The Court of Appeal
Criminal Division

Review of the Legal Year
2007 / 2008

Review of the period October 2007 to September 2008

Introduction

Having retired from the dust of the arena I look back at the last year from the relative calm of the Law Lords' Corridor. My comments relate not so much to the last year as to the last three, for last year has been very much 'more of the same'. That same has been frenetic activity. Whether you talk to Circuit Judge, High Court Judge or presider from the Court of Appeal the reaction is the same – a spell in the 'Crim Div' is hard labour. Managing the workload is only possible because of the efficient service of all who work in the Criminal Appeal Office, and particularly the lawyers who produce the invaluable summaries and draw attention to the sentences whose illegality have escaped the attention of all in the court below and might well have passed unnoticed on appeal also. I also wish to pay tribute to Master Venne, the Registrar of Criminal Appeals. 'Master and Commander', he runs a tight ship but does so with a relaxed calm and charm that results in a happy ship's company.

The work of all who sit in the criminal jurisdiction, whether in the Magistrates' Court, the Crown Court, the Court of Appeal or the House of Lords has been rendered infinitely more arduous than when I sat as a Recorder by a ceaseless torrent of legislation, adding complexity to substantive law and to the sentencing exercise. Some of this legislation is needed to deal with changing circumstances, and this includes some of the new terrorist offences. Ruling on the ambit of these occupied quite a lot of my energy last year and is continuing to do so, sometimes in appeals that challenge my own rulings. Other legislation is less easy to justify, including the subdivision of sexual offending into an astonishing number of different offences, some of which have yet to see the face of an indictment. Changes in the law relating to hearsay and bad character were bound to provide a fruitful source of appeals, and these show no sign of falling off.

There is one area where workload has reduced. The Attorney General has referred significantly fewer sentences to the Court. I welcome this. A challenge on the ground that a sentence is unduly lenient should be reserved for the very rare case where the judge appears to be significantly out of line. The statistics in the Summary that follows this Introduction are impressive. Less than 1% of convictions result in successful appeals and only 1.3% of sentences. There are still too many applications, often renewed, that have no prospect of success. These cause a waste of valuable time and energy. The introduction of a warning by the Single Judge that renewing an application will risk a Loss of Time Order is having a salutary effect and I hope that there will be a further reduction in such applications over the next year.

Over the last three years I have met with colleagues in other jurisdictions on a number of occasions. They are always astonished when I tell them how speedily we process our criminal appeals. There is no room for complacency, but there is good cause for satisfaction.

Lord Phillips of Worth Matravers
Lord Chief Justice of England and Wales

1 Summary for the period October 2007 to September 2008

1.1 The Court continues to play a critical role in protecting and promoting public confidence in the criminal justice system. It exists to determine appeals from the Crown Court and to provide guidance on the interpretation of criminal law and its procedures. In most cases, it is also the Court of final appeal and its role is therefore fundamental in protecting the rights of the individual defendant from miscarriages of justice and in preserving the convictions of the guilty.

1.2 Having seen the first increase since 2002 in the number of applications received by the Court last year, this year has seen the number of applications level off with a total of 6854 applications received (a small increase over the year of 60 applications). That increase has been wholly attributable to sentence applications. This year the Court received 5313 sentence applications and 1541 conviction applications. This was 137 more sentence applications and 57 less conviction applications then those received in the previous year. The number of applications outstanding has risen slightly since last year (3186 compared to 3010), however it is still relatively less comparable to previous years. (see **Annex A**).

1.3 The average waiting time of cases disposed of by the Court over the previous 12 months was 11.1 months for conviction cases and 3.8 months for sentence only cases (see **Annex B**). In contrast, last year the average waiting time for conviction cases was less at 10.9 months, although for sentence cases was more at 4.2 months. The Court is committed to reducing waiting times, which is demonstrated by the significant reduction in sentence cases. Work still needs to be done though to reduce waiting times further, especially in respect of conviction cases.

1.4 In order to proceed to a full appeal hearing, an appellant must be granted leave to appeal, either by a single Judge or by the full Court dealing with a referred or renewed application for leave. A total of 1541 conviction applications were received in the reporting year. 212 appellants were granted leave to appeal by a single Judge, 38 had their application referred to the Court by a single Judge and 138 had their application referred to the Court by the Registrar. Of those applicants who were refused leave to appeal, 58% renewed their applications to the full Court (compared to 57% last year). (see **Annex A and G**).

1.5 Similarly, there were 5313 sentence applications over the reporting year and 1248 appellants were granted leave to appeal, 84 had their application referred to the Court by a single Judge and 613 had their application referred to the Court by the Registrar. 692 applicants renewed their applications for leave to appeal against sentence to the full Court following refusal by a single Judge. This was 204 less than last year and amounted to only 27% of the total number of applicants who were refused leave to appeal. It is telling that this decrease has occurred following the introduction of the new Form SJ and a single Judge's indication as to whether or not a Loss of Time Order may be appropriate should the case proceed and be unsuccessful. (see **Annex A and G**).

1.6 It is interesting to look at these statistics in the context of all Crown Court trials throughout the legal year. Approximately 10% of cases (conviction or sentence) dealt with at the Crown Court are appealed to the Court of Appeal Criminal Division. Of that 10 %, only 34% are granted leave to appeal or referred to the full Court (i.e. 3.4% of the total number of Crown Court

cases). Of those that proceed to a full appeal, 74% of sentence appeals and 39% of conviction appeals were successful, thus in terms of all Crown Court matters, approximately 1.3% of sentences result in successful appeals and less than 1% of convictions result in successful appeals. This clearly demonstrates good reason for confidence in the criminal justice system, especially as some of the appeals that are successful are based on information or evidence which was not available at trial.

1.7 There was a slight increase in the number of applications which were made under some jurisdiction other than the Criminal Appeal Act 1968. During the period of this review, the Court dealt with 29 cases (compared to 25 in the previous year) where the Prosecution exercised its right of appeal. Although still a relatively small number of cases compared to the bulk of the Court's business, these applications often have to be listed at very short notice which can mean that the Court's lists have to be completely re-organised to accommodate them. The number of interlocutory applications halved this year to 16 cases.

1.8 **Annex E** shows the proportion of all cases heard by the Court during the period. There is a clear consistency in the Court's decision making in terms of the rates at which leave to appeal is granted and the final results. This is further highlighted in **Annex F** which shows the number of successful appeals against conviction and sentence as against the total number of such applications received.

1.9 The number and type of cases heard by the Court can vary considerably over a given year. Hearings can last anything from 15 minutes to days depending on their nature. The length of time of a hearing will depend on many factors such as the nature and complexity of the case, the need to receive witness evidence and representation. If the Court is only hearing sentence appeals, as many as sixteen may be listed in one day.

1.10 The following table shows the number of days sat in court together with the number of reading days, reflecting the different types of constitution:

Year	Lord Justice		High Court Judge		Circuit Judge	
	CT	RD	CT	RD	CT	RD
2002-2003	768	280	1295	496	229	88
2003-2004	798	339	1300	540	256	93
2004-2005	765	301	1317	496	194	94
2005-2006	758	287	1283	482	242	92
2006-2007	743	384	1293	495	247	95
2007-2008	725	360	1178	439	258	89

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

1.11 The number of sitting days for Lord Justices decreased slightly during the year. Retired judges also sit regularly as part of the constitution of the Court. Over the reporting year the retired Judges sat for 136 days which increased the total number of sitting days for High Court

Judges to 1314. Lord Justices have a higher proportion of administrative days to court days in comparison to the other Judges, the reason for this is that they have other judicial commitments such as membership of the Judicial Appointments Commission and other administrative duties.

1.12 The Court has continued to utilise two-Judge courts where two High Court Judges can deal with certain renewed applications for leave to appeal against conviction and sentence, and many appeals against sentence.

1.13 The Court has historically sat in six constitutions, with the exception of the summer vacation. The slightly reduced number of Court Sittings over the year reflects the fact that the Court was reduced to five constitutions over the period May- July 2008. This reduction was brought about by the need to release a constitution to sit in the Administrative Court because of particular burdens placed on that Court at that time. Although, it was the summer vacation, one constitution sat in August and two in September.

