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Revisiting the Precedential Status of Crown Court Decisions

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Revisiting the Precedential Status of Crown Court Decisions

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Abstract

The binding authority of substantive decisions made by the Crown Court in the exercise of its criminal jurisdiction is often assumed to be negligible. In 2013, the Court of Appeal appeared to confirm the correctness of that assumption. Yet there was little in the way of explanation or case law that was cited in support by the court. This article suggests that a re-evaluation of the place and treatment of such decisions within the doctrine of precedent is overdue, and considers that they should be recognised to have some binding effect if there is able to be established a reasonably satisfactory process to facilitate their systematic and public dissemination, whether electronic or otherwise.

Keywords

Crown Court, precedent, *stare decisis*, judges, authority

Introduction

A number of commentators have suggested that decisions of the Crown Court possess no formal binding force.[1] Many viewed the lack of systematic reporting of such decisions to be the major

1. R Cross, *Precedent in English Law* (Clarendon Press, Oxford 1961) 6 (originally in respect of quarter sessions, subsequently updated in later editions to cover the successor Crown Court; see R Cross, *Precedent in English Law* (3rd edn Clarendon Press, Oxford 1977) 7); A Ashworth, 'The Binding Effect of Crown Court Decisions' [1980] Crim LR 402; D Feldman, 'Regulating Treatment of Suspects in Police Stations: Judicial Interpretation of Detention Provisions in the Police and Criminal Evidence Act 1984' [1990] Crim LR 452; R Cross and JW Harris, *Precedent in English Law* (4th edn Clarendon Press, Oxford 1991) 123; K Kerrigan, 'Miscarriage of Justice in the Magistrates' Court: The Forgotten Power of the Criminal Cases Review Commission' [2006] Crim LR 124, 138; T Ingman, *The English Legal Process* (13th edn OUP, Oxford 2011) 209; P Morgan, 'Doublethink and District Judges: High Court Precedent in the County Court' (2012) 32 LS 421, 440; J Martin, *English Legal System* (Routledge, Abingdon 2014) 11; M Zander, *The Law-Making Process* (7th edn Hart, Oxford 2015) 241; R Card and J Molloy, *Card, Cross & Jones Criminal Law* (22nd edn OUP, Oxford 2016) 13; AA Gillespie and S Weare, *The English Legal System* (7th edn OUP, Oxford 2019) para 3.4.1.5; D Kelly, *Slapper and Kelly's English Legal System* (19th edn Routledge, Abingdon

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factor negativing their binding authority.[2] Since these commentaries the Court of Appeal has seemingly confirmed that Crown Court decisions do not have authoritative value.[3] It is suggested in this article—which is solely concerned with substantive decisions made by the Crown Court in the exercise of its criminal jurisdiction—that that conclusion should be revisited in the light of recent developments.[4]

Do Crown Court Decisions Have Any Authoritative Value?

The Case of R v X Ltd

In *R v X Ltd*,[5] the Court of Appeal case alluded to above, counsel had attempted to rely on a prior first instance decision made by a Recorder in the Crown Court. That was greeted with judicial surprise and scepticism. Some wonderment was expressed at why such a decision had been reported; once the pulse reverted to normal the Court of Appeal peremptorily dismissed the authority of that decision, saying that its reasoning was unpersuasive for the purposes of the instant case.[6]

What is of present interest is the court's further statement that that particular Crown Court decision had no authoritative value, being one made at first instance by a judge neither of the High Court nor sitting in the High Court.[7] This somewhat elliptical pronouncement was made without supporting authority, and indicates three possibly separate reasons for the refusal to give the decision any precedential standing.

The first reason is that the decision was made at first instance rather than on appeal. The second is that it was decided by a judge of lower rank than a High Court Judge. And the third is that it was decided in a court that was below the High Court in hierarchy. The Court of Appeal's ruling could be read as suggesting that all three of these factors must be apparent before the authority of the decision in question is negatived. Another reading, admittedly attributing meaning not immediately detectable from the court's choice of language, is that the presence of only some, but not all, of those factors is sufficient to deny the decision its precedential status.

