

# **Taylor on Criminal Appeals:**

## **Book Reviews**

**Reviewed by: Anthony Edwards, *TV Edwards LLP***

This edition comes almost 12 years after the first and at what, for criminal lawyers, is a huge price. Is it worth having a copy in the office or will a library copy suffice? Against all my instincts this work is an essential companion for anyone undertaking criminal cases.

The time it will save in research on the whole range of appeal issues will rapidly cover the cost. It is clear, comprehensive and extraordinarily well-written. It deals with the difficult decisions on appeal from the magistrates' courts - to Crown court or to the High Court and if the latter by way of judicial review or case stated better than anything I have read. It identifies the relevant Rules, sets out the procedures and time limits. It covers all aspects of funding. The appendices have specimen documents.

With increasing numbers of solicitor advocates in the Crown court it is inevitable that we shall have to bring more appeals. This work sets out everything that the advocate could require to know, whether on conviction or sentencing appeals. Forms are identified and flow charts cover the procedures. The section on the use of new evidence is impressive especially on sentencing appeals. Chapters 9 and 10 on the wide range of grounds for appeal to the Court of Appeal are to be commended. The index helped me find the right section very quickly but it is worth spending time finding ones way around the book.

I checked on bail pending appeal, the use of authorities - the sort of detail the Court of Appeal expects us to get right - and on the disallowance of time served. Everything I needed was there with a clear explanation and the authorities identified. The approach is extremely practical with good commonsense advice. The book also covers the range of interlocutory appeals now available.

Later sections deal with references by the Criminal Cases Review Commission, Attorney General's References, and appeals to the Supreme Court and to the Judicial Committee of the Privy Council. It is essential, though, that the work is kept up-to-date and to do so in a way that avoids constant new editions will be a major challenge for the publishers, while The Legal Aid, Sentencing and Punishment of Offenders Act 2012 will from October continue the near-constant process of change.

**Reviewed by: Campbell Malone, sometime partner and consultant at Stephenons LLP (Wigan)**

It is amazing to think that nearly 12 years have elapsed since the publication of the first edition of Taylor on Criminal Appeals. That edition has always been one of the most thumbed works of reference amongst my own criminal appeal colleagues and the second edition has long been eagerly anticipated.

Paul Taylor, as well as editing the book, has contributed key chapters including on bringing criminal appeals to the Court of Appeal and on applications to the Criminal Cases Review

Commission. Other chapters have been written by very distinguished and specialist contributors.

During the decade since the first edition the Criminal Justice system has had to get to grips with the implications of the Human Rights Act as well as a significant number of other major legislative changes. Criminal trials and sentencing upon conviction have become ever more complex, forensic science has advanced and medical knowledge developed and both have become more relevant to the appeal process and yet at the same time there has been considerable downward pressure on the legal aid funding available to the would-be appellant. As a result the appeal process has itself become more demanding and there have been a number of landmark judgments handed down by the Court.

In turn some of those judgments have themselves been reviewed by an entirely new creature, the Supreme Court which replaced the House of Lords as the final appellate body during this period.

Thankfully all of these developments are comprehensively addressed in this volume which at the same time provides clear and practical guidance for both the all-round criminal practitioner who is perhaps an infrequent visitor to the Court of Appeal and to the specialist lawyer likely to be a member of the Criminal Appeal Lawyers Association.

The opening chapters of the book deal with the various avenues open to a practitioner in challenging a decision in the magistrates Courts from a rehearing in the Crown Court to a challenge in the High Court and there are important chapters on interlocutory appeals including those now available to the prosecution under the Criminal Justice Act 2003 and have immediate relevance to all practitioners in all Criminal Courts. The Court of Appeals approach to the bad character and hearsay provisions introduced by the 2003 Act is also fully covered.

There is comprehensive coverage of the issues that can arise on bringing an appeal to the Criminal Division of the Court of Appeal including clear guidance as to the procedures and time limits involved with some very helpful flowcharts and tables. Experienced practitioners will find especially useful the sections dealing with grounds of appeal both against conviction and against sentence and the issues that they are likely to confront when presenting applications for leave or appeals particularly involving fresh evidence or arguments based on article 6 of the ECHR.

For example there is a very helpful summary of the way the Court of Appeal has developed principles in relation to the area of sentences imposed for public protection including the indeterminate sentences created under the Criminal Justice act 2003 including the implications of the judgements in in relation to the assessment of risk in the case of Pedley, Martin and Hamadi and in relation to such sentences imposed in children in the case of JW.

In the context of appeals against conviction based on fresh evidence, there is a detailed and invaluable summary of the leading cases arising from Pendleton and the thorny issue of the jury impact test and what might be considered the retreat from that judgment in subsequent decisions of the Court. In truth, as Paul Taylor makes clear, there has been considerable inconsistency in the approach of the Court and he concludes both by trying to establish a reconciling principle behind the decisions and by giving firm advice as to how the fresh evidence and the implications arising from it should best be presented to the Court.

