

# insideinformation – fact sheet

## Appeals

Information courtesy of William Cordingly of Morgans Solicitors Cardiff

### **From the Magistrate's Court**

There are 3 methods of challenging a decision of a Magistrates Court;

An appeal to the Crown Court can be against either conviction or sentence and is effectively by way of a re-hearing. You do not need specific grounds to appeal in this way. The time limit for appealing is within 21 days of sentence. You should bear in mind that the Crown Court can reduce or increase a sentence and can award costs against you if you are not successful.

An appeal to the Divisional Court by way of case stated, this can only be on the grounds that the decision is wrong in law or in excess of jurisdiction. You should ask the Magistrates to state a case within 21 days of the decision initially and if they refuse you will then need to apply to the High Court to ask them to make the Magistrates state a case. There are of course potential costs implications if you lose but the Divisional Court can reverse a decision including a decision to acquit. If you follow this route of appeal you cannot also appeal to the Crown Court.

The third method is Judicial Review. There is a fact sheet that covers Judicial Review.

### **From the Crown Court**

In order to appeal to the Court of Appeal you must show that you have grounds to say that either your conviction was unsafe or that your sentence is manifestly excessive or wrong in principle. If you were represented you can ask your advocate for written advice, it is best to do this quickly given the time limits.

You can also appeal if fresh evidence comes to light but the rules regarding this are quite restrictive. The Court of Appeal must first decide that the evidence is capable of belief, that it relates to a ground of appeal and there must be a reasonable explanation for it not having been used at trial. Appeals are almost always refused if the evidence could have been used at trial but was not for tactical or other reasons.

In order to appeal you must complete a form NG. This should normally be accompanied by an advice from an advocate with higher court rights, grounds of appeal and an application for leave if applicable. This form must be sent to the Crown Court where you were convicted not the Court of Appeal itself.

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The single judge can give you permission on some or all of your grounds and will take into account the reason you are appealing after the time limit has expired. You will not be given leave unless you have a good reason for being out of time or in some circumstances if you have a very strong case. If the single judge refuses leave you can still argue for leave orally before the full Court of 3 judges.

You should bear in mind that the Court of Appeal has power in some circumstances to order that the time you have spent as an appellant does not count toward your sentence. If you have applied for leave the single judge will indicate whether he thinks time should be added by putting his initials in the box at the bottom right of the letter he sends you. Although it is not common for the Court to do this it is something you should consider. It is not unknown for a person to be refused leave by the single judge but succeed before the full court. If you reach this stage alone you would be well advised to seek legal advice.

If you have nominated an advocate in your form NG then the Court of Appeal will agree to pay them for the hearing out of the legal aid fund. It is not normal for solicitors to be paid to represent you unless there is a specific reason for this or the appeal is complex or involves witnesses.

Once you have passed these hurdles your appeal will be heard before the Full Court of Appeal. You would be well advised against pursuing an appeal past the leave stage on your own. The Court of Appeal will strongly encourage you not to do so in any event.

### IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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