The former reading is not attractive primarily because of the difficulties in ascribing dispositive significance to some of the enumerated factors. Let us take them in turn. Whether the doctrine of precedent should differentiate between a first instance decision and a decision made on appeal, both of which are issued in the same court, is an issue possessed of divergent authority. On the one hand, Master McCloud recently observed such a differentiation,[8] and the Divisional Court is said to only bind itself when acting in its appellate but not supervisory capacity.[9] This seems though to open up the result to a considerable degree of arbitrariness, since the same point of law could have arisen on appeal or at

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2020) para 4.4.4; S Wilson and others, *English Legal System* (4th edn OUP, Oxford 2020) 197. See further the views of the Office of Criminal Justice Reform in the Law Commission's report on *The High Court's Jurisdiction in Relation to Criminal Proceedings* (Law Com No 324, 2010) para 12.2.

2. See also the passing note in P Rock, *The Social World of an English Crown Court* (Clarendon Press, Oxford 1993) 183 ('After all, one judge's knowledge of another was necessarily imperfect and often second-hand, based perhaps on written articles (one of the Court's judge's *dicta* were reported from time to time and he would write letters to the editors of newspapers) and colleagues' own reports').
3. Technically, of course, it is the holding of law forming the *ratio decidendi* of the decision, and not the decision itself, which would be binding if at all, and so long as this is borne in mind it is not harmful to write that a decision may bind a court.
4. A call for reconsideration has been sounded also in C Cox, 'The Elephant in the Sales Room: Ivory and the British Antiques Trade' (2016) 23 IJCP 321, 327–28.
5. [2013] EWCA Crim 818; [2014] 1 WLR 591.
6. Ibid [24].
7. Ibid.
8. *JLE v Warrington & Halton Hospitals NHS Foundation Trust* [2018] EWHC B18 (Costs) [23].
9. *Rogers v Essex County Council* [1985] 1 WLR 700, 706; *Ritz Video Film Hire Ltd v Tyneside Metropolitan Borough Council* (unreported, 26 January 1995, Divisional Court).

first instance; according precedence to one decision but not the other is unproductive of the predictability desired.[10] Such a form of distinction was indeed rejected in *Coral Reef Ltd v Silverbond Enterprises Ltd*.[11] It might once have been a rebuttal that the law was deliberated upon more closely on appeal than at first instance, but the industry of judges and counsel combined with their access to case law[12] means that any difference in quality is, even accounting for the practice in jury trials,[13] more theoretical than real nowadays.[14] It can consequently be argued with some force that the doctrine of precedent ought not to distinguish between a Crown Court decision made at first instance and one made on appeal from any of the Magistrates' Courts.

The second factor is that the case has been decided by a judge lower in rank than a High Court Judge. There are again conflicting authorities on whether rank matters in determining precedence as between the decisions of higher and lower courts. In *R v Thompson*,[15] Master Gordon-Saker reasoned that since a decision of a Judge made in High Court proceedings was binding on a Costs Judge, it would be illogical if a decision of a High Court Judge sitting in the Crown Court were not.[16] However, Master Rowley in *R v Jagelo*[17] declined to follow the decision of a High Court Judge made in the Crown Court; he said that it would be an unattractive proposition if the decision of a Crown Court Judge who was not a High Court Judge was only persuasive, but a decision of a High Court Judge was binding notwithstanding that it was made in the same court.[18] Implicit support for the latter position may be located in *R v Hertsmere Borough Council, ex parte Woolgar*[19] and *R v Southwark London Borough Council, ex parte Bediako*,[20] both of which explain that a High Court Judge and a Deputy High Court Judge—who is obviously of lower rank—are when sitting in the High Court bound only by comity and not a rule of strict precedent to follow each other.

