rolled up” hearing.

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<sup>91</sup> Regulation 9 [The Criminal Legal Aid \(Determinations by a Court and Choice of Representative\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>92</sup> Regulation 14 Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013

<sup>93</sup> See *R (on the application of Sharif Sanjari) v The Crown Court at Birmingham* [2015] EWHC 2037 (Admin)

<sup>94</sup> *R v Banfield* [2014] EWCA Crim 1824, *Knaqgs (Russell)* [2018] EWCA Crim 1152 at [149]-[153]

## D.6 Applications to vary the notice of appeal (fresh grounds) (CPD 10.4.5)

D.6.1. As a rule all the grounds of appeal that an applicant wishes to advance should be lodged with the appeal notice, subject to perfection on receipt of transcripts from the Registrar. The application for leave is an important stage and it must not be treated lightly, or its determinations ignored.

- Where an appellant wants to rely on a ground of appeal not identified in the appeal notice after leave has been granted, an application for leave to vary must be made which identifies each new ground and reasons why it was not included in the appeal notice.<sup>95</sup> The application must be served on the Registrar and the respondent as soon as practicable (CrimPR 36.14 (5)).
- Where an applicant instructs (fresh) representatives to renew refused application(s) and introduce new/fresh grounds of appeal an application for leave to vary must accompany the renewal within 14 days of refusal. Where an application to renew has been made after 14 days, an extension of time application will need to be made and the hurdle will be higher if accompanied by an application to vary.

D.6.2. Fresh representatives will be required to comply with their duty of due diligence<sup>96</sup> and a waiver of privilege will almost certainly be required. On receipt of the trial representative's response fresh representatives should again consider with great care their duty to the court and whether the proposed fresh grounds should be advanced as reasonably arguable and particularly cogent.

D.6.3. Advocates **must** comply with CPD 10.4.5 and have regard to the criteria identified by the court in [R v James & Ors](#)<sup>97</sup> (*ibid*). It should be noted that fresh grounds must be particularly cogent and that the hurdle is a high one. If there is any doubt as to whether a ground is fresh, then an application to vary should be made. The court will consider the following (non-exhaustive) list of issues:

- The extent of the delay in advancing the new ground/s.
- The reason for the delay in advancing the new ground/s.
- Whether the issues / facts giving rise to the new grounds were known to the applicant's representative at the time he or she advised the applicant regarding any available grounds of appeal.
- The interests of justice and overriding objective in CrimPR part 1.

D.6.4. The Registrar will consider whether any further transcripts should be obtained and will direct a RN. An application to vary the notice of appeal will be considered by the full court when considering the renewed application for leave to appeal.

## D.7 CAO summaries, index and bundles

D.7.1. In preparation for the full Court hearing the CAO will write a summary<sup>98</sup>. It is important that the advocate considers the contents promptly and should notify the Registrar if any significant alterations are proposed (CPD 10.6.3).

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<sup>95</sup> There is no prescribed form but representatives should note their duties and that they must comply with CrimPR 39.3 and CPD 10.4.5.

<sup>96</sup> [McCook](#) *ibid* and see fresh representatives [B.7 above](#)

<sup>97</sup> It should be noted that the Court refers to a previous version of this guide. A5 is now [B.6](#)

<sup>98</sup> See CPD 10.6 for the makeup of the summary and restrictions on its use

D.7.2. In most sentence cases the CAO summary will contain hyperlinks to DCS or the Document Upload Centre (DUC)<sup>99</sup> in non-DCS cases. An index is not provided in these cases.

D.7.3. In all other cases the CAO summary (CPD 10.6.2) will be hyperlinked from the index (CPD 10.7.1) or sent to the advocate if a non-DCS case. Where the Registrar directs, or the advocate on their own volition provides, a core bundle, practitioners should follow the guidance in appendix 3. Bundles should only contain documents and material which are necessary for the proper understanding of, and determination of, the issues (CPD 10.7.4). The bundle will be placed on CACD1 or DUC<sup>100</sup> **by CAO staff** and the index will contain a hyperlink to that bundle and any administrative documents that the court may need. Where no core bundle is lodged, the index will provide links to the procedural and relevant core documents.

D.7.4. It is important that the advocate considers the index/summary and checks the links on receipt. The caseworker should be notified as soon as practicable if there are amendments that need to be made (CPD 10.7.3).

D.7.5. Late papers<sup>101</sup> are discouraged. In the exceptional event that late papers are sent, the advocate **must** follow the instructions on the index and ensure other party, if represented, is copied in.

D.7.6. The index will contain a link to any authority, and if more than one, the bundle of authorities lodged pre single judge. Advocates should consider lodging an amended bundles in furtherance of the principles in CrimPR 39.3(1)(f) & 39.3(2)(f), CPD 10.8.9 – 10.8.10 and having regard to the current list of frequently cited authorities.

## D.8 Skeleton arguments

D.8.1. The grounds of appeal and/or RN should normally suffice in that all the points that are to be argued are already in the single document (CPD 10.8.1). On occasion the Registrar or the single judge will direct one or both parties to submit a skeleton argument. Where this has not happened an advocate must, in a conviction case, serve a skeleton argument when the grounds of appeal are not sufficiently outlined, particularly in complex or novel point of law cases and in sentence cases, it may be helpful where there is a complex issue (CPD 10.8.2).

D.8.2. Skeleton arguments **must** be concise, succinct and define the issues<sup>102</sup>. A numbered list of points in no more than one or two sentences should be grouped under each ground of appeal. Cross references should be made to relevant document(s) but should not contain extensive quotations from documents and/or authorities. Authorities, where necessary should be cited as per CPD 10.8.4 a., and state the proposition of law and identify, but not quote, the part in support of the proposition. Where there is more than one, the skeleton should briefly state why (CPD 10.8.4 – 10.8.5). A chronology of relevant events will be necessary in most cases (CPD 10.8.6). In the event of non-compliance with the CPD or unless requirements have been varied by the Court, the CAO can refuse to accept service and may return for amendment. At the hearing the Court may refuse to hear argument on the point. A request for variation must give reasons and accompany the non-compliant document (CPD 10.8.7 – 10.8.8).

