

SHERIFF APPEAL COURT

(CRIMINAL)

PRACTICE NOTE

No. 1 of 2015

Introduction

1. The purpose of this Practice Note is to set out the practice of the Sheriff Appeal Court (“the Court”) in dealing with criminal appeals. It comes into force on 22nd September 2015.
2. This Practice Note derives from the existing practice of the High Court of Justiciary in relation to summary criminal appeals. The Court intends to review its practice once it begins to hear appeals. Where no provision is made in the Rules or this Practice Note about any aspect of procedure in relation to summary criminal appeals, practitioners should have regard to the practice of the High Court in relation to that type of business.

Lodging additional documents for second sift

3. The form, content and intimation requirements for all documents associated with appeals against conviction and/or sentence are set down in the Criminal Procedure (Scotland) Act 1995 (“the Act”) and the Act of Adjournment (Criminal Procedure Rules) 1996 (“the Rules”).
4. The Act does not expressly permit the lodging of additional material in advance of the second sift. Despite that, in the High Court a practice had developed of such material being lodged. The Court will continue to accept the lodging of additional material, but practitioners should note that all such material must be intimated to the Crown. Any material not so intimated will not be considered by the Court at the second sift.

Reporting restrictions

5. The general principle (that is to say the general constitutional principle of open justice) is that judicial proceedings are heard and determined in public. There should accordingly be public access to judicial determinations including the reasons given for them and the identity of parties.
6. This general principle is only to be departed from in the following examples of those exceptional circumstances where an order restricting the reporting of proceedings ("a reporting restriction") is made. Reporting restrictions can arise:
 - (a) where the court makes an order under statute;
 - (b) where the court makes an order at common law;
 - (c) where the court makes an order to ensure that the court does not act in a way which is incompatible with the European Convention on Human Rights ("the Convention").

Procedure for the making of reporting restrictions

7. Chapter 56 of the Rules enables the Court to make an interim order when it is considering making an order restricting the reporting of proceedings.
8. Where an interim order is made, notification will be given to any interested person. An interested person is a person who has asked to see any order made by the Court restricting the reporting of proceedings and whose name appears on the list kept by the Lord Justice General for the purposes of Chapter 56.
9. Interested persons have two days to make representations on the interim order, if so advised. Where representations are lodged a hearing will be fixed. If no representations are lodged, the clerk will put the interim order before the Court in chambers so that it may resume consideration of whether to make an order. If no order is made, the Court must recall the interim order.
10. Where an order has been made, interested persons will again be notified via email and the making of the order will appear on the Scottish Courts and Tribunals Service webpage. Any person aggrieved by the making of the order may at any time thereafter apply for the revocation or variation of the order.

Procedural hearing: written case and argument

11. Where a written case and argument is lodged in terms of rule 19.18A(3), the Court will ordinarily fix a procedural hearing.
12. At the procedural hearing, for the purposes of determining whether parties are ready to proceed to a hearing of the appeal, the Court will check whether the written case and argument has been lodged in accordance with rules 19.18A(4) and 19.18A(5).
13. The Court will ordinarily fix the date and time for the hearing of the appeal at the procedural hearing. However, if the time estimated by the appellant for the hearing of the appeal in terms of rule 19.18A(4)(b) is longer than two hours then the appellant will be asked to explain why this is the case before the Court does so.
14. The Court will ordinarily proceed as mentioned in paragraph 13 although some of the appellant's preparations may be outstanding. The Court does so in the knowledge that the appeal hearing is likely to be fixed in the region of 3 months from the date of the procedural hearing and that this period ought to be sufficient for preparations to be completed.

Hearings in appeals against conviction and sentence

15. Unless there is good reason not to, the Court will hear appeals against conviction and sentence at a single sitting.

Use of sound equipment and digital recording of proceedings

16. The courtroom contains equipment installed to support digital recording of proceedings and sound enhancement and hearing impaired systems. These systems are designed to facilitate the administration of justice by improving the quality of recording and of audibility in the courtroom.
17. Where there is no requirement to record proceedings, the sound enhancement and assistance for the hearing impaired part of the system will still be in operation.
18. With the exception of the Bench microphone, which, through a single push button on the Bench, has a press-to-mute facility to permit private conversation between an Appeal Sheriff and the clerk of court, all other microphones are live and cannot be unplugged or muted.

19. On occasion, practitioners may wish to engage in private conversations at the court well table and may wish to exclude completely the possibility of such conversations being overheard in the courtroom. Testing has demonstrated that softly spoken conversations undertaken away from the direct vicinity of microphones are unlikely to be picked up by either the recording or the sound enhancement systems.
20. In the event of any concern about a particular conversation being overheard, it is open to the presiding Appeal Sheriff to interrupt the proceedings and direct the clerk of court to turn off the sound enhancement system. Such interruption is unlikely to be necessary, and sound enhancement systems should not routinely be turned off when the Court is in session as the general public and persons with impaired hearing will not be able to hear proceedings.
21. It is important that court users speak directly towards a microphone when addressing the court. Most of the microphones installed in the courtrooms can be moved to a certain extent, but apart from this practitioners and other court users should not move or interfere with the microphones or obscure them with books or file binders, as this is likely to adversely affect the recording of court proceedings.
22. All court users should speak audibly, clearly and insofar as it is practicable in the direction of the microphones to ensure that all parties can hear proceedings and to facilitate clarity of recording.

