

FORMAL MEMORANDUM

COURT OF APPEAL PAPERS – ALTERNATIVE SOURCES

Introduction

1. The principal value of the Court of Appeal file to the review of an application is the identification of issues raised in previous appeal proceedings, the arguments/evidence put forward and the manner of their resolution by the court. In addition, the file should invariably include the trial judge's summing up, which is an invaluable start to understanding what the case is about and how it was presented to the jury, as well as being the source from which any misdirection or errors of law might be identified.

Documents usually found on the Court of Appeal file

2. Key documents which will normally be available from the Court of Appeal file are:
 - Transcript of trial judge's summing up
 - Court of Appeal judgment
 - Sentencing remarks
 - Pre-sentence reports
 - Advice on appeal
 - Grounds of appeal
 - Single judge's comments
 - Correspondence [usually only relevant if appellant has drafted grounds but also may be useful if the applicant has waived legal privilege]
 - Criminal Appeal Office case summary.

3. Other relevant documents, depending on the grounds of appeal, might include:

- Other transcripts (of evidence/rulings on matters of law)
- Applications to call fresh evidence
- Witness statements; documentary exhibits; photographs; Crown Court log
- PII material
- Transcripts of PII hearings in Crown Court
- Transcripts of PII hearings in Court of Appeal
- Responses from defence counsel and/or solicitor if appeal involved allegation of incompetent representation

} (see paragraph 15 below)

Alternative sources of commonly sought documents

4. If the Court of Appeal file is not available, most of this material should be obtainable from other sources which are set out below, together with a suggested order of approach. It is possible that the applicant himself may have some of the material, so the application form should be checked.

5. Transcripts

Transcripts of summing up, sentencing remarks, evidence or rulings may be found on the following files:

(a) Prosecution file

- only where there has been a full court hearing
- this is not likely to be a source of sentencing remarks as the prosecution is rarely involved with sentence appeals

(b) Defence file

6. If this is unsuccessful, and the applicant does not have copies, the transcript(s) should be requested from the appropriate Court Reporters. In relation to previously transcribed material, this will be a request for a copy which should not cost too much and be provided fairly quickly. As a last resort, if official transcripts cannot be located the trial judge's notebook is an alternative source of the evidence, albeit not a verbatim source.

7. Court of Appeal judgment

- Many post-1996 judgments can be obtained from the internet (Smith Bernal reporters).
- For 1993 – 1996 judgments: try John Larkin Court Reporters
- Otherwise, try prosecution file, defence file, Crown Court file, Supreme Court library or even prison records. As a long shot, some surprising material gets onto prison records.

- The Supreme Court Library has judgments from 1963 - November 1989. Judgments delivered after this date can be obtained by contacting the After Court section of the Court of Appeal, Criminal Division.

8. Pre-sentence reports

- Defence file
- Probation service (the original source of the reports)
- Prison records

9. Single judge comments

- Defence file
- Prison records

10. Advice on appeal/grounds of appeal

- Defence file
- Prosecution file (grounds of appeal only)

11. Correspondence; applications to call fresh evidence

Generally, correspondence is not likely to be particularly significant except where the appellant has drafted his own grounds of appeal. In that event, the appellant may have kept a copy. Otherwise, the grounds can usually be discerned from the full court judgment and, sometimes, from the single judge's comments.

The defence file is likely to be the only source of copy applications to call fresh evidence.

12. Criminal Appeal Office summary

It may be possible to locate the electronically stored record via the Criminal Appeal Office case lawyer. Otherwise there is no alternative source. The document could well be useful if the Court of Appeal file cannot be located as an alternative source summarising evidence and grounds of appeal.

13. Witness statements; documentary exhibits etc.

- Crown Court file (only likely source of Crown Court generated material)
- Prosecution file
- Investigating body file
- Defence file.

14. Responses to allegations of incompetent representation

The source of the response is trial solicitor and/or defence counsel

15. PII material and transcripts of PII hearings

During the course of the appeal proceedings, any material in these categories should have been kept separate from the Court of Appeal file and stored securely by the Registrar of Criminal Appeals. This should include PII material itself, transcripts and/or tapes of any PII hearings at the Crown Court and tapes of any PII hearings in the Court of Appeal. If all or any of this material is no longer held by the Registrar of Criminal Appeals when a request for access to it is made (which may well be the case if that request is more than about six months after the appeal has been disposed of), then:

- PII material itself should be available from the prosecuting or investigating bodies.
- The Crown Court may have transcripts and/or tapes of PII hearings there.
- Loss of tapes of PII hearings in either Crown Court or Court of Appeal leaves the recollection of those at the hearing as the only likely source of information and includes, from an *ex parte* hearing, prosecuting counsel and his instructing solicitor. If the hearing was *inter partes*, defence counsel and his instructing solicitor become additional possible sources. Counsel is likely to be the most reliable source where informed recollection is required, on the assumption that he will frequently be accompanied by an unqualified representative from instructing solicitors. That person may however have taken a note unless the sensitive nature of the hearing prevented it.

16. Material from prosecution or defence counsel

If pursuit of any of the above avenues fails, inquiry of prosecution or defence counsel should be considered. It is unlikely that counsel will have retained any of the papers in the brief, but they may have kept notebooks and they may have a recollection of the point in issue.

17. Pressure to locate Court of Appeal Files

This responsibility lies with the Stage 1 team which periodically presses the Court of Appeal about missing files while cases here are awaiting allocation. Allocation will not be delayed simply because the Court of Appeal file has not been sent. If a case is allocated without the Court of Appeal file, the Case Review Manager should at that point consider what material might assist the review and initiate action to recover it from alternative sources.