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<sup>99</sup> See [annex 1](#).

<sup>100</sup> The CAO can provide any documents from a DUC index that the advocate does not have.

<sup>101</sup> See [annex 1](#)

<sup>102</sup> See [annex 1](#) for the practical requirements.

## **D.9 Listing of appeals<sup>103</sup>**

D.9.1. The CAO summary contains time estimates for the hearing (including the delivery of the judgment) and the judge's reading time of the core material which advocates should review. The hearing date will be fixed using those estimates unless the listing officer is notified within seven days of receipt of the summary. Likewise, it is incumbent on the advocate to notify the Registrar of any matter which affects the estimates (e.g. abandonment of a ground) after the date has been fixed so that time estimates can be reconsidered (CPD 10.3.4).

D.9.2. Where necessary the Registrar may give directions for the listing of cases; the arrangements for the fixing of dates lies with the CAO listing officer (CPD 10.3.1). The CACD retains precedence over the lower courts but where possible, regard will be had for advocates existing commitments and particularly if an advocate is acting pro bono, the list office will try and accommodate any reasonable listing request but in general a commitment in a lower court will not be regarded as a good reason for failing to accept a proposed date. A lower court can and should contact the Registrar where there are difficulties in releasing the advocate (CPD 10.3.2).

## **D.10 Remote attendance requests: participants (s.51 CJA 2003)**

D.10.1. The default position is that hearings will be in person<sup>104</sup>. The Registrar and the Vice-President of the Court of Appeal, Criminal Division are delegated the power to grant remote attendance, but this is subject to giving other represented parties an opportunity to make orders. Any party making an application for remote attendance must attempt to get the agreement of any other represented party before contacting the CAO listing office.

## **D.11 Remote observation requests: professional, court users, public (s.85A CJA 2003)**

D.11.1. Only the full Court has the power to grant permission. Practitioners and others are asked to send any requests for remote observation to [courtclerks@criminalappealoffice.justice.gov.uk](mailto:courtclerks@criminalappealoffice.justice.gov.uk) as soon as is practicable. The Registrar, through the CAO staff, will ensure that the constitution is consulted as soon as possible but, if necessary, the links can be arranged by the court staff on a provisional basis, subject to the full Court making a direction at the start of the hearing.

# **E Full Court hearing**

## **E.1 Attendance**

### **E.1.1 Leave granted/referral.**

E.1.1.1. An appellant is entitled to be present and to be represented by an advocate, if instructed. The full Court is likely to grant permission to attend.

E.1.1.2. However, if the single judge/Registrar deems that issue is a technical error and that the full Court can deal with the case without oral argument, then the application for leave and appeal will be determined on the papers.<sup>105</sup> If the matter is listed for directions then the appellant/applicant will not be entitled to attend unless the Court give him leave. In practice the presiding judge will consider the application in advance of the hearing.

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<sup>103</sup> Appeal includes applications for leave to appeal (CPD 10.3.6) and directions hearings.

<sup>104</sup> It is acknowledged that this will not always be possible or reasonable in the circumstances of the case; see [Review of the Year In the Court of Appeal, Criminal Division pp 7 - 8](#)

<sup>105</sup> [S.22 Criminal Appeal Act 1968](#), CrimPR 39.11, *R v Hyde and Ors* [2016] EWCA Crim 1031).

## **E.1.2 Renewal**

E.1.2.1. The applicant is not entitled to be present<sup>106</sup> unless leave is given by the Court but maybe represented by an advocate on a pro bono or privately paying basis. A litigant in person (LIP) is not entitled to attend or address the Court unless permission is given by the Court.<sup>107</sup> If the prosecution advocate is present, for example, because there are linked applications which require the presence of the prosecution, the advocate must take care “not to stray into issues that are particular to an unrepresented applicant”.<sup>108</sup>

E.1.2.2. In sentence cases involving a fatality, if leave is granted and the prosecution is not in attendance, the Court must consider adjourning the hearing so that the CPS may instruct an advocate and to give the victim’s family notice and opportunity to attend<sup>109</sup> (CPD 10.2.7).

E.1.2.3. In all other sentence cases, if an advocate attends on behalf of the applicant instructions should be obtained prior to the hearing should the Court grant leave and proceed in the applicant’s absence and hear the appeal<sup>110</sup>.

## **E.1.3 Evidence Presentation System (EPS)**

E.1.3.1. The EPS has now replaced the Clickshare system which was previously used by practitioners to share digital evidence during court proceedings. This system no longer requires the use of dongles; instead, practitioners may connect their devices via a wired connection at the prosecution end of the bench or wireless adapters which can be used elsewhere in the court.

## **E.1.4 Funding**

E.1.4.1. If a representation order is not already in place, the full Court on a directions or renewal hearing (if the full Court think there is merit in an application) can grant a representation order.

## **E.2 Judgments**

E.2.1. Where judgment is reserved, CPD 10.9 sets out the expectations in respect of the draft judgment, amendments, communication of it to the parties and timetabling. Where there is to be an application for a retrial<sup>111</sup> or either party wishes to make any other application consequent on the judgment, the judge’s clerk, copied to the caseworker and listing, should be informed with a time estimate by 12 noon on the day before the judgment is handed down. No fee is payable to advocates attending a hand down if not required to do so by the Court (CPD 10.9.6).

## **E.3 Re-trials<sup>112</sup> ordered by the Court of Appeal**

E.3.1. Practitioners should note the provisions in CPD 5.11.6 and 5.11.7; the Crown Court must comply with the directions of the Court of Appeal and cannot vary those directions without reference to the Court of

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<sup>106</sup> [S.22 Criminal Appeal Act 1968](#), CrimPR 39.11; either in person or via CVP. An applicant not in custody can attend the hearing but leave is still required to address the Court.