The Court of Appeal's earlier decision in *Howard de Walden Estates Ltd v Aggio*[21] appears though to have put to rest any doubt that the operation of the doctrine of *stare decisis* between courts at different levels depends on the positions of the courts rather than of the judges hearing the cases. It was ruled there that the County Court was bound by the decisions of judges sitting in the High Court, whether made at first instance or on appeal, because the County Court was inferior to and lower in the hierarchy than the High Court.[22] In a relationship between lower and higher courts, it seems appropriate that court

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10. See also P Jackson, 'The Divisional Court: The Survival of Binding Precedent' (1985) 101 LQR 484; KH Lau, 'Precedent Within the High Court' (2020) 40 LS 397, 413–14.
11. [2016] EWHC 3844 (Ch); [2018] 4 WLR 104, [62].
12. Which (one hopes) deflects some of the specific criticism levelled against the continued publication of lower court decisions in B Robertson, 'The Looking-Glass World of Section 78' (1989) 139 NLJ 1223, 1225.
13. cf Morgan (n 1) 438–39.
14. Lau (n 10) 414.
15. [2015] 1 Costs LR 173.
16. Ibid [13]. See also P Cooper and D Wurtzel, 'A Day Late and a Dollar Short: In Search of an Intermediary Scheme for Vulnerable Defendants in England and Wales' [2013] Crim LR 4, 12 ('No decision of a *circuit judge* creates binding precedent and few are reported' (emphasis added)).
17. [2016] 1 Costs LO 133.
18. Ibid [56].
19. (1995) 27 HLR 703, 716.
20. (1997) 30 HLR 22, 25. Because he was sitting as a deputy, the judge indicated that the threshold of conviction for identifying error was higher than usual, but, as I have mentioned elsewhere, I read this to refer to the degree of deference and not to remove the case altogether from the situation in which co-ordinate courts follow each other out of comity; see Lau (n 10) 409. *Sed quaere Bristol & West Building Society v Trustee of the Property of Back* [1998] 1 BCLC 485, 488; *In re SHB Realisations Ltd* [2018] EWHC 402 (Ch); [2018] Bus LR 1173, [47].
21. [2007] EWCA Civ 499; [2008] Ch 26.
22. Ibid [92]–[95]. This was questioned in Morgan (n 1) but since then the Supreme Court has cited the holding in *Howard de Walden* approvingly; see *Willers v Joyce (No 2)* [2016] UKSC 44; [2018] AC 843, [5]. On a separate note, the *Willers* judgment also proposed that the Privy Council had power to change the law of England and Wales; on this aspect see P Mirfield, 'A Novel Theory of Privy Council Precedent' (2017) 133 LQR 1; J Sorabji, 'Precedent and the Privy Council' (2017) 36 CJQ 265.

hierarchy should determine the relative precedential status of their decisions.[23] That particular exercise requires comparison of a stable and outwardly discernible quality of judgments. Using the rank of the deciding judge ticks the discernibility box but not the stability box, because in the system to which we are accustomed judges of different age, rank and seniority can potentially hear the same types of cases. Using the position of the deciding court, however, ticks both boxes. The importance of this as regards Crown Court practice is not to be underestimated when one considers that the list of judges allowed to sit includes High Court Judges, Circuit Judges and Recorders, not to mention their respective deputies where permissible.

It is therefore the third factor—that the decision was made by a court below the High Court in the hierarchical order—which appears or should appear as critical in the pronouncement in *R v X Ltd* that Crown Court decisions have no authoritative value. The way in which the Court of Appeal has elucidated the position suggests that the deficiency is absolute in its view. That is not how some understand the current practice; as alluded to earlier, according to *R v Thompson* a decision of a High Court Judge, made when sitting in the Crown Court, exerts binding force on a Costs Judge. Although not universally accepted, it remains possible to contend that this is one instance in which decisions of the Crown Court carry precedential authority.

Recent Developments

Two developments have now called into further question the unqualified nature of the rule seemingly pronounced in *R v X Ltd*.

