

Research Paper

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

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Abstract

Appeals to the Court of Appeal (Criminal Division) have dropped by 36% from 2011 to 2019. Recent research has highlighted the particular vulnerabilities of women in prison, leading to concerns that women may have particular difficulties successfully accessing their right to appeal. There has been no prior research of women's experiences of appealing, so this research project set out to assess the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal (Criminal Division). I sought to answer this question using a mixed methods thematic analysis of data including a set of letters from women in custody writing to APPEAL (a non-profit law practice specialising in criminal appeals), questionnaire responses from women in prison and responses to a survey by legal professionals. Barriers to appeal included gendered factors, such as the general under-confidence of women to take on appeals and women's recovery from trauma and mental illness taking priority on their arrival to custody. External barriers identified included women's lack of access to information about the appeal system and varying standards of advice offered by legal professionals. Many procedural barriers to appeal were also identified, including the unrealistic 28-day appeal window and a lack of public funding for such work. The research concludes with recommendations for practice, policy and legislative reform.

Chapter 1: Introduction

I am a criminal defence investigator at APPEAL, a non-profit law practice, specialising in challenging the wrongful conviction and unfair sentencing of women in criminal cases. In my work, I have noticed that it can be difficult to convince women to appeal short sentences for low level, non-violent crimes that are clearly unjust. Many women seemed fearful of appealing and worried that doing so might make things worse for themselves.

My concern was compounded when I read the findings from an internal project at APPEAL looking into past cases heard by the Court of Appeal (Criminal Division) (CACD) that included 'fresh evidence' being put to the court. Out of a sample of 268 people who appealed against their sentence or conviction between 1997 and 2010, only 19 were women, a mere 7% of cases. While there are fewer women entering the criminal justice system than men - making up roughly 26% of the total number of people being prosecuted (Ministry of Justice, 2017, p39) and 27% of total convictions (p45) – it appeared that women were disproportionately underrepresented in the criminal appeal process.

My study therefore sets out to uncover what barriers women face in appealing their convictions and sentences to the CACD. I do this through a review of the relevant literature and a mixed methods thematic analysis of data including a set of letters from women in custody writing to APPEAL, questionnaire responses from women in prison and responses to a survey by legal professionals.

1.1 A Brief Overview of Appeals to the Court of Appeal (Criminal Division)

The CACD hears appeals from proceedings in the Crown Court, specifically convictions, sentences and confiscation orders given by the Crown Court. Based in the Royal Court of Justice in London, appeals are heard by Lord/Lady Justices of Appeal and in some cases High Court judges. The overarching procedural framework for the Court of Appeal consists of the Criminal Appeal Act 1968 (as amended) and the Criminal Procedure Rules 2011 Parts 65 to 73.

An individual may appeal a Crown Court verdict whether s/he has pleaded guilty or not and can appeal a conviction, a sentence or both. Appeals must be brought within 28 days of conviction or sentence. It is possible to seek an extension of time to bring an 'out of time' appeal, but "substantial grounds must be given for the delay before the Court will exercise its discretion to extend time" (Taylor, 2012, p142).

Initially, applications for appeal are sent to a single judge who considers the case on the basis of the papers. If the single judge grants leave to appeal, the matter will be heard by a panel of three CACD judges. The panel of three then decides whether to allow the appeal or refuse it. If the single judge refuses leave to appeal, the application can be renewed to the full court where three judges will reconsider whether or not to grant permission. If this is refused, then there are no further rights to appeal (see Figure 1).

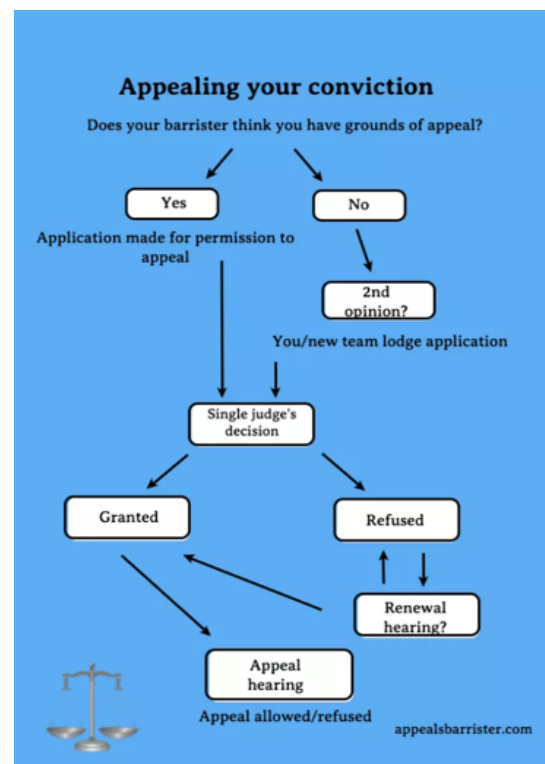


Figure 1: Explanatory diagram of appeal process (Stanbury, M. (4th April 2017). *Can I Appeal My Criminal Conviction?* Retrieved from <https://appealsbarrister.com/2017/04/04/can-i-appeal-my-conviction/>)

It is usual practice amongst trial solicitors to seek an 'advice on appeal' from a barrister at the conclusion of a criminal case. The CACD's *Guide to Commencing Proceedings* states that "solicitors should not wait to be asked for advice by the defendant" (HMCTS, 2018, A1), representatives should see the defendant and should express orally their view as to the prospects of a successful appeal. If the advice is negative, solicitors will usually close a case. If the advice is positive, grounds will be drafted and submitted in an application to the single judge. If a client is represented on Legal Aid, provision for advice on appeal is included in the trial representation order issued by the Crown Court. However, Legal Aid will not cover a second opinion on the same matter within six months (Ministry of Justice, 2017, 11.26).

A 'loss of time' direction can be made by either the single judge or the full court when leave to appeal has been denied. This was introduced by section 29 of the Criminal Appeal Act 1968. This order causes the appellant to lose credit for a period of time spent in prison between the date the appeal was lodged and the date the appeal was dismissed. If the CACD believes an application to be wholly without merit this will effectively push back the appellant's release date.

If an appeal to the CACD is lost, the only way to have a case heard again is through the Criminal Cases Review Commission (CCRC), a 'watchdog' set up to investigate miscarriages of justice. The CCRC accepts applications from anyone who has had an unsuccessful appeal and will only look at 'no appeal' cases in exceptional circumstances. The CCRC has statutory powers of investigation, and if they choose to refer a case, it skips the permission stage and will be heard by the full panel of three judges in the Court of Appeal.

1.2 The Statistics

There has been a dramatic decline in applications to appeal to the CACD in recent years. The CACD's annual reports give statistics on the number and rate of successful appeals but doesn't disaggregate this data by sex or gender (see Figure 2). Appeals to the CACD have dropped from 6,972 applications received between October 2010 and September 2011 (CACD, 2011) to 4434 between October 2018 and September 2019 (CACD, 2020), a decrease of 36% in a decade.

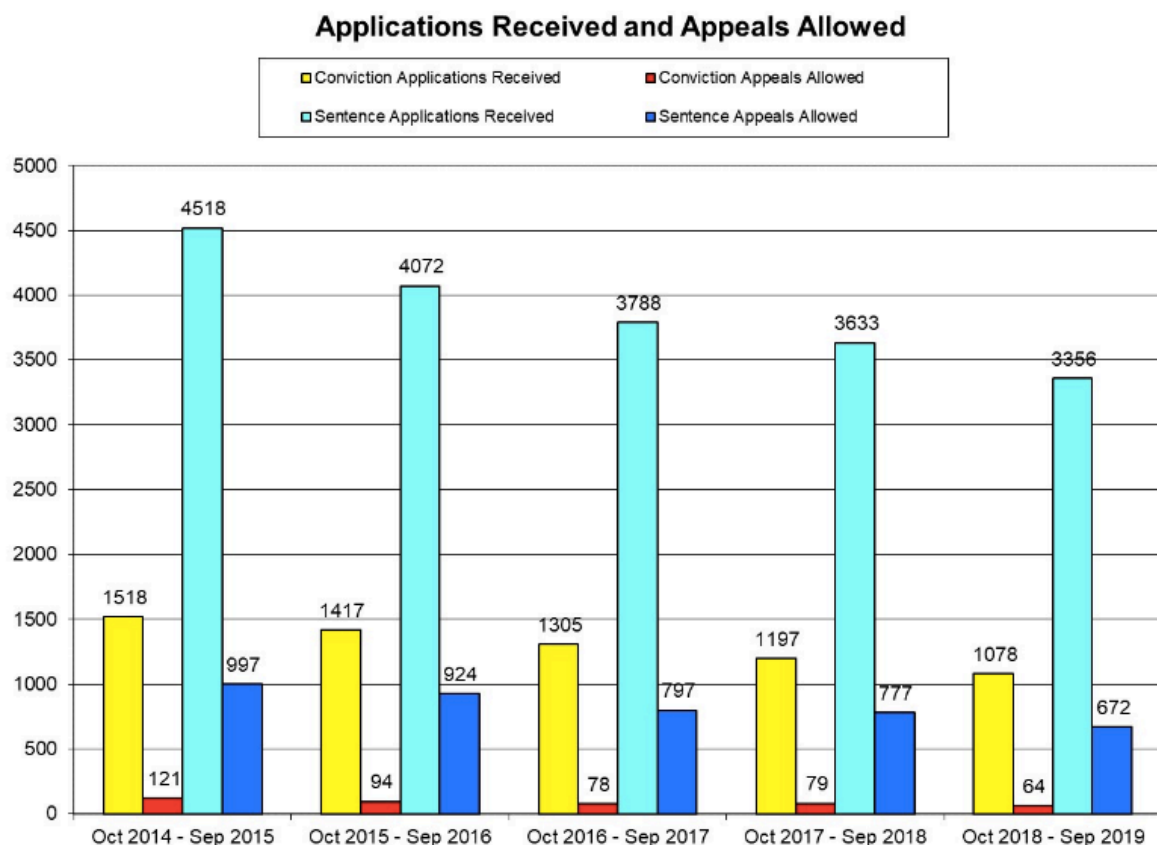


Figure 2: Applications and appeals received and allowed between 2014-2019 (Court of Appeal Criminal Division. (February 2020) 2018-2019, p53

The number of prosecutions and convictions has also declined over this period, but cannot account for the extent of the fall in the number of appeals. Prosecutions dropped by 15% between 2011 and 2019 and convictions have fallen by 12% (Ministry of Justice, 2018).

1.3 Women in prison

The Corston Report (2007) on women in the criminal justice system highlighted the reality that the needs and vulnerabilities of women in custody tend to outstrip those of men. While women only account for 5% of the prison population, proportionately more women than men are remanded in custody. Women also tend to commit a different range of offences from men, committing more acquisitive crime with lower involvement in serious violence, criminal damage and professional crime. The Ministry of Justice's (MOJ) 2018 Female Offender Strategy also highlighted that more than three quarters of women sentenced to custody receive less than 12 months (p6).

The vulnerabilities of women in custody are stark. The Female Offender Strategy accepted that women were "more than twice as likely to report needing help for mental health problems than male prisoners (49% compared with 18% of male prisoners). They are twice as likely as male prisoners to suffer from anxiety and depression (49% compared with 23%) and more likely to report symptoms indicative of psychosis (25% compared with 15%)" (p27). In fact, according to the Prison Reform Trust, nearly 8 in 10 women in prison reported having a mental health issue (2019, p12). In the general prison population, significantly more females had an alcohol problem when they arrived in prison (24%) than males (18%), similarly for a drug problem (39% compared to 28%) (Ministry of Justice, 2017, p5). Additionally, 57% of women in prison report having been victims of domestic violence as adults (Prison Reform Trust, 2017, p3).

The rate of appeals to the CACD is falling, whilst the vulnerabilities of women in custody remain high. Researching the barriers to accessing the CACD for women is crucial to ensuring the CACD remains a viable recourse for women unfairly sentenced or wrongly convicted.

Chapter 2: Literature Review

There appears to be no research to date on women's experience of the criminal appeal system. Women's voices are strikingly absent from reviews of processes and analyses of decisions made by the Court of Appeal. This review of literature examines three key areas that relate to the research question. First it will review the Court of Appeal's function in light of academic thinking on legitimacy and procedural fairness. Second, it will look at the barriers to appeal identified by scholars in contextual debates on legal processes within the CACD. Last, it examines the way women use, experience and take up complaint procedures in custody.

2.1 Legitimacy of authority and procedural fairness

The literature on legitimacy in the criminal justice system is helpful for framing the appeals process. Coicaud (2014) defines legitimacy as "the recognition that those who are not in a position of power grant to those in commanding positions to have the right to hold and be in power" (p40). The criminal justice system, and by extension the appeals system, relies on the creation of legitimacy to ensure the rule of law is upheld. The value of legitimacy for the CACD lies in how it shapes the attitudes and behaviour of those with criminal convictions.

Tyler's work on legitimacy concluded that people comply with the law, not because they fear punishment, but because they feel legal authorities are legitimate and that their actions are generally fair (1990). Coicaud outlines three conditions needed to give a body legitimacy: that those in power must deliver services to those not, that these services must satisfy the needs and expectations of those without power, and that those in power must be held accountable to the needs and rights of those without power (2014, p40). He emphasises that constraints and challenges to power are central to legitimacy and notes that "this includes the rights not only of victims, but of perpetrators as well, to ask and challenge" (p45). This concept is central to the legitimacy of the criminal justice system and crystallises the Court of Appeal's role in it. In order for decisions made by the lower courts to hold authority, the CACD must provide an effective place of challenge and remedy to errors.

Both theoretical and empirical research stress the crucial role procedural justice and fairness plays in creating and maintaining legitimacy. Many appeals brought to the CACD are on grounds relating to

the fairness of initial trial proceedings and this is essential to rectifying failures of legitimacy in the lower courts. Procedural justice is typically defined as the way in which authority treats citizens and the fairness of the decisions that authority makes (Hough, Jackson & Bradford, 2014; Reisig & Lloyd, 2009; Sunshine & Tyler, 2003; White, Mulvey & Dario, 2016). The key components of procedural justice are citizen participation (being given the opportunity to state one's case), fairness and neutrality, dignity and respect, and trustworthy motives (White, Mulvey & Dario, 2016; Tyler & Huo, 2002; Tyler, 2003; Goodman-Delahunty, 2010). Numerous studies have shown that procedurally just behaviour by police leads to citizens being more satisfied with both the interaction and the outcome (White, Mulvey & Dario, 2016, Mastrofski et al., 1996; McCluskey, 2003; Reisig, Bratton, & Gertz, 2007; Tyler & Wakslak, 2004; Wells, 2007). Long term compliance and decision acceptance by the courts is also intrinsically linked with procedural fairness.

