



HOW TO APPEAL

A guide to the criminal appeal system

a JUSTICE publication



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appeal system

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We regret that JUSTICE cannot give legal advice or assist with individual cases, so please do not write to us with details of your case.

What happens in an appeal

Each stage is covered in detail in the text

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The information in this booklet on appeals against conviction applies to you if you were convicted in a Crown Court in England or Wales. The information on appeals against sentence applies to you if you were sentenced in a Crown Court in England or Wales.

This booklet explains what you need to do to start your appeal. Any technical words are listed in the bottom right-hand corner and explained in the index at the end.

Appeals from the magistrates' court, and appeals in Scotland, have different rules and the information in this booklet is not applicable to them.

- **If you were convicted in a Crown Court and you pleaded not guilty** to the charge(s), you have the right to apply for leave to appeal against conviction and against sentence.
- **If you pleaded guilty** you can apply for leave to appeal against sentence but you are very unlikely to be given leave to appeal against conviction. ➤ See what we say in the **Grounds of Appeal** section on page 31.

How long will it take to appeal?

The length of time it takes depends on a number of different factors, including how quickly you get leave to appeal, whether your barrister supports your appeal and how long your sentence is.

Can I apply for bail?

You can apply, but you are unlikely to get bail pending appeal. ➤ See the **Grounds of Appeal** section for what you need to do.

Can I give up my appeal if I change my mind once I've started?

Yes. This is called abandonment of the appeal and it means that you cannot re-start your appeal again. It is a final decision. You can abandon your appeal at any time by completing a Form A which can be obtained from the Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL or from the Courts Service website (www.hmcourts-service.gov.uk) and returning it to the Registrars at the Criminal Appeal Office. A letter or spoken instruction is not sufficient to abandon your appeal.

Are there any disadvantages in appealing? Can I be made to start my sentence again if I appeal?

The Court of Appeal has the power to order that time you have served in custody while waiting for an application for leave to appeal should not count towards your sentence if the Court takes the view that your appeal is totally without merit. This is known as a 'loss of time order'. If the Single Judge hearing your application for leave to appeal refuses the application, s/he can indicate on a form called the SJ form (see page 12, and pages 18 to 20 below) whether

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the full court should consider exercising this power in your case if your application is renewed before them and dismissed.

The Court may also order you to pay part or all of the costs of any party to the case (eg the prosecution) – and/or of the costs of any transcripts obtained for the Court in your case – if your application for leave to appeal, or your appeal, is dismissed. However, the Court will have regard to your ability to pay in deciding this.

There is a box in Part 3A of the back sheet of the SJ form where you can say why the Court should not make a 'loss of time order' or a costs order against you. See page 20 below.

What's involved in an appeal?

The diagram on page 3 of the booklet sets out the steps you need to take to appeal.

Get yourself organised

When do I need to start an appeal?

You are supposed to start your appeal within 28 days of conviction. Time runs from the date of conviction, even if you were sentenced at a later hearing. The Registrar at the Criminal Appeal Office can give you an extension of time. He can extend the time limit if, for instance, you have been waiting for your barrister's written advice or you did not know what to do. If you appeal after 28 days you will need to give reasons for appealing outside the 28 day period. ➤ If this applies to you, look at what we say about this in the **Grounds of Appeal** section on page 32.

In general, if you have good grounds for appealing, the fact that you are a bit late will not prevent you getting leave to appeal.

I had co-defendants. Can I appeal even if my co-defendants do not?

Yes. It does not matter what your co-defendants do, though if they appeal as well, the court will usually hear the cases at the same time.

What do I need to do to start an appeal?

First, you should make sure your trial barrister writes an advice on appeal. This is a written document giving the barrister's views about the trial and whether you have any grounds of appeal. If you had legal aid for your trial, you are entitled to this written advice under legal aid. Ask your solicitor to ask the barrister to write it.

Please note that some solicitors are now qualified to be advocates in the higher courts. In some cases, therefore, a 'solicitor advocate' may do the same job as a barrister.

I don't have any faith in my trial lawyers. Can I get advice from a new solicitor or barrister?

You can always do this if you are in a position to pay for the advice. If you cannot pay, you might be able to get advice from a new solicitor under the 'advice and assistance' legal aid scheme. ➤ See what we say in the **Legal Aid** section.

To get advice from a new barrister you need to have a solicitor first, so it is best to start by finding a solicitor willing to help you and then getting a barrister.

The prison legal aid officer should be able to give you a list of local solicitors. You can also find one using the Community Legal Advice website (www.communitylegaladvice.org.uk) or call their helpline on 0845 345 4 345.

Don't forget the time limits for appealing. (See previous page.)

Apply for leave to appeal

If your barrister thinks you may have good grounds for appealing, s/he will draft grounds of appeal for you. Your trial solicitor will deal with the form-filling procedure described below to start the appeal. After that, the solicitor usually drops out of the picture. This is because legal aid for solicitors ends once they have filled the forms in.

➤ Go to **Stage 3** below for what happens when the papers go to the court.

What if my barrister thinks that I don't have any grounds of appeal?

You can still appeal by yourself, even if your lawyers do not support your appeal. You do not have to have a lawyer to help you. If you are in prison, the legal aid officer in the prison has copies of the forms you will need. If you are not in prison, you can get the forms from any Crown Court or from the Registrar at the Criminal Appeal Office. They are also available from the Courts Service website (<http://www.hmcourts-service.gov.uk>) There are copies of the forms later in this booklet between pages 45 and 49.

- You will need a Notice of Grounds form called an NG form.

- If you want to apply for bail, you need a bail form called a B form.
- If you want to be allowed to call witnesses you need a W form – that is a witness form – for each witness.
 - If you are filling in the forms yourself you need to read the section of this booklet called **Grounds of Appeal** carefully to help you fill in the forms.

Even if my barrister doesn't think I can appeal, can my solicitor still help me?

If your solicitor disagrees with your barrister's advice he or she can help you but would only be able to act unpaid – unless you are willing to pay privately – as legal aid will have come to an end when your trial barrister advised against the appeal. ➤ See what we say in the **Legal Aid** section.

Generally, therefore, if your trial solicitor does any further work on your case s/he will not be paid for it, unless you can pay yourself.

I cannot write any grounds of appeal without my trial papers. Can my trial solicitor refuse to hand over my papers to me or another lawyer?

You are entitled to have your trial papers from your solicitor if you want them. There can be a delay whilst their costs are sorted out with the legal aid authorities. Equally, if you were responsible for paying them, they are entitled to keep your papers until you pay their bill, or sort out their costs with the Law Society.

What do I do with the forms once they are filled in?

