Courts and Tribunals Judiciary

A Review of the Year In the Court of Appeal, Criminal Division

October 2024 – September 2025

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Introduction

by the Vice-President of the Court of Appeal, Criminal Division

In October 2025, I was honoured to take up the position of Vice-President of the Court of Appeal, Criminal Division.

During the short time I have been in post, I have been very impressed by the work of court users, advocates and the judiciary in their preparation, presentation and determination of the cases which come before the court. It is a privilege to be in post, and I thank my predecessor Lord Justice Holroyde for his leadership, focus and good humour. I also wish to pay particular tribute to the late Lord Justice William Davis who was held in the highest regard by everyone who had the pleasure of working with him. He will be missed greatly.

It has been another busy year for the court including many high-profile cases and novel points of law. Although there has been a slight decrease in the number of applications received by the court this year, there is no doubt that the cases are becoming increasingly complex. A rise in the number of Attorney General references of unduly lenient sentences and applications for leave to appeal against conviction and sentence from litigants in person has increased the pressure on the court, resulting in longer waiting times particularly in the number of applications awaiting allocation to a single judge. One of my first tasks is looking at what can be done to address waiting times, and I wish to thank the judiciary, in particular the judges sitting in retirement, for their assistance in this regard.

I am grateful for the support of the Registrar and all the staff in the Criminal Appeal Office. Their diligence and hard work ensures that cases move smoothly through the appellate system, issues are identified at an early stage in the proceedings and court users receive a high quality service. I am pleased to see that the Criminal Appeal Office is continuing its outreach work as well as providing placements to a number of HMCTS legal apprentices.

In my role as Vice-President, I am committed to addressing the demands currently faced by the court, whilst ensuring that the integrity of the criminal justice system is maintained. There are many challenges; but I look forward to the year ahead.

Lord Justice Edis
Vice-President of the Court of Appeal, Criminal Division

Overview of the Year

Master Beldam, Registrar of Criminal Appeals

During another busy year for the Court of Appeal, Criminal Division, we were all shocked and saddened at the news of Lord Justice William Davis's sudden death in June 2025. A full tribute to him appears later.

In October 2025, Sir Tim Holroyde stepped down from his role as Vice-President of the Court of Appeal, Criminal Division. It has been a pleasure to work with him over the last three years, and I am extremely grateful for his sound leadership, unfailing support and dedication to the role. He has made an enormous contribution, not only to the work of the court but also to the work of the Criminal Procedure Rules Committee and the Sentencing Council. I wish him a very long and happy retirement. I warmly congratulate his successor, Lord Justice Edis, on his appointment to the role. He has truly hit the ground running immediately suggesting initiatives, which it is hoped will help reduce waiting times.

The end of the year also saw the retirement of Lady Justice Macur and Lady Justice Nicola Davies after many years sitting in the Court of Appeal, Criminal Division and I thank them both for their contribution and wish them both a long and happy retirement. I am delighted to welcome Lady Justice May, Lady Justice Yip and Lord Justice Foxton, all of whom I congratulate on their well-deserved appointments.

Although there has been a slight decrease in the number of applications received by the court this year, it has not felt any less busy than previous years. There has been a stark rise in both the number of Attorney General references of unduly lenient sentences and applications for leave to appeal against conviction and sentence from litigants in person. The court has also seen an increase in the complexity of applications lodged by legal representatives, the cumulative effect of which has increased the demands on the court and in contributed to longer average waiting times. As always, I would like to express my thanks to the judiciary for their hard work and support in addressing these demands.

The lawyers and the administrative staff in the Criminal Appeal Office have worked exceptionally hard this year for which I am very grateful. Staff are committed to looking at ways to address the challenges faced by the court to ensure that all cases are dealt with justly and as expeditiously as possible. The Criminal Appeal Office continues to support the court in all aspects of its work and offer a high-quality service to court users. The office has continued with its outreach work and this year we have welcomed a number of HMCTS apprentices who have all completed successful placements with us. We wish them all the very best in their future legal careers.

We have also had the pleasure of welcoming several visitors from overseas. At the beginning of the year, a number of Directors of Public Prosecutions visited the court from the Caribbean. We then had the pleasure of meeting a Romanian Liaison Magistrate to the UK, a delegation of judges from Tanzania and a group of law students from Yale University in Connecticut. The visitors were impressed with the work of the court, its use of technology following the pandemic and the support that it receives from the Criminal Appeal Office.

The Court of Appeal, Criminal Division sat in Wales this year; both in Cardiff and in Swansea and I thank all of the HMCTS staff who helped to organise this. The Court hopes to sit in Wales and on circuit again this year.

I am confident that the court will continue to adapt to the ever-changing landscape and the challenges that lie ahead in order to ensure that justice is administered swiftly and fairly in all cases. May I once again thank the judiciary, the staff in the Criminal Appeal Office and everyone who has contributed to this review of the year.

Master Beldam
Registrar of Criminal Appeals

The Work of the Criminal Appeal Office

The Criminal Appeal Office ("CAO") supports the court and is located at the Royal Courts of Justice, in close proximity to the judges that it serves. The CAO includes both legal and administrative staff.

Lawyers at the CAO work closely with the Registrar of Criminal Appeals to ensure that cases are guided through the appeal process efficiently and justly. They provide case summaries pursuant to the Practice Direction, which are invaluable to the court and practitioners. The summaries are entirely objective and do not provide advice on the merits of a case, but they highlight and crystallise the salient issues to assist the court. In addition, the lawyers give advice on procedural matters to practitioners and to litigants in person, to help them navigate the relevant Criminal Procedure Rules and statutory framework within which the court operates. The lawyers also provide invaluable advice on legal and procedural issues referred to them by their administrative colleagues.

Three Senior Legal Managers head the legal team. Their work includes the management of staff and work but also encompasses specialist internal and external training. In addition to being responsible for the promotion of best practice within the CAO, the Senior Legal Managers have an important role in assisting the Registrar in carrying out her statutory functions and making decisions on matters of jurisdiction and public funding.

Acting on behalf of the Registrar, and within the framework of the Criminal Procedure Rules, CAO staff play a proactive role in preparing cases for the Single Judge and the Full Court and assisting in identifying issues for the court.

One clear example of this is in respect of unlawful sentences. In some instances, deficiencies in information given to the sentencing court, coupled with misunderstandings of disparate and complex sentencing provisions, have led to a number of unlawful sentences not being identified until grounds of appeal (sometimes against conviction only) have been lodged with the court. In such instances the staff of the CAO are often the first to identify that a sentence appears to be unlawful and they then draw that to the attention of the parties and the court.

Dedicated teams of administrative staff obtain advice from CAO lawyers as necessary and exercise case management functions. In addition to core functions such as the listing of cases, a team of specialist administrative staff is responsible for writing case summaries on all but the most complex sentence cases. Administrative staff also provide essential back-office support and deal with some specialist matters such as the assessment of costs. Court clerks sit as the Registrar in court and have additional duties such as co-ordinating remote access arrangements for participants and those observing CACD proceedings.

The day-to-day running of the court is overseen by a Senior Operations Manager, who works closely with the Registrar, the three Senior Legal Managers and the Head of Legal Operations. Together they make up the CAO Management Board, which meets regularly and ensures that the CAO is operating effectively and efficiently in supporting the court.

New CACD Webpage and Quick Guide

The Court of Appeal, Criminal Division now has its own dedicated webpage:

https://www.judiciary.uk/courts-and-tribunals/court-of-appeal-home/the-court-of-appeal-criminal-division/

The webpage is an important resource for practitioners, court users (including victims of crime) and even members of the public wanting to learn more about the work of the court.

For practitioners, it contains links to the Guide to Proceedings in the Court of Appeal, Criminal Division, which has been drafted to aid practitioners to meet the expectations of the CACD and comply with their obligations under the Criminal Procedure Rules and Practice Direction. Pursuant to Criminal Practice Direction 10.1.1, practitioners must comply with this guidance.

The guide is a living document which is expertly edited and updated by CAO lawyer, Samantha White. Practitioners will also find links to the list of frequently cited authorities and remote observation/participation forms as well as links to the Rules, Practice Direction and relevant forms for use in this jurisdiction.

The guide also provides important and helpful guidance in relation to a number of practices and procedures including the citation of authorities, expedition of cases and time estimates for hearings.

The Quick Guide to proceedings in the Court of Appeal, Criminal Division, was introduced with the new webpage and written by Lord Justice Holroyde, the former Vice President of CACD. It is designed to give an overview of the appeal process and the work of the court, in clear and accessible language

It is hoped that more information about the work and processes of the court, might better inform knowledge of the workings of CACD, particularly for members of the public attending CACD hearings, and better promote open justice.

Open Justice and Anonymity in Criminal Cases

There can often be a conflict between the promotion of open justice and protecting anonymity of victims and sometimes even alleged offenders in criminal cases.

The case of Cunningham & Ors v R [2025] EWCA Crim 662 (Lady Carr LCJ, Bryan and Cavanagh JJ), highlights the difficulties in relation to youth defendants. The case concerned the fatal stabbing of a 16-year-old boy, Mikey Roynon, at a birthday party in a residential house in the suburbs of Bath.

Reporting restrictions were made under section 45 of the Youth Justice and Criminal Evidence Act 1999 with respect to the identification of a number of witnesses in the case whilst they remained under the age of 18. Reporting restrictions were also made under the same section with respect to the three appellants who were aged 16 years when they were each facing trial for murder. Shane Cunningham was convicted by the jury of murder (as being responsible for the stabbing) and the two other appellants were convicted of manslaughter on the basis of joint enterprise.

Upon conviction, the reporting restrictions with respect to all three boys were lifted in the Crown Court following the ruling of the Judge, Mr Justice Saini, on a media application for an excepting direction.

The sentencing remarks in this case were then recorded for broadcast by the BBC and Sky News. Cunningham's video recorded police interview was then released for broadcast, as well as CCTV footage which showed the three appellants on a bus and Ring doorbell footage of them leaving the scene.

Counsel in the case argued that the Judge was wrong to lift the reporting restrictions and was also wrong to refuse an application for a stay of 7 days to allow the appellants to challenge that decision in a higher Court (by way of judicial review).

The Judgment confirms that there is no statutory right of appeal against this type of ruling in the Crown Court, which was made post-conviction, and challenge to such ruling stood to be made by way of judicial review rather than by way of appeal to CACD (see R v KL [2021] QB 831; [2021] EWCA Crim 200). The court further stated that the point was rightly not advanced as a separate ground of appeal in the case and said no more about it.

However, in subsequently quashing the convictions of two of the appellants convicted of manslaughter and ordering a re-trial, the court imposed new reporting restrictions made pursuant to s.4(2) of the Contempt of Court Act 1981.

These had the effect of postponing publication of any report of these proceedings until the conclusion of any re-trial.

That was to avoid a substantial risk of prejudice to the administration of justice in any re-trial proceedings (although the previous convictions had been widely reported), but the re-trial did not take place, as the Prosecution offered no evidence on 29 October 2025.

The effect of these criminal proceedings is that the two youth appellants concerned are no-longer convicted of manslaughter. Their identities were initially protected and then they were widely reported, but subsequently then covered by a reporting restriction. That no-longer applies.

The case highlights the complexity of the careful balance that exists between protecting anonymity and promoting open justice and the difficulties that often exist in criminal justice between these two conflicting concepts.

Victims of trafficking – anonymity

R v Baniulyte [2025] EWCA Crim 1205

The issue of anonymity most often arises for the court where there are alleged victims of trafficking. In this case the applicant was convicted of supplying class A drugs. On appeal, one of her grounds was that she had been a victim of modern slavery and that the statutory defence under section 45 of the Modern Slavery Act 2015 should have been advanced.

Having granted leave and quashed the conviction, the court (Holroyde LJ VPCACD, McGowan and Nicklin JJ) considered and refused the application for anonymity by way of a withholding order and a reporting restriction under s11 Contempt of Court Act 1981. The court set out the approach to such applications stating that:

- Although issues as to anonymity would arise more frequently in such cases than in other applications and appeals, a victim of trafficking or a victim of modern slavery had no automatic right to anonymity, and no statutory provision imposed automatic reporting restrictions in favour of an adult accused who put forward a defence under s45 of the MSA 2015. An order derogating from open justice should therefore not be made on a routine basis. As in any other case, a person seeking anonymity had the burden of demonstrating by cogent evidence why a derogation was strictly necessary.
- Any application for anonymity must be made when the application for leave to appeal was lodged. The Criminal Appeal Office could then arrange for the applicant's name to be replaced by a cipher for listing and other purposes. This would be a convenient safeguard but did not imply that the court would necessarily grant the application.