Distributive justice, or outcome fairness, is of particular importance to those in custody. Bottoms and Tankebe note that "prison researchers have also shown that, within the enclosed context of a custodial institution, perceived outcome fairness as well as procedural fairness can be of great importance" (2012, p125). Black, Asian and Minority Ethnic (BAME) prisoners have also been found to have the lowest levels of perceived legitimacy (Bruton-Smith and McCarthy, 2016).

The absence of literature on the effects of gender or sex on legitimacy of the courts or police reveals a gaping hole in the research. One study looked at women in the police station: White, Mulvey and Dario found that female arrestees were more likely to cooperate with the police than men, but provided no analysis examining this finding (2016, p355). Similarly, Brunton-Smith and McCarthy's analysis of prisoners in England and Wales collected data from the women's prisons but provided no gender analysis of the differences in survey and interview responses.

2.2 Contextual debates on legal processes within the Court of Appeal (Criminal Division)

2.2.1 Purpose of the CACD

The function of the CACD is debated. Many view it as having a dual function; "the first is the private one of doing justice in individual cases by correcting wrong decisions. The second is the public one of engendering public confidence in the administration of justice by making those corrections and in clarifying and developing the law" (Roberts, 2017, p2). Taylor & Ormerod add a further dimension - "there is an additional and onerous responsibility to maintain the moral integrity of the criminal process" (2004, p267). Sir Robin Auld's Review of the Criminal Courts in 2001 laid out what he believed to constitute a good appellate system. This included justice for individual defendants,

bringing finality to the criminal process, being readily accessible, having clear and simple structures and procedures, being efficient in its use of resources and being speedy (ch 2, para 2). There have been consistent critiques of the CACD's ability to achieve these functions.

One such critique has been that a lack of resources prevents the CACD from properly fulfilling all its functions. Roberts states that "a lack of resources has led to the fear that the floodgates would open and there would be a deluge of applications to appeal which the Court could not cope with" (Roberts, 2017, p3). When analysing the function of the CACD in 1991, Malleon questioned whether the scale of error the CACD was intended to fix was, in fact, much more limited. She argued, "the present design of the system, the limited and narrow powers of the Court and the hazardous path to that institution are not accidental or a mistake but persist because there has never been the will or intention to have a system the size or scope of which is determined by the numbers of miscarriages of justice occurring" (p5). Spencer (2006) argued that the CACD should consider setting up regional courts so not all appeals have to be heard centrally from the Royal Courts of Justice in London (p10). Spencer also cautioned against "the assumption that the judicial resources available to handle appeals from the Crown Courts are fixed" and has offered many suggestions for better managing the workload of the CACD (p5). He points out that "the argument that says we cannot provide something beneficial because everyone would want it has been used to justify obvious injustices in criminal procedure in the past: including, at one time, the rule that defendants were not allowed counsel to defend them at the trial" (ibid).

Beyond resource constraints, however, Nobles & Schiff suggest that barriers to would-be appellants are more a result of the CACD being caught in cycles of reactive reform and scandal since its inception (2000, p40). Malleon further believes that judgements from the CACD "seek to reaffirm the limited nature of the Court's role to intercept a small range of miscarriages of justice, tightly defined and constrained by an inflexible range of grounds of appeal" (p5). Malleon's insight is crucial, as it indicates that some barriers to appeal are intentional and designed to stem the flow of would be appellants to the Court. Put another way, not everyone who wants to appeal, whether or not they have a meritorious claim, is meant to be able to.

2.2.2 Stemming the flood

There are various methods by which it can be argued that the CACD stems the flow of appeals. The appeal system is designed as a hurdles race, with various obstacles to overcome each step of the way. Even at the outset, appellants have no absolute right of appeal, leave must be sought, and

permission must be granted for an appeal to be heard, something Spencer describes as “perverse” (2006, p5).

Short sentences

Malleson’s large scale review in 1991 found that a convicted person was more likely to appeal if they had received a custodial sentence and, the longer the sentence, the greater the likelihood of appealing. Of those who received non-custodial sentences in 1989, she calculated that the statistical likelihood of success on appeal was a mere 0.16%. With regards to sentence length, she found that while only 6% of those convicted in the Crown Court received a prison sentence of four years or longer, at the CACD this figure was 38%. Delays to bringing appeal proceedings and loss of time rules (a Judge’s ability to extend a sentence if they deem an appeal to be completely without merit) were also identified as factors that disproportionately disadvantaged short-sentenced defendants (p3). This discrepancy is not because there is less risk of miscarriages of justice occurring in low level, low stakes cases. She asserts that “it is hard to imagine any factor which would result in the presence of miscarriages of justice in serious cases and not in more minor cases. In fact, arguably, one would expect the reverse to be the case” (ibid).

Long wait times

The Court of Appeal has long been described as an overburdened and overworked system (Spencer, 2006; Darbyshire, 2011; Jellis, 2011). While waiting times have improved in recent years, timeframes for CACD decisions continue to be measured in months for sentencing appeals, and more than a year for conviction appeals (CACD, 2020, p49) (see Figure 3). Of course, the incentive to appeal when your case may not be heard before your release from prison is greatly lessened.

Average Waiting Time in Months, September 2018-September 2019													
	Sept 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19	April 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19
Conviction (renewal)	12.9	13	13.2	13.3	13.4	13.4	13.5	13.5	13.4	13.7	14.1	14	14.1
Sentence (overall)	5.7	5.7	5.6	5.7	5.5	5.4	5.4	5.3	5.2	5.3	5.4	5.4	5.5

Figure 3: Average waiting times in months for conviction and sentencing appeals from September 2018-September 2019 (Court of Appeal Criminal Division, 2018-2019, p49)

Fresh evidence

Timing is also relevant to appeals in another way. The 28-day appeal window creates problems for those appellants hoping to appeal based on fresh evidence. Practitioners largely agree that “it is far easier to succeed on an appeal based on procedural irregularity in England and Wales than it is for an appeal based on fresh evidence” but that this is largely due to it being “very difficult to find fresh evidence in twenty-eight days, so the appellant’s grounds of appeal at first instance tend to be those alleging procedural errors” (Roberts, 2017, Fresh Evidence, p3; Spencer, 2006, p3). In Stephanie Roberts’ 2016 sample, just 14% of appeals raised fresh evidence. She noted that “fresh evidence appeals are the most problematic for lawyers because it may take years to find new evidence” (2017, p22).

John Spencer questions the burden of proof on appeal and notes that “the basis that underlies the appeal is that the burden lies on the appellant, who must persuade the Court of Appeal that there is some reason to question the conviction, or the correctness of the sentence originally imposed” (2006, p3).

Legal advice

Zander (1972) found that loss of time directions and the risk of an increased sentence length had a significant impact on dissuading defendants from appealing. He references a practice direction of Lord Parker in 1970 emphasizing that single judges hearing applications for leave could, and should, exercise this power and found that “up to March 1970 appeals had been running at the rate of 12,000 per year; within a short time of the announcement they had fallen to 6,000 a year” (1972, p133). Zander found that while loss of time orders were rarely made, they discouraged those with short sentences from appealing. He also found that lawyers were emphasising the risk of added time to short-sentenced defendants (p167). As Malleon explained, “clearly it is the threatened rather than actual application of the rules which keeps down the number of appeals” (1991, p4).

Zander’s study also found significant failings in the way legal advice on appeal was given to defendants in 1972. He found that in at least 10% of cases no advice on appeal was given, and in at least 25% of cases where the appellant had been advised to appeal, no assistance in drafting grounds had been provided. He also found that prison officers, while often sympathetic to those hoping to appeal, would not provide additional information unless explicitly asked (Malleon, 1991, p3).

Litigants in person

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 stripped back Legal Aid and as a result there has been a significant rise in the numbers of unrepresented defendants in criminal cases. According to the Equal Treatment Bench Book published by the Judicial College, “Litigants in person also appear with increasing frequency in the Court of Appeal. Some have represented themselves at first instance. Others, having had lawyers appear for them in the court below, take their own cases on appeal, often through a withdrawal of public funding after the first instance hearing” (2013, 4-3). Roberts warns that litigants in person face unfavourable odds when seeking to appeal to the CACD, stating “it is even more difficult to succeed if the applicant is drafting his/her own grounds and the increase in these appeals is a worrying development, particularly if innocent people are languishing in prison because they are unable to get legal representation and navigate the difficulties of the appellate process” (2017, p25).

2.3 Women and complaints

A criminal appeal can be thought of as a complaint, where someone questions the decision-making process or outcome of a criminal trial. While there is little research on women’s use of the criminal appeal system, there is some useful work on the way women in prison differ from men in their use of complaints systems.

The mostly directly relevant literature stems from the reports of the Prisons and Probation Ombudsman (PPO), the body that carries out independent investigations into deaths and complaints in custody. Their analysis of prisoners who complained found that 97% of those who made complaints were men (2011, p7). A 2014 follow up study found that women made up only 1.7% of all PPO complaints, despite being 5% of the prison population (PPO, 2014, p10) (see Figure 4). Women complained less across all complaint types, including adjudication complaints. Even in this, more serious realm of adjudications (proven adjudications remain on a prisoner’s record and can affect chances of parole), “female prisoners were underrepresented as they make up 2% of the PPO’s eligible adjudication complainants but 6% of national proven punishments” (2011, p11).

Figure 4: Proportion of each group in the prison population who complained to PPO in 2009/10 (Average across all groups = 3.1%)

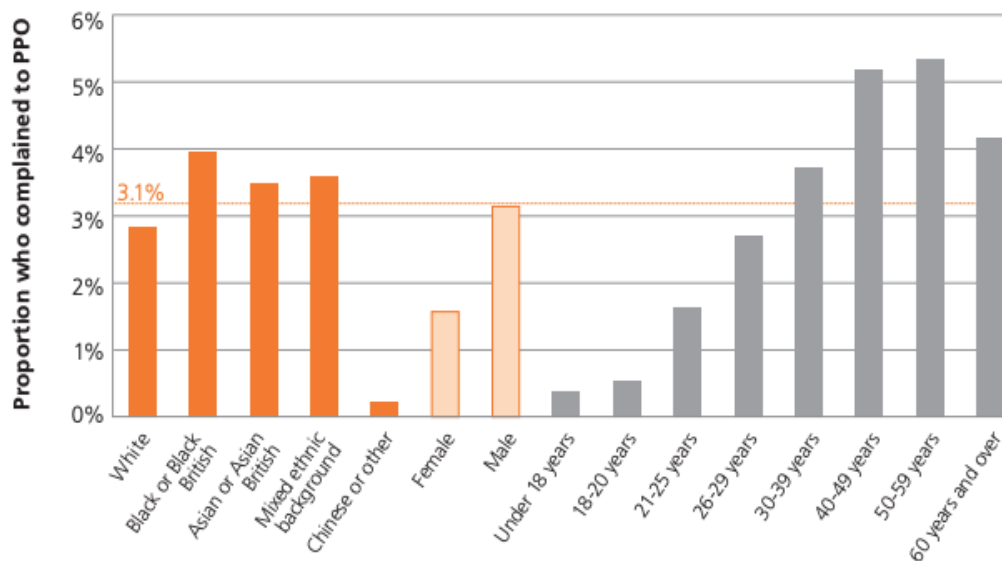


Figure 4: Proportion of prison population who complained to the PPO in 2009/10 (Prisons and Probation Ombudsman for England and Wales. (May 2011). Overview of Complaints. Learning from PPO Investigations, p8)

PPO analysis showed a significant difference between the eligibility rate of complaints between the high security male estate and the female estate. Just 30% of women's complaints over the five-year period were deemed eligible, compared to 56% from the high security men's estate, betraying perhaps a lack of proper understanding of the complaint procedure and process amongst women prisoners (p16). While most offenders knew about the internal complaints system, few were clear on the appeal stage once they had received a reply to an initial complaint (2015, p15). While most prisoners were told about the PPO on their induction to prison, the stressful and chaotic nature of induction coupled with the high volume of information being transmitted at that time meant that few women remembered the PPO later down the line (p15).

The PPO (2015) sought to analyse through focus groups why women and young people in custody didn't make as many formal complaints. Good relationships and communication with staff were central to resolving issues and meant that women frequently sought to resolve a problem informally rather than through the complaints system. Respondents also mentioned the importance of outside help from solicitors. The independence of solicitors from a prison meant that many trusted them to resolve an issue by, for example, contacting the Governor, rather than by using the formal

complaints system (p9). Women tended to find alternative solutions to their problems and preferred to bypass institutional and formal processes in favour of personal or independent resolutions.

Women in custody had a high level of distrust of the complaints system and of prison staff and had a significant fear of reprisal. Women were concerned about having incidents on their records which could affect decisions such as parole and there was consensus that they would not complain if they were awaiting a decision for Home Detention Curfew (HDC) or had a Parole Board hearing coming up. They didn't want to 'rock the boat'. There were concerns that prison staff wouldn't take their complaints seriously, wouldn't follow the proper procedures when investigating and might tamper with or ignore the complaints made (p14). Furthermore, there were frustrations that decisions often came back with little explanation for the course of action chosen, leading women to further feel their grievances had not been taken seriously (p11). Previous negative experiences of the internal complaints system significantly impacted women and resulted in a lack of confidence (p11).

Delays, and the amount of time resolving a complaint could take, added to anxiety and a feeling of being out of control, and were significant deterrents to women's complaints (p11). The Legal Ombudsman, who investigates complaints about legal services, collects data on the types of complaints received that reinforces this PPO research finding (see Figure 5).