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If you have completed the forms yourself and you are in prison, give the forms to the legal aid officer in the prison. He or she will arrange for them to be sent to the Crown Court where you were tried. If you are not in prison, take the forms to the Crown Court yourself. If your barrister advises that you have grounds of appeal, your solicitor will do this for you.

The procedure after that is the same whether you have lawyers acting for you or whether you have started your appeal yourself. The Crown Court checks the details on the forms about the offences which you were convicted of, the dates of trial, the name of the judge, and the sentence passed. The Crown Court then sends all the paperwork to the Registrar at the Criminal Appeal Office in London.

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[Criminal Appeal Office](#)
[NG form](#)
[B form](#)
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STAGE 3

The 'single judge' stage

What happens when the appeal papers get to the Criminal Appeal Office?

The staff of the Registrar's office check the papers and give the appeal a reference number. They will write to you to confirm that they have received the papers, giving you the reference number. If you need to write to or telephone the Court, you must quote this number.

The papers are then sent to one judge to read. He or she will decide whether to give you leave (that is, permission) to appeal. This is known as the 'single judge' stage of an appeal. The single judge sees:

- the notice and grounds of appeal
- any advice on appeal that has been sent with it
- the transcripts of the summing up and any other transcripts that have been typed
- other relevant trial papers.

The single judge records the decision on leave to appeal on a form called the SJ form. An example of an SJ form is included on pages 18 to 20.

There is no hearing in court: the single judge reads the papers and decides whether to give leave to appeal. He or she fills in the SJ form giving reasons for any applications that are granted or refused.

The papers are passed back to the Registrar's staff who will send you a copy of the SJ form telling you whether you have been given leave to appeal or not.

A transcript of the trial judge's summing up is not enough for the Court of Appeal to know what went on at the trial. Shouldn't there be a transcript of the trial?

It is very unusual for any transcripts of evidence to be prepared for the Court of Appeal. They are very expensive to produce. A transcript of part of the evidence may be ordered if the barrister or the judge thinks that it is absolutely necessary.

If you can raise the money, you can pay to have further transcripts prepared that the court will not order. The court where you were tried will be able to tell you the name and address of the shorthand-writers who were at your trial and you can write or telephone them direct to ask how much it will cost to prepare the transcript you require. They will usually require cash in advance.

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[SJ form](#)

[Court of Appeal
Criminal Division](#)

[transcript](#)

What if I think my barrister's grounds don't cover everything that I want to raise?

It is quite likely that all the points of concern you have will not be made in the grounds your barrister drafts. This is because the court can only consider certain points (► see the **Grounds of Appeal** section). You can raise further points yourself, but you should raise them with your lawyers first if you have any. You should also read the section on grounds of appeal to see whether you have a point which the court will look at.

If you do decide to put in further points, you need to send them to the Registrar at the Criminal Appeal Office. You can do this at any stage while your appeal is still being dealt with. The new points are treated just as if they had been there from the beginning.

If the single judge gives me leave to appeal, what happens next?

This means that your case will go ahead to be listed as an appeal to be heard before three judges of the Court of Appeal Criminal Division. ► See **Stage 6**.

What if the single judge decides I should not have leave to appeal?

Read **Stage 4**.

'Renewal to the full court'

How do I find out that I haven't got leave to appeal?

If you are in prison, the legal aid officer in the prison will hand you the SJ form. If you are not in prison, it will be sent to you through the post. The form will say which applications are allowed and which are refused and the judge gives brief reasons for his or her decision. Sometimes, if the handwriting is not clear, the Criminal Appeal Office will type up the reasons for not giving leave.

What do I need to do next?

When you are given the SJ form, the legal aid officer will note on the back the date he or she gave it to you and sign it. From that day, you have 14 days to decide if you want to 'renew your appeal', that is to carry on with your appeal. You **must** decide within the 14 days. If your lawyers put in the grounds of appeal, you should contact them for advice, but you can carry on even if they advise against it.

If you are not in prison and you want to continue your appeal, you must return the form **within 14 days of the date it was sent off by the Criminal Appeal Office** (*not* the date you received it). The date it was sent is shown at

the top of the back sheet of the form, after the words 'Date form SJ despatched'. See page 20.

Are there any penalties if I carry on with my appeal?

► See what we say under the heading '**Are there any disadvantages in appealing?**' at the beginning of the booklet.

I want to carry on. What do I need to do?

You need to complete parts 3A and 3B on the back sheet of the form SJ to show that you are renewing your application to the full court, and, if there was more than one, which applications are renewed. See page 20. If you are in prison, you hand the form back to the legal aid officer. He or she signs and dates it and returns it to the Court of Appeal. If you are not in prison, you post it back to the Court of Appeal. It is a good idea to get a photocopy of the form signed by you before you send it, if you can.

I did not renew my application within 14 days. Can I still continue with my appeal?

The 14 day time limit will not be extended unless the circumstances are exceptional. In our experience it is very hard to get the time extended. You need to show that getting the form back in time was beyond your control, for example that you needed emergency hospital treatment. You cannot normally use as a reason for being late that you were waiting for your lawyer's advice.

If you wish to renew an application after the time limit, you **must** include a written explanation for the delay with the completed form SJ when you return it.

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What happens after I have signed and returned the form?

The Registrar's office will prepare the case for the 'full court hearing'. ➤ See **Stage 5**.

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SAMPLE SJ FORM

COURT OF APPEAL, CRIMINAL DIVISION
Determination by Single Judge under Section 31
Criminal Appeal Act 1968
(Criminal Procedure Rules, r65.5(2))



(Please write in **BLACK**)

APPLICANT	REF NUMBER	DOB
------------------	-------------------	------------

WHERE DETAINED	INDEX NO.	EDR
-----------------------	------------------	------------

ORDER by the Hon Mr(s) Justice

APPLICATIONS considered

(a) EXTENSION of time	(e) LEGAL ASSISTANCE
(b) Permission to appeal against CONVICTION	(f) BAIL
(c) Permission to appeal against SENTENCE	(g) ORDER FOR WITNESS to attend
(d) Permission to appeal against CONFISCATION ORDER	

DECISION

If legal assistance is granted please indicate the number of Counsel and whether Solicitors are included.