- The application must set out the nature of the order being sought, the jurisdiction under which it could be made, and why it was strictly necessary for the order to be granted. With effect from 6 October 2025, a revised Criminal Procedure Rule 6.4 applied to applications for reporting restrictions and other applications to derogate from open justice and set out what would be required of an applicant.
- Any application for an anonymity order (and reporting restrictions) must be supported by evidence which established convincingly the need for the derogation(s) sought. Where it was contended that, if anonymity was not granted, there was a credible risk of physical harm or death, the nature of the threat and why an order for anonymity would avoid or reduce that risk must be explained.
- If anonymity was sought on the grounds that the applicant had been anonymised in other proceedings, full details of those proceedings, and a copy of the order granting anonymity, must be provided. If it was contended that there was a risk of 'jigsaw identification' if an anonymity order was not granted, the nature of that risk and how it arose must be explained and demonstrated.
- The evidence submitted in support of the application must explain the extent to which there had been reporting of the identity of the person seeking anonymity and reporting restrictions as a result of the proceedings at first instance. Such evidence was necessary to assist this court in deciding whether it was too late to impose an anonymity order.
- When the case came before the court for hearing, it would generally be appropriate to address the issue of anonymisation at the outset. The court might often think it right to make a withholding order and a reporting restriction order on a temporary basis, pending judgment or further order.
- The court had to make a fact-specific assessment of the competing rights which were in issue and determine whether the applicant had established that it was strictly necessary to derogate from open justice.
- The court should ensure that any withholding order and/or reporting restrictions were clearly stated in the orders made and explained (at least briefly) in the judgment. When approving its judgment for publication, the court should similarly ensure that the front page contained a clear warning as to any relevant order which had been made.

A tribute to Lord Justice Holroyde on his retirement

Lord Justice Holroyde was called to the Bar (Middle Temple) in 1977, took Silk in 1996 and was elected as a Bencher in 2005. He was appointed an Assistant Recorder in 1994, a Recorder in 1997 and authorised to sit as a High Court Judge in 2008 pursuant to the Senior Courts Act 1981. He was appointed a High Court Judge (Queen's Bench Division, now King's Bench Division) in 2009 and was Presiding Judge of the Northern Circuit between 2012 and 2015.

After a long and illustrious legal and judicial career, which included serving as a member and then Chairman of the Sentencing Council, Lord Justice Holroyde formally retired as Vice President of the Court of Appeal Criminal Division with effect from 25 October 2025.

His contribution to the law, to promoting a culture of excellence at the Court of Appeal and his commitment to the interests of justice will probably be most remembered by his scrupulous and longstanding oversight of the appeals against conviction by persons formerly employed as sub-postmasters or sub-postmistresses, or as managers of sub-Post Offices, collectively referred to as SPMs, who had been prosecuted many years ago by Post Office Limited (POL) or its predecessor or the CPS and had pleaded guilty to, or been convicted of, offences of dishonesty: see R v Josephine Hamilton & others [2021] EWCA Crim 577. Subsequent cases included *R v Robert Ambrose & others* [2021] EWCA Crim 1443; R v Roger Allen & others [2021] EWCA Crim 1874; R v Margaret White & others [2022] EWCA Crim 435; R v Richard Hawkes & others [2022] EWCA Crim 1197; R v Sheila Coultas & another [2023] EWCA Crim 606; and R v Joanne O'Donnell [2023] EWCA Crim 979.

He was firmly committed to supporting outreach work in the Court of Appeal and was known for his good humour and approachability.

His attention to detail was second to none and his work in promoting the Criminal Procedure Rules was motivated by his unwavering commitment to clarity in the law and excellence.

He will be greatly missed. Both the judiciary and HMCTS staff of the Criminal Appeal Office wish him a long and happy retirement.

Miscarriages of justice

CCRC Cases and R v Peter Sullivan [2025] EWCA Crim 772

On 13 May 2025, the court (Holroyde LJ VPCACD, Goss and Bryan JJ) allowed the appeal of Mr Sullivan against his conviction for murder in 1987. The case had been referred by the Criminal Cases Review Commission (CCRC').

The case concerned the brutal murder of Diane Sindall (aged 21 years). On the evening of Friday 1 August 1986, after finishing her shift as a barmaid, Diane Sindall was driving home when she ran out of fuel. She left her vehicle and began to walk along a main road. The following day a passerby found her partially clothed body at the end of an alleyway. Investigations showed that her body had been dragged to that location and that she died because of multiple blows to her head. Other injuries had also been inflicted including bite marks to intimate areas of her body. Traces of semen were also recovered from her abdomen.

The scientific techniques available at the time were not sufficient to enable any identification of the person responsible. Fibres, which could have originated from polyester trousers, were recovered from her body and clothing. On 2 August 1986, smoke was seen from a fire at Bidston Hill, about 2 miles away from the scene of the murder. On 3 August, a Mr Griffiths, who knew Mr Sullivan, saw him on Bidston Hill. Neither Mr Griffiths nor his girlfriend who was with him picked out Mr Sullivan at an identification procedure. On 2 or 3 August 1986 walkers on Bidston Hill passed the site of a fire and saw a handbag, the back pocket from a pair of jeans and a bank paying-in slip in the name of Ms Sindall. On 17 August, officers found evidence of two fires at Bidston Hill and recovered some of her belongings.

On 18 August 1986, the police obtained a witness statement from Mr Sullivan, describing his movements on the day of the murder. In September 1986, he was spoken to again and his home was searched. Fibres were recovered which matched those recovered from Ms Sindall's body, though the expert evidence indicated that only limited significance could be attached to that finding. A crowbar was found which the appellant admitted had been in his possession around the time of the murder. In the pathologist's opinion, Ms Sindall's injuries could have been caused by that crowbar. Mr Sullivan gave a voluntary interview to the police, giving an account of his movements.

He was arrested and cautioned. Access to legal advice was initially refused. There followed a number of interviews in which he repeatedly changed his account. At different times he made admissions, and at other times he retracted them. He was later permitted legal representation. In interviews with a solicitor present, he again made and withdrew admissions.

Ten of the appellant's teeth were missing. Dental impressions were taken of his remaining teeth and compared with the bite marks on Ms Sindall's body. An expert report concluded that the injuries could have been bite marks made by the appellant.

The appellant was charged with the murder and remanded in custody. In November 1986 it was alleged that he had made admissions to a prisoner.

At trial the prosecution presented a circumstantial case. Mr Sullivan gave evidence in his own defence and put forward an alibi. He said he had given different accounts to police, and made admissions, because he could not remember his movements and he had been assaulted and abused by police officers. He denied the alleged cell confession.

Mr Sullivan was convicted by a jury at Liverpool Crown Court on 4 November 1987 and his counsel advised that there were no arguable grounds for appeal.

In 2019, he lodged an application for leave to appeal out of time. He put forward fresh evidence that the dental evidence and the evidence of admissions in interview were unreliable. The application was refused by the single judge, and the appeal was dismissed by the court in 2021.

Mr Sullivan subsequently made an application to the CCRC which resulted in the CCRC referral. The reasons for referral were adopted as the grounds of appeal and were:

1. New DNA evidence: The CCRC obtained a forensic report stating that the semen found on the victim's body had been analysed using modern forensic techniques and the report concluded that the semen belonged to an unidentified man;

2. Bite mark evidence: The CCRC obtained a new expert report from the dental surgeon who had prepared a report for the first appeal. He maintained that the bite mark evidence relied on at trial was flawed;

3. Admissions: The CCRC obtained a psychologist's report which stated that the police interviews included breaches of the Police and Criminal Evidence Act 1984 Codes of Practice such as to cast doubt on the reliability of the confessions.

With regard to Ground (1), the court was satisfied that the new DNA analysis should be admitted as fresh evidence under section 23 of the Criminal Appeal Act 1968. There was a strong inference that there had been a sexual motive to the attack, and that the man who ejaculated on Ms Sindall was also the person who carried out the attack and, strong though the circumstantial evidence against the appellant had been, this new scientific evidence pointed to someone else – an unknown man – as the attacker.

The court concluded that in light of this new evidence it was impossible to regard the conviction as safe. Had this evidence been available at the time of trial it would inevitably have weakened each strand of the circumstantial evidence. Having allowed the appeal on Ground 1, Grounds 2 and 3 were taken shortly: the court declined to receive the expert dental and psychological reports as fresh evidence as the issues raised had been thoroughly addressed at trial and in the first appeal and the reports did not add anything substantially new.

The case was widely reported as a miscarriage of justice.

The Riot Cases

R v Cush and Others [2024] EWCA Crim 1382 (Lady Carr LCJ, Holroyde LJ VPCACD and Bennathan J)

On 7 November 2024, the court heard four referred applications for leave to appeal against sentences imposed for offences arising out of the widespread and significant public disorder which took place throughout England in July and August 2024.

The applicants Williams, Temesgen and Willis each pleaded guilty to Violent Disorder, contrary to section 2 of the Public Order Act 1986. The applicant Cush pleaded guilty to Assault by Beating of an Emergency Worker, contrary to section 1 of the Assaults on Emergency Worker Act 2018.

Cush participated in a protest held in Whitehall on 31 July 2024. At the time of the applicant's offence, people were shouting aggressively at police officers and refusing to comply with a dispersal order. The applicant kicked out at a police officer who was filming the event, striking his hand. It was a hard kick, although no lasting injury was caused. In passing sentence, the judge commented that his action ran the risk of inflaming the wider situation and encouraging others to attack the police. He pleaded guilty in the Magistrates' Court. He was sentenced in the Crown Court to 46 weeks' detention in a Young Offender Institution.

Williams (aged 45) participated in riots in Sunderland on 2 August 2024 involving widespread destruction. Police officers were injured and there was extensive damage to property. In the middle of the disturbance the applicant shouted at the police line, assumed a boxer's stance and urged the officers to come and fight with him. He took his top off and the volume of noise from the crowd rose appreciably. The applicant was persistent, loud and abusive. He threw a drink at the police which struck a shield. He later threw a piece of metal which fell just short of police lines. The CCTV of the event showed him being very loud and very aggressive. He was later identified from CCTV and arrested. He pleaded guilty in the Magistrates' Court. He was sentenced in the Crown Court to 26 months' imprisonment.

Willis (aged 18) participated in a protest in Middlesbrough on 4 August 2024 that became violent. The disorder was on a large scale. Police were assaulted and an extensive range of properties were damaged. Shopkeepers and other members of the public reported feeling scared. CCTV showed the applicant throwing a brick against the window of a Chinese takeaway several times until the window broke. The applicant handed himself in to the police when he saw published images and realised he was wanted. He pleaded guilty in the Magistrates' Court. He was sentenced in the Crown Court to 14 months' detention in a Young Offender Institution.

Temesgen (aged 19) participated in a disturbance in Plymouth on 5 August 2024. People descended on the city, threw stones and fireworks and used and threatened unlawful violence. CCTV showed the applicant in the main right-wing demonstration where he said he was racially abused. He was pushed to the other side of police lines where there were a number of counter demonstrators. Shortly thereafter he covered his face with a surgical mask then threw an object over the police lines towards the other protest (likely to be a drink). He ducked away, then threw another object (likely to be a bottle). When later arrested, he confessed and apologised. He pleaded guilty in the Magistrates' Court. He was sentenced in the Crown Court to 14 months' imprisonment (although the sentence should have been one of detention in a Young Offender Institution: s227 Sentencing Act 2020).

Each applicant argued that their sentence was manifestly excessive by reference to the application of the Sentencing Guideline relevant to their specific conduct. Each further submitted either that the sentencing Judge failed to give sufficient weight to their mitigation and / or that the sentence imposed should have been suspended.

As a general proposition the Crown submitted: (i) that the actions of the applicants had to be considered in the context of the widespread disorder, rather than in isolation from it; (ii) that their conduct required an immediate custodial sentence: (a) to reflect the culpability of and harm occasioned by them, and (b) to act as a deterrent to others at a time when such disorder had become prevalent, and (iii) that mitigation could not outweigh the need to punish serious offending and to protect the public from the corrosive impact of such disorder.

The role of the courts and relevant sentencing principles

The court referred to two provisions of the Sentencing Code: section 57, relating to the purposes of sentencing adults, and section 59, relating to sentencing guidelines and the duty of the court.

In each of the cases before the court, the offence concerned was the subject of a specific definitive guideline published by the Sentencing Council. Also relevant in some of the cases was the Imposition of Community and Custodial Sentences guideline ("the Imposition Guideline").

In the context of widespread and significant public disorder, it was not only the precise individual acts of an offender that mattered. It was the fact that the offender was taking part in violent disorder, threatening violence against other people and/or property, and was part and parcel of widespread threatening and alarming activity. That was the gravamen of the offending: being one of those who, by weight of numbers, pursued a common and unlawful purpose.

Thus, whilst what an individual offender may have done themselves was of relevance, their acts could not be taken in isolation; rather the court was required to look at the whole picture. That principle was well-established by cases such as *R v Caird and others [1970] 54 Cr App R 499 at 506 to 508; R v Fox and Hicks [2005] EWCA Crim 1122; [2006] 1 Cr App R (S) 17 at [16]; and* R v Blackshaw and others *[2011] EWCA Crim 2312; [2012] 1 Cr App R (S) 114 at [8].*

The court stated that the weight to be given in the sentencing process to the need for deterrence may vary according to the context of the offending. If public safety is under threat because of the potential spread of violence across the nation, then deterrence may be of the highest importance. The cases before the court illustrated the speed with which disorder in one part of the country may be replicated in other areas, each incident encouraging and promoting further incidents elsewhere. Defendants who choose to involve themselves in activity which threatens the safety and well-being of communities across the nation must therefore expect severe sentences designed not only to punish them but also to deter others.

