

**Research Briefing**

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# A short guide to the criminal justice system

# 1

## Introduction

This paper will focus on the first two stages of the criminal justice system in England and Wales. First, reporting crimes to the police, and their powers to conduct an investigation and apprehend suspects. Secondly, suspects charged with crimes enter the court system where their guilt and culpability for the offence is assessed and any punishment handed out.

This short guide aims to explain the process to help Members with constituents going through the criminal justice process.

This paper does not include information on prisons and the criminal justice process post-conviction. Instead, the Library has published [a range of other materials](#) containing this information.

## 1.1

### Key Actors

#### Police forces

Police forces are responsible for the prevention, detection and investigation of crime. As such, they are also the first point of contact for anyone wishing to report a crime.

During a criminal investigation, [police officers have various common law and statutory powers](#)<sup>1</sup> designed to help them gather evidence, interview people and detain suspects. They also have the power to make charging decisions in certain, lower-level cases. Police forces have an obligation to conduct effective investigations and to treat victims and witnesses in accordance with their rights.

#### Police and Crime Commissioners (PCCs)

Most police forces in England and Wales are overseen by [an elected PCC](#).<sup>2</sup> PCCs are also responsible for commissioning the majority of local support services for victims of crime in conjunction with their local police forces.

PCCs set their policing agenda for their area through a five-year ‘police and crime plan’ and will often outline their approach to victim support in these plans.

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<sup>1</sup> [Police powers: an introduction](#), Commons Library briefing 8637

<sup>2</sup> [Police and Crime Commissioners](#), Commons Library briefing 6104

In Greater Manchester, West Yorkshire and Greater London the role of a PCC is performed by the Combined Authority Mayor. In the City of London, it is performed by the [City of London Police Authority](#).

## Crown Prosecution Service (CPS)

The primary criminal prosecuting authority in England and Wales is [the CPS](#). The CPS is an independent body responsible for prosecuting criminal cases that have been investigated by the police and other investigative organisations.

The CPS employs criminal solicitors who can provide legal advice to the police, are often responsible for making the decision to charge a suspect and support barristers presenting the case for the prosecution in court.

The CPS is led by the Director for Public Prosecutions who is currently [Max Hill QC](#).

## Her Majesty's Courts and Tribunals Service (HMCTS)

[HMCTS](#) is the executive agency responsible for the administration of courts and tribunals in England and Wales.<sup>3</sup>

HMCTS is responsible for some practical aspects of criminal court proceedings. For example, they are responsible for the safe and secure accommodation of defendants held in custody whilst they appear in court as well as the provision of courtroom adjustments afforded to vulnerable victims under the Victims' Code.

## Magistrates' courts and the Crown Court

These are the courts of first instance in England and Wales, meaning that defendants will have their cases heard in one of these courts first. All cases begin at a magistrate's court<sup>4</sup> but serious offences are immediately sent to the Crown Court for sentencing or trial.

Important to note is that a jury trial will only take place where a defendant pleads not guilty in the Crown Court.<sup>5</sup> A defendant appealing a decision from a magistrate's court will typically do so in the Crown Court.<sup>6</sup>

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<sup>3</sup> GOV.UK, HM Courts and Tribunals Service, [About Us](#) (accessed 05, January 2022)

<sup>4</sup> Courts and Tribunals Judiciary, [Magistrates' Court](#) (accessed 05 January 2022)

<sup>5</sup> Courts and Tribunals Judiciary, [Crown Court](#) (accessed 05 January 2022)

<sup>6</sup> GOV.UK, [Appeal a magistrates' court decision](#) (accessed 05 January 2022)

## Court of Appeal

The Criminal Division of the Court of Appeal hears appeals of decisions from the Crown Court from the defence if they can establish grounds to appeal.<sup>7</sup> Alternatively, the Attorney General can appeal a sentence if they believe it is unduly lenient.<sup>8</sup>

Depending on whether the appellant is appealing the conviction or the sentence, the Court of Appeal can amend or overturn the conviction or change the sentence as they judge necessary.

Court of Appeal Criminal Division judgments are binding on the Crown Court and magistrates' courts.