1.14 This year showed a significant decrease in the number of directions hearings in comparison to the previous year from 149 hearings to 95 hearings. The reason for this is that Criminal Appeal Office lawyers are increasingly more focussed on case management and progression and aim to ensure the proper progression of cases without the need to take up valuable Court time. There are of course some cases which require a firmer hand, regrettably because at times counsel fail to comply with proper requests from the office. The Registrar will in those, and indeed other circumstances give directions either in writing or direct that Counsel attend for an oral hearing before him.

1.15 This year, the Attorney-General has referred 78 unduly lenient sentences to the Court pursuant to section 36 Criminal Justice Act 1988. This is a considerable reduction on last year's figure of 134 such cases. The Court has in some cases held that substantial increases in sentence are appropriate. For example in ***Attorney General's References (No. 114 of 2007)*** [2007] EWCA Crim 366 the Court increased a sentence of 4 years' imprisonment for possession of a Class A controlled drug to 8 years'. Also of note is ***Attorney General's References (Nos.85, 86 & 87 of 2007) sub nom R v (1) Tsouli (2) Mughal (3) Al-Daour*** [2007] EWCA Crim 3300 in which the Court increased the defendants' sentences of 10, 7 ½ and 6 ½ years' for Incitement to murder contrary to section 59 of the Terrorism Act 2000 to 16, 12 and 10 years' respectively.

1.16 In terms of costs, 7180 bills of costs were received totalling £15.03m of which 553 which were in excess of £4,000. This represents a decreases of 1.01% compared with the previous year's total number of bills. 37 bills of costs were received which were in excess of £50,000. This represented a 24% decrease in comparison with similar sized bills received in the previous year.

2 Criminal Appeal Office Organisation

2.1 The Court is supported by the Registrar and the staff of the Criminal Appeal Office, comprising some 33 lawyers (some of whom work part-time) and 85 administrative staff. The office is structured into four different casework groups, one of which deals exclusively with sentence cases. The Office is responsible for processing applications for leave to appeal, obtaining the necessary papers, preparing the case to enable a single Judge to determine it, writing a case summary for the Court and taking all steps to ensure that cases are heard at the earliest opportunity once fully prepared. Staff also advise appellants and their legal representatives on matters of procedure and deal with a huge volume of correspondence and telephone queries. 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 public service.

2.2 Lawyers at the Criminal Appeal Office work closely with the Registrar to ensure that cases are guided through the appeal process efficiently and justly. They provide case summaries which are invaluable to the Court and practitioners. They also provide advice on procedural matters to practitioners and applicants in person. Within the Office, there are also specialist senior lawyers, who deal with the more complex cases, prosecution appeals against terminating rulings, interlocutory applications and other ad hoc matters. Their specialist knowledge, often gained over many years practice within the office, is invaluable for the proper conduct and case progression of what are often very complex and/or urgent cases.

2.3 Dedicated teams of administrative staff support the lawyers and are responsible for the preparation and progression of the majority of sentence only cases, obtaining advice from Criminal Appeal Office lawyers as necessary. They write the case summaries on all but the most complex sentence cases and also provide essential back office support. They also deal with specialist matters such as the assessment of costs and the listing of cases. Court clerks sit as the Registrar in Court.

2.4 The Registrar's staff play a proactive role in preparing cases for the Single Judge and indeed the Full Court. One clear example of this is in respect of unlawful sentences. In some instances, the failure by the Crown to provide the sentencing judge with proper information as to sentencing and indeed defence counsel's apparent misunderstandings of sentencing provisions (especially those under the Criminal Justice Act 2003) has 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 many instances the staff of the Criminal Appeal office are the first to identify that a sentence is in fact unlawful and draw that to the attention of the parties and the Court

2.5 The legal team is headed by four Senior Legal Managers, who are responsible for the throughput of all work in the CACD. Their work however is not confined to the management of staff and work, but also encompasses specialist training both internally and externally, maintaining best practice and assisting the Registrar in carrying out his statutory functions. They liaise closely with the Area Director for the Court of Appeal. The administrative team is headed by the Court Manager and her Deputy, who are responsible for office finance, systems and compliance with departmental objectives.

2.6 The Registrar and Judiciary are also assisted by Michael Catterson, Legal Information and Dissemination Lawyer and Victoria Froggatt, Registrar's Staff Lawyer.

2.7 The Legal Information and Dissemination Lawyer reviews all of the conviction appeals listed before the Court and distributes each week to the senior judiciary and within the Criminal Appeal Office a list, summarising the issues which are likely to arise, alerting different constitutions of the Court to similarities in cases before them, and ensuring that relevant recent unreported judgments of the Court are drawn to the attention of the Court and the parties. Regularly throughout the year on the Registrar's behalf, he distributes to the judiciary and to the staff of the Criminal Appeal Office a Bulletin digesting statutory changes, important decisions of the Court, and of other courts which may impact upon the decision-making of the Court. He assists the Registrar in keeping relevant primary and secondary legislation under review and in dealing with other interested parties when proposals for change are made. He has oversight of all legal advice given by the Registrar's legal staff to administrators in sentence cases and draws the Registrar's attention to recurring issues with a view to the Court being enabled to give general guidance in what has become an area of extraordinary complexity.

2.8 The Registrar's Staff Lawyer works directly to the Registrar assisting him and the Judiciary with any matters which require a legal input, whether that be advice, research, co-ordination of special courts or liaison with external stakeholders. She also acts as Permanent Editor of this review.

2.9 The Criminal Appeal Office said farewell to Helen Chaytor, Senior Legal Manager, at the end of the last legal year when she joined the Revenue and Customs Prosecution Office as a senior lawyer in the International Policy and Advisory Division. Helen joined the office as a casework lawyer in 1999. In 2002, she spent a year at the European Court of Human Rights in Strasbourg. She returned to the Criminal Appeal Office in 2003 and was appointed as the Registrar's Staff Lawyer, before becoming a Senior Legal Manager in 2005. Helen was replaced by Paul Burns who having joined the office from the CPS in 2001, became a Senior Lawyer in 2004, before becoming a Senior Legal Manager.

2.10 The Senior Legal Management team was expanded in October by the appointment of Diane Stenning who had previously enjoyed a varied career with service at the Assets Recovery Agency, Crown Prosecution Service and Revenue and Customs Prosecution Office.

3 Cases of Note

3.1 The Registrar and his staff, together with the Judiciary, continuously 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 in batches and possibly before a constitution of five Judges. The aim being to provide clear precedent on matters for which precedent may not exist or simply to address issues which are particularly important.

3.2 In ***R (on the application of Trinity Mirror PLC and others) v Croydon Crown Court (Respondent) & (1) A (2) B (Children) (by the Official Solicitor) (Interveners)*** [2008] EWCA Crim 50 a 5 Judge Court, which included the President of the Family Division, considered an appeal under s159 Criminal Justice Act 1988, where a trial Judge had made an order preventing the identification of the children of a defendant who had pleaded guilty to twenty counts of making or possessing indecent photographs of children, although the defendant had been named in open court. The Court held that s11, Contempt of Court Act, 1981, did not confer any jurisdiction on the Judge to make the order which he had made. It was not incidental to the proceedings which had been conducted in the Crown Court. Jurisdiction to make an order for the children's protection lay in the High Court. The Court made clear that the balancing of the children's rights under Art 8 and the rights of the press under Art 10 would not automatically be resolved in favour of the children. It was not possible to over-emphasise the importance to be attached to the ability of the media to report criminal trials which embodied the principle of open justice in a free country. Occasionally, restrictions were considered appropriate but, where the Court was vested with a discretion, the restriction had to be absolutely necessary. It was sad, but true, that the criminal activities of a parent could bring misery, shame and disadvantage to their innocent children.

