# **WHAT WILL I SEE IN THE COURT OF APPEAL, CRIMINAL DIVISION?**

# **A QUICK GUIDE TO HEARINGS IN THE CACD**

**Introduction**

The Criminal Division of the Court of Appeal (often called **the CACD**) usually sits in some or all of courts 4-9 at the Royal Courts of Justice. The courts are open to the public, and visitors are welcome. A member of the court staff will show you where to sit. You must not take photographs or make a video or audio recording at any time when you are in court.

If you come to watch proceedings in the CACD, please do not expect to see a trial of the kind you would see in the Crown Court, with witnesses giving evidence and being cross-examined before a jury. So what will you see? This note provides a quick guide to the different types of case in the CACD. It also explains some of the words (printed in bold) which you may hear being used in court or shown on the daily list.

**What does the CACD do?**

A person who has been convicted of one or more offences in the Crown Court, either because they pleaded guilty or because they were found guilty by a jury, may appeal to the CACD against their conviction, or against their sentence, or against both. A person who has been convicted in a magistrates’ court, but sentenced in the Crown Court, may also appeal to the CACD against their sentence.

The CACD hears the appeals against conviction or sentence, and applications relating to such appeals. It also hears applications by the prosecution in cases where the Attorney General considers that a sentence imposed in the Crown Court was much too light (this is called an **unduly lenient sentence**), and appeals by the prosecution against rulings made by a Crown Court judge during a trial.

Appeals and applications relating to proceedings before a Court Martial can also be heard. In such cases, the court sits as **the Court Martial Appeal Court (the CMAC)**. If you see a CMAC case, you may find that the advocate representing the prosecution is wearing military uniform rather than a wig and gown.

The daily list of hearings (known as **the** [**Daily Cause List**](https://www.gov.uk/government/publications/royal-courts-of-justice-cause-list/royal-courts-of-justice-daily-cause-list#court-of-appeal-criminal-division-daily-cause-list))) shows you what type of case is before the court. It also tells you the names of the judges who will hear the cases. Usually, the court consists of three judges: a Lord Justice or Lady Justice of Appeal and either two High Court Judges or one High Court Judge and a very experienced Circuit Judge. For some sentence appeals, there may be two judges.

The judges, and the lawyers, wear wigs and gowns. The part of the court where the judges sit is called **the bench**. As you look at the bench from your seat in the court, the most senior judge will be in the middle; the next most senior will be on your left; and the less senior judge will be on your right. If lawyers (usually referred to as **advocates** or **counsel**) are present, they sit in the front two rows facing the bench: the advocate representing the applicant or appellant will be on the left, as you look from your seat, and the advocate representing the prosecution will be on the right.

**How does an appeal begin?**

A person who has been convicted and sentenced in the Crown Court, and who wants to appeal, is known as **the applicant**. In almost all cases, an applicant must first ask the court for leave to appeal (sometimes also referred to as permission to appeal). This is called making an **application for leave to appeal**.

The applicant has to make a written application stating the reasons why it is said that the conviction is unsafe or the sentence should be reduced. These are called the **grounds of appeal**. Applicants can’t appeal just because they disagree with the verdict of the jury, or the sentence they received: the grounds of appeal have to show good legal reasons.

Grounds of appeal against conviction often challenge a **legal ruling** given by the judge in the Crown Court (for example, it may be said that the judge was wrong to allow particular evidence to be heard by the jury) or the **legal directions** which the judge gave to the jury (for example, it may be said that the judge got the law wrong when telling the jury about what exactly the prosecution had to prove in a trial).

Grounds of appeal against sentence are usually that the sentence was **wrong in principle** (this means, that the judge imposed the wrong type of sentence – for example, it may be said that the judge wrongly imposed a prison sentence rather than a non-custodial sentence) or that it was **manifestly excessive** (this means that it was much too severe – for example, it may be said that the sentence was much longer than it should have been by reference to the sentencing guidelines published by the Sentencing Council).

Sentencing guidelines are often referred to in appeals against sentence. Sentencing guidelines help to make sure that judges take a consistent approach to sentencing. You can read them at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) .

**Is there a time limit?**

An application for leave to appeal must be made within 28 days after the conviction, or within 28 days after the sentence was imposed. If the application is not made within that time limit, the applicant must make an **application for an extension of time**. The applicant will have to explain why there has been a delay and why the court should allow the application to proceed even though it was made later than it should have been.

**What happens to applications?**

Applications for leave to appeal and for an extension of time are sent to the Criminal Appeal Office, which is headed by **the Registrar of Criminal Appeals**. Most applications are then considered by a High Court judge, who is called **the Single Judge**. The Single Judge considers the case papers, and gives a decision in writing, which is sent to the applicant or the applicant’s legal representatives.

If the Single Judge gives leave to appeal, the case is then prepared for an appeal hearing in court. The judges who hear the appeal are called **the Full Court**. The appeal hearing will be shown on the Daily Cause List as “**FC Appeal Conviction**” or “**FC Appeal Sentence**”.

