
# In the Court of Appeal
# Criminal Division

2013 / 2014

# Contents

# Introduction by the Lord Chief Justice

I am delighted to be introducing this, the eighteenth review of the work of the Court of Appeal (Criminal Division), but my first as Lord Chief Justice. It has been an interesting and active year. The Vice President of the Court, Hallett LJ, and I would like to express our sincere thanks to all of those who have enabled the Court to fulfil its responsibilities to the administration of criminal justice, particularly the legal and administrative staff of the Courts who have worked tirelessly throughout the year in difficult circumstances.

Lord Judge made a remarkable impact on the criminal justice system and led the judiciary of England and Wales during a period of unprecedented difficulties and challenges. It has been a daunting task to follow him.

In my Birkenhead Lecture of October 2013, the first speech I delivered as Lord Chief Justice of England and Wales, I called for the greater provision of justice outside London and promised that the Courts would do all they could to encourage it. To this end, during the course of the legal year I have sat with the Court of Appeal at Nottingham, Liverpool, Leeds, Cardiff, Birmingham, Bristol, and Canterbury. Arrangements are already being made for further sittings out of London during the forthcoming year. These regional sittings have been, on the whole, a great success. They not only provide access to justice without the costs involved in all the parties coming to London but also enable an appeal to be heard in the area where there may be a strong local interest in the case. It is also a great pleasure to both myself and the other Judges to have the opportunity to meet the Crown Court staff who play such a vital role in the administration of criminal justice. In addition to these sittings the Court now sits regularly in Cardiff for one week every term with other Lord Justices of Appeal presiding. These sittings serve to demonstrate the Court's respect for the separate governance of Wales within the jurisdiction of England and Wales.

The year has once again seen the Court deal with many varied and complex issues. These have included secret trials, the amendments to the dangerousness provisions and matters concerning confiscation. These are discussed in the text of the Review. Two cases however call for special mention. In *Achogbuo* [2014] EWCA Crim 567 I said that it had become a habit for a number of cases to be brought on the basis of incompetent representation by trial solicitors or trial counsel with many cases proceeding without any enquiry having been made of solicitors and counsel who acted at trial. This often means that the lawyer who brings such an application acts on the allegations of a convicted criminal without any check being made on whether the instructions are accurate. This is impermissible. Before applications are made to this Court alleging incompetence based upon the defendant's account, lawyers are required to take proper steps to ascertain by independent means, including contacting the previous lawyers, as to whether there is any objective and independent basis for the grounds of appeal. In *McCook* [2014] EWCA Crim 734, it was necessary to go further and make clear that henceforth it will be necessary for solicitors and counsel to go to the solicitors and/or counsel who had previously acted to ensure that the factual details put before the Court are accurate. It will only be in exceptional circumstances, likely to be very rare, that this will not need to be done.

**Lord Thomas**
**Lord Chief Justice of England and Wales**

# Looking to the Future

As can be seen from the summary below most of the Court's work involves the determination of applications and appeals against conviction and sentence from the Crown Court. This Court will be the court of final appeal for the vast majority of criminal cases. It has a vital role in ensuring that the criminal justice system is fair and effective and in providing guidance to the lower courts on the interpretation of the law. We aim to maintain and promote public confidence in the system through our high quality review of convictions and other decisions in the Crown Court.

However, the workload is relentless and resources limited. There are occasions when the Court is faced with applications, often renewed, that have absolutely no prospect of success. This wastes valuable time and scarce resources. The Court has recently re-affirmed the principle that, in appropriate cases, it will exercise its power under section 29 of the Criminal Appeal Act 1968 and make loss of time orders (see Gray and others – yet to be reported).

The Court continues to take advantage of the increased technology in terms of video-link facilities. Since the introduction of the Registrar's power to direct a hearing via video-link pursuant to section 110 of the Coroners and Justice Act 2009 the Court has seen an increased use of such hearings; there were some 240 during the reporting year. This saves on scarce resources and enables appellants and witnesses to participate without having to come to the Royal Courts of Justice.

Broadcasting of cases started at the beginning of the reporting year. It allows one courtroom each day to be covered and shows lawyers' arguments, judges' comments and judgments. Defendants, witnesses and victims are not shown. In the last 12 months there have been 143 requests to film cases of which just over half involved sexual offending or where a death occurred.

During the course of the year, Fulford LJ began and completed the study I commissioned into the workings of the CACD. We are considering with various interested parties how best to implement his recommendations.

He also piloted for us over three days in January 2014, the concept of paperless digital appeal hearings. Judges and counsel were provided with their case "papers" in electronic format. A variety of laptop and tablet devices were used during the proceedings and judgments were delivered ex tempore without the need to refer to hard copy bundles. The Court hopes to continue this development, focusing initially on the provision by counsel of case authorities digitally rather than in hard copy.

Since the beginning of the reporting year, the Court has been able to provide improved waiting room facilities for victims of crime and a new Code of Practice for Victims of Crime came into force on 10 December 2013. The new Code sets out with greater clarity victims' entitlements and 'service provider' obligations during the course of appeal proceedings. In particular, it clarifies the handling of Victim Personal Statements for the purpose of an appeal.

Finally, I have instituted a series of plenary sessions of all judges who sit in the CACD. The idea is to improve awareness and understanding of problems and developments and to promote consistency of approach, where appropriate. We have been extremely fortunate in securing the services of Professor David Ormerod to assist us.

**The Right Honourable Lady Justice Hallett DBE**
**Vice President of the Court of Appeal (Criminal Division)**

# Overview of the Year; Master Egan QC, Registrar of Criminal Appeals

This has been a significant year for the Court of Appeal (Criminal Division). Our new Lord Chief Justice has ensured that the Court of Appeal regularly visits other court centres far from London. There is a very real benefit when the Court of Appeal sits on Circuit and while we have grown used to seeing our Court sitting regularly in Wales the Lord Chief Justice's sittings in Bristol, Birmingham, Nottingham, Canterbury and Liverpool has extended this; this Michaelmas term our Court will sit in Manchester and Sheffield.

I have referred six applications for summary dismissal under Section 20 of the Criminal Appeal Act 1968 this year. This power to refer is used by me sparingly and tends to be confined to cases which are more properly described as an abuse of the appeal process rather than simply misconceived. The Court gives careful consideration before exercising the power to dismiss and declined to do so in one case [1]. Four cases[2] involved conduct which the Court ultimately decided should be reported to the appropriate regulatory body. One of those cases, McCook changed the approach to be taken generally by fresh representatives and has been positive in alerting them to clear and obvious errors in their instructions. However it is rather disturbing that some trial lawyers have no useful notes about what happened in the original proceedings. The Bar Standards Board sets out rules for recording significant matters in *'Written Standards for the Conduct of Professional Work'* at paragraph 11.5 (solicitor advocates apply these standards). Advocates should bear in mind that since the abolition of advocate's immunity from suit in **Hall v Simons**[3] criminal practitioners have been liable to actions as occurred in **Popat v. Barnes**[4]. If that happens the possession of a decent written record is not only invaluable, it is essential.

Regulation 18 of the parent Regulations (The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (SI 2013 No. 614)) as now amended imposes the same severe restrictions on the assignment of Queen's Counsel on the Court of Appeal. These provisions are mandatory; CACD has no discretion in the matter and they do give rise to difficult decisions. There may be cases in which Queen's Counsel was properly assigned for trial and settled grounds of appeal against sentence but who cannot properly be assigned under a representation order for the appeal. Similarly in conviction applications there will be cases where the trial may have justified assignment of a silk but the point on appeal does not. Cases where QC has represented a Respondent on an AG's Ref. are very difficult. The client will wish the QC who "secured" the sentence to appear at the CACD even though the criteria under Regulation 18 will often not justify such an order.

---

1 **R. v. Omorogeiva**, 1 May 2014, a fresh arguable ground was lodged the day before the hearing; the Court granted leave. The case has yet to be heard.

2 **R. v. Davis and Thabangu** [2013] EWCA Crim 24224 (5th December 2013); **R. v. Achogbuo** [2014] EWCA Crim 567 (19th March 2014; **R. v. McCook** [2014] EWCA Crim 734 (10th April 2014) and **R. v. Graham** [2014] EWCA 1594 (22nd July 2014). One case awaits determination.

3 [2002] 1 AC 615.

4 [2004] EWHC 741 (QB); [2004] EWHC 820.

The incorporation of the PQBD Jury Protocol[5] into the Criminal Procedure Rules at CPD 39M.1 to 39M.26 is an important confirmation of this instruction. We have noticed that communication between our Court and Crown Courts has improved out of all recognition and the apparent decrease in instances of inappropriate internet research seems to confirm an improvement in clear and unambiguous jury direction by Trial Judges.

We continue to have a strong relationship with the Criminal Cases Review Commission (CCRC). Directed investigations under section 23A Criminal Appeal Act 1968 into allegations of jury impropriety depend upon them and no one can ever fail to be impressed by the thoroughness and impartiality of their investigations.

It has been a year of change in the Criminal Appeal Office. We have all enjoyed the appointment of Lady Justice Hallett as VP and she has been able to bring her great experience in criminal justice to that important role. We have lost some lawyers but also gained some outstanding new recruits. I would like to pay tribute to Doreen Parkinson whose well-earned retirement in November after over 40 years has deprived us of a true institution and Susan Holdham whose thoroughly well-deserved appointment to the District Bench was a bittersweet moment for our Office, pleased for her as we all were. I am, however, entirely satisfied that the CAO office has a very powerful team of lawyers and administrative staff who are up to any of the challenges that the future has for our Court.

