

Banks on Sentence

Sentencing Alert No 200

25 Sept 2018

Alert material

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Breach Offences

New guideline In force 1 October 2018

The Sentencing Council has issued a new definitive guideline for breach offences. It deals with breaches of community orders, Criminal Behaviour Orders, Disqualification from acting as a Company Director, Disqualification from keeping an animal, Non-molestation Orders, notification requirement, post-sentence supervision, Restraining Orders, Sexual Harm Prevention Orders and Suspended Sentence Orders. It also deals with failure to surrender to bail and other breach offences.

Court of Appeal

Service of appeal notices and NG forms In force 1 October 2018

Criminal Practice Directions 2015 EWCA Crim 1567 para 39C.5¹.

Direct Lodgement

para 39C.5 With effect from 1st October 2018, Forms NG and Grounds of Appeal which are covered by Part 39 of the Criminal Procedure Rules (appeal to the Court of Appeal about conviction or sentence) are to be lodged directly with the Criminal Appeal Office and not with the Crown Court where the appellant was convicted or sentenced. This Practice Direction must be read alongside the detailed guidance notes that have been produced to accompany the new forms.²

From this date the Crown Court will no longer accept Forms NG and will return them to the sender. Forms NG and Grounds of Appeal should only be lodged once. They should, where possible, be lodged by email. Applications should not be lodged directly onto the Digital Case System. Applications must be lodged at the following address:

criminalappealoffice.applications@hmcts.x.gsi.gov.uk

If you do not have access to an email account, you should post Form NG and the Grounds of Appeal to: The Registrar, Criminal Appeal Office, Royal Courts of Justice, Strand, London WC2A 2LL. Once an application has been effectively lodged, the Registrar will confirm receipt within 7 days.

Service

39C.6 Legal representatives should make sure they provide their secure email address for the purposes of correspondence and service of document.³ The date of service for new applications lodged by email will be the day on which it is⁴ sent, if that day is a business day and if sent no

later than 2:30pm on that day, otherwise the date of service will be on the next business day after it was sent.

Completing the Form NG

39C.7 All applications must be compliant with the relevant Criminal Procedure Rules, particularly those in Part 39. A separate Form NG should be completed for each substantive application which is being made. Each application (conviction, sentence and confiscation order) has its own Form NG and must be drafted and lodged as a stand-alone application.

Note: There is a new Form NG to be used from 1 October 2018, see www.banksr.com Other Matters Other Documents Criminal Practice Directions. Ed.

Partial leave/Adding a ground of appeal In force 1 October 2018

Criminal Practice Directions 2015 EWCA Crim 1567 para 39C.4⁵. Where the appellant wants to rely on a ground of appeal that is not identified by the appeal notice, an application under Criminal Procedure Rules 2015 Rule 36.14(5) is required. In *R v James and Others* 2018 EWCA Crim 285 the Court of Appeal identified as follows the considerations that obtain and the criteria that the court will apply on any such application.

(a) as a general rule all the grounds of appeal that an appellant wishes to advance should be lodged with the appeal notice, subject to their being perfected on receipt of transcripts from the Registrar.

(b) the application for permission to appeal under section 31 of the Criminal Appeal Act 1968 is an important stage in the process. It may not be treated lightly or its determination in effect ignored merely because fresh representatives would have done or argued things differently to their predecessors. Fresh grounds advanced by fresh representatives must be particularly cogent.

(c) as well as addressing the factors material to the determination of an application for an extension of time within which to renew an application for permission to appeal, if that is required, on an application under Criminal Procedure Rules Rule 36.14(5) [see **4.36**] the appellant or his or her representatives must address directly the factors which the court is likely to consider relevant when deciding whether to allow the substitution or addition of grounds of appeal. Those factors include (but this list is not exhaustive):

(i) the extent of the delay in advancing the fresh ground or grounds;

(ii) the reasons for that delay;

(iii) whether the facts or issues the subject of the fresh ground were known to the appellant's representatives when they advised on appeal;

(iv) the interests of justice and the overriding objective in Part 1 of the Criminal Procedure Rules.