3.3 In ***R v Bakish Alla Khan and Others*** [2008] EWCA Crim 531 the grounds of appeal related to the composition of juries and the application of the principles identified by the House of Lords in ***Abdroikof, Green & Williamson*** [2007] UKHL 37. Specifically, the Court considered cases where police officers or employees of the CPS sat on juries and the resultant "appearance of bias". The Court expressed the view that it is undesirable that the fear of jury bias should lead to appeals, particularly if such appeals lead to the quashing of convictions necessitating re-trials. The Court was of the view that any risk of jury bias, or of unfairness as a result of partiality to witnesses should be identified prior to the commencement of the trial. Thus if any risk was identified, the particular juror should be stood down.

3.4 The Court considered giving guidance as to the steps that should be taken to ensure that the risk of jury bias does not occur, but concluded that the various authorities and HMCS should consider providing guidance to their staff on this issue. One matter that the Court did consider should receive immediate attention was that trial judges should be aware at jury selection if any juror in waiting is or has been, a police officer or a member of the prosecuting authority, or is a serving prison officer. Those called for jury service should be required to record on the appropriate form whether they fall into any of these categories, so that this information can be conveyed to the judge.

3.5 In a group of cases, ***R v Povey and Others*** [2008] EWCA Crim 1261, the Court made some observations about knife crime and offensive weapons generally, commenting that such offences were reaching epidemic proportions. The carrying of such weapons represents a public danger and courts will continue to do what they can to help reduce and, so far as practicable eradicate, the danger. It is important that the public had confidence in the criminal justice system to deal with this problem. The Court revisited the earlier guideline case of ***R v Poulton and Celaire*** [2003] 1 Cr App R(S) and recommended that the Magistrates' Court Guidelines on Sentencing for such offences should normally be applied at the severe end of the appropriate range of sentences, given the current prevalence concerns. The guidance will result in more such cases coming before the Crown Court for trial, especially where knives are involved, and thus may have an impact on the number of cases appealed to the CACD.

3.6 In a number of appeals listed together in a special court (although not conjoined) - ***R v Islam, Richards and Sivaramen*** [2008] EWCA Crim 1736 & 1740 the Court considered appeals against confiscation orders, which had been adjourned pending the House of Lords decisions in ***R v Jennings, May and Green***. These were the first batch of cases of this sort, the second group of cases will be dealt with by the Court in the early part of the Michaelmas Term 2008 and a third set, before a five-Judge Court later that term.

3.7 A significant number of appeals against conviction seek to rely upon fresh evidence in accordance with Section 23 of the Criminal Appeal Act 1968. Of note was the case of ***R v Hill*** [2008] EWCA Crim 76 in which the Court confirmed that it was of central importance to the law that a person charged should advance whatever material was available to him at trial. The Court of Appeal would not ordinarily so exercise its powers to admit fresh evidence as to permit a defendant to change his account after trial in order to run a different defence on appeal, in the absence of the witnesses and of the jury.

3.8 Grounds of appeal which relate to the admissibility of bad character are something which has provided the Court with food for thought since the provisions relating to such evidence were introduced in the Criminal Justice Act 2003. This year has been no different and a number of key judgments have added to previous case law in this area.

3.9 In ***R v D*** [2008] EWCA Crim 1156 the Court reviewed the use of gateway (c) and stated that evidence of propensity should not be allowed to 'slide in' under the guise of important background evidence. Gateway (c) was quite distinct from the other gateways in terms of the uses to which the evidence may be put. Its 'legitimacy was established by reference to the necessity for such evidence, since without it the jury would find it impossible or difficult properly to understand.

3.10 In ***R v Colliard*** [2008] EWCA Crim 1175 the Court considered evidence admissible under gateway (d) relating to an important matter in issue between the Crown and the defence. In cases where the important matter in issue was the propensity of the accused, as with all gateway (d) cases, the question whether something was relevant was dependent on the facts. What may appear likely to be an important matter in issue might become a non-issue because of the way in which the defence is run.

3.11 Whilst appeals often deal with novel points of law, they also provide commentary on matters of procedure. In ***R v Holdsworth*** [2008] EWCA Crim 971 the Court heard fresh evidence from 5 eminent medical specialists, one of whom had to be recalled to deal with matters advanced by another specialist in his evidence. The Court commented that the evidence received had involved intellectual debate between experts and, with the benefit of hindsight, it would have been better had experts in like discipline been in contact before the hearing to ascertain points of agreement and disagreement. A summary setting out points of disagreement and the reasons for such disagreement should have been agreed in advance. In directing a retrial, the Court commended the comments made in ***R v Harris*** [2005] EWCA Crim 1980 as to the power of the Court to make provision for experts to consult together and produce a summary of points of disagreement.

3.12 In ***R v Hodgson & Pollin*** [2008] EWCA Crim 895 the Court dismissed an appeal against conviction where the indictment charged an offence under s18, OAPA, 1861, but the particulars omitted any reference to intent. Explicit reference to the mental element of the offence, although desirable, was not always required. The Court observed that the appeals against conviction had resulted from sloppy drafting of the indictment by prosecuting counsel. It should have been noticed by the judge and counsel on arraignment but was not. The indictment was no mere formality but was the foundation of the prosecution. It emphasised that it was the responsibility of counsel to ensure that the indictment was in proper form before arraignment.

3.13 In ***R v RL*** [2008] EWCA Crim 973 the Court considered the admission of a written statement by the appellant's wife who was treated as a non-compellable witness and who had declined to give evidence. The Court concluded that there was no requirement on the police to tell a wife that she was not compellable before interviewing her and that s80, PACE, did not pose a legal bar to the admission of her written statement at trial. There was an obvious paradox in excusing a wife from giving evidence but placing her statement before the jury in written form. Whether it was just to admit such a statement was entirely dependent on the facts of the individual case.

3.14 In ***R v Bassett*** [2008] EWCA Crim 1174 the Court considered the elements of the offence of voyeurism created by s67 of the Sexual Offences Act 2003, and the definition of "private act" provided by s68. The appellant had taken a hidden video camera into the men's changing room at a public swimming pool where he had observed a man wearing swimming trunks taking a shower. Whether he was guilty of the s67 offence turned on whether the word "breasts" in s68 included the male chest. The Court held that it did not.

3.15 ***Mitchell*** [2008] EWCA Crim 850, a case involving the taking of vehicles using violence raised the issue of the requirement on the prosecutor to prove the necessary intent to deprive permanently. The appellant and three others came across a lady in a parked car, broke the window, dragged her out and drove off. Less than two hours later, police recovered the car from where it had been abandoned a few miles away. The Court concluded that the Crown had failed to establish the necessary intent to deprive permanently and had not established the deemed intent represented by s6(1), Theft Act, 1968. If the taking was not theft, the use of violence did not translate it into robbery.

3.16 The Court has again dealt with cases concerning jurisdictional matters. In ***R v Adams*** [2008] EWCA Crim 914, the Court confirmed that, although preventative rather than punitive, a Financial Reporting Order is a "sentence" within the meaning of s50, CAA, 1968, and can be appealed to CACD. The Court commented that, had it held otherwise, there would have been no avenue of appeal against such an order.

3.17 In ***R v W Stevenson & Sons*** [2008] EWCA Crim 273 the Court considered whether it was possible to indict a partnership as a defendant and, if so, whether individual partners were then exposed to criminal liability. An interesting case which concerned offences under the Sea Fishing (Enforcement of Community Control Measures) Order 2000, the partnership was the owner of a fishing vessel which had failed to make proper returns of its catches. At common law, a partnership cannot incur criminal liability. Difficult questions of criminal liability had been avoided where legislation provided express answers. There was no question but that primary or secondary legislation could render a partnership liable as a separate entity. The Court held that the partnership could be criminally liable but not the individual partners who could only be criminally liable if they were complicit. Pleas entered by counsel on behalf of the partnership on arraignment were not defective. The resultant convictions of the partnership did not expose the individual partners to liability, they were not individually "offenders" against whom confiscation proceedings could be brought.

