

Research Paper

2019/02



Righting Wrongs: What are the barriers faced by women seeking to overturn unsafe sentences in the Court of Appeal (Criminal Division)?

Naima Sakande

Executive Summary

www.thegriffinsociety.org

Executive Summary

Background

I am a criminal defence investigator at APPEAL, a non-profit law practice, specialising in challenging wrongful convictions and unfair sentences for women in criminal cases. The impetus for this research came from the fact that I found it difficult to convince women to appeal short sentences for low level, non-violent crimes that were clearly unjust. An internal project at APPEAL looking into past cases heard by the Court of Appeal (Criminal Division) (CACD) found that, of a sample of 268 appeals lodged between 1997 and 2010, only 19 were women, a mere 7% of cases. I was further concerned by the decline in total applications to the CACD, down 36% from 2011-2019. While the CACD does not report the number of applications by sex or gender, I feared that women may be disproportionately underrepresented in the criminal appeal process. I could find no research on women's experience of the criminal appeal system and this project sought to fill that gap.

Key Objectives

Women must be able to use and effectively participate in the criminal appeal system. I therefore set out to answer the question: What barriers do women face in seeking to appeal their convictions and sentences to the CACD? This report seeks to answer this question through the voices and experiences of women in custody and those of legal professionals.

Overall Research Design:

Given the lack of prior research on this topic, I decided to use the direct experiences of women in custody and legal professionals to answer my questions. I aimed to analyse the experiences of as many women in custody as I could by reviewing a set of letters written to APPEAL over a two-year period, as well as written questionnaires sent to women in prison. I also sought the input of legal professionals with experience of the CACD through an online survey. While this mixed methods study is of a small scale, I believe it is the only study examining the barriers to appealing convictions and sentences women face.

Methodology:

Though I employed both qualitative and quantitative analysis to answer my research questions, my design was weighted towards qualitative analysis, applying Braun and Clarke's six step thematic analysis technique (2006) to assess the experiences and views expressed by respondents.

Three different data sources were examined:

1. An analysis of APPEAL's existing database of letters written by women in custody writing to the service to seek advice on appeal. A total of 132 letters received by APPEAL between 2017 and 2019 were examined.
2. Responses to a questionnaire completed by 33 women in prison and women who had served custodial sentences.
3. Responses to a survey completed by 20 barristers, solicitors and other legal professionals with experience of representing women at trial and on appeal.

Thematic Analysis – Key Findings:

My analysis revealed three categories of barriers.

1. Gendered barriers to appeal:
 - Women often did not reveal their experiences of gendered trauma such as domestic abuse to legal representatives and were afraid of being disbelieved. As a result, such stories often came to light well after conviction and sentence and outside of the 28-day appeal window.
 - Women decided not to appeal due to feelings of shame and to avoid placing further strain on their children.
 - Upon arrival to custody, women focused on pressing issues such as recovering from poor mental health or addiction and did not prioritise appealing.
 - The risk of a facing loss of time order seemed to have a disproportionately chilling effect on women's desire to appeal, particularly those given short sentences.
2. External barriers to appeal:
 - Women lacked knowledge of the appeal process. More than a third of women's letters displayed ignorance about how to lodge an appeal.

- Women in prison had little access to information or resources, from things as basic as the addresses of law firms to access to printing facilities and paperwork. Women whose literacy or grasp of the English language was poor were even less able to access information.
- Quality standards of legal representation were inconsistent. Half of the women's letters complained that their legal representatives had in some way fallen short in providing them with adequate advice and advocacy.

3. Procedural barriers to appeal:

- The vast majority (86%) of women writing for advice on appeal were significantly outside of the 28-day appeal window from the date of their conviction or sentence. Reasons for explaining the delay were that women were not able to figure out the appeal process in time, and that their mental ill health had prevented them from seeking a timely appeal.
- Lawyers felt that it had become harder to win cases in the CACD, with fewer grants of leave being given, tougher criteria for appeals out of time and fresh evidence rules being too stringent. Because of this, advocates found appellate work frustrating and felt the fundamental attitude of the CACD was to dissuade appellants from seeking to appeal.
- The lack of funding, particularly for initial work on appeals created a further lack of incentive for lawyers to take on appeals.