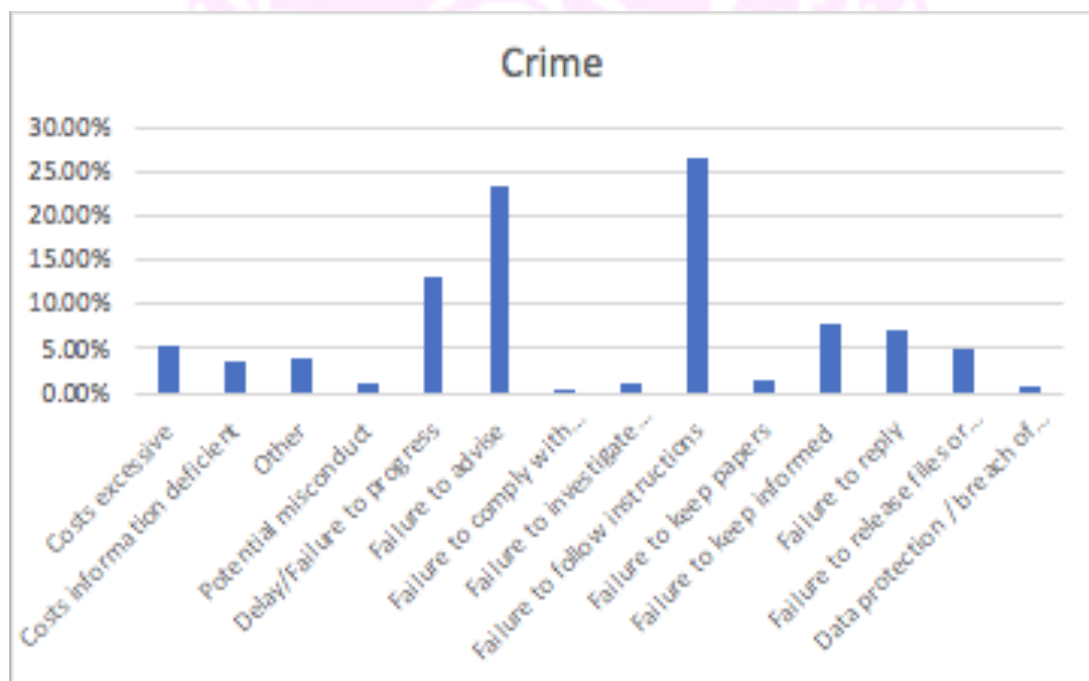
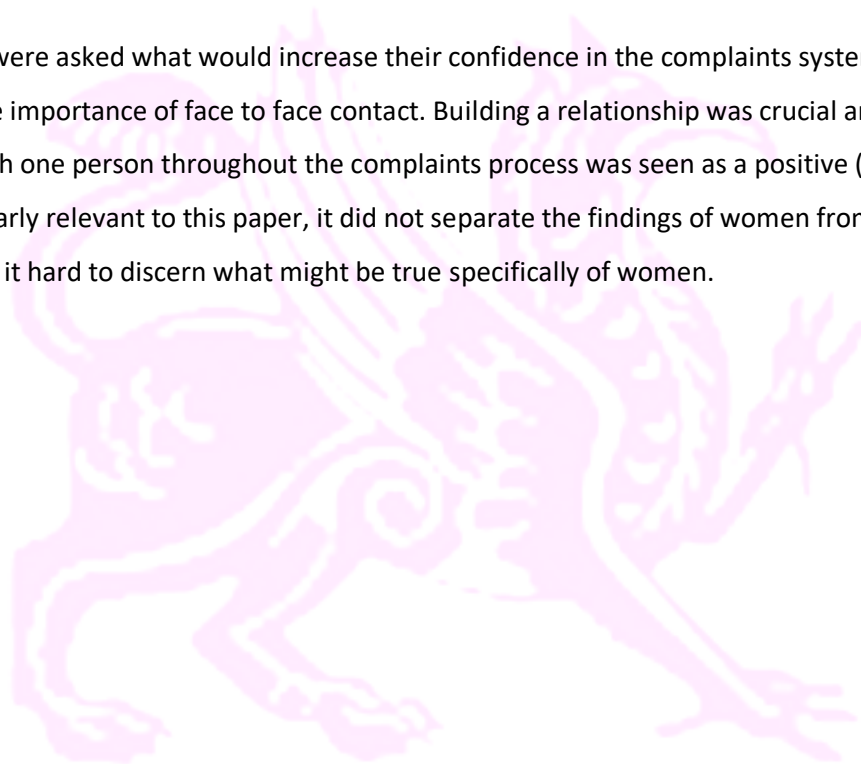


Figure 5: Reasons for complaints about criminal legal services in 2017-18 (Legal Ombudsman. Complaints data 2018-19. Retrieved from <https://www.legalombudsman.org.uk/raising-standards/data-and-decisions/#complaints-data>)

Although this data isn't disaggregated by sex or gender, it confirms that one of the top three reasons for complaints to do with criminal proceedings is about delays (nearly 13%) (Legal Ombudsman, 2019).

Respondents mentioned feeling as if they didn't have a right to complain, because they had broken the law and were in prison. They "viewed the problems they had as part of their punishment and putting up with ill treatment was the only option" (p14). Similarly, women expressed concerns about being believed by staff since they thought staff would see their incarceration as proof of their being untrustworthy (p15). There was a sense that staff wouldn't break ranks to side with an offender's version of events over that of their colleagues.

When women were asked what would increase their confidence in the complaints system, they emphasised the importance of face to face contact. Building a relationship was crucial and being able to deal with one person throughout the complaints process was seen as a positive (p18). Whilst this study is clearly relevant to this paper, it did not separate the findings of women from young people, making it hard to discern what might be true specifically of women.



Chapter 3: Research Methodology

3.1 Research question

The question this study sets out to answer is: What barriers do women face in seeking to appeal their convictions and sentences to the CACD?

3.2 Mixed methods

I employed both qualitative and quantitative analysis to answer my research question. I used a parallel mixed method design, defined by Teddlie and Tashakkori as “a family of [mixed methods] designs in which mixing occurs in an independent manner either simultaneously or with some time lapse.” (2009, p341). Whilst I employed both types of method, the research design was purposefully weighted towards more qualitative analysis, focused on applying Braun and Clarke’s six step thematic analysis technique (2006) to assess the experiences and views expressed by research respondents.

3.3 Research design and data collection

The research question was examined using three different data sources:

1. An analysis of APPEAL’s existing database of letters written by women in custody writing to the service seeking advice on appeal. A total of 132 letters were examined, received by APPEAL between 2017 and 2019.
2. Responses to a questionnaire which was 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.

Having completed my participant information sheet and consent form (appendix 8.2), my monitoring form (appendix 8.3), my questionnaire for women in prison (appendix 8.4) and my online survey for lawyers (appendix 8.5), I then obtained ethics approval from the Institute of Criminology, University

of Cambridge and approval from HMPPS' National Research Committee to conduct the research with women in custody.

3.4 Sampling and recruitment

For the qualitative analysis of the letters, I analysed 132 first letters of application, not all subsequent correspondence, over a two-year period (2017-19). I chose to only look at first letters sent to provide some standardisation across the sample, as these letters contained what information women chose independently to volunteer when seeking help with an appeal and were not in sent in response to prompts or requests for further information.

For the questionnaire of women in custody, respondents were recruited through a feature in Women in Prison's magazine, *Ready, Steady, Go!* 2019 summer edition (appendix 8.1), which is distributed to all English women's prisons. It included a request that women interested in participating in the research write to me, or to Women in Prison. Four women responded and were sent an information sheet, consent form, questionnaire and prepaid return envelope, and five additional copies of everything to distribute among their peers in custody. I also sent packets of questionnaires to female clients in custody represented by the law practice for whom I work, making clear that participation was optional and would have no impact on her legal representation. Further, I sent two copies of the questionnaire to female clients who had recently been released from prison. In total, 33 responses were obtained.

For the survey of legal practitioners, I aimed to get a balanced sample of experienced solicitors and barristers directly involved in criminal appeals work to respond. The lawyers' survey was publicised on APPEAL's website and social media accounts and was open for a month. I also sent it to the Criminal Bar Association, the Criminal Appeals Lawyers Association, the London Criminal Courts Solicitors Association, the Criminal Law Solicitors Association, Young Legal Aid Lawyers, Legal Voice, the Legal Aid Practitioners Group, Crime line, the Justice Gap, the Law Society, Innocence initiatives at Cardiff, Sheffield and Manchester Universities, Women in Criminal Law, the Centre for Women's Justice, Justice, the Criminal Justice Alliance, Law Works, the Prison Reform Trust, the Legal Action Group and Revolving Doors. Many publicised it in newsletters, emails and on Twitter. However, only 20 legal professionals responded to the survey.

3.5 Limitations of the data and sample

In the existing data set of women writing to APPEAL to seek legal advice, women were not specifically reflecting on the research question and the same information was not available in all the

letters. For example, not all of the women detailed the length of their sentence or their index offence. This made comparison across the sample at times difficult.

The recruitment tactics meant the sample of women responding to the questionnaire was self-selecting. Perhaps as a result, there were only four Black, Asian and Minority Ethnic (BAME) respondents to the questionnaire of women in prison, and this included no black women. This is despite BAME women forming 18% of the women's prison population, a disproportionate figure compared to the general population (Prison Reform Trust, 2017, p3). More active recruitment strategies could have perhaps targeted a more diverse sample.

Similarly, the legal professionals who responded to my survey were unlikely to be representative and may have had particular issues that they wished to highlight.

This study made use of available data and convenience samples; hence it cannot make any claims to representability and statistical inference cannot be drawn. The findings must therefore be regarded as indicative and suggestive, rather than conclusive.

3.6 Data analysis

Intake database

For the purposes of thematic analysis, I used an iterative approach to analyse the sample. I created an initial coding panel of roughly 130 categories. I coded the first 30 letters using this panel, with new tags being added as distinct, previously un-coded themes emerged. Following the first 30 letters, I refined the coding panel, reorganised it under thematic headlines (such as 'complaints about poor legal advice', 'lack of access to paperwork' or 'discloses mental health issues') and narrowed to roughly 80 coding categories. I then applied this revised coding panel to the remaining letters.

I carried out the coding using DevonThink, a document management and analysis software. Each letter was loaded into a database, and codes were applied to letters using tags. These tags were then nested under each theme and a tally of the number of letters linked to that tag was counted. An open source 'annotate and highlight' script allowed me to tag quotations that spoke particularly well to a theme.

Questionnaires

The questionnaire responses were scanned and saved into the same DevonThink database, but the information was also transcribed into an online Google Form version of the questionnaire. This allowed me to compare answers to each question and to tabulate the numbers responding similarly to a question. Responses were read and reread, using the main headings of the intake database coding panel as an initial thematic guide. Additional themes were added as they emerged (such as 'a sense of futility' and 'lack of access to legal support on appeal'). These were then refined and finally interpreted.

Survey

The lawyers survey was created using an online Google Form that respondents could fill out through their email, or on our webpage. Responses were read and reread. On rereading responses, answers were nested into the original coding panel developed for the letters. Some different themes emerged, mostly to do with lawyers' experiences of the Court of Appeal (such as 'lack of legal aid funding for appeals' and 'sense that legal barriers to appeal have increased over time').

I sought to be consistent by using the refined coding panel from the analysis of the letters to also analyse the questionnaires and surveys. This allowed for comparison of where the data agreed and where it differed.

Chapter 4: Findings

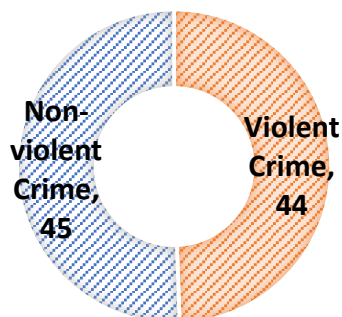
The findings from each data set – the letters, the questionnaires and the survey - will be discussed in turn.

4.1 Letters

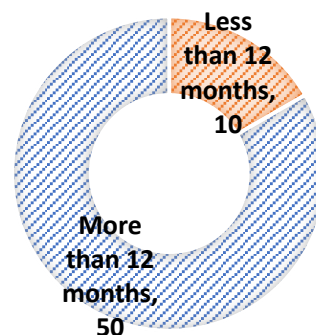
Almost three-quarters of the women (95 of the 132) wrote to inquire about an appeal against sentence, and nearly two thirds (n=82) wrote about an appeal against conviction. Many wrote inquiring about both.

Roughly an equal number had been convicted of violent crimes as non-violent ones. Of the violent crimes, the most common conviction was murder, and of the non-violent crimes, the most common was fraud.

OFFENCE TYPE



SENTENCE LENGTH



The vast majority of women writing to APPEAL were sentenced to more than 12 months in custody. Of the 60 women for whom their sentence length was known, 50 had received sentences of over 12 months of which 8 were serving life sentences, or Imprisonment for Public Protection (IPP) sentences.

The vulnerabilities of the women in custody were very apparent. Almost a quarter (31 of 132) of the women reported suffering from poor mental health, of which 8 had attempted suicide in the past, 12 reported a Post-Traumatic Stress Disorder diagnosis, and 18 suffered from depression. This number will be an underestimate, as not all women with mental health issues will have reported this

in a first letter of enquiry. Again, a quarter of the women (30 of the 132) reported having abused drugs or alcohol at some stage, and half (n=66) reported having been a victim of some form of Violence Against Women and Girls (VAWG)¹. Again, these figures will undercount the true numbers.

These vulnerabilities were complex and overlapping. Barely any of the letters that spoke of vulnerabilities mentioned just one.

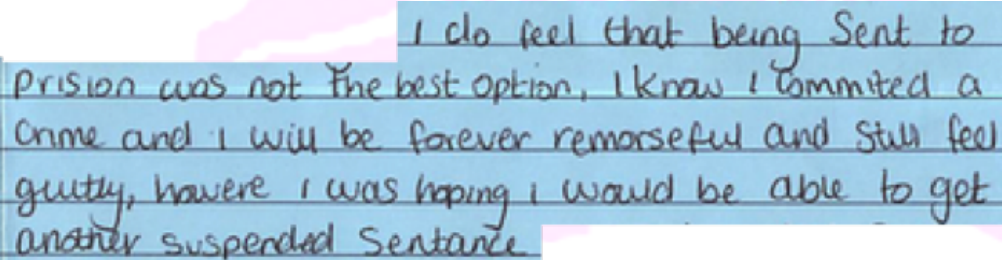
4.1.1 Reasons for seeking to appeal

The reasons for seeking support for an appeal raised were often not grounds of appeal that the CACD would accept but were rather reasons why women felt dissatisfaction at their treatment at trial or sentencing.

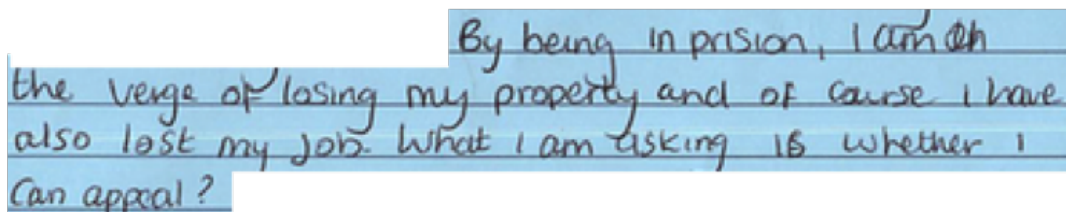
A Complaints about sentence

The imposition of custody

More than half of women (n=55) felt custody was a disproportionate punishment for their crime. Many felt that the collateral consequences of being sent to custody far outweighed the gravity of their offending and wrote asking about the possibility of community-based alternatives.



I do feel that being Sent to prision was not The best option. I know I committed a crime and I will be forever remorseful and still feel guilty, howere I was hoping I would be able to get another suspended Sentence.