## Sentencing Council

The Sentencing Council is a non-departmental, independent body that issues guidelines on sentencing in England and Wales.<sup>9</sup> Its main aim is to promote greater transparency and consistency in sentencing, while maintain the independence of the judiciary.

# 2 Reporting and Investigation

## 2.1 Reporting a crime

Crimes can be reported to the police in several ways:

- Dial 999 in an emergency or when reporting terrorist activity;
- Non-emergencies can be [reported online](#) or by calling 101;
- Police forces also often have their own crime reporting webpages such as [Greater Manchester Police](#) and [Cambridgeshire](#);
- People can also report crimes anonymously to [Crimestoppers](#), who will pass the report to the police.

Anyone can report crime to the police. Once the report is received, the police have responsibilities to provide the victim with certain information including:

- written confirmation of the crime report;
- a crime reference number;
- contact details for the police officer dealing with your case;
- details of next steps;

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<sup>7</sup> GOV.UK, [Appeal a Crown Court Sentence](#) (accessed 06 January 2022)

<sup>8</sup> Crown Prosecution Services, [Unduly Lenient Sentences](#), 09 March 2021

<sup>9</sup> Sentencing Council, [About the Sentencing Council](#) (accessed 06 January 2022)

- how frequently the police will provide updates on the investigation.<sup>10</sup>

Under [their obligations](#) in the Victim’s Code, the police will carry out a ‘needs assessment’ to find out what support the victim requires and ask a [support organisation](#) to contact them within 2 days.<sup>11</sup>

More information on the rights of victims is available in the [support for victims of crime](#) casework page.

## 2.2 Police investigation

The first stage of any police investigation of a crime report is an [initial investigation](#). This determines whether a full investigation would be an appropriate use of police resources. Most police forces have internal policies that guide their initial assessment decisions. For example, the Metropolitan Police “investigative assessment” will broadly assess:

- the victim’s vulnerability as defined by the [Victim’s Code](#);
- the severity of the offence;
- the case’s solvability based on the evidence that exists to help build a case. For instance, are there [witnesses](#) or is [CCTV evidence](#) available?<sup>12</sup>

To conclude an initial investigation, the police will need to complete various steps, including:

- [obtaining an account](#) from the victim and any other victim/s or witnesses;
- meeting the immediate needs of the [victims](#) and [witnesses](#);
- examining the [crime scene \(if applicable\)](#);
- taking any [fast-track actions](#) likely to establish important facts, preserve evidence or lead to the early resolution of the investigation.

The police have an obligation to record certain information under a statutory [Code of Practice](#) issued under section 23 of the [Criminal Procedure and Investigations Act 1996 \(CPIA\)](#). The Code prescribes how the police should record, retain and reveal to the CPS material obtained in a criminal

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<sup>10</sup> GOV.UK, [Appeal a Crown Court decision](#) (accessed 05 January 2022)

<sup>11</sup> Ministry of Justice, [Code of Practice for Victims of Crime in England and Wales \(Victim's Code\)](#), Right 4, 21 April 2021

<sup>12</sup> Metropolitan Police, [What happens after you report a crime?](#) (accessed 05 January 2022)

investigation. These records may contain the personal data of the person who reported the crime as well as any witnesses.

Constituents may be able to obtain this information by submitting a [subject access request](#) to the police force concerned under the [Data Protection Act 2018](#). However, the 2018 Act also give forces a [statutory power](#) to [exempt the information from disclosure](#) to the extent that it is likely to prejudice the investigation of crime or the apprehension of offenders.

At the end of the initial investigation, the case will either be closed or allocated for further investigation.

## Closing a case

Where an investigation is closed it will not be investigated further. However, if the police receive new evidence relating to the case they may decide to re-open the case. The victim and any recorded witnesses will be notified if that happens.

Victims can request that a decision to close an investigation without charging a suspect be reviewed under their [Victim's Right to Review](#). However, this can only be done in cases where there is already a named suspect, which may be unlikely in the early stages of an investigation.<sup>13</sup>

Otherwise, there is no formal way for a victim to challenge these investigative decisions as police forces retain operational discretion. However, they can complain about their treatment to the police force or to the [Independent Office for Police Conduct](#) (IOPC). The Library has produced a [short guide to police complaints](#) for victims who may wish to take this route. Complaining will not necessarily lead to a review of the police's decision as forces make independent decisions about how to investigate crime and prioritise their resources.