**What happens if leave to appeal is refused?**

If the Single Judge refuses leave to appeal, the applicant can make a **renewed application** to at least two judges, who sit in court and are also called the Full Court. The application hearing will be shown on the Daily Cause List as “**FC Application Conviction**” or “**FC Application Sentence**”. The judges may hear a lawyer who puts forward the case on behalf of the applicant (this is called **making submissions**). Sometimes no lawyer appears. This is called **a non-counsel application**. In that type of case, the judges will consider the case papers and state their decision in court.

If the Full Court gives leave to appeal, then there will be an appeal hearing, which may take place immediately, or at a later date before different judges.

If the applicant does not make a renewed application for leave to appeal, or if a renewed application is made but the Full Court refuses it, then that is the end of the appeal.

**Does a Single Judge always consider applications?**

In some cases, for example those which are particularly urgent, the Registrar sends the case direct to the Full Court, without being considered by a Single Judge. This is called a **referral** by the Registrar. Where this is done, the Full Court decides whether to give leave to appeal. The hearing will again be shown on the Daily Cause List as “**FC Application Conviction**” or “**FC Application Sentence**”.

**What happens if leave to appeal is given?**

If leave to appeal is given (either by the Single Judge or by the Full Court), the person who is appealing is called **the appellant**.

Before the appeal hearing, the judges will have read the relevant case papers, including the grounds of appeal. In a conviction appeal, the papers will include a transcript of what the Crown Court judge said in any relevant legal ruling, or in the legal directions which the judge gave to the jury. In a sentence appeal, the papers will include a transcript of what the Crown Court judge said when passing sentence. This is called **the** **sentencing remarks**. The advocates may also have provided the judges with a written summary of the main points they want to make. This is called a **skeleton argument**.

**What happens at the appeal hearing?**

At the appeal hearing, the appellant is usually represented in court by a lawyer. Appellants who are in custody will appear in court via a video link. Appellants who are not in custody can attend the hearing if they wish, but are not required to be present.

The prosecution will generally be represented at the hearing of an appeal against conviction, and is sometimes represented at the hearing of an appeal against sentence.

An appeal against conviction is always heard by a court of three judges. The court does not rehear the whole case that was before the Crown Court: it just hears submissions about the points which are relevant to the grounds of appeal. The court does not usually hear evidence, but in some cases an appellant asks the court to consider evidence which was not available at the time of the trial in the Crown Court (this is called **fresh evidence**).

After the judges have heard all the submissions, they will usually leave court for a short time to discuss their decision. When the judges come back into court, one of them will usually announce their decision and explain the reasons for it. This is called **giving judgment**. In some cases – for example, where there has been a particularly long hearing, or where the case involves an important and difficult question of law – the judges do not give their decision straight away: they take time to consider the case further, and give their judgment in writing at a later date. This is called **reserving judgment**. Where judgment has been reserved, the case will be listed again for the judgment to be given: this will be shown on the Daily Cause List as “**Hand Down Judgment**” or “**Reasons for Judgment**”.

If the court decides that a conviction is unsafe, it will **allow the appeal** and set aside the conviction. This is called **quashing the conviction**, and it means that the appellant is no longer convicted of the offence in question. However, the court may decide that the appellant must be retried in the Crown Court, and **order a retrial**.

If the conviction is safe, the court will **dismiss the appeal**.

An appeal against sentence may be heard by two or three judges. If the court decides that the sentence should be altered or reduced, it will **allow the appeal** and impose a different or lesser sentence. If the court decides that there is no reason to alter or reduce the sentence, it will **dismiss the appeal**.

If the court dismisses an appeal against sentence, it cannot increase the overall sentence. If the appellant has been convicted of more than one offence, the court may vary one or more of the sentences; but the total sentence must not be more severe than it was in the Crown Court. The only time the court can increase a sentence is if an application has been made by the Attorney General, and the court decides that a sentence imposed in the Crown Court was unduly lenient.

**Other types of hearing shown on the Daily Cause List:**

As I have indicated above (see “What does the CACD do?”), the court sometimes hears other types of application or appeal. the most common types which you may see in the Daily Cause List are a “**Reference by the Attorney General under s36 Criminal Justice Act 1988**” (which is an application for the court to consider a sentence which maybe unduly lenient) or a “**Prosecution appeal against a ruling under s58 Criminal Justice Act 2003**” (which is an appeal by the prosecution against a ruling made by a judge during a trial).

**Reporting restrictions:**

In some hearings, particularly in cases which concern sexual offences or children, the court will announce that **reporting restrictions** apply. You should listen very carefully to these. They apply to everyone, not only to media or press reporters. Anyone who breaks a reporting restriction may be guilty of contempt of court and liable to a fine or even imprisonment. You should be careful about anything you post online.

**And finally …**

I hope you will want to come and observe hearings in the CACD. Open justice is very important, and the public are welcome to come to watch the proceedings in court. I think you will find it interesting!

Lord Justice Holroyde

Vice-President of the Court of Appeal, Criminal Division

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