**Master Egan QC**
**Registrar of Criminal Appeals**

5 "Jury Irregularities in the Crown court: A Protocol issued by the President of the Queen's Bench Division November 2012.

# Cases of Note

## Confiscation Orders

Confiscation is an area of sentencing which continues to develop and present challenges for the Courts, particularly in light of the decision of the Supreme Court in *R v Waya* [2012] UKSC 51.

In **R v Morgan [2013] EWCA Crim 1307** the Court (Aikens LJ. Cranston J and HHJ Pert) considered *Waya* in relation to criminal lifestyle cases and whether the safeguards built into the statutory criminal lifestyle provisions avoided the danger of a disproportionate confiscation order. The Court held, in the absence of any very unusual circumstances, that if the statutory provisions had been applied correctly the confiscation order would not normally be disproportionate.

Another area which often causes contention is in what circumstances it is proportionate for a confiscation order to be based on turnover as opposed to net profit. This issue was considered again by the Court (Fulford LJ. Holroyde J and HHJ Lakin) in **R v King [2014] EWCA Crim 621**.

In **Fields and Others [2013] EWCA Crim 2042** the Court (Davis LJ. Spencer J and HHJ Rook) considered whether it was disproportionate that the prosecution could obtain confiscation orders against a number of co-conspirators, which in total exceeded the benefit from the criminal conspiracy. The Court held that the confiscation orders were lawful. However, the Court certified the question for the Supreme Court, who were about to consider apportionment in the case of Ahmad.

In conjoined appeals, *R (Appellant) v Ahmad and another (Respondents) and R (Respondent) v Fields and others (Appellants)* [2014] UKSC 36, the Supreme Court upheld the Court's decision on apportionment, but said that applying proportionality, the Crown could not enforce a confiscation order in a joint benefit case if they had already recovered the full amount of the benefit from a different defendant(s) under a confiscation order. Accordingly the confiscation orders in the cases of Ahmad and Fields were amended with that proviso included.

On an important issue of statutory interpretation of the Proceeds of Crime Act 2002, the appellant in **R (Virgin Media Ltd) v Zinga [2014] EWCA Crim 52** sought to challenge the trial judge's ruling that a private prosecutor could undertake confiscation proceedings pursuant to section 6 of the Proceeds of Crime Act 2002. The Court (LCJ. Foskett and Hickinbottom JJ.) invited representations from both the Director of Public Prosecutions and the Metropolitan police and concluded that a private prosecutor could lawfully instigate confiscation proceedings. That decision may also be subject to challenge in the Supreme Court, the Court having certified the question.

# Criminal Law

## Abuse of Process

In **R v Crawley and others [2014] EWCA Crim 1028** the Court (PQBD, Davis and Treacy LJJ.) heard a prosecution appeal involving a dispute between the Criminal Bar and the Government over Very High Cost Cases (VHCC). In September 2013 the Ministry of Justice (MOJ) announced a reduction in the fees payable under a VHCC by 30% and as a result the Bar Standards Board instructed its members to decline instructions in such cases. In allowing the appeal the Court said the judge had been wrong to link as one the Financial Conduct Authority and those responsible for the provision of legal aid. The Court said that it was of fundamental importance that the MOJ, led by the Lord Chancellor, and the professions continue to try to resolve the impasse that stood in the way of the delivery of justice in complex cases.

## Dangerous Dogs

In **R v Robinson-Pierre [2013] EWCA Crim 2396** the Court (Pitchford LJ. Nicola Davies J. and The Recorder of Leeds) confirmed that section 3(1) of the Dangerous Dogs Act 1991 created an offence of strict liability. It went on to consider the extent to which liability for the offence was strict. It noted that responsibility to prevent the state of affairs prohibited was placed on the owner and, if different, the person *"in charge"* of the dog at the relevant time. Accordingly there were concurrent obligations upon both the owner of the dog and the person in charge of it. In the event that the prohibited state of affairs arose *both* committed an offence under section 3(1). However, if the owner "reasonably believed" that the person in charge of the dog was "a fit and proper person" a defence arose (section 3(2)). The underlying assumption was that in the normal course of things someone would be in charge of the dog, and therefore in a position to control it, so as to prevent the prohibited state of affairs arising and, if no one was in charge of the dog, the owner would be responsible. It followed that it was not Parliament's intention to render the owner absolutely liable in all circumstances.

## Self Defence and Insanity

In **R v SO [2013] EWCA Crim 1725** the Court (Davis LJ. Keith and Lewis JJ) considered the interconnection between self-defence and insanity. The appellant was convicted of two counts of affray and one of inflicting grievous bodily harm. It was agreed by the defence and prosecution experts that by reason of a disease of the mind, the appellant did not know the nature and quality of the acts he was doing. At trial the appellant relied on self-defence saying that he thought the police were evil spirits trying to trap him. The jury were directed on self-defence and insanity. The question for the Court was whether an insanely held delusion on the part of the appellant entitled him to an acquittal on the basis of reasonable self-defence. The Court said not. The provisions of section 76 of the Criminal Justice and Immigration Act 2008 were clear. The second limb of self-defence included an objective element by reference to reasonableness, even if there might also be a subjective element. An insane person could not set the standards of reasonableness as to the degree of force used by reference to his own insanity.

## Inconsistent verdicts

In **Formhals [2013] EWCA Crim 2624** the Court (Davis LJ. Nicol J. and The Recorder of Chester) held that the principles applicable to inconsistent verdicts were also capable of applying to a failure of the jury to agree. The Court of Appeal ultimately had to consider whether or not a conviction was safe. The failure of a jury to agree on a verdict was self-evidently not a verdict. It would be a rare case where a failure to reach a verdict could be said to be logically inexplicable when contrasted with or set against a verdict which had been reached. If such an argument was to be run, it would be in cases which called for the closest scrutiny by the Court. Moreover, such an argument had to be run in circumstances where the principles applicable to inconsistent verdicts (in the true sense of the words) were themselves very tightly prescribed. The bar was thus set high for the application of the principle of inconsistent verdicts. The bar was set equally high, and perhaps even higher, where the attempt was to compare and contrast a verdict of guilt with a failure of the jury to agree.

## Unlawful Act Manslaughter

In **R v. Bristow [2013] EWCA Crim 1540** the Court (Treacy LJ. Hamblen and Nicol JJ.) considered the question of a burglar's liability to be convicted of manslaughter where the death of the property owner occurred during the course of a burglary. Unlawful act manslaughter comprised (a) an unlawful act intentionally performed (b) in circumstances rendering it a dangerous act (c) causing death. The unlawful act had to be such as all sober and reasonable people would inevitably recognise would subject the other person to at least the risk of some harm. Whilst burglary per se was not a dangerous crime the circumstances of its commission might make it so. What needed to be considered was the foresight of the participants as they embarked upon the crime and what if anything a reasonable bystander would inevitably have recognised as a risk of physical harm to any person intervening.

## Attempted money laundering

In **R v Pace [2014] EWCA Crim 186** the appellants appealed against their convictions for attempting to conceal, disguise or convert criminal property contrary to s.1(1) of the Criminal Attempts Act 1981 following an investigation into scrap metal dealers. The Court (Davis LJ. Blake and Lewis JJ.) allowed the appeal and said that a constituent element of the offence of converting criminal property was that the property in question was criminal. An intent to commit the offence involved an intent to convert criminal property and that indicated an intent that the property should be criminal property. For the purpose of a count of attempted money laundering, proof of a mental element of suspicion only would not be sufficient.

## Public Office holders

In **R v Mitchell [2014] EWCA Crim 318** the Court (PQBD. Thirlwall and Lewis JJ.) ruled that a paramedic employed by an NHS Ambulance Trust was not a holder of public office and accordingly his conviction for misconduct in judicial or public office was quashed.

The Court stated a three stage test to identify public officers: (i) what was the position held; (ii) what were the duties undertaken; and (iii) whether the individual fulfilled one of the responsibilities of Government such that the public had a significant interest in its discharge extending beyond an interest in anyone who might be directly affected by a serious failure in the performance of the duty. On the facts of the case the Court held that the NHS Trust was performing an important function of Government in the discharge of which the public had a significant interest. However, the duty of care owed by the individual paramedic was private to the patient.

## Previous convictions

In **R v Mehmedov [2014] EWCA Crim 1523** the Court (Pitchford LJ. Openshaw J and HHJ Melbourne Inman) determined that a conviction recorded in a member state before its accession to the European Union was admissible under s.73 of the Police and Criminal Evidence Act (PACE) 1984, as amended by the Coroners and Justice Act 2009. The amendment to s.73 had been made with a view to bringing domestic law into compliance with Council Framework Decision 2008/675/JHA of 24 July 2008. The Court ruled that there was no need to construe s.73 as not applying to a pre-accession conviction as there were other mechanisms for determining whether its admission would be unfair. There were two ways in which courts in England and Wales would ensure that the treatment of a conviction by a member state would be the same as the treatment of a conviction by a national court. Firstly, by s.74(2) PACE, proof of the conviction would constitute a rebuttable presumption that the offence was committed unless the contrary was proved. Whether the conviction was by a national court or the court of a member state, it was open to the defendant to challenge the correctness of the conviction. Secondly, if there was evidence that the conviction was the result of a trial which failed to reach appropriate standards of fairness, it would be open to the court to exercise its discretion pursuant to either s.101(3) of the Criminal Justice Act 2003 or s.78 PACE to decline to admit the evidence. There was no requirement to qualify the terms of s.73 PACE in order to ensure compliance with the Framework Decision.