3.18 This year has seen the increased use of the new Form SJ to reflect whether or not a loss of time order would be likely should an applicant renew their application for leave to appeal. In ***R v Greaves*** [2008] EWCA Crim 647, the Court treated the fact that the applicant had been released from custody prior to his renewed application for leave to appeal being heard as debarring it from making a loss of time order under s29, CAA, 1968. The Court however gave a stark warning for would-be renewed applications, that neither the bulk nor the complexity of an application provided a barrier to the making of an order under s29 nor did it translate an unarguable case into one which was arguable.

3.19 Appeals against sentence provide the Court with a significant proportion of its work. In ***R v Crispin***, the Court expressed strong views when dismissing an appeal against a sentence of 8 years for possession of a substantial arsenal of weapons (including 4 rifles, 2 shotguns, a shortened shotgun, an improvised fragmentation and incendiary device and 1000 rounds of ammunition). The Court's view was unequivocal: gun crime was a contemporary curse. The unexplained unlawful possession of such weapons, even if not used or about to be used, must attract severe deterrent sentences.

3.20 The case of ***R v Lawlor*** [2008] EWCA Crim 474 provided a useful reminder of the rule that a sentence of detention in young offender institution in excess of 12 months cannot be suspended. If such an error is not identified within (now) 56 days so as to be corrected within the 'slip rule' in the PCC(S)A 2000, s151(1), the only remedy is adjustment by way of an appeal. There is no 'saving' provision unlike that within s.150(1) which has the effect of remitting any excess over 24 months (the maximum permitted) in respect of a Detention and Training Order.

3.21 The Court has continued to be faced with sentence appeals dealing with the dangerousness provisions within the Criminal Justice Act 2003. In ***R v Barwell*** [2007] EWCA Crim 2561

the Court considered the effect on future risk presented by an offender by the availability of suitable treatment to the extent that it may impact on an assessment of dangerousness. The Court quashed a sentence of imprisonment for public protection where pre-appeal psychiatric reports (not available to the sentencing Judge) indicated that Sex Offender Treatment work was likely to control and minimise the risk that the offender presented.

3.22 In ***R v Blythe*** [2008] EWCA Crim 830, in the context of the then dangerousness provisions within the CJA 2003, the Court considered the application of section 13(1) Sexual Offences Act 2003 (Child sex offences ordinarily charged under ss.9-12 SOA 2003) which applied when the offences were committed by a person under 18. The Court held that whilst the offences per se were the same, the provision for charging under 18's under section 13 meant that the offences were actually quite separate with their own different sentencing regime.

3.23 In ***R v Terrell*** [2007] EWCA Crim 3079 the Court considered the application of the dangerous offender provisions to an offender who had viewed pornographic images of child abuse on the internet. The Court concluded that, absent any indication that the offender might progress into contact offences or the taking or commissioning of images, the causal link between the viewing of the images and the (undoubted) serious harm suffered by the abused children was too remote. The dangerous offender provisions did not apply where a small and indirect contribution to harm might result from a repetition of offending at a similar level. They might well be appropriate where reoffending might involve particular children, or progression in terms of contact or gravity, or widening of the network. The imposition of a Sexual Offences Prevention Order may mitigate any future risk such that the statutory criteria for the imposition of a sentence for public protection would not be met. The issue was addressed again in ***R v Van Der Huure*** [2008] EWCA Crim 1727. The circumstances however were very different, the appellant was a large-scale distributor of child pornography and could be distinguished from ***Terrell*** on that basis. It was plain on the facts that the application of the dangerousness provisions was made out.

3.24 In ***R v Shalih*** [2007] EWCA Crim 2750 the Court, faced with an appeal against conviction for possession of a firearm with intent to endanger life contrary to s.16 Firearms Act 1968, had to consider whether the trial judge should have directed the jury that they should acquit the defendant if they concluded that the only reason why he had been in possession of the firearm may have been that he intended to use it, if necessary, for lawful self-defence. The Court held that it would only be in rare cases that self-defence would provide a defence to a charge under s16. The effectiveness of legislation designed to prevent the carrying of firearms (or offensive weapons) would be seriously impaired if anyone who reasonably feared that he or she might at some time be unlawfully attacked was permitted to carry a weapon.

3.25 In ***R v Bieber*** [2008] EWCA Crim 1601 counsel for the appellant sought to persuade the Court that a life sentence for murder with a "whole life" tariff was an irreducible life sentence, i.e. 'without any prospect of release or any reconsideration of the facts of the case and regardless of any changes which might occur in the mind or behaviour of the inmate or progress made by him towards rehabilitation', amounts to inhuman treatment contrary to Article 3 of the European Convention on Human Rights. Applying the approach of Grand Chamber of the European Court of Human Rights in ***Kafkaris v Cyprus*** (application no. 21906/04) the

Court held that such a sentence was not irreducible. There was provision under section 30 of the Crime (Sentences) Act 1997 for the release of a prisoner subject to such an order and therefore Article 3 was not infringed.

3.26 The Sentencing Guidelines Council has continued to produce useful guidelines for trial Judges. In appeals against sentence, they are often relied upon to advance an argument that a sentence is manifestly excessive. They are a valuable tool for the Court when considering such appeals. A number of definitive guidelines have been published in this legal year, including guidelines on Assault and Other Offences Against the Person, Overarching Principles: Assaults on Children and Cruelty to a Child, Causing Death by Driving and Failing to Surrender to Bail.

3.27 This year also saw the publication the first set of Magistrates' Court guidelines to be issued under the auspices of the Council. Applicable to all relevant cases appearing for allocation or sentence on or after 4 August 2008, they are the most extensive guideline produced by the Council and cover most of the offences regularly coming before Magistrates' Courts which require decisions on allocation or on sentence. These are the first set of guidelines applicable in the Magistrates' Court to carry the statutory duty placed upon the courts by section 172 of the Criminal Justice Act 2003 to 'have regard' to the guidelines, and to give reasons if choosing to depart from them.

3.28 In ***R v Bowley*** [2008] EWCA Crim 2036 the Court commented that the guidelines issued by the Sentencing Guidelines are just that guidelines. Even when they do not apply directly and specifically address an individual offender or the offence he has committed, in such a way that the court is bound by statute to have regard to the guidelines, they may be used by any judge to assist them in their assessment of sentence. Just as the guidelines, even if definitive, do not narrowly restrict judges' sentencing options, so they may be used to inform their thinking and approach to sentence. Judges should not be unduly constrained by particular sentencing brackets which are set out in guidelines.

4 Prosecution Appeals

4.1 In addition to appeals against sentence and conviction, there are 20 other types of appeal within the jurisdiction of the Court of Appeal (Criminal Division). One such other type is the right of appeal given to the prosecutor under s58 Criminal Justice Act 2003. Commonly referred to as a right of appeal against "terminating rulings", although the Act does not use that term and section 58 creates a "General right of appeal in respect of rulings". The Court has dealt with a slightly increased number of these appeals this year – 29 as compared to 25 last year.

4.2 In ***R*** [2007] EWCA Crim 370 the issue of jurisdiction to appeal under s58 arose in circumstances where the trial judge had refused to adjourn to allow the Crown to take new expert evidence when they had caused the delay and thus failed to comply with the Rule 24 Crim PR and the overriding objective. The Court of Appeal held that they were not required, in a section 58 appeal, to undertake an investigation into whether there was, objectively, a terminatory ruling in the sense of one that would lead to an acquittal. What mattered was simply whether the Crown was prepared to make an 'acquittal agreement' in good faith. The prosecution is the sole judge of whether the consequence of a ruling which it wished to appeal should be that a defendant should be acquitted.

4.3 In ***C*** [2007] EWCA Crim 2532, the Crown appealed following a ruling by the trial Judge refusing an application to adjourn a retrial to enable the prosecutor to arrange for the attendance of the complainant, whose evidence was vital to the prosecution case but who had made clear her refusal to attend. The Court considered the statutory provisions and determined that, although pre-eminently a case-management decision, they were sufficiently widely drafted to permit an appeal against the ruling. Having determined it had jurisdiction to consider the appeal, the Court emphasised that trial Judges are best placed to make case-management decisions and that s67(c) placed a very severe restriction on this Court's power to interfere.

