

SENTENCE REVIEW COMMISSIONERS

Annual Report 2020/21

Sentence Review Commissioners' Annual Report 2020/21

(For the year ended 31 March 2021)

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

Ordered by the House of Commons to be printed
15 July 2021



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ISBN 978-1-5286-2666-8

CCS0521612700 07/21

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

SENTENCE REVIEW COMMISSIONERS

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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 Chairperson 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 twenty third report, covers the year ending 31 March 2021. This has been a year like no other and staff and Commissioners must be commended for their dedication and efforts to ensure that the work of the Sentence Review Commissioners continued unhindered throughout the pandemic of COVID 19. 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 of the report summarises the background to the Commissioners' role, Chapter Two describes some issues that were addressed during the year, Chapter Three provides information on the cases processed and Chapter Four gives a breakdown of staff and resources during the reporting year.

Lastly, I would like to acknowledge the commitment and dedication of my fellow Sentence Review Commissioners who serve in a part-time capacity and also to thank our Secretariat Staff for their administrative support during this particularly challenging year. I have no doubt that this support and commitment will continue throughout the 2021/22 reporting period.

Yours sincerely



CLODACH MCGRORY
Chairperson

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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 information” 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.

Rule 22(1) of the Sentence Reviews Commissioners’ Rules applies where the Secretary of State certifies as ‘damaging information’ (hereinafter ‘DI’) any information, document or evidence which, in his opinion, would if disclosed to the person concerned or any other person be likely to:

- a) Adversely affect the health, welfare or safety of the person concerned or any other person;

- b) Result in the commission of an offence;
- c) Facilitate an escape from lawful custody or the doing of any act prejudicial to the safe keeping of persons in such custody;
- d) Impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- e) Be contrary to the interests of national security; or
- f) Otherwise cause substantial harm to the public interest.

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 following which the issues are 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, and the only mechanism by which either party can challenge the outcome is by way of judicial review.

Prisoners who are unsuccessful in their applications may make a further application at a later stage if it can be demonstrated that the person's circumstances have changed since the most recent substantive determination or reliance is placed on any material information, document or evidence which was not placed before the Commissioners when the previous substantive determination was made.

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 where the Commissioners are required to consider the case of a recalled prisoner. In particular, the Rules make provision for the proceedings in relation to recalled prisoners to be expedited.

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:
 - o was a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996; and
 - o 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:
 - o was committed in connection with terrorism and with the affairs of Northern Ireland; and
 - o is certified as one that would have been scheduled under the Northern Ireland (Emergency Provisions) Acts, 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:
 - o be likely to become a supporter of a specified organisation; or
 - o be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
 - o if a life sentence prisoner, be a danger to the public.

Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts. 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

Schedule 3(8) of 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 specified organisations as listed in the Northern Ireland (Sentences) Act 1998 (Specified Organisations) (No. 2) Order 2008 are:

- 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 makes provision for the accelerated release of prisoners who are granted a declaration in relation to a sentence. Specifically, the Act provides that any prisoner who would have a right to be released on a date which falls after the second anniversary of the Act’s commencement will be released by the Secretary of State on that day, or once the prisoner has served two years of the sentence to which the declaration relates, whichever is the latter.

The Act 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 the accelerated release provision by subordinate legislation.

Licence Arrangements

Each prisoner released early under the legislation is subject to the following 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 person's licence is suspended 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 successful further application from the prisoner.

The Commissioners

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

<p><i>Ms Clodach McGrory</i> <i>Chairperson</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 was a Life Sentence Review Commissioner/Parole Commissioner from 2001-2019 and is currently a Legally Qualified Member of Social Security Appeal Tribunals in Northern Ireland. Ms McGrory was appointed Chairperson of the Sentence Review Commissioners in January 2013.</p>
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<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>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 and he has been a Life Sentence Review Commissioner/Parole Commissioner since 2002.

Mr Timothy Thorne	Mr Timothy Thorne qualified as a barrister in 1987. He practiced mainly in the fields of criminal defence and prosecution. He was a Deputy Assistant Judge Advocate General sitting in Courts Martial and is a fee-paid judge in the First Tier Tribunal, sitting in the Immigration & Asylum Chamber and the Care Standards Tribunal. He is also a Parole Commissioner for Northern Ireland. He was also a Deputy Chairperson of the National Health Service Tribunal and a consultant trainer to the Inns of Court School of Law in London. He is also a non-Executive Director of a legal training company.
Dr Micaela Greenwood	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.
Ms Anne Grimes	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. She was appointed as a salaried judge of the First-Tier Tribunal (Immigration & Asylum Chamber) in January 2020. **

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

** *Ms Grimes is currently on a sabbatical from her role as a Sentence Review Commissioner.*

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.