## Costs

In **R (Virgin Media Ltd) v Zinga [2014] EWCA Crim 52** the Court (LCJ. Rafferty LJ. and Holroyde J.) was asked to consider a private prosecutor's application for costs. The Court, having considered section 17 of the Prosecution of Offences Act 1985, Regulation 7 of the Costs in Criminal Cases (General) (Amendment) Regulations 2012 and a number of authorities, stated that (i) in determining whether a person, be it a corporate body or private individual, had acted reasonably and properly in instructing the solicitors and advocates instructed, the Court would consider what steps were taken to ensure that the terms on which the solicitors and advocates were engaged were reasonable; (ii) in any significant prosecution the private prosecutor would be expected properly and reasonably to examine the competition in the relevant market, test it and seek tenders or quotations before selecting the solicitor and advocate instructed; (iii) it would rarely, if ever, be reasonable in any such case, given the changes in the legal market, to instruct the solicitors and advocates without taking such steps. Such an issue would be highly material for all future applications in determining whether the costs which were charged

were proper and reasonable in a criminal case. The Court would also have regard to the relevant market, the much greater flexibility in the way in which work was done and to Ministry of Justice guidance.

## Secret Trial

The Court (Gross LJ. Simon and Burnett JJ.) heard the case of **R v Incedal and Rarmoul-Bouhadjar [2014] EWCA Crim 1861**. The case was originally anonymised as *R v AB and CD* on the basis that the defendants were suspected of terrorism offences and it was proposed to make it the first criminal trial in British legal history to be held entirely in secret. At the earlier closed hearing in the Central Criminal Court the trial judge (Nicol J.) had ruled that the trial "should take place entirely in private with the identity of both defendants withheld" and with "a permanent prohibition on reporting what takes place during the trial and their identities". The prosecution had argued they would be deterred from bringing the prosecution without an order for secrecy. The basis for this argument was not made public. The existence of the prosecutions became public on 4th June 2014 after an amalgam of press and media agencies headed by Guardian News and Media Ltd applied to the Court under s.159 of the Criminal Justice Act 1988 to overturn the ban on publicly identifying the defendants. On 12 June 2014 the Court gave a decision overturning the anonymity order and limiting the degree to which the trial could be heard in private. The ruling stated: "We express grave concern as to the cumulative effects of holding a criminal trial in camera and anonymising the defendants. We find it difficult to conceive of a situation where both departures from open justice will be justified. Suffice to say, we are not persuaded of any such justification in the present case." The "core of the trial" will remain secret, but the identities of the defendants and the outcome of the trial were ordered to be made public, as well as some details of opening remarks by the judge and prosecution. The court trying the case will have discretion to admit journalists to some parts of the trial, but will retain their notes until the end of the trial, when the court will review what content should or should not be allowed to be made public. The prosecution indicated that it did not intend to make any further appeal, and that the trial would go ahead.

# Evidence

## Criminal Procedure Rules (Expert Evidence)

In **R v H [2014] EWCA Crim 1555** the Court (PQBD. Patterson J. and Sir Richard Henriques), in dismissing the appellant's appeal against conviction for offences including rape, commented that following the *Law Commission Report on Expert Evidence in Criminal Proceedings* there was a real concern about the use of unreliable or inappropriate expert evidence. In the present case the trial judge had expressed the view that the reports of the expert witness relied on by the defence were littered with wholly inappropriate and adverse comments on the credibility and reliability of the complainant. His ruling that the expert's evidence was inadmissible was upheld by the Court. The Court said that Part 33 of the Criminal Procedure Rules had been revised with effect from October 2014 and a Practice Direction was to be published incorporating reliability factors recommended by the Law Commission. The task of an expert was only to provide assistance as set out in *Bernard V* [2003] EWCA Crim 3917.

## Complainant's Sexual History

In **R v RP [2013] EWCA Crim 2331** the appellant had been convicted of six counts of indecent assault on his step-daughter. The trial judge ruled that cross-examination relating to the assistance and support given to the complainant by the appellant after an abortion amounted to questions relating to her sexual behaviour and was therefore prohibited by s.41 of the Youth Justice and Criminal Evidence Act 1999. The Court (McCombe LJ. Mitting and Phillips JJ.) found that the proposed questioning was relevant to the issue before the jury. The submission that a question asked on a subject, which necessarily lead to the fact or inference that there had been some sexual behaviour in the past was therefore a question "about…sexual behaviour" was rejected and the potential width of the definition was thereby acknowledged. Accordingly questions about whether someone had assisted the complainant in obtaining a lawful abortion could not be said to be a question "about" sexual behaviour even though an abortion was clearly the result of past sexual behaviour.

# Procedure

## Jury issues

The Court (PQBD. Wilkie and Jay JJ.) in **R v Roberts [2013] EWCA Crim 1508** held that where lawyers sat on juries it was necessary for them to observe the duties imposed on them by the court and accept with humility any directions given by the judge. It was not for them to second guess either the judge or the advocates about the case. It was for the advocates instructed to decide what submissions to make.

In **R v Baybasin and others [2013] EWCA Crim 2357** the Court (LCJ. Cox and Holroyde JJ.) ruled that a practice at Liverpool Crown Court of balloting jurors by number in cases involving time estimates in excess of 2 weeks did not have any effect on the fairness of the trial. The jury would not have known that the balloting by number was unorthodox and would not have adopted a different attitude to the appellant as a result. The appellant had the right to inspect the panel from which the names of the jurors might be drawn under s.5(2) of the Juries Act 1974. However the Court observed that the Crown Court was a single court and its practices and procedures had to be the same in all its locations, unless there was an objectively justifiable basis for practice based on local conditions. If such a practice was required, details of it and justification must be submitted to the office of the Lord Chief Justice. The Criminal Procedure Rule Committee would be asked to consider balloting by number in defined circumstances.

## Absconders

In **R v Okedare and others [2014] EWCA Crim 228** the Court (VPCACD. Silber and Green JJ.) considered the issue of offenders whose whereabouts were unknown. The first issue was whether those representing the offender had authority to lodge an appeal. A lawyer either had authority from his client or he did not. The longer the period between instructions, absconding, conviction and application, the harder it might become to persuade a court that instruction to appeal existed. Any disengagement by the offender from the trial and appeal process might also tend to negate an inference of authority. In most criminal appeals the offender played a limited role and the appeal was commonly determined on questions of law, evidence or sentencing practice. In the event of conviction or sentence it might be safely assumed that an offender would wish to appeal if they were informed that the application was properly arguable at least as far as the single judge stage. A single judge was entitled, but not bound, to conclude that the legal representatives submitting an application for permission to appeal had actual or implied authority to do so. In relation to renewed applications it was harder to infer authority where there was a real risk of adverse consequences to the offender in the form of costs or an order that time served pending appeal did not count towards his overall sentence. If the offender had nothing to lose by renewing the application it might be easier to persuade a court that authority should be inferred. Unless the interests of justice demanded a hearing of the merits, the full Court might treat an application to renew without instructions as ineffective. It was also observed that if an appeal was successful, a retrial ordered and the offender was still absent at the time of arraignment, a plea of not guilty should be entered and the offender tried in his absence.

## Fresh Evidence on Appeal

In **R v Cross [2014] EWCA Crim 96** the Court (LCJ. Simon and Irwin, JJ.) said that where a Court agreed to hear fresh evidence it did so *de bene esse* and, in light of the argument, then considered whether it should be admitted. The Court emphasised that the decision about whether or not to hear fresh evidence rested with the full Court hearing the appeal, not an earlier Court at a directions hearing.

## Technical issues

In **R v Stocker [2013] EWCA Crim 1993** the applicant had been tried and convicted on an indictment that had been incorrectly drafted. The question for the Court (VPCACD. Sweeney J and HHJ Zeidman) was whether the error was purely a technical defect or whether the indictment breached Rule 14(2) of the Criminal Procedure Rules and was therefore fundamentally flawed. After a thorough review of the authorities the Court concluded that there was a clear judicial and legislative steer away from quashing an indictment and allowing appeals on the basis of a purely technical defect. The overriding objective of the criminal justice system was to do justice. To that end, procedural and technical points should be taken at the time of the trial. The purpose of the Rule was to ensure an accused had sufficient information to know the case that had to be met and the correct statutory provision. There was no possible doubt in this case. It could have been cured easily by an amendment at any time. In **R v Lewis [2013] EWCA Crim 2596** the appellant was convicted of a summary only offence, namely common assault, which had originally been committed for trial together with an either-way offence of attempted theft pursuant to s.40 of the Criminal Justice Act 1988. The Crown subsequently offered no evidence on the either-way count and a formal verdict of not guilty was directed. The appellant submitted that the indictment was a nullity on the basis that a summary only offence was the only count ultimately remaining on the indictment. The Court (McCombe LJ. Griffith Williams J and The Recorder of Newcastle) ruled that there was a valid and preferred indictment. All the counts were properly joined. The fact that subsequently only a summary count was left for trial did not invalidate the indictment. Section 40 gave no indication that in order to found jurisdiction the defendant had have been put in the charge of a jury on charges which included at least one triable on indictment from the outset. Section 40 was directed to the stage when the indictment was drawn. To rule to the contrary would amount to retrospectively invalidating an indictment, which was originally correctly drafted because of a pre-trial acquittal of one of the offences.