## Further investigation and arrests

When a case is referred for further investigation, investigating officers will be assigned to the case. One officer will be assigned as the [single point of contact](#) for the victim throughout the investigation.<sup>14</sup> Forces have different policies on how victim care is delivered, but victims are guaranteed access to services outlined in the Victim's Code.

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<sup>13</sup> Crown Prosecution Service, [Victim's Right to Review](#)

<sup>14</sup> Ministry of Justice, [Code of Practice for Victims of Crime in England and Wales \(Victim's Code\)](#), 21 April 2021

If the investigation does not uncover enough evidence to charge a suspect with an offence, police have a responsibility to take ‘no further action’ and close the case until new evidence comes to light.

If a suspect is identified, the police have a [range of investigative strategies](#) for dealing with that individual. Suspects must be detained, treated and questioned in line with [Code C](#) of the Police and Criminal Evidence (PACE) Act 1984.<sup>15</sup>

Once arrested, suspects are granted rights including being informed of the offence they have been arrested for, free legal advice and medical assistance if required.<sup>16</sup>

## 3 Charging and prosecution

Where there is a realistic prospect of conviction, the police, a prosecuting authority or a private entity (see section 3.3) can make the decision to charge the suspect. This is typically the [Crown Prosecution Service](#) (CPS) but other agencies also have statutory prosecution powers.<sup>17</sup>

### 3.1 Police charging decisions

For lower-level offences, the police can [charge a suspect](#) directly. This includes for:

- any [summary offence](#) (including criminal damage with a value of less than £5000);
- any offence of retail theft (shoplifting) or attempted retail theft provided that can be sentenced in a magistrates' court; and
- any [either way offence](#) where the defendant is likely to plead guilty and is suitable for sentence in a magistrates' court;

This is unless the case falls into a list of exclusions outlined in Annex 1 of [the CPS charging guidance](#), for instance if the case involves a death or is connected with terrorist activity.

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<sup>15</sup> [Police powers: detention and custody](#), Common's Library Briefing 8757

<sup>16</sup> GOV.UK, [Being arrested: your rights](#) (accessed 06 January 2022)

<sup>17</sup> Crown Prosecution Service, [Relations with other prosecuting agencies](#), 05 October 2020

In making a charging decision, the police often work together with the CPS, seeking advice from the CPS lawyers either in person or, for less complex cases, over the phone or through [CPS Direct](#).

Victims can request a review of a police decision not to prosecute a suspect directly with the force responsible for the investigation. Although the structure of forces differs across the country, all police VRR schemes must conform with [guidelines](#) from the National Police Chiefs' Council (NPCC) (formerly the Association of Chief Police Officers (ACPO)). These 2015 guidelines were due for an update in 2017 but remain the most up to date guidelines publicly available. They may be updated in the future, with [NPCC's 2019-2021 victims strategy](#) highlighting a desired review of the police VRR scheme (pages 14-15).

Important to note here is that, in general, very few police decisions not to charge will qualify for a review as the exceptions (outlined in para 4.5 of the [guidelines](#)) are broadly drawn.

## 3.2

### CPS/Public prosecution decisions

The [Code for Crown Prosecutors](#), issued by the Director of Public Prosecutions, sets out the general principles public prosecutors should follow when they make decisions on cases.

To start or continue a public prosecution, prosecutors must ensure that the case has passed the [Full Code Test](#). This test has two limbs:

- Evidential test - is there sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge?
- Public Interest Test - is a prosecution in the [public interest](#)? Factors include the seriousness of the offence, the suspect's level of culpability and the level of harm caused. In some cases it may be more appropriate to deal with the case by way of an out-of-court disposal rather than a prosecution.

This test is used together with guidance issued by the Director for Public Prosecutions.<sup>18</sup>

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<sup>18</sup> Crown Prosecution Service, [Charging \(The Director's Guidance\) - sixth edition, December 2020 | The Crown Prosecution Service](#), 31 December 2020



Where not all the evidence is available at the time when a suspect has to be charged or released, prosecutors may instead satisfy the lower [Threshold Test](#) to detain the suspect while the evidence is gathered.<sup>19</sup>

There is a separate policy for CPS [charging decisions for deceased suspects](#).