The court made clear that sentencers must follow any relevant guideline and consider all features of the case to determine what sentence is just and proportionate in all the circumstances. The need for a sentencer to give due weight to deterrence does not of itself preclude consideration of whether, in accordance with the Imposition Guideline, a custodial sentence of appropriate length can be suspended. Where the offending involves serious public disorder, however, the application of that guideline may well lead to the conclusion that appropriate punishment can only be achieved by immediate custody.

The court refused leave to appeal against sentence in the cases of Cush and Williams and granted leave to appeal against sentence in the cases of Willis and Temesgen.

The court allowed the appeal in the case of Temesgen for the sole and limited purpose of correcting the unlawfulness of the sentence of imprisonment passed on him *(by quashing the sentence and substituting it with a sentence of 14 months' detention in a Young Offender Institution).*

The court further allowed the appeal in the case of Willis, quashed the sentence of 14 months' immediate detention and substituted a sentence of 14 months' detention in a Young Offender Institution suspended for 2 years, with a Rehabilitation Activity Requirement for up to 40 days.

Other Cases of Note

Following guidance from the senior judiciary, the Registrar and her staff look out for cases raising novel or important points of law or procedure for inclusion in special or guidance courts. Such cases may be listed individually or conjoined, where appropriate, before a constitution of three or five judges. It is not possible to report on every case heard, but the following are a selection of cases of note.

Criminal Law and Procedure

Hearsay evidence

R v. BOB and Others [2024] EWCA Crim 1494

The trial judge had ruled that a series of witness statements from two witnesses who had died before trial were inadmissible hearsay evidence. The court (Edis LJ, Bright J and HHJ Morris) took the opportunity to reformulate the practical guidance set out in Riat [2012] EWCA Crim 1509. The court concluded that the steps to be considered should be as follows:

1. Is the court satisfied that the prosecution has adduced all relevant evidence, and disclosed all relevant unused material to enable the court to assess the extent to which the hearsay evidence is demonstrably reliable and, if not, the extent to which it can be safely assessed and tested? If not, should the court simply refuse the application or do the interests of justice require directions for a proper disclosure process?

2. Is there a specific statutory justification (or "gateway") permitting the admission of hearsay evidence (ss.116–118)?

3. What material is there which can help to test or assess the hearsay? This may be undermining evidence admitted under s.124, or other inconsistent evidence and it may also be independent dovetailing or supporting evidence. The court is required to make a judgment on the basis of all the evidence, having regard to the issues in the case and the importance of the hearsay to those issues.

4. Is there a specific "interests of justice" test at the admissibility stage?

5. If there is no other justification or gateway, should the evidence nevertheless be considered for admission on the grounds that admission is, despite the difficulties, in the interests of justice (s.114(1)(d))?

6. Even if admissible, ought the evidence to be ruled inadmissible (s.78 of the Police and Criminal Evidence Act 1984 (PACE) and/or s.126 of the CJA 2003)?

7. If the evidence is admitted, then should the case subsequently be stopped under s.125? This safeguard should be considered in all cases where it applies, at the initiative of the court if the parties do not raise it and would generally be best determined at the conclusion of all the evidence so that the judge can take into account the proposed legal directions that would be given to the jury.

Causing a public nuisance (section 78 of the Police, Crime, Sentencing and Courts Act 2022)

R v. Smith and Others [2024] EWCA Crim 1040

The new statutory offence of causing a public nuisance, contrary to section 78 of the Police, Crime, Sentencing and Courts Act 2022 ("s78" and "the Act"), came into force on 28 June 2022 and these appellants were the first to be convicted of the offence.

The appellants had taken part in a pre-arranged protest or demonstration at the British Grand Prix Formula One motor race held on 3 July 2022 at the Silverstone circuit. On the day before the race, they had recorded a video stating what they were planning to do as part of the Just Stop Oil (JSO) campaign. Their aim was to occupy part of the racetrack, dressed in distinctive orange JSO t-shirts and holding a JSO banner, so that their message would be captured on camera and widely broadcast.

The court (Holroyde LJ VPCACD, Griffiths J, and The Recorder of Manchester) stated that three features must be noted at the outset:

i) The common law offence of public nuisance had been abolished by s78(6) of the Act.

ii) Although Parliament had followed the recommendations of the Law Commission, they had not adopted the precise wording which the Commission had recommended.

iii) Section 78(1)(b) referred simply to "the public or a section of the public": it gave no further definition of the latter phrase, and in particular it did not use any of the qualifying adjectives ("significant", "substantial", "representative", etc) which appeared in the judgments concerned with the common law ingredients of public nuisance. If Parliament had wished to qualify the phrase "a section of the public" in any of those ways, it could and would have done so.

Accordingly, the court did not accept that section 78 had to be interpreted precisely in accordance with previous authorities which related to the common law offence.

The court also rejected the submission made by some of the appellants to the effect that an offence of public nuisance could not be committed on private land, to which the public would only be admitted upon purchasing a ticket as there was nothing in s78 which limited its ambit in such a way.

In cases where the sufficiency of the evidence in relation to whether defendants had acted in a way which created a risk of serious harm to the public or a section of the public was called into question, the court considered that judges should proceed as follows:

i) The focus should be on the risk of harm, which was created, not on whether any harm was in fact caused. The risk must be real, not fanciful. It would be necessary to consider the circumstances which actually obtained; but, depending on the facts of the particular case, it may also be necessary for the jury to consider the circumstances which would have obtained if other persons, over whom the defendants had no control, had behaved in a different, but foreseeable, way. It would also be necessary to be clear about the time at which the risk was to be evaluated.

ii) Identification of the relevant risk necessarily involved identification by the jury of all of the persons who were placed at risk.

iii) Where more than one person was accused of a s78 offence, it would be necessary to consider whether each of the co-accused could himself or herself be identified as a member of the relevant "section of the public". The terms of s78 did not specifically exclude them; and because it was not possible to foresee all the circumstances in which s78 offences might be charged, the court did not exclude the possibility that in some circumstances one or more co-accused might properly be so identified, although such circumstances would be rare.

iv) A question of fact would then arise as to whether the persons whom the jury found to have been put at risk of serious harm could properly be described as "a section of the public" i.e. a group of persons within a larger group or body of persons. It would be a question of fact in each case as to whether the smaller group could fairly be described as "a section of the public". In deciding that question, the status held by particular persons, or their reasons for being present at the relevant place at the relevant time, may be relevant considerations but would not be determinative. Accordingly, individuals would not necessarily be excluded from the category of members of the public merely because they were present in some specific or official capacity, or in the course of their employment.

Ill-treatment of a person in care (section 20 of the Criminal Justice and Courts Act 2015)

R v. Banner and Bennett [2024] EWCA Crim 1201

The appellants were convicted of several counts of ill-treatment of a person in care, contrary to section 20 of the Criminal Justice and Courts Act 2015 ("the 2015 Act"). They were employed in senior healthcare roles at Whorlton Hall Hospital, where the patients, who were adults with longstanding learning disabilities and significant additional psychological and behavioural needs, required specialist care.

At trial, the judge ruled that the counts in relation to the appellants should be left to the jury. He outlined the ingredients of the offence (ill-treatment) and noted that the prosecution did not have to prove that any suffering or injury to health was caused. He said that it was common ground that the term "ill-treatment" should be given its ordinary meaning and that the behaviour alleged should not be viewed in isolation but in the wider context of the case.

The court (Singh LJ, May and Griffiths JJ) stated that the judge had been correct in his approach. There had been no requirement for him to define "ill-treatment" beyond what he had said in his written and oral directions of law.

Victim's consent to assault

R v. Hobday [2025] EWCA Crim 46

The appellant was convicted of assault occasioning actual bodily harm. It was the Prosecution's case that the complainant instigated and consented to sexual activity with the appellant during which she started to, and he finished carving the letter "M" onto her buttock.

At trial the judge ruled, and then directed the jury, that the complainant's consent was not a defence to the charge.

In dismissing the appeal, the court (Edis LJ, Lavender J. and HHJ Leonard) considered the authorities of R v Brown [1994] 1 AC 212, R v. Wilson [1996] 2 Cr App R 241 and R v. BM [2018] EWCA Crim 560.

The court considered that the trial judge had correctly decided that *Wilson* could be distinguished from the present case and that the defence of consent should not be left to the jury.

Whether section 75A of the Serious Crime Act 2015 (non-fatal strangulation) created one or two offences.

R v. Jones [2025] EWCA Crim 195

The court (Holroyde LJ VPCACD, Bennathan J and Sir Nigel Davis) in dismissing the appeal, stated that section 75A created a single offence of non-fatal strangulation or suffocation which could be committed in two ways – one which required a specific intention and the other which could be committed by a reckless act. If Parliament had wanted to create two distinct offences, it could easily have done so by assigning a separate section of the Act to each of them.

Provided that all the jurors, or a sufficient majority of them, were sure that an accused committed an act which amounted to strangulation or suffocation within the meaning of section 75A(1)(a) or (b), it would only exceptionally be necessary for them to agree on the route by which they had reached that conclusion. In rare situations, it may be necessary to give a direction that the jury must agree on the precise nature of the act of strangulation or suffocation as discussed in R v Chilvers [2021] EWCA Crim 1311 but the court noted that the present case was not one of those rare situations.

Ingredients of a conspiracy

R v. Oni and Others [2025] EWCA Crim 12

The case concerned a large group of individuals involved in gang violence. Some of the offenders were convicted of conspiracy to murder, whilst others were convicted of conspiracy to cause grievous bodily harm with intent. On appeal, one of the grounds was whether the judge erred in his approach to the law of conspiracy.

The court (Dingemans LJ, Cockerill J and Sir Robin Spencer) in determining the matter, stated that the essential complaint at the heart of the appeal was that there had been a failure at trial to confront the fact that there were in essence two separate agreements, one to kill and one to cause really serious bodily harm, giving rise to the separate conspiracies which were on the indictment. In this case, the court did not consider that the indictment was defective or that trying the appellants on the two counts was impermissible.

The court identified a number of principles relevant to this appeal from the provisions of section 1 of the Criminal Law Act 1977 and the authorities:

- It was the agreement that was at the heart of a conspiracy to commit an offence. Such an agreement need not have the formalities of a conventional contract.

- In order to be guilty of conspiracy, it was not necessary to commit an offence or that anything should be done apart from the making of the agreement, so long as there was an intention to carry out the course of conduct which would necessarily amount to or involve the commission of any offence or offences, see R v Saik [2006] UKHL 18. Stopping participation in the conspiracy would only be relevant to matters of sentence.

- As was made clear in R v Mehta [2012] EWCA Crim 2824 and R v Shillam [2013] EWCA Crim 160, a conspiracy required that the parties to it had a common unlawful purpose or design which was not the same as similar or parallel but separate designs. The design must be unlawful i.e. an agreement to commit an offence or offences. It was possible to have what were sometimes called "wheel" or "chain" conspiracies, and it was not necessary for all of the conspirators to meet either in person, or online so long as there was a shared intention to carry out the course of conduct which would necessarily amount to or involve the commission of an offence or offences.

- It was possible to indict a conspiracy comprising an intention to carry out a course of conduct which would necessarily involve the commission of a number of different offences, but unless two or more of the conspirators had agreed to commit all of those different offences, the count for conspiracy would fail (R v Roberts [1997] EWCA Crim 3013).

- Acts or statements made by co-conspirators in furtherance of a conspiracy were admissible against other conspirators "provided that it was proved that there was a conspiracy to which he was a party", see *R v Gray [1995] 2 Cr App R 100*. If there were two separate conspiracies, what one person did in furtherance of that conspiracy was not admissible against another conspirator in respect of the second conspiracy.

"Upskirting" - ingredients of the offence (section 67A(2) of the Sexual Offences Act 2003)

R v. Barone [2025] EWCA Crim 125

Section 1 of the Voyeurism (Offences) Act 2019 added two new offences to the Sexual Offences Act 2003 in response to the practice commonly known as "upskirting". The applicant was convicted of one count of voyeurism contrary to section 67A(2) of the Sexual Offences Act 2003.

The issue at trial focused on the words "would not otherwise be visible" and on appeal, the court were concerned with the meaning of the phrase "beneath the clothing". The court (Stuart-Smith LJ, McGowan J and HHJ Altham), in rejecting the application for leave to appeal conviction, stated that:

- The first requirement of an offence under section 67A(2) was that A recorded an image "beneath the clothing" of B, the image being of that person's private parts. That was generally understood to be the essence of "upskirting": looking up someone's skirt towards their private parts. In that context, the meaning of the word "beneath" was clear. The section was concerned with people who looked up a person's legs to their private parts despite the fact that the person had clothed that part of their body. It did not matter whether the skirt was short or long: the concept was the same.
- The second requirement of an offence under section 67A(2) (as also under section 67A(1)) was that the image was taken beneath the clothing "in circumstances where the [private parts] would not otherwise be visible". This meant that the upskirting gave A a view (or image) of the victim's private parts that would not have been available otherwise than by "upskirting".