(d) [Not listed. About *R v McCook* 2014 duties, transcripts and respondent's notices and adding nothing new.]

(e) while an application under Criminal Procedure Rules 36.14(5) will not require "exceptional leave", and hence the demonstration of substantial injustice should it not be granted, the hurdle for the applicant is a high one nonetheless. Representatives should remind themselves of the provisions of paragraph 39C.2 above.

(f) permission to renew out of time an application for permission to appeal is not given unless the applicant can persuade the court that very good reasons exist. If that application to renew out of time is accompanied by an application to vary the grounds of appeal, the hurdle will be higher still.

(g) any application to substitute or add grounds will be considered by a fully constituted court and at a hearing, not on the papers.

(h) on any renewal of an application for permission to appeal accompanied by an application under Criminal Procedure Rules 36.14(5), if the court refuses those applications it has the power to make a loss of time order or an order for costs in line with *R v Gray and Others* [2014] EWCA Crim 2372. By analogy with *R v Kirk* [2015] EWCA Crim 1764 (where the court refused an extension of time) the court has the power to order payment of the costs of obtaining the respondent's notice and any additional transcripts.

1. As inserted by Criminal Practice Directions 2015 Amendment No 7 2018 EWCA Crim 1760

2. See www.banksr.com Other Matters Other Documents Criminal Practice Directions and www.banksr.com Other

Matters Other Documents Court of Appeal

3. Perhaps the author meant 'documents'.

4. Perhaps the author meant 'they are'.

5. As inserted by Criminal Practice Directions 2015 Amendment No 7 2018 EWCA Crim 1760. In force 1/10/18

Intimidatory Offences

New guideline In force 1 October 2018

The Sentencing Council has issued an Intimidatory Offences Guideline which is in force from 1 October 2018. It deals with

- a) Controlling or coercive behavior (Serious Crime Act 2015 s76)
- b) Disclosure of private sexual images (known as revenge porn)
- c) Harassment (both sections 2 and 4)
- d) Racially or religiously aggravated harassment (both sections 32 (1)(a) and 32(1)(b))
- e) Stalking (both sections 2A and 4A)
- f) Racially and religiously aggravated harassment stalking (both sections 32 (1)(a) and 32 (1)(b))
- g) Threats to kill

The guideline can be found at www.banksr.com Other Matters Other Documents Guidelines

Medical reports

Procedure In force 1 October 2018

Criminal Practice Directions 2015 EWCA Crim 1567 para R as inserted by Criminal Practice Directions 2015 Amendment No 7 2018 EWCA Crim 1760. In force 1 October 2018

paras 3P.1-3 [Not listed at it only sets out general matters.]

3P.4 Where the court requires the assistance of such a report then it is essential that there should be (i) absolute clarity about who is expected to do what, by when, and at whose expense; and (ii) judicial directions for progress with that report to be monitored and reviewed at prescribed intervals, following a timetable set by the court which culminates in the consideration of the report at a hearing. This is especially important where the report in question is a psychiatric assessment of the defendant for the preparation of which specific expertise may be required which is not readily available and because in some circumstances a second such assessment, by another medical practitioner, may be required.

paras 3P5-9 [Not listed. They deal with timetabling and associated matters.]

3P.10 Guidance entitled 'Good practice guidance: commissioning, administering and producing psychiatric reports for sentencing' prepared for and published by the Ministry of Justice and HM Courts and Tribunals Service in September 2010 contains material that will assist court staff and those who are asked to prepare such reports:

<http://www.ohrn.nhs.uk/resource/policy/GoodPracticeGuidePsychReports.pdf>

para 3P.10-16 [Not listed. They deal with funding and those in custody etc.]

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