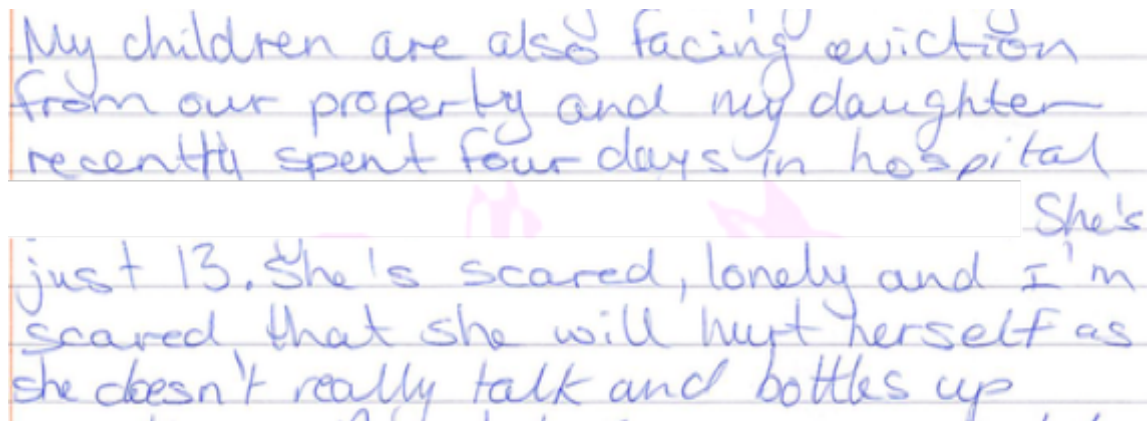


By being in prision, I am on the verge of losing my property and of course I have also lost my job. What I am asking is whether I can appeal?

¹ VAWG figure includes reported domestic abuse, sexual abuse (including child sexual abuse), coercive control and culturally specific abuse like forced marriage and female genital mutilation.

The effect of maternal imprisonment on children

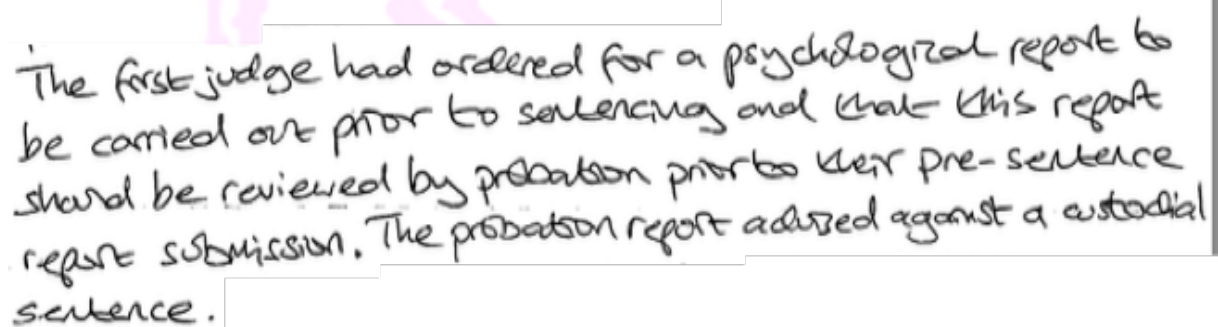
A third of women (35 of 95) felt that the effect of their imprisonment on their children had not been properly considered. Many mothers felt that their children were being unfairly punished for their crimes.



My children are also facing eviction from our property and my daughter recently spent four days in hospital. She's just 13. She's scared, lonely and I'm scared that she will hurt herself as she doesn't really talk and bottles up.

Pre-Sentence Reports

More than a quarter of women (27 of 95) felt that their pre-sentence report was incorrect or incomplete. Some women complained of psychological reports not being asked for or of risk assessment criteria being incorrectly applied. Some women felt that the sentencing Judge had sentenced to custody against recommendations.



The first judge had ordered for a psychological report to be carried out prior to sentencing and that this report should be reviewed by probation prior to their pre-sentence report submission. The probation report advised against a custodial sentence.

Lack of adequate mitigation

Many women complained that their mitigating circumstances were not given appropriate weight. Women with particular vulnerabilities, such as mental health (n=3) or domestic abuse problems (n=3) often felt these were not considered by Judges.

I suffered domestic abuse from my partner + was told nobody not even the judge believed me.

They also complained that their previous good character, demonstrated either by this being a first offence or positive character references, did not sway judges.

The reason I'm writing to you today is to discuss the possibility to appeal against my sentence time. This is my first offence, I plead guilty early on, I am a not violent criminal and I am of extremely good character, both my references and my pre-sentencing report reflect this.

Roughly 1 in 5 women (n=20) felt their punishment was too harsh for a first-time offence and 13 mentioned character references being ignored by judges.

15 women also referred to advocates not adequately presenting mitigation in their defence at sentencing.

2 I DIDN'T HAVE NO REPORTS OR MITIGATION I HAVE; NT BEEN IN TROUBLE FOR MANY YEARS

B Complaints about conviction

Innocence

Just less than half of women (37 of 82) mentioned innocence, clearing their name or their lack of culpability as the reason they were seeking help.

I'm Fully Aware That saying I'm innocent isn't
A valid Reason to Appeal 'Grounds' wise
But innocent I Am.

Issues with evidence

Complaints about the handling of evidence during trial was a significant cause for concern. Problems included failures by the police and prosecution to disclose exculpatory evidence to the defence, insufficient police investigation turning up poor or inadequate evidence at trial or evidence that women considered key to their defence simply not being presented at trial.

② There ~~is~~ are important evidence in my phone however I have never received from CPS.

There was a witness they used. Whole mobile phone - got lost in the police station

There were various complaints that evidence had been mishandled, poorly stored or simply lost in the course of the police investigation and subsequent trial. Many evidentiary concerns were not just laid at the feet of the police, but also on defence advocates.

I have asked my solicitor to get the phone and USB evidence more than a YEAR ago and she still has not got it.

Understanding of culpability

A surprising complaint came from women who simply did not understand why they had been charged with crimes in the first place, and felt their actions were not criminal in nature.

There was no criminality in any of this, and I still cannot believe that I was convicted

8 women in the sample failed to grasp how their actions had broken the law.

I did everything legal and still got found guilty of fraud. Even in court

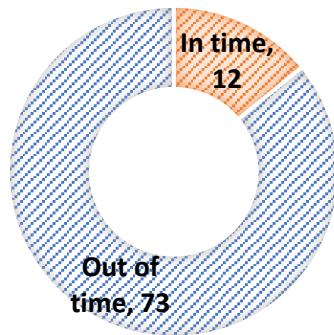
4.1.2 Barriers to Appeal

Timing

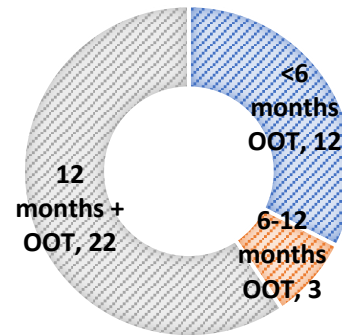
The vast majority of women writing for advice on appeal were writing significantly outside of the 28-day appeal window from the date of their conviction or sentence. Of the 85 letters for which it was possible to ascertain when women had been convicted or sentenced, just 12 were in time. Of those

who wrote 'out of time', the majority were more than 12 months beyond the acceptable appeal window.

TIMING OF LETTER



OUT OF TIME LETTERS

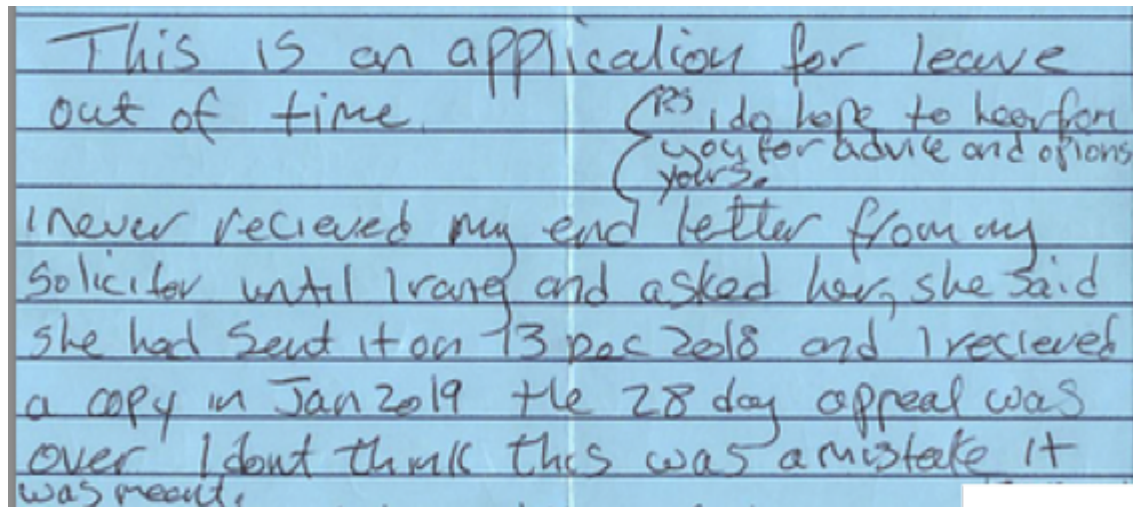


Reasons for explaining the delay given were that women claimed not to have been able to figure out the appeal process in time, or that their mental ill health had prevented them from seeking to appeal.

I really do think I may have grounds for appealing sentencing. I appreciate 28 days have lapsed since conviction so I will need to explain that I have only just figured out the process.

I desperately want this appeal process to be dealt with whilst I still have a level of health and mental capacity, to cope with it.

In two cases, a woman's lawyer only sent her the advice on appeal after the 28-day appeal window had passed, robbing her of the ability to seek alternative representation before the time limit expired.



This is an application for leave out of time. (PS I do hope to hear from you for advice and options yours.)

I never received my end letter from my solicitor until 1 rang and asked her, she said she had sent it on 13 Dec 2018 and I received a copy in Jan 2019. The 28 day appeal was over. I don't think this was a mistake. It was meant.

Loss of time

The risk of a 'loss of time' order was mentioned infrequently; only 6 times in the sample of 132.

Ineffective assistance of legal representatives

Half of women writing asking for assistance across all offence categories and sentence lengths (n=64) complained that their legal representatives had in some way fallen short in providing them with adequate advocacy.

It was

- > basically a kangaroo court with the police ace Ventura
- > barrister competing against my fumbling solicitor.

Solicitors

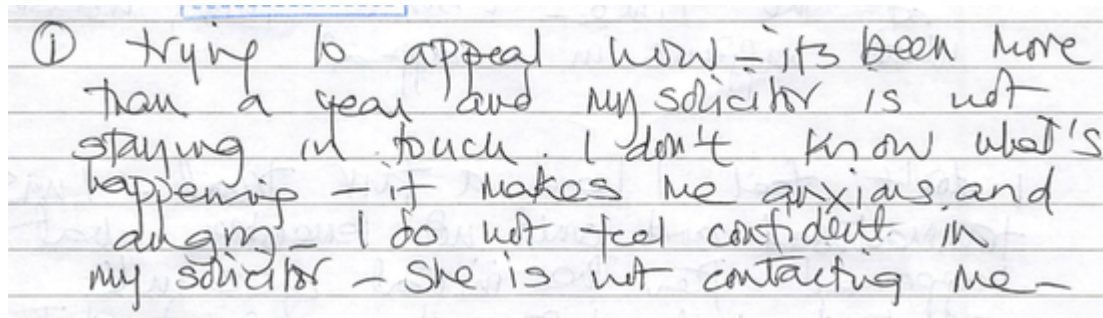
More women writing for advice on appeal were upset with their solicitor than with their barrister, though this was only by a slim margin of 36 to 31.

21 of the complaints about solicitors were about their failure to stay in touch.

I tried to get in contact with my solicitor, on 8 separate occasions, with 5 letters and 3 phone calls, even my parents tried with follow up emails unsuccessfully; I have never heard a word back. Since then my solicitor has apparently left the firm, and ultimately my case.

I also have tried to get all my paperwork, references, etc from [redacted] in an attempt to lodge my own appeal, but to no avail.

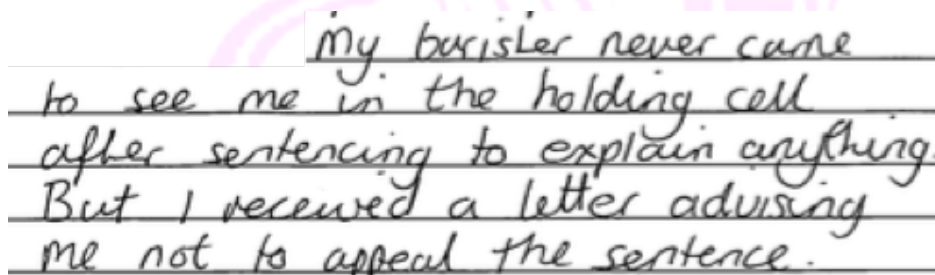
Women expressed the anxiety caused by not hearing from their solicitors.



① trying to appeal now - it's been more than a year and my solicitor is not staying in touch. I don't know what's happening - it makes me anxious and angry - I do not feel confident in my solicitor - She is not contacting me -

Barristers

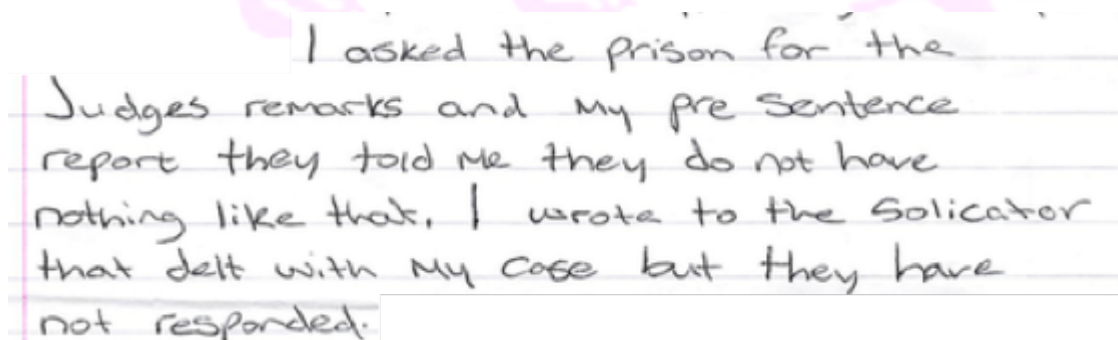
The main complaints about barristers was that they didn't mount a vigorous enough defence at trial (7 complaints) and that negative advice on appeal was not properly explained (6 complaints).



my barrister never came to see me in the holding cell after sentencing to explain anything. But I received a letter advising me not to appeal the sentence.

Access to Paperwork

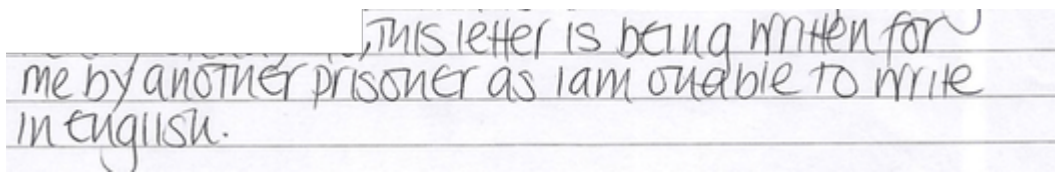
12 women complained of not being able to access the paperwork they needed in order to lodge an appeal from prison.