<sup>107</sup> The obligations on LIP’s was addressed by the Court in [Zuman](#) [2023] EWCA Crim 79

<sup>108</sup> [Zuman](#) *ibid* at [67]. It is of note that the CPD no longer contains the bar to prosecution attendance but the principles of *Nasteska v The former Yugoslav Republic of Macedonia (Application No.23152/05)* must still be observed per *Zuman* at [68].

<sup>109</sup> This is to allow the prosecuting authority to comply with statutory obligations under the Victims Code.

<sup>110</sup> [R v Spruce and Anwar](#) [2005] EWCA Crim 1090

<sup>111</sup> [S.7 Criminal Appeal Act 1968](#)

<sup>112</sup> [S.8 Criminal Appeal Act 1968](#); see also CrimPR 39.8, 39.9 and 39.14

Appeal. The custody time limit is 112 days starting from the date that the new indictment is preferred i.e., from the date that the indictment is delivered to the Crown Court.

E.3.2. Arraignment must take place within two months from the date of the order for a retrial.

#### **E.4 Certification of a point of appeal to the Supreme Court.**

E.4.1. It is of assistance for the judge's clerk to be informed prior to hand down of any intention to request a certification but this is not obligatory, and the time limit is 28 days<sup>113</sup>

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<sup>113</sup> [S.34 Criminal Appeal Act 1968](#)



## F Useful contacts and information

**Registrar of Criminal Appeals:** Master Alexandra Beldam KC

**Address:** Criminal Appeal Office  
The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

**Telephone:** 020 7947 6011

**General Email:** [generaloffice@criminalappealoffice.justice.gov.uk](mailto:generaloffice@criminalappealoffice.justice.gov.uk)

**Lodging new applications:** [applications@criminalappealoffice.justice.gov.uk](mailto:applications@criminalappealoffice.justice.gov.uk)

### **Enquiries/service after form NG lodged**

All cases are assigned a CAO Reference number and each case has a letter at the end which dictates where the relevant query should be directed:

Conviction (B/C Group): [breference@criminalappealoffice.justice.gov.uk](mailto:breference@criminalappealoffice.justice.gov.uk)

Sentence (A Group) enquiries: [areference@criminalappealoffice.justice.gov.uk](mailto:areference@criminalappealoffice.justice.gov.uk)

### **Hearing enquiries**

Including matters relating to CVP/remote hearings and other practical issues:

Listing: [listoffice@criminalappealoffice.justice.gov.uk](mailto:listoffice@criminalappealoffice.justice.gov.uk)

Court clerks: [courtclerks@criminalappealoffice.justice.gov.uk](mailto:courtclerks@criminalappealoffice.justice.gov.uk)

### **Opening hours and facilities**

[HMCTS Personal Information Charter](#)

### **Useful Websites:**

[Judiciary](#)

[Criminal Procedure Rules \(Appeal\)](#) and Criminal Practice Directions

[Criminal Procedure Rules; forms](#): See part 34 onwards

[Daily Cause Lists](#)

[Previous Court of Appeal decisions](#): [Bailii](#), [National Archives](#); [Court of Appeal \(Judiciary.uk\)](#)

[Sentencing Council](#)

[Criminal Cases Review Commission](#)

[CPS; Appeals to the Court of Appeal](#)

[The Supreme Court](#)

[Court of Appeal Criminal Division - GOV.UK \(www.gov.uk\)](#)

### **Legislation:**

[Administration of Justice Act 1960](#)

[Criminal Justice Act 1967](#)

[Criminal Appeal Act 1968](#)

[Criminal Justice Act 1972](#)

[Prosecution of Offences Act 1985](#)  
[Criminal Justice Act 1987](#)  
[Criminal Justice Act 1988](#)  
[Criminal Procedure and Investigations Act 1996](#)  
[Proceeds of Crime Act 2002](#)  
[Criminal Justice Act 2003](#)  
[Domestic Violence, Crime and Victims Act 2004](#)  
[Serious Organised Crime and Police Act 2005](#)  
[Serious Crime Act 2007](#)  
[Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)  
[Sentencing Act 2020](#)  
[Judicial Review and Courts Act 2022](#)  
[Police, Crime, Sentencing and Courts Act 2022](#)

**SI's:**

[The Criminal Legal Aid \(General\) Regulations 2013](#)  
[Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#)  
[Criminal Legal Aid \(Determinations by Court and Choice of Representative\) Regulations 2013 \[SI 2013/614\]](#)

**Recommended reading:**

Court of Appeal Criminal Division; A Practitioners Guide - 2nd edition; edited by Alix Beldam & Susan Holdham, ISBN 9780414064737, published by Sweet & Maxwell.

## **G Annex 1 – practical guidance on preparation of documents, bundles and submission to the CAO**

### **G.1 Grounds of appeal/skeleton arguments/RN's**

#### **G.1.1 DCS**

It is a requirement to create hyperlinks to relevant documents on DCS. Its purpose is to assist the practitioner and avoid the need for producing and lodging annexes. It assists the judiciary as the material will be more easily navigable.

To create a hyperlink:

- In the DCS review pane use the 'Copy Link' tab which takes a URL of the page and allows it to be pasted in a document.
- When pop-up window appears, select the text and press 'Ctrl+C' on your keyboard to copy the URL.
- Please note that this method allows the user to hyperlink to a specific page. For example, the reader needs to be taken to page 6 of a particular document then the link can be created by going to page 6 and following the steps above.
- On occasions the advocate might want to refer the reader to a sequence of documents and to hyperlink each would be unwieldy. In that case a particular section could be hyperlinked. To do this:
  - Select the sections pane and go to the section required.
  - Click on view documents and press 'Ctrl+C' on your keyboard to copy the URL from the address bar.