Interfering with key national infrastructure contrary to section 7 of the Public Order Act 2023 - compatibility with Articles 10 and 11

R v. Sarti and Others [2025] EWCA Crim 61

The appellants were convicted of interfering with key national infrastructure contrary to s. 7 of the Public Order Act 2023. The offences arose in the context of a protest organised by JSO.

They sought leave to appeal against their convictions on two grounds: the judge erred in concluding that the ingredients of the s. 7 offence were sufficient in themselves to ensure that any conviction will be compatible with Articles 10 and 11 ECHR; and the judge erred in concluding that he could decide the issue of proportionality himself and that the convictions were proportionate interferences with their Article 10 and 11 rights.

In determining the issue, the court (Lady Carr LCJ, Bryan and Chamberlain JJ.) considered that:

- First, the offence in s. 7 applied where a person did an act which interfered with the use or operation of "key national infrastructure", intending the act to have that effect or reckless as to whether it would do so. The term "key national infrastructure" in the heading to s. 7 and in s. 7(1)(a), taken with the definition in s. 7(6) (as elaborated in s. 8), made it clear that the intention concerned specific categories of infrastructure regarded as essential to national life.

- Secondly, in line with this approach, the definition of "road transport infrastructure" in s. 8(2) also had the aim of identifying the roads where obstruction or delay was likely to have the greatest impact on the rights of the travelling public. The definition included "special roads" (principally motorways) and A and B roads. On its face, this encompassed a large number of roads in and between towns and cities. It included many of the roads on which protests have traditionally been held (for example, Whitehall, which is part of an A road). However, it did not include classified unnumbered roads or unclassified roads.

- Thirdly, s. 7(4) should be read together with s. 7(5). The former dealt with the case where the use or operation of infrastructure was to any extent *prevented* (for example, by destroying any part of it or putting it beyond use). The latter dealt with the case where the use or operation of the infrastructure was *delayed*. In most protest cases, acts of the protester would delay, rather than prevent, the use of the road. Where the conduct involved delaying rather than preventing the use of relevant infrastructure, the effect of s. 7(5) was that only a "significant" delay will count.

- Fourthly, the defences in s. 7(2) served to exclude certain conduct which would otherwise fall within the scope of the offence. S.7(2)(b) excluded acts done wholly or mainly in furtherance of a trade dispute. Thus, one type of activity protected by Article 11 (lawful industrial action) was not caught. S. 7(2)(a) provided for a more generally applicable defence. However, no-one would suggest that there could be a lawful excuse for a threat to kill merely because it was made as an act of protest; and it had now been established that there was no lawful excuse for criminal damage merely because it had been carried out as part of a protest, at least where the damage was caused in a violent or non-peaceful manner or is significant: see Attorney General's Reference (No. 1 of 2022). On the other hand, the language of s. 7(2) was plainly broad enough to encompass an assessment of proportionality if that was required by the Convention. Whether such an assessment was required would depend on the next stage of the analysis.

- Fifthly, whatever the answer to that question, those taking part in a public procession on a road to which s. 7 applied would be entitled to invoke the defence of lawful excuse in s. 7(2) if (i) the procession had been notified to the police in accordance with s. 11 of the POA 1986 and (ii) they complied with any conditions imposed on it under s. 12 of the POA 1986."

The court concluded that once the ingredients of the s. 7 offence were made out, s. 7(2)(a) did not require a court to consider whether a conviction would be a proportionate interference with the defendant's Article 10 or 11 rights."

Conspiracy to cause a public nuisance

R v Maxey and Hallam [2025] EWCA Crim 472

The appellants were active in movements which campaigned and protested in relation to climate change. In 2019 they were part of a group called "Heathrow Pause". As the name suggested the group were concerned with halting the proposed expansion of Heathrow Airport involving the creation of a third runway. The appellants were arrested on 12 September 2019. The case against them was that they had planned a protest against the expansion which involved supporters of Heathrow Pause flying drones within the Flight Restriction Zone ("FRZ") of the airport i.e. a zone of 5 kilometres around the airport. It was alleged that their aim was to compel the authorities to close the airport to preserve the safety of those using the airport. This was the public nuisance which it was said that they had agreed to cause. In any event the limited number of drone flights meant that there was no effect on flights in and out of Heathrow.

It was not in dispute that the appellants had agreed a plan involving multiple drone flights within the FRZ at Heathrow. The issue was whether the agreement was to cause a public nuisance i.e. the closure of the airport. The appellants' case was that the flying of drones was a publicity exercise to draw attention to their campaign against the expansion of Heathrow. They said that they had no intention of closing the airport.

Following their conviction for conspiracy to cause a public nuisance, they appealed on the basis that the judge should have acceded to their submission of no case to answer at the conclusion of the prosecution case. Their submission was that the evidence at that point did not demonstrate a prima facie case that a public nuisance would necessarily have resulted from their planned actions.

The court (William Davis LJ, Goss and Dexter Dias JJ) restated that the essence of the offence of conspiracy was the agreement. As soon as the agreement was reached, the offence was complete. They considered that the judge had properly left the case to the jury. The flying of many drones carried with it the possibility of a closure of the airport. The appellants had stated their intentions in clear terms prior to 13 September 2019. In contrast, the appellants' case was that they did not intend to cause the airport to be closed. If the jury had found that this was or may have been the case, the appellants would have been acquitted. The questions in the revised route to verdict required the jury to be sure that the appellants intended to cause the closure of the airport. The verdicts in relation to the appellants showed that the jury were so sure.

The supposedly unusual aspect of the case was that the alleged agreement was to take action which would compel a third party to do something which caused a public nuisance. In the context of protests in relation to climate change, it was not unusual that the acts of the conspirators did not directly lead to public nuisance.

The appellants in this case were prosecuted by reference to the common law offence. The substantive offence required the effect of the conduct to be interference with the rights of the public. Where conduct created a risk to public safety, it was entirely foreseeable that the authorities would take reasonable steps to prevent that risk. Thus, the effect of the conduct was to cause a public nuisance. Although the definition of the statutory offence was different, the position vis-à-vis the actions of protestors remained the same.

Fitness to plead/bad character/s.10 admissions/ funding

R v. Kurtaj [2025] EWCA Crim 1163

The applicant was charged with computer hacking offences. He was found to be unfit to plead pursuant to s4A of the Criminal Procedure (Insanity) Act 1964 and at a subsequent trial of issue, was found to have done the relevant acts. His application for leave to appeal against those findings was refused by the single judge and renewed to the full court.

The court (Holroyde LJ VPCACD, Edis LJ and HHJ Edmunds KC) in dismissing the appeal noted that the agreed admissions came into conflict with the admission of the bad character evidence and the directions to the jury. Although the previous convictions were, in principle, admissible pursuant to ss.101(1)(d) and 103(1)(a) CJA 2003, they should have been excluded on fairness grounds pursuant to s.101(3) CJA 2003 and/or – i.e. s.78 Police and Criminal Evidence Act 1984 considering the findings about the appellant's neurodivergent conditions.

Following on from R v Roberts [2019] EWCA Crim 1270 and *R v Antoine [1999] 2 Cr App R 225*, the court confirmed the principles and considered some of the practical implications involved in such applications:

- An 'unfit' person cannot act in person to bring or conduct an application and give instructions to fresh representatives. Any appeal must be brought on his or her behalf by the representatives (appointed in the Crown Court).
- The Registrar cannot grant a representation order as there are no "criminal proceedings."
- Payment can be made from central funds - s19(3)(d) of the Prosecution of Offences Act 1985.
- Where the single Judge grants leave, the representatives could prepare, present and get paid (whatever the outcome). Where the applicant was a litigant in person, the single judge on the papers would determine the merits and fresh counsel could be appointed to settle appropriate grounds.

- The applicant as a litigant in person could not renew a single judge refusal and the Registrar could not appoint, or grant a Defendant's Costs Order to, fresh representatives.
- Representatives appointed in the Crown Court (see point 1) also had authority to renew the application to the full court. If the court granted leave, then it would usually be appropriate for the court to make an order for the payment out of central funds. If leave was refused, the court still had the power to award costs out of central funds.

Confiscation

Restraint Orders

R v. Wieromiejzyk [2024] EWCA Crim 1486

Restraint Orders were made in the Crown Court pursuant to the relevant provisions of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ("the 2005 Order"). The Restraint Orders had been made following an external request by the Republic of Poland.

The applicants applied for the discharge of the Restraint Orders which was dismissed.

External requests for restraint orders from another European Union member state were subject to Part 2 of the Criminal Justice and Data Protection (Protocol No.36) Regulations 2014 ("the 2014 Regulations"). Following the UK's withdrawal from the European Union, those regulations were repealed on 31st December 2020. Thereafter, the UK and the European Union agreed the provisions of the Trade and Cooperation Agreement (Treaty Series No.8) (2021) ("TCA") which set out the desirability that there was agreement as to a legal basis for cooperation relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties.

The court (Macur LJ, Goss J and Sir Nigel Davis) in refusing the applications, made the following observations as to the required approach with regard to external requests for provisional measures from member states of the European Union.

- An external request, and the information contained in it, should always be carefully scrutinised by the Crown Court.
- In deciding whether to make a Restraint Order pursuant to such an external request, the current approach continued to be in substance the same as that required immediately before 2021.

- In deciding whether to make a Restraint Order, the Crown Court must initially assess whether the first condition or second condition set out in Article 7 of the 2005 Order was satisfied.
- In deciding whether the relevant condition was satisfied and whether to make a Restraint Order, the Crown Court should focus solely on the information provided with the external request
- In deciding whether to exercise the power under Article 8 of the 2005 Order to make a Restraint Order, the Crown Court should aim to give effect to the policy and objectives of the TCA, as well as to the "steer" given in Article 46(2) of the 2005 Order itself.
- In deciding whether to make a Restraint Order, the Crown Court was not (subject, for the avoidance of doubt, to the prior requirement to be satisfied by the external request as to the first condition or second condition in Article 7) concerned with the substantive reasons for the making of the measure which was the subject of the request.
- On any subsequent application to discharge or vary a Restraint Order under Article 9 the Crown Court again was not concerned with the substantive reasons for the making of such measure; and any substantive challenge to the measure (including any challenge as to its necessity and proportionality) should be raised by the affected party in the requesting state.

Adducing fresh evidence

R v. Taktouk [2025] EWCA Crim 71

The case concerned confiscation proceedings arising from a private prosecution for fraud offences brought by Benherst Finance Limited and Chestone Industry Holding against the appellant.

The appellant was ordered to pay a Confiscation Order ("the Order") in the sum of £4,549,925.29, under section 6 of the Proceeds of Crime Act 2002. The order was to be paid within 3 months, and in default a term of 8 years' imprisonment was imposed.

On appeal, he sought leave to adduce fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968 from his brother, Dr. Wassim Taktouk, who was the executor of the estate of their late father. This was said to show that the judge's finding that the appellant had an interest in family-owned assets which he had not been truthful about was wrong. This was the basis on which the judge had held that the appellant had failed to prove that the available amount was less than the benefit figure and thus made the Order in the same sum as the benefit.

The court (Edis LJ, Saini J and HHJ Leonard) in allowing the appeal, stated that the application of section 23 to appeals against conviction and to most sentence appeals was well understood and explained by the authorities. The ultimate question for the court was whether a conviction was unsafe or whether a sentence should be quashed and replaced with another sentence. In the present situation, the real question was neither of those. It was whether the court should make an order under section 11(3)(a) quashing the Order and a further order under section 11(3A) directing the Crown Court to proceed afresh, subject to such directions as may be given under section 11(3B). That would require, if Dr. Wassim Taktouk was called on behalf of the appellant in such fresh proceedings, the court to hear that evidence and to decide whether it was reliable as well as what its proper scope and weight was.

The court concluded that they could give directions which ensured that any new confiscation order made in the Crown Court did not deal with the appellant more severely than the order quashed under section 11(3)(a).

Sentencing

Proper application of section 244ZA of the Criminal Justice Act 2003

R v. Barnes and Others [2024] EWCA Crim 1548

The case raised one common issue: the proper application of the provisions for release of prisoners on licence in section 244ZA of the Criminal Justice Act 2003 ("the 2003 Act") to persons convicted of the offence of causing death by dangerous driving, when the offending took place before 28th June 2022, but the sentence was passed after that date.

This issue arose because of amendments made by the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act") to the 2003 Act, the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 ("the RTA" and "RTOA", respectively). Section 86 of the 2022 Act amended various provisions in the RTA and the RTOA. One of the amendments (made by section 86(2) of the 2022 Act) increased the maximum penalty for causing death by dangerous driving from 14 years' imprisonment to life imprisonment. By section 86(9) the amendments to the RTA and RTOA made by section 86 did not apply "in relation to offences committed before the provision comes into force." Section 86 of the 2022 Act came into force on 28 June 2022.

Section 130 of the 2022 Act inserted a new provision into the 2003 Act, section 244ZA. In part, section 244ZA restated the provisions on release of prisoners on licence previously contained in the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 ("the 2020 Order"). The 2020 Order, which had been made in exercise of the power at section 267 of the 2003 Act, was revoked by section 130(9) of the 2022 Act.

