

**SENTENCE REVIEW
COMMISSIONERS**

Annual Report 2016/17

SENTENCE REVIEW COMMISSIONERS

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(For the year ended 31 March 2017)

Presented to Parliament pursuant to Paragraph 6 of Schedule 1
to the Northern Ireland (Sentences) Act 1998

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HC 213



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SENTENCE REVIEW COMMISSIONERS

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Rt. Hon James Brokenshire MP
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Dear Secretary of State

Sub-paragraph 6(1) of Schedule 1 to the Northern Ireland (Sentences) Act 1998 requires me, as Chairman of the Sentence Review Commissioners, to make a report to you, as soon as practicable after the end of the financial year, on the performance of the Sentence Review Commissioners' functions during the year. Annual Reports have accordingly been forwarded to you and your predecessors every year since the first in 1998/1999.

This, the nineteenth report, covers the year ending 31 March 2017. The layout and the content of this Report follow the line adopted in last year's report. It should be noted that all our previous Reports are readily available on the Commissioners' website: www.sentencereview.org.uk.

Chapter One summarises the background to the Commissioners' role. Chapter Two describes some issues that were addressed during the year, including a review of guidance on the payment of Legal Aid, ongoing development of policies and guidance documents for the purposes of Commissioner training and the development of a protocol between the Commissioners and the Northern Ireland Office in relation to cases involving evidence certified as 'damaging information'. Chapter Three gives details of the caseload processed throughout the year and Chapter Four deals with staff and resources. Finally, I would like to take this opportunity to acknowledge the commitment and dedication of my fellow Commissioners who serve in a part-time capacity and to thank staff within the Secretariat for their administrative support throughout the year. I have no doubt that this support will carry through to the 2017/18 reporting period.

Yours sincerely



CLODACH MCGRORY
Chairman

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Chapter 1

Background

The work of the Commissioners has its origins in the Agreement reached on Good Friday (10 April) 1998 between the participants in the multi-party negotiations, subsequently endorsed by referendum.

The part of the Agreement dealing with prisoners committed both Governments to putting in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or of similar offences elsewhere. The arrangements were to protect the rights of individual prisoners under national and international law.

Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.

The Act and Rules

The Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998 ('the Act') and through various pieces of subordinate legislation made under it, most particularly the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998 ('the Rules'). Both were passed by Parliament in late July 1998.

The Act provides for the appointment of Commissioners and sets out the criteria that must be met for a prisoner to be eligible for early release on licence. The Act also makes provision for the calculation of the appropriate release dates for qualifying prisoners, whether fixed term or life sentence prisoners.

The Rules set out in detail the procedures under which prisoners apply for early release and the Commissioners consider their applications. Within the terms of the Rules there

is provision for the views of the Secretary of State (represented by the Northern Ireland Office) to be made known and taken into account by the Commissioners. The Rules normally give both parties access to the same information. However, in certain circumstances information certified by the Secretary of State as 'damaging' may be withheld from the prisoner (and any representative nominated by the prisoner). If this happens, there is provision for the Attorney General to appoint a Special Advocate to represent the interests of the prisoner.

The papers submitted by the prisoner (known as the 'applicant') and the Secretary of State (known as the 'respondent') are considered by a panel of three Commissioners who give their initial view in writing in the form of a 'preliminary indication'. The Rules allow either party to challenge the preliminary indication and have the issues considered afresh at an oral hearing. If there is no such challenge, or after an oral hearing, the final decision of the Commissioners is given to both parties in the form of a 'substantive determination'. The Act makes provision for the Secretary of State to apply to the Commissioners to revoke a declaration that a prisoner is eligible for release, on certain grounds, at any time before the prisoner is released. Other than this the Commissioners have no power to reconsider a substantive determination, so the only way in which either party can challenge the outcome is by way of judicial review.

Prisoners who are successful in their applications are released on licence, the conditions of which are set out in the Act. The Act also makes provision for the suspension of a licence by the Secretary of State if he believes a person has broken or is likely to break a condition of his/her licence.

The Rules set out in detail the procedures to be followed in these circumstances.