The reader can then download relevant documents in one bundle or individually.

To embed the link into a word or phrase:

- Highlight the word or phrase with the cursor.
- Press 'Ctrl+K'
- In the pop up box, click 'existing file or web page' (usually opens as default)
- Paste link into box and click ok.
- The word or phrase should now be underlined and in blue text.

Note: it is only possible to put URL links (https://) such as DCS and other websites (e.g. sentencing council). Hyperlinks to documents on a desktop (C:/Users/jbloggs/Downloads/) will not work for other users.

There is guidance also available on the [DCS training page](#).

Having created the word document and inserted the hyperlinks and the document is ready for submission; the word document needs to be saved as a PDF file; click 'save as' on the word document and then under the name of the document click 'save as type' and select PDF. Do not use the 'print PDF' option. The title should include the applicant's name and CAO case number.

#### **G.1.2 Non-DCS cases**

These cases are generally those that pre-date DCS (2015), some confiscation cases and non-CPS prosecutions. For these cases the CAO and CACD use eJudiciary Document Upload Centre (DUC). Only the CACD judges and the CAO can access documents on DUC albeit the CAO can provide a time limited link so that practitioners can upload documents in non-DCS cases.

It is recognised that practitioners may not be able to fully comply with the CrimPR by hyperlinking grounds of appeal/skeleton arguments/RN's to relevant material.

Practitioners are, therefore, encouraged to submit the form NG, grounds of appeal and any ancillary application or RN and a single bundle of relevant documents. The grounds must comply with the CrimPR and CPD as far as possible and instead of a hyperlink ensure that relevant documents are identified, the sections which need to be considered and an adequate description of where they can be found, for example at title, page and paragraph number (CPD 10.4.1 c.).

## **G.2 Document guidance**

Where possible documents created, such as grounds of appeal, should be served in pdf format. They must be:

- presented in A4 page size and portrait orientation, in not less than 12-point font and in 1.5 line spacing (CPD 10.4.1).
- set out in consecutively numbered paragraphs.
- So that the document text can be ‘copy and pasted’ and is searchable. This is referred to as OCR in some guidance<sup>114</sup>.
- Check that the hyperlinks work before submission.

### **G.2.1 Skeleton arguments (CPD 10.8)**

- The beginning of the document must include CAO reference number, the appellant’s surname and titled skeleton argument, the date on which the document was served and conclude with the advocates’ names.
- Should be A4 and in portrait orientation, in no less than 12-point font and in 1.5 line spacing.
- Not normally exceed 15 pages and be self-contained

## **G.3 Bundles: authorities and core bundles for the full Court.**

The most appropriate format for the core<sup>115</sup> and authorities<sup>116</sup> bundle will be a PDF file. For the purpose of creating bundles it is necessary to have access to pdf bundling software. The ‘how to’ instructions will depend on the software but invariably it will be user friendly and/or have a simple guide/tutorial to assist the user.

- Core bundles should follow the [CAO index template](#) where possible (CPD 10.7.4). In more complex cases it might be necessary to order the bundle differently. The case lawyer can always advise if necessary.
- The filename should contain the CAO reference number, the appellant’s surname and a short title for the bundle, i.e., “Bundle of Authorities” or “Appeal Bundle”.
- All documents should be A4 and in portrait orientation. If an original document is in landscape, then it should be inserted so that it can be read with a 90-degree rotation clockwise. No document should appear upside down.
- The default view for all pages should be 100%
- Pages should be numbered. This can be done automatically from the ‘Number Pages’ tab but care should be taken to ensure that the number does not mask relevant detail on the original document.
- The PDF should be fully booked marked. The bookmark description should be clear, e.g., the name and citation of the authority or what the document is, e.g. witness statement of A Bloggs 10.2.23.

To create the bookmark:


- In the home tab click on the blue ribbon. This opens the navigation pane.
- Highlight some text on the page – it need not be the authority’s name or document name

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<sup>114</sup> If a document is created in word and saved as a PDF it will contain editable text. If the document is scanned an OCR program needs to be used to convert the graphic into text. OCR technology reads text from PDFs and images, then converts them into actual text that you can interact and work with.

<sup>115</sup> CPD 10.7

<sup>116</sup> CPD 10.8.13 – 10.8.14

- Click  and a box with 'untitled' in it will appear; type the descriptive name of the authority or document in the box (or paste ('ctrl + v') if the copied text is the description)
- There must be an index at the start of the document; clickable links to the documents are useful – look for 'build a table of contents' tab; this will build an index from the bookmarks and the index will contain clickable links and page references.
- If amendments need to be made to the bundle, practitioners should liaise with the CAO and confirm whether a replacement bundle should be served or whether any additions can be lodged as a supplemental bundle.

The default position is that paper bundles will not be required unless in exceptional circumstances (CPD 10.7) and this will be communicated to the parties. In such cases, four copies should be supplied to the CAO in good time for the hearing (CPD 10.7.4)

#### **G.4 Bundles and functionality of DCS in court**

It might be helpful for judges and advocates alike to be aware that there can be limitations for viewing bundles within the DCS review pane. The two main issues are that, firstly, the number generated (in red) by DCS will not be the same as the bundle pagination and secondly, the document is not being viewed as a PDF and will not have the PDF functionality e.g., the bookmark navigation pane. To ensure consistency between judges and advocates it is recommended that bundles are downloaded to the users' desktop. This can be achieved in more than one way, but the easiest way is:

- From the review pane go to the 'PAGE' tab
- Click on 'download document'.
- A pop-up window will show the PDF in a list.
- Do not open file from the pop-up window (if you do, then click on 'save as' and save to desktop and open the file from there)
- Open file explorer on your desktop; go to downloads and select the file from there. This will open the file in a PDF.
- Click on the blue ribbon and this will open the navigation pane from which you can click to go directly to the document required.