The 2020 Order had identified a class of offenders who would not qualify for release on licence under section 244 of the 2003 Act after serving half of the sentence imposed on them but would instead qualify for release on licence only when they had served two-thirds of the sentence of imprisonment imposed by the court. In further part, section 244ZA established additional classes of prisoner who would only qualify for release on licence after serving two-thirds of their sentence. The amendment made by section 130 of the 2022 Act also came into effect on 28 June 2022.

In the present cases, each offender committed an offence of causing death by dangerous driving before 28 June 2022, when the maximum sentence for that offence was 14 years' imprisonment. Had sentences been passed before 28 June 2022, there could have been no suggestion that section 244ZA(4) of the 2003 Act could apply or that the date for release on licence would occur only when two-thirds of the sentence has been served. Conversely, had the offending in each case occurred on or after 28 June 2022, by which time the maximum penalty for the offence of causing death by dangerous driving had increased to life imprisonment, there would be no question but that section 244ZA(4) of the 2003 Act did apply and that "the requisite custodial period" would be two-thirds of the sentence imposed by the court. However, in each of the cases before the court, the offences were committed before 28 June 2022 and sentencing took place after 28 June 2022. The question therefore arose as to the effect of section 244ZA(4)(d)(ii) of the 2003 Act.

Specifically, the question arose as to whether "… an offence … for which a sentence of imprisonment could have been imposed … at the time the actual sentence was imposed" referred to the maximum sentence that the court could have imposed on the offender who was sentenced by the court or to the maximum sentence that could be imposed for the offence as it stood at the date of the sentencing hearing. If it was the former, each of the offenders fell outside section 244ZA(4) because when each was sentenced the court did not have the power to sentence any of them to life imprisonment, and each was instead within section 244 of the 2003 Act and would be eligible for release on licence after serving one half of the sentence. If it was the latter, then each would fall within section 244ZA of the 2003 Act and would be eligible for release on licence after serving two-thirds of his sentence.

The court (Sharp LJ PKBD, Swift and Farbey JJ.) held that when applying paragraph (d) of section 244ZA(4) of the 2003 Act, the question that had to be considered was whether a sentence of life imprisonment could have been imposed for an offence of causing death by dangerous driving at the date of the sentencing hearing rather than at the date of the offence. As a result, those who were sentenced after 28 June 2022, fell within section 244ZA of the 2003 Act and would be eligible for release on licence after serving two-thirds of their sentence.

Taking a weapon (a motorcar) to the scene of the crime

R v. Deeprose and Papworth [2024] EWCA Crim 1431

These cases raised a common issue: in what circumstances, if at all, was an offender to be taken as having taken a weapon to the scene of an offence, where the weapon was a vehicle that had been driven to the scene? The resolution of that issue could affect, for the purposes of sentencing, the starting point for setting the minimum term for an offence of murder, or the correct categorisation of an offence of attempted murder.

In determining the issue, the court (William Davis LJ, Johnson J and HHJ Smith) stated that the full description set out in paragraph 4(2) of schedule 21 to the Sentencing Act 2020 was not restricted to knives but related to any "other weapon". Since a car could undoubtedly be a weapon (see *R v Beckford [2014] (EWCA Crim 1299) (*see R v Tony Deeprose*)*, there was no reason why it should be incapable of being taken to the scene.

For the use of a car to come within paragraph 4 in any given case, the offender must have taken the car to the scene. The car must have been taken to the scene with the intention of committing an offence or having it available to use as a weapon. The car must have been used as a weapon to commit the murder or attempted murder. So long as those matters were proved, the offender would fall within paragraph 4 of Schedule 21.

These features, in combination, involved a particular level of culpability, described as "high" in the guideline for attempted murder and meriting a 25-year starting point for murder. That high level of culpability was a result of the premeditation, planning and danger that arose where a person took a weapon to the scene where they then used the weapon, or had it available, to commit the offence. Such elements were just as much present where the weapon was a car as where the weapon was a knife.

Just as there may be fine distinctions between different situations in which a knife was taken from one place to another, so the same may apply to the use of a car as a weapon. Every case would be fact specific. The fact that some cases may be on the borderline was no reason to exclude cars as weapons which may be taken to the scene.

Sentencing: Fake drugs

R v Ali [2024] EWCA Crim 1218

The applicant pleaded guilty to being concerned in the supply of Class A drugs. When stopped by the police, the applicant had been found to be in possession of six small bags containing a white powder. Subsequent forensic analysis showed that the powder actually contained about 3 grams of paracetamol which had been crushed into six bags and which the applicant had been attempting to pass off as half gram bags of cocaine. A tiny amount of cocaine (0.049 grams with a nil value) was also found.

In sentencing the applicant, the Recorder had recognised that to supply fake drugs was less serious than offering to supply actual drugs.

The court (Holroyde LJ VPCACD, Martin Spencer and Cutts JJ) said that the Recorder had been correct in their approach, namely considering the appropriate sentence had the drugs offered for sale been genuine by reference to the applicable guideline and then making an appropriate reduction to reflect the fact that the drugs were not genuine. What discount should have been applied to take into account the fact that the drugs were fake would depend on a number of factors, including, for example, whether the product being offered for sale was itself dangerous, and, if so, how dangerous; and also, the personal circumstances of those to whom the product was being offered.

The approach should therefore be:

- Consider the appropriate starting point by reference to the applicable guideline.
- Adjust the starting point to take into account any aggravating and mitigating factors in the usual way.
- If appropriate, apply a further discount to take into account the fact that the drugs were fake, the amount of the discount to be decided according to the particular facts of the case, including, for example, the nature of the product in fact being offered for sale; and
- Apply any discount as credit for the offender’s guilty plea.

Notification requirements (Part 2 of the Sexual Offences Act 2003)

R v Ar'raa-ee [2024] EWCA Crim 1287

The applicant pleaded guilty upon re-arraignment to two counts of sexual activity with a child and was sentenced to a community order. In addition, the judge ordered he would be the subject of notification requirements under Part 2 of the Sexual Offences Act 2003 ("the 2003 Act") for a 5-year period. The applicant was 17 years old at the date of the commission of the offences and 19 years old at the date he was sentenced.

The court (Jeremy Baker LJ, Farbey J and HHJ Drew) confirmed that as the appellant was under 18 at the time of the commission of the offence and had not been sentenced to imprisonment, the Recorder had fallen into error in concluding that the notification requirements applied.

As confirmed in R v Allon [2023] EWCA Crim 204, notification requirements took effect (if at all) by operation of statute and not by virtue of a decision or order of a sentencing judge. The role of the court was only to state in open court that one of the eligibility criteria for notification had been satisfied and to certify that fact. An appeal did not lie against the statutory application of the notification requirements. However, where a judge, as in the present case, went further and purported to give a decision or make an order on the issue, the court had jurisdiction to entertain an appeal.

Whether non-qualifying curfew days should count towards sentence

R v Rice [2025] EWCA Crim 352

The appellant pleaded guilty to an offence of inflicting grievous bodily harm and on appeal the sole ground was that the appellant had spent 496 days subject to a non-qualifying curfew before he was sentenced, most of it awaiting a trial which never happened. The judge referred to the fact of the curfew but made no reduction to the sentence to take account of it and did not explain why. The appellant's case was that the judge should have reduced the sentence to make an allowance for the curfew.

The court (Edis LJ, Stacey J and HHJ Lockhart KC, The Recorder of Coventry) stated that the ability of a sentencer to take into account time spent on non-qualifying curfews was not limited to "rare" or "exceptional" cases. The ability to reduce the sentence to take account of a non-qualifying curfew was based on the requirements of justice and not prescribed or circumscribed by statute.

Notwithstanding the fact that a curfew did not fall within the statutory scheme, it still constituted a significant constraint on a defendant's liberty. The court, when dealing with the issue in cases which were outside the statutory scheme for credit, should address the issue in a non-mechanistic way and neither simply apply the statute (which did not apply) nor refuse to make any adjustment on the grounds that the case was not "rare" or "exceptional".

Sentencing in non-violent protests

R v. Hallam and Others [2025] EWCA Crim 199

The appellants were sentenced for offences committed in connection with protests in the name of Just Stop Oil (JSO) about climate change issues. The appeal raised certain general issues concerning the approach to sentencing in such cases.

The court (Lady Carr LCJ, Lavender and Griffiths JJ) set out the following points of principle:

- The exercise of sentencing in cases of non-violent protests should be carried out in accordance with normal sentencing principles, including those contained in ss. 57, 63 and 231(2) of the Sentencing Act 2020.
- The correct approach to issues that may arise when sentencing in cases of non-violent protests, such as conscientious motivation and deterrence, were considered authoritatively in R v Trowland [2023] EWCA Crim 919.
- The sentencing exercise in cases of non-violent protest should not be over-complicated because of the engagement of the European Convention on Human Rights (ECHR). Whether or not Articles 10 and/or 11 of the ECHR were engaged should be simple and if engaged, the court would then have to carry out what should be a straightforward proportionality exercise. There should be no need to make extensive reference to domestic or international authorities.
- References to the sentencing outcomes in different cases were unlikely to be helpful, since each case would turn on its own facts. Seeking to treat the three-year sentence in *Trowland* as a benchmark for similar offending risked undesirable and unwarranted sentence inflation.

Compensation orders

R v ANZ [2025] EWCA Crim 778

The victim in this case, ANZ's daughter, had endured years of sexual abuse, neglect and cruelty at his hands. Despite the fact that compensation had not been sought by the prosecution; there was no reference to it in the sentencing note and no submissions had been made by the defence, the judge decided to order ANZ to pay compensation to the victim in the sum of £10,000.

The court (Fraser LJ, McGowan J and HHJ Picton), in allowing the appeal, noted that the imposition of a compensation order was governed by sections 133 to 135 of the Sentencing Act 2020, and that the court must have regard to a defendant's means before making an order. The relevant principles were set out in the case of York [2018] EWCA Crim 2754.

The court found that there had been no attempt by the court to enquire into ANZ's means and as a result the compensation order was unlawful. The court considered, and declined to vary, the terms of the order or to remit the case to the crown court (a statement of means form having been provided on appeal) but they did note that compensation orders were designed to be used only in clear and straightforward cases and were not an alternative to the sentence that ought to be imposed upon an offender such as this appellant. The Criminal Injuries Compensation Scheme was the best forum for assessing such an award for a victim in these circumstances.

The court concluded by making the point that it would be contrary to principle to suspend a custodial sentence merely because of an ability (or perceived ability) on the part of an offender to pay compensation. This would essentially allow those of significant means to buy themselves out of a penalty which would plainly be wrong in principle.

Mental disorder/restriction order/judge not bound by experts

R v Gordon [2025] EWCA Crim 1194

The appellant who had no previous convictions and whose mental health difficulties were managed within the family home, stabbed his father, causing serious injury. The experts at the sentencing hearing did not recommend a s.41 restriction order and the imposition of one was the issue in the appeal.

The court (Macur LJ, Cutts and Murray JJ), in dismissing the appeal, accepted that it would have been better had the judge set out his reasons for finding that the imposition of a section 41 restriction order was necessary. However, in their view, his decision could not be said to have been irrational or Wednesbury unreasonable. It was a decision that was reasonably open to him, and he was entitled to conclude that there was a risk of serious harm to the public in the future.

Tribute to the late Lord Justice William Davis

Lord Justice William Davis (20 June 1954 – 7 June 2025), died suddenly at his home in Warwickshire on 7 June 2025. He was 70 years' old.

He was called to the Bar (Inner Temple) in 1975 and took Silk in 1998. He practised from 7 Fountain Court in Birmingham, now St Philips Chambers, where he specialised primarily in criminal and personal injury work. He was head of Chambers from 2004 to 2008. He was appointed as an Assistant Recorder in 1992 and a Recorder in 1995. In 2008, he was appointed to the Circuit Bench and in 2009 he became the Honorary Recorder of Birmingham, a Senior Circuit Judge and a Deputy High Court Judge. He was appointed as a High Court Judge (Queen's Bench Division, now King's Bench Division) in 2014 and was the Presiding Judge of the Northern Circuit from 2016 to 2019. He was promoted to the Court of Appeal on 1 October 2021.

He was the Judicial Lead on Youth Justice from 2014-2022 and commissioned the first Youth Defendants in the Crown Court bench book in 2019 (now known as Child Defendants in the Crown Court) having recognised the need for a toolkit to assist judges and recorders in what are often very difficult and complicated cases. As a result of his vision and dedication, the bench book has proved invaluable. It is now in its fifth edition and is increasingly referred to by High Court and Court of Appeal judges as an important reference tool for those dealing with children in the Crown Court.

Having been a judicial member of the Sentencing Council from 2012 to 2015, he went on to be appointed as Chairman in August 2022 where he was a staunch advocate of consistency in sentencing no matter which Crown Court a defendant appeared in or which judge they were before. His work as Chairman echoed his lifelong commitment to justice in the public interest.

He was also a member of the Criminal Procedure Rules Committee and Director of Criminal Training for the Judicial College from 2014 to 2019.