REASONS FOR DECISION

I have considered the papers in your case and your grounds of appeal

Where a refused application for leave to appeal is renewed to the full Court, the Court may make a **loss of time order** if the application is considered to be wholly without merit, even if it is supported by your legal advisers. The Court will certainly consider doing so if the judge's initials appear in this box: ▷



SIGNED _____ **DATE** _____

DIRECTIONS TO THE REGISTRAR (FOR CAO USE ONLY)



(i) Transcript

- No further transcript necessary Further transcript required as follows:
-

(ii) Representation order(s) granted as follows:

- Junior QC Other (please specify any shared representation)
-

(iii) Reports to be obtained as follows:

- Pre-Appeal Report General Prison DTTO/DRR Medical* Psychiatric*

* Doctor to be asked to address the following specific areas:

(iv) Listing

- Refer to Registrar for directions as to constitution Note the following Listing points:
-

(v) Any other directions:

PART 1 - FOR CRIMINAL APPEAL OFFICE USE		CAO REF:	FORM SJ - RENEWAL
Date form SJ despatched:		Date renewal received:	
PART 2 - FOR USE BY THE PRISON SERVICE			
A. Date form SJ handed to applicant:		Signed: (Prison Officer)	
B. Date applicant handed in form SJ renewal with Part 3 completed:		Signed: (Prison Officer)	
PART 3 - RENEWAL NOTICE FOR USE BY APPLICANT/APPLICANT'S LEGAL REPRESENTATIVE			
Applicants should read the notes below in Part 4 and tick the relevant box(es) and sign below in this part of the form if they wish to renew <u>existing</u> application(s). This form cannot be used to lodge a <u>new</u> application. This renewal notice is invalid unless Parts 3A and 3B are completed.			
A. I wish to renew the following application(s) (<i>Tick the relevant box(es)</i>):			
<input type="checkbox"/>	EXTENSION of time	<input type="checkbox"/>	LEGAL ASSISTANCE
<input type="checkbox"/>	Permission to appeal against CONVICTION	<input type="checkbox"/>	BAIL
<input type="checkbox"/>	Permission to appeal against SENTENCE	<input type="checkbox"/>	ORDER for witness to attend
<input type="checkbox"/>	Permission to appeal against CONFISCATION ORDER		
I understand that if an application is renewed after being refused by a Judge and the Court comes to the conclusion that there is no justification for the renewal, the Court may:			
i) direct that some or all of the time spent in custody as an applicant shall not count towards sentence "a loss of time order" and/or			
ii) make an order for costs against the applicant, including the cost of any transcript obtained.			
You may include in the box below any reasons why you consider the Court should not make such an order:			
B. Signed:			Date:
(Applicant / Applicant's legal representative)			
PART 4 – NOTES			
a) Applications which have been refused by a Judge may be renewed for consideration by the full Court of Appeal.			
b) This form must be completed and signed if any applications are being renewed. A renewal cannot be lodged validly by any other means. This form may be completed by the applicant or by that person's legal representative. Legal representatives cannot renew an application without the applicant's express instructions.			
c) For applicants in custody, this form must be handed in the prison or other custodial authority <u>within 14 days</u> of the date shown in part 2a of this form. The date of handing in the form must be completed by the custodial authority in part 2b. Applicants not in custody and legal representatives must return this form to the Registrar to reach him <u>within 14 days</u> of the date shown in part 1 of this form.			
d) If an application is not renewed within the above time limits it will generally be treated as having been refused by the Full Court of Appeal, which will not extend the time limits unless the circumstances are wholly exceptional. If an applicant wishes to renew an application after the time limits, he or she <u>must</u> include with the late renewal a written explanation for the delay.			
e) If an applicant wishes to obtain advice before renewing any application(s), this should be done and the completed form returned within the time limits already mentioned. The Court will not normally accept as a reason for delay the fact that the applicant was seeking further legal advice. Legal advice received when the appeal was first launched should be sufficient to enable the applicant to make a decision concerning whether or not to renew any application(s).			
f) An applicant is not entitled to be present at the hearing of a renewed application.			
<u>Important notice to the applicant's legal representative</u>			
Legal assistance is not available under the provisions of the Crown Court representation order to prepare or present a renewed application. If a legal representative intends to appear in court on the applicant's behalf at the hearing of a renewed application (on a private or pro bono basis) he or she should inform the registrar in writing <u>within 14 days</u> of the date shown in part 1 of this form. Otherwise, the matter will be fixed for hearing as a non-counsel matter and, save in exceptional circumstances, will not be re-listed for hearing thereafter.			

The 'full court hearing'

What happens next?

The 'full court' is a panel of three judges who look at the case and decide whether or not you should be given leave to appeal. The judges usually make their decision by reading the papers. They read the grounds of appeal, the summing-up and other relevant papers and discuss the case amongst themselves. The judges say what their decision is, whether they have granted or refused leave to appeal, and what their reasons are.

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Who represents me?

Usually no one represents the applicant. You can arrange for a barrister to represent you and to argue that you should be given leave to appeal. However, there is no legal aid to pay for a barrister. If you can raise the money yourself, you may be able to pay the barrister. If the barrister feels strongly about the case, sometimes s/he will agree to argue the case before the full court without charging a fee.

I'm in prison. Will I be brought to court for my full court hearing?

No. Prisoners in custody are not brought up for a full court hearing. If you are not in prison, you can attend.

Can my family or friends come to the hearing?

Yes. The hearings are held in public in the Royal Courts of Justice in the Strand in London and anyone can attend.

If I'm not there, how can I know what the decision is?

If you are not there because you are in prison, you will receive a letter from the Criminal Appeal Office which simply tells you whether or not you have been successful. It does not tell you what the judges said in their judgment. That is why it is a good idea to get a friend or relative to go to court to hear what is said. If you are represented by a barrister, the barrister should report back to you, at least through the solicitor. It should be possible to get a copy of the transcript of the judgment from the Criminal Appeal Office although there may be a fee payable.

What can I do if my application to the full court fails?

This is the end of your appeal.

- ▶ See what we say in **Stage 7** – after the appeal.

What happens if the full court grants my application for leave to appeal?

You will get a letter telling you that the court has decided to give you leave to appeal. Usually they will also have made an order for legal aid. Your case will now go ahead to be prepared for an appeal hearing, in the same way as if the single judge had given you leave. ▶ See **Stage 6**.

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full court

full court hearing

leave to appeal

Criminal Appeal Office

appeal hearing

single judge

The Appeal

What happens at my appeal hearing?

The hearing of an appeal takes place before three judges sitting in the Court of Appeal Criminal Division in the Royal Courts of Justice, Strand, London WC2A 2LL (sometimes called the High Court or the Law Courts).

You will be represented at the hearing by a barrister (or sometimes two barristers). The prosecution will be represented by a barrister as well. The barristers each put their side of the case to the judges. Your barrister goes first, followed by the prosecution barrister. Then your barrister can reply. Sometimes the judges allow witnesses to be called if you have made an application for this. The judges then decide.