I asked the prison for the Judges remarks and my pre sentence report they told me they do not have nothing like that. I wrote to the Solicitor that dealt with my case but they have not responded.

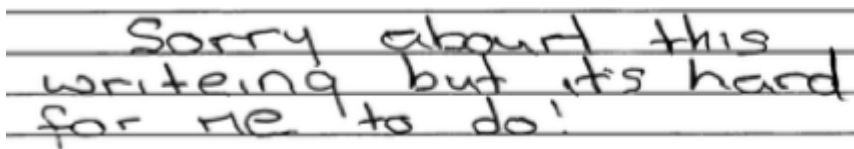
Literacy

7 of the sample were speakers of foreign languages or non-native English speakers and were severely disadvantaged by their struggles in understanding the appeal process.



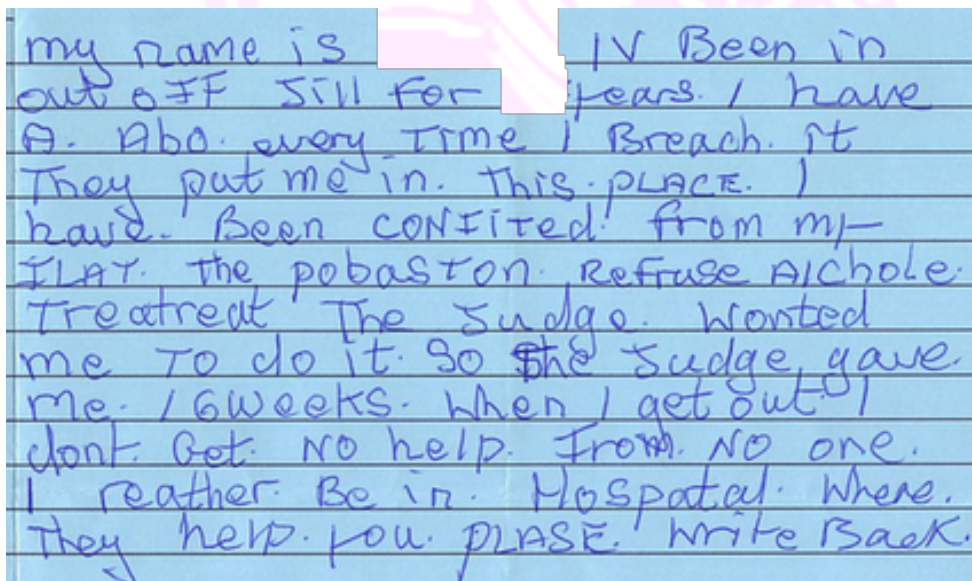
This letter is being written for me by another prisoner as I am unable to write in English.

For 22 of the letters, literacy skills were consistently poor.



Sorry about this writeing but its hard for me to do!

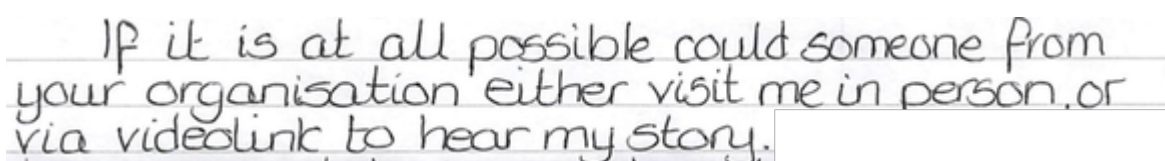
Many struggled to make themselves understood.



my name is [redacted] I V Been in out off jail for [redacted] years. I have A. Abo. every time I Breach. it They put me in. This place. I have. Been CONFITED. from my- ILAY. the pobaston. Refuse Alchole. Treatreat The Sudge. wonted me To do it. So the Sudge gave me. 16 weeks. When I get out. I dont. Get. no help. From. no one. I reather. Be in. Hospital. Where. They help. you. PLASE. Write Back.

Visits

12 women wrote requesting visits in person, as communicating complex issues via letter was difficult for them.



If it is at all possible could someone from your organisation either visit me in person, or via videolink, to hear my story.

Lack of knowledge of the appeals system

More than a third of the letters (n=46) displayed ignorance about how to begin lodging an appeal.

I need to get out of here
and don't know where to
get help and what I can do

Women found themselves overwhelmed with requests for documents that they do not know how or where to source.

I don't know if I will have grounds of
appeal or not I just requested it as
an other inmate advised me to. They
are asking for the name of the Judge,
representation order and transcripts.
I don't really know where to start.

Defeat and desperation

The letters often contained feelings of utter desperation.

i know longer feel like i'm living anymore,
(just existing) I feel suicidal and broken

The barriers to appealing, coupled by a sense of injustice, resulted in a miserable cocktail of frustration and isolation that some women felt brought them to the borders of insanity.

Please help me with this matter i am going insane here i
have lost the will to live and be the person i was before all these lies
about me did what they have done. These people have taken away everything i
had to live for i am shortly going to loose my home because of them lying
if i don't get this matter resolved and my name cleared please help me
i have none else i can turn to. SS

Hope

Some women seemed to have the determination and spirit to fight their way up an ever-steepening slope.

I will continue to fight this miscarriage of justice while I have breath left in my body purely because I am innocent.

The relative density of the themes identified is summarised in Figure 6 below.

Density of themes identified			
Complaints about sentence	Tally (n)	Total of relevant sample	Percentage
<i>Felt custody was disproportionate punishment for crime</i>	55	95	58%
<i>Felt the effect of maternal imprisonment on children had not been considered</i>	35	95	37%
<i>Felt their pre-sentence report was incorrect or incomplete</i>	27	95	28%
<i>Lack of adequate mitigation:</i>			
<i>Domestic abuse not considered by a judge</i>	3	95	3%
<i>Mental illness not considered by a judge</i>	3	95	3%
<i>This being a first offence not considered by a judge</i>	20	95	21%
<i>Character references ignored</i>	13	95	14%
<i>Advocates not adequately presenting mitigation in defence</i>	15	95	16%
Complaints about conviction	Tally (n)	Total of relevant sample	Percentage
<i>Claim innocence</i>	37	82	45%
<i>Mishandling of evidence:</i>			
<i>Key evidence not looked at by defence</i>	5	82	6%

<i>Important evidence not presented at trial</i>	12	82	15%
<i>Lack of pre-trial disclosure</i>	8	82	10%
<i>Insufficient police investigation</i>	6	82	7%
<i>Evidence mishandled, poorly stored or lost by police</i>	10	82	12%
<i>Lack of understanding of culpability</i>	8	82	10%
Barriers to appeal	Tally (n)	Total of relevant sample	Proportion
<i>Timing</i>			
<i>'Out of time'</i>	73	85	86%
<i>'In time'</i>	12	85	14%
<i>Risk of losing time</i>	6	132	5%
<i>Ineffective assistance of legal advisors</i>	64	132	48%
<i>Complaints with solicitors:</i>	36	64	56%
<i>Not staying in touch</i>	21	36	58%
<i>Complaints with barristers:</i>	31	64	48%
<i>Poor trial defence</i>	7	31	23%
<i>Poorly explained negative advice</i>	6	31	19%
<i>Poor access to paperwork</i>	12	132	9%
<i>Literacy issues:</i>			
<i>Foreign national</i>	8	132	6%
<i>Doesn't speak English (letter written by another)</i>	7	132	5%
<i>Letter poorly written</i>	22	132	17%
<i>Requested a legal visit</i>	12	132	9%
<i>Ignorance of appeal system</i>	46	132	35%

Figure 6: Summary of density of themes identified across the 132 letters analysed

4.2 Questionnaires of women in prison

Next, I will look at the findings from the questionnaires sent to women in prison.

Of the 33 responses to my request to fill in a questionnaire, just less than half (n=15) were convicted of violent crimes (similar figures to the letters), and just over half (n=19) were serving a sentence of more than 12 months. For two thirds of women (n=22) this sentence was their first experience of the criminal justice system, a similar proportion to those that wrote letters to APPEAL. This sample had more knowledge of the appeal system than women writing letters to APPEAL. 18 women of the 33 had tried to appeal their sentences, of whom three had been successful. 11 had tried to appeal their conviction of whom none were successful. All but four of the questionnaire respondents were white and six foreign national women responded.

Many of the vulnerabilities identified were similar to those spoken of in the letters. However, because the questionnaire asked explicit questions, higher numbers were apparent. Two-thirds of the sample (n=21) had been diagnosed with a mental health condition, the majority of which were depression and Post Traumatic Stress Disorder (PTSD), a third (n=11) had suffered from drug or alcohol addiction and more than half (n=18) had experienced domestic abuse (16 had experienced physical abuse and 15 had experienced sexual abuse). 7 respondents were diagnosed with learning difficulties and 9 reported a physical disability.

4.2.1 Barriers to appeal

The barriers to appeal identified by women answering the questionnaires were similar to those highlighted in the letters, though women provided more nuanced responses to direct questions.

Loss of time

18 women had been told by their legal teams about the risk of a loss of time order, and 14 had not been told. 12 women said they had decided to appeal anyway, while 4 stated that the fear of losing time had made them decide not to appeal.

Some women determined that the risk of losing time was far outweighed by the potential benefits of a successful appeal. One woman stated, it *"didn't affect [my willingness to appeal] at all. I am determined to keep fighting as I still believe in justice"*. Another said, *"I feel I have nothing to lose now. I feel I have lost everything already (my son - grief)"*. Those that decided to appeal anyway, rarely said that losing time had no effect on their decision. One woman said, *"obviously it was/is a concern, but I feel that purely on the grounds that justice should be secured I must take this risk"*. Another commented, *"given that I was given a 10-year sentence at the time, although I was very worried about this added stress, I went forward accepting this because I felt that there was too much injustice"*.

A woman who decided not to appeal when asked if the risk of losing time had affected her decision to appeal replied, *"yes it did as I didn't want to start my sentence again"*. Two women mentioned feeling pressured, stating *"I was very upset and scared me to appeal [sic]"* and one commented that she felt *"scared, blackmailed and traumatised"* by the direction.

Ineffective assistance of legal representatives

Women complained about their legal representatives, that they were hard to get hold of, and had inadequately closed their cases after their convictions: *"1st of all my legal representatives are appalling. I was given non-existing phone number of my barrister, I was never visited, did not see anybody until later just a letter"*. Five women said they had been visited at the close of their case and 12 said they had received letters. Women spoke of having to make first contact before receiving a response: *"Once I was convicted my solicitor and barrister did not come and see me even at court when I was convicted until I wrote a letter to them then they replied."*

19 indicated that they had been given insufficient information about the appeals process; *"all they did was agree to pass my papers to the next legal team I had. But even this was not done promptly, and some papers were believed missing when received by my new team"*. One said, *"Under some pressure from myself, they faxed a Form NG to the prison for me and sent me a copy of the legal aid fee structure which they explained verbally was why most legal firms won't take on appeals for people on legal aid."*

One frequent complaint was a lack of explanation for negative advice on appeal. Only one woman said that she felt her legal team properly advised her as to why she was given negative advice: *"yes they said I had no grounds as the judge directed the jury the right way"*. Negative answers were

more emphatic, with one saying, *“no just left to ROT”* and another saying, *“no I did not understand - language barrier as well as lack of understanding of legal stuff”*.

12 women stated that their legal teams never advised them as to whether or not they had grounds of appeal.

Lack of understanding of appeal process

When asked to rate their knowledge of the criminal appeal system out of 10 (1 being low and 10 being high), 9 rated themselves 1 to 3, 5 between 4 - 6 and 6 between 7 - 10. Generally, they felt they were lacking information. Comments included: *“I have had to find out the information for myself and this has taken a very long time given the lack of support and lack of necessary reasons in the prison”, “the information/understanding I gained was through leaflets, posters and occasional articles”* and *“The (very many) barriers in place are due related to a lack of access to information, resources and support. Women’s prisons suffer to a much greater extent than men’s prisons in respect of all of the issues. Notably resource-poverty.”*

One woman also reflected on poor information sharing in women’s prison compared to the male estate: *“Men’s prisons function differently to women’s prisons. From my experience those in the male estate are more likely to discuss their situations with regards to appealing. They are more likely to pass on information and legal recommendations. If women had a means for gaining strength in numbers in terms of appealing, they would be less alone with the emotional and legal impact, and they would be able to get peer advice.”*

When asked what they felt would make the criminal appeals system more accessible to women, comments included: *“More information available and to be treated as individuals”, “Readily available information, support for those without the educational background to understand and use the information; access to relevant internet based legal resources (including things as basic as lists of law firms specially to appeal); laptops and/or typewriters to write legible letters and make notes; paper; photocopying facilities and time set aside to make use of those resources”* and *“To be able to have teams or people in the justice system that can assist and give you the correct legal advice and not judge you on your past.”*

Access to legal advice

Women complained of struggling to access specific legal support to lodge appeals. 15 had sought a second opinion on appeal and 8 had not. Women who didn't, explained their sense of despondency: *"I didn't. I just felt totally alone and abandoned and that is just how it is"* and *"No as I already been knocked back twice"*. One simply said, *"I didn't know I could"*.

Women who had sought a second opinion highlighted the difficulties of accessing further support: *"I have written to the lawyers whose addresses I can access from prison (that are in Inside Time). Basically, the process is made impossibly difficult - we have no access to internet or books with names of companies, no access to computers or typewriters, no access to photocopying etc"*.

Difficulties in communicating were a barrier: *"many women are dyslexic without diagnosis so trying to come to terms with a lot of books and papers is almost impossible to do, let alone to write and rewrite your reasons for appeal if you suffer from PTSD."*

Impact of domestic abuse and mental illness

When asked if they felt there were any barriers to appeal specific to women, 4 said no and the rest said yes. Their previous traumatic experiences of domestic abuse and histories of mental illness were relevant:

"It is much harder if you have suffered any abuse because abuse is not easy to speak out about, let alone then being asked to prove, especially when you have no access to anything. The biggest fear and reason that women don't speak out about abuse is not being believed or being shamed and scrutinised for your suffering. Then not getting protection once you have spoken out loud. It is especially hard when you suffer from mental health as well."

"They did not take DV into consideration"

"Yes, I feel women are judged more harshly than men. Coercive control was not taken seriously at my trial".

"We are women. We are not believed."

"Women who are here due to DV should be looked after by specialist solicitors and all should have pre-sentence reports".