The first is a strong and consistent line of authority that the Upper Tribunal, being a superior court of record,[24] is empowered to set precedent.[25] Its decisions therefore have precedential value at least with respect to the First-tier Tribunal, from which appeals to the Upper Tribunal generally lie. The greater debate has been over whether the Upper Tribunal itself is strictly bound by decisions of the High Court, an issue which requires elaboration later, but for present purposes the point is that the Crown Court is also a superior court of record[26] that hears appeals from the Magistrates' Courts. By the same logic it ought theoretically to possess power to set precedent, disregarding any remnant historical incumbrances. The Upper Tribunal being primarily a civil tribunal does not appear to be a relevant difference in this regard. There is in fact no persuasive reason why reasoned rulings of law by the Crown Court judiciary—largely drawn from senior members of the criminal Bar—should today be viewed as so exceptionally deficient than those as emanate from other superior courts of record. A significant number of cases are heard at Crown Court level and important decisions will be handed down from time to time.

The other development has been the modern retrievability of written decisions, for if the lack of systematic publication of Crown Court decisions was formerly the chief reason why they were seen to lack formal binding effect, that now requires fresh evaluation in light of contemporary innovations in database and recordkeeping technology.

As an initial remark, there should of course be heeded the salutary warning given by Robert Megarry, made prior to his judicial ascent, that a decision ought not to be rejected out of hand merely because there was no orthodox report of it.[27] In *Beach v Smirnov*,[28] Ouseley J rejected any suggestion that a High Court decision appearing in the White Book held greater authority than other High Court decisions which did not.[29] And, even more pertinently, it was stated in *Coral Reef* that the ready availability of decisions by

23. Which I also discuss elsewhere; see Lau (n 10) 406.
24. Tribunals, Courts and Enforcement Act 2007 s 3(5).
25. *R (Cart) v Upper Tribunal* [2009] EWHC 3052 (Admin); [2010] 2 WLR 1012, [75], and on appeal [2011] UKSC 28; [2012] 1 AC 663, [43]; *Gilchrist v Revenue and Customs Commissioners* [2014] UKUT 169 (TCC); [2015] Ch 183, [88].
26. Senior Courts Act 1981 s 45(1).
27. RE Megarry, 'Reporting the Unreported' (1954) 70 LQR 246, 250.
28. [2007] EWHC 3499 (QB).
29. Ibid [10].

Masters ought not to be a determinative consideration as regards their precedential status, because the doctrine of precedent had to operate regardless of whether the decisions of a particular court were readily available or not, and its scope could not be altered by changing practice in the distribution of judicial decisions over time.[30]

It must be realised though that any move towards according some binding effect to reasoned decisions of the Crown Court has to be accompanied by an increase in their accessibility. A system of precedent is unable to function effectively or consistently if there is no outlet into public consciousness for the rulings handed down.[31] That parallel necessity can now potentially be fulfilled by the systematic electronic dissemination of such decisions or, at the very least, the full transcripts via online databases.[32] The institution of an appropriate practice for Crown Court decisions would promote their wider availability. Under present English law they do not have to find a home in an official series of published reports to have binding effect.[33] Any risk of the courts then being swamped by an avalanche of case law could be mitigated through the issuance of procedural orders or practice directions,[34] which currently state that an unreported case is not usually to be cited in court unless it contains a relevant statement of legal principle not found in reported authority.[35] The eventual solution may be to tap on advanced technology to ensure that counsel cite only the appropriate rulings in court.

The Place of Crown Court Decisions

If substantive Crown Court rulings are eventually to be recognised as having binding effect, what is their status within the doctrine of precedent? The Magistrates' Courts should presumably be bound by those rulings.[36] A concern in this regard is that lay justices in those courts may be less familiar than professional judges with the doctrine of precedent and related issues, such as whether a particular ruling is *ratio* or *obiter* or made *per incuriam*.[37] This is a legitimate concern but in my view it does not except those sitting in the lower courts from administering justice consistently and in accordance with law, including as pronounced by the higher courts. It would not seem helpful or appropriate for the Magistrates' Courts either to ignore relevant Crown Court decisions or to treat them as merely persuasive, given the risk of a significantly uneven application of the criminal law.[38] The better approach appears to be to accord such