Citations of cases in court

23. Where a case has been reported and the publisher of the report has made an electronic version available, practitioners who wish to cite it may present a printed copy of the electronic version. It must be presented to the court in an easily legible form and the practitioner presenting the report must be satisfied that it has been reproduced in an accurate form from the data source. In any case of doubt the Court will rely on the printed text of the report unless the editor of the report has certified that the electronic version is more accurate because it corrects an error in an earlier printed text of the report.
24. For the avoidance of doubt, the Court requires that where a case has been reported in Justiciary Cases it must be cited from that source. Other series of reports may only be used when a case is not reported in Justiciary Cases.

Judgments: anonymisation and the Data Protection Act 1998

25. There exists, prior to the publication of a written judgment, the opportunity for an Appeal Sheriff to “anonymise” it (for example, using initials instead of a person’s name). The effect of such a step is not the same as an order restricting reporting (see paragraphs 5 to 10). The media will still be able to report the proceedings (including a person’s name) but anonymisation allows for other personal information to be excluded where it is not, in the eyes of the Appeal Sheriff, relevant to the decision or necessary for the purposes of pronouncing judgment.
26. At this stage Appeal Sheriffs will have regard to the principles of the Data Protection Act 1998. In particular, they should ask themselves whether the inclusion of personal information (such as addresses, bank accounts and telephone numbers etc.) is relevant to the decision or necessary for the purposes of pronouncing judgment.

Judgments: availability of written judgments

27. Where it appears to the Court that a particular judgment does not give rise to procedural issues upon which parties may require to be heard, the judgment may be issued in writing without the need for an advising hearing.
28. Judgments which are not issued in accordance with paragraph 27 may, at the discretion of the Court, be made available to the Crown and to the appellant’s legal representatives in advance of a formal advising hearing. This will allow for consideration of the outcome of the appeal, and the resultant need for any motion(s) to be made, in advance of the hearing. This is intended to encourage early preparation and more efficient use of court time.
29. Unless the Court otherwise directs, judgments to which the previous paragraph applies will be made available at Judiciary Office to the Crown and to the appellant’s legal representatives 2 working days before the date which has been fixed for advising. This is strictly on the condition that the contents of the judgment are not disclosed to the appellant until the advising itself. The contents of the judgment are subject to strict embargo and are not to be disclosed to any other party until after the advising has taken place. Where a judgement is issued in accordance with this paragraph, a signature acknowledging and accepting the terms of the embargo will be required from the recipient.

30. In the case of any typographical error or minor inaccuracies in the judgment, parties may inform Justiciary Office by email (summaryappeals@scotcourts.gov.uk) not later than noon on the day before the advising hearing. The purpose of this is not to allow the case to be reargued. Comments should be confined to such apparent errors or minor inaccuracies as are identified.

Judgments: non-disclosure of information under section 95 of the Police, Public Order and Criminal Justice (Scotland) Act 2006

31. In terms of section 95 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 where an offender has, otherwise than in pursuance of an assistance agreement, assisted in relation to the investigation or prosecution of an offence other than one for which he or she has been convicted, this may be taken into account when passing sentence. Where this has occurred, it must not be disclosed (section 95(3)).

32. Similar provisions regarding non-disclosure of such consideration exist in relation to appeals by the offender (section 96(3)) or by other persons, such as a co-accused (section 94(4)).

33. These duties of non-disclosure are, generally, unqualified. Accordingly, practitioners should be aware that there will be circumstances, including circumstances where a co-accused is bringing an appeal deploying a comparative justice argument, where it may not be possible for the Court to articulate its reasons as fully as would normally be the case.

Judgments: format

34. All opinions in the Court will be issued with single spacing and paragraph numbering, but no page numbers. Where more than one judge has heard an appeal, the paragraph numbering will continue sequentially through each opinion and will not start again at the beginning of the second or any subsequent opinion. Indented paragraphs will not be given a number.

Neutral citation of Sheriff Appeal Court opinions

35. A unique number will be given by the Clerk of the Sheriff Appeal Court to opinions issued by the Court. Opinions will be numbered in the following way:

[2015] SAC (Crim) 1, (2, 3 etc).

36. Under these new arrangements any particular paragraph of the case to be referred to will be cited in square brackets at the end of the neutral citation as follows:

Smith v Brown [2015] SAC (Crim) 1 [12].

37. The neutral citation will be the official number attributed to the opinion by the Court and must always be used on at least the first occasion when the case is cited and referred to in any later opinion. Once the case is reported the neutral citation will appear in front of the citation from the law report series.

Recording of sentencing discount

38. Where the Court alters the sentence imposed at first instance and the new sentence is discounted, the fact that the sentence was discounted and the sentence that would otherwise have been imposed should also be recorded in the court minutes.

39. The presiding Appeal Sheriff should ensure that the clerk of court makes an appropriate entry in the court minutes. An entry along the following lines would be sufficient: "The sentence imposed was discounted in terms of section 196 of the Criminal Procedure (Scotland) Act 1995 and would otherwise have been X".

Edinburgh
22 September 2015

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President of the Sheriff Appeal Court