## Fresh Legal Representatives

In **R v. Davis and Thabangu [2013] EWCA Crim 2424** the applicants had committed a "black-dollar" fraud to which they had pleaded guilty. Eight years out of time, and long after the applicants had been deported, applications for extensions of time and for leave to appeal against conviction were lodged on their behalf by fresh solicitors. The grounds of appeal stated that they had not been advised of the statutory defence available to them as asylum seekers. The applications were referred to the Court under section 20 of the Criminal Appeal Act 1968. Solicitors accepted at the hearing that the grounds were unarguable and had resulted from a misreading of the relevant legislation. The Court

(LCJ. Griffith Williams J. and The Recorder of Newcastle) was scathing in its observations as to the competence of the solicitor who had drafted the grounds and referred his conduct to the Solicitors Regulation Authority and for enquiry by the Legal Aid Agency. Scarce public funds had been expended needlessly. The Court relied upon the integrity, honesty and competence of practitioners. It would scrutinise with great care applications made under the self-certification procedure to ensure that there was no further abuse of the scheme.

In **R v Achogbuo [2014] EWCA Crim 567** the Court (LCJ. Royce J. and HHJ Tonking) noted that it had become the habit for appeals to be brought on the basis of incompetent representation by trial solicitors or counsel. As in the instant case, many applications for leave to appeal were submitted without any enquiry having being made of the trial representatives. In such circumstances the fresh representatives were submitting applications based upon the allegations of a convicted criminal. For a representative to submit such allegations without prior enquiry was impermissible. The Court would henceforth consider exercising s.20 of the Criminal Appeal Act 1968 frequently in such cases. The Court expected not only the highest standards of disclosure, but also strict compliance with the duties of advocates and solicitors. It was their fundamental duty to make applications after the exercise of due diligence which included making enquiries of the trial representatives. Having made those enquiries steps had to be taken to obtain objective and independent evidence before submitting grounds of appeal based on allegations of incompetence. The Lord Chief Justice re-iterated these comments in **R v McCook [2014] EWCA Crim 734** where the Court (LCJ. PQBD and VPCACD) ruled that the appeal was frivolous and vexatious. The case highlighted two points: (i) it was always desirable to consult trial representatives where fresh representatives had been instructed; and (ii) in any case where fresh representatives were instructed it would henceforth be necessary for them to liaise with the trial representatives to ensure that the facts were correct, unless there were in exceptional circumstances, good and compelling reasons not to do so. It was contemplated that such circumstances would be very rare.

## Contempt of court

In **R v West [2014] EWCA Crim 1480** the Court had to deal with a barrister fined for contempt of court. He had failed to comply with a number of directions given by the judge. The Court (PQBD. Patterson J. and Sir Richard Henriques) rejected submissions that the trial judge should have recused himself. The discretion to deal with contempt summarily properly remained with the judge. However an issue, not raised by the appellant, concerned the procedure to be followed in cases of alleged contempt as laid down in Crim PR Pt 62, especially Rules 62.5(2), 62.7 and 62.9. Ordinarily, compliance with the strict provisions of the Criminal Procedure Rules could be waived by the parties or the court but this was not the case in instances of alleged contempt, in which strict observance of the rules was essential. In the present case there had been a failure of process, so the appeal would be allowed and the finding of contempt set aside.

## Mental Health

In **R v Fort [2013] EWCA Crim 2332** the Court (Aikens LJ. Simon J and HHJ Morris) addressed the complex relationship between custodial sentences for life and orders under the Mental Health Act 1983 (MHA). Under both regimes release was discretionary dependent on the Secretary of State. Under the MHA regime release was dependent on the appropriate authority being satisfied that the offender no longer presented any danger which arose from his medical condition whereas for a sentence of public protection the appropriate authority must be satisfied that the offender is no longer a danger to the public for any reason. The sentencing judge had to evaluate whether, given the history of the offender up to the time that the relevant offence was committed, the risk of committing further offences was one that would be triggered by virtue of a relapse in the mental condition of the offender. If the offender posed a significant risk of serious harm to members of the public occasioned by the commission of serious offences, even if his mental disorder were to be cured or substantially alleviated, then the sentence to be imposed must recognise and focus on that residual risk.

## Legal Funding

The main issue in **R v. Banfield [2014] EWCA Crim 1824** was whether leading counsel who was granted a representation order could also be remunerated on a privately funded basis for additional costs incurred. The Court (LCJ. Rafferty LJ and Holroyde J.) ruled that this was not permissible. It was clear from Article 11 of the Criminal Defence Service (Funding) Order 2007 and the Criminal Legal Aid (Remuneration) Regulations 2013 that where a representation order had been granted a representative was not entitled to also charge the defendant for work done privately unless that work fell within the exceptions enumerated.

## Slip Rule – Section 155 of the Powers of Criminal Courts (Sentencing) Act 2000

The Court (LCJ. Hickinbottom and Jeremy Baker JJ.) in **R. v. E [2014] EWCA Crim 1105** re-affirmed that for a section 155 variation the court must be similarly reconstituted and in open court. Rule 42.4(4) of the Criminal Procedure Rules 2013 prohibits the exercise of the power unless the defendant has had an opportunity to make representations at a hearing and the court should not order a variation in the defendant's absence unless he has expressly or impliedly waived his right to be present.

# Sentencing

## Dangerous offender provisions

In **R. v Burinskas (Gintas) Attorney General's Reference (No.27 of 2013) [2014] EWCA Crim 334** the Court (LCJ. Mitting and Thirlwall JJ.) considered the effect of amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") to the dangerous offender provisions in Chapter 5 of the Criminal Justice Act 2003. After reviewing the specific provisions introduced by LASPO the Court outlined the general approach to be adopted in relation to sentencing where Chapter 5 applied: (i) If an offender is not dangerous and s.224A did not apply a determinate sentence should be passed; (ii) If an offender is not dangerous and the conditions in s.224A were satisfied then, subject to subsection 2(a) and (b), a life sentence must be imposed; (iii) If an offender is dangerous the court should decide whether the seriousness of the offence and the offences associated with it justifies a life sentence; (iv) If so, then such a sentence should be imposed in accordance with s.225 and, if s.224A also applied, the judge should record that fact in open court; (v) If a life sentence is not justified the judge should then decide whether s.224A applies. If it does then, subject to the terms of s.224A, a life sentence must be imposed; (vi) If s.224A does not apply the judge should consider imposing an Extended Determinate Sentence pursuant to s.226A. However, before imposing such a sentence the judge has to first consider the propriety of a determinate sentence.

## Whole life tariffs

In **R v Mcloughlin [2014] EWCA Crim 188** a specially constituted Court (LCJ. PQBD. VPCACD. Treacy LJ and Burnett J.) considered whole life orders in light of the decision in *Vinter v United Kingdom* which held that whole life orders breached Article 3 on the basis that they were irreducible. The Court held that the statutory regime imposed by Parliament was compatible with Article 3. There were some crimes so heinous that just punishment might require imprisonment for life and States had a margin of appreciation in deciding just and appropriate sentence. The Court concluded that no specific passage in the judgment, or the judgment as a whole, sought to criticise the provisions of the Criminal Justice Act 2003. The whole life order itself did not violate Article 3 and the regime for review under s.30 of the Crime (Sentences) Act 1997 Act was compliant with Article 3. Judges should continue to apply the statutory scheme contained in the CJA 2003 and in exceptional cases, likely to be rare, impose whole life orders in accordance with Schedule 21.

## Assisted Suicide

In **R v Howe [2014] EWCA Crim 114** the Court (LCJ. Treacy and Macur LJJ.) provided guidance when sentencing for offences of assisted suicide. The most serious cases were those where death resulted. Next on the scale would be attempted suicides where serious harm resulted. Courts should take into account adverse consequences for people other than the primary victim and if serious harm had occurred the court should assess whether it had been resolved or whether it would continue into the foreseeable future.

Harm in this context would be both psychological and physical. At the bottom end of the range would be those cases where despite encouragement the victim did not attempt suicide. A little higher up the scale would be cases where a substance was provided with intent, but which turned out to be harmless. When assessing culpability and the level of blameworthiness courts would need to consider factors such as premeditation, persistence, the extent of encouragement or assistance given and the means by which the suicide was to take place. Motivation was also important with malice or prospect of gain at one end of the scale and compassion at the other end. A court should also consider whether the victim had a settled, voluntary and informed intention to commit suicide, or whether his state of mind was less certain. Whether the victim solicited assistance or encouragement was also relevant as was the victim's capacity to make a decision as to suicide. In this context knowledge by the offender of any vulnerability of the victim would be important. Where the custodial threshold was crossed the range would be between 3 and 12 years, or more where an attempt at suicide or actual suicide had taken place. The Court stressed that the guidance extended only to cases of face to face encouragement and not those involving remote encouragement over the internet by strangers. That situation might need to be addressed on another occasion.

## Sexual Activity with a Child

In **Attorney General's Reference (No.53 of 2013) [2013] EWCA Crim 2544** the Court (LCJ. Henriques and Blake JJ.) quashed the suspended sentence and substituted a sentence of 2 years imprisonment for offences of sexual activity with a child, making indecent photographs and possession of extreme pornography. The Court said that Crown counsel and the judge had fallen into error in thinking that it was a relevant mitigating factor that the sexual activity had been initiated by the victim. It was clear that the purpose of Parliament in passing legislation to make it a crime punishable with imprisonment to have sexual relations with those under 16 years was to protect those under 16. The reduction of punishment on the basis that the person who needed protection encouraged the commission of an offence was therefore simply wrong. An underage person who encouraged sexual relations with her needed more, not less, protection. The fact that the offender took advantage of what he asserted the victim did aggravated the offence. The victim's vulnerability was therefore an aggravating rather than a mitigating feature.