"Male and females have different concerns, emotions, experiences etc. From my experience women are more likely to stay quiet to protect an abusive partner. They are more likely to stay quiet to protect their children and they are more likely to stay quiet as a means of protecting themselves from traumatic/intense emotions. Women are more likely to have been the primary carer of children. This must be considered when addressing any issue within the female prison estate. Being torn away from your children often leaves a mother with feelings of guilt and/or despair. 'How can I have the right to think of myself when I have caused my children so much pain', 'my children are better off without me' etc."

"The appeal process is hard as it is, let alone for women who have endured suffering."

Sense of defeat

One woman who had spent 12 years in custody observed:

"I have met a lot of women who when discussing appeal options with them have replied 'what's the point?' This has been very common amongst women with difficult backgrounds where they have become used to the idea that their opinions/rights do not matter. I have also met women who have chosen not to appeal simply because they do not want to subject their children to any more trauma."

4.3 Survey of lawyers

Next, I will look at the findings from the survey of legal professionals.

The 20 legal professionals who responded to my request to complete the survey largely had wide professional experience of criminal appeals. 9 solicitors or solicitor advocates, 6 barristers and 5 other legal professionals, including campaigners and paralegals responded. 13 of the 20 had 10 or more years of post-qualification experience. All worked on behalf of legally aided clients and 17 had personally represented someone to the CACD). Some reported having represented hundreds of appellants on appeal.



13 were female. 16 were ethnically white, three were Asian or Asian British and one was mixed race.

4.3.1 Barriers to appeal

The barriers to appeal identified by legal professionals had some overlap with the experiences of women in prison, however varied in key areas.

Timing

Three lawyers identified the 28-day appeal window as a barrier for appellants, one referred to it as *"The ludicrous, unrealistic appeal time limit of 28 days"*.

Loss of time

Only one lawyer had ever had a 'loss of time' order against a client (*"Only happened once, there was a valid appeal point court of appeal disagreed and made an example, unfairly I would submit"*), and some commented that they had never known anyone to receive one.

Legal professionals, however, saw 'loss of time' directions having a significant effect on appeals. One paralegal commented, *"It has gotten harder as the Court of Appeal seems increasingly harsh in dismissing out of time of appeals and making loss of time orders"*. A barrister said, *"The routine ticking of the box 'adding on time' if the single judge refuses an appeal has had a chilling effect on taking proper appeals"*. One solicitor suggested there was a deliberate attempt to limit access: *"The Court of Appeal have also acted to restrict access to the court in a series of decisions and procedural hurdles which have been introduced in recent years with the express intention of restricting access to the court, such as the increased use of loss of time orders."*

One barrister commented, *"The barrier is the lower the sentence, the more chilling effect the risk of adding on time to deter an appeal. This is more likely to affect women who in my cases seem likely to be convicted/sentenced of less serious offences"*.

All lawyers confirmed they always informed clients of the risk of a loss of time order, often in writing.

Limited legal advice

When asked what additional resources or information, if any, legal professionals provided to clients about how to appeal a conviction or sentence at the close of a case, four lawyers said they would advise of the client's right to appeal independently or would provide the details of other solicitors:

“Mostly it is to remind them of time limit for appeals. If dissatisfied with advice, I would advise they can seek a separate opinion and how”. Three said they gave clients web links to resources, which of course would not be of any use to clients in prison.

All answers confirmed appeals were mentioned at the conclusion of a case, though the amount and manner in which this information was given varied. When legal professionals were asked whether or not they seek or write a formal or written advice on appeal, there was a wide variety of responses. Six respondents indicated that they would routinely do this as *“it is the right of the Defendant”*. Six said they did not or would not volunteer this unless asked. One solicitor clarified, *“If I am instructed in the case then I will not obtain a separate advice unless the client wishes to pay for it.”* A barrister stated, *“In most cases the client is clear they do not want to appeal, and I agree there are no grounds. I would write a very short few lines - often just an email setting out the position”*.

Legal aid restrictions

A frequent barrier mentioned was limited access to legal aid, *“The system has been utterly starved of funding which has severely impacted the ability of most people to get justice.”* This was brought up in nearly every section of the survey by solicitors, barristers and other legal professionals alike. A barrister highlighted that *“The lack of funding currently available and the hurdles that have to be gone through in order to obtain funding for appeal reviews is of large concern to me”*. A lawyer suggested that *“Legal aid needs to be restored for pre permission/hearing it is not workable to advise with the small limit and then keep having to justify extensions it takes longer than the work.”*

Sensitivity to client vulnerability

Two lawyers wrote at length about the particular difficulties faced by female clients with histories of trauma, particularly for those from ethnic minorities.

One solicitor observed, *“I think if women have been victims of sexual violence or domestic violence there are real issues about being able to talk about it and bring it up. One of my cases in the CCRC is a woman from a Muslim background who can’t even admit to the abuse. It took 6 years of working with her before she admitted culpability because of the shame and dishonour. And that affects particular communities, which makes it very difficult for them to talk about it, on top of the shame and trauma aspects of abuse. I’m not saying it doesn’t happen to men as well, as it is a common feature of sexual violence, but it does affect women more than men in numbers and proportions.”*

A barrister stated, *"A large concern for me are women who have been sexually exploited or raped who feel shame and are unable to come forward to appeal convictions or sentences until well into their recovery period. I desperately wish for there to be a better understanding that this is why women often don't come forward - rather than a stringent extension of time analysis. I now find the Court of Appeal full courts do understand these points- but I'm not sure if practitioners do fully appreciate this."* This barrister stated simply *"The level of vulnerability is simply tenfold as a practitioner in this field for women."*

One barrister wrote about the level of institutional sexism and racism at the bar that she herself had faced and had seen her clients subjected to: *"If an Oxbridge educated female barrister of colour day by day receives that in the very work environment which determines what sentences are imposed, then what hope for your clients. Then what kind of pre-judgments do you think at first instance are passed down by practitioners and first instance judges onto women of colour facing sentence or trial. It's no good telling me things are improving. I look around the criminal justice system and all the women I have represented in all my appeals - 90% are ethnic minorities...I love being an appellate advocate. But the real and telling success of my work will be the day where I won't be repeatedly appealing unjust sentences disproportionately imposed upon women of colour."*

The Court of Appeal itself

Answers to the question, "What do you believe works well in the criminal appeal system?" produced mixed results. The positive answers provided included:

- *"The Registrar's Office is extremely good at their job, very skilled lawyers and committed staff."* (Barrister)
- *"The vast majority of the people working within the system are hardworking and well intentioned and are committed to fighting for justice."* (Solicitor)
- *"Skills of judges who adjudicate"* (Solicitor)

However, there were also a significant number of negative responses, including:

- *"Cannot think of a positive."* (Paralegal)
- *"Almost nothing."* (Paralegal)
- *"Not much, the system is heavily weighted against the defendant."* (Solicitor)

Legal professionals expressed heavy cynicism about the state of the CACD. The question “What do you believe works poorly in the criminal appeal system?” was the most populated portion of the survey. Responses included:

- *“Lack of Legal Aid funding for criminal appeal cases”* (Barrister)
- *“Anachronistic and complex rules and procedures which appellants cannot understand”* (Paralegal)
- *“Time delay is pretty appalling”* (Solicitor)
- *“The test for 'arguable grounds' for leave has a higher bar than the authorities suggest.”* (Barrister)
- *“Judiciary are not representative of appellants and are biased in their decision-making as a result of their different life experience”* (Paralegal)
- *“If the trial process happened and you were represented, and nothing went disastrously wrong then you are stuck with it however perverse a jury decision might be. The problem is when you get a jury that gets it wrong.”* (Solicitor)
- *“Huge problem is poor to incompetent defence legal teams. You can't really argue incompetency - it's dangerous and difficult it has to be really extreme to argue that.”* (Solicitor)
- *“Rules on 'fresh evidence' set too high a hurdle for appellants”* (Paralegal)

When asked whether the barriers to appeal had become higher in recent years, three legal professionals said no. In the rest of responses, however, many reasons were given for why they felt the bar had been raised.

- *“It is now dramatically restricted particularly by fewer grants of leave, tougher criteria for appeals out of time and use of respondents notices and McCook² to allow defensive trial lawyers to help defend an appeal.”* (Barrister)
- *“Quality of appeals presented has declined due to lack of time to prepare cases and such terribly limited investigation of underlying facts by solicitors”* (Solicitor)

² The Court of Appeal in *R. v. Lee* [2014] EWCA Crim 2928, *R. v. McCook* [2014] EWCA Crim 734 and *R. v. Achogbuo* [2014] EWCA Crim 567 decided there was an obligation of new legal representatives to make enquiries as to the factual basis for grounds of appeal. It functionally means new representatives must present their grounds to previous representatives for comment before submitting an appeal to the court.

- *“Access to the CACD has severely reduced over time due largely to a lack of available funding which has severely restricted the ability of appellants to receive legal advice and representation” (Solicitor)*
- *“The high bar for successful appeals is not just leading to fewer successful appeals. It has resulted in fewer applications for leave being granted by the SJ [single judge], fewer applications for leave being made and even fewer positive advices from counsel being provided to convicted/sentenced defendants. The biggest barrier to a potential appellant is getting a positive advice in the first place.” (Paralegal)*

Barristers stated that changes in the Court of Appeal had not affected their propensity to dispense negative or positive advice.

Sense of defeat

There was palpable frustration in the responses from legal representatives about the difficulties of bringing appeals to the CACD. These frustrations crystallised into an acknowledgement that the fundamental attitude of the CACD was to dissuade appellants from seeking to appeal.

- *“The default position appears to be to uphold the original conviction at all costs even where major errors in the original trial are present” (Solicitor)*
- *“The overall system provides no encouragement for proper appeals to be pursued” (Barrister)*
- *“Ultimately it seems a very clear mindset that you do not allow appeals unless there is some really grave and compelling public interest reason.” (Solicitor)*
- *“The CACD is also failing to function as an effective court of appeal and appears set on focussing on reducing its workload at the expense of access to justice” (Solicitor)*

Under-confidence of female clients

Many felt or had observed from their own practice that there was a clear difference in the willingness of women versus men to fight appeals.

- *“Looking at my records there is a clear difference in readiness to fight a case at trial (less willing for women).” (Barrister)*
- *“Many of the women I have represented have had children and other caring responsibilities...They want to serve their time and get back to their families as soon as possible.” (Solicitor)*

- *“Men feel more entitled to an appeal so are more likely to assert their rights than women are. Many women just accept their lot.” (Solicitor)*
- *“I have known men pursue appeals that are merely arguable rather than advisable. They have not been successful. Generally, women have been quicker to listen to advice.” (Paralegal)*

One barrister gave an example: *“Men who specifically wish to appeal against sentences and convictions will say so. Many women are extremely distraught at being sentenced to custody. In a successful appeal against sentence, where there was relevant PTSD, the applicant had been subjected to severe domestic abuse both during the index offence and prior- she was utterly devastated and was speaking of self-harming and committing suicide in the conference post sentence. She had merits in which to appeal. But had just lost her life, her livelihood and had never any experience of the criminal justice system. Put frankly, I don't know how much of my oral advice she was able to take on board at that conference. I had to spend an hour with her to calm her down, let the cell staff know of the suicide risk, and then hope that she did take on my advice to appeal. She did, and we appealed against the prison sentence successfully for a woman who had no previous convictions and the Court of Appeal imposed a suspended sentence. The mental health vulnerabilities of many of my clients is so stark even pre-sentence - and at the date of sentencing I simply am hopeful that they are not going to self-harm.”*

Three lawyers felt there was no observable difference between women and men seeking to appeal.

Chapter 5: Analysis and Discussion

I divide up the findings into three categories: gendered, external and procedural barriers to appeal. I then analyse the impact of collective barriers on the legitimacy of criminal appeal system.

There was significant agreement between the barriers to appeal identified by women in the letters as in the questionnaires. Gendered barriers to appeal were those identified that appeared to impact women in particular. For example, women's lack of confidence, or experiences of trauma and mental illness featured heavily in preventing them from seeking to appeal. Things women had no control over, external barriers, such as their inability to contact their trial representatives, lack of access to further legal advice and their limited access to paperwork also formed substantial impediments to the CACD. Perhaps unsurprisingly, lawyers and legal professionals grouped their concerns around more legal and procedural hurdles, such as restrictions on funding appeals work.

Many barriers women face going to the CACD are similar to those faced by men. Certainly, the abovementioned external barriers and procedural hurdles are not gendered. The sheer number of obstacles in the way of appealing creates a significant legitimacy problem for the CACD. However, my findings highlight the way these barriers are fundamentally different because of the experiences of trauma and victimisation that are so prevalent in the women's prison population. The 2018 Female Offender Strategy echoed the Corston Report findings of a decade earlier regarding the unique level of vulnerability and complex need within women's prisons and certainly this research project has found no less. Acknowledging women's differential experiences raises fundamental questions about the legitimacy of the CACD as a legal body capable of righting wrongs done to women.

5.1 Gendered barriers to appeal

The most important finding from the data was the extraordinary stresses that women in prison are living with and how their clear vulnerability dampens their ability to access the appeal system. Women, much like in the PPO study (2015, p14), were concerned that they would not be believed, particularly in their experiences of gendered trauma such as domestic abuse. They were often only disclosing this information well after conviction and sentence and outside of the 28-day appeal window. In these cases, trial lawyers had then not had the opportunity to put this information in

mitigation. Given the high number of women in custody who have experienced some form of abuse, this is a worrying indication that the court process is ill equipped to encourage women with vulnerabilities to disclose them. As one woman in prison said, we need the law to *“acknowledge all the fears and reasons why women won’t do this by specific time frames”*.

Women decided not to appeal due to feelings of shame and to avoid placing further strain on their children. Women felt doubly stigmatised for their involvement in the criminal justice system. Not only had they broken the law but had also transgressed against societal stereotypes of women as mothers, carers and nurturers. Removed from their children, women’s shame caused them to avoid making a further fuss by appealing.

Women and lawyers alike identified an adjustment period when first arriving in custody when they had to come to terms with being in prison and entered ‘survival mode’ for any mental health needs they had. This is a poor time for women to be thinking about an appeal and made the 28-day appeal window a much too high threshold for women suffering from poor mental health or recovering from addiction to meet. The PPO study also found that women preferred to resolve their issues informally rather than seeking to complain (2015, p8) and women at times seemed to prefer to accept their lot.

There was a concern among legal professionals that fewer women than men may be taking up appeals. The reason chimed with the PPO’s conclusion on why women use the complaints systems in prison much less than men; because of mistrust of the system and fear of reprisals for complaining (PPO, 2015, p14). Women’s prior experiences of victimisation further prevented them from having confidence in the appeal system. A loss of time order acts as a ‘punishment’ for bringing a ‘time wasting’ appeal and while they are rarely given, the risk seemed to have a disproportionately chilling effect on women’s desire to appeal. The risk is more serious to women given short sentences and it was notable that very few short-sentenced women participated in the study. This seemed to further confirm that this cohort of women may simply not be participating in the appeal system, echoing the findings of Zander (1972) and Malleson (1991).