Eligibility for Early Release

The eligibility criteria laid down by the Act are that:

- the prisoner is serving a sentence of imprisonment in Northern Ireland;
- the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10 April 1998;
- if the sentence was passed in Northern Ireland, the offence:
 - was a scheduled offence; and
 - was not the subject of a certificate of the Attorney General that it was not to be treated as a scheduled offence;
- if the sentence was passed in Great Britain, the offence:
 - was committed in connection with terrorism and with the affairs of Northern Ireland; and
 - is certified as one that would have been scheduled, had it been committed in Northern Ireland;
- the prisoner is not a supporter of a specified organisation;
- if the prisoner were released immediately, he would not:
 - be likely to become a supporter of a specified organisation; or
 - be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
 - if a life-sentence prisoner, be a danger to the public.

Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those most likely to be committed by terrorists. They include murder and manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

It should be noted that the Act does not require offences in Northern Ireland to have been committed by or on behalf of a terrorist organisation but simply requires them to have been tried as scheduled offences.

The Specified Organisations

The Act requires the Secretary of State to 'specify' by subordinate legislation any organisation believed to be concerned in terrorism connected with the affairs of Northern Ireland which has not established or is not maintaining a complete and unequivocal ceasefire. Specification of an organisation means that its supporters are not eligible to benefit from the early release arrangements.

The list of specified organisations referred to in Section 3(8) of the Northern Ireland (Sentences) Act 1998 are currently:

- The Continuity Irish Republican Army;
- The Loyalist Volunteer Force;
- Óglaigh na hEireann;
- The Orange Volunteers;
- The "Real" Irish Republican Army; and
- The Red Hand Defenders.

The Accelerated Release Date

The Act provided that any prisoners given release dates after the second anniversary of the Act's commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the latter.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners' declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

Licence Arrangements

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

For a fixed term prisoner the licence remains in force until the date when he or she would otherwise have been entitled to be released from prison under the legislation in place at that time. For a life prisoner, the licence remains in force for the rest of his or her life.

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again.

Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements or subject to a further application from the prisoner.

The Rules make provision for successive applications to be made by any prisoners where circumstances have changed since the most recent decision of the Commissioners or it comes to light that there was some material information, document or evidence which was not placed before the Commissioners when the most recent decision was made.

The Commissioners

The Sentence Review Commissioners are an independent body made up of a Chairman and six other Commissioners* appointed by the Secretary of State. The following Commissioners served during the reporting period.

<i>Ms Clodach McGrory Chairman</i>	Practiced at the Bar in Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and served a term of office on the Irish Human Rights Commission from December 2000 until August 2006. She was a member of the Prison Review Team which was appointed by the Minister for Justice in June 2011 to conduct a comprehensive review of the Northern Ireland Prison Service and reported in October 2012. She is currently a part-time Chairman of Social Security Appeal Tribunals and has been a Life Sentence Review Commissioner/Parole Commissioner since 2001. Ms McGrory was appointed Chairman of the Sentence Review Commissioners on the 21st January 2013.
<i>Dr Adrian Grounds</i>	Was a University senior lecturer in forensic psychiatry at the Institute of Criminology, University of Cambridge, and an honorary consultant forensic psychiatrist in the Cambridgeshire and Peterborough NHS Foundation Trust, until retiring in 2010. He is now an honorary research fellow at the Institute of Criminology. He is also a Parole Commissioner for Northern Ireland, and a Medical Member of the First-tier Tribunal (Mental Health) in England.
<i>Dr Duncan Morrow**</i>	An academic in the University of Ulster currently developing engagement with communities and stakeholders as part of the University's Greater Belfast Development. Until 2011 he was Chief Executive of the Community Relations Council (CRC) and has taken an active role in peace building and the legacy of violence in the past. Dr Morrow is a Parole Commissioner for Northern Ireland. A native of Belfast, he is married with three teenage children.
<i>Prof John Jackson</i>	A Professor of Law at the University of Nottingham and a qualified barrister. He was previously Dean of the School of Law at University College Dublin and has taught at several other universities including Queen's University Belfast, the University of Sheffield, the City University, London and University College Cardiff. He has held visiting professorships at Hastings College of the Law, University of California and the Faculty of Law, University of New South Wales and was a Fernand Braudel Senior Fellow at the European University Institute in 2007 – 2008. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review.
<i>Mr Timothy Thorne</i>	Tim qualified as a barrister in 1987. He practiced mainly in the fields of criminal defence and prosecution. He is a Deputy (part-time) Judge Advocate sitting in Courts Martial and a part-time judge in the First Tier Tribunal, dealing with asylum and immigration cases. He was also a past Deputy Chairperson of the National Health Service Tribunal and a consultant trainer to the Inns of Court School of Law in London. He is presently a non-Executive Director of a legal training company. Tim is also a Parole Commissioner for Northern Ireland.
<i>Ms Anne Grimes</i>	Ms Anne Grimes qualified as a solicitor in 1990. She worked at Law Centre (NI) for 12 years. She was appointed as an Immigration Judge of the First-tier Tribunal in 2002 and also as a Deputy Judge of the Upper Tribunal in 2010. In 2007 she was appointed a part time Legal Chairman of the Northern Ireland Valuation Tribunal. Anne is also a Parole Commissioner for Northern Ireland.
<i>Dr Micaela Greenwood</i>	Dr Micaela Greenwood is an independent business psychologist and management consultant. Her previous positions include Principal Occupational Psychologist at the Police Service of Northern Ireland and Associate Director of the MSc in Occupational Psychology at Queen's University of Belfast. Micaela is also a Parole Commissioner for Northern Ireland.

