

11. Appeals

Magistrates' court (acting in its civil capacity) and orders on conviction in criminal proceedings

Section 4 of the Crime and Disorder Act 1998 provides the offender with the right of appeal against the making of a stand-alone ASBO.

Section 108 of the Magistrates' Courts Act 1980 provides a right of appeal against an on-conviction order. An appeal in both cases is to the Crown Court. Rules 74 and 75 of the Magistrates' Courts Rules 1981 and 6 to 11 of the Crown Court Rules 1982 apply to appeals against orders. Both parties may provide additional evidence. By virtue of section 79(3) of the Supreme Court Act 1981, an appeal is by way of a re-hearing of the case. In determining an appeal, the Crown Court should have before it a copy of the original application for an order (if applicable), the full order and the notice of appeal. The lead agency should ensure that copies are sent to the court.

Notice of appeal must be given in writing to the designated officer of the court and the applicant body within 21 days of the order (Crown Court Rules 1982, rule 7). But the Crown Court has the discretion to give leave to appeal out of time (rule 7(5)). The agency that brought the initial application should take charge of defending any appeal against the order. It should also lead in action to guard against witness intimidation.

The Crown Court may vary the order or make a new order. Any order made by the Crown Court on appeal shall be treated for the purpose of any later application for variation or discharge as if it were the original magistrates' court order, unless it is an order directing that the application be re-heard by the magistrates' court.

Although on hearing an appeal it is open to the Crown Court to make any incidental

order, for example to suspend the operation of a prohibition pending the outcome of the appeal where this appears to the Crown Court to be just, there is no provision for automatic stay of an order pending appeal. The order remains in force pending the outcome of the appeal, and breach is a criminal offence even if the appeal subsequently succeeds.

An appeal against the ruling of the Crown Court is to the High Court by way of case stated under section 28 of the Supreme Court Act 1981, or by application for judicial review by virtue of section 29(3) of that Act. It is also open to the applying authority to seek to challenge a magistrates' decision to refuse to grant an order by way of case stated (judicial review of the decision to the divisional court) by virtue of section 111 of the Magistrates' Courts Act 1980.

County court

Any appeal against an order made in the county court must be made in accordance with part 52 of the Civil Procedure Rules. Appeals against orders made by district judges will be to a circuit judge and against orders made by circuit judges to the High Court.

Appeals to the High Court by case stated

Any person who was party to any proceedings or is aggrieved by the conviction, order, determination or other proceedings of the court may question the proceedings on the grounds that it is wrong in law or in excess of jurisdiction.

The court can then be asked to state a case for the opinion of the High Court.

The case stated is heard by at least two High Court judges, and more often three judges sit, including the Lord Chief Justice. No evidence