## "One-punch" Manslaughter

In **Attorney-General's Reference No 16 of 2014 [2014] EWCA Crim 956** the Court (Treacy LJ. Kenneth Parker J and HHJ Rees) held that a sentence of four years' imprisonment imposed on an offender who had pleaded guilty to manslaughter arising from a full-force single punch to a defenceless victim was consistent with the sentencing practice set out in *Attorney General's Reference No 60 of 2009, Appleby and others* [2009] EWCA Crim 2693 and was not unduly lenient. *Appleby* had signalled a significant change in the approach to be taken to cases involving manslaughter arising from a single punch with the bare fist. Whilst there had to be a focus on the actions of an accused and his intentions, there also had to be a focus on the catastrophic consequences of the offence, namely the death of the victim. It was important to examine the nature of the blow which was struck. There was a distinction between a relatively modest blow

which resulted in death and more serious violence. That distinction played a part in the assessment of culpability alongside the grave harm done. The Court indicated that this might be an area for the attention of the Sentencing Council.

## Drugs

In **R v Dyer and Others [2013] EWCA Crim 2114** the Court (PQBD. Royce J. and Sir David Maddison) considered the correct approach to the Sentencing Council Definitive Guideline for drug offences, in particular with regard to "street dealing". The Court said that it was no longer appropriate to refer to pre-guideline cases. The existence of the guideline was not to underplay the position of the court. It set out the approach for the courts to follow and subsequent court decisions might help to interpret it and provide practical illustrations of its application and of when the interests of justice might justify a departure. Amplification and explanation was the function of the court for cases not covered by the guideline. If the court identified areas not covered by the guideline it was for the Sentencing Council to reconsider it.

## Public Utilities

In **R. v Sellafield Ltd; R. v Network Rail Infrastructure Ltd [2014] EWCA Crim 49** the Court (LCJ. Mitting and Thirlwall JJ.) considered the correct approach when sentencing for environmental protection and Health and Safety offences. The Court stated that it was imperative to have regard to the purpose of sentencing and the seriousness of the offences, and to take account of the criteria set out in s.164 of the Criminal Justice Act 2003. The structure, turnover and profitability of companies with turnover in excess of £1 billion had to be carefully examined. It was important that any information necessary to enable the sentencing court to assess their financial circumstances was provided well in advance of the sentencing hearing. In **R. v Southern Water Services Ltd [2014] EWCA Crim 120** the company had failed to notify the Environmental Agency of discharges of raw sewage into the sea around Kent. In dismissing an appeal against a fine of £200,000 the Court (LCJ. Simon and Irwin JJ.) stated that it was very important in such cases that those in charge of a company explained to the court what they were doing to protect the public from such breaches.

## Responsibility of Crown counsel

The Court (LCJ. Hickinbottom and Baker JJ.) in **R. v PG [2014] EWCA Crim 1221** said that it was the duty of Crown counsel, particularly in cases of some complexity, gravity and which spanned a considerable period of time, to offer the utmost assistance to the sentencing judge however experienced. Moreover where, as in the present appeal, the judge had failed to mention or otherwise deal with four of the counts on the indictment Crown counsel should have pointed it out. Thereafter it was incumbent on the judge to ensure that the sentence(s) were pronounced in open court.

## Youths

The Court (LCJ. Treacy LJ and Simon J.) in **R v Monteiro [2014] EWCA Crim 747** made observations in respect of knife crime and youths. It said that the youth court should pay attention to the guidance given in *R. v Povey (Clive Richard)* [2008] EWCA Crim 1261 and that the guidance for magistrates had been updated with effect from April 1, 2014. It was essential that magistrates' courts strictly applied the new guidance in relation to knife crime and the starting point of 12 weeks' custody for the lowest level of offence involving the use of knives. Given the prevalence of knife crime among young persons, the youth court had to keep a very clear focus, if necessary through the use of more severe sentences, on preventing further offending and securing a reduction in the carrying of knives. Such sentences fulfilled the principles set out in the Criminal Justice Act 2003 s.142A and the Sentencing Council Guidelines. It was also important, particularly in relation to knife crime, that the ACPO guidance given in respect of cautions was aligned to the sentencing practice in the youth court, the magistrates' court and the Crown Court.

## Section 240A of the Criminal Justice Act 2003

In **R v Leacock [2013] EWCA Crim 1994** the Court (LCJ. Mackay and Sweeney JJ.) confirmed that it was the duty of defence advocates to ensure that proper information about their clients concerning time served on qualifying electronic curfew (s.240A, Criminal Justice Act 2003) was available to the sentencing court. Section 240A was not administrative and a calculation would need to be made by the court. A correction of errors by an appeal process was disproportionate and where an error was made it was the duty of defence advocates to apply to the Court of Appeal within the time limits. This Court would not grant long extensions of time to correct errors where no one had applied their mind to the matter until long after the event.

## Victim Surcharge Order

In **AG's Reference No. 28 of 2014 [2014] EWCA Crim 1723** the Court (Treacy LJ. Simler J. and HHJ Bevan) re-affirmed the approach taken in *Bailey and others [2013] EWCA Crim 1551*. Where offending spanned the 1st October 2012, the date the victim surcharge order regime changed, a court should not undertake a lengthy analysis of when the offending actually took place. Whether or not to impose a victim surcharge order in such cases should be resolved in the way least punitive to the offender.

# Court Martial Appeal Court

In addition to sitting in the Court of Appeal (Criminal Division), certain nominated Appeal Court judges preside over courts constituted as the Court Martial Appeal Court (CMAC), which hears appeals from the Court Martial. The Court Martial has jurisdiction to try Service offences as defined in the Armed Forces Act 2006 against any Service personnel and civilians who are subject to Service law. Appeals to CMAC can be against conviction and / or sentence, and there are also provisions for the Court to deal with interlocutory and prosecution appeals, similar to the provisions in CACD. In the past CMAC has regularly recognised the Court Martial as a "specialist criminal court…which is designed to deal with Service issues" *[R v Glenton [2010] EWCA Crim 930]*. The same legal and administrative staff of the Criminal Appeal Office undertake the work of the Court Martial Appeal Office and support and assist the CMAC.

The most notable case heard by the Court this year was **R v Marines A, B, C, D, E and Guardian New and Other Media [2013] EWCA Crim 2367**. Whilst serving in Afghanistan in 2011, Marine A was accused of the murder of an Afghan insurgent by shooting him at close range whilst he was lying severely wounded in a field. Marines B and C were alleged to be secondary parties to the murder through encouragement or assistance. The incident had been captured on a helmet camera of one of the Marines and attracted much public interest. On 8 November 2013, a Court Martial found Marine A guilty of murder, but acquitted Marines B and C. Proceedings against Marines D and E had been discontinued. This application for leave to appeal related solely to Orders made by the Judge Advocate in relation to (i) the identification of the Marines; and (ii) whether to make the video recording and still photographs available to the media. With regards to the identification of the Marines the Judge Advocate had originally ordered the prohibition of the identification of the Marines on the grounds that there was a real and immediate risk to their lives if identified. He amended that Order just before verdicts were returned and directed that if any of the Marines were convicted then they could be identified. The Order was stayed pending appeal by Marines A, B and C against the amendment. The Court (LCJ. Tugendhat and Holroyde JJ.) ruled that CMAC did not have jurisdiction to hear the application and reconstituted as a Divisional Court of the Queen's Bench Division to consider the application as an application for judicial review. The Divisional Court ordered the identity of Marines A, B and C be made public due to the public interest in open justice. The Court Martial Appeal Court did, however, accept jurisdiction to hear a counter application by the media for the release of the video and still photographs. The Court upheld the Judge Advocate General's ruling that the release of the video and one category of the stills, which showed the deceased, to the media would pose a real and immediate threat to the lives of members of the British Armed Forces on the basis that it would be used as propaganda material by terrorist organisations. However, the release of another category of stills to the media, which did not show the deceased insurgent or any act of violence, was permitted. The Ministry of Defence was represented at the hearing as an interested party.

Having been identified, Marine A subsequently applied to CMAC for leave to appeal against his conviction for murder and his sentence of life imprisonment with a minimum

term of 10 years in **R v Blackman [2014] EWCA Crim 1029**. The Court (LCJ. PQBD and VPCACD) was asked to consider a single ground of appeal against conviction, namely whether by virtue of the possibility that the appellant was convicted by a simple majority of a seven-man board, there remained doubt as to whether the criminal standard of proof was in fact satisfied. It was submitted that the system by which he was convicted was discriminatory, contrary to Article 14 of the European Convention on Human Rights, as the position of a defendant subject to the Court Martial system was afforded much less protection than a defendant before the Crown Court which required at least a specified majority before a guilty verdict could be returned. It was submitted that a simple majority conviction was inherently unsafe. The Court held, following the decision in *R v Twaite [2010] EWCA Crim 2973*, that a finding of guilt by a simple majority did not deprive a defendant of his right to a fair trial under Article 6 and that the provision for a simple majority verdict set out in s.160(1) of the Armed Forces Act 2006 was entirely compatible with the Convention. Even if Article 14 was engaged, there was no discrimination as it had been held by the European Court of Human Rights in *Engel and Others v The Netherlands (No. 5100/76, 8 June 1976)* that the distinctions between the courts and Court Martials were justified by the differences between the conditions of military and civilian life. The conviction appeal was therefore dismissed, but the Court allowed the appeal against sentence by reducing the minimum term to 8 years, commenting that there were no comparable authorities available from this or any other jurisdiction on the facts of the case.

