



Home Office

## Criminal appeals

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## Criminal appeals

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This guidance tells Immigration Enforcement Criminal and Financial Investigation (CFI) teams about the different types of criminal case appeals and the people who you investigate.

It tells you what you must do if an investigation assigned to you is the subject of an appeal and gives advice on the process when a case is the subject of:

- an appeal against sentence or conviction imposed by a magistrates' court
- an appeal against sentence or conviction imposed by a Crown court
- an appeal made by the Attorney General, on your behalf, against an unduly lenient sentence
- how appeals are handled in Northern Ireland
- the work of the criminal cases review commission (CCRC) who handle and refer allegations of miscarriages of justice
- appeals lodged with 'higher courts', for example:
  - the High Court
  - the Court of Appeal
  - European courts
- details of who you should refer any appeal to if you receive one

Changes to this guidance – This page tells you what has changed since previous versions of this guidance.

Contact – This page tells you who to contact for help with a specific case if your manager can't answer your question.

Information owner - This page tells you who the information owners are and tells you how the guidance can be updated.

Safeguard and promote child welfare – This page explains your duty to safeguard and

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	promote the welfare of children and tells you where to find more information.	
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### Criminal appeals: Changes to this guidance

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This page lists changes to the 'Criminal appeals' guidance, with the most recent at the top.

Date of the change	Details of the change
08 July 2015	Change request: <ul style="list-style-type: none"><li>replaced 'Immigration Enforcement Specialist team' with 'the national single point of contact (SPOC)'</li><li>general housekeeping changes</li></ul>
06 December 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none"><li>Minor housekeeping and plain English changes throughout.</li></ul>
02 July 2013	Completely revised by the modernised guidance team.

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## Criminal appeals

### An overview of criminal appeals

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This page tells Immigration Enforcement Criminal and Financial Investigation (CFI) teams what an appeal is and what you must do if you are told one of your investigation cases is the subject of an appeal.

#### **Appeals: a definition**

In law, an appeal is a process for requesting a formal change to an official decision. If you work in an Immigration Enforcement Investigation team, your work will usually mean you are involved in investigating:

- criminal cases in a wide range of suspected offences, for example:
  - immigration facilitation and human-trafficking offences
  - document offences
  - money-laundering offences
- civil cases, for example:
  - investigations that follow cash seizures, where the objective is to seize the cash if it is proven to be the proceeds of criminal activity, but where an individual is not prosecuted

#### **Criminal cases**

In criminal cases, the defendant is the individual prosecuted for the offence and the prosecution normally ends with a:

- trial which is either a:
  - summary trial in a magistrates' court
  - trial on indictment held in a Crown court
- sentencing hearing, where the defendant pleads 'guilty' or is found 'guilty' of the offence, that decides:
  - whether a custodial (prison) sentence is necessary
  - the length of any sentence
  - whether a fine or penalty must be paid

- whether another form of punishment or rehabilitation measure should be imposed, for example a period of community service
- whether the proceeds of the crime committed should be forfeited or destroyed
- whether any other previous offences should be 'taken into consideration' (the legal term for considering any other offences committed by someone when deciding what prison sentence or other punishment should be given to them)

If the defendant and their legal representative (normally a solicitor or barrister) wish to contest a decision made during a trial or sentencing hearing, they must lodge an appeal to the courts.

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### Appeals relating to immigration enforcement investigation cases

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This page tells Immigration Enforcement Criminal and Financial Investigation (CFI) teams about the sort of appeals you may receive following an immigration enforcement investigation which involved an alleged immigration or false document offence being committed.

This guidance also outlines what action to take when you are notified (told) an appeal has been lodged.

#### Prosecutions brought in the magistrates' courts

Once the magistrates have reached a decision on an offender's guilt, the defendant has an automatic right of appeal to the Crown court against the:

- conviction, where:
  - any witnesses who gave evidence at the magistrates court will normally also have to give evidence to the Crown court
- sentence issued:
  - witnesses involved at the magistrates' court hearing will not normally have to attend again

The defendant and the prosecution (the Crown Prosecution Service (CPS)) may also appeal on a 'point of law or jurisdiction' to the High Court by way of a 'case stated' or, more exceptionally, ask for the magistrates' court decision to be judicially reviewed.

The defendant is often called 'the appellant' – this is the suspected offender or defendant if that person has been charged with an offence.