A victim of crime can [seek a review](#) of certain decisions by the prosecutor not to pursue a prosecution or to stop a prosecution.

If the victim objects to a CPS not to prosecute or to stop a prosecution, they have a right to ask for that [decision to be reviewed](#). Alternatively, they can [complain to the CPS](#) directly.

An [accessible guide](#) on the victim's right to review scheme for victims has been published by the charity Rights of Women. Although targeted primarily at women, anyone wishing to use the right to review scheme could benefit from the information in the guide.

### 3.3

## Private prosecutions

[Section 6\(1\)](#) of the Prosecution of Offences Act 1985 preserves the right of an individual to institute or conduct criminal proceedings. This protects the right for anyone, including any organisation, to bring a private prosecution.<sup>20</sup> This is the route through which organisations such as [the RSPCA](#) and [Royal Mail](#) can commence criminal prosecutions.

Constituents wishing to bring a private prosecution should be aware of their limitations:

- the Director of Public Prosecutions (DPP) has power under section 6(2) POA 1985 to take over private prosecutions;
- in some cases, the private prosecutor must seek the consent of the Attorney General or of the DPP before the commencement of proceedings.

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<sup>19</sup> College of Policing, [Charging and case preparation](#), Threshold Test, 16 December 2021

<sup>20</sup> Crown Prosecution Service, [Private Prosecutions](#), October 2019

## 3.4 Out of court disposals

To save time and resources for the police and courts, the police can avoid instigating a formal prosecution for some low-level offending by using an [Out of Court Disposal](#) (OCD).

OCDs are a range of options available to police as an alternative to prosecution. They include:

- [Simple Caution](#) - there are separate guidelines on the use of simple cautions for [adult offenders](#) and [young offenders](#);
- [Conditional caution](#) - As with simple cautions, there are separate guidelines for [youth conditional cautions](#);
- [Penalty Notices for Disorders](#) (PNDs) - [Information](#) on GOV.UK may be useful for constituents in understanding how and when PNDs are issued;
- Cannabis warnings - the GOV.UK [drug penalties](#) page summarises that police can issue fines or warnings for possession of cannabis. [Sentencing Council guidelines](#) may be useful for constituents who are given a cannabis warning to understand the status of the warning.

Victims of low-level offending may be asked to be a part of [Community Resolution](#), which is an informal process including them in the process of issuing a conditional caution. This allows victims to attach conditions to an offender's conditional caution, assuming that the conditions are reasonable. The operation of community resolution is governed by NPCC (formerly ACPO) [guidelines](#) from 2012.

The Police, Crime, Sentencing and Courts Bill currently going through Parliament contains amendments to the adult OCD framework which may alter the situation for constituents subject to OCDs in the future.<sup>21</sup>

## 3.5 The Community Trigger

In cases involving sustained antisocial behaviour (ASB), if a victim feels that their reports have been ignored or not investigated or acted upon properly, they may be able to request an ASB case review, also known as the Community Trigger. According to the [Local Government Association's guidance](#):

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<sup>21</sup> [Police, Crime, Sentencing and Courts Bill 2019-21: Part 6- Cautions](#), Commons Briefing Paper 9165

Case reviews are intended to provide an opportunity to assess what action has been taken in response to previous complaints and, where the problem behaviour persists, bring agencies together to identify a more joined up, problem-solving response for the victim concerned.

Victims need to contact the relevant authority to request a case review. The charity ASBHelp maintains a [Community Trigger Directory](#) with links to the relevant page on each local authority's website. Third parties, including MPs can, with the consent of the victim, apply for a case review on their behalf.

If the review results in further measures being applied, the relevant authority will share an 'action plan' with the complainant, including timescales for the implementation of the measures.

Section 3.4 of the Library's [short guide to anti-social behaviour complaints](#) contains further details on how a victims can request a review under the Community Trigger. Further background information on the community trigger has been published by the Library in section 5.3 of the [tackling anti-social behaviour](#) briefing paper.