30. *Coral Reef* (n 11) [66].
31. Lau (n 10) 418.
32. For instance, in addition to being located on paid subscription databases, a number of Crown Court rulings and decisions are freely available on the Judiciary of England and Wales' website at <https://www.judiciary.uk/court/crown-court> accessed 17 June 2020 and on BAILII at <http://www.bailii.org/ew/cases/Misc> accessed 17 June 2020. The author is not presently aware of any firm or official statement made as to the completeness of these archives or the system by which rulings and decisions are selected to be uploaded.
33. Unlike, for instance, some jurisdictions in the United States that deny precedential status to judicial opinions not formally published by a sanctioned reporter.
34. Something to which Lord Woolf CJ once resorted: *Practice Direction (Citation of Authorities)* [2001] 1 WLR 1001. See also *Noble v Southern Railway Co* [1940] AC 583, 597; *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 AC 192, 200–202; *Hamblin v Field* [2000] BPIR 621, 627–28; *Michaels v Taylor Woodrow Developments Ltd* [2001] Ch 493, [78]–[87]; *A v B plc* [2002] EWCA Civ 337; [2003] QB 195, [8]–[10]; *Trembath v Secretary of State for Work and Pensions* [2002] EWCA Civ 1445, [10]; *R v Erskine* [2009] EWCA Crim 1425; [2010] 1 WLR 183, [63]–[81]; G Lightman, 'The Civil Justice System and Legal Profession—The Challenges Ahead' (2003) 22 CJQ 235, 239.
35. *Practice Direction (Citation of Authorities)* [2012] 1 WLR 780, [10]; *Criminal Practice Directions 2015*, Division XII (General Application) paras D.3 and D.7.
36. See WHD Winder, 'The Rule of Precedent in the Criminal Courts' (1941) 5 JCL 242, 253 for a short discussion of the relationship between the old courts of quarter sessions and assize courts; T Frost, R Huxley-Binns and J Martin, *Unlocking the English Legal System* (6th edn Routledge, Abingdon 2020) para 3.3.6.
37. I am grateful to the anonymous reviewer for prompting reflection on this point.
38. Most obviously when different judges ascribe varying weight to the same precedent authority, such as when they take into account intuitive and possibly subjective (but not always relevant) factors like how fully reasoned it might seem to be or the distinction of the judge who issued it.

decisions a strict binding effect, and to continue to provide lay justices with appropriate legal guidance during their training phases and, while in court, through their clerks.

Whether substantive Crown Court decisions are of co-equal authority as decisions made in the High Court is a more difficult question. Suggestions have previously been made, without definitive resolution, that the Crown Court is bound by Divisional Court decisions.[39] In this respect a brief examination of the place of Upper Tribunal decisions may be helpful.

Relationship Between Upper Tribunal and High Court

Since the reorganisation of the tribunals system, the Upper Tribunal has liberated itself from having to strictly follow decisions of the High Court. In 2010 it held that, where it was exercising a jurisdiction formerly exercised by the High Court, it would not be bound by that court's decisions but would, unless convinced they were wrong, follow them out of comity.[40] The position was thus the same as where the High Court handled decisions of co-ordinate jurisdiction, with one qualification that the Upper Tribunal, when dealing with highly specialised legislation, might in a proper case feel less inhibited in revisiting issues decided at High Court level. These opinions were not commented upon when the case reached the Court of Appeal.[41]

The Upper Tribunal has continued to press this freedom.[42] *Gilchrist v Revenue and Customs Commissioners*[43] contains an instructive discussion. There the tribunal reasoned that it was ultimately a matter of parliamentary intention whether the Upper Tribunal was bound by High Court decisions. The legislative establishment of the Upper Tribunal as a superior court of record, with power to set precedent, together with the exclusion of the High Court from the appeal process or structure, strongly suggested that the Upper Tribunal was not bound by decisions of the High Court.[44] There were no indications to the contrary. Advisers would not be placed in difficulty by having to face conflicting decisions of the High Court on the one hand and those of the Upper Tribunal on the other, any more than if there were two conflicting High Court decisions. The need for certainty was not offended by the Upper Tribunal departing from High Court decisions.