As a result of his background in criminal law, he brought a wealth of experience to the CACD. His judgments were of exceptional quality. He dealt with those who appeared before him with kindness and fairness as well as quite often a dose of dry wit, for which he was well known.

The Registrar commented that "Lord Justice William Davis was not only a stalwart of the CACD, but he was also a real friend to the Criminal Appeal Office. We valued his exceptional experience in criminal law. He was one of the best criminal judges I have worked with. He was also very supportive of the CAO, generously sharing his wisdom and responding to any issue with his customary good will and good sense. He undertook any work we threw his way without complaint as well as being interested in our personal lives, particularly the musical endeavours of the CAO Listing Officer. It was a privilege to work with him and his loss both as a judge and as a friend is still felt by us all".

Bill Davis, to those who knew him, leaves behind his wife Ginny and his children, Rosie and Ralph. All at the CACD extend their sincere condolences to them and all who mourn him. The contribution that he made to the CACD is immeasurable. His absence is keenly felt.

Outreach work

On 27 June 2025, students supported by Anthony Walker bursaries as well as those on a variety of social mobility and other mentoring schemes, all visited the Royal Courts of Justice for what is now an annual outreach day organised by the CAO and the Court of Appeal, Criminal Division to meet legal colleagues and talk with senior members of the Judiciary.

The Anthony Walker Foundation, in partnership with the CPS, supports students from diverse ethnic minority backgrounds in the north of England as they aspire for careers in the legal profession. Hosting them and the other delegates at the Royal Courts of Justice, provided valuable experience, learning and connections. In turn, activities such as this help ensure the legal profession of the future reflects the diversity of the society it serves and demonstrates a commitment to open justice.

The event was opened by Michelle Penn, Delivery Director for the Royal Courts of Justice Group, who warmly welcomed the students and explained the many jurisdictions within the court buildings.

Students then engaged enthusiastically as they heard how HMCTS lawyers at the Criminal Appeals Office joined the legal profession and successfully developed their careers through private practice and roles in the Civil Service. They had the opportunity to interact with HMCTS lawyers during a networking lunch and then to learn about the role of the Senior Operations Manager.

The students also took a tour of the RCJ, stepping through the legal history that infuses the historical buildings and courtrooms. Lord Justice Bean answered questions on the cases that the students had observed in court, and he gave valuable and practical advice to the aspiring students.

Master Beldam, Registrar of Criminal Appeals, also met the students and explained her role and the work of the court.

The event was made possible with the kind support of legal operations staff, building management and others. It was a real success, with those attending expressing thanks and gratitude to all involved and legal staff thoroughly enjoying meeting the students.

Other Visitors

In March 2025, the Registrar was delighted to welcome several visitors to the court. These included a delegation of DPP's from the Caribbean, students from Yale Law school and two delegations of Officers from the Service Prosecuting Authority.

On 3 April 2025, the Registrar then welcomed Oana Stroiu, the Romanian Liaison Judge to the UK to the court and on 21 May 2025, she received a delegation of Judges from Tanzania.

Receiving visiting judges and other delegations presents opportunities for the court to share best practice internationally and to help promote greater understanding of our justice system.

Summary and Statistics

The Annexes attached to this Review provide details of the number of applications considered by the court, the average waiting times and the general success rates.

Annex A sets out the number of conviction and sentence applications received. These form the bulk of the court's work. The statistics show a rise in conviction applications, but that the sentence applications received over the reporting year were similar in number to the previous year.

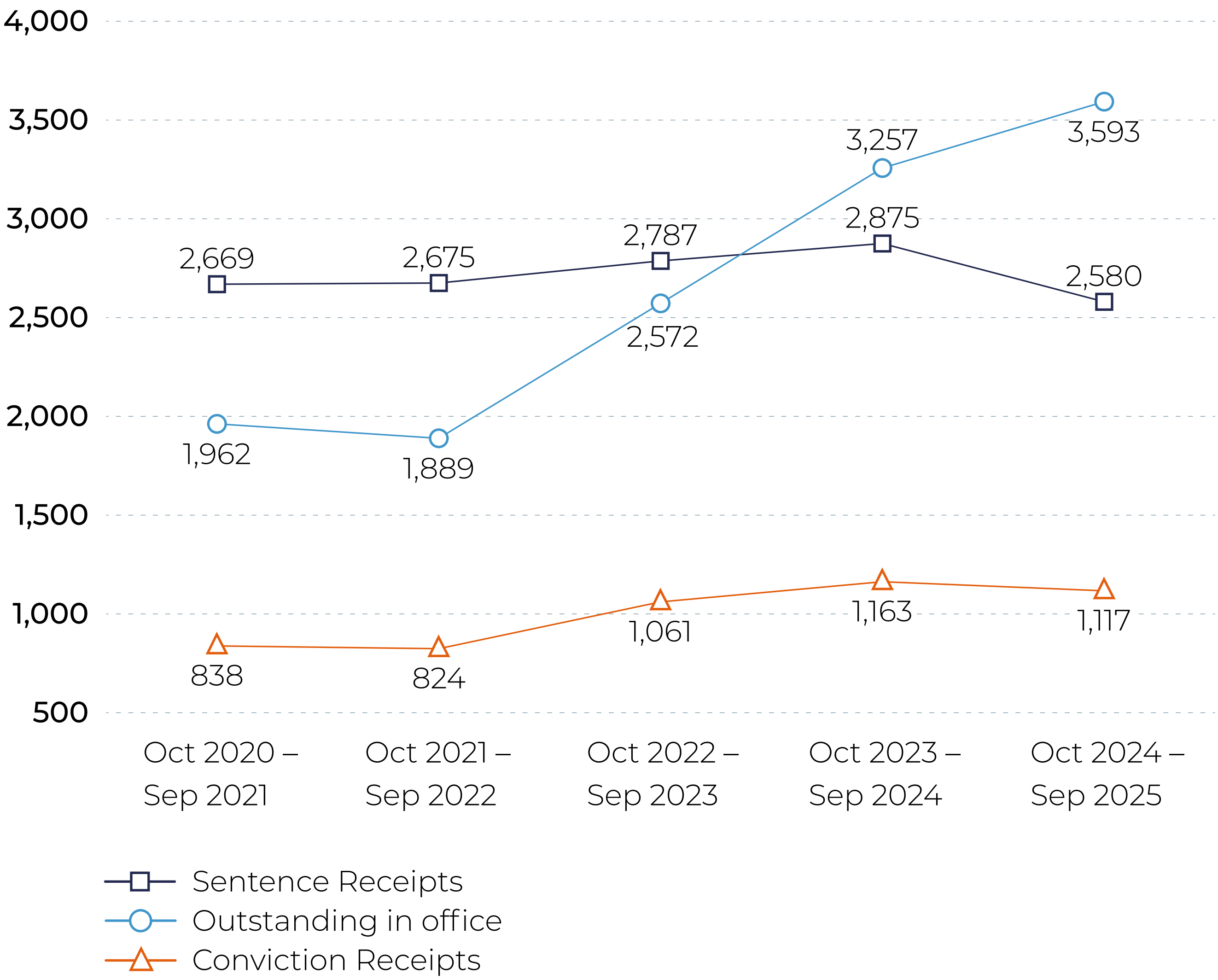
Annex H shows that there is also a marked increase in the number of outstanding old conviction cases (cases over 10/13 months) which reflects the higher number of conviction applications received and the increased workload in the CAO. The number of old sentence cases (cases over 5 months) has remained fairly static, which is in line with the number of those applications lodged.

The statistics at Annex C show the success rate at the Section 31 leave stage, when the application is considered by a single High Court Judge. This demonstrates the effectiveness of the Section 31 stage in acting as an important filter for the court. The number of cases determined can be seen to have increased significantly compared to the previous four years.

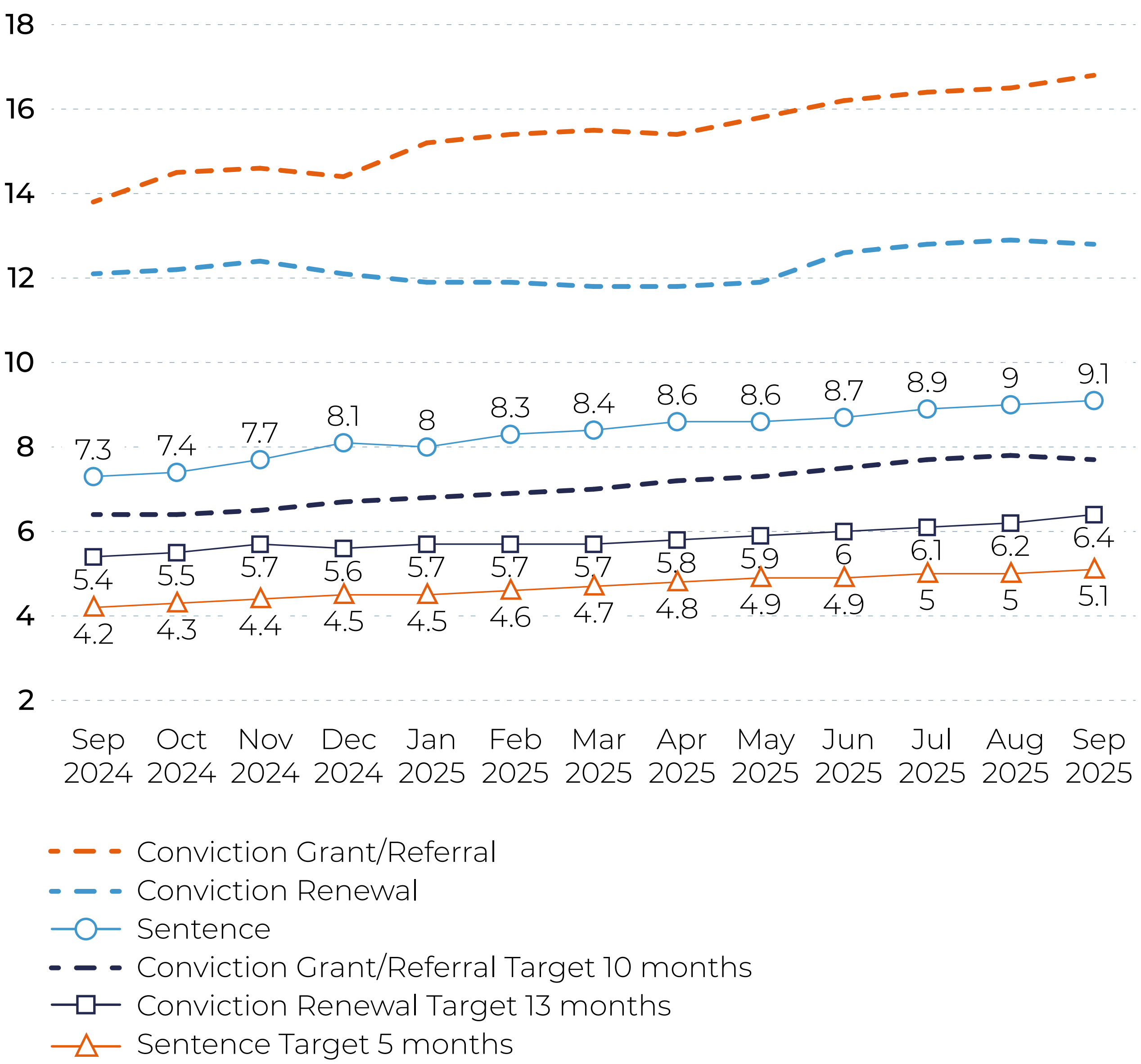
Annex F shows that out of 1117 conviction applications received (all applications), this resulted in 57 conviction appeals which were allowed by the court.

Once a case reaches the court for a full appeal hearing, Annex D shows that 37% of conviction appeals were allowed by the court and 54% of sentence appeals were allowed.