Situation	Action required by the appellant	Action that you must take
The appellant lodges an appeal against:	The appellant must lodge a notice of appeal within 21	If you receive a notice of appeal you must

#### Related links

[The role of the National Single Point of Contact](#)

	<ul style="list-style-type: none"> <li>• the verdict</li> <li>• the sentence given</li> </ul>	<p>days of the verdict or sentence to the:</p> <ul style="list-style-type: none"> <li>• clerk to the justices</li> <li>• prosecution (the CPS)</li> </ul>	<p>immediately:</p> <ul style="list-style-type: none"> <li>• forward a copy to the CPS lawyer who handled your case (they will then be able to advise you whether you need to take further action)</li> <li>• inform the national single point of contact (SPOC) for more information, see related link</li> </ul>	
	<p>Either the appellant or the prosecution lodge an appeal by way of a case stated against a point of law or jurisdiction.</p>	<p>The applicant must ask the magistrates to 'state a case on which they have based their decision'.</p> <p>This appeal must be submitted to the magistrates within 21 days of the day on which the court sentences the defendant.</p>	<p>If you receive a notice of appeal to state a case on a point of law or jurisdiction you must immediately:</p> <ul style="list-style-type: none"> <li>• forward a copy to the CPS lawyer who handled your case (they will then be able to advise you whether you need to take further action)</li> <li>• inform the national single point of contact (SPOC) - see details below</li> </ul>	



**Prosecutions brought in the Crown courts**

In the same way as with magistrates' court appeals, the defendant can seek leave to appeal to the Court of Appeal against:

- conviction
  - this includes being able to argue against a legal point
- the sentence issued

In all cases which involve a Crown court appeal, the CPS lawyer will deal with all appeal applications, but they may ask for your help or input by providing evidential papers. If you receive notification of a Crown court appeal directly (because either the appellant or the court sent it to you instead of to the CPS), you must immediately send a copy of the appeal to the:

- CPS lawyer who is dealing with your case
- Immigration Enforcement national single point of contact (SPOC) - for more information on the SPOC see related link

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### The role of the national single point of contact

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This page tells Immigration Enforcement Criminal and Financial Investigation (CFI) teams about the role of the Immigration Enforcement National Single Point of Contact (SPOC) when you receive notification that an appeal has been lodged in connection with one of your investigations.

The National Single Point of Contact (SPOC):

- specialises in providing advice and guidance to investigation managers and officers on criminal investigations
- is the single point of contact for all criminal appeals that affect criminal investigations and prosecutions

#### Contacting the national SPOC

You must inform the national SPOC as soon as possible if:

- you receive notification of a criminal appeal against one of your prosecutions
- in conjunction with the Crown Prosecution Service (CPS), you decide to lodge an appeal against a:
  - point of law
  - court's decision to acquit a defendant
  - sentence awarded that is thought to be unduly lenient

#### External links

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The national SPOC contact details for criminal appeals are:

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### Attorney General appeals

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This page tells Immigration Enforcement Criminal and Financial Investigation (CFI) teams about the Attorney General, and their role in appealing certain issues on behalf of the Home Office.

The Attorney General is the main legal advisor to the UK government. The Attorney General:

- has supervisory powers over the prosecution of criminal offences in the UK
- sometimes determines whether bringing a prosecution to the courts is in the public interest
- is sometimes referred to as the solicitor general for England and Wales
  - there is a separate attorney general for Northern Ireland (NI) who is sometimes referred to as the advocate general for NI
- does not get personally involved with prosecutions and investigations led by government departments such as the Home Office

The Attorney General can appeal against any court decisions which affect immigration enforcement investigations, but most often will appeal on the Home Office's behalf where they believe a sentence handed down by a court is 'unduly lenient'.

#### **Unduly lenient sentence: definition**

An unduly lenient sentence is one where the:

- sentence issued by the court judge or magistrate falls outside the range of sentences specified in law (after the judge or magistrate has considered any mitigating factors)
- prosecuting department believes the punishment given to the offender by the courts is not strict enough

The Attorney General will usually become involved in an appeal when:

**External link**  
[Advocates used by the CPS](#)

[Criminal Justice Act 1988](#)

- the Crown Prosecution Service (CPS) ask them to intervene:
  - the CPS lawyer will discuss any appeal with the immigration enforcement team before contacting the Attorney General
- another interested party, such as the victim of the crime or a member of parliament (MP), believes that the offender's punishment is insufficient
- media coverage of the case means that the Attorney General believes that it is in the public interest to lodge an appeal to increase the offender's punishment

**Unduly lenient sentences: appeals**

The Criminal Justice Act 1988 (subsections 35 and 36) empower (allow) the Attorney General to appeal to the Court of Appeal about certain decisions made by a magistrates' or Crown court. The Court of Appeal:

- sits (hears and decides upon appeal cases) at the Royal Courts of Justice in London
- hears appeals against decisions made by other courts, sometimes known as 'the lower courts', these are:
  - the High Court
  - county courts across England and Wales, for example a magistrates' court or a Crown court
  - certain tribunals such as the immigration appeal tribunal

The Attorney General can apply to:

- the Court of Appeal for permission to appeal against a prison sentence thought to be exceptionally lower than expected
- make an application to the Court of Appeal to review sentences heard in the Crown court:
  - the Court of Appeal can quash (withdraw) the sentence
  - replace it with a heavier sentence, which the lower court had the power to pass

The Attorney General, or the defence, may refer any point of law that arises as a result of the increased sentence to the House of Lords.