COVID 19

This has been an unprecedented and challenging year for the work of the Sentence Review Commissioners. Contingency planning was initiated in March 2020 to facilitate remote working. It involved much time and effort on the part of the Secretariat and their efforts have ensured the progression of casework in a timely manner. Oral Hearings and case meetings are now also held remotely via WebEX thus ensuring the safety of all participants. This technology has also been employed to hold Commissioner training and plenary events.

Plenary Meetings and Training

During the year covered by this Report, the Commissioners held one plenary meeting 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 individual cases.

Plenary meetings provide a valuable opportunity for ongoing training of Commissioners and an opportunity to discuss and review policies and procedures. Updated Commissioner guidance documents on the role of the single Commissioner and further applications under rule 9 have been issued to Commissioners and a number of administrative forms have been revised. The Commissioners have continued to keep under review the relevance of the procedural rules and during this reporting period have considered issues such as privacy of hearings and the relevance of victim representation.

Jurisdiction

During this reporting year the Commissioners have benefitted from the further guidance of the courts in relation to the extent of their jurisdiction to consider successive applications under section 3. In the case of *Re McGuinness' Application [2019] NIQB 85* the Applicant challenged the decision of the Commissioners to accept a further application from a prisoner following the revocation of the licence previously granted to him under the 1998 Act. This case, together with *Re McGuinness' Application [2019] NIQB 10*, raised complex jurisdictional issues in relation to the respective roles of the Sentence Review Commissioners and the Parole Commissioners for Northern Ireland in respect of prisoners who have been released and recalled under the NI (Sentences) Act 1998.

The approach of the Commissioners is to consider all further applications for a declaration of eligibility under the Northern Ireland (Sentences) Act 1998, subject to the requirements of rule 9. This approach is informed by the absence of any express provision in the statutory framework which removes the entitlement of a prisoner to make a fresh application in the event of the revocation of a licence.

In its Judgment delivered in November 2020 the Court of Appeal upheld the ruling of McCloskey LJ in the case of *Re McGuinness' Application [2019] NIQB 85* that the Commissioners were legally competent to determine a further application made by Mr Stone following the revocation of his licence. The Court of Appeal was satisfied that the provisions of the 1998 Act and the 1998 Rules enable a prisoner who has had his licence revoked to apply under section 3 for a further declaration of eligibility for release under the 1998 Act.

The Applicant in the case is currently seeking leave to appeal this decision to the Supreme Court.

Website

The SRC website is now fully functional and it is updated regularly by the Secretariat. It holds a wealth of knowledge providing information on application eligibility and the application process. It provides a reference point for those considering applying to the Sentence Review

Commissioners, their legal representatives or other interested parties.

Sustainable Development

The Sentence Review Commissioners are committed to operating in accordance with the principles of sustainable development. Every effort is made to ensure that administrative work is paperless where possible and recycling and reuse of materials by Secretariat and Commissioners is encouraged. This approach has been more important during the pandemic with Secretariat staff and Commissioners working remotely. Remote working has permitted the work of the Commissioners to continue throughout the pandemic with casework progressed in accordance with the legislation.

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.

Applications to the Sentence Review Commissioners

During the period of this report we received one initial application and two further applications.

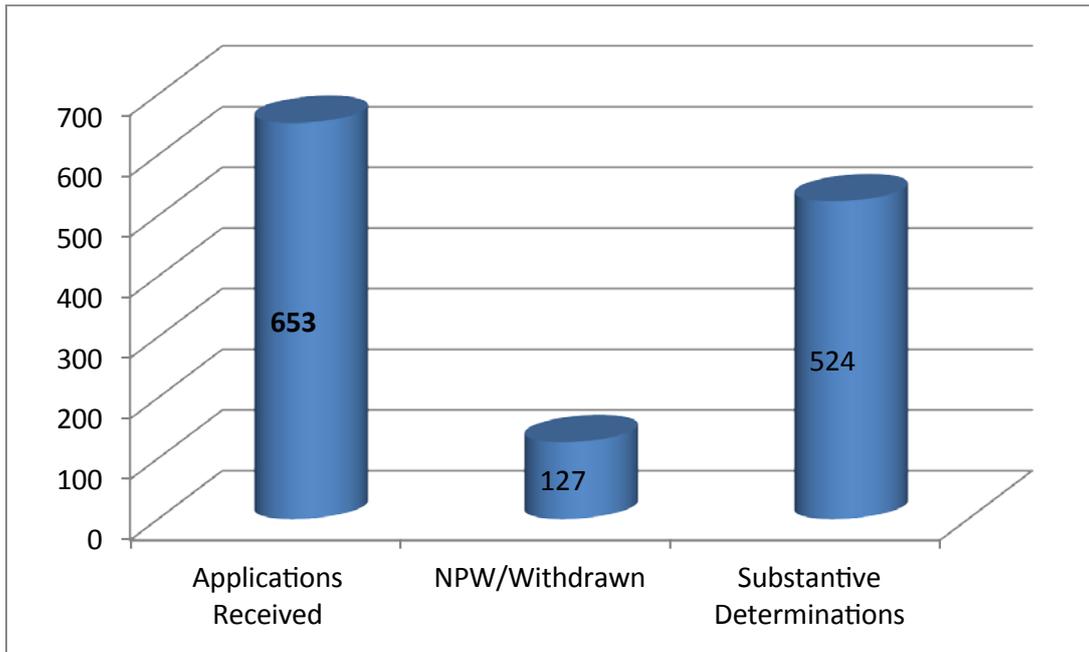
Preliminary Indications, Oral Hearings and Substantive Determinations