The tribunal in *Gilchrist* considered all of this to be unaffected by *R (Cart) v Upper Tribunal*,[45] in which the Supreme Court had ruled that the High Court retained a supervisory jurisdiction in respect of

39. See *Customs and Excise Commissioners v Newbury* [2003] EWHC 702 (Admin); [2003] 1 WLR 2131, 2134; *Revenue and Customs Commissioners v Berriman* [2007] EWHC 1183 (Admin); [2008] 1 WLR 2171, [28]; *R v I-I* [2009] EWCA Crim 1793; [2010] 1 WLR 1125, 1126; *Channel 4 Television Corporation v The Commissioner for Police for the Metropolis* [2019] 1 Costs LR 67, [89]. See also the assertion in Ingman (n 1) 211.
40. *Secretary of State for Justice v RB* [2010] UKUT 454 (AAC); [2011] MHLR 37, [40]–[47].
41. *B v Secretary of State for Justice* [2011] EWCA Civ 1608; [2012] 1 WLR 2043.
42. *Kinsasi v Secretary of State for the Home Department* (unreported, 4 June 2013, Upper Tribunal (Immigration and Asylum Chamber)), [81]; *Revenue and Customs Commissioners v Noor* [2013] UKUT 71 (TCC); [2013] STC 998, [49]; *GR Solutions Ltd v Revenue and Customs Commissioners* [2013] UKUT 278 (TCC); [2013] STC 2289, [16]; *Gilchrist* (n 25) [85]; *ToTel Ltd v Revenue and Customs Commissioners* [2014] UKUT 485 (TCC); [2015] STC 610, [3]; *Post Box Ground Rents Ltd v The Post Box RTM Company Ltd* [2015] UKUT 230 (LC), [35]; *R (Hassan) v Secretary of State for the Home Department* [2016] UKUT 452 (IAC), [88]; *The Kingsbridge Pension Fund Trust v Downs* [2017] UKUT 237 (LC); [2017] L & TR 467, [20]; *West v Revenue and Customs Commissioners* [2018] UKUT 100 (TCC); [2018] STC 1004, [53]; *Robertson v Gordon-Webb* [2018] UKUT 235 (LC); [2018] L & TR 31, [23]; *Governing Body of Lark Hall Primary School v Secretary of State for Education* [2018] UKUT 294 (AAC), [22]; *D v Information Commissioner* [2018] UKUT 441 (AAC), [32]; *R (MS) v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), [107]; *Hussain v Waltham Forest LBC* [2019] UKUT 339 (LC); [2020] HLR 14, [59]. For two discussions on tribunal precedents, see T Buck, 'Precedent in Tribunals and the Development of Principles' (2006) 25 CJQ 458; M Elliott and R Thomas, 'Tribunal Justice and Proportionate Dispute Resolution' [2012] CLJ 297, 319–20.
43. *Gilchrist* (n 25) [87]–[89].
44. There is in fact recent authority that the Upper Tribunal binds a Master sitting in the High Court; see *Addlesee v Dentons Europe LLP* [2018] EWHC 3010 (Ch); [2019] 1 BCLC 570, [13], and on appeal [2019] EWCA Civ 1600; [2020] Ch 243, [2] and [81].
45. [2011] UKSC 28; [2012] 1 AC 663.

'unappealable decisions' of the Upper Tribunal. In the tribunal's view, the issue of supervisory jurisdiction was conceptually distinct from the question of precedent:

> [T]he existence of a supervisory jurisdiction on the part of the High Court over the Upper Tribunal does not imply that the Upper Tribunal is bound by the decisions of the High Court, as a matter of stare decisis. The ratio of *Cart's* case, concerning the grounds of judicial review of unappealable decisions of the Upper Tribunal by the High Court, has no application to the question of whether the Upper Tribunal is bound by decisions of the High Court in substantive matters.[46]

Gilchrist has been cited approvingly by the Court of Appeal without qualification.[47]

Relationship Between Crown Court and High Court

Viewed against what has been said of the Upper Tribunal, the important features of the Crown Court appear to be the following. It is a superior court of record,[48] from which appeals generally proceed to the Court of Appeal.[49] A limited subset of its decisions and exercise of jurisdiction is subject to the review and supervision of the High Court.[50] This fact does not of itself negate the possibility of substantive Crown Court decisions being of co-ordinate status as High Court decisions, if the reasoning in *Gilchrist* is found to be similarly applicable. Nor should it be relevant for the doctrine of precedent that the Crown Court has no power to unilaterally make practice directions for criminal procedure in that court or the Magistrates' Courts[51]; if that were otherwise a similar disability would, for instance, improbably afflict the Court of Appeal, Criminal Division.

