

CRIMINAL PRACTICE DIRECTIONS 2015 DIVISION IX

APPEAL

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CrimPR Part 34 Appeal to the Crown Court

CPD IX Appeal 34A: APPEALS TO THE CROWN COURT

- 34A.1 CrimPR 34.4 applies when a defendant appeals to the Crown Court against conviction or sentence and specifies the information and documentation that must be provided by the magistrates' court.
- 34A.2 On an appeal against conviction, the reasons given by the magistrates for their decision should not be included with the documents; the appeal hearing is not a review of the magistrates' court's decision but a re-hearing.
- 34A.3 On an appeal against sentence, the magistrates' court's reasons and factual finding leading to the finding of guilt should be included, but any reasons for the sentence imposed should be omitted as the Crown Court will be conducting a fresh sentencing exercise.

CrimPR Part 39 Appeal to the Court of Appeal about conviction or sentence

CPD IX Appeal 39A: APPEALS AGAINST CONVICTION AND SENTENCE – THE PROVISION OF NOTICE TO THE PROSECUTION

- 39A.1 When an appeal notice served under CrimPR 39.2 is received by the Registrar of Criminal Appeals, the Registrar will notify the relevant prosecution authority, giving the case name, reference number and the trial or sentencing court.
- 39A.2 If the court or the Registrar directs, or invites, the prosecution authority to serve a respondent's notice under CrimPR 39.6, prior to the consideration of leave, the Registrar will also at that time

serve on the prosecution authority the appeal notice containing the grounds of appeal and the transcripts, if available. If the prosecution authority is not directed or invited to serve a respondent's notice but wishes to do so, the authority should request the grounds of appeal and any existing transcript from the Criminal Appeal Office. Any respondent's notice received prior to the consideration of leave will be made available to the single judge.

- 39A.3 The Registrar of Criminal Appeals will notify the relevant prosecution authority in the event that:
- (a) leave to appeal against conviction or sentence is granted by the single Judge; or
 - (b) the single Judge or the Registrar refers an application for leave to appeal against conviction or sentence to the Full Court for determination; or
 - (c) there is to be a renewed application for leave to appeal against sentence only.

If the prosecution authority has not yet been served with the appeal notice and transcript, the Registrar will serve these with the notification, and if leave is granted, the Registrar will also serve the authority with the comments of the single judge.

- 39A.4 The prosecution should notify the Registrar without delay if they wish to be represented at the hearing. The prosecution should note that the Registrar will not delay listing to await a response from the Prosecution as to whether they wish to attend. Prosecutors should note that occasionally, for example, where the single Judge fixes a hearing date at short notice, the case may be listed very quickly.

- 39A.5 If the prosecution wishes to be represented at any hearing, the notification should include details of Counsel instructed and a time estimate. An application by the prosecution to remove a case from the list for Counsel's convenience, or to allow further preparation time, will rarely be granted.

- 39A.6 There may be occasions when the Court of Appeal Criminal Division will grant leave to appeal to an unrepresented applicant and proceed forthwith with the appeal in the absence of the appellant and Counsel. The prosecution should not attend any hearing at which the appellant is unrepresented. *Nasteska v. The former Yugoslav Republic of Macedonia (Application No.23152/05)* As a Court of Review, the Court of Appeal Criminal Division would expect the prosecution to have raised any specific matters of relevance with the sentencing Judge in the first instance.

- 39A.7 Where there is a renewed application for leave to appeal against a sentence imposed for an offence involving a fatality, the Crown

Prosecution Service has indicated that it wishes to be represented at all sentence appeals in order to ensure that they are in a position, if appropriate, to make representations as to the impact of the offence upon the victim and their family. In those circumstances, if the court is minded to grant the application for leave to appeal the court should consider adjourning the hearing of the appeal to allow prosecution counsel to attend and for the victim's family to be notified and attend if they so wish.

CPD IX Appeal 39B: LISTING OF APPEALS AGAINST CONVICTION AND SENTENCE IN THE COURT OF APPEAL CRIMINAL DIVISION (CACD)

- 39B.1 Arrangements for the fixing of dates for the hearing of appeals will be made by the Criminal Appeal Office Listing Officer, under the superintendence of the Registrar of Criminal Appeals who may give such directions as he deems necessary.
- 39B.2 Where possible, regard will be had to an advocate's existing commitments. However, in relation to the listing of appeals, the Court of Appeal takes precedence over all lower courts, including the Crown Court. Wherever practicable, a lower court will have regard to this principle when making arrangements to release an advocate to appear in the Court of Appeal. In case of difficulty the lower court should communicate with the Registrar. In general an advocate's commitment in a lower court will not be regarded as a good reason for failing to accept a date proposed for a hearing in the Court of Appeal.
- 39B.3 Similarly when the Registrar directs that an appellant should appear by video link, the prison must give precedence to video-links to the Court of Appeal over video-links to the lower courts, including the Crown Court.
- 39B.4 The copy of the Criminal Appeal Office summary provided to advocates will contain the summary writer's time estimate for the whole hearing including delivery of judgment. It will also contain a time estimate for the judges' reading time of the core material. The Listing Officer will rely on those estimates, unless the advocate for the appellant or the Crown provides different time estimates to the Listing Officer, in writing, within 7 days of the receipt of the summary by the advocate. Where the time estimates are considered by an advocate to be inadequate, or where the estimates have been altered because, for example, a ground of appeal has been abandoned, it is the duty of the advocate to inform the Court promptly, in which event the Registrar will reconsider the time estimates and inform the parties accordingly.
- 39B.5 The following target times are set for the hearing of appeals. Target times will run from the receipt of the appeal by the Listing Officer, as being ready for hearing.