#### **G.5 Video material**

It is helpful to the CAO if the grounds of appeal and/or RN indicate whether any footage is relevant to the grounds and issues to be determined by the Registrar/single judge and/or the full Court. Advocates are requested to provide guidance to the judges by identifying files/dates/times of the relevant footage, including providing a hyperlink to any footage already included on DCS and giving a short narrative in cases where it might not be obvious what the footage is showing, e.g., that a witness is not in the footage when the evidence suggests they should be (CPD 10.4.1).

It should be noted that CACD judges cannot view egress via links on DCS, however hyperlinking to that material does assist in identifying it. In cases where the parties have identified footage relevant to the application and/or appeal. CAO staff will liaise with the CPS for an egress link to be provided to the judges. This will not be accessible by anyone else, and the parties need to make arrangements with the CPS to ensure that they have an accessible link.

CACD judges and the CAO have no access to material on Evidence.com or similar platforms such as one drive. The CAO and judiciary are also unable to view material provided on removable media such as USBs. In these cases, which may include fresh evidence cases, it will be necessary for the parties to contact the CAO so that arrangements can be made with the CPS for the uploading of material onto egress.

## G.6 Submission of documents to the CAO

- **Users must not upload any document to CACD1.** Any relevant document outside of CACD1 must be hyperlinked in the grounds.
- The form NG, grounds of appeal and ancillary applications are likely to be within the email size limit (or can be emailed in more than one email – each email must be clearly marked) but if an authorities bundle (and/or core bundle) is too large to email, the CAO caseworker should be notified. A time limited link to the eJudiciary Document Upload Centre can be provided and CAO staff will transfer any bundle to DCS or in non-DCS cases to the case file in DUC.
- Before submission of any document or bundle containing hyperlinks, please check the links work.
- Documents should not be emailed to the case lawyer/caseworker as this will not be effective service. The correct email addresses are in [G.7 below](#).

## G.7 Late papers

The expectation is that bundles and material for the Court will be submitted in good time for the hearing (CPD 10.7.4). Any late papers for the judges **must** be identified with an URGENT - LATE PAPERS marking, the case reference number and the hearing date and emailed to:

- [reference@criminalappealoffice.justice.gov.uk](mailto:reference@criminalappealoffice.justice.gov.uk) (sentence cases) or
- [breference@criminalappealoffice.justice.gov.uk](mailto:breference@criminalappealoffice.justice.gov.uk) (conviction and confiscation cases) and
- The other party if represented at the hearing.

**DO NOT email** late papers to the case lawyer and/or worker as there is no guarantee that the papers will reach the judges in good time or before the hearing.

### G.7.1 Index template (only include relevant documents; these are prompts and examples)

#### Part 1 APPEAL DOCUMENTS

- Grounds of Appeal or Perfected Grounds of Appeal
- Extension of time reasons.
- Form RN
- Waiver of Privilege Documents
- Signed Waiver
- Trial counsel's comments dated
- Trial solicitors' comments dated
- Applicant's response dated
- Fresh evidence
- Applicant's / Appellant's Skeleton Argument
- Respondent's Skeleton Argument

#### Part 2 TRIAL / CROWN COURT DOCUMENTS

- Indictment
- Committal for Sentence or Memorandum of Conviction
- Other Order e.g., SHPO, ASBO, SOPO, Restraining Order

#### Part 3 TRANSCRIPTS

- Rulings
- Evidence
- Summing Up
- Prosecution Facts

- Sentencing Remarks
- “Newton” Hearing (NB: important to distinguish this transcript)
- Oral Probation Report
- Other (specify)

#### Part 4 REPORTS

- Antecedents
- Antecedents (co-defendant e.g., in “disparity” cases)
- Pre-Sentence (in chronological order, earliest first, if more than one)
- Medical (Physical) (in chronological order, earliest first, if more than one)
- Medical (Psychiatric/Psychological) (in chronological order, earliest first, if more than one)
- Prison Report
- Victim Personal Statement
- Character References (applicant/appellant/co-defendants)
- Other (specify)

#### Part 5 OTHER (material from the Crown Court proceedings)

- Prosecution Case Summary/Opening Note
- Written Basis of Plea
- TICs
- Defence Statement
- Admissions / Agreed Facts
- Route to Verdict
- Record of Police Interview
- Photographs/video footage
- Judge’s written rulings/orders

## H Annex 2 – other appeal types

### H.1.1 Interlocutory Appeals against rulings in Preparatory Hearings (CrimPR 37)

Where a judge has ordered a preparatory hearing, they may make a ruling as to the admissibility of evidence and any other question of law relating to the case.<sup>117</sup>

The defence or the prosecution may appeal to the CACD (and ultimately to the Supreme Court) against such a ruling, but only with the leave of the trial Judge, single judge or the full Court. As to the scope of a judge's powers in relation to a preparatory hearing and thus the extent of appeal rights, see *H [2007] UKHL 7*; *R v V.J.A [2010] EWCA Crim 2742*.

If the trial date is imminent and the application is urgent, the Registrar should be notified so that consideration can be given to a referral to the full Court.

An application for leave to appeal is made to the trial judge and should be made orally immediately after the ruling, or within two business days by serving a notice of an application on the appropriate officer of the Crown Court and all parties directly affected (CrimPR 37.4). Notice of an appeal<sup>118</sup> or application for leave to appeal ([form NG \(Prep\)](#)) must be served on the Registrar, the Crown Court and the parties within five business days of the ruling or the trial judge's decision whether to grant leave (CrimPR 37.2).

A Respondent's Notice ([form RN \(Prep\)](#)) must be lodged within five business days of service of the appeal notice (CrimPR 37.5).

Defence representatives are usually covered by the Crown Court representation order if one is in force (s.16 (3) (b) and para 5(3) Sched.3 [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)).

If the relevant time limits are not complied with, the Court has power to grant an extension of time. Where a single judge refuses leave to appeal or an extension of time within which to serve a notice, the application may be renewed for determination by the full Court by serving the notice of renewal, appropriately completed, upon the Registrar within five business days of the refusal being served (CrimPR 37.7).