Most appeals take one or two hours to hear, though unusual cases can take one or two days. Generally the judges make their decision immediately after hearing the case and one of them then gives a judgment. They will say whether or not they allow the appeal and give reasons. Sometimes, if the case is complex, they say they will reserve judgment, which means that they go away to think about it and give judgment on a later date.

How do I know when my case will come up?

You will be notified of the date your appeal is to take place (usually at least two weeks beforehand). This information is sent by the Criminal Appeal Office to you in a letter.

If I'm in prison, will I be brought to court for the hearing?

Yes, if you want to attend. When you are notified of the date of your appeal hearing you should ask in the prison what arrangements are being made to bring you to court. If you are held in a prison some distance from London you will usually be brought up the day before and be held in a London prison overnight. You also bring your personal possessions with you. If your appeal is successful and you are due for immediate release, you can go free straight from court.

If you do not wish to attend the hearing, you can waive your right to do so. Provided that the proper steps were taken to inform you of the hearing, the Court will continue to decide the appeal in your absence.

Will I get legal aid?

The judge who gave you leave to appeal will give you legal aid if you asked for this in your application. However, the legal aid is generally limited to counsel (that is, a barrister) only. The Criminal Appeal Office prepares the papers and sends the brief for the appeal to the barrister.

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[Court of Appeal
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reserve judgment
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Conviction

Get advice on appeal

Barrister advises there are no grounds

If you think there are grounds, get appeal forms and complete

Hand to legal aid officer

Legal aid officer sends to Crown Court

Crown Court receives papers, checks transcript(s) and sends to the Registrar, CAO

CAO registers the case and sends you the number

CAO prepares case for the SJ

SJ considers the papers and decides whether to grant leave

SJ refuses leave to appeal and gives reasons on SJ form

CAO sends copy of SJ form to you

You decide NOT to renew to full court

APPEAL ABANDONED

APPEAL RIGHTS EXHAUSTED

You renew application to the full court

Papers submitted to CAO by 3 judges

Full court hearing

Judgment

LEAVE TO APPEAL GRANTED

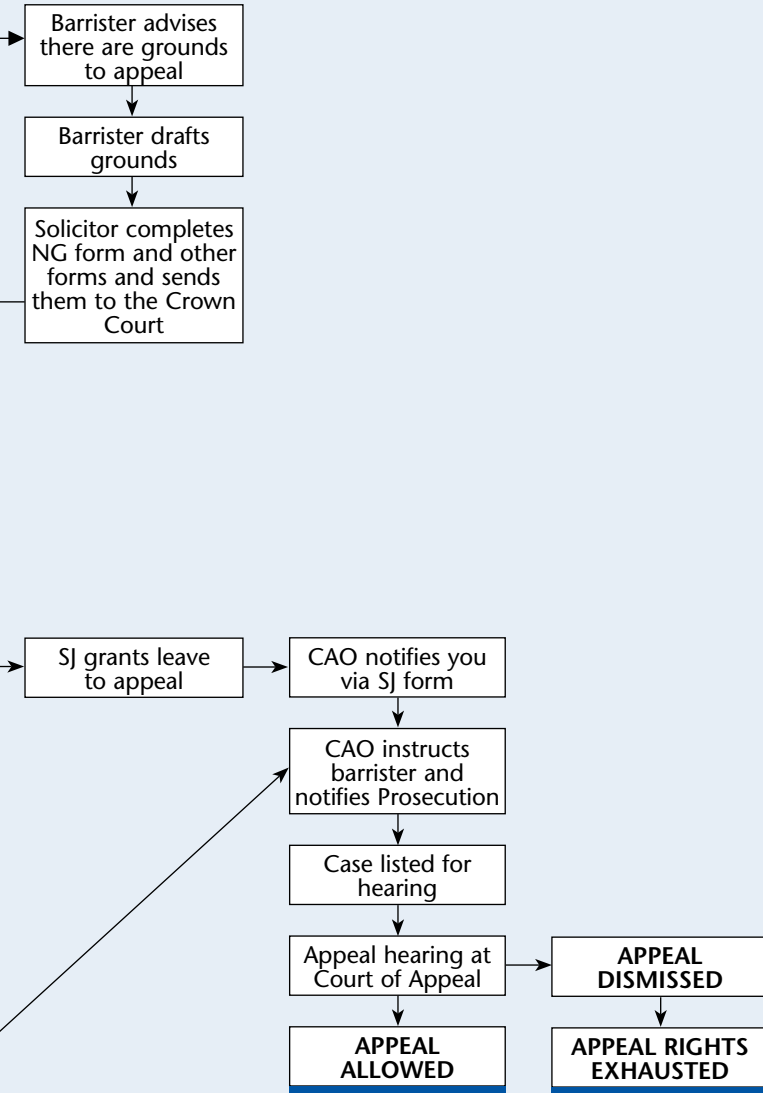
CAO notifies you

LEAVE TO APPEAL REFUSED

CAO notifies you

APPEAL RIGHTS EXHAUSTED

How it works



CAO = Criminal Appeal Office

SJ = Single Judge

I will need a solicitor to make further inquiries. Can I get legal aid for this?

It is rare for there to be legal aid for solicitors to do this work. It only happens where it is clear that there are significant further investigations to be carried out. You or your solicitor can always apply for legal aid, specifying as precisely as you can what work needs to be done and why. ► See what we say under the **Legal Aid** section.

Who will be my barrister in the Court of Appeal? How is he or she chosen?

If your trial barrister drafted grounds on which you have got leave to appeal, it is nearly always best for you if that barrister argues your case before the Court of Appeal. The barrister from the trial will always know more about the case than anyone else can learn by reading the papers. If, however, you want to change you have the right to ask the Criminal Appeal Office to instruct someone else for you.

If you get leave to appeal on grounds you have drafted yourself, the Criminal Appeal Office will ask you whom you want to instruct. If you don't have confidence in your trial barrister, you can ask the Criminal Appeal Office to instruct someone else.

Will I have the chance to discuss my case with my barrister before the appeal hearing?

Yes. You should make sure that this is arranged. If you are not in prison, you can arrange to meet to discuss the case. If you are in prison, you will be brought to court and kept in the cells below the appeal courts until your case is heard. Your barrister (and your solicitor, if you have one) can visit you there before the court starts.

Where there are matters to discuss, and particularly where a different barrister is going to present your appeal, conferences in prison can be arranged.

Can I argue my case for myself?

You may be able to represent yourself – known as 'acting in person' – but you have to get permission from the Court. However, this is usually very unwise because it is very hard to present your own case well.

What if I'm released from prison before the case comes to hearing?

You have the right to continue your appeal even if you have served your sentence. The appeal will still go ahead.

Can my family or friends come to support me?