39B.6

NATURE OF APPEAL	<i>FROM RECEIPT BY LISTING OFFICER TO FIXING OF HEARING DATE</i>	<i>FROM FIXING OF HEARING DATE TO HEARING</i>	TOTAL TIME FROM RECEIPT BY LISTING OFFICER TO HEARING
Sentence Appeal	14 days	14 days	28 days
Conviction Appeal	21 days	42 days	63 days
Conviction Appeal where witness to attend	28 days	52 days	80 days

39B.7 Where legal vacations impinge, these periods may be extended. Where expedition is required, the Registrar may direct that these periods be abridged.

39B.8 “Appeal” includes an application for leave to appeal which requires an oral hearing.

CPD IX Appeal 39C: APPEAL NOTICES CONTAINING GROUNDS OF APPEAL

39C.1 The requirements for the service of notices of appeal and the time limits for doing so are as set out in CrimPR Part 39. The Court must be provided with an appeal notice as a single document which sets out the grounds of appeal. Advocates should not provide the Court with an advice addressed to lay or professional clients. Any appeal notice or grounds of appeal served on the Court will usually be provided to the respondent.

39C.2 Advocates should not settle grounds unless they consider that they are properly arguable. Grounds should be carefully drafted; the court is not assisted by grounds of appeal which are not properly set out and particularised in accordance with CrimPR 39.3. The grounds must:

- i. be concise; and
- ii. be presented in A4 page size and portrait orientation, in not less than 12 point font and in 1.5 line spacing.

Appellants and advocates should keep in mind the powers of the court and the Registrar to return for revision, within a directed period, grounds that do not comply with the rule or with these directions, including grounds that are so prolix or diffuse as to render them incomprehensible. They should keep in mind also the court’s powers to refuse permission to appeal on any ground that is so poorly presented as to render it unarguable and thus to

exclude it from consideration by the court: see CrimPR 36.14. Should leave to amend the grounds be granted, it is most unlikely that further grounds will be entertained.

39C.3 Where the appellant wants to appeal against conviction, transcripts must be identified in accordance with CrimPR 39.3(1)(c). This includes specifying the date and time of transcripts in the notice of appeal. Accordingly, the date and time of the summing up should be provided, including both parts of a split summing up. Where relevant, the date and time of additional transcripts (such as rulings or early directions) should be provided. Similarly, any relevant written materials (such as route to verdict) should be identified.

CPD IX Appeal 39D: RESPONDENTS' NOTICES

39D.1 The requirements for the service of respondents' notices and the time limits for doing so are as set out in CrimPR Part 39. Any respondent's notice served should be in accordance with CrimPR 39.6. The Court does not require a response to the respondent's notice.

CPD IX Appeal 39E: LOSS OF TIME

39E.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 sections 29 and 31, to direct that part of the time during which an applicant is in custody after lodging his notice of application for leave to appeal should not count towards sentence. Those contemplating an appeal should seek advice and should remember that a notice of appeal without grounds is ineffective and that grounds should be substantial and particularised and not a mere formula. When leave to appeal has been refused by the single judge, it is often of assistance to consider the reasons given by the single judge before making a decision whether to renew the application. Where an application devoid of merit has been refused by the single judge he may indicate that the Full Court should consider making a direction for loss of time on renewal of the application. However the Full Court may make such a direction whether or not such an indication has been given by the single judge.

39E.2 Applicants and counsel are reminded of the warning given by the Court of Appeal in *R v Hart and Others* [2006] EWCA Crim 3239, [2007] 1 Cr. App. R. 31, [2007] 2 Cr. App. R. (S.) 34 and should 'heed the fact that this court is prepared to exercise its power ... The mere fact that counsel has advised that there are grounds of appeal will not always be a sufficient answer to the question as to whether or not an application has indeed been brought which was totally without merit.'