## 4 The court system

Criminal cases are heard in either a [magistrates' court](#) or the [Crown Court](#). Cases with defendants between 10-17 years-old are heard in a [youth court](#), which are set up similarly to a magistrates' court.

Almost all cases begin in the magistrates' court which then decides whether to send the case to the Crown Court. Offences are split into three categories based on their seriousness:

- [Summary offences](#)

Lower-level offences that carry lesser sentences, such as most motoring offences or minor criminal damage. They are usually dealt with by a magistrates' court, but the Crown Court can deal with summary offences in [certain circumstances](#).

- [Either-way offences](#)

Offences that can be sentenced in either a magistrates' court or Crown Court such as burglary and many drug offences.

- [Indictable offences](#)

Serious offences that can only be tried ‘on indictment’ in the Crown Court, such as robbery or serious violent or sexual offences. Cases are typically sent to the Crown Court immediately on an initial hearing.

Constituents can find their local magistrate’s or Crown Court on [the GOV.UK website](#).

If a defendant pleads guilty to the offence as charged, the case will move immediately to sentencing. In a magistrates’ court, the defendant may be sentenced immediately or referred to the Crown Court for sentencing at a later date if the offence is sufficiently serious.

Where a defendant pleads not guilty, the case will go to trial. Here, the prosecution will present their case for a conviction and the defendant will have an opportunity to refute that case.

## 4.1

### Legal representation

The defendant can be [represented in their case by a lawyer](#), including through [legal aid](#), or [by representing themselves](#) as a ‘litigant in person.’

There are different tools for finding a lawyer depending on the type of lawyer the defendant requires and which UK nation they are in:

- England and Wales;
  - [Legal advisors or solicitors](#)
  - [Barristers](#)
- Scotland;
  - [Legal advisors or solicitors](#)
  - [Barristers](#)
- Northern Ireland
  - [Legal advisors or solicitors](#)
  - [Barristers](#)

## 4.2

# Court proceedings and appearing in court

All trials in England and Wales are conducted in accordance with the [Criminal Procedure Rules](#), which govern every aspect of every stage of the criminal court process.

If the case is being heard in a magistrates' court, the trial will be overseen by two or three [magistrates](#) or a [District Judge](#). Trials for offences in magistrates' courts are known as [summary trials](#).

A trial in the Crown Court will be held with a jury who is guided throughout the case by the judge before reaching a verdict on the defendant's guilt. Juries are constituted of 12 people randomly selected from the electoral register.<sup>22</sup>

Parties to the case can sometimes vet or object to selection of members of the jury.<sup>23</sup> More details on this process and the different types of judges are published on [the Judiciary website](#).

## Evidence and witnesses

The parties build their cases around sources of [evidence](#) including [forensics](#) and witnesses.

In the interests of a fair trial and [the principle of 'equality of arms'](#), strict [disclosure rules](#) ensure that both parties have access to evidence that may undermine the case for the prosecution.

Police and prosecutors are obligated to treat witnesses in accordance with the [Witness Charter](#) and victim witness in accordance with enhanced rights granted by the [Victim's Code](#).

Further information on the Victim's Code is published in the Library's constituency casework article on [support for victims](#).

Vulnerable or intimidated witnesses may be granted [special measures](#) in court to help them give evidence and relieve stress.

Types of special measures are laid out in [section 23-30](#) of the Youth, Justice and Criminal Evidence Act 1999 (YJCEA). Examples include screens to shield the view between the defendant and the victim, allowing the witness to give evidence via live link or having barristers and judges remove their gowns and wigs.

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<sup>22</sup> [Jury Service](#), 13 December 2019

<sup>23</sup> Crown Prosecution Service, [Jury vetting](#), 10 July 2018

## Staying proceedings

At any point, the court has the power to halt or ‘stay’ proceedings where it believes there has been an abuse of process that would undermine a defendant’s right to a fair trial if proceedings were allowed to continue.<sup>24</sup>

## 4.3 Feedback and complaints

There are a variety of avenues for constituents to register formal complaints against various parts of the court process:

- [HMCTS](#) can receive feedback and complaints about the administration of a person’s case; the condition of a HMCTS building; the security procedures within the court; and a person’s treatment during their time at court.
- The [Crown Prosecution Service can receive complaints directly](#). However, convicted defendants wishing either to appeal a conviction or exercise their victim’s right to review should not complain to the CPS to achieve this.
- Constituents can complain against [officials in a magistrates’ court](#) for their behaviour, language or conduct;
- Constituents can complain to the [Judicial Conduct Investigations Office](#) regarding the personal conduct of Crown Court judges.