Yes. Appeal hearings are held in public in the Royal Courts of Justice in the Strand, London WC2A 2LL and anyone can attend. However, if you are in prison, you cannot, in any circumstances, have visits in the cells below court from anyone other than your lawyers.

How long will it all take?

This is very hard to estimate, because it depends on a number of different factors. You can expect it to take some months between leave to appeal being given and the appeal hearing. The length of time will depend on the further work that needs to be done to get the appeal ready. It will also depend on the length of your sentence. They try to list people with shorter sentences before those serving long terms of imprisonment.

I've been given my date, but I'm not ready for the hearing. What can I do?

You can apply for an adjournment, and if you have good reasons for needing more time, an adjournment will usually be granted. You need to apply for an adjournment as soon as possible after getting the date.

You should ask your barrister for advice.

What happens when the judges deliver judgment?

When the judges have decided, one of the judges will 'deliver judgment'. He or she will set out some of the facts of the case and say what their decision is and why they have made it. You usually hear at the end of the judgment whether you have won or lost.

If you have won, the judge who gives the judgment says that the appeal is 'allowed' and/or that the conviction is 'quashed'. If you have failed, the judge says that the appeal is 'dismissed'.

Where your appeal against conviction is allowed, the Court of Appeal may order a retrial, if it thinks this is in the interests of justice. You may be released on bail or held in custody to await your retrial at the Crown Court. If it has been a long time since your original trial and you have spent a long time in custody, these are strong factors against the order of a retrial, but the Court of Appeal may still order one.

After the judges have finished speaking, the barristers may stand up and make any points that need to be made about costs or other matters. You do not have the right to speak.

If you are entitled to be released straight away – ie, if your appeal against conviction is allowed and there is to be no retrial; if there is a retrial but you are released on bail; or if your sentence is reduced so much that you are due for immediate release – then you can be released straight from court. There is a lot of paperwork to be completed, so you are taken back to the cells for about two hours. You are then released from the cells.

[SEE THE INDEX FOR](#)

[appeal hearing](#)

[leave to appeal](#)

[adjournment](#)

[deliver judgment](#)

[appeal allowed](#)

[appeal dismissed](#)

[conviction quashed](#)

After the appeal

If I've lost my appeal, what then?

Your rights of appeal end (or in legal terms 'are exhausted') either when the full court has refused to give you leave to appeal or when the Court of Appeal has dismissed your appeal. There are two further ways to reopen your conviction, but they are both extremely difficult.

- **Appeal to the Supreme Court (formerly the House of Lords)**

You do not have an automatic right to appeal to the Supreme Court. Either the Court of Appeal or the Supreme Court itself can give you leave to do so. The Court of Appeal must have certified that a point of law of general public importance is involved in the decision, and it must appear to the Court of Appeal or the Supreme Court that the point is one that ought to be considered by the Supreme Court. If you think this might apply to your case, you should ask your barrister for advice.

If the Single Judge did not give you leave to appeal (see **Stage 3**) and the full court also decided against your renewed application for leave to appeal (see **Stage 4**), you have no right to appeal to the Supreme Court against this decision.

- **Application to the Criminal Cases Review Commission**

The Criminal Cases Review Commission can refer a case back to the Court of Appeal even after a previous, unsuccessful appeal. You must have some new argument or evidence not presented at trial or on appeal. You can contact the Criminal Cases Review Commission (www.ccr.gov.uk) at Alpha Tower, Suffolk Street Queensway, Birmingham, B1 1TT, telephone 0121 633 1800.

Grounds of appeal

Some general points

It is important to understand that the powers of the Court of Appeal are limited. An appeal is not another trial which looks at the evidence and decides who is telling the truth. It does not look again at the facts of the case in the way that the jury did and decide whether the person is guilty or innocent. It looks to see if the trial judge conducted the trial according to the rules, summed up the facts fairly and got the law right.

If there is new evidence which was not available for the trial, the Court of Appeal will sometimes look at the new evidence and decide if it might have led the jury to reach a not guilty verdict.

So...

In order to have a successful appeal you have to be able to show either

- **that the judge did not conduct the trial in accordance with the legal rules or**
- **that there is good new evidence to show that the jury made the wrong decision.**

If you possibly can, you should get legal help to draft grounds of appeal. But, if you cannot get legal aid (► see

the **Legal Aid** section), you may have to draft grounds of appeal yourself. This can be very difficult, because it is not enough to list the things that you think went wrong with your trial. You have to find things which come within the two areas that we set out above. We try below to give you some idea of the things that you can, and can't, put forward as grounds of appeal.

Appeal against conviction

✗ What you *can't* successfully put forward as grounds:

I am innocent.

A witness/witnesses lied in court.

The jury should have believed me, I was telling the truth.

It's not fair. I was convicted and my co-defendant was not.

✓ Points you *might* be able to put forward

1 The judge's rulings during the trial

These are the decisions that the judge made during the trial. They include decisions about whether certain evidence could be heard, or whether the jury should have been told about your previous convictions. These things are difficult to argue, because a trial judge has a lot of freedom about how he or she conducts the trial. So, if your barrister tried to argue these things in front of the judge, the Court of Appeal will not interfere unless the trial judge acted very unreasonably.

2 The judge's summing up

The trial judge has a lot of leeway in how he or she sums up the case for the jury. The judge should have explained

the law in simple language. He or she does not have to give strict legal definitions. He or she should also have given an outline of the defence case; but this does not need to be in great detail. It is rare to succeed with an appeal on the grounds that the trial judge was biased against you, or did not put your case fully enough. Even if you can show that the judge made a mistake, you will only succeed if the mistake is likely to have led the jury to find you guilty.

3 Jury issues

You may want to object to a particular member or members of the jury. This is difficult to do after you have been convicted, because objections to the members of the jury should be made at the time of the trial. You can only raise issues about individual members of the jury if the evidence about them has been brought to your attention after conviction. Even then, it is hard to succeed, if the evidence is only about one of the twelve.

You may think that the judge put pressure on the jury to reach a verdict, if they were not given enough time to decide. In general, the judge should give the jury two hours to try to reach a unanimous verdict, before saying that he or she will accept a verdict based on ten people agreeing.

4 Disclosure issues

You may think, or know, that the police or prosecution did not tell your lawyers about important evidence which they had: for example, information or witnesses which would have been helpful to your case. This must be evidence that is so important that the jury would probably have found you not guilty, if they had known about it. This is a complicated subject, and if you think it affects

you, you should seek legal advice under 'advice and assistance' legal aid (▶ see the **Legal Aid** section).

5 New evidence

New evidence does not just mean evidence that was not called at the trial. Before you can use new evidence in an appeal you also need to show that there was a good reason why the evidence was not called at the trial.