Often that fresh evidence arises from an expert, most often in "diminished responsibility" cases and, as it does throughout, the book provides a useful extract from the judgment of the leading case, in this instance that of *Erskine and Williams* in which Lord Judge LCJ clearly spelt out the required approach in presenting such cases, including very specific directions on the citation of authorities.

Of course many problems confront the practitioner before how best to present the case becomes the pressing one. Many unsuccessful appellants or applicants to the Court of Appeal continue to maintain that they have been wrongly convicted and in those circumstances, they must turn to the CCRC and there is a comprehensive section of the book dealing with the Commission, its procedures and powers, and how to challenge an unwelcome decision. This section of the book also deals with the changes brought about by section 315 of the Criminal Justice Act 2003 which posed a requirement to seek leave of the Court to argue grounds not contained in reference as well as the policy of the Commission in relation to when to refer a case in circumstances where there are grounds to refer but issues still unresolved.

Also made clear are the issues that came to a head in the case of *Cottrell and Fletcher* when the Court made it clear that they were unhappy with referrals made by the Commission following a change or "clarification" of the common law which ultimately led to the implementation of section 16C of the Criminal Appeal Act 1968. The response of the commission has set out in their internal formal memorandum is included and is followed by a detailed discussion of the approach to be adopted on applications to the commission bearing in mind the extent to which there is a distinction between changes of law cases and those cases simply involving an application of contemporary standards of fairness.

The chapter on applications to the Commission reveals the author's comprehensive experience in dealing with them as well as obvious input from the Commission itself. The question of public funding in the making of such an application, as well as in relation to all aspects of appeals generally, are dealt with in a separate chapter written by Stephen Bird, a highly experienced solicitor and committee member of CALA. It is clear and practical guidance for all.

The book as a whole is set out well, easy to navigate and contains all the relevant authorities and useful extracts from leading cases and relevant legislation. It provides a comprehensive guide to all aspects of the appeal process from Magistrates Courts to the Supreme Court in a forthright and practical way. The day our copy arrived it was being used to guide our approach on a difficult but interesting new potential application to the CCRC. In my view this book is indispensable for any serious criminal practitioner, whether they be experienced appellate lawyers or not.

**Reviewed by *Andrew Keogh, CrimeLine***

We have waited years for the revised edition of this work, and it has been worth it. The editor has assembled a stellar team of contributors to produce a book that will effortlessly guide the practitioner through the appellate court system.

## **An appreciation by Phillip Taylor MBE and Elizabeth Taylor of Richmond Green Chambers**

The United Kingdom has the proud reputation of having the fairest system of criminal justice in the world, yet it, like any human institution, is certainly not infallible and, yes, it has been known to blunder from time to time, hence the need for a workable system of appeals.

It is surprising, as Sir John Thomas remarks in the foreword to this monumental work, that England and Wales did not have a Court of Appeal for the more serious criminal cases until 1907. Since then, many developments have occurred within the system of criminal appeals, most of which are complex yet precise and certainly a challenge for the criminal practitioner. The purpose of this invaluable book is, therefore, to assist the individual practitioner to meet this challenge. The result is a comprehensive guide to the entire appellate system, which explains the different routes of appeal and the procedures involved, together with detailed analyses of important issues.

This is only the second edition since the publication of the first over eleven years ago, during which time much has changed. The most significant developments have been the implementation of the Human Rights Act, and advances in forensic science which have provided additional grounds for appeal. Editor Paul Taylor's stated aim has been to set out 'both the procedural rules and substantive grounds of challenge in the major areas in which an appeal or view of a criminal case is likely to occur'.

Divided into seventeen chapters, the book covers the full spectrum of appeals, starting with the chapter on 'Appeal and Review of Magistrates and Certain Crown Court Decisions: Choosing the Appropriate Procedure'. (Certainly, it's the detailed guides to procedure, including flowcharts, which is one of the most useful aspects of this book.) Subsequent chapters cover such areas as the grounds of appeal against sentence... the powers of the Court of Appeal (Criminal Division)... and the chapters on the Criminal Cases Review Commission and appeals to the Supreme Court.

This thorough and copiously footnoted work of reference contains over 100 pages comprising tables of cases, statutes, statutory instruments, civil procedure rules and criminal procedure rules; plus -- tables of European legislation, international treaties and convention, practice directions and notes. There are fifteen appendices and a detailed index at the back.

We particularly like the editor's quote from a Times article by Cyril Connolly: 'The test of a country's justice is not the blunders which are sometimes made, but the zeal with which they are put right'. It would be entirely fair to say that this book constitutes inspiring and incontrovertible proof of that zeal. The publication date is 29 November 2011.