## 5 Sentencing

If a defendant is found not guilty, then they will be free to leave court immediately after the end of the hearing. If the defendant is found guilty, they are convicted of the crime. It then falls to the judge (or magistrate) to [pass a sentence](#) which will serve as punishment for the crime.<sup>25</sup>

The [Sentencing Council](#) is responsible for monitoring sentencing in England and Wales. It publish guidelines on sentencing for most of the significant offences sentenced in the [magistrates’ court](#) and for a wide range of offences in the [Crown Court](#).

Guidance for practitioners on using Sentencing Council guidelines is also available [on their website](#), which may also be useful for defendants.

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<sup>24</sup> Crown Prosecution Service, [Abuse of Process](#), 20 July 2021

<sup>25</sup> Crown Prosecution Service, [Sentencing – Overview](#), 10 September 2019

The four main [types of sentence](#) in general order of severity are:

- [Discharge](#)
- [Fine](#)
  - [calculated](#) based on the severity of the offence and the amount that an offender can be expected to pay. Fines generally fall into one of six [bands](#)
- [Community sentence](#)
  - These include the [Community Payback](#) which involves unpaid work as well as required attendance at [programmes and treatment services](#) designed to help an offender tackle personal issues and reduce the likelihood of reoffending.
- [Custodial sentence](#)
  - [Suspended sentences](#)
  - [Determinate sentences](#)
  - [Extended sentences](#)
  - [Life sentences](#)

The maximum custodial sentence that a magistrate's court can impose for an offence is six months in custody.<sup>26</sup> A defendant convicted of an either-way offence (see section 4 above) in a magistrate's court can be committed to the Crown Court for sentencing if the magistrates believe their sentencing powers do not reflect the seriousness of the offence.<sup>27</sup>

For some specified offences, constituents who believe that a sentence passed by a court is too lenient can ask the Attorney General's Office to [review the sentence](#). The Office may then send the case to the Court of Appeal to appeal the sentence.

Once convicted, the defendant can appeal to the Court of Appeal against a sentence they believe to be too harsh if they can establish grounds for appeal (see below).

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<sup>26</sup> GOV.UK, [Criminal Courts](#) (accessed 06 January 2022)

<sup>27</sup> Sentencing Council, [Sentencing Hearings](#) (accessed 06 January 2022)

## 6 Appeals

It is very important for a constituent to seek [legal advice](#) if they are considering an appeal.

There is general information about appealing both a magistrates' court verdict and a Crown Court verdict in England and Wales at the [appeal a sentence or conviction](#) on the GOV.UK website.

### 6.1 Appealing from a magistrate's court

Constituents wishing to appeal must make their appeal to the magistrates' court within 21 days of their sentencing. Otherwise, the constituent must ask the Crown Court for permission to appeal. The procedure for appeals should be explained to the parties to the case by the magistrates' court.

The [appeal a magistrates' court verdict](#) page on the GOV.UK website contains information on the appeals process and procedure. The CPS has also published a more detailed [guidance to the appeals process](#). This is aimed more towards legal professionals but may still be useful to constituents.

### 6.2 Appealing from the Crown Court

An appeal against a decision from the Crown Court is made to the [Court of Appeal Criminal Division](#).

Constituents must apply for permission to appeal within 28 days of their conviction (if appealing their conviction) or sentencing (if appealing their sentence). However, it may be possible to get an extension for a late application.

As with magistrates' courts, there is information about the appeal process and procedure at the [appeal a Crown Court verdict](#) page on GOV.UK. Also, as above, the [CPS guidance](#) of appeal to the Court of Appeal is more technical but may still be useful to constituents.

There is more practical information for constituents about appeals from the Crown Court in these guides from [HMCTS](#) and the charity [JUSTICE](#).



GOV.UK has also produced [guidance for people](#) representing themselves in the Court of Appeal as litigants in person.

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