4.4 In ***Y*** [2008] EWCA Crim 10 the Court had to consider whether a ruling refusing to admit evidence was capable of falling with s58 or could only be dealt with under the right of appeal created by s62. The issue was significant because s62 was not in force. The Court deprecated the use of the term "terminating" in relation to appeals under s58. The word was not used in the Act. It was possible that a ruling might fall within both s58 and s62. It was not helpful to approach the jurisdictional issue by asking whether the ruling in question would bring the prosecution to an end. Although in law, exclusion of the particular item of evidence in this case would not do so, in practice it would. If the Crown continued with the trial to a successful submission of no case, s58(7)(b) allowed it to "piggy-back" the exclusionary ruling on an appeal against the ruling that there was no case to answer. Once it was determined that the ruling fell within s58, the decision of the Crown to volunteer the undertaking required by s58(8) (that the defendant be acquitted if the appeal failed) enabled them to appeal.

4.5 The issue of jurisdiction was considered again in ***O, J & S*** [2008] EWCA Crim 463 when the Court held that there was no conflict between ***Y***, ***C*** and the earlier case of ***Thompson & Hanson*** [2006] EWCA Crim 2849. ***Y*** was a clear and binding authority that a ruling as to admissibility of evidence could fall within s58.

4.6 ***LSA*** [2008] EWCA Crim 1034 was a prosecutor's appeal in the Courts Martial Appeal Court under provisions of military law which mirrored ss58-61, CJA, 2003. The Court held that the provisions of s58(8), CJA, 2003, meant that the Crown must give the undertaking (as to the defendant's acquittal if the appeal was abandoned or leave to appeal was not obtained) at the time when it informed the Court of its intention to appeal. The failure to give it then was fatal to an application to the Court for leave.

4.7 In ***R v Miell*** EWCA Crim 3130 the court considered only the second ever application to quash an acquittal and for a retrial pursuant to section 76 Criminal Justice Act 2003. The application was based on the defendant's plea of guilty for an offence of perjury, the perjury relating to his evidence at his original trial for murder.

5 Terrorism

5.1 Offences concerning terrorism are something which have continued to exercise the criminal justice system this year. Similarly the Court's work in this area has by no means diminished. Terrorism cases are by their very nature high profile and indeed are often complex. The vast majority of these types of matters are case-managed by the Senior Lawyers within the Criminal Appeal Office.

5.2 In ***R. v. Ibrahim and others*** [2008] EWCA Crim 880 the Court gave guidance on the admissibility of evidence obtained in the course of so called "safety interviews". It was held that there was no general rule to prohibit the admission of evidence obtained via such an interview. It was subject to the ordinary rules of admissibility under Section 78 of PACE. Although there was a prohibition on the jury drawing an adverse inference from silence during a safety interview, there was no such prohibition in respect of lies told during that interview.

5.3 In ***R v Zafar & others*** [2008] EWCA Crim 184, with some hesitation, the Court concluded that possessing a document for the purpose of inciting a person to commit an act of terrorism fell within the ambit of section 57 of the Terrorism Act. The Court considered the wording of the section: The phrase "for a purpose connected with" was so imprecise as to give rise to uncertainty unless defined in a manner that constrained it. It must be interpreted in a way that requires a direct connection between the object possessed and the act of terrorism; "Instigation" must be construed having regard to its normal meaning, for which incitement was a synonym.

5.4 The case of ***R v Rahman & Mohammed*** [2008] EWCA Crim 1465 provided the Court with an opportunity to impart some much welcomed guidance in relation to sentencing for terrorist offences. Whilst the case was concerned with sentencing for an offence of Disseminating a terrorist publication contrary to section 2 Terrorism Act 2006, the guidance has a general application to other terrorism offences. The Court concluded that terrorism offences can vary greatly in terms of their seriousness, and it followed that sentences would therefore also vary. When evaluating the seriousness of an offence, there was nothing to warrant a departure from the ordinary approach under s.143(1) Criminal Justice Act 2003. However, care had to be taken to ensure that the sentence was not disproportionate to the facts of the particular offence. Terrorist offences were usually extremely serious and whilst sentences should reflect the need to deter others, sentencing judges should consider whether if they pass excessively long sentences that are merited on the particular facts of a case, is there a danger that that will inflame rather than deter extremism?

5.5 A number of other issues regarding sentencing in Terrorism cases have also been dealt with by the Court this year. In ***R v Khyam, Amin, Akbar, Garcia & Mohmood and Others*** [2008] EWCA Crim 1612 the Court considered the relevance of time spent in custody outside the jurisdiction of England Wales and its relevance when sentencing. The Court held that whilst time spent being detained in a foreign jurisdiction (at the behest of UK authorities) could not be the subject of a s.240 remand time direction as it was not technically time spent on remand, it was time spent in custody attributable to the same criminal activity and should therefore be taken account of generally during the sentencing exercise.

5.6 In ***Attorney General's References (Nos.85, 86 & 87 Of 2007) sub nom R v (1) Tsouli (2) Mughal (3) Al-Daour*** [2007] EWCA Crim 3300 the Court was concerned with sentencing for an offence of Incitement to murder contrary to section 59 of the Terrorism Act 2000. The Act did not provide that an offence of incitement to murder must attract a mandatory sentence of life imprisonment. However imprisonment for public protection was an available sentence and there were circumstances where it might be appropriate for an offence contrary to s.59 to result in the imposition of a discretionary life sentence.

5.7 In ***R v Saleem, Muhid and Javed*** [2007] EWCA Crim 2692 the Court held that sentences for inchoate offences which could lead others to commit acts of terrorism should reflect the seriousness of the offending by taking into account how long it lasted, the sophistication, skill and industry devoted to it, and the likelihood that it would lead, or had led, others to commit acts of terrorism.

5.8 In ***R v Osman & Mohamed*** [2008] EWCA Crim 880 the Court upheld sentences of life imprisonment with specified minimum terms of 40 years for convictions for conspiracy to murder. (They had attempted to detonate bombs on the London transport system in an emulation of the July 7th bombings. They initially escaped detention and were at large for some weeks.) The offences were merciless and extreme crimes. The sentences imposed were severe and extreme, as they were rightly meant to be, but were utterly justified.

6 Legislative Developments

6.1 During the year, the Criminal Justice and Immigration Act was enacted and parts of it were brought into force on 14th July, 2008. Of particular and direct interest to the Court and its users are those parts which affect the powers of the Court and its procedures in dealing with applications and appeal.

6.2 One provision which has the ability to have a significant impact on the Court in terms of volume of work the increase from 28 to 56 days in which the Crown Court can vary a sentence or other order (the "slip rule"). This provision came into effect on 14th July 2008, thus its impact upon the work of the Court is not yet known. The coming year may cast some light on whether it does impact on the volume of sentence applications the Court receives.

6.3 In cases where there has been a development in the law since the date of conviction, the Court identified in ***R v Cottrell; R v Fletcher*** [2007] EWCA Crim 2016 that there may be a lack of symmetry in its powers when determining such a case dependent upon whether it was a direct application by a convicted person out of time or an appeal on a reference by the Criminal Cases Review Commission. The Court invited consideration of legislative amendment and, as a result, a new s16C has been inserted in the Criminal Appeal Act, 1968, the effect of which is to align the Court's powers in the two types of case.

6.4 This is a small but highly significant change which should ameliorate any possibility of tension between the powers of the Court and the powers of the Commission in such cases.

6.5 Although the government otherwise decided to withdraw its proposals to limit the discretion of the Court when dealing with appeals against conviction, it has legislated to ensure that when reversing or varying a trial Judge's ruling on appeal by a prosecutor under section 58 of the Criminal Justice Act, 2003, the Court will not direct the acquittal of a defendant unless a fair trial is not possible.

6.6 At the request of the Court, a number of detailed and uncontroversial amendments were made to the Criminal Appeal Acts with a view to ensuring the Court has all the powers which it needs for efficient and effective decision-making.

6.7 A time limit of 28 days has been imposed on the power of a trial Judge to grant a certificate that a case is fit for appeal, thus aligning this power with his power to grant bail pending appeal.

