



Director's Instruction No. 11

Guidelines for Instituting Appeals

Issued: 4 December 2012

AIM OF INSTRUCTION

To set out the procedures within the Office for identifying matters for appeal and for instituting appeals. The Instruction also deals with the procedures for responding to appeals.

To which matters does this instruction apply?

This instruction applies to all matters where an appeal is being considered, and for which an appeal has been instituted. It also applies to matters where the Office is responding to an appeal.

BACKGROUND

1. Key decisions on appeal are made by the Appeals Council, consisting of the Director, the Deputy Director in charge of Crown Chambers and the Assistant Director in charge of the Criminal Practice, in consultation with the Appeals Team.
2. Appeals are co-ordinated by the Appeals Team, headed by the Supervising Prosecutor (Appeals). The Appeals Team is a sub-team within Crown Chambers and is supervised by the Deputy Director head of Crown Chambers.
3. The Appeals team consists of a Supervising Prosecutor (Appeals) a Senior Prosecutor (Appeals) and a Prosecutor (Appeals).
4. **Time is of the essence** when it comes to instituting appeals:
 - Generally the Crown has 28 days to appeal from the making of an order (r5405 CPR);

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- With reference appeals, an application must be made within 6 weeks after the end of the trial, or such longer period as the Court of Appeal allows: s 37S(3) *Supreme Court Act 1933*.
5. It is important to bring the possibility of an appeal to the attention of the Appeals Team as soon as possible. Equally, the Appeals Team should be given a copy of the minute recommending an appeal as soon as possible, at the same time that the minute is given to the reviewing lawyer.
 6. Excessive bureaucracy is to be avoided. The process of drafting a minute of recommendation to the Appeals Team is not designed to be burdensome. It is a task that should take no more than an hour in the first instance (unless the issues are so complex that they require something more).
 7. Documents should be forwarded electronically rather than in hard copy if possible.

THE PROCESS FOR INSTITUTING AN APPEAL IS:

8. Generally, appeals are initiated by individual prosecutors who are unhappy with a decision of judicial officer. Alternatively, a senior lawyer upon hearing of a decision could be troubled by it.
9. When the prosecutor returns from court, the prosecutor may want to briefly chat to the Supervising Prosecutor (Appeals) or another Senior Prosecutor to 'gauge the waters' about appealing the decision.
10. If the prosecutor maintains the opinion that the decision should be appealed, the prosecutor should prepare a short minute of recommendation to cover the following:
 - An outline of the facts essential to understand the judicial officer's ruling and the prosecutor's suggested recommendation;
 - A precise summary of the judicial officers ruling;
 - A suggested basis upon which the appeal could be made (e.g. manifest inadequacy; error of law; mandamus; certiorari; reference) together with brief summary of reasons; and
 - Annexing a copy of relevant material such as the statement of facts, bench sheet, criminal history.
11. That minute should be addressed to Supervising Prosecutor (Appeals) and the reviewing lawyer (see next paragraph). A copy should immediately be given to the Director so that the Director is aware of the matter. The minute should also be given to the reviewing lawyer (see next paragraph).
12. For Magistrates Court matters not involving sex offences, the prosecutor takes the minute to the Supervising Prosecutor (Appeals) or the Senior Prosecutor (Appeals) for review. For all sex matters or Supreme Court matters, the prosecutor takes the minute to the Deputy Director in charge of Crown Chambers for review.

13. After review, if the Supervising Prosecutor (Appeals) is of the view that there is merit in the appeal, then the matter will be referred to the Appeals Council.
14. If the Appeals Council are of the view the matter should proceed to appeal, the following will take place:
 - The prosecutor will be requested to draft a Notice of Appeal. (Templates will be available on Intranet and CASES.)
 - At the same time, the requesting prosecutor may be asked to expand the minute to flesh out more of the issues, grounds or reasons.
 - Once the Notice of Appeal is drafted and minute finalised, the requesting prosecutor will give a copy to the Appeals Council and the reviewing lawyer.
 - The reviewing lawyer will make their recommendation on the minute and forward this to the Appeals Council.
15. The Appeals Council will decide whether to institute the appeal by consensus, and if appropriate sign the Notice of Appeal. It will then be given to the Supervising Prosecutor (Appeals) for filing.

LISTINGS

16. In relation to appeals from the Magistrates Court, these matters will be managed by the Supervising Prosecutor (Appeals) and allocated through the Major Matters Meeting once a hearing date is obtained.
17. In relation to Crown appeals to the Court of Appeal, these will be allocated to counsel by the Appeals Council as soon as the appeal is lodged.
 - For such appeals, the allocated prosecutor will usually be the Director or a member of Crown Chambers.
 - The Supervising Prosecutor (Appeals) will work with the allocated prosecutor in settling the index and progressing the matter.
18. In relation to appeals to the Court of Appeal for which the Crown is a Respondent, these will be allocated by the Appeals Council once a hearing date is obtained (see below for further instruction).

SPECIAL CONSIDERATIONS REGARDING APPEALS TO COURT OF APPEAL

Crown Sentence Appeals from Supreme Court

19. Crown Chambers will proactively consider all Supreme Court sentences to determine whether an appeal is warranted. This will involve Crown Chambers identifying in advance what sentences are listed, and whether they are likely to be

matters of interest. After each sentence is handed down, Crown Chambers will consider each sentence.

20. The Crown Chambers will meet at least once a fortnight to consider all Supreme Court sentences and trials as well as all respondent appeals for that fortnight. Prosecutors will be consulted before the meeting about any matters of relevance to them.
 - This does not preclude prosecutors bringing to the attention of Crown Chambers and the reviewing lawyers, any sentences they think should be appealed (following the process outlined in paragraphs 7 – 13 above).
21. In sexual assault matters, the submission can go directly to the Appeals Team from the head of the sexual assault unit.
22. Whether initiated by the Appeals Committee or individual prosecutors, the minute of recommendation (as per paragraph 9 above) should be sent to the Appeals Team as soon as possible.

Other Crown appeals including reference appeals

23. The Appeals Team will be the focus of requests for the consideration of other Crown appeals.
24. Again it is expected that the Appeals Team process will assist in identifying appeals.
25. A copy of the minute of recommendation should be sent directly to the Appeals Team at the same time it is sent to the reviewing lawyer.
26. If the appeal is approved, the Appeals Council (in accordance with paragraph 15) will allocate the matter so that the following can take place:
 - The allocated prosecutor (with the assistance of the Appeals Team) will prepare the draft index of the appeal book and ultimately the appeal book.
 - The allocated prosecutor will prepare a draft submission of the Crown's argument which will be forwarded to the Appeals Team.

Responding to appeals in the Court of Appeal

27. In order to avoid re-allocations and duplication of work, (in accordance with paragraph 16) all appeals to the Court of Appeal where the Crown is a respondent will be allocated once a hearing date is known.
28. Court of Appeal sittings are known well in advance. The Supreme Court Practice Manager (with the Appeals Team) will ensure that the Appeals Council is given sufficient lead time in order to allocate such appeals.

29. Once the Appeals Council has allocated the matters, the allocated prosecutor will consider the matter without delay and advise the Appeals Team in broad terms of the appeal. In doing so, the allocated prosecutor will consult as necessary with the appropriate prosecutor having knowledge of the matter.
30. The allocated prosecutor will prepare draft submissions which will be forwarded to the Appeals Team.
31. The draft submissions will be forwarded to the Appeals Team no later than one week before they are due to be served on the appellant. In some cases, this will be before the appellant's submissions have been received.