

Righting wrongs: what are the barriers to women seeking to overturn unsafe sentences in the Court of Appeal (Criminal Division)?

Naima Sakande

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Abstract

This research explores the barriers women experience in seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal (Criminal Division). Appeals to this Court have dropped by 36% from 2011 to 2019, and there is evidence to suggest that women may face particular barriers in challenging convictions and sentences. The research adopted a mixed-methods approach, which included analysis of letters from women in custody writing to APPEAL (a non-profit law practice specialising in criminal appeals) (n=132); a questionnaire completed by women in prison (n=33) and a survey of legal professionals (n=20). The research documents the specific challenges faced by women in the criminal justice system. These barriers included gendered factors, such as an under-confidence among women to take on appeals and the prioritisation of recovery from trauma and mental illness on women's arrival from custody, meaning that the 28-day time-frame for lodging an appeal were exceeded. Further external barriers include a lack of access to information about the appeal system, varying standards of advice offered by legal professionals and a lack of public funding for such work. The report concludes with recommendations for practice, policy and legislative changes.

Findings

- There has been an overall decline in the numbers of applications to the Court of Appeal Criminal Division (CACD) in recent years.
- Women may constitute a disproportionately small proportion of those making appeals to overturn convictions or sentences for criminal offences.
- There has been no research to date on women's experiences of the criminal appeal system.
- Women writing to APPEAL to seek information on the appeal process typically served longer sentences (more than 12 months).
- More than half of the women felt that custody was a disproportionate punishment and a third of women felt that the effect of imprisonment on their children had not been considered.
- More than a quarter of women felt that their pre-sentence report was incorrect or incomplete and many women complained that their mitigating circumstances were not given appropriate weight.
- More than four-fifths of women writing for advice on appeal were significantly outside of the 28-day appeal window from the date of their conviction or sentence.
- Questionnaire data showed concern about access to legal representation and ineffective assistance from lawyers.
- Women expressed a lack of understanding of the appeal process and identified barriers including prior experience of domestic abuse and mental illness.
- Legal professionals identified the 28-day appeal window as a significant barrier for women, particularly for those with shorter sentences.

- Cuts to Legal Aid funding has impacted the ability of women to gain access to justice.

Recommendations

- The Ministry of Justice should revise the terms of the Standard Crime Contract 2017 for criminal legal aid services to provide better funding for work on appeals.
- The Solicitors Regulation Authority and Bar Standards Board should issue guidance to solicitors outlining their responsibilities in relation to correspondence with former clients.
- The CACD should update their guidance to emphasise that representatives should aim to see defendants face-to-face to explain the prospects of appeal on conclusion of a case.
- The Law Society should develop accredited training on building trust with vulnerable clients.
- Information on appeal should be better publicized by Her Majesty's Court and Tribunal Service and Her Majesty's Prison and Probation Service.
- Legislative change is required to extend the 28-day deadline for appeal to 6 months.
- The CACD should publish its annual report and include statistics disaggregated by sex or gender and conduct further research to monitor any bias or disproportionate outcomes.