6.8 The power of the Court in section 4 of the Criminal Appeal Act, 1968, to resentence a successful appellant who remains convicted of other offences has been widened. It is no longer restricted to the counts on the same indictment but will now apply to a wider class of related offences.

6.9 The subsequent powers of the Court when it makes an Interim Hospital Order have been made consistent across all the provisions permitting the Court to make such an order. In future, in all cases the Court will have powers to extend or terminate the Order and to deal with the offender when it comes to an end.

6.10 The power of the Court to compel the attendance of a witness by the issue of a witness order is no longer confined to persons who would have been compellable witnesses at trial. The Court may now issue a witness order directed to any person whom it considers may be capable of giving relevant evidence. This may be of particular value in cases where the attendance at the hearing of an appeal of a trial advocate or of a juror is required. Section 23 of the Criminal Appeal Act, 1968, has been amended so as to put beyond doubt that the Court may exercise any of its powers in relation to witnesses as well as on an application for leave as on an appeal. Further amendment makes clear that it may exercise its powers to compel production of materials to a party in advance of any hearing as well as to itself at a hearing.

6.11 An amendment has been made to section 31 (which enumerates the powers which may be exercised by a single Judge) so as to include the power to grant leave to appeal on an Interlocutory application whether under section 9 of the Criminal Justice Act, 1987, or section 35 of the Criminal Procedure and Investigations Act, 1996.

6.12 Section 31C of the Criminal Appeal Act, 1968, which provided rights of appeal against procedural directions given by a single Judge, has been repealed. A single Judge, including of course a single Lord Justice, may now give procedural directions on the application of a party to an appeal, on a reference by the Registrar, or of his own motion secure in the knowledge that the efficient and effective disposal of the case for which he has provided cannot be challenged simply by seeking a review of his directions.

6.13 Finally, a small but important amendment has been made to section 37 of the Criminal Appeal Act, 1968, which will ensure that if a conviction is restored on a prosecutor's appeal to the House of Lords, the defendant will, ordinarily, be liable to serve the remainder of his sentence.

6.14 The Crown Court became empowered to make or vary a Serious Crime Prevention Order on conviction on 6th April, 2008. Section 24 of the Serious Crime Act, 2007, provided for a right of appeal in relation to such orders and empowered the Secretary of State to make detailed provision for such appeals by statutory instrument. The Secretary of State consulted closely with the Registrar of Criminal Appeals in the design and drafting of the necessary provisions, promulgated in The Serious Crime Act 2007 (Appeals under Section 24) Order 2008, and which came into force on 18th August, 2008. The provisions of the Order largely mirror those of the Criminal Appeal Acts (with appropriate adaptations) and prescribe the Court's powers and specific procedures for what is expected to be a relatively limited new jurisdiction.

7 The role of the Criminal Cases Review Commission

7.1 The Criminal Cases Review Commission ("the CCRC") was established on 1 January 1997. It is an independent body whose purpose is to investigate possible miscarriages of justice. Its statutory role and responsibilities are set out in Part II of the Criminal Appeal Act 1995 and it has jurisdiction over all criminal cases at any Magistrates' or Crown Court in England, Wales and Northern Ireland.

7.2 Over the reporting year, the CCRC referred 15 cases to the Court – 11 relating to appeals against conviction and 4 in relation to appeals against sentence. [Less than half the number referred last year]. Although a relatively small number of cases in comparison to the total number of applications received, these cases are notoriously complex and their referral is usually the final stage of a lengthy investigation where the CCRC concludes that there is a "real possibility" that the conviction or sentence would not be upheld.

7.3 Grounds of appeal referred by the CCRC do not require leave to be argued. However, in many cases, appellants seek leave to argue additional grounds of appeal which were not referred by the CCRC. This can result in additional delays if further investigation and additional transcripts and documents are required for the Court. Leave to appeal is required in respect of the additional grounds which may mean that additional Court time will be required to consider the issue of leave.

7.4 Many of these cases are referred by the CCRC because fresh evidence or new argument has come to light many years after the conviction. In ***R v Solomon*** [2007] EWCA Crim 2633, the appellant sought to admit and give credence to fresh evidence which differed significantly from the case advanced both at trial and on a previous unsuccessful appeal. Whilst it was clear that the evidence satisfied the criteria set out in ss23 (a), (b), and (c) Criminal Appeal Act 1960, there was no reasonable explanation for the appellant's failure to produce the evidence at trial. The Court indicated that only in the most exceptional circumstances would it admit fresh evidence on appeal which had been deliberately withheld at trial for tactical reasons. The circumstances of this case were exceptional and the evidence admissible on appeal.

7.5 In ***R v Diamond*** [2008] EWCA Crim 923 the Court had to consider whether or not to admit fresh evidence in relation to the appellant's mental state both at the time he killed and before and during his trial, 10 years previously. He had refused to allow his representatives to investigate or put forward a defence of diminished responsibility (although there was evidence at the time that he suffered schizophrenia) and in evidence at trial he had denied that he was the killer.

7.6 The Court repeated that it was fundamental to the trial process that a defendant had to advance his whole case at trial but observed that s23 nevertheless empowered the Court to receive fresh evidence in its discretion. It reviewed the principles applicable to the exercise of the s23 discretion and a large number of authorities. In the particular circumstances, the appellant's decision not to advance a defence of diminished responsibility at trial was a tactical decision made with sufficient understanding on his part and the fresh evidence would not be received.

7.7 The case of ***R v Stock*** [2007] EWCA Crim 1862 made legal history in that it was the second time the CCRC had referred a historic (1970) conviction (on fresh evidence grounds) to the Court and the fourth time the Court had considered it. The appeal however was unsuccessful.

7.8 The CCRC also has an essential role as an independent investigatory body for the Court. In addition to referring cases to the Court, the Court can itself direct, pursuant to Section 15 of the Criminal Appeal Act 1995 that the CCRC use its statutory powers to carry out investigations on its behalf. This Section applies to all cases before the Court and is not limited to those initially referred to the Court by the CCRC.

7.9 The Court has needed to call upon the CCRC this year to investigate a number of sensitive and complex issues. Of particular note was the Commission's willingness and expediency in investigating allegations of juror bias in a number of conjoined appeals (none of which had been referred to the Court by the Commission) listed to consider the impact of the composition of juries and the appearance of bias (see 3.2. above). In respect of two of the cases, the Commission were able to undertake their investigations into two jurors (said to be prison officers) and report their findings to the Court within 6 days. Their findings were conclusive and resulted in a great saving in terms of argument before the Court and delay to the hearing of the matters.

7.10 The Court is grateful to Professor Zellick for his valuable contribution in the success of the Court's unique relationship with the Commission, which it is hoped will continue to develop over future years. The Court wishes him well in his impending retirement.

8 Contacts

8.1 The Registrar continued to welcome a number of overseas visitors from both the judicial and academic fields. These visits help to build and strengthen global relations and international understanding of our legal system.

8.2 Over the last reporting year, the Registrar has met with:

- A group of Court of Appeal Judges from Sweden
- Judge Kull of the Exchange Programme from the Supreme Court of the Republic of Estonia
- Judge Judgstom of the Administrative Court of Finland
- Mr Kalainis, Chairman of the Siauliu Regional Court, Lithuania
- Mr Juan Gonzalez (Senior Judge and Member of the Spanish Council), Mr Javier Lazaro (Senior Judge, Spain) Mr Javier Laorden (Senior Barrister Spain) and Mrs Pilar Carnicero (Senior Diplomat, Spanish Council)
- Thames Valley University Law Students
- Professor Parker and the Students from Wake Forest University, USA
- Students from Syracuse CPS Summer Law Programme

8.3 The CACD User group has met twice this year and is chaired by Lord Justice Latham, Vice-President of the CACD. Given the pace and frequency of new legislation the meeting has continued to be an important forum for discussing the practical effect of such changes upon the work of the CACD. Over the past year topics discussed have included the changes brought about by the Criminal Justice and Immigration Act 2008, amendments to the law relating to indeterminate sentences and changes to the Criminal Procedure Rules. The latter stimulating very lively debate regarding the composition and format of Grounds of Appeal and the duties of Prosecutors to give clear assistance to Judges in the lower courts regarding their sentencing powers. The meeting is also a useful forum for Master Venne, Registrar of Criminal Appeals, to provide an update on CACD business, including average waiting times, and the number of prosecution appeals and terrorism cases waiting to be heard.