In **R v M [2014] EWCA Crim 1147** the Court (Rafferty LJ. Cooke and Cranston JJ.) considered a prosecution application for leave to appeal against a ruling by the Judge Advocate in a preliminary hearing that there was no jurisdiction to try the respondent as there had been no good service of the charge sheet. The issue related to what constituted effective service of a charge sheet on an ex-serviceman within 6 months of him ceasing to be a member of the force. The procedure for bringing a charge was set out in Regulations 11 and 16 of Part 5 of The Armed Forces Act 2006 Regulations 2009, which permitted service by the commanding officer or by a person authorised by him. The prosecution's ground of appeal was that the Judge Advocate had erred in law by imputing a requirement for an explicit delegated authorisation by the commanding officer that the charge sheet could be served by someone other than him. The Court held that the appeal was well-founded not only in law but also in military practice and the Judge Advocate's ruling was reversed. Military working practice permitted the commanding officer to delegate his powers generally through the chain of command, and did not require specific delegated authority in each case.

# The Work done by the Court of Appeal Criminal Division

The Court usually sits with a Lord Justice presiding and two Justices of the High Court. Sometimes only two judges sit, although the type of case a two judge court may hear is restricted, both by statute and by practice. Designated Circuit Judges also regularly sit as a member of the Court and make a significant contribution to its work.

The following table shows the number of court sitting days reflecting the different types of constitution:

| | Lord Justice | | High Court Judge (including Retired Judges) | | Circuit Judge | |
|---|---|---|---|---|---|---|
| | CT | RD | CT | RD | CT | RD |
| **2013-2014** | 582 | 454 | 869 | 676 | 272 | 211 |

(CT = Court sittings, RD = reading days including judgement writing)

The Court is supported by the Registrar and the staff of the Criminal Appeal Office (CAO), currently comprising both legal and administrative personnel.

The structure of the office is intended to provide maximum support to the judiciary in all aspects of the appeal process and to provide value for money as a publicly funded service.

The Registrar and judiciary remain of the view that it is vital to the Court's ability to function effectively and efficiently that the CAO is fully staffed by high quality and suitably qualified personnel.

Conviction applications and appeals are managed by teams comprising administrative staff and lawyers who are assigned cases according to complexity and who ensure that they are guided through the appeal process efficiently and justly. The lawyers provide case summaries to the Court, saving valuable judicial time. The lawyers also provide advice on procedural matters to practitioners and to applicants/appellants in person.

Sentence appeals and applications are managed by administrative staff with access to legal advice as required. Administrative staff are responsible for the preparation and progression of the majority of sentence only cases and write the case summaries on all but the most complex cases. This work is similarly essential to the volume of cases dealt with.

The administrative staff are led by the Senior Operational Manager, Criminal Appeal Office and Support Services. Small teams of administrative staff within the CAO also deal with specialist matters such as the assessment of costs, listing of cases, and the maintenance and development of electronic case management systems and IT. Court Clerks sit as the Registrar in Court.

The Registrar and judiciary are also assisted by the Legal Information and Dissemination Lawyer. He provides regular legal bulletins to the Registrar and members of the judiciary, ensures that recent unreported judgments are drawn to the Court's attention and assists the Registrar in keeping relevant primary and secondary legislation under review.

The Registrar and/or the Senior Legal Managers (in the Registrar's absence) regularly receive overseas visitors. The visits help to build and strengthen global relations and international understanding of our legal system. During the period of this review the following have visited the Court of Appeal: a group of European Judges/Prosecutors, Judge Sola Fayet, Spain, and students from Portsmouth University and Syracuse University, New York.

# Summary and Statistics

## 1 October 2013 to 30 September 2014

### Overall number of cases received

During the year there has been a reduction in the number of cases received by the Court. A total of 6,116 applications were received, a reduction of 598 cases from last year. The number of sentence and conviction applications received was 4,706 and 1,410 respectively.

(See **Annex A**)

### Applications for leave to appeal

Applications for leave to appeal are generally considered by a single Judge, though some are referred directly to the full Court by the Registrar.

**Conviction applications:**

In the reporting year a total of 1,148 applications were considered. Of these 174 (15%) were granted leave; 82 (7%) had their applications referred to the full court; and 892 (78%) were refused leave.

**Sentence applications:**

In the reporting year a total of 3,841 applications were considered. Of these 981 (26%) were granted leave; 232 (6%) had their applications referred to the full court; and 2,628 (68%) were refused leave.

(See **Annex C**)

### Average waiting times

The average waiting time of cases disposed of by the Court over the reporting period has shown a steady increase as seen in Annex B.

### Conviction and Sentence cases heard by the full Court

There were 397 conviction cases heard by the full court of which 142 were allowed. The total represents an increase of 39 cases from the preceding year. The corresponding figures for sentences heard was 1,582 (78 less than the preceding year) of which 1,016 were allowed.

(See **Annex D**)

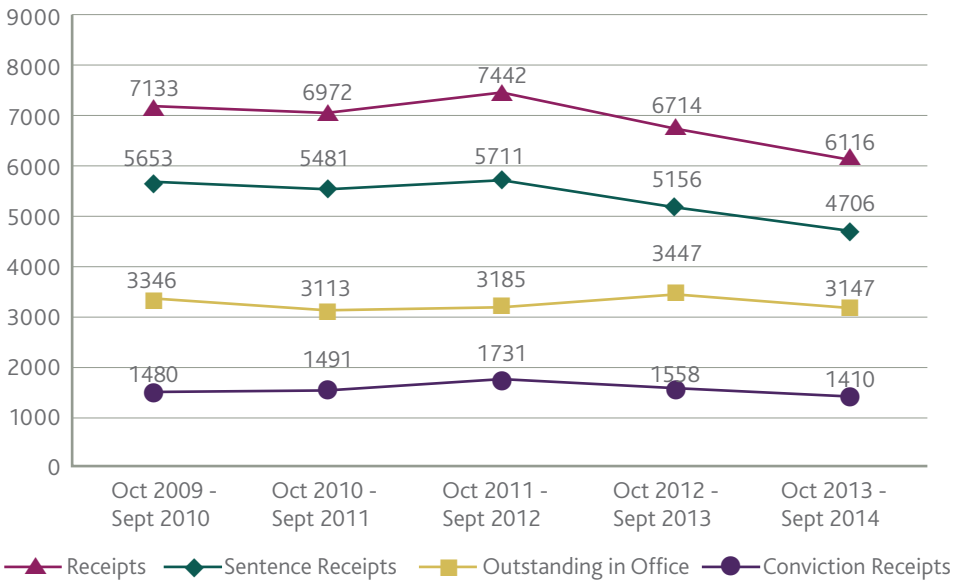
### Success rate of appeals

It is difficult to quantify the success rate of appeals in terms of the number of cases received by the Court, as those received in a given year far outnumber those dealt with by the full Court because not all cases get that far.

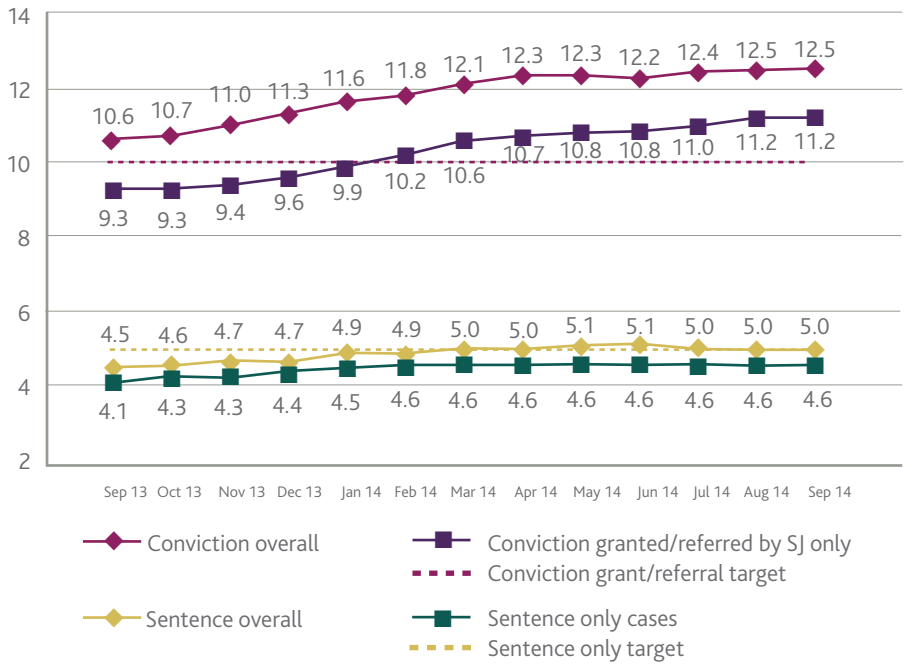
Over the last 4 years the number of successful conviction appeals has been between 8 and 14% when considered as a percentage of cases received. For sentence it is between 21 and 25%.

