

Additional Material for Chapter 9 – Crown courts and appeal courts

Section numbers from the book are used. Its content provides fuller explanations and context.

9.2 Routes to Crown court

Voluntary bill of indictment

If magistrates decide not to send an indictable-only or either-way case to Crown court for trial a prosecutor can apply to a High Court judge for it to be sent to Crown court directly. If the judge agrees, a draft indictment, setting out the charge(s) against the defendant, called a voluntary bill of indictment, is sent to the Crown court to become the actual indictment there. Because magistrates' decisions are usually respected by prosecution agencies, this procedure is rarely used. Exceptionally, it may be used in other circumstances – for example, if a defendant is so disruptive at a hearing at the magistrates' court that it is better to use to a voluntary bill of indictment than attempt to complete a 'sending' hearing.

9.4. When do the automatic reporting restrictions cease to apply?

Case study: In 2014 a judge at Southwark Crown court agreed to lift reporting restrictions covering a pre-trial hearing. The case concerned an alleged multi-million-pound fraud. Because evidence was complex it was classed as a Very High Cost Case (VHCC). But, the court heard, government cuts to legal aid had reduced by 30 per cent the fees which defence barristers could claim in such cases, so no barristers were willing to represent five defendants in the forthcoming trial. A barrister representing them pro bono at the hearing asked Judge Anthony Leonard QC to 'stay' (end) the fraud proceedings, arguing that without barristers the defendants could not have a fair trial. Journalists from three newspapers, the BBC and the Law Society Gazette argued in a note to the judge that reporting restrictions covering the pre-trial hearing should be lifted because the legal argument relating to the legal aid cuts was a matter of considerable public interest (and so should be published contemporaneously) and because airing it would not prejudice the trial case as the issue was whether the defendants could have a fair trial. The judge agreed, ruling that the media was 'free to report anything' from the hearing, subject to the normal rules on contempt of court. Subsequently he did 'stay' the fraud case. But the Court of Appeal reversed this 'stay' decision, saying it was too early to ascertain whether the defendants could get barristers (*Media Lawyer*, 1 and 13 May 2014; *R v Crawley and others* [2014] EWCA Crim 1028).

9.4.9 Appeals against rulings by judge—reporting restrictions

In its hearing concerning the VHCC case, see above, the Court of Appeal lifted the automatic reporting restrictions in section 71 of the Courts Act 2003, to enable the media to fully and contemporaneously report the arguments over the legal aid issue, and because airing it would not cause prejudice.

9.9 Journalists can visit prisoners

Visiting prisoners

The House of Lords ruled in *R v Secretary of State for the Home Department ex p Simms* ([1999] 3 All ER 400) that two prisoners serving life sentences for murder should be allowed visits from journalists who wished to interview them about their claims of miscarriage of justice. The governors of the prisons, following what was then Home Office policy, were only prepared to allow the visits if the journalists signed written undertakings not to publish any part of the interviews – which the journalists refused to do. The House of Lords ruling overturned this policy. Lord Steyn said in the judgment: ‘The prisoners are in prison because they are presumed to have been properly convicted. They wish to challenge the safety of their convictions. In principle it is not easy to conceive of a more important function which free speech might fulfil.’

The National Offender Management Service (NOMS), an agency of the Ministry of Justice, set out in document PSI 37/2010 its policy on journalists visiting prisons. NOMS has since been replaced by HM Prison and Probation Service. The policy says such visits will only be allowed in exceptional circumstances, where there is a need for a face-to-face interview because the prisoner claims a miscarriage of justice and requires the assistance of a journalist to challenge a conviction or sentence, or ‘there is some other sufficiently strong public interest in the issue sought to be raised during the visit and the assistance of a particular journalist is needed’ – for example, if the prisoner alleges torture by a public official.

Prisoners do not need the governor’s permission to write letters to, or receive them from, the media.

In 2015 *Guardian* journalist Amelia Gentleman wrote of repeatedly being refused permission to visit UK prisons, to write generally about them. In early 2016 she was able to visit Wandsworth prison, London and Oakwood prison near Wolverhampton. See links to her articles below.

9.14 Courts martial

People in the armed forces are subject to UK law in the courts martial system, even if the alleged offence was committed in another country. This military court is presided over by a civilian Judge Advocate. The decision on whether to convict or acquit is taken by a ‘board’ (in effect a jury) of three to seven service personnel. If it convicts, the board and the Judge Advocate decide on sentence. The court has the same sentencing powers as a Crown court, including to impose life sentences.

Courts martial are usually open to the public and the media. But the Armed Forces (Court Martial) Rules 2009 give these courts discretion to go into private session – for example, to protect national security - and to order that the names of defendants and witnesses be withheld from their public hearings if it is argued, for example, that publicity identifying them would create a ‘real and immediate’ risk to their safety from a terrorist group. To guard against inadvertent disclosure, and against the consequences of the media discovering by other means who these protected people are, courts martial can make an additional order to ban media coverage from identifying such defendants and witnesses. But all courts have to consider in such decisions the open justice principle and the media’s and public’s rights under Article 10 of the European Convention on Human Rights, explained in 1.3.2, 15.1 and 15.4 in *McNae’s*.

Case study: An anonymity order protected the identity of two instructors with the SAS regiment who in September 2018 were acquitted by a court martial of negligence as regards their duty of care for soldiers taking part in an arduous exercise which was part of a selection process for a special military unit. The case was brought against the instructors because three part-time soldiers died after marching through the Brecon Beacons during the exercise in high temperatures in July 2013. Lance Corporal Craig Roberts and L/Cpl Edward Maher were pronounced dead after suffering heat illness. Corporal James Dunsby died in hospital more than two weeks later from multiple organ failure (*The Guardian*, 10 and 18 September 2018)

Case study: In the 2013 court martial of Royal Marine sergeant Alexander Blackman, who was eventually convicted of murdering an injured insurgent in Afghanistan, the Judge Advocate barred the media from identifying him and other marines during the proceedings. The Judge Advocate's orders were made under the 2009 rules and section 11 of the Contempt of Court Act 1981, a power explained in 12.6 in *McNae's*. After the guilty verdict the Judge Advocate lifted the orders, ruling that Blackman could be identified. Blackman appealed against that ruling, but the High Court upheld it, allowing the media to reveal who he was (*Marines A and others v Guardian News and Media and Other Media* [2013] EWCA Crim 2367).

See Useful Websites, below, for more information about the courts martial system.

The reporting of courts martial is protected in defamation law if the requirements of the defence of absolute privilege or that of qualified privilege are met – see 22.5 and 22.7 in *McNae's*.

Useful Websites

<https://www.bbc.co.uk/editorialguidelines/guidelines/crime/dealing-with-criminals>

BBC Editorial Guidelines on interviewing prisoners

<http://www.theguardian.com/commentisfree/2015/feb/10/uk-prisons-journalists-what-hide>

Amelia Gentleman's 2015 article

<http://www.theguardian.com/society/2016/feb/22/inside-wandsworth-prison-drug-drones-staff-shortages-daily-struggle>

Amelia Gentleman's 2016 article on Wandsworth prison

<http://www.theguardian.com/society/2016/feb/23/inside-oakwood-prison-supersize-private-jail-g4s-profit>

Amelia Gentleman's 2016 article on Oakwood prison

www.judiciary.gov.uk/about-the-judiciary/the-justice-system/jurisdictions/military-jurisdiction/

Information about the courts martial system on the judiciary website