Importantly, for the court or tribunal in question not to be bound by the High Court, the particular line of reasoning in *Gilchrist* would require it to be exercising a jurisdiction formerly exercised by the High Court.[52] The question is whether this element must be present before the Crown Court may be freed from

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46. *Gilchrist* (n 25) [98]. Notably, this was not a case where the High Court's appellate or supervisory jurisdiction over a tribunal had been excluded altogether. Without questioning the reasoning there, the exceptional scenario where the jurisdictional oversight is totally excluded warrants a mention. In *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22; [2020] AC 491, the Supreme Court was divided (with Lord Lloyd-Jones not expressing any definite view) on whether, and if so to what extent, Parliament could by statute oust the High Court's supervisory jurisdiction to review a decision of an inferior tribunal of limited statutory jurisdiction: at [144], [168], [210] and [253]. What is relevant for present purposes is that Lord Carnwath and Lord Sumption expressly considered in their judgments (at [112], [139] and [192]) the risk of an isolated tribunal system developing 'local laws' that did not conform to the general law of the land. Each ultimately placed different weight on the value of consistency, although one notes that the uninviting prospect of anomalous laws being created is much diminished if such a tribunal is disabled from setting precedent. It is suggested that a hypothetical tribunal—care should be taken to set this apart from the position of Judges sitting in the High Court, whose decisions have binding effect even though they are subject to neither judicial review nor, if statute should so preclude, appeal (see *Re Racal Communications Ltd* [1981] AC 374, 384)—whose legal rulings cannot be corrected in a judicial forum should not, as a matter of principle, be allowed to strictly bind itself or any tribunal below it; any such ruling would be at best persuasive and avoidable by a later tribunal that was satisfied of its error (see also the first instance judgment in *R (Privacy International) v Investigatory Powers Tribunal* [2017] EWHC 114 (Admin); [2017] 3 All ER 1127, [48]–[49]; BJ Ong, 'The Ouster of Parliamentary Sovereignty?' [2020] PL 41, 42–44).
47. *Addlesee v Dentons Europe LLP* [2019] EWCA Civ 1600; [2020] Ch 243, [87].
48. See n 24.
49. Criminal Appeal Act 1968 s 1.
50. Senior Courts Act 1981 ss 28 and 29(3). A relevant discussion of these provisions may be found at *R v Crown Court at Ipswich, ex parte Baldwin* [1981] 1 All ER 596. It has been repeatedly said that, but for them, the Crown Court, a superior court of record, would not be subject to any other court's supervisory jurisdiction; see *R v Manchester Crown Court, ex parte Director of Public Prosecutions* [1993] 1 WLR 1524, 1528; *R v Chelmsford Crown Court, ex parte Chief Constable of Essex* [1994] 1 WLR 359, 367–69; *R (Shields) v Liverpool Crown Court* [2001] EWHC 90 (Admin), [10]; *R (Tapecrown Ltd) v Oxford Crown Court* [2018] EWHC 1450 (Admin); [2019] 1 WLR 3354, [31].
51. *R (Sullivan) v Crown Court at Maidstone* [2002] EWHC 967 (Admin); [2002] 1 WLR 2747. The empowering provisions are currently contained in the Courts Act 2003 ss 68–74.
52. See text at n 34.