(See **Annex F**)

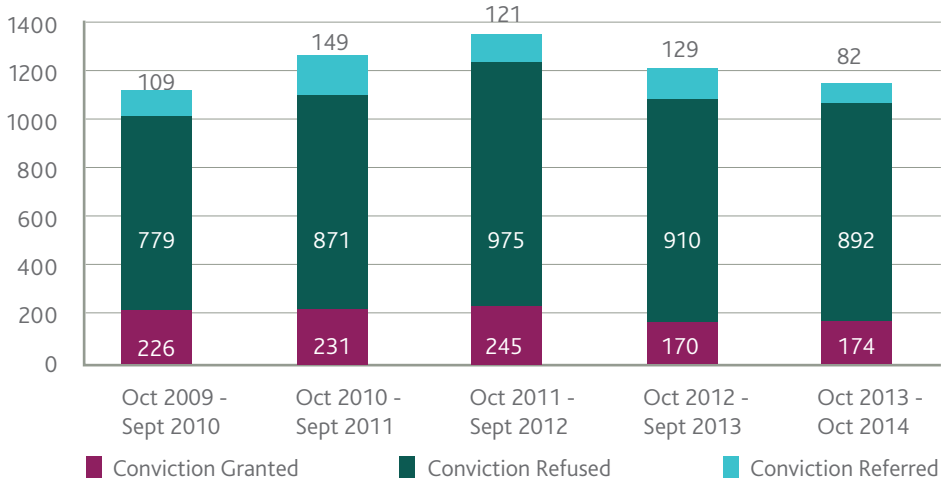
Applications Received and Outstanding in Office



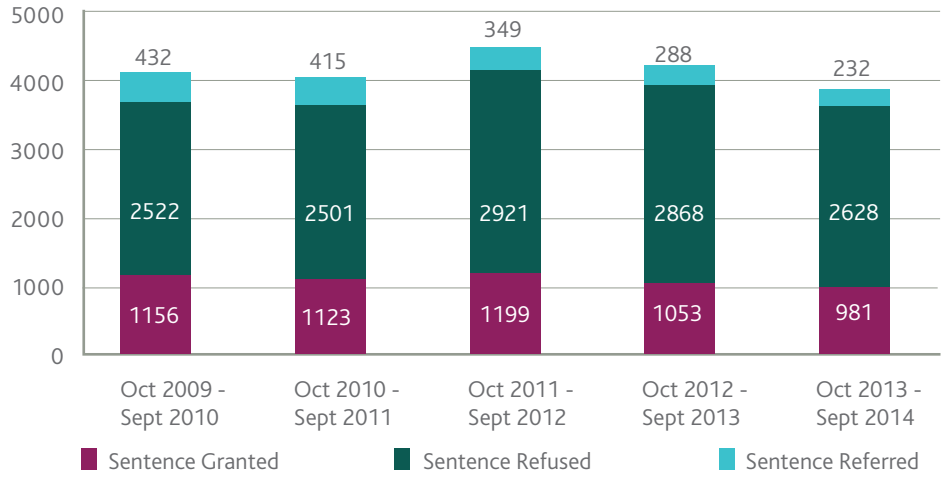

Average Waiting Times (in months)
Rolling average of cases disposed by full court over previous 12 months

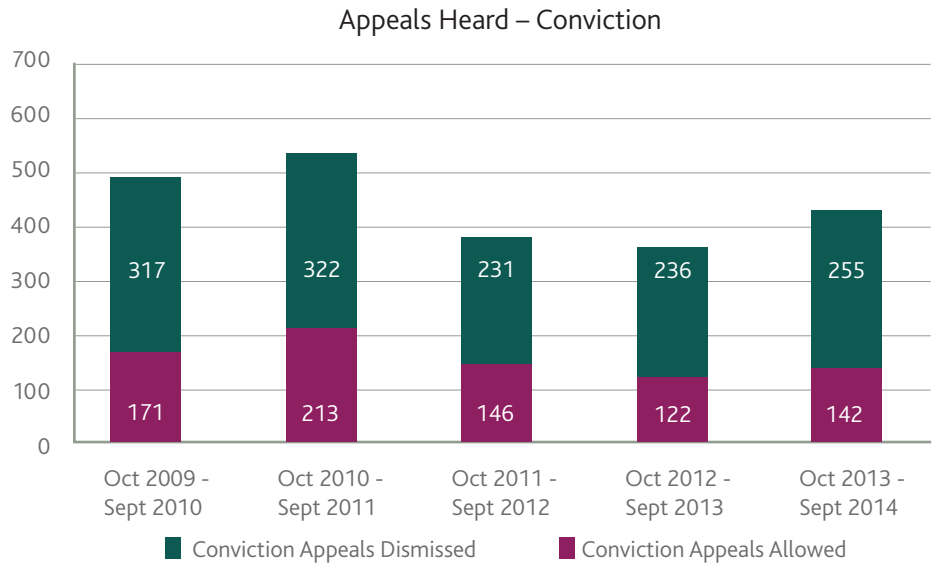


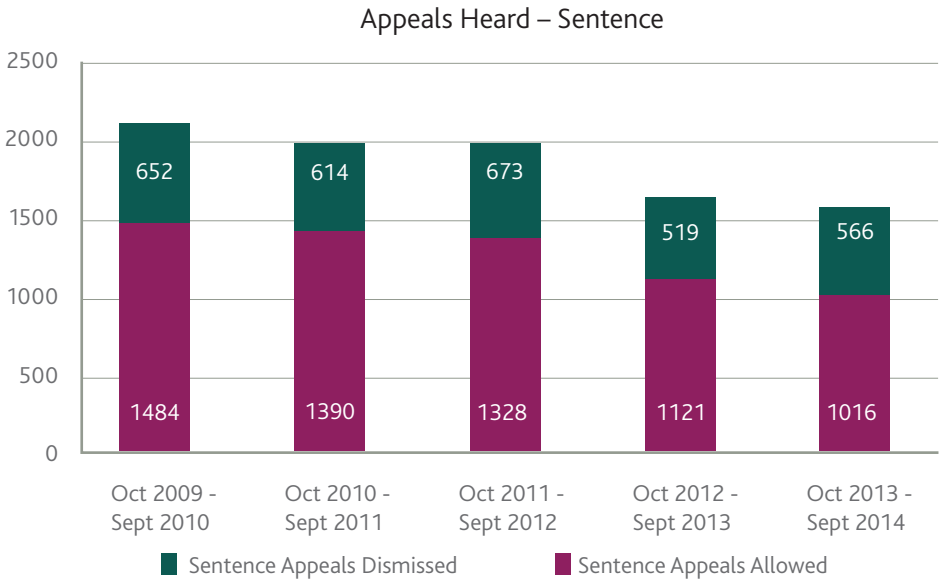
Section 31s – Conviction Applications dealt with



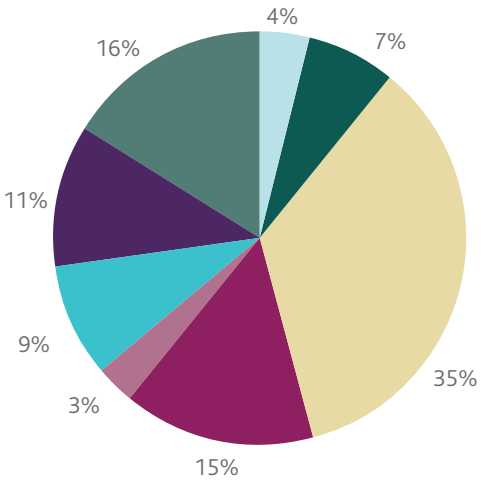

Section 31s – Sentence Applications dealt with



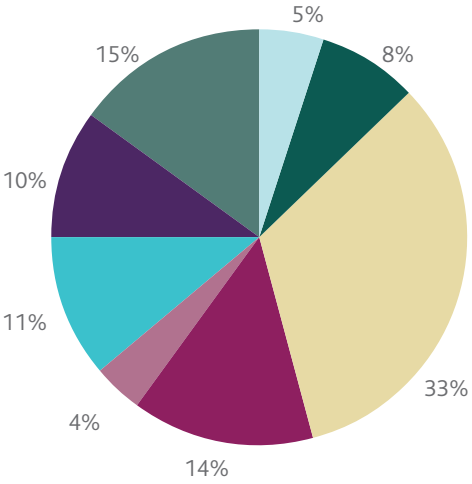

Appeals Heard – Conviction
700
600
500
400
300
200
100
0
317
322
231
236
255
171
213
146
122
142
Oct 2009 - Sept 2010
Oct 2010 - Sept 2011
Oct 2011 - Sept 2012
Oct 2012 - Sept 2013
Oct 2013 - Sept 2014
Conviction Appeals Dismissed
Conviction Appeals Allowed


Appeals Heard – Sentence
2500
2000
1500
1000
500
0
652
614
673
519
566
1484
1390
1328
1121
1016
Oct 2009 - Sept 2010
Oct 2010 - Sept 2011
Oct 2011 - Sept 2012
Oct 2012 - Sept 2013
Oct 2013 - Sept 2014
Sentence Appeals Dismissed
Sentence Appeals Allowed