During this reporting period there were two oral hearings, four Preliminary Indications and two Substantive Determinations issued. At 31 March 2021 there are currently two cases outstanding.

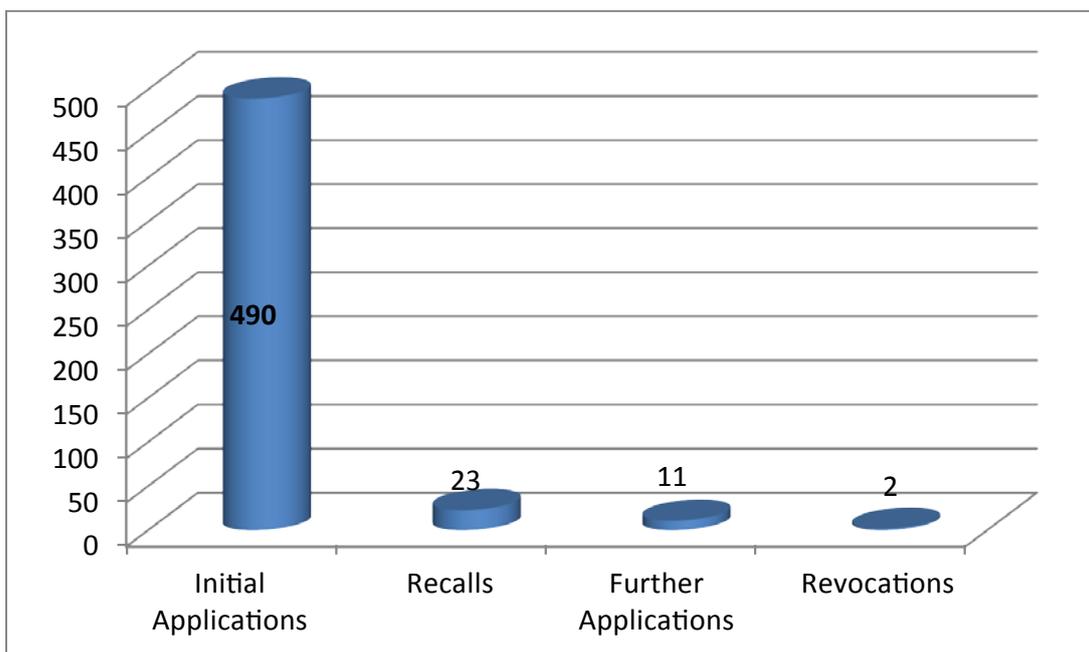
Statistical Analysis

The following tables show the analysis of casework from 1998 – 2021:

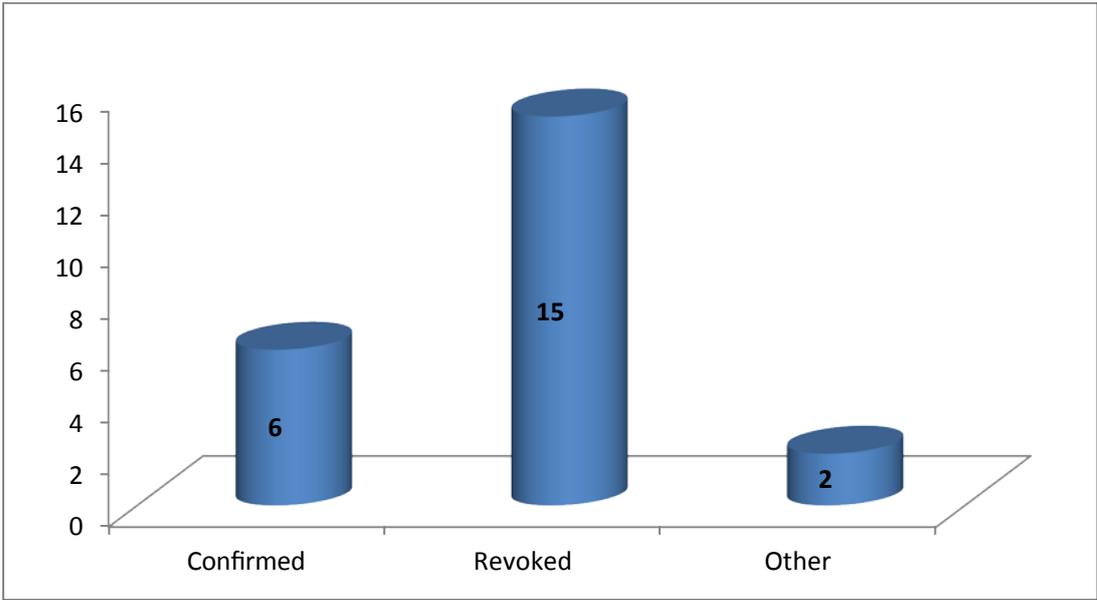
Breakdown of Casework completed from 1998 – 2021