If it is felt a court's action has resulted in an unduly lenient sentence, an application for review must be filed with the Registrar of Criminal Appeals within 28 days of sentencing. Any decision to invite the Attorney General to refer such a case is to be made at Commissioner level.

**What you must do if you receive notification of an appeal**

The Home Office will usually ask the CPS to deal with all such appeals. When an appeal has been lodged for one of your investigations, you must send the CPS lawyer:

- transcripts of the 'pleas of mitigation and sentencing':
  - when the court judge or magistrate decides on a punishment for someone found guilty of a criminal offence, the judge or magistrate must consider any mitigation (reasons or excuses for the offender's role in the crime) which can sometimes reduce the maximum level of punishment that would otherwise have been given
  - the judge or magistrate must use legal guidelines which show the minimum and maximum sentence that can be given for each offence, together with the recommended mitigation reductions
  - the courts must make and retain a transcript (typed record) of the sentence and mitigation details used by the judge or magistrate. In all immigration enforcement cases, the investigation officer must ask the court to provide a copy of this transcript even if no appeal will be considered later
- the prosecution advocate's opinion and any documentation, which must be prepared within the 28 day time limit:
  - a prosecution advocate is a solicitor or legally trained person who will sometimes work on behalf of the CPS if the CPS lawyer cannot attend the court hearing themselves

For more information about advocates used by the CPS, see related link.

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### Appeals made in Northern Ireland

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This page tells you about immigration enforcement investigation cases that lead to an appeal through the courts in Northern Ireland.

The UK does not have a single unified judicial courts system – there are different courts and processes in place for:

- England and Wales
- Scotland
- Northern Ireland

There are some exceptions to this where one system covers the whole of the UK, for example, the Asylum and Immigration Chamber makes decisions which affect any case within the UK.

The court system of Northern Ireland (NI) includes civil and criminal courts. Both are responsible for the administration of justice in NI and follow NI law.

#### **NI magistrates' court appeals**

The Home Office or a defendant can appeal to the NI county court against decisions made by NI magistrates' courts, specifically against a:

- conviction:
  - this takes the form of a second hearing of the case at the county court
  - witnesses who gave evidence in the magistrates' court will normally have to give their evidence again to the county court
- sentence awarded:
  - witnesses are not normally expected to give evidence again at the county court when the appeal is against a sentencing decision only

#### **Related links**

[The role of the National Single Point of Contact](#)

#### **External links**

[Courts and tribunal service - Northern Ireland](#)

In Belfast and Londonderry, the county courts are also referred to as recorders' courts.

If a defendant wishes to appeal against a decision of a magistrates' court they must:

- do so within 14 days of the date of the magistrates' decision
- give notice of appeal to the clerk to the justices and to the complainant (the Home Office immigration enforcement investigation team)

If the defendant pleaded guilty to the offence, they may appeal against the sentence but not usually against conviction.

Both parties may appeal on a point of law alone, by asking the magistrates to state a case for the opinion of the Court of Appeal.

#### **What you must do if you receive notification of an appeal**

If you work in a NI Immigration Enforcement Investigation team (or in another UK team but your case is being dealt with by a NI court) and you receive notice of an appeal from a defendant, or a NI court, you must send a copy of the appeal immediately to the:

- director of public prosecutions for Northern Ireland (DPP NI), and include the:
  - notice of appeal
  - full evidence bundle used in the prosecution
- Immigration Enforcement national single point of contact (SPOC) - for more information on the national single point of contact, see related link

All other action is taken by the DPP (NI).

Sometimes you may receive the notice of appeal from the clerk to the justices, when this happens you must:

- ask the clerk to the justices to forward a copy of the notice to you
- make sure that a copy is sent to the DPP (NI) immediately and phone them to make



sure it has been received

- inform the SPOC

Sometimes, the defendant may send you a copy of their notice of appeal directly. Where this happens you must:

- tell the defendant that they must lodge the notice with the court
- immediately inform the DPP (NI) and the SPOC

### **Appeal decisions**

The decision of the county court judge is final on appeals from the magistrates' courts, except where the judge may be asked to state a case on a point of law for the Court of Appeal in the same way as the magistrates' court.

For further information on the NI courts and tribunal service, see related link: [Courts and tribunal service - Northern Ireland](#).

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This page tells you who to contact if you need more help with a question about criminal appeals.

If you have read this guidance and still need more help, you must first ask your line manager.

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This page tells you about this version of the guidance for 'Criminal appeals', and who owns it.

Version	3.0
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#### External links

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