8.4 The success of the meetings stems from the diversity and breadth of experience of the User Group members who include practitioners of appellate law, counsel and solicitors, representatives from the Criminal Cases Review Commission, Crown Prosecution Service, Revenue and Customs Prosecutions Office, the Office of the Attorney General, the Probation Service, Law Reporters and senior CAO staff.

8.5 The User Group has valued the regular attendance and contribution of Professor Zellick, Chairman of the CCRC and wishes him well the future.

9 Looking to the future

9.1 Following the appointment of the Area Director for the Court of Appeal last year, a full review has been conducted to identify opportunities for improved working practices and closer working relationships between the Court of Appeal Criminal and Civil Divisions, while accepting that the work of the two Courts is separate and distinct.

9.2 From that review, an improvement implementation plan has been developed. Staff from both divisions of the Court of Appeal, as well as colleagues from the wider RCJ, have been involved in this exercise and will play an important part. The plan will create opportunities to make better use of resources and share best practices, which will lead to efficiencies in the administration and throughput of cases. Part of this includes the amalgamation of the corporate functions, including finance, performance monitoring and IT support for both divisions.

9.3 The Court has benefited from additional technology over the last year and a number of courtrooms are now fitted with permanent video link equipment. It is anticipated that there will be greater use of these facilities in the future. Many prisons also now have video link equipment which will mean in situations where an appellant cannot attend the Court, their appeal can still go ahead in their presence via video link. This will mean that certain cases will be dealt with sooner than they otherwise may have been and without the need to transport an appellant from prison to the Court. This will no doubt prove useful in high security cases and will likely see some cost saving throughout the criminal justice system.

9.4 The Court remains committed to the service provided to victims of crime. The Registrar's staff liaise with Witness Care Units which in turn liaise with the originating Crown Court so that victims or their families can be kept informed about important events in the appeal process, such as information that an appellant is to be released on bail or that there will be a substantive hearing before the full Court of Appeal. They are also notified of the date of the hearing and provided with a copy of the Order made by the Court. If attending an appeal hearing, victims and their families are able to utilise separate waiting rooms and seating in Court.

9.5 At the time of writing, work is underway on the production of an up to date "Guide to Commencing Proceedings in the Court of Appeal Criminal Division" (the Blue Guide). The last edition was published in 1997. Since then the jurisdiction of the Court has expanded to encompass a variety of diverse applications and appeals by the defence, the Crown and other interested parties. The Guide will provide invaluable advice as to the initial steps for commencing proceedings in the Court generally and in relation to perhaps less familiar provisions. The Guide will no doubt prove an invaluable aide memoir for practitioners and a useful resource to appellants and others who may be unfamiliar with the Court's practice and procedure.

10 Conclusion

10.1 Although the Court has enjoyed a diverse range of work this year, the majority of its work continues to be applications pursuant to section 31 Criminal Appeal Act 1968 in respect of appeals against conviction and/or sentence. The volume of this work places considerable demand on High Court Judges. Regrettably, there remains a considerable number of cases which are lodged with the Court which are bound to fail, yet they still have to be considered by a single Judge and in some cases upon renewal to the Full Court.

10.2 Counsel must advise clients in custody that an application for leave which is plainly without merit, may result in a Loss of Time Order being made that any time spent in custody as an appellant shall not count towards sentence (s.29 Criminal Appeal Act 1968). Guidance on the use of this power was given in ***R v Hart and others*** [2006] EWCA Crim 3239.

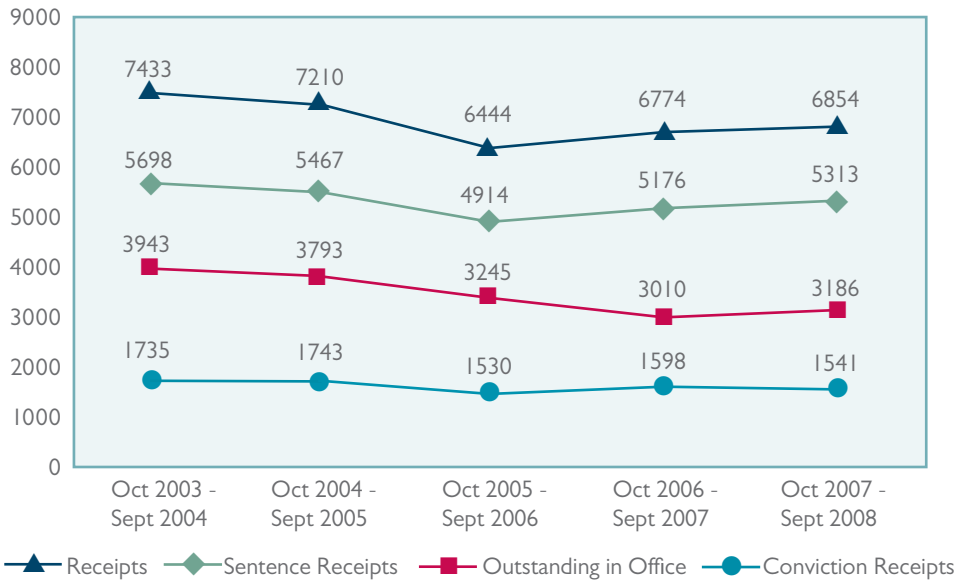
10.3 The indication of the very real possibility of the making of a Loss of Time Order seems to have had an impact on the amount of renewed applications for leave to appeal against sentence. The same cannot be said to be true about renewed applications for leave to appeal against conviction which take up a lot of Court time and are often hopeless cases. Many are not supported by counsel, but some are. Counsel are reminded that they should only settle (and indeed persist with) grounds which they consider reasonable, have some real prospect of success and are prepared to argue them before the Court. Grounds should not be settled that cannot be supported merely because of a client's instruction to do so, as not only does this create a false hope for applicants but also burdens the Court with unnecessary work.