having to follow an otherwise covering High Court decision. The answer, it is suggested, is no. The Upper Tribunal was created in part to replace the High Court as the judicial forum for resolving certain types of cases, and it is therefore understandable, from the perspective of ensuring future consistency of decision-making in that forum, why it was seen to be a vital requirement for the Upper Tribunal to be exercising jurisdiction formerly belonging to the High Court. In relation to the Crown Court, however, what is relevant is not so much the historical fact that it is the successor to the courts of quarter sessions and assize courts, but that among the matters it decides are trials of, and sentencing for, indictable offences, over which the Crown Court has exclusive jurisdiction[53]; that most criminal appeals from the Magistrates' Courts will lie to the Crown Court, which, although not a decisive consideration, does mean that that court is best placed to swiftly and consistently correct errors of law below; and that those cases which exhibit signs of involving more intricate discussion of a point of law are generally heard or reserved for hearing by more senior judges, such as High Court Judges or Circuit Judges.

Conclusion

In summary, if there should be established a reasonably satisfactory process to facilitate the systematic and public dissemination (electronic or otherwise) of reasoned substantive decisions made in the exercise of the Crown Court's criminal jurisdiction, it is suggested that those decisions, whether made at first instance or on appeal, should be recognised to have the following effect under the doctrine of *stare decisis*:

(i) Such a decision would bind judges and justices sitting in the Magistrates' Courts. If a judge or justice is faced with covering but conflicting decisions of the Crown Court and/or the High Court, the decision generally to be followed is the one which has given full consideration to the other decision(s) and which is not inconsistent with any higher authority of the Court of Appeal (Criminal Division), the House of Lords or the Supreme Court.

(ii) Such a decision would not bind any judge or justice sitting in the Crown Court, but would generally be followed out of comity unless he or she is convinced that it is wrong, in accordance with the ordinary rule relating to judges sitting at co-ordinate jurisdiction[54]; the same treatment should also apply with respect to High Court decisions when cited in Crown Court proceedings. If a judge or justice is faced with two conflicting decisions, the second decision, if reached after full consideration of the first decision, should be followed except where he or she is convinced that that decision was wrong in not following the first.[55] Judges and justices sitting in the Crown Court, like their counterparts in the Divisional Court,[56] would however be bound by decisions of the Court of Appeal (Criminal Division), the House of Lords and the Supreme Court.

(iii) Such a decision would not bind any judge sitting at High Court level or higher.[57]

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53. Senior Courts Act 1981 s 46.
54. See, eg, *Faulkner v Talbot* (1981) 74 Cr App R 1, 4.
55. Pursuant to the practice described in *Colchester Estates (Cardiff) v Carlton Industries plc* [1986] Ch 80, 85; *Bishopsgate Investment Management Ltd v Maxwell* [1993] Ch 1, 14; *In re Lune Metal Products Ltd* [2006] EWCA Civ 1720; [2007] Bus LR 589, [9]–[10]; *Howard de Walden* (n 21) [90].
56. The Divisional Court when exercising criminal jurisdiction is generally thought to be bound by decisions of the Court of Appeal (Criminal Division), even though it is to the Supreme Court that an appeal from the Divisional Court lies, with leave, under the Administration of Justice Act 1960 s 1; see also *C v Director of Public Prosecutions* [1996] AC 1, 12–13; *Morgans v Director of Public Prosecutions* [1999] 1 WLR 968, 979; WHD Winder, 'Divisional Court Precedents' (1946) 9 MLR 257, 260–62; Note, 'Judicial Precedents in Criminal Law' (1958) 22 JCL 155; Cross and Harris (n 1) 121; Ingman (n 1) 206; Morgan (n 1) 427; Wilson and others (n 1) 195.
57. See *Fitzgerald v Preston Crown Court* [2018] EWHC 804 (Admin), [11]; *Perrin v Northampton Borough Council* [2006] EWHC 2331 (TCC); [2007] 1 All ER 929, [41] and [44] (albeit with the caveat that it is not entirely clear from the written judgment whether the Crown Court decision under discussion was made in the exercise of its civil or criminal jurisdiction). Crown Court decisions made under its civil jurisdiction are not binding on the High Court; see *R (Chief Constable of South Yorkshire Police) v Crown Court at Sheffield* [2020] EWHC 210 (Admin), [54].

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