Women reported terrible experiences of being ignored by their representatives and of having negative advice poorly explained or not explained at all. Their voices were infused with a sense of futility and defeat, largely brought about by previous poor treatment. Women in the PPO study reported that having good relationships with staff made a difference to their willingness to resolve a complaint (2015, p8). It seems crucial then, that trial advocates develop stronger relationships with the women they represent, both to encourage their disclosure of relevant details of their lives, and to encourage them to appeal when it is in their best interest.

5.2 External barriers to appeal

Women's lack of knowledge of the appeals process was a paramount concern. Like Zander found more than 50 years ago, knowledge of the criminal appeals system is poor and is not consistently explained by legal professionals. One woman responding to a questionnaire said: *"From my experience those in the male estate are more likely to discuss their situations with regards to appealing. They are more likely to pass on information and legal recommendations."* Although anecdotal only, this might be an indication that information on the appeal process is less available in the women's estate. A PPO analysis of complaints over a 5-year period found that under a third of women's complaints were deemed eligible, about 25% lower than for men (2011, p8) highlighting perhaps a lack of understanding of complaints procedures for women in custody more generally.

Women's lack of understanding of appeals was made worse by the lack of standardisation in the way legal professionals close a case. There was no common understanding of, for example, whether or not a formal advice on appeal was needed. Quality standards are inconsistent and results in poor experiences of legal representation for defendants. This was compounded by the fact that women in prison have very little access to information or resources, from things as basic as the addresses of law practices to access to printing facilities and paperwork. Furthermore, women whose literacy or grasp of the English language was poor were even less able to access information. Women were clearly eager to understand more and were making good faith attempts to advocate on their own behalves, but the futility and frustration of these efforts was palpable.

5.3 Procedural barriers to appeal

There were ample procedural barriers to appeal identified. One clear area of concern was the 28-day window from the date of conviction or sentence within which to bring an appeal. Women who are recovering from trauma, who are unable to get hold of their representatives, who have no information about where else they can go for help are unable to meet this arbitrary deadline. Although women are able to bring appeals 'out of time', leniency for untimely appeals has waned, even if the appellant is likely to succeed (see *R v Ordu* [2017] EWCA Crim 4)³. The task of bringing an appeal in time is unrealistic for most women seeking to appeal in custody.

³ Mr. Ordu pled guilty to an offence in October 2007 and sought an extension of time of 8 years and 3 months in which to apply for leave to appeal against conviction. The delay was not Mr. Ordu's fault as he was unaware that he had a defence to what he was accused of in that time. He was sentenced to 9 months' imprisonment for the offence and served his full

Measures such as *McCook* obligations to run grounds of appeal by previous representatives have created significant new hurdles for those seeking to appeal. Lawyers also felt that it has become harder to win on the merits in the CACD, with fewer grants of leave being given, fresh evidence rules being too stringent and because of this, fewer advocates being willing to give positive advice on appeal.

The lack of funding, particularly for initial work on appeal is of grave concern. Lawyers spoke of a lack of incentive to take on appeals work due to the restrictions on funding. The 2017 Standard Crime Contract Specification (Ministry of Justice, 2017, 11.26) effectively rules out seeking a second opinion if you have received negative advice on appeal from your trial representatives, unless you can afford to pay privately. Quality legal representation for defendants hoping to appeal is therefore at risk.

5.4 Impact of collective barriers on legitimacy of criminal appeal system

The barriers to appeal identified by women and legal professionals should be of real concern to the CACD, as it erodes the legitimacy of the whole criminal justice system. Taylor and Ormerod state, “the law’s primary concern should be to maximise fairness and justice in the criminal process, being confident that the process convicts (and maintains the convictions of) only the guilty” (2004, p266). Barriers to accessing the Court of Appeal prevent the court from carrying out this most fundamental function. It might well be argued, as it was by the Lord Chief Justice in the introduction to the CACD 2010/11 annual report that a low rate of appeals from the Crown Court to the CACD “demonstrates good reason for confidence in the criminal justice system” (p2). However, if the reason for the low rate is that unreasonable hurdles are placed in the way of would-be appellants, these figures are less an indication of a properly functioning system and more evidence that the criminal justice system is lacking an effective means of correcting mistakes.

It could also be argued the CACD lacks procedural fairness, which is fundamental to compliance with law and order (Tyler, 1990, p120). The findings of this research project call into question whether a system that is out of reach to many of those that it serves can ever be described as procedurally fair.

sentence. While the Court of Appeal acknowledged that Mr. Ordu had grounds of appeal that would be likely to succeed, they refused to allow the extension of time. This is because they applied the ‘substantial injustice’ test. This test requires an appellant to show not only that their conviction is unsafe, but also that a substantial injustice would be done if it were not quashed. The court decided that since Mr. Ordu’s life had improved considerably since his imprisonment, they felt there was no substantial injustice in allowing his conviction to stand, even after admitting he had legitimate grounds of appeal.

While appealing is a fundamental right of a convicted or sentenced person, what use is that right if they are unable to exercise it?



Chapter 6: Summary and Recommendations

6.1 Summary

At the conclusion of this study, a fundamental question remains about the purpose of the CACD. If it is to be a Court that aspires to remedy miscarriages of justice in all its forms and for all sorts of defendants, regardless of offence type, sentence length, sex, gender or other minority status, it must confront the fact that the most meritorious of cases cannot reach it if access to the Court is so hindered with hurdles. The CACD should aspire to be a court of correction for *all* defendants convicted in the Crown Court, and duly accessible by all. This would entail greatly increased spending and investment in the CACD.

6.2 Recommendations

In light of this research, I recommend the following:

For Legal Professionals

The current restrictions to public funding severely limit the quality of client care defendants receive and must be improved.

Legal Aid:

- 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.

Criminal legal professional standards vary significantly. Guidance is needed for lawyers on defendant's rights to information and training is needed on dealing with vulnerability and trauma.

Practice:

- 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 **CACD** 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 always 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

The right to appeal a conviction or sentence and the process for doing so should be better publicised.

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

Every effort should be made to provide prisoners with the information and tools needed to access their rights, including their right to seek a criminal appeal.

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)

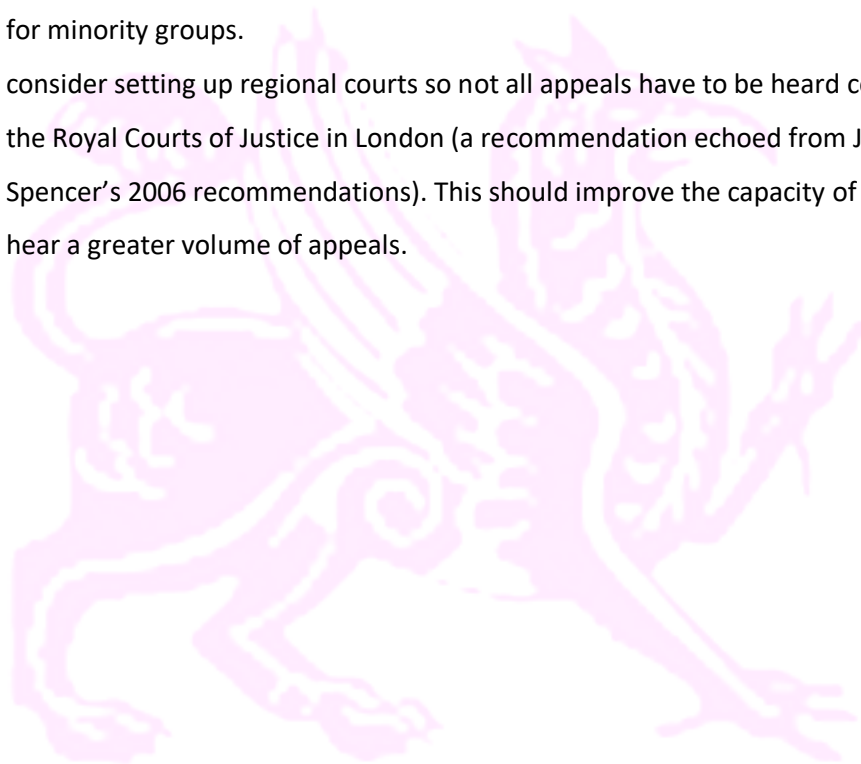
Piecemeal reform is unlikely to have much success in achieving the scale of change necessary to ensure a criminal appeal system that hits the key functions envisaged by Auld LJ in 2001. The CACD has limited the scope of appeals to reduce the number of appeals being heard, in part due to overwork and budgetary constraints. There must be a fundamental shift in thinking about criminal appeals to allow better remedial access to appeals for all defendants.

Legislation:

- **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.

Practice:

- The **CACD** 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 (a recommendation echoed from John Spencer's 2006 recommendations). This should improve the capacity of the CACD to hear a greater volume of appeals.



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Appendix 1: Research advertisement in *Ready Steady Go!***RESEARCH OPPORTUNITY: MAKE YOUR VOICE HEARD!**

We are doing a research project looking into what the barriers are for women seeking to appeal convictions and sentences in order to make suggestions for improvement. We hope this project will make the Court of Appeal more accessible to women hoping to appeal. We are hoping to find out:

- Whether or not you have ever considered appealing, why or why not
- Your experience of trial, conviction and the advice you received from your lawyers regarding an appeal
- What your understanding of the appeals process is, and what you believe would improve it

If you are interested in participating in this research project, please write to: Naima Sakande, Room 29, 2-10 Princeton Street, London, WC1R 4BH. Please include your name, prison and prisoner number, and I will write to you with more information. Please note that if you choose to participate, nothing you say will be reported to your lawyer or the prison and all your answers will be recorded anonymously.

We hope you will take up this opportunity to make suggestions for reform and have your voice heard!

Appendix 2: Participant information sheet and consent form

Questionnaire: Exploring the barriers to accessing criminal appeals faced by women in prison

Who am I?

My name is Naima Sakande and I work as the Women's Justice Advocate at APPEAL. We represent women seeking to overturn wrongful convictions or unfair sentences in the Court of Appeal. I am doing a research project, supported by the Institute of Criminology at Cambridge University, looking into what the barriers are for women seeking to appeal in order to make suggestions for improvement. I hope this project will make the Court of Appeal more accessible to women hoping to appeal.

What is this questionnaire about?

This questionnaire hopes to find out:

- Whether or not you have ever considered appealing your conviction or sentence, why or why not
- Your experience of trial, conviction and the advice you received from your lawyers regarding an appeal
- What your understanding of the appeals process is, and what you believe would improve it

How long will it take to fill out?

It depends how much detail you go into, but it should take no longer than an hour.

How will you be using my information?

Quotations from your answers will be used to illustrate the research findings, but no person will be identified or identifiable. Questionnaire responses will be destroyed one year after the research project is complete. If you choose to participate, nothing you write will be reported to your lawyer, the prison or the OMC. However, if I learn of illegal acts or that anyone is in danger of self-harm, I am obliged to bring this to the attention of the prison authorities. If you have written to us for help with an appeal, that application will be dealt with independently of this research project.

What will I get out of it?

- I will write to you with some information on appealing a conviction or sentence once I receive your questionnaire response

- You will have an opportunity to make recommendations for improvement of the appeals system
- I will send you a copy of the research once it is complete

What if I have questions or change my mind?

If you have any questions about the research, or at any stage change your mind about wanting to be involved, please reach out to Naima by writing to her at APPEAL, The Green House, 244-254 Cambridge Heath Road, E2 9DA or calling 0207 040 0019.

CONSENT FORM

I.....(name)

consent to taking part in this research project by NAIMA SAKANDE of APPEAL, for my answers to this questionnaire and my experiences to be reproduced in any reports or publications by her.

I understand that I will not be identified personally in any such reports or publications.

Signed: Date:

PLEASE RETURN THIS FORM IN THE PRE-PAID ENVELOPE PROVIDED

Appendix 3: Monitoring Form

Monitoring Form

We know that you might have been asked to fill out a form like this many times before. We want to assure you that we don't collect this information to put you in a box, or to bring up bad experiences. We are asking these questions to use the data collected to tell the wider world about the experiences of women in prison, to better campaign and advocate for their needs.

Responding to this questionnaire is optional and the responses will be treated confidentially.

1. About you

a) Are you:

☐ Male ☐ Female ☐ Other ☐ Prefer not to say

b) How old are you?

☐ 15 – 24 ☐ 25 – 34 ☐ 35 – 44 ☐ 45 – 54 ☐ 55 – 64 ☐ 65 or over

c) What is your ethnicity?

Asian or Asian British	Mixed	Other Ethnic Groups
<input type="checkbox"/> Indian	<input type="checkbox"/> White and Black Caribbean	<input type="checkbox"/> Any other ethnic group
<input type="checkbox"/> Pakistani	<input type="checkbox"/> White and Black African	
<input type="checkbox"/> Bangladeshi	<input type="checkbox"/> White and Asian	
<input type="checkbox"/> Any other Asian background	<input type="checkbox"/> Any other Mixed background	

Black or Black British <input type="checkbox"/> Caribbean <input type="checkbox"/> African <input type="checkbox"/> Any other Black background	White <input type="checkbox"/> British <input type="checkbox"/> Irish <input type="checkbox"/> Any other White background	<input type="checkbox"/> Prefer not to say
---	--	--

d) Are you a British national/citizen?

Yes ☐ No ☐

e) If you don't mind telling us, how would you define your sexuality?

f) Have you ever been diagnosed with any learning difficulties (e.g. ADHD)?

Yes ☐ No ☐

2. General questions

a) Is this your first experience of the criminal justice system?

Yes ☐ No ☐

If no, and you don't mind telling us, what was your previous experience?

b) Which of the following would you consider yourself to be?

Low-income ☐ Middle-income ☐ High-income ☐

c) Have you ever been homeless?

Yes ☐ No ☐

d) Have you ever spent time in care?

Yes ☐ No ☐

3. Wellbeing

a) Have you ever been diagnosed with any mental health issues (e.g. depression, OCD)

Yes ☐ No ☐

If yes, and you don't mind telling us, what have you been diagnosed with?

b) Have you had any issue with drug or alcohol abuse?

Yes ☐ No ☐

c) Do you have a disability?

Yes ☐ No ☐

d) If you don't mind sharing with us, have you ever experienced abuse?

- ☐ Domestic abuse
- ☐ Physical abuse
- ☐ Emotional abuse
- ☐ Sexual abuse or sexual exploitation
- ☐ Culturally specific abuse (e.g. forced marriage or honour-based violence)
- ☐ Trafficking
- ☐ I have not experienced abuse

4. Please answer this section if you have children.

a) How many children do you have? _____ b) How old are they? _____

c) Are you a single parent?

