

SENTENCE REVIEW COMMISSIONERS

Annual Report 2014/15

(For the year ended 31 March 2015)

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

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Any enquiries regarding this publication should be sent to us at Sentence Review Commissioners Secretariat, Laganside Court, Mezzanine 1st Floor, Oxford Street, BELFAST, BT1 3LL

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SENTENCE REVIEW COMMISSIONERS

Commissioners' Secretariat
9th Floor
Linum Chambers
2 Bedford Square
Bedford Street
BT2 7ES
e-mail: info@sentencereview.x.gsi.gov.uk
website: www.sentencereview.org.uk

Chairman

Ms. Clodach McGrory

Rt. Hon Theresa Villiers MP
Secretary of State for Northern Ireland
Stormont House
Stormont Estate
BELFAST
BT4 3SH

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 seventeenth report, covers the year ending 31 March 2015. 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 and Chapter Two describes some issues that were addressed during the year including policy reviews and revised guidance on issues such as the location of hearings. Chapter Three gives details of the caseload processed throughout the year and Chapter Four deals with staff and resources.

Finally, I would like to thank the Secretariat staff for their excellent standard of administrative support which the Commissioners rely on and I have no doubt they will carry this through to the 2015/16 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 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 Act also makes provision for the suspension of a licence by the Secretary of State if she 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 later.

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 three other Commissioners* appointed by the Secretary of State to serve until July 2017. The following Commissioners served during the reporting period.

<p><i>Ms Clodach McGrory</i> <i>Chairman</i></p>	<p>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.</p>
<p><i>Dr Adrian Grounds</i></p>	<p>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.</p>
<p><i>Dr Duncan Morrow</i></p>	<p>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.</p>
<p><i>Prof John Jackson</i></p>	<p>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.</p>

** 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.*

Three additional Commissioners were appointed with effect from 1 April 2015.

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 four 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 paragraphs that follow describe some of the issues thus considered and the conclusions that were reached.

Human Rights Act 1998

Section 6(1) of the Human Rights Act 1998 makes it "unlawful for a public authority to act in a way which is incompatible with a Convention right". The Commissioners have been advised that each of them is a public authority for the purposes of the Northern Ireland (Sentences) Act 1998.

In giving effect to the 1998 Sentences Act, the Commissioners may, conceivably, be faced with a course of action that could be inconsistent with one or more of the Convention rights. They have been advised that, where they conclude that such inconsistency exists, their legal duty would be to comply with section 6(1). Accordingly, the Commissioners continually keep under review the policies and procedures that they have adopted in order to discharge their statutory responsibilities. To date these have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and the secondary legislation (the Commissioners' Rules) with the Human Rights Act.

Confidentiality of Information

During the reporting year the Commissioners developed a guidance note in relation to the confidentiality of information about the proceedings before the Commissioners. The guidance observes that whilst there are specific non-disclosure provision of the 1998 Rules in respect of 'damaging information', there are no such express non-disclosure provisions in respect of other information, for example, information contained in documents submitted to the Commissioners by either party to the proceedings. This is not to suggest that documents placed before the Commissioners are public documents in the sense that they require to be made available to the public, on request or otherwise. The guidance note confirms that all documents which plainly contain material of a confidential nature disclosed to the Commissioners for the purpose of the effective discharge of their statutory function should be treated accordingly by the Commissioners.

It is noted that, in the exercise of their statutory functions, the Commissioners are required to observe the general obligations demanded by criminal and civil law, for example, in respect of the unlawful disclosure of personal data or the misuse of private information.

Location of Hearings

The Commissioners also developed a policy on the location of hearings. In accordance with rule 17(1) all ancillary and substantive hearings must be held at the prison where the person concerned is detained, with a discretion conferred on the Commissioners by rule 28(7) to direct otherwise in the specific circumstances of a recalled prisoner who is unlawfully at large. Notwithstanding this requirement, in some cases involving damaging information the NIO has made representations to the effect that an oral hearing in the prison would jeopardise national security or the safety of witnesses and that the substantive hearing is required to be conducted in a court house. The Commissioners accept that there may be exceptional circumstances in which consideration will need to be given to a direction that a hearing should be held at a location other than the prison.

The policy sets out the requirement for the NIO to submit an ancillary application stating the reasons for the application and the proposed arrangements. Where the ancillary application is granted the ancillary decision should make it clear that it is for the NIO to make the necessary arrangements.

Damaging Information

Commissioners continued to develop their policy and procedures in relation to “damaging information” cases in line with emerging jurisprudence. During 2014/15 they produced a paper, Guiding Principles and Procedures on Damaging Information, which provides clear guidance as to the procedures which Commissioners should follow when ‘damaging information’ is introduced. This document along with the revised casework guidance will prove invaluable to the current and new Commissioners.

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 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. As outlined in Chapter Two, 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 one initial application and one further application were received.

Preliminary Indications, Oral Hearings and Substantive Determinations

During this reporting period Commissioners held one oral hearing. Three Preliminary Indications and three Substantive Determinations were issued (two to release and one to revoke a licence). One further application was considered and rejected as it did not satisfy the statutory requirements. At 31 March 2015 there are currently no cases outstanding.

Table 1

Table 1 shows the state of business at the end of each quarter, the total cases processed in the year and the total cases processed by the Commissioners since their appointment.

	Q1	Q2	Q3	Q4	Total 2014/15	Total 1998-2015
Applications received	1	1	0	0	2	644
Applications sent to respondent	1	1	0	0	2	587
Responses received	1	1	0	0	2	586
Applications not proceeded with after response received	0	1	0	0	0	56
Applications withdrawn / lapsed before issue of preliminary indication	0	0	0	0	0	3
Preliminary indications issued	0	2	1	0	3	532
Applications withdrawn / lapsed after issue of preliminary indication	0	0	0	0	0	13
Challenges received	0	1	0	0	1	55
Oral hearings held	0	0	1	0	1	53
Applications withdrawn / lapsed following oral hearing	0	0	0	0	0	2
Substantive determinations issued	0	1	0	2	3	516
Applications transferred to PCNI following tariff expiry	0	0	0	0	0	1
Outstanding Applications under consideration at year end.						0

Chapter 4

Staff and Resources

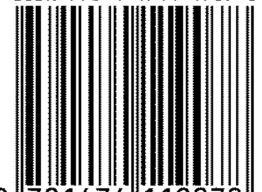
For the period covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and one case manager. They occupy shared accommodation with the Parole Commissioners for Northern Ireland on the 9th floor of Linum Chambers, Belfast.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2015 was:

Estimated Expenditure for 2014/15:

Financial Year	2012/13 £000	2013/14 £000	2014/15 £000*
Commissioners' Remuneration	46	25	25
Commissioners' Travel, Accommodation and Expenses	25	3	2
Legal Representation for Applicants	12	27	6
Legal Costs	6	9	7
General Administration	3	4	2
Running Costs:			
Accommodation	19	14	17
Staff Salaries	29	36	44
Total Budget Spend:	140	118	103
<i>*further to a review of the treatment of VAT, the figure quoted now includes VAT, unlike in previous years.</i>			

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