### H.1.2 Appeals by a prosecutor against a “terminating” ruling (CrimPR 38)

The prosecution has a right of appeal in relation to a “terminating” ruling<sup>119</sup>. This is wide enough to encompass a case-management decision<sup>120</sup>.

There is no right of appeal in respect of a ruling that the jury be discharged or a ruling in respect of which there is a right of appeal to the Court of Appeal by virtue of another enactment<sup>121</sup>. The prosecution should therefore consider whether there is a right of appeal under s.9 CJA 1987 or s.35 CPIA 1996.

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<sup>117</sup> [s.9 of the Criminal Justice Act 1987](#) or [s.35 of the Criminal Procedure and Investigations Act 1996](#)

<sup>118</sup> See CrimPR 37.3 for the requirements and format of the applications and see annex 1

<sup>119</sup> [S.58 Criminal Justice Act 2003](#)

<sup>120</sup> *R v Clarke* [2007] EWCA Crim 2532

<sup>121</sup> [s.57\(2\) Criminal Justice Act 2003](#)



The prosecution must inform the Court that it intends to appeal or request an adjournment to consider whether to appeal; until the next business day (CrimPR 38.2(2), CrimPR 38.5). The judge has discretion to adjourn for longer if there is a real reason for doing so.<sup>122</sup> Leave should be granted only where the Judge considers there is a real prospect of success and not to speed up the hearing of the appeal<sup>123</sup>. Whether or not leave is granted, the trial judge must decide if the appeal is to be expedited and if so, adjourn the case. If he decides that the appeal should not be expedited, then he can adjourn the case or discharge the jury.<sup>124</sup>

The application ([form NG \(Pros\)](#)) and grounds of appeal<sup>125</sup> must be served on the Crown Court, Registrar and every defendant affected by the ruling the next business day if the trial judge expedites the appeal or five business days if not (CrimPR 38.3). The prosecution must give the undertaking (as to the defendant's acquittal if the appeal is abandoned or leave to appeal is not obtained) at the time when it informs the Court of its intention to appeal. The failure to give it then is fatal to an application to the Court of Appeal for leave<sup>126</sup>

A RN ([Form RN \(Pros\)](#)) must be served the next business day if the trial judge expedites the appeal or within five business days of service if not (CrimPR 37.5).

Defence representatives are usually covered by the Crown Court representation order if one is in force (such proceedings being considered incidental; (s.16 (3) (b) and para 5(3) Sched.3 [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)), although the Registrar/Court can grant a representation order for two counsel or an application for a K.C even if not covered by the Crown Court representation order, if the Regulations are satisfied.

Expedition does not impose time limits on the Registrar or CACD. However, if leave has not been granted by the trial judge, the application may be referred to the full Court by the Registrar to ensure that the matter is dealt with quickly.

The Registrar endeavours to list prosecution appeals where a jury has not been discharged as quickly as possible. In such cases it is of great assistance if a phone call is made to the Registrar or CAO General Office (0207 947 6011) notifying the office even before the appeal notice is sent, so that preliminary views can be taken as to the constitution which may be able to hear the appeal. The listing of an urgent appeal invariably means that other cases have to be removed from the list.

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<sup>122</sup> [R v H](#) [2008] EWCA Crim 483

<sup>123</sup> [R v G](#) [2006] EWCA Crim 3276

<sup>124</sup> [s.59 Criminal Justice Act 2003](#)

<sup>125</sup> See CrimPR 38.4 for the requirements and format of the applications and see [annex 1](#)

<sup>126</sup> [s.58\(8\) Criminal Justice Act 2003](#), [R v LSA](#) [2008] EWCA Crim 1034; [R v NT](#) [2010] EWCA Crim 711; [R v B](#) [2014] EWCA Crim 2078).

### H.1.3 Other appeal types at a glance - For guidance see the requisite legislation and CrimPR.

Type of appeal	Legislation	<a href="#">CrimPR</a>	Note	Respondent's Notice (RN)	Funding	Leave to appeal
<p><b>Attorney General's reference of an unduly lenient sentence</b></p> <p>The Attorney General can refer sentences only in relation to specific offences or sentences (ss.35 &amp; 36 Criminal Justice Act 1988 and <a href="#">Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006</a>)</p>	<a href="#">S.36 Criminal Justice Act 1988</a>	CrimPR 41	Although CrimPR 41.3(1) implies there is a specific form to commence proceedings, in practice a standard letter with supporting documents is sent to the Registrar by the Attorney General's Office no more than 28 days after sentence	If the defendant wishes to make representations to the Court he <b>must</b> serve a Respondent's Notice within 14 days of the Registrar serving the application upon him. Again, there is no specific form available	Representation orders are granted by the Registrar to respond to an Attorney General's reference	Full court
<p><b>Attorney General's reference of a point of law on an acquittal</b></p>			There is no time limit			Leave not required
<p>Prosecution appeal against the making of a <b>confiscation order</b> or where the Court declines to make one (save on reconsideration of benefit)</p>	<a href="#">S.31(1) &amp; (2) Proceeds of Crime Act 2002</a>	<a href="#">CrimPR 42</a>	Serve <a href="#">Form PoCA 1</a> on the defendant and the Crown Court within 28 days of the decision appealed against	<a href="#">Form PoCA 2</a> served on the Registrar and applicant not later than 14 days after receiving <a href="#">Form PoCA 1</a>	An undischarged Crown Court representation order will cover advice and assistance on the merits of opposing the	Single judge or the full court