Collectively, the findings question whether a system that is out of reach to many of those that it serves can ever be described as procedurally fair.

Summary Conclusions:

This research highlights that:

- There are significant and overwhelming barriers to appealing convictions and sentences to the CACD, both for women and men.
- However, these barriers are higher for women because of the experiences of trauma and victimisation that are prevalent in the women's prison population.
- Acknowledging women's different experience raises fundamental questions about the legitimacy of the CACD as a legal body capable of righting wrongs done to women.

Recommendations:

In light of this research, I recommend the following:

For Legal Professionals

- The **Ministry of Justice** should publish a revision of the terms of the Standard Crime Contract 2017 for criminal legal aid services to include:
 1. funding for case closing meetings with clients face-to-face on conclusion of a criminal case.
 2. a reversal of the policy that does not allow second opinions on the merits of appeal within 6 months of the first.
 3. an extension of legal aid to renewal hearings when permission has been refused by the single judge.
- The **Solicitors Regulation Authority** and **Bar Standards Board** should:
 1. issue guidance to all solicitors stating that failing to respond to letters from former clients may be viable grounds for complaint and sanction.
 2. state that failure to respond to requests for paperwork may violate clients' right to their own data under the General Data Protection Regulations in the Data Protection Act 2018.
- The **Court of Appeal (Criminal Division)** should:
 1. update section A1 of the CACD's *Guide* on Advice and Assistance to emphasise that representatives should always aim to see the defendant face-to-face to explain the prospects of appeal on conclusion of a case.
 2. clarify that face-to-face conferences should be followed by the issuing of written advice, even if negative, in every case.
- The **Law Society** should:
 1. provide an online course or curriculum on its Professional Development Centre learning gateway for criminal practitioners on building trust with vulnerable and traumatised clients.
 2. consider offering Continuing Professional Development accreditation for such training to incentivise uptake.

In the Crown Court

- **Her Majesty's Court and Tribunal Service** should:

1. make HMCTS's *Guide to Commencing Proceedings in the CACD* available in hard copy as a matter of course to all convicted defendants in the Crown Court.
2. produce a short leaflet distillation of the *Guide* (translated, with copies available in other languages) and make this available for legal representatives to give clients in post-conviction conferences in the Crown Court cells.
3. produce posters explaining the 28-day time limit, rights to legal aid and the process for lodging an appeal unrepresented and put these up in Crown Court cells.

In Prison

- **Her Majesty's Prison and Probation Service** should:
 1. put up posters explaining the 28-day time limit, rights to legal aid and the process for lodging an appeal unrepresented in prison induction units. Special care should be taken to make these available and visible in the women's estate.
 2. make appeal 'toolkits' available in prison libraries including the *Guide*, copies of the relevant forms for lodging appeals, the Information Commissioner's Office's *Guide to Data Protection* detailing an individual's right to their own data as clarified by the General Data Protection Regulations in the Data Protection Act 2018, and the addresses of law firms and chambers that accept legally aided appeals work.

In the Court of Appeal (Criminal Division)

- **Parliament** should:
 1. revise the Criminal Appeal Act 1968 (as amended) to revoke the 28-day restriction and substitute a 6-month deadline to bring an in-time appeal, allowing defendants time to adjust to the prison regime, seek out alternative representation if needed, and develop fresh evidence that may support grounds of appeal.
 2. discard section 29 of the Criminal Appeal Act 1968 allowing for loss of time orders to be made. They are not in the interests of justice and are discriminatory to women and others given short sentences.
- **The Court of Appeal (Criminal Division)** should:
 1. publish its annual report including statistics disaggregated by sex or gender in order to better understand how its reforms and decisions affect different kinds of appellants.

2. collect, report and analyse data on the number of BAME appellants availing themselves of their right to appeal, echoing the first recommendation of the 2017 Lammy Review.
3. conduct further internal research to monitor any bias or disproportionate outcomes for minority groups.
4. consider setting up regional courts so not all appeals have to be heard centrally from the Royal Courts of Justice in London. This should improve the capacity of the CACD to hear a greater volume of appeals.

ENDS

