# How are appeals dealt with by the courts in Scotland? – Transcript

**The Rt Hon Lord Bracadale**: The appeal court consists of at least three judges hearing appeals against conviction and two judges hearing appeals against sentence and appeals come from each of the courts that we’ve already discussed. The appeal court also hears appeals referred to it by the Scottish Criminal Cases Review commission.

The basis for an appeal against conviction is that there has been a miscarriage of justice. A miscarriage of justice may occur as a result of a number of possible circumstances. The judge may have misdirected the jury, he may have given them a wrong definition of an offence, or may have failed to give an important direction. For example, if a judge failed to tell the jury that they had to be satisfied beyond reasonable doubt before they could find the accused guilty, then that would be a misdirection and a material misdirection which would amount to a miscarriage of justice.

Or fresh evidence may become available that was not available at the time of the trial. For example, DNA evidence might emerge at a later stage to demonstrate that the person who was convicted could not have committed the crime. Again that would amount to a miscarriage of justice in the original trial and the conviction would be quashed.

It may be that the representation of the accused at the original trial was such that his defence was not properly advanced and that could amount to a miscarriage of justice. Where a conviction is quashed on the basis of a miscarriage of justice, it may be that the authority will be given for the Crown to prosecute again and there may be a retrial.

So far as appeals against sentence are concerned, an appeal against sentence may be brought on the basis that the sentence imposed was excessive. The judge may have failed to give sufficient weight to a particular consideration in favour of the accused, or may have given too much weight to some consideration against him.

[End of transcript]