<p>Prosecution and third party appeal against a determination, under <a href="#">S.10A Proceeds of Crime Act 2002</a>, of the extent of the defendant's interest in property</p>	<p><a href="#">S.31(4) &amp; (5) Proceeds of Crime Act 2002</a></p>				<p>appeal and drafting the RN, otherwise an application for a representation order can be made to the Registrar. In any event where an application for a representation order is made on <b>Form PoCA 2</b>, the Registrar will consider a representation order for the hearing</p>	
<p>Appeal in relation to a <b>restraint order</b> - The prosecution or an accredited financial investigator can appeal a refusal to make a restraint order. A person who applied for an order or who is affected by the order can apply to the Crown Court to vary or discharge the order and then appeal that decision to the CACD</p>	<p><a href="#">S.43 Proceeds of Crime Act 2002</a></p>	<p>CrimP R 42</p>	<p>Serve <a href="#">Form PoCA 3</a> on the Crown Court within 28 days of the decision being appealed and must then be served on any respondent, any person who holds realisable property to which the appeal relates, or is affected by the appeal, not later than seven days after the form is lodged at the Crown Court.</p>	<p><a href="#">Form PoCA 4</a> served on the Registrar not later than 14 days from request and on applicant and any other respondent within 21 days of request</p>	<p>No public funding available</p>	<p>Single judge or the full court</p>
<p>Appeal in relation to a <b>receivership order</b> - The appointment, non-appointment or powers of a receiver can be appealed, as can an order giving a direction to a receiver and the variation or discharge of a receivership order. An appeal can be brought by the person who applied for the order, a person who is affected by the order or the receiver</p>	<p><a href="#">S.65 Proceeds of Crime Act 2002</a></p>	<p>CrimP R 42</p>	<p>Serve <a href="#">Form PoCA 3</a> on the Crown Court within 28 days of the decision being appealed and must then be served on any respondent, any person who holds realisable property to which the appeal relates, or is affected by the appeal, not later than seven days after the form is lodged at the Crown Court.</p>	<p><a href="#">Form PoCA 4</a> served on the Registrar not later than 14 days from request and on applicant and any other respondent within 21 days of request</p>	<p>No public funding available</p>	<p>Single judge or the full court</p>

<p>Appeal against a <b>finding of unfitness to plead or a finding that the accused did the act or made the omission charged</b></p> <p>Appeal against the order <b>following a verdict of not guilty by reason of insanity or a finding of unfitness to plead</b></p>	<p><a href="#">S.15 Criminal Appeal Act 1968</a></p> <p><a href="#">S.16A Criminal Appeal Act 1968</a></p>	<p>CrimP R 39</p>	<p>See section A2. Lodging of Form NG and grounds of appeal and <i>R v Roberts</i> [2019] EWCA Crim 1270</p> <p>An accused who, as a result of a verdict of not guilty by reason of insanity or a finding of fitness to plead has a hospital order, interim hospital order or supervision order made against him may appeal against the order</p>	<p><a href="#">See B.10 Respondent's Notice</a></p> <p><a href="#">See B.10 Respondent's Notice</a></p>	<p>Payment is from central funds but the mechanism is dependent on outcome. <i>R v Antoine</i> [1999] 2 Cr. App.R.225</p>	<p>Crown Court judge, single judge or the full court</p>
<p>Appeal against a <b>verdict of not guilty by reason of insanity</b></p>	<p><a href="#">S.12 Criminal Appeal Act 1968</a></p>	<p>CrimP R 39</p>	<p>See section A2. Lodging of Form NG and grounds of appeal</p>	<p><a href="#">See B.10 Respondent's Notice</a></p>	<p>Payment is from central funds but the mechanism is dependent on outcome. <i>R v Antoine</i> [1999] 2 Cr. App.R.225,]</p>	<p>Crown Court judge, single judge or the full court</p>
<p>Appeal against <b>review of sentence</b></p> <p>A defendant or specified prosecutor may appeal</p>	<p><a href="#">S.74(8) Serious Organised Crime and Police Act 2005</a></p>	<p>CrimP R 39</p>	<p>Serve <b>Form NG (RD)</b> on the Registrar not more than 28 days after the review</p>	<p><a href="#">See B.10 Respondent's Notice</a></p>	<p>An application for a representation order can be made to the Registrar</p>	<p>Single judge or the full court</p>

<p>Appeal against an order for <b>trial by jury of sample counts</b></p> <p>Appeal against an order relating to a <b>trial to be conducted without a jury where there is a <i>danger</i> of jury tampering</b></p> <p>Appeal against an order that a <b>trial should continue without a jury or a new trial take place without a jury <i>after</i> jury tampering</b></p> <p>All Prosecution or defence</p>	<p><a href="#">S.18 Domestic Violence, Crime and Victims Act 2004</a></p> <p><a href="#">S.45(5) and (9) Criminal Justice Act 2003</a></p> <p><a href="#">S.47 Criminal Justice Act 2003</a></p>	<p>CrimP R 37</p>	<p><a href="#">Form NG (Prep)</a> must be served on the Crown Court, the Registrar and any party directly affected not more than five business days after the order or the Crown Court Judge granting or refusing leave</p>	<p><a href="#">Form RN (Prep)</a> should be served if the court directs or the prosecution (or any party affected) wants to make representations to the court</p>	<p>Representatives are usually covered by the Crown Court representation order if one is in force; (s.16 (3) (b) and para 5(3) Sched.3 <a href="#">Legal Aid, Sentencing and Punishment of Offenders Act 2012</a>).</p>	<p>Crown Court judge, single judge or the full court</p>
<p>Appeal against a <b>wasted costs order</b></p> <p>by third party against a third party costs order made against them</p> <p>by legal or other representative against the making of a wasted costs order against them</p>	<p><a href="#">Regulation 3C Costs in Criminal Cases (General) Regulations 1986</a></p>		<p>There is no specific form. Notice of appeal should be served on the Registrar and any interested party within 21 days of the order being made.</p>	<p>Any interested party can make representations orally or in writing</p>		<p>Leave is not required (<a href="#">s. 19A Prosecution of Offences Act 1985</a>)</p>
<p>Appeal relating to <b>Serious Crime Prevention Orders</b></p>	<p><a href="#">S.24 Serious</a></p>	<p>CrimP R 39</p>	<p>Serve of <a href="#">Form NG (SCPO)</a> on the Registrar not more</p>			