Examples of evidence which is **not** usually new evidence:

- a witness at trial who is now saying something different
- someone you or your lawyers knew about who was not called as a witness because it was decided that he or she would not help anyway.

It **may be** new evidence if you can show that there is evidence which your solicitors should have obtained for the trial, but did not (for example because they forgot to get a statement from that person). But it is unusual for the Court of Appeal to accept this.

Examples of new evidence that are **most likely** to be helpful are things that were not known about at the time of trial, for example:

- new scientific evidence or tests
- a new witness whom no-one knew about at the time of the trial and who has come forward with relevant information.

The Court of Appeal in considering whether to receive fresh evidence will have regard to the following:

- (i) Whether the evidence appears to the court to be capable of belief.
- (ii) Whether it appears to the court that the evidence may afford any ground for allowing the appeal.

- (iii) Whether the fresh evidence would have been allowed to go before the jury at the time of the trial.
- (iv) Whether there is a reasonable explanation for the failure to introduce the fresh evidence at trial. This is always a matter for the discretion of the Court, who may exceptionally be prepared to admit fresh evidence if it is very compelling and significant, even if there is no reasonable explanation for the failure to call it at trial.

The Court, when considering fresh evidence, may in borderline cases ask itself whether the evidence, if given at trial, might reasonably have affected the decision of the jury to convict; if it might have done, then the conviction will be unsafe.

6 Lawyers' mistakes

You may feel that your conviction was because of your lawyers' mistakes – either because your solicitor did not prepare the case properly, or because your barrister did not put it over well in court.

It is very difficult to use this as a ground of appeal. In order to succeed, you will have to show both that:

- the mistake was a very serious one and
- the mistake caused your conviction.

What if I pleaded guilty to some or all of the charges?

If you pleaded guilty to lesser charges but were tried on and convicted of a more serious charge, you can appeal against the conviction. For instance, if you pleaded guilty to manslaughter and were convicted of murder you can appeal the murder conviction. If you pleaded guilty to possession of drugs but were convicted of possession with

intent to supply you can appeal against the conviction of intent to supply.

But if you pleaded guilty to a charge and that plea was accepted by the prosecution, so that there was no trial but only a sentencing hearing, it is almost impossible to appeal against conviction.

Appeal against sentence

To get leave to appeal you have to show that the sentence was 'wrong in principle or manifestly excessive'. It is not enough just to say that it is too high or is higher than a co-defendant's sentence. You need to be able to show:

- **either** that the judge gave you an unjustifiably high sentence for the facts of your case
- **or** that he or she used wrong facts about your offence in calculating your sentence.
- or that you had a legitimate expectation of a non-custodial sentence (ie, that the judge ordered a pre-sentence report, and indicated that if the reports were positive s/he would give you a non-custodial sentence, but then gave you a custodial sentence despite the report being positive; OR that a judge indicated to your barrister that if you pleaded guilty you would get a non-custodial sentence but then you received a custodial sentence after pleading guilty)

Appeal to the Court of Appeal by the prosecution

Attorney General's Reference

The Attorney General can refer sentences that s/he believes are unduly lenient to the Court of Appeal.

'Unduly lenient' means that the sentence is so low that no reasonable judge could have given it. The Attorney General must notify the Court of his/her intention to refer the sentence no more than 28 days after sentencing takes place. If you have been affected by such a notice, you will need to make representations within 14 days of the application being served on you.

The Attorney General's power applies to sentences for a range of serious offences. You should ask your solicitor if you are not sure whether this power applies in your case.

If the Court of Appeal grants the Attorney General leave, the full court will decide whether the sentencing judge imposed a sentence which was far too low and out of step with other sentences for the relevant offence. If the Court of Appeal increases a sentence on an Attorney General's reference, its practice has been to allow some discount on the sentence that should originally have been imposed, because of the wait involved in not knowing whether the sentence is to be increased.

Where a large part of a sentence with a fixed maximum term is still to be served, this principle has limited effect. Where however, the custodial sentence has been served, is close to being served, or is being substituted for a non-custodial sentence, the discount should be approximately 30 per cent.

Prosecution Application to Retry for Serious Offences

It is now possible for the prosecution to apply for a retrial following acquittal for a small number of very serious offences. The consent of the Director of Public Prosecutions is required to reopen the investigation and for an application to be made to the Court of Appeal.

New and compelling evidence must have come to light which demonstrates on its face that the acquitted person was guilty of the crime. Examples include DNA evidence, or a confession subsequently made by the acquitted person.

If the Court of Appeal grants the application than a retrial will take place.

How to fill in the forms

If you are applying for leave to appeal and do not have a solicitor handling your appeal who can complete the relevant forms for you, you need an NG form. You can get it from the legal aid officer in the prison (➤ see **Stage 2** above). A copy is shown on pages 45 to 47. ➤ You will see that you need to fill in details of your full name and current address. In addition you need to give details of the court and judge who conducted your trial, the dates of your trial, and the details of your convictions, with case and charge numbers. If you do not have all this information about your charges and trial, write and ask your solicitor for it. They should have it readily available on file.

You will see that at the foot of the first page you need to tick the boxes for the applications you are making.

The applications you can make are:

- permission to appeal against conviction
- permission to appeal against sentence
- permission to appeal against a confiscation order
- representation order (legal aid)
- bail
- permission to call witness(es)
- extension of time in which to make any of the other applications.

Tick the boxes at the foot of the first page for all the things

you want to apply for. Then read the notes on the second page of the form about grounds of appeal. Write your grounds of appeal and attach them to the form. We give a little information about what amounts to grounds for an appeal at the beginning of this section. If you haven't read that, read it now. Write down your grounds of appeal saying why you think your conviction is unsafe or your sentence is inappropriate.

Extension of time to seek leave to appeal

If you are appealing outside the 28 day period, you will need to give reasons for being late.

Make sure you have ticked the extension of time box on the front page of the NG form.

Then attach to your grounds of appeal the detailed reasons why you are late in starting your appeal, preferably under a separate heading 'Grounds for Extension of Time'. You can use as your reason, if it is true, that you were waiting for your barrister's advice, or that you did not know what to do.

Representation Order (legal aid)

If you had legal aid for your trial you should include an application for legal aid for appeal. Make sure you have ticked the 'Representation Order' box under 'Applications' on the front page of the NG form. You do not need to give written grounds for this in the grounds of appeal section.

Bail

You are extremely unlikely to get bail while waiting for your appeal but you are allowed to apply for it. To apply for bail you need to tick the bail box at the foot of the

front page of the NG form. You must also fill in a B form. Look at the example on page 48. You will not get bail unless you have sureties and have very strong reasons for arguing that your conviction is likely to be quashed. Sometimes, although your bail application is refused, the appeal may be 'expedited' – that is, speeded up.

