

APPEALS AGAINST WRONGFUL CONVICTION

It is commonly believed that if an individual is convicted of a criminal offence, they are entitled to appeal if they think that it is wrongful and to have the conviction overturned if the individual is innocent. However, this is not how the criminal appeals system works, nor is being innocent the basis upon which wrongful convictions are overturned. Instead, criminal appeals in England and Wales attempt to determine not whether appellants are factually guilty or factually innocent, but whether convictions are 'safe' or 'unsafe' in law according to the prevailing rules and procedures of the appeal court in question (see Naughton, 2013).

There are two main routes to appeal against a criminal conviction in England and Wales: first, appeals to the Crown Court for convictions given in a magistrates' court for less serious offences, such as motoring offences, minor assaults, theft and handling stolen goods; and, second, appeals to the Court of Appeal (Criminal Division) for convictions given in the Crown Court for more serious offences, such as murder, manslaughter, rape and robbery. Alleged victims of wrongful convictions, whether convicted in a magistrates' court or the Crown Court, can also apply to the Criminal Cases Review Commission (CCRC), the world's first statutory public body that reviews alleged miscarriages of justice that have failed in the normal appeal process, in order to have their convictions referred back to the relevant appeal court for further consideration.

Analysing these in order, those convicted in a magistrates' court have an automatic right to appeal to the Crown Court, whereupon there is a full rehearing of the case. In addition, if alleged victims of wrongful convictions in magistrates' courts fail to obtain an acquittal in an appeal to the Crown Court, the original conviction will be upheld, but the appellant has further appeal rights to the Court of Appeal (Criminal Division).

Despite the extensive appeal rights provided to those convicted in magistrates' courts, there is not an automatic right to an appeal against criminal convictions given in the Crown Court. Rather, those convicted in the Crown Court are only permitted to make a request for leave to appeal to the Court of Appeal (Criminal Division), and this usually has to be done within 28 days from the date of the conviction. Appeals to the Court of Appeal (Criminal Division) against criminal convictions given in the Crown Court also have other stipulations that detract from the lay understanding. For instance, there is a requirement that, except in exceptional circumstances, any evidence to be considered by the Court of Appeal (Criminal Division) is 'fresh' evidence that was not or could not have been made available at the time of the original trial. This means that alleged victims of wrongful convictions who may have evidence of factual innocence that was not made available at the time of the original trial (defence lawyer error

or incompetence, for instance) may not have that evidence accepted as grounds of appeal by the Court of Appeal (Criminal Division).

Finally, the CCRC is the last resort for alleged victims of wrongful conviction who fail to have their convictions overturned in the normal appeals system. It was established in response to notorious wrongful conviction cases such as the Guildford Four and Birmingham Six because the previous system for investigating alleged wrongful convictions was apparently failing to refer potentially meritorious cases back to the appeal court for political as opposed to legal reasons (see Naughton, 2009). However, the CCRC has been subjected to much critique (see Naughton and Tan, 2013) in that its claimed independence and ability to assist innocent victims of wrongful convictions is fundamentally undermined by the requirement that it only refer cases back to the appeal courts if it thinks that there is a 'real possibility' that the conviction will be overturned. This literally handcuffs the CCRC to the rules and procedures of the appeal courts, also restricting the cases that it can refer to those in which there is fresh evidence that was not available at the original trial or previous appeal. In consequence, alleged victims of wrongful convictions who may be innocent and who are unable to fulfil this test may not be able to overturn their convictions.

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See also: Miscarriage of Justice, Wrongful Conviction and Victims

Readings

- Naughton, M. (2009) 'Introduction', in M. Naughton (ed) *The Criminal Cases Review Commission: Hope for the innocent?* Basingstoke: Palgrave Macmillan, pp 1–14.
- Naughton, M. (2013) 'The Court of Appeal (Criminal Division)', in M. Naughton (ed) *The innocent and the criminal justice system*. Basingstoke: Palgrave Macmillan, pp 140–59.
- Naughton, M. and Tan, G. (2013) 'Report: Symposium on the Reform of the Criminal Cases Review Commission'. Available at: <http://www.innocencenetwork.org.uk/wp-content/uploads/2013/01/CCRC-Symposium-Report.pdf>

AUSTERITY, HARM AND VICTIMISATION

In the UK, austerity is the main policy response to the financial crisis that began to unfold in 2007/08 and describes the expansion of a neoliberal economic