



An appeal lies to the Crown Court from a conviction or sentence for a Criminal offence in the Magistrates Court. Appeals are commenced by giving a written Notice of Appeal within 21 days after the day on which the decision appealed against was given. After this 21 day period, an extension of time will need to be applied for.

In general, Orders and sentences are not stayed pending an appeal. The fact that a Defendant has given notice of appeal to the Crown Court does not prevent the sentence being enforced. However, service of a Notice of Appeal may be relevant consideration when considering whether or not a Defendant has a reasonable excuse for not complying with an Order.

Where a Defendant is appealing against a custodial sentence, he or she may apply to the Magistrates Court or Crown Court for bail. Bail pending appeal is not automatically granted, and in fact is very often refused as the Court will fear that the risk of returning to prison may prompt a Defendant to abscond.

The grounds given in a Notice of Appeal are deliberately brief, for example "conviction is against the weight of the evidence" or "sentence is excessive". This will mean that in the later appeal proceedings, the representing barrister will not have his or her hands tied by too specific a case.

The Crown Court enters the appeal and gives notice of hearing to the Defendant (now the Appellant), the Clerk to the Magistrates' Court and any other party to the appeal.

On hearing an appeal, the Crown Court will comprise a Judge, sitting with usually not less than two and not more than four Justices, who are not concerned with the original case. The appeal is treated as a re-hearing. Both the Prosecution and Defence present their evidence in exactly the same format as the Magistrates Court. However, the CPS (Crown Prosecution Service) may present their case in a different way from that in which it was presented in the Magistrates Court, and because it is a re-hearing, it is open to the Crown Court to find the case proved on a different basis from that found by the Court below. Additionally, evidence may be called which was not present at the Magistrates Court.

The Crown Court may, in the course of hearing an appeal:-

- a) Reverse or vary any part of the decision appealed against, including a decision not to impose a separate penalty in respect of an offence;

OR

- b) May remit the matter back to the original Court with its opinion;

OR

- c) May make such Order in the matter as the Court thinks just.

Except in the case of an appeal against conviction which is fully allowed, it is important to be warned that "sentence is at large". This means, that the Crown Court may impose an entirely different penalty

to that imposed by the Magistrates Court. The Court, having decided sentence afresh, should then compare it with the sentence passed below, and only if the difference is **significant** should the sentence be varied to that extent. (**Either up or down**).

The Crown Court should not ask itself whether the Justices' sentence was within their discretion to pass, but instead should consider what was the right sentence.

The Magistrates from whose decision the appeal is being brought, have the right to appear and to call evidence in support of their decision.

If the Appellant fails to appear, the appeal may be dismissed. If both parties fail to attend and neither is represented by Counsel, the appeal should be dismissed. If the CPS fail to appear, the Court may either adjourn the matter or allow the Appellant's appeal.

Legal Aid may be available to cover the cost of an appeal to the Crown Court. Where a Legal Aid/Representation Order is made in favour of an Appellant, the Appellant is entitled to a copy of the original Court Clerk's notes of evidence.

An Appellant may abandon an appeal as of right provided that the notice of abandonment is received at least three days before the appeal is due to be heard. If the decision to abandon the appeal is made any later, leave must be sought from the Court (though it would be unusual for this permission to be refused).

There is no provision for reinstatement once an appeal has been abandoned.

Once an appeal has been abandoned, the Magistrates Court will issue process to enforce its original decision.

The Judge presides at the appeal, decisions being taken by majority. In the event of an even split, the Judge retains a further casting vote. The Magistrates must take part in all decision-making, but they must take the Judge's advice on matters of law.

If the decision is unfavourable, there is no appeal available to the Court of Appeal for decisions of the Magistrates Court. The remaining remedies for an Appellant from a Magistrates Court decision who is still aggrieved, are Case Stated, Judicial Review, Royal Pardon and References made by the Criminal Cases Review Commission.

Appeal by way of Case Stated occurs where there are no disputes about fact, however the Defendant believes that the decision made is wrong in law, or the Court has acted in excess of its jurisdiction. The remedy is available both to the Prosecution and to the Defence. A challenge could be made to a decision to convict or acquit.

Judicial Review is not an appeal. It is not a course of action taken if the merits of a decision by the Magistrates Court is challenged, but rather where there has been a substantial procedural irregularity which has led to the Court:

- a) Exceeding or abusing its powers or making an error in law;
- b) Procedural impropriety;
- c) Irrational decision-making (reaching a decision which no reasonable tribunal, properly directed and on the evidence, could have reached)

It is a discretionary remedy and not every complaint will be actionable. If it is successful, the Court will generally quash the original conviction and in most cases order a re-trial.

A Royal Pardon arises from the Monarch's power to grant the Royal Prerogative of Mercy to any person. If given, it removes the penalty, but not the conviction.

The Criminal Cases Review Commission has the power to refer cases to the Crown Court where it believes there is a real possibility that the conviction, verdict, finding or sentence would not be upheld because of:

a) an argument or evidence not raised in the original proceedings;

OR

b) because of an argument on a point of law not raised in the original proceedings;

c) And an appeal has been refused

Appeals from the Crown Court are made to the Court of Appeal. The Court of Appeal shall allow an appeal against conviction if they think:

a) The conviction should be set aside on the ground that in all the circumstances of the case, it was unsafe or unsatisfactory;

b) That the judgment of the Court of trial should be set aside on the ground of a wrong decision of any question of law; or

c) That there was a material irregularity in the course of the trial

If it appears to the Registrar that a Notice of Appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination. If on that determination, it is considered that the appeal or application for leave is frivolous or vexatious, they may dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown. In the alternative, where after hearing an application for appeal devoid of merit has been refused, a direction may be made for loss of time. This means that time spent in custody by the Appellant or the Applicant for leave to appeal since the commencement of appeal proceedings shall not count towards service of any custodial sentence that may have been imposed by the Crown Court.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.