Witnesses

If you want to call witnesses in the Court of Appeal, you need to get permission from the Court. Make sure you have remembered to tick the box at the foot of the front page of the NG form to indicate that you are making the application. You need to include the reasons in your grounds of appeal section and you need to complete a W form for **each witness** you want to call. Look at the example on page 49. You need to set out what they can say, whether they gave evidence at the trial and if not, why not.

Sign the form

You need to sign the form on the third page. Go through the reminder checklist on the third page and make sure you can answer 'yes' to all the questions. Then sign and date the form. You will see from the copy form that it warns you that you might be made to serve more time in prison or pay costs. ➤ See what we say about this under the heading **Are there any disadvantages in appealing?** at the beginning of the booklet.

You are now ready to hand in the forms.

Changing your grounds of appeal

If you think of further points of appeal after your papers have been submitted, or you decide you want to put something differently, you can put in further grounds later on. You need to send them to the Registrar of Criminal Appeals and they will be added to the grounds you have already put in. Always quote your criminal appeal reference number.

Equally, if you decide you do not want to continue any point you have made, you can abandon it, in the same way that you can abandon your whole appeal, by writing to the Registrar quoting your criminal appeal reference number.

Waiver of privilege form

If you make allegations criticising your defence lawyers, the Registrar's office will ask you to sign a 'waiver of privilege' form.

The purpose of the waiver is to allow your barrister or solicitor to comment on your criticisms of their conduct of your case. The general rule is that all information passing between a lawyer and his or her client is confidential. If you sign the waiver then the barrister or solicitor will be able to pass on any information which you might have given in confidence if he or she feels it is necessary in order to comment on your criticisms.

If you do not sign the waiver, the single judge will consider your complaints, but will be reluctant to give you leave to appeal on this point.

You will be allowed the right to reply.

Legal Representation (please use BLOCK CAPITALS)	Name of Counsel _____ Address _____ Post Code _____ DX No _____ Telephone No _____ Reference _____
	Name of Solicitor _____ Address _____ Post Code _____ DX No _____ Telephone No _____ Reference _____
	Prosecuting Authority _____ Address _____ Post Code _____ DX No _____ Telephone No _____ Reference _____

IMPORTANT NOTES

Grounds of Appeal (r.68.3 (2)) Please also see the attached guidance notes, particularly note 8	<p>The grounds of appeal must be attached to this notice of application, and should be listed separately for conviction, sentence, or other order, under appropriate headings.</p> <p>The grounds of appeal must:</p> <ol style="list-style-type: none"> 1) Identify each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one) and concisely outlining each argument in support; 2) Identify the transcript that the appellant thinks the court will need, if the appellant wants to appeal against conviction (see notes on Transcripts below); 3) Identify the relevant sentencing powers of the Crown Court, if sentence is in issue; 4) Where the Criminal Cases Review Commission has referred a case to the court, explain how each ground of appeal relates (if it does) to the reasons for the reference; 5) Summarise the relevant facts; 6) Identify any relevant authorities; 7) Identify any other document or thing that the appellant thinks the court will need to decide the appeal (Please Note: any report relied upon and which was not retained by the Crown Court must be copied and attached to this application form). <p>NB:</p> <ol style="list-style-type: none"> (1) Where grounds have been settled by counsel they must be signed by counsel with the name of counsel printed underneath. (2) If an extension of time is needed, the detailed reasons for the delay must be attached to the grounds of appeal, preferably under a separate heading – grounds for extension of time.
Other Applications (r.68.3(2)(h))	Any other application must be made in accordance with rule 68.3(2)(h) of the Criminal Procedure Rules, and be attached, together with reasons, preferably under a separate heading for each such application, together with Form B (Bail) or Form W (Witness) duly completed if appropriate. (Please also see the attached guidance notes, particularly note 7).

Transcripts	<p>On an application for permission to appeal against conviction a transcript of the trial judge's summing up is obtained by the Registrar as a matter of course. On an application for permission to appeal against sentence the Registrar will obtain a transcript of the sentencing judge's remarks, and on a plea of Guilty, the prosecution opening of facts.</p> <p>If ADDITIONAL transcript is sought, this must be specified within the grounds of appeal, giving specific dates and times of the part of the proceedings for which the transcript is requested. Failure to give such details could result in unnecessary delay and prejudice the appellant.</p> <p>Please note that transcript obtained by means other than through the Registrar may result in the cost of the transcript not being allowed upon taxation in cases subject to a Representation Order.</p>
--------------------	--

Reminder	<p>Have You:</p> <p style="text-align: right;">*delete as appropriate</p> <p>a) included reasons in support of any application for extension of time? Yes/No*</p> <p>b) included Form B if applying for bail? Yes/No*</p> <p>c) included Form W and witness statement (conviction cases only) if seeking to call a witness Yes/No*</p> <p>d) (i) attached your grounds of appeal? Yes/No*</p> <p style="padding-left: 20px;">(ii) are the grounds of appeal signed by counsel/solicitor? Yes/No*</p> <p>e) (i) attached your request for additional transcript? Yes/No*</p> <p style="padding-left: 20px;">(ii) specified the dates and times of transcript requested? Yes/No*</p>
-----------------	--

Signature	<p><u>APPELLANTS IN CUSTODY ONLY</u></p> <p>I understand that if the single judge and/or the Court is of the opinion that the application for permission to appeal is plainly without merit, an order may be made that time spent in custody as an appellant shall not count towards sentence.</p> <p><u>ALL APPELLANTS</u></p> <p>I understand that if the court dismisses my appeal or application it may make an order for payment of costs against me, including the cost of any transcript obtained.</p> <p>[This form should be signed by the appellant but may be signed by his/her legal representative provided the WARNINGS set out above have been explained to him/her. NB if signed by a legal representative, the appellant will be given the opportunity to request a copy of the form.]</p> <p>Signature Date</p> <p>(of appellant or legal representative signing on <i>behalf</i> of the appellant)</p>
------------------	--

NOW PLEASE SEND THIS FORM TO THE CROWN COURT WHERE TRIED OR SENTENCED UNLESS IT RELATES TO A REFERENCE BY THE CRIMINAL CASES REVIEW COMMISSION, IN WHICH CASE IT SHOULD BE SENT TO THE REGISTRAR OF CRIMINAL APPEALS DIRECTLY.

SAMPLE B FORM



NOTICE OF APPLICATION FOR BAIL
THE COURT OF APPEAL CRIMINAL DIVISION
 Criminal Appeal Act 1968
(Criminal Procedure Rules, r.68.8(2))

Form
B

If possible this form should be lodged at the Crown Court at the same time as Form NG. If this application is made at a later stage it should be sent directly to the Registrar of Criminal Appeals, Royal Courts of Justice, Strand, London, WC2A 2LL, quoting the Criminal Appeal Office reference No.