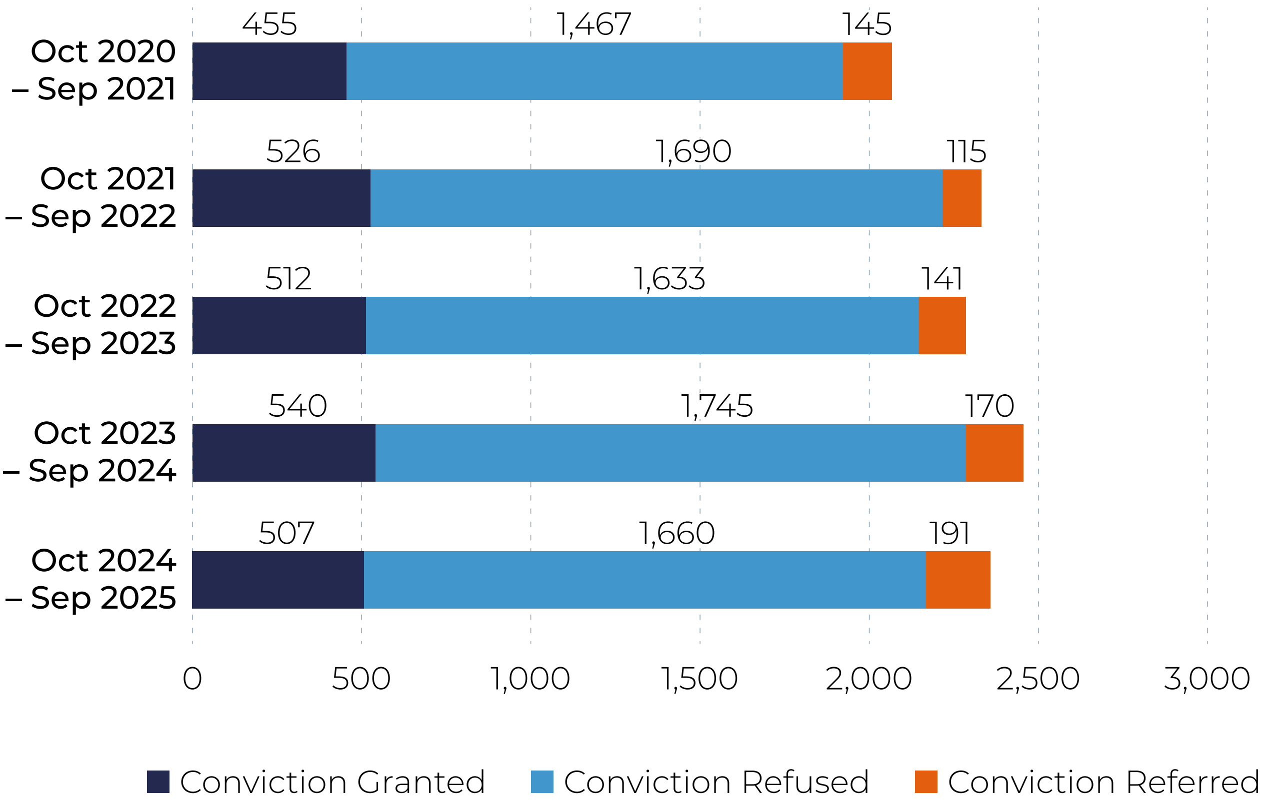
Annex A – Applications received and outstanding in office

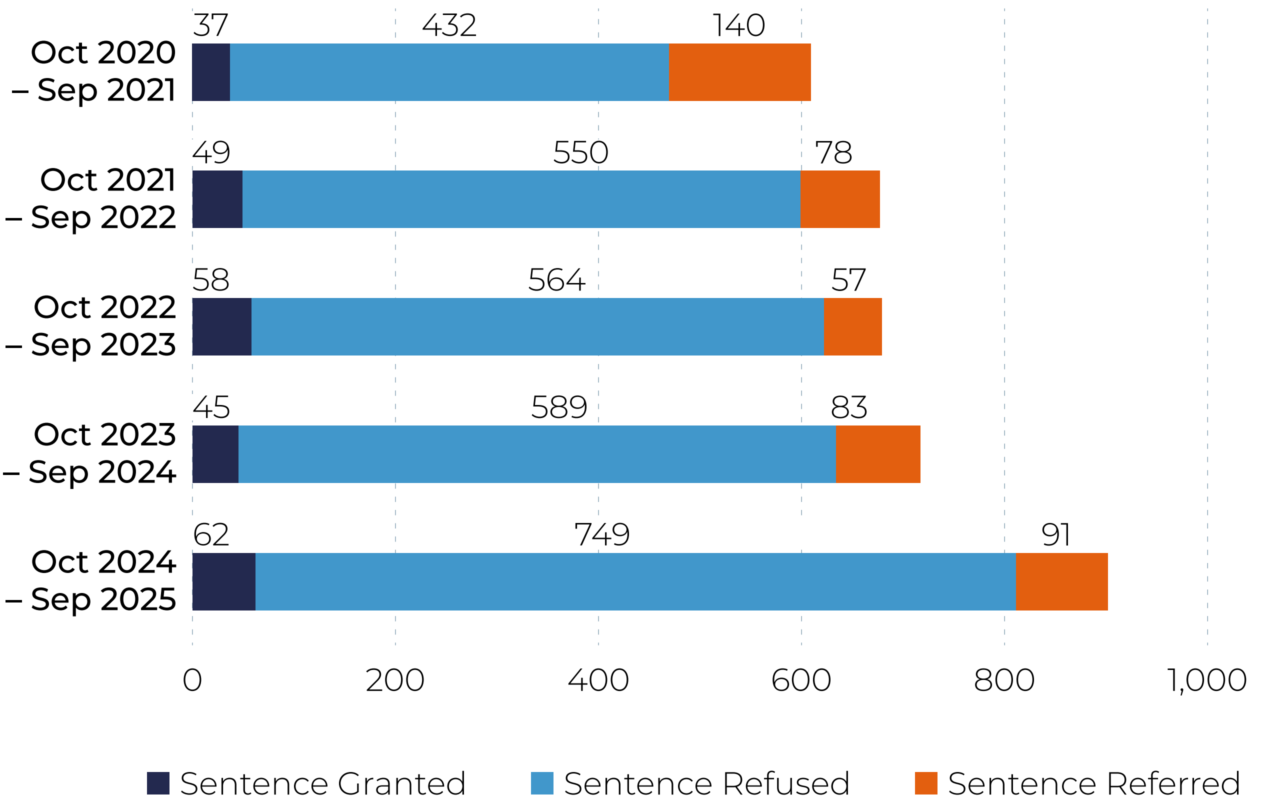


Annex B – Average waiting time (months)