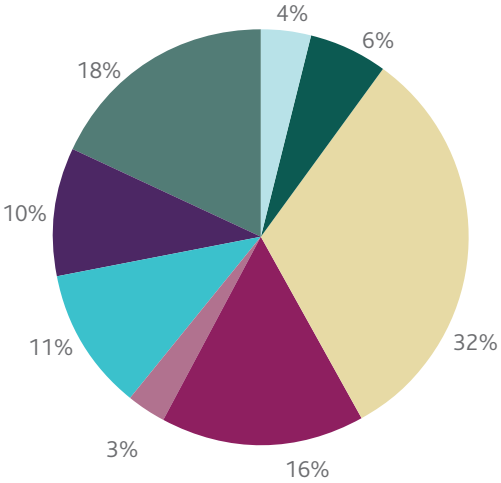
October 2009 - September 2010



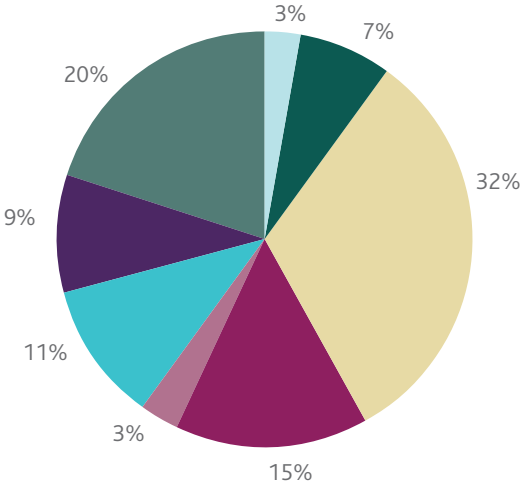

October 2010 - September 2011



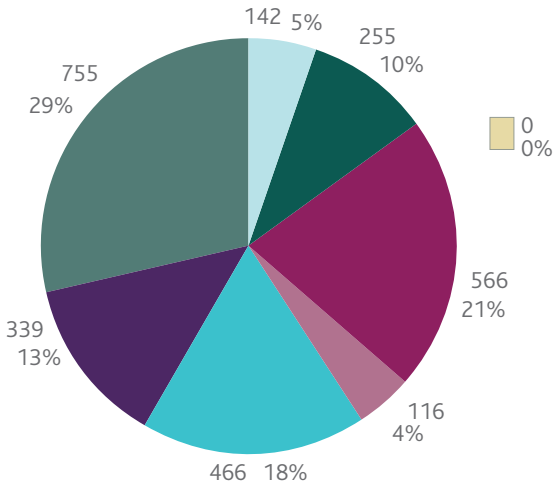

October 2011 - September 2012

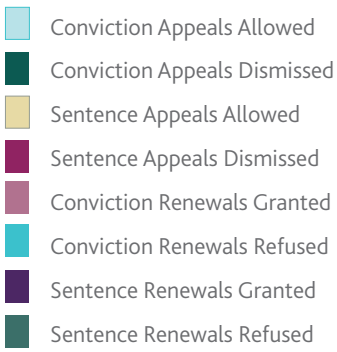


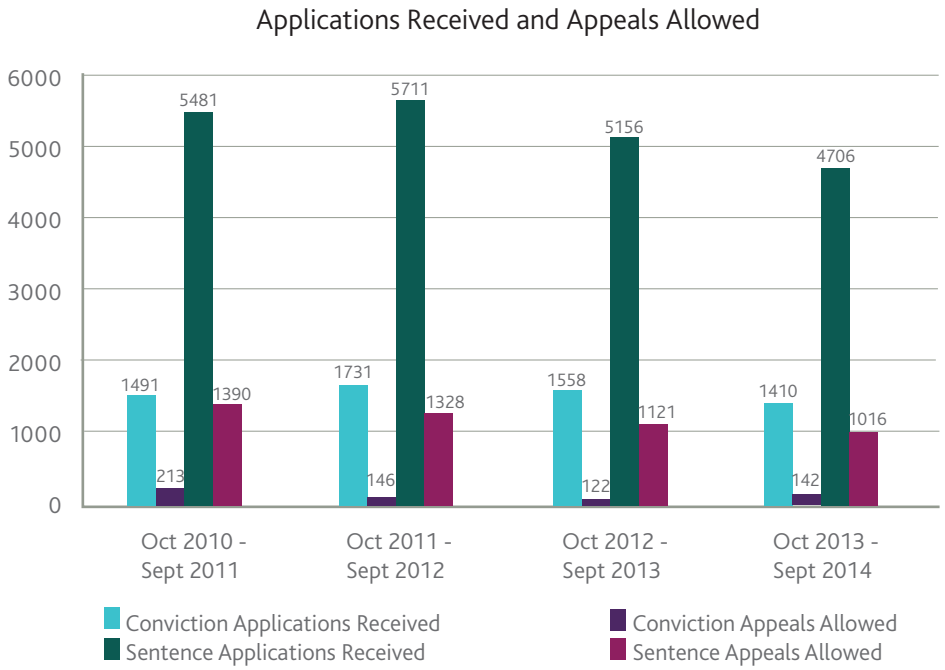

October 2012 - September 2013



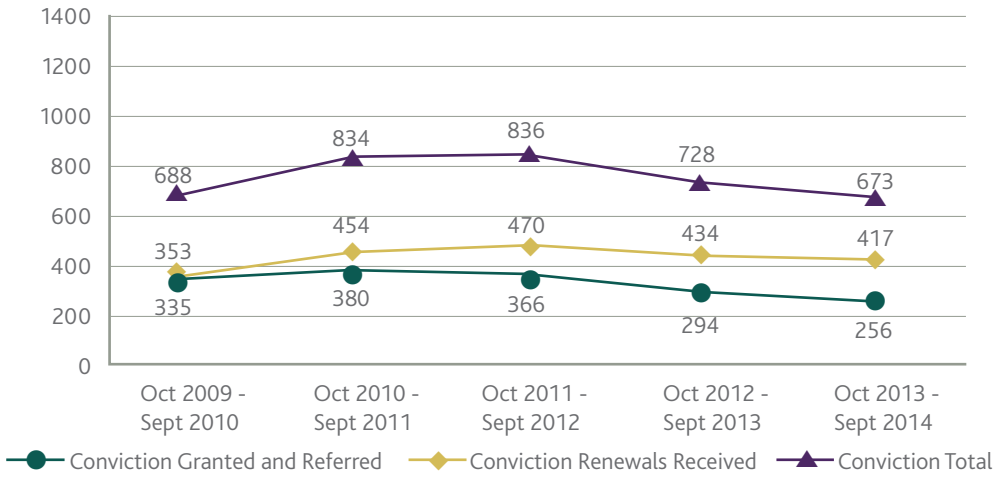

October 2013 - September 2014



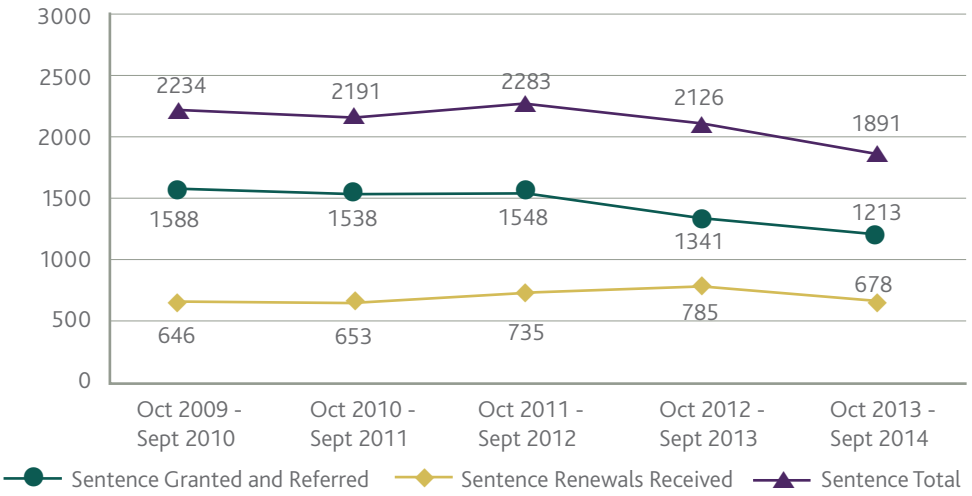




Applications Received and Appeals Allowed
6000
5000
4000
3000
2000
1000
0
1491
213
5481
1390
1731
146
5711
1328
1558
122
5156
1121
1410
142
4706
1016
Oct 2010 - Sept 2011
Oct 2011 - Sept 2012
Oct 2012 - Sept 2013
Oct 2013 - Sept 2014
Conviction Applications Received
Sentence Applications Received
Conviction Appeals Allowed
Sentence Appeals Allowed

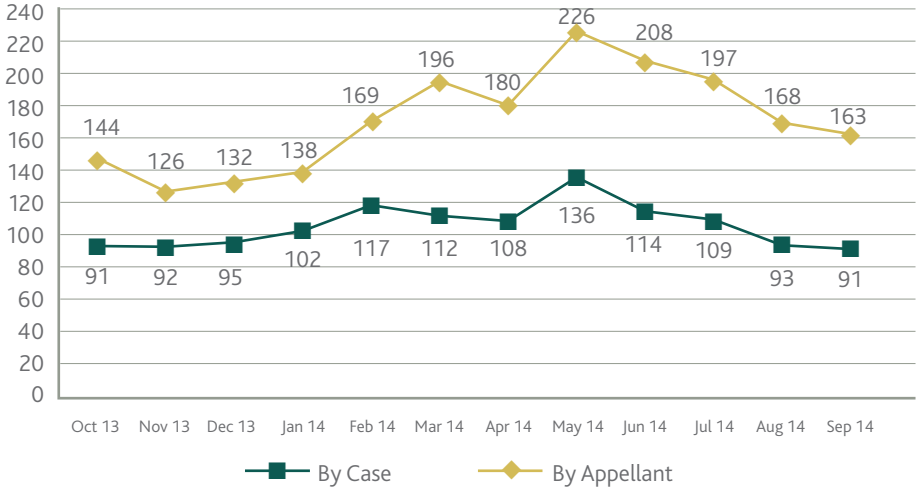
Applications Granted / Referred and Renewals Received (Conviction)




Applications Granted / Referred and Renewals Received (Sentence)



Conviction Old Cases – Outstanding over 10/13 months




Sentence Old Cases – Outstanding over 5 months