

SENTENCING EXPLAINED

ATTORNEY GENERAL'S REFERENCES

Where offenders have been sentenced for certain offences in the Crown Court and the Attorney General considers that the sentence imposed was too low, the Attorney General can refer the offender's case to the Court of Appeal for the sentence to be reviewed. If the Court of Appeal considers that the sentence imposed on the offender was "unduly lenient" they can increase it and replace it with the sentence they think appropriate. These cases are commonly called an Attorney General's reference. This is because it is primarily the Attorney General who has the power to refer a case to the Court of Appeal to be considered. However, cases can also be referred to the Court of Appeal by the Solicitor General.

Who is the Attorney General?

The Attorney General is the chief legal adviser to the Government. The Solicitor General is the Attorney General's deputy. Both are Government Ministers and are therefore either a member of the House of Commons or the House of Lords. The Attorney General is ordinarily invited to attend Cabinet. The Attorney General and the Solicitor General are both qualified lawyers. They are collectively known as the Law Officers.

What cases can be reviewed?

Not all cases can be reviewed by the Court of Appeal. The power to refer sentences is limited by an Act of Parliament and only offenders who have been sentenced in the Crown Court for certain offences can have their sentences referred to the Court of Appeal.

Any offence which can only be prosecuted in the Crown Court in front of a judge and jury (known as an "indictable only" offence) can be referred as can certain offences that can be tried in the Crown Court or the magistrates' court (known as "either-way offences"). These offences are specifically listed in legislation in the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116). They include most serious sexual offences, offences related to producing or supplying controlled drugs, modern slavery and terrorism offences, and certain offences relating to stalking and domestic violence.

Offences of wounding or causing grievous bodily harm without intent, assault occasioning actual bodily harm, causing death by careless driving and causing serious injury by dangerous driving do not currently fall within the scheme. They cannot therefore be referred to the Court of Appeal.

Where an offender has been convicted of multiple offences, some in the scheme and some not, their total sentence can be referred to the Court of Appeal. In such circumstances the Court of Appeal may review the sentence imposed for all offences, and are not limited to only reviewing the sentence imposed on offences within the scheme. However, even where an offender is convicted of a specified offence unless they were sentenced in the Crown Court their sentence cannot be reviewed. There is no power for the Court of Appeal to review sentences imposed on offenders by the magistrates' court or the youth court. Moreover, only cases where the offender (or in cases with multiple offenders, the last offender) has been sentenced in the last 28 days may be referred to the Court of Appeal. This time limit is absolute and cannot be extended. There is no power to refer a case sentenced more than 28 days ago, no matter the circumstances. This 28-day limit includes weekends and public holidays.

Who can ask for a sentence to be reviewed?

Anybody can ask for a sentence to be reviewed. You do not need to be the victim of the offence or have a personal connection to the case. You may ask the Attorney General to review a sentence by completing an online form (available at: <https://www.gov.uk/ask-crown-court-sentence-review>) or by telephone (020 7271 2492). If the prosecution consider that the sentence imposed by the judge was too low then they may refer the case to the Attorney General themselves.

What happens when the Attorney General's Office is asked to review a case?

When a case is referred to the Attorney General's Office it is first checked to ensure it is one that can be reviewed by the Court of Appeal. If the case is one that can be reviewed by the Court of Appeal then the Attorney General's Office will contact the Crown Prosecution Service to obtain the papers from the case, and to seek the views of the lawyer who prosecuted it. Often the Attorney General's Office will then seek further specialist advice from a very experienced prosecutor who is independent to the case (these prosecutors are known as Treasury Counsel).

A legal official at the Attorney General's Office will then review the case papers and produce a covering note and bundle of papers for the Law Officer, summarising the case, the issues present and advising them on whether or not they should refer the sentence. The case then goes to either the Attorney General or Solicitor General who must consider the case personally before making a decision whether or not to refer it. The decision to refer a sentence to the Court of Appeal cannot be made by officials acting on their behalf. The Attorney General and Solicitor General will only refer a sentence to the Court of Appeal where they think the court will increase it.

When will the Court of Appeal increase a sentence?

The Court of Appeal can only increase a sentence where a case is referred to them by the Attorney General or the Solicitor General. However, the Court of Appeal will not increase an offender's sentence unless they consider it is "unduly lenient". This is a very high threshold to meet.

The Court of Appeal has said they will not interfere with an offender's sentence unless it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. They will not, therefore, interfere where the sentence was lower than what they would have imposed but within a range of reasonably appropriate sentences. They will only interfere where an obvious error has occurred.

When deciding whether the sentence imposed was within the range of reasonable options open to the judge, or if there was a clear and obvious error, the Court of Appeal will consider the relevant sentencing guidelines issued by the Sentencing Council, and relevant previous decisions of the courts.

The Attorney General or the Solicitor General cannot rely on evidence that was not before the original sentencing court (such as new psychiatric reports) when arguing that the sentence imposed was unduly lenient. Similarly, it will frequently be very difficult for them to challenge findings of fact made by the sentencing judge. The Attorney General and the Solicitor General must rely on the facts agreed by the lawyers who appeared at the original sentencing hearing or trial, and do not have the advantages of the sentencing judge who often have seen the entire trial.

Even where the Court of Appeal does find that a sentence was unduly lenient (because of a clear error or because it was outside the range of reasonable options open to the judge) the sentence will not always be increased. For example, if an offender on a community sentence has made exceptional progress on that sentence then the court might decline to interfere with that sentence in the interests of the offender's rehabilitation, even where they consider the sentence was unduly lenient.

If the Court of Appeal does increase a sentence, they will impose the sentence they believe that the judge should have initially imposed. However, in some rare circumstances the Court of Appeal will impose a sentence less than they believe should have initially been imposed to reflect the distress and anxiety that an offender experienced as a result of going through the sentencing process a second time. The reduction in sentence is known as a "double jeopardy" discount. It is, however, now uncommon for such discounts to be given.