Tel: 020 7947 6011/6014 **DX:** RCJ 44450 Strand **Fax:** 020 7947 6900

FOR CRIMINAL APPEAL OFFICE USE

Reference No. _____

Date Received _____

*Please ensure that you have read the notes for guidance attached. Write in **BLACK INK** and use **BLOCK LETTERS***

1. The Appellant	Surname _____ Forenames _____ Place Where Detained _____ _____ Index No _____	Proposed Address if Granted Bail _____ _____ Name of householder _____
-------------------------	---	--

2. Police Station	Enter the name of the nearest Police Station the appellant is able to report to, if bail is granted _____	
--------------------------	--	--

3. Proposed sureties	Name _____ Address _____ _____ Occupation _____ £ _____	Name _____ Address _____ _____ Occupation _____ £ _____
-----------------------------	---	---

4.	Was bail granted before trial or sentence? If yes, please attach details	Yes / No
-----------	---	----------

5. Grounds for bail pending appeal	The appellant applies for bail pending appeal on the following ground(s):
---	---

6. Certificate of Service (rule 68.8(2) of the Criminal Procedure Rules) See note 4.	Give details of those on whom this Notice has been served, including the date and method of service:
---	--

7. Signature	Signed _____ Appellant / Legal Rep (delete as appropriate) Date _____	Address and status of person signing on appellant's behalf _____ _____ _____
---------------------	---	---



NOTICE OF APPLICATION FOR WITNESS ORDER and / or PERMISSION TO CALL A WITNESS

THE COURT OF APPEAL CRIMINAL DIVISION

s.23 Criminal Appeal Act 1968
(*Criminal Procedure Rules (rr 68.3, 68.7)*)

Form
W

If possible this form should be lodged at the Crown Court at the same time as Form NG. If this application is made at a later stage it should be sent directly to the Registrar of Criminal Appeals, Royal Courts of Justice, Strand, London, WC2A 2LL, quoting the Criminal Appeal Office reference No. See guidance overleaf.

Tel: 020 7947 6011/6014 **DX:** RCJ 44450 Strand **Fax:** 020 7947 6900

FOR CRIMINAL APPEAL OFFICE USE
Reference No. _____
Date Received _____

Please ensure that you have read the notes for guidance attached. Write in **BLACK INK** and use **BLOCK LETTERS**

1. The Appellant

Surname _____ Forenames _____

Address _____

Index No _____

2. Particulars of Witness

Surname _____ Forenames _____

Address _____

Do you want a Witness Order? (A witness order is not required if the witness would attend the Court of Appeal voluntarily) Yes / No*

Was the Witness called at the trial? Yes / No*

Do you seek any directions about the way evidence should be received (see r68.7(1) CPR). If yes, please attach details. Yes / No*

* delete as appropriate

The witness can now give the following evidence (which was not given at trial). Please attach full witness statement.

The evidence was not given at the trial because (see notes overleaf):

3. Signature

Signed _____ Address and status of person signing on appellant's behalf _____

Appellant / Legal Rep (delete as appropriate) _____

Date _____

Information about legal aid

There are different kinds of legal aid:

1 Trial legal aid under a Representation Order

This will have been sorted out by your solicitor. It continues after you have been sentenced and will pay for your barrister to give you written advice on an appeal. If he or she advises you do not have good grounds for appeal, your trial legal aid ends. If he or she advises you have good grounds to appeal, legal aid covers the cost of the barrister drafting those grounds and your solicitor submitting them to the Court to start the appeal process.

If your barrister advises that you do not have good grounds for appeal and your solicitor disagrees, then he or she may draft the grounds of appeal under the representation order.

2 'Advice and assistance' legal aid

You can get legal aid under the 'advice and assistance' scheme for advice from a solicitor.

If your barrister or solicitor advises against appeal or the single judge refuses leave to appeal, this is the only possibility of getting more legal advice under legal aid. But it is very difficult to get 'advice and assistance' legal

aid. The legal aid authorities will usually say that you have already had legal advice about your appeal.

You will only be able to get 'advice and assistance' legal aid for a new solicitor to advise you if you can show that the points on which you want advice are a 'new matter'. This is only likely to be of use if you have new evidence.

If you can't get 'advice and assistance' legal aid, you will either have to persuade your trial solicitor to help you without charge (or find another solicitor who will do so) or put your own grounds in and hope to get legal aid later.

3 Legal aid granted by the Court of Appeal

If the single judge gives you leave to appeal, he or she will make a representation order for you to be represented by a barrister at your appeal. So will the appeal court judges, if you get leave to appeal from the full court.

This legal aid does not normally cover work done by solicitors. Your barrister can apply to the Registrar and ask for legal aid for a solicitor to carry out further investigations. But you will only succeed if you can show very good reasons why it is necessary for your appeal.

Index

abandonment	an appeal has been given up
adjournment	the court puts off the date of a hearing
'advice and assistance' legal aid	a type of legal aid – see the legal aid section
advice on appeal	written advice from a barrister about whether you have good grounds to appeal
appeal allowed	the appeal is won
appeal hearing	when the appeal is heard by the Court of Appeal after leave to appeal has been given
appeal dismissed	an appeal has been lost
apply for leave to appeal	to send the papers to the court to start an appeal
B form	the form that is used to apply for bail whilst the appeal is going through the system
conviction quashed	the appeal is won by overturning the conviction

Court of Appeal Criminal Division	(often referred to as the COACD) the part of the Court of Appeal that deals with criminal cases
Criminal Appeal Office (CAO)	the office of the Registrar of Criminal Appeals that deals with all the paperwork and procedure for appeals
deliver judgment	the Court of Appeal judge gives the judgment of all three judges
full court	the panel of three judges who hear a renewed application for leave to appeal
full court hearing	when the full court decides whether to give you leave to appeal
leave to appeal	permission to go ahead with an appeal
NG form	the form used to start an appeal
Registrar of Criminal Appeals	the person who is responsible for organising cases to be considered for appeal. He or she runs the Criminal Appeal Office
renew to the full court	to apply to a panel of three judges (the full court) for leave to appeal after the single judge has refused leave to appeal
reserve judgment	the judges decide that they will not give their judgment immediately
single judge	the judge who considers the NG form and other papers to decide whether to give leave to appeal

SJ form

the form on which the single judge records his or her decision

transcript

a written record of what was said at trial

W form

the form that you use to ask for witnesses to give evidence in the Court of Appeal

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