<p>A person subject to the order, an applicant authority or anyone given the opportunity to make representations at the Crown Court about the making, variation or non-variation of an order</p>	<p><a href="#">Crime Act 2007</a></p>		<p>than 28 days after the order</p>			
<p>Appeal against orders <b>restricting or preventing reports or restricting public access</b></p> <p>Applications for leave to appeal and appeals in relation to reporting restrictions <u>may</u> be heard in private (<a href="#">CrimPR 36.6(1)</a>). Applications for leave to appeal and appeals relating to restricting public access may be decided without a hearing but the decision must be announced at a hearing in public (CrimPR 36.6(3)). In either case, if the hearing relates to public interest immunity, it must be in private unless the Court otherwise directs (CrimPR 36.6(2)).</p>	<p><a href="#">S.159 Criminal Justice Act 1988</a></p>	<p>CrimPR 40</p>	<p>Serve <a href="#">Form NG (159)</a> on the Registrar, the Crown Court, the prosecutor and defendant and any other affected person.</p> <p>Applications against orders <b>restricting reporting</b> shall be made within 10 business days after the date on which the order was made. Applications against orders to <b>restrict public access</b> must be made the next business day after the order was made. If advance notice of an order restricting public access is given, then advance notice of an intention to appeal may be made not more than five business days after the advance notice is displayed</p>	<p><a href="#">Form RN (159)</a> if he wishes to make representations to the court or the court so directs within three business days</p>	<p>The court may make such order as to costs as it thinks fit (s.159(5)(c) Criminal Justice Act 1988), but not out of central funds (<i>Steele Ford &amp; Newton v. CPS No.2</i> [1994] 1 AC 22</p>	<p>Single judge or the full court</p>

## H.1.4 Application for a Retrial for a Serious Offence

### H.1.4.1 Application by a prosecutor to quash an acquittal and seek a retrial of a qualifying offence<sup>127</sup> (CrimPR 27)

There must be new and compelling evidence and it must be in the interests of justice for the acquitted person to be re-tried. Evidence was “new” if it had not been adduced at trial and for the purposes of s.78 (2), evidence was “adduced” if it had been put forward in evidence.<sup>128</sup>

Proceedings can begin in one of two ways:

1. By serving notice of the application on the Registrar and the acquitted person within two days of the decision having been made. This notice charges the acquitted person with the offence. It requires the personal written consent of the Director of Public Prosecutions (DPP)

If the acquitted person is not in custody the prosecution can ask the Crown Court to issue:

- (i) A summons for the acquitted person to appear before the Court of Appeal for the hearing of the application
- (ii) A warrant for his arrest

Once arrested on the warrant the acquitted person must be brought before the Crown Court within 48 hours.

2. An acquitted person may be charged with the offence before an application has been made. This may be after an arrest in an investigation authorised by the DPP or where no authorisation has been given, after arrest under a warrant issued by a justice of the peace. Having been charged, the acquitted person must be brought before the Crown Court to consider bail within 24 hours and can be remanded in custody or on bail for 42 days whilst an application is prepared. Once a notice of application has been made, stating that the acquitted person has previously been charged with the offence, the acquitted person must be brought before the Crown Court to consider bail within 48 hours of the notice being given to the Registrar, if the acquitted person is already in custody under s.88 (above) ([s.89\(2\) CJA 2003](#)).

In either case, bail is dealt with largely by the Crown Court. The CACD only considers bail on the adjournment of the hearing of the application under s.76<sup>129</sup>.

The notice ([Form NG \(ACQ\)](#)) should where practicable be accompanied by the witness statements which are relied on as the new and compelling evidence, the original witness statements, unused statements, indictment, paper exhibits from the original trial, any relevant transcripts from the original trial and any other documents relied on (Crim PR 27.2(2)).

An acquitted person who wants to oppose a s.76 application must serve a response ([Form RN \(ACQ\)](#)) not more than 28 days after receiving the notice (Crim PR 27.5(2)).

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<sup>127</sup> [S.76 \(1\) Criminal Justice Act 2003](#); see also ss. [78](#), [79](#), [s.80](#), [s.87](#), [s.88](#), [s.89](#)

<sup>128</sup> [Criminal Justice Act 2003](#) and [MH](#) [2015] EWCA Crim 585 for a review of the authorities

<sup>129</sup> [s.90\(1\) Criminal Justice Act 2003](#)

#### **H.1.4.2 Application by a prosecutor for a determination whether a foreign acquittal is a bar to a trial and if so, an order that it not be a bar**

The prosecution can apply, with the personal written consent of the DPP for a determination whether an acquittal outside the UK is a bar to the acquitted person being tried in England and Wales and if it is found to be so, an order that the acquittal not be a bar. Proceedings can begin in the same way as for an application under s.76 (1) Criminal Justice Act 2003, *see section E1 above*.

#### **H.1.5 Application for restrictions on publication relating to an application under s.76 Criminal Justice Act 2003**

An application can be made by the DPP for reporting restrictions<sup>130</sup>. This can be made after a notice of an application for a re-trial has been made and may also be made by the Court of its own motion. An application can also be made by the DPP for reporting restrictions **before** a notice of an application for a retrial if an investigation has been commenced. The application for reporting restrictions must be served on the Registrar ([Form REP \(ACQ\)](#)) and (usually) the acquitted person (CrimPR 27.3(2)).

A party who wants to vary or revoke an order for restrictions on publication may apply to the Court of Appeal in writing at any time after the order was made (CrimPR 27.3(3)).

The Registrar will grant a representation order to the acquitted person for solicitors and counsel to respond to any of the above applications.

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<sup>130</sup> [S.82 Criminal Justice Act 2003](#)