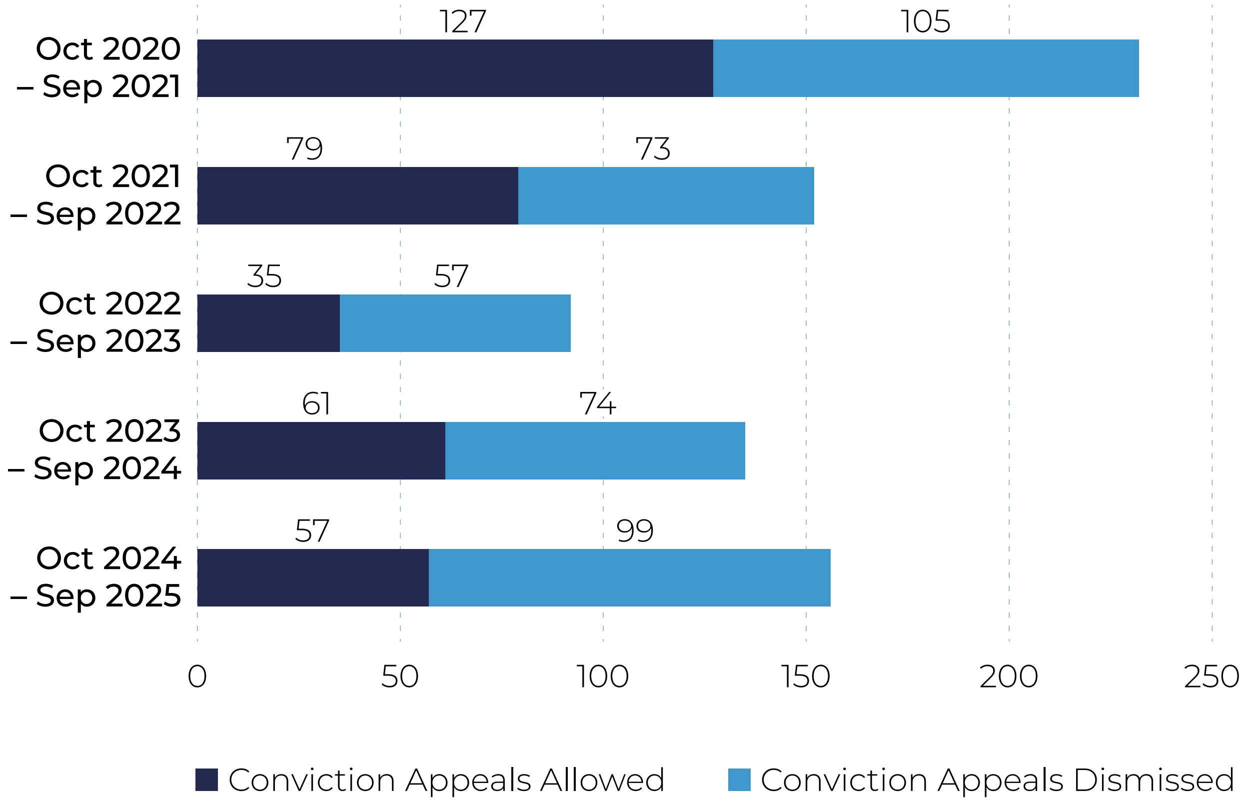


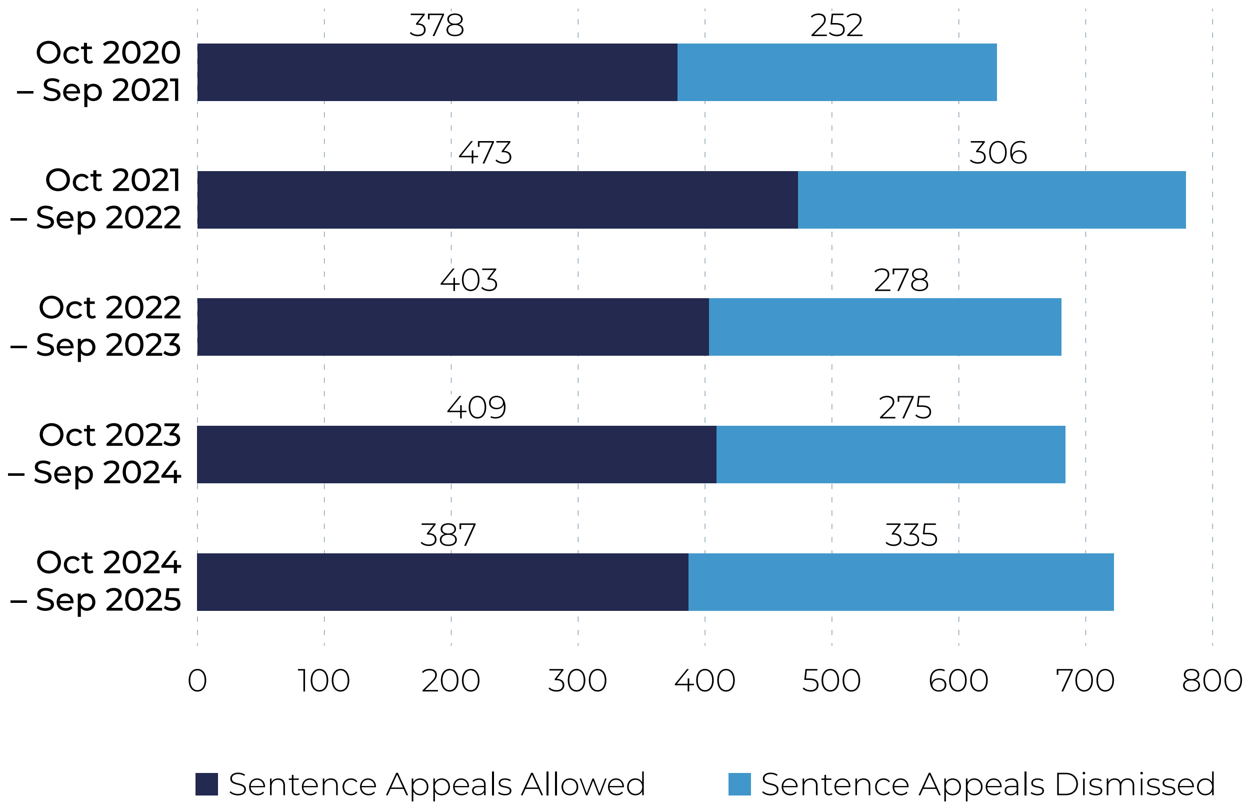
Annex C – Section 31 Applications



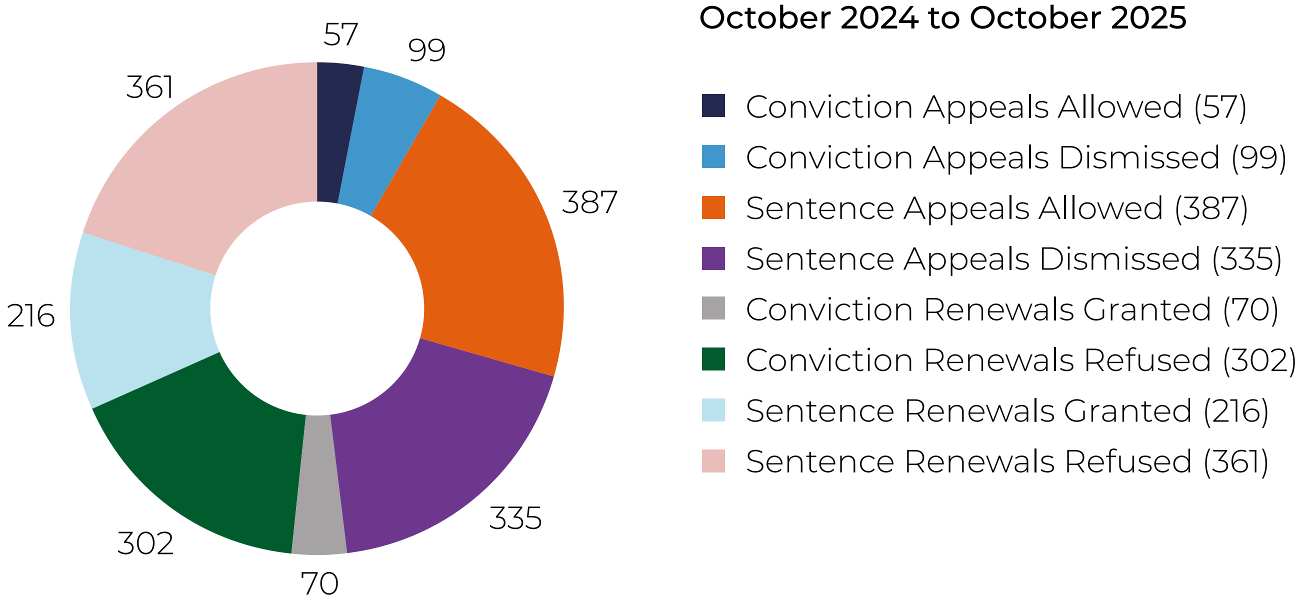


Annex D – Appeals Heard

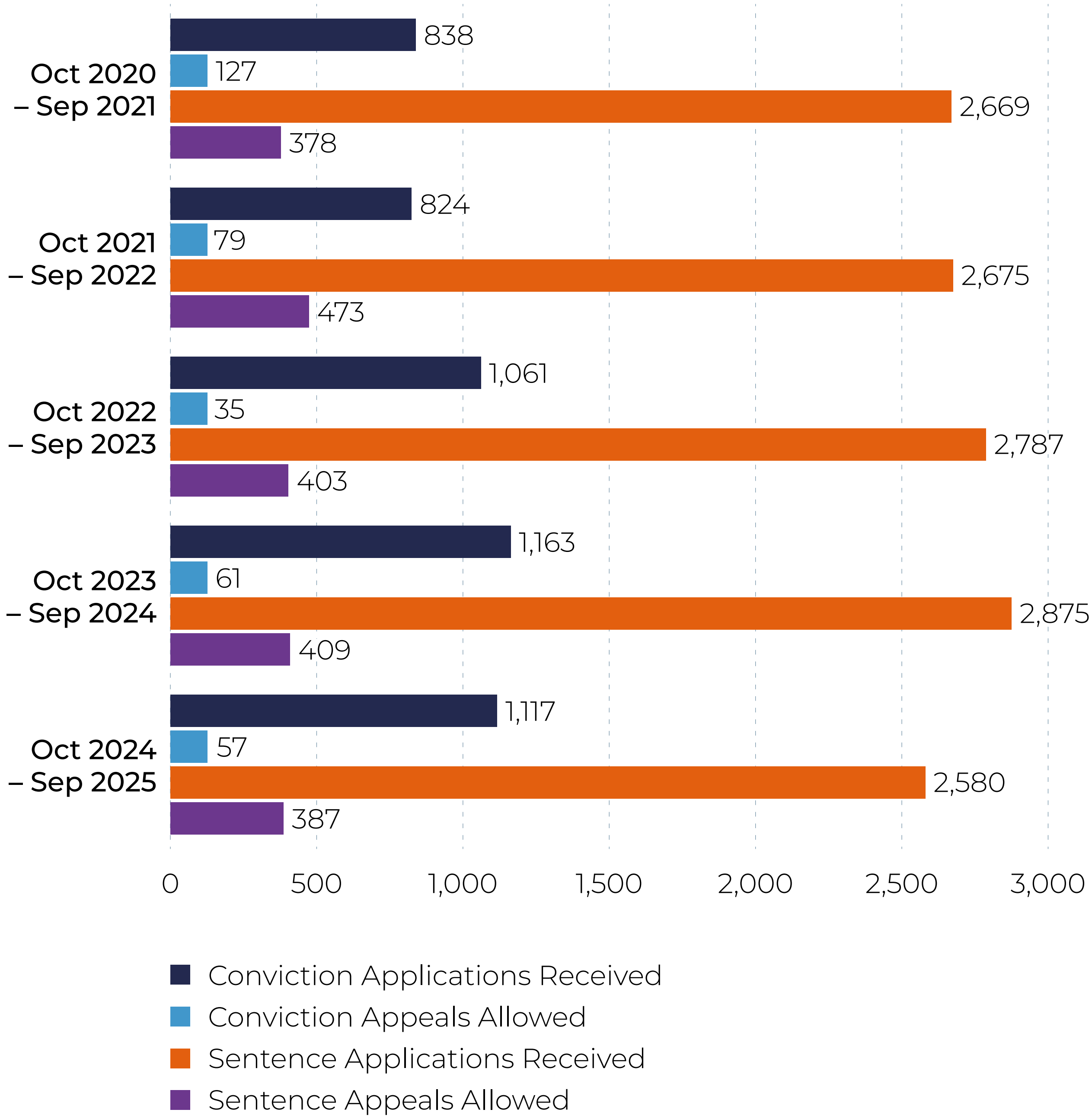




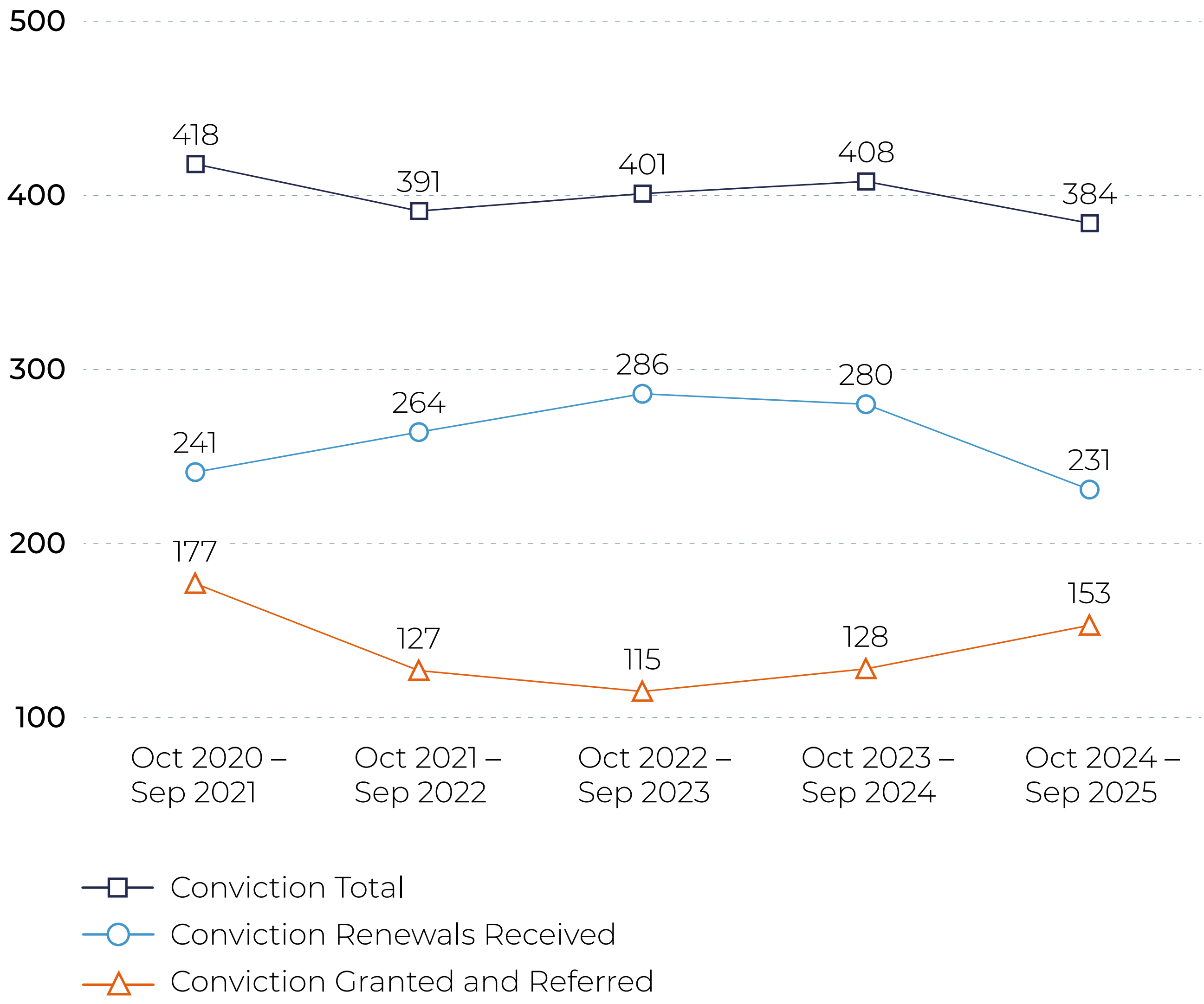
Annex E – Court time Appeals

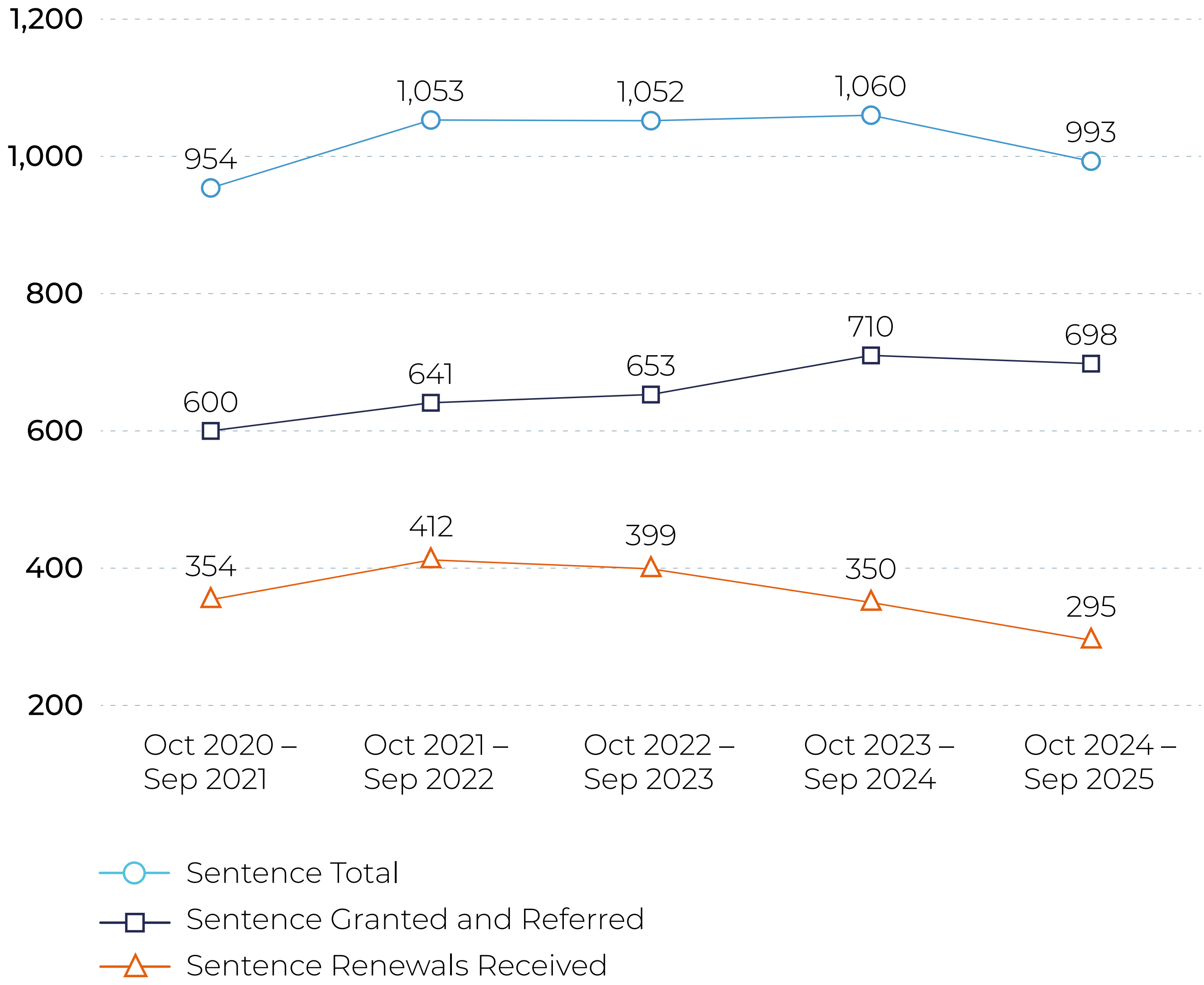


Annex F – Applications received and appeals allowed



Annex G – Applications Granted, Referred or Renewed

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Oct 2020 – Sep 2021
Oct 2021 – Sep 2022
Oct 2022 – Sep 2023
Oct 2023 – Sep 2024
Oct 2024 – Sep 2025
Sentence Total
Sentence Granted and Referred
Sentence Renewals Received

Annex H – Old Cases