* All Commissioners are paid on a part-time per diem basis and the Chairman receives an additional annual increment in respect of her duties as Chairman.

** Dr Morrow stood down as a Sentence Review Commissioner on 7 April 2016 to stand as a candidate in the Northern Ireland Assembly elections.

Chapter 2

Approach

The Commissioners are under a duty to implement one of the most sensitive parts of the Agreement, and their first priority continues to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held two plenary meetings at which they discussed in depth their approach with regard to aspects of their responsibilities that have either arisen for the first time or been brought into particular focus by experience relating to particular cases. The plenary meetings have also provided a valuable opportunity for ongoing training of Commissioners.

The development of policies and guidance documents was ongoing throughout the year of this report and the Commissioners have finalised further documents, including a revised guidance document on the payment of legal aid.

In view of their obligations under section 6(1) of the Human Rights Act 1998, the Commissioners have kept under review their policy and procedures in relation to 'damaging information' cases. During this reporting period a protocol has been developed which sets out the agreed arrangements between the Sentence Review Commissioners and the NIO National Security Casework and Operations when dealing with cases coming before the Commissioners which involve information certified by the Secretary of State as 'damaging information'. The protocol has been developed to ensure that roles and responsibility are clearly defined throughout the process for admitting and considering 'damaging information'.

Chapter 3

Casework

The work of the Commissioners is mainly dependent on the number of prisoners who apply to them in accordance with the provisions of the Act and the review process initiated by the Northern Ireland Office. Cases processed by the Sentence Review Commissioners can raise new and complex issues and thus tend to be very time consuming.

In addition, there has increasingly been reliance by the Secretary of State on 'Damaging Information' in cases before the Commissioners. In light of their obligations under section 6(1) of the Human Rights Act 1998 the Commissioners have been required to further develop their policy and procedures in relation to 'Damaging Information' cases in line with emerging jurisprudence. The appointment of the Special Advocate at an early stage of the proceedings and the engagement with the parties in the 'gisting process' requires a significant time commitment on the part of the Commissioners appointed to each case.