CPD IX Appeal 39F: SKELETON ARGUMENTS

- 39F.1 Advocates should always ensure that the Court, and any other party as appropriate, has a single document containing all of the points that are to be argued. The appeal notice must comply with the requirements of CrimPR 39.3. In cases of an appeal against conviction, advocates must serve a skeleton argument when the appeal notice does not sufficiently outline the grounds of the appeal, particularly in cases where a complex or novel point of law has been raised. In an appeal against sentence it may be helpful for an advocate to serve a skeleton argument when a complex issue is raised.
- 39F.2 The appellant's skeleton argument, if any, must be served no later than 21 days before the hearing date, and the respondent's skeleton argument, if any, no later than 14 days before the hearing date, unless otherwise directed by the Court.
- 39F.3 Paragraphs XII D.17 to D.23 of these Practice Directions set out the general requirements for skeleton arguments. A skeleton argument, if provided, should contain a numbered list of the points the advocate intends to argue, grouped under each ground of appeal, and stated in no more than one or two sentences. It should be as succinct as possible. Advocates should ensure that the correct Criminal Appeal Office number and the date on which the document was served appear at the beginning of any document and that their names are at the end.

CPD IX Appeal 39G: CRIMINAL APPEAL OFFICE SUMMARIES

- 39G.1 To assist the Court, the Criminal Appeal Office prepares summaries of the cases coming before it. These are entirely objective and do not contain any advice about how the Court should deal with the case or any view about its merits. They consist of two Parts.
- 39G.2 Part I, which is provided to all of the advocates in the case, generally contains:
- (a) particulars of the proceedings in the Crown Court, including representation and details of any co-accused,
 - (b) particulars of the proceedings in the Court of Appeal (Criminal Division),
 - (c) the facts of the case, as drawn from the transcripts, appeal notice, respondent's notice, witness statements and / or the exhibits,
 - (d) the submissions and rulings, summing up and sentencing remarks.
- 39G.3 The contents of the summary are a matter for the professional judgment of the writer, but an advocate wishing to suggest any

significant alteration to Part I should write to the Registrar of Criminal Appeals. If the Registrar does not agree, the summary and the letter will be put to the Court for decision. The Court will not generally be willing to hear oral argument about the content of the summary.

- 39G.4 Advocates may show Part I of the summary to their professional or lay clients (but to no one else) if they believe it would help to check facts or formulate arguments, but summaries are not to be copied or reproduced without the permission of the Criminal Appeal Office; permission for this will not normally be given in cases involving children, or sexual offences, or where the Crown Court has made an order restricting reporting.
- 39G.5 Unless a judge of the High Court or the Registrar of Criminal Appeals gives a direction to the contrary, in any particular case involving material of an explicitly salacious or sadistic nature, Part I will also be supplied to appellants who seek to represent themselves before the Full Court, or who renew to the full court their applications for leave to appeal against conviction or sentence.
- 39G.6 Part II, which is supplied to the Court alone, contains
- (a) a summary of the grounds of appeal and
 - (b) in appeals against sentence (and applications for such leave), summaries of the antecedent histories of the parties and of any relevant pre-sentence, medical or other reports.
- 39G.7 All of the source material is provided to the Court and advocates are able to draw attention to anything in it which may be of particular relevance.

**CrimPR Part 44 Request to the European Court for a preliminary ruling
CPD IX Appeal 44A: REFERENCES TO THE EUROPEAN COURT OF JUSTICE**

- 44A.1 Further to CrimPR 44.3 of the Criminal Procedure Rules, the order containing the reference shall be filed with the Senior Master of the Queen's Bench Division of the High Court for onward transmission to the Court of Justice of the European Union. The order should be marked for the attention of Mrs Isaac and sent to the Senior Master:

c/o Queen's Bench Division Associates Dept
Room WG03
Royal Courts of Justice
Strand
London
WC2A 2LL

- 44A.2 There is no longer a requirement that the relevant court file be sent to the Senior Master. The parties should ensure that all

appropriate documentation is sent directly to the European Court at the following address:

The Registrar
Court of Justice of the European Union
Kirchberg
L-2925 Luxembourg

- 44A.3 There is no prescribed form for use but the following details must be included in the back sheet to the order:
- i. Solicitor's full address;
 - ii. Solicitor's and Court references;
 - iii. Solicitor's e-mail address.
- 44A.4 The European Court of Justice regularly updates its Recommendation to national courts and tribunals in relation to the initiation of preliminary ruling proceedings. The current Recommendation is 2012/C 338/01:
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF>
- 44A.5 The referring court may request the Court of Justice of the European Union to apply its urgent preliminary ruling procedure where the referring court's proceedings relate to a person in custody. For further information see Council Decision 2008/79/EC [2008] OJ L24/42:
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:024:0042:0043:EN:PDF>
- 44A.6 Any such request must be made in a document separate from the order or in a covering letter and must set out:
- iv. The matters of fact and law which establish the urgency;
 - v. The reasons why the urgent preliminary ruling procedure applies; and
 - vi. In so far as possible, the court's view on the answer to the question referred to the Court of Justice of the European Union for a preliminary ruling.
- 44A.7 Any request to apply the urgent preliminary ruling procedure should be filed with the Senior Master as described above.