Yes ☐ No ☐

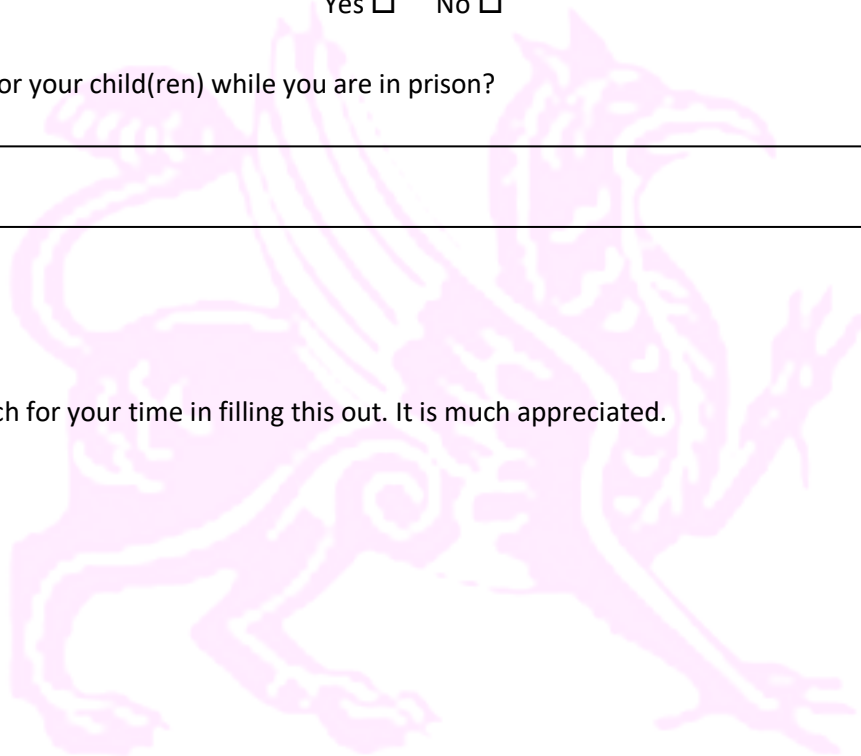
d) Before prison, were you the primary carer for your child(ren)?

Yes ☐ No ☐

e) Who is caring for your child(ren) while you are in prison?

--

Thank you so much for your time in filling this out. It is much appreciated.



Appendix 4: Questionnaire for women in custody**Questionnaire****A little about you**

The following set of questions is intended to find out a little more about who you are. Please answer all questions you are comfortable sharing.

What were you convicted of and what sentence did you receive?

How were you convicted?

Convicted after trial ☐ Convicted after pled guilty ☐

Were you represented on legal aid?

Yes ☐ No ☐

On a scale of 1-10 (1 being low, 10 being high), how would you rate your overall understanding of the criminal appeal process?

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐

When you were first convicted, did you want to appeal your sentence or conviction? Why? Why not?

Have you ever appealed against your conviction?

Yes ☐ No ☐

If yes, where to? *Please tick all that apply*

Court of Appeal (Criminal Division) ☐ Criminal Cases Review Commission ☐

Was your appeal successful?

Yes ☐ No ☐

Have you ever appealed against your sentence?

Yes ☐ No ☐

If yes, where to? *Please tick all that apply*

Court of Appeal (Criminal Division) ☐ Criminal Cases Review Commission ☐

Was your appeal successful?

Yes ☐ No ☐

Your experience with lawyers

The following set of questions are intended to get a sense of what your experience of trial and conviction were, and what information you were given by your legal representatives about appeals.

When you were convicted, how did your legal team close your case?

For example, did they visit you in prison or write you a letter?

When your legal team closed your case, what information did they give you about how to appeal your conviction or sentence?

Have you ever considered appealing your sentence or conviction? Why? Why not?

Did your legal team tell you whether or not you have grounds for appeal?

This is called an 'Advice on Appeal'.

Yes ☐ No ☐

If you were given 'Negative Advice', do you feel your legal team properly explained why?

A 'Negative Advice' explains that you have no grounds for appeal.

If you were given 'Negative Advice', did you write to other lawyers to ask for a second opinion? Why? Why not?

If you were given 'Positive Advice', did you go on to appeal your conviction or sentence? Why? Why not?

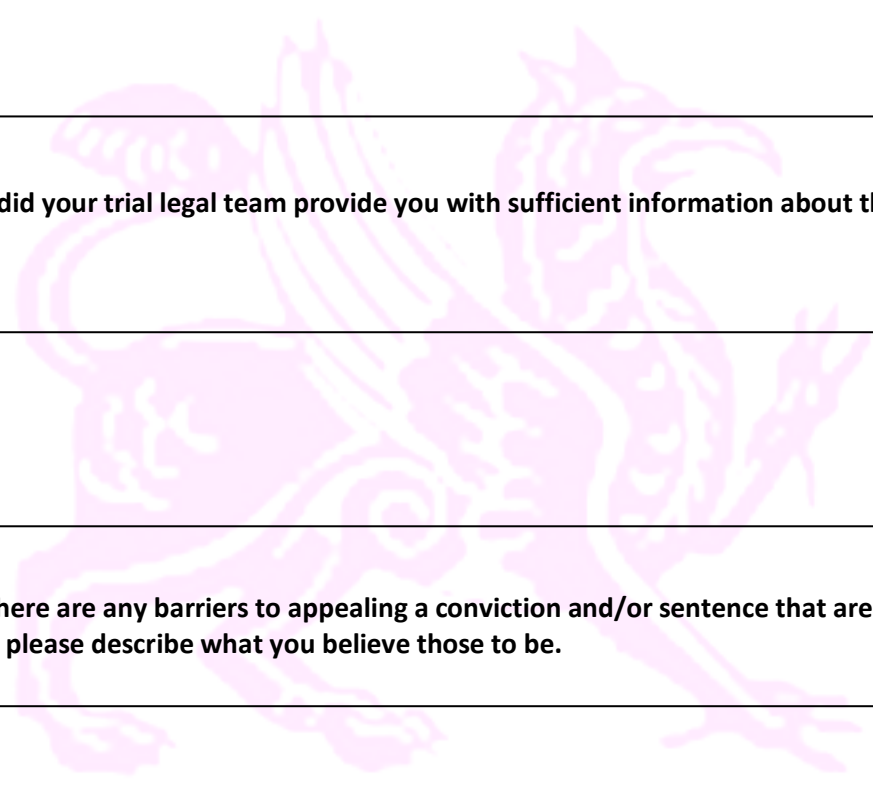
A 'Positive Advice' explains that you have grounds for appeal

Were you informed that if you chose to appeal you might have your sentence extended?

This is called a 'loss of time' direction. It means that a Judge may order that some of the time that you have spent in custody awaiting appeal will not count towards your sentence if the Judge feels your appeal is without merit, effectively putting back the appellant's release date.

Yes ☐ No ☐

If yes, how did this affect your willingness to appeal?



In your opinion, did your trial legal team provide you with sufficient information about the appeals process?

Do you believe there are any barriers to appealing a conviction and/or sentence that are particular to women? If yes, please describe what you believe those to be.

What do you believe would make it easier for women to be able to access the criminal appeal system?

Is there anything further you would like to add? Is there anything that has not been asked in the questionnaire that you would like to answer?

Thank you so much for taking the time to help!

If you would like to receive a copy of the final research paper when it is complete, please provide your name, prison number and address and I will mail you the final report.

I would like to receive a final copy of the paper:

Yes ☐ No ☐

I would like some information about appealing a conviction or sentence:

Yes ☐ No ☐

Name: _____ **Prisoner number:** _____

Address: _____

Appendix 5: Questionnaire for Lawyers

Access to Justice for Women in the Court of Appeal (Criminal Division)

This research project looks at the criminal appeals system as it relates to women. We are asking questions of legal professionals in order to better understand how lawyers work within the criminal appeals system and their experiences of representing women in it. Your answers to this survey will be anonymous in the final paper. If you opt at the end to share your information, the lead researcher, Naima Sakande, may contact you and ask if you would be willing to partake in a short interview by telephone. Again, your answers will be anonymously reported in the final paper.

This survey should take you roughly 20-30 minutes to complete. The survey will be open until August 31st 2019.

This research project is funded by the Griffins Society (<https://www.thegriffinsociety.org/>) and is hosted by the Institute of Criminology at Cambridge University (<https://www.crim.cam.ac.uk/>). Should you have any questions about completing the survey or about the research project, please contact:

Naima Sakande | naima@appeal.org.uk

Women's Justice Advocate

APPEAL (<http://appeal.org.uk/>)

2-10 Princeton Street

London

WC1R 4BH

0207 040 0019

Thank you for your willingness to participate!

- **Required**

1 Email address *



1. Who are you?

The following set of questions is intended to find out a little more about who you are. Please answer all questions you are comfortable sharing.

This section (1/4) should take approximately 2 minutes to complete.

2. 1.1 What is your legal role? * *Mark only one oval.*

- ☐ Solicitor
- ☐ Barrister
- ☐ Solicitor Advocate
- ☐ Legal Executive
- ☐ Paralegal
- ☐ Other: _____

3. 1.2 How many years Post-Qualified Experience (or equivalent work experience) do you have? *

Mark only one oval.

- ☐ 1-3 years
- ☐ 4-6 years
- ☐ 7-9 years
- ☐ 10 +
- ☐ Prefer not to say

4. **1.3 What part of the country do you practice in? Please check all that apply. * Check all that apply.**

- ☐ South East
- ☐ London
- ☐ North West
- ☐ East of England
- ☐ West Midlands
- ☐ South West
- ☐ Yorkshire & Humberside
- ☐ East Midlands
- ☐ North East
- ☐ Wales
- ☐ Jersey
- ☐ England and Wales
- ☐ International

5. **1.4 What is your gender? ***

Mark only one oval.

- ☐ Female
- ☐ Male
- ☐ Prefer not to say
- ☐ Other: _____

6. **1.5 What is your ethnicity? ***

Mark only one oval.

- ☐ Asian or Asian British
- ☐ Black or Black British
- ☐ Mixed
- ☐ White
- ☐ Prefer not to say
- Other: _____

7. **1.6 Do you accept instructions in cases on Legal Aid as part of your regular practice? * Mark only one oval.**

- ☐ Yes
☐ No

8. **1.7 What proportion of the work you do is pro bono or legally aided? * Mark only one oval.**

- ☐ None
☐ Less than 50%
☐ 50%
☐ More than 50%
☐ All

9. **1.8 What proportion of your cases are finalised in the Magistrates court? * Mark only one oval.**

- ☐ None
☐ Less than 50%
☐ 50%
☐ More than 50%
☐ All

10. **1.9 What proportion of your cases are finalised in the Crown Court? * Mark only one oval.**

- ☐ None
☐ Less than 50%
☐ 50%
☐ More than 50%
☐ All

11. **1.10 What proportion of your cases are finalised in the Court of Appeal (Criminal Division)?**

*

Mark only one oval.

- ☐ None
☐ Less than 50%
☐ 50%
☐ More than 50%
☐ All

12. 1.11 Have you ever personally been the legal representative of a person who is appealing a sentence or conviction to the Court of Appeal (Criminal Division)? *

Mark only one oval.

- ☐ Yes
☐ No

13. 1.12 If yes, roughly how many of each type?

14. 1.13 Do you take on fresh appeals in cases where you were not the instructed representative at trial? *

Mark only one oval.

- ☐ Yes
☐ No

2. The Court of Appeal (Criminal Division)

The following questions are intended to get an overview of your opinion of the Court of Appeal (Criminal Division), and to see how well you believe our current criminal appeal system to be working.

This section (2/4) should take approximately 6-10 minutes to complete.

15. 2.1 What do you believe works well in the criminal appeal system?

16. 2.2 What do you believe works poorly in the criminal appeal system?

17. 2.3 Do you think access to the Court of Appeal (Criminal Division) for defendants/appellants has changed over time? If yes, how?

18.2.4 What do you see as some of the barriers to accessing the Court of Appeal (Criminal Division) for defendants/appellants?

3. Case Management

The following questions are intended to get a sense of what your standard practise is for managing clients and cases. Please answer bearing in mind your average client, not exceptional cases. Please only answer from your experiences of representing clients in Crown Court and in the Court of Appeal (Criminal Division).

This section (3/4) should take approximately 6-10 minutes to complete.

19.3.1 If a client is convicted at trial, what is your usual practice for closing the case?

20.3.2 Does this practice differ for a legally aided client? If yes, how so?

21.3.3 If a client is convicted at trial, what is your usual practice for informing them of the appeal system?

22.3.4 What additional resources or information, if any, do you provide to clients about how to appeal a conviction or sentence?

23.3.5 Do you always seek a formal or written advice on appeal of conviction or sentence from counsel? Why? Why not?

Please answer only if you are a solicitor/solicitor advocate. If you are a barrister, please skip to question 3.7.

24.3.6 Have you ever appealed a sentence and/or conviction after there has been a negative advice on appeal from instructed counsel? Why? Why not?

Please answer only if you are a solicitor/solicitor advocate. If you are a barrister, please skip to question 3.7.

25.3.7 Do you always provide a formal or written advice on appeal on conclusion of the case? Please answer only if you are a barrister. If you are a solicitor/solicitor advocate please ensure you have answered questions 3.5 and 3.6.

26.3.8 Has your propensity to dispense negative or positive advice on an appeal of conviction or sentence changed over time? If yes, how so?

Please answer only if you are a barrister. If you are a solicitor/solicitor advocate please ensure you have answered questions 3.5 and 3.6.

27.3.9 If a client chooses to appeal, what is your usual practice in advising clients of the loss of time direction?

A loss of time order dictates that some of the time that the appellant has spent in custody awaiting appeal will not count towards their sentence, effectively putting back the appellant's release date.

28.3.10 Have you ever had a loss of time order made against a client in an appeal? If yes, please explain the context of the case or provide the case reference/citation.

5. Women and Criminal Appeals

The following questions are intended to understand the role, if you believe there to be any, of the gender of your clients in your and their experience of the criminal appeals process.

This section (4/4) should take approximately 6-10 minutes to complete.

29. 4.1 In what proportion of the appeal cases you have worked on were your clients women?

30.4.2 Do you believe there is a difference in the number of women versus men appealing convictions and/or sentences in the Court of Appeal (Criminal Division)? If yes, to what do you attribute this difference?

31. 4.3 Do you believe there is a difference in the readiness of women versus men to appeal convictions and/or sentences? If yes, how would you describe those differences?

32.4.4 Do you believe there are any barriers to appealing a conviction and/or sentence that are particular to women? If yes, please describe what you believe those to be.

Thank you for your time!

33. Is there anything further you would like to add? Is there anything that has not been asked in the survey that you would like to answer?

If you are happy to be contacted by the Lead Researcher for an informal follow up conversation on this survey, please fill in your information below.

All your responses will be recorded in the final report anonymously.

34.Name

35.Email

36.Telephone number

37.Address

If you have any further questions about the research you have participated in, or would like a copy of the final paper when it is complete please do not hesitate to reach out to the Lead Researcher.

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☐ Send me a copy of my responses.

ENDS