Applications to the Sentence Review Commissioners

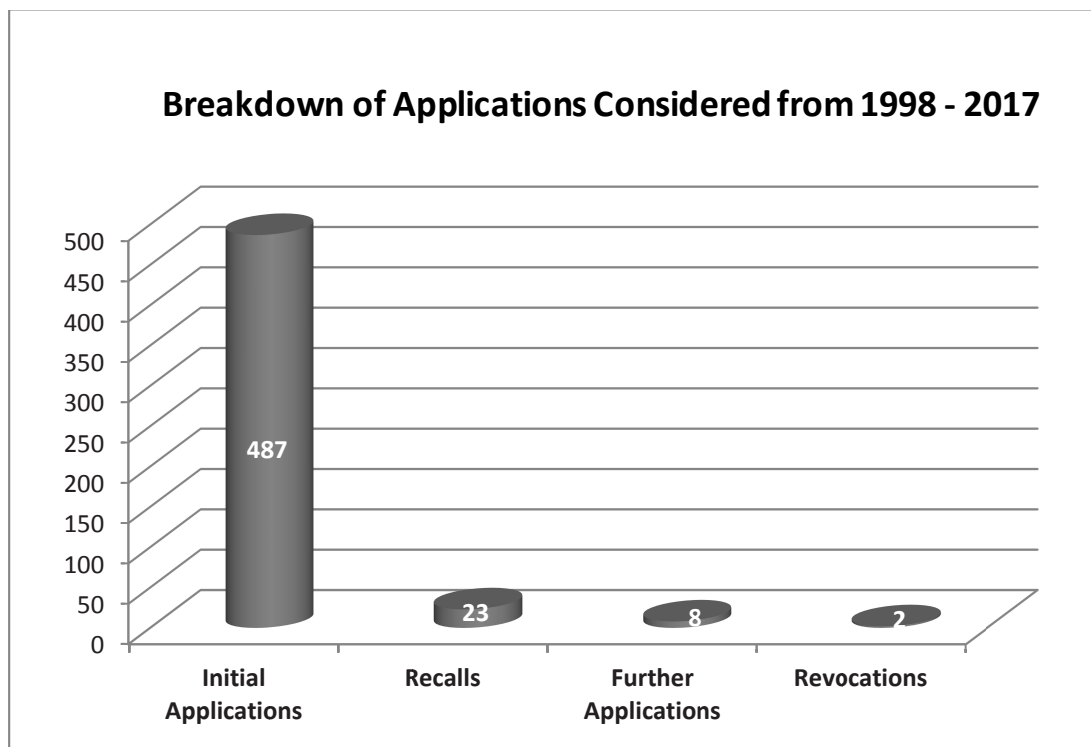
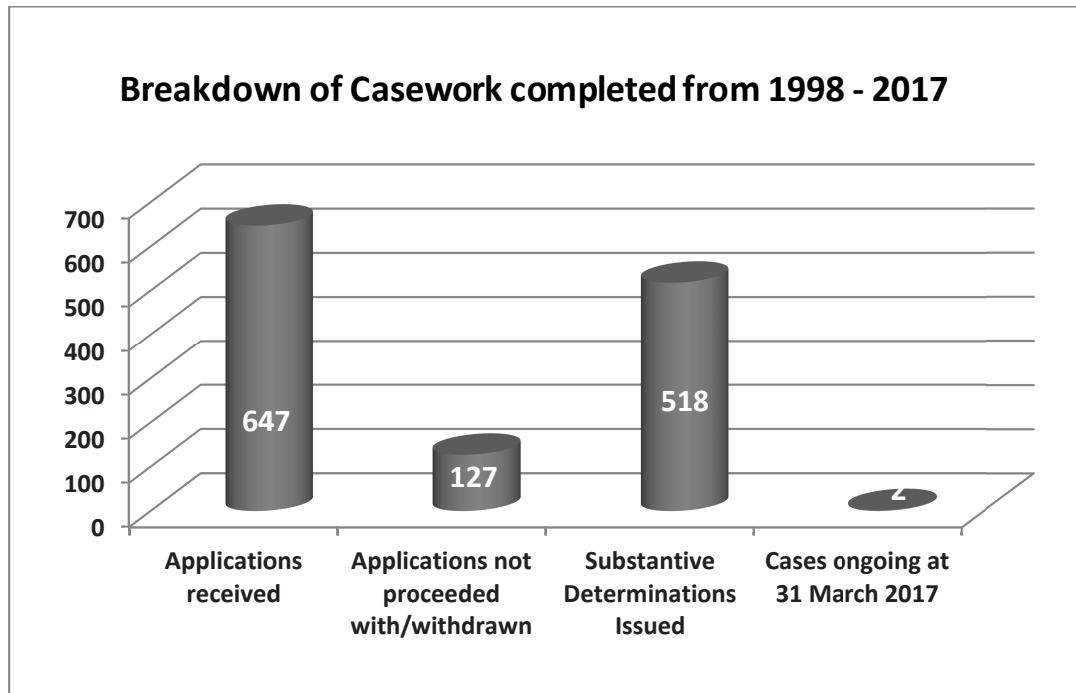
During the period of this report two recall applications were received.