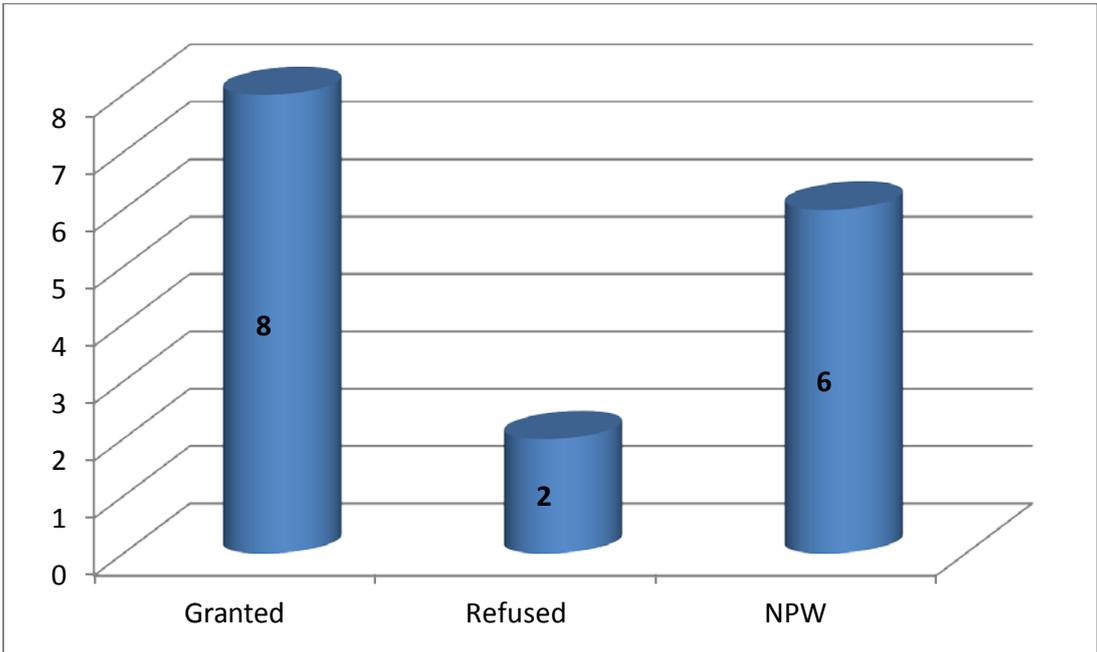
Breakdown of Applications considered from 1998 – 2021



Analysis of Recall applications from 1998 – 2021



Breakdown of Further Applications from 1998 – 2021



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 normally occupy shared accommodation with the Parole Commissioners for Northern Ireland on the Mezzanine, Laganside Courts but throughout this reporting period they have worked remotely in accordance with COVID guidance and hearings and meetings have been held virtually. This has resulted in a marked reduction in Commissioner travel, accommodation and expenses costs and general administration costs have also been reduced.

As per Section 20 of the Northern Ireland (Sentences) Act 1998, expenditure incurred by the Secretary of State by virtue of this Act shall be paid out of money provided by Parliament. Thus, expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2021 was:

Estimated Spending for 2020/21:

Financial Year	2017/18 £000	2018/19 £000	2019/20 £000	2020/21 £000
Commissioners' Remuneration	27	21	21	36
Commissioners' Travel, Accommodation and Expenses	1	1	1	0
Legal Representation for Applicants	5	0	3	4
Legal Costs	0	3	88	6
General Administration	0	1	11	2
Running Costs:				
Accommodation	26	24	20	25
Staff Salaries	50	46	39	38
Total Budget Spend:	109	96	183	111

CCS0521612700
978-1-5286-2666-8