Preliminary Indications, Oral Hearings and Substantive Determinations

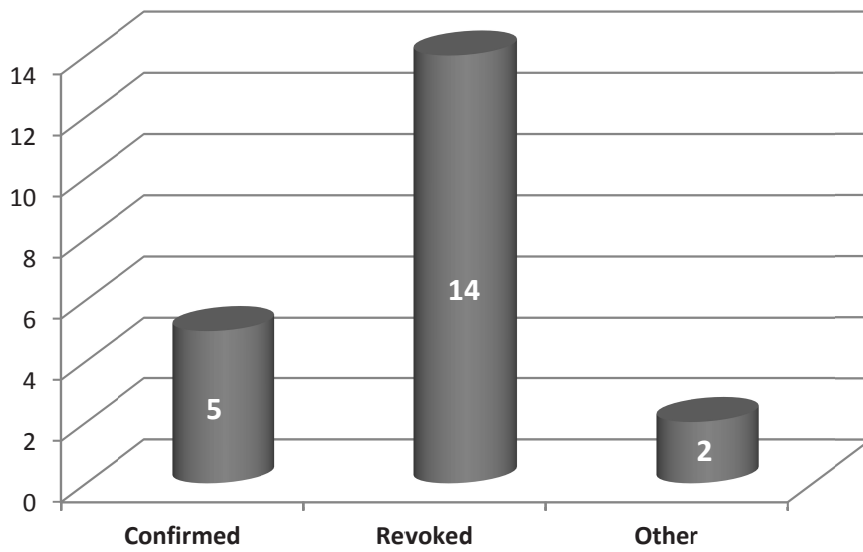
During this reporting period two Preliminary Indication and one Substantive Determination were issued. At 31 March 2017 there are currently two cases outstanding.

Statistical Analysis

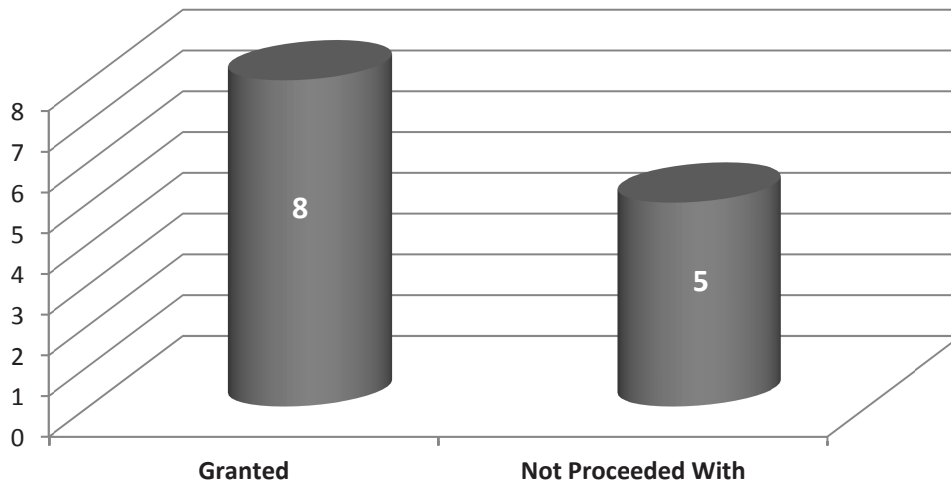
The following tables show the analysis of casework from 1998 - 2017



Analysis of Recall applications from 1998 - 2017



Breakdown of Further Applications from 1998 - 2017*



** Of the eight Further Application which were granted - six were granted on the first further application and two were granted on subsequent*

Chapter 4

Staff and Resources

For the period covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and one case manager. They occupy shared accommodation with the Parole Commissioners for Northern Ireland on the Mezzanine, Laganside Courts.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2017 was:

Estimated Expenditure for 2016/17:

Financial Year	2014/15 £000	2015/16 £000	2016/17 £000
Commissioners' Remuneration	25	28	23
Commissioners' Travel, Accommodation and Expenses	2	1	1
Legal Representation for Applicants	6	10	3
Legal Costs	7	2	7
General Administration	2	1	1
Running Costs:			
Accommodation	17	19	20
Staff Salaries	44	42	43
Total Budget Spend:	103	103	98

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