Lord Phillips of Worth Matravers
Lord Chief Justice of England and Wales

Lord Justice Latham
Vice President of the Court of Appeal
Criminal Division

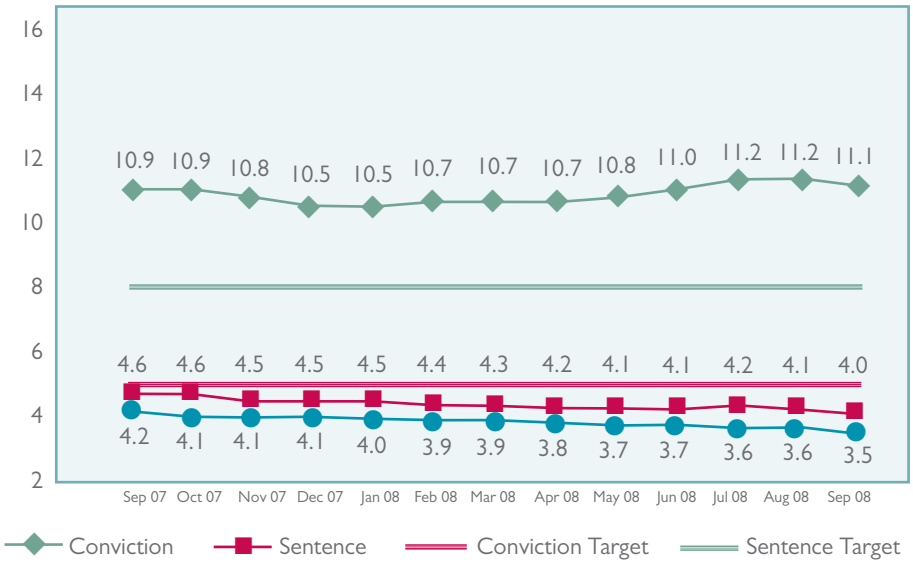
Annex A

Applications Received and Outstanding in Office



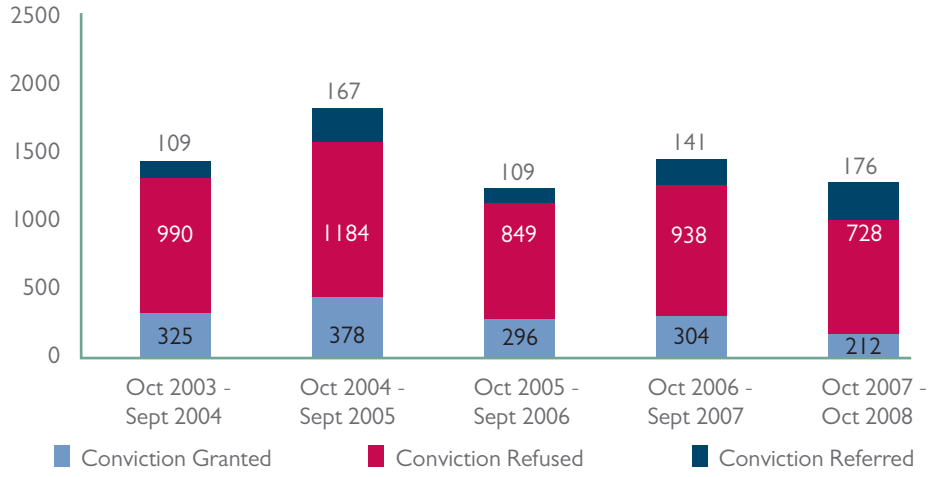
Annex B

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

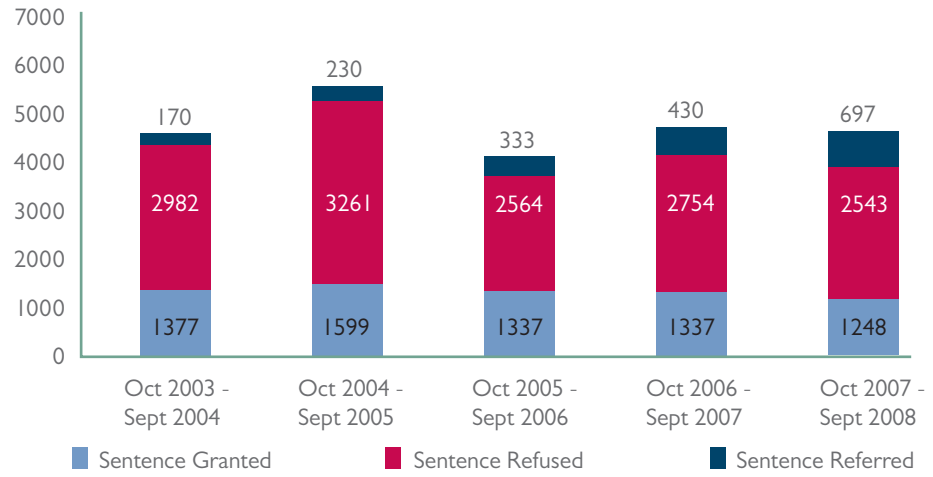


Annex C

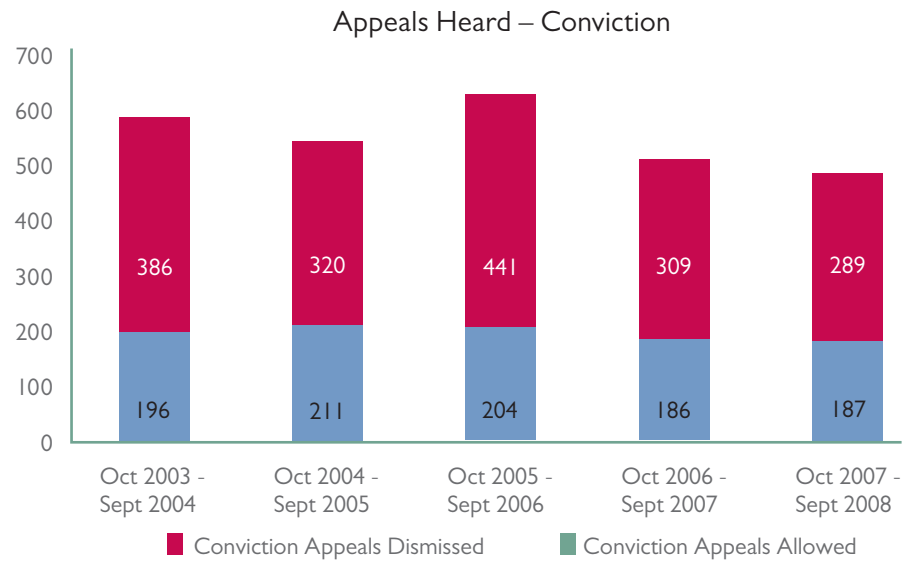
Section 31s – Conviction Applications dealt with



Section 31s – Sentence Applications dealt with



Annex D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600
500
400
300
200
100
0
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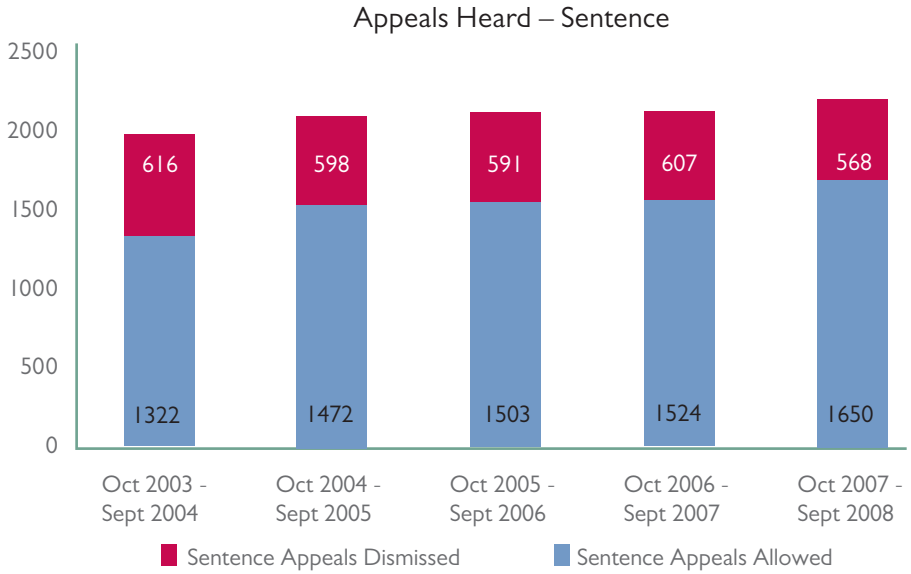
320
441
309
289
196
211
204
186
187
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Oct 2007 - Sept 2008
Conviction Appeals Dismissed
Conviction Appeals Allowed


Appeals Heard – Sentence
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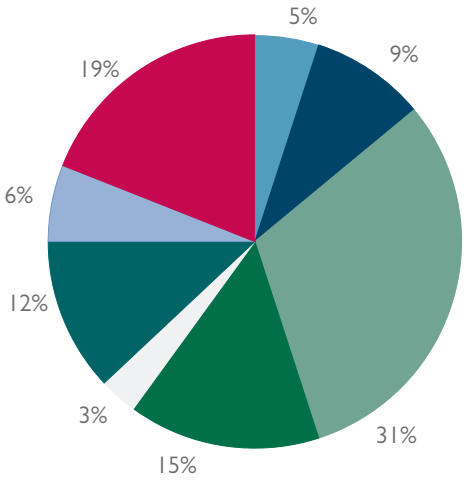
2000
1500
1000
500
0
616
598
591
607
568
1322
1472
1503
1524
1650
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Oct 2007 - Sept 2008
Sentence Appeals Dismissed
Sentence Appeals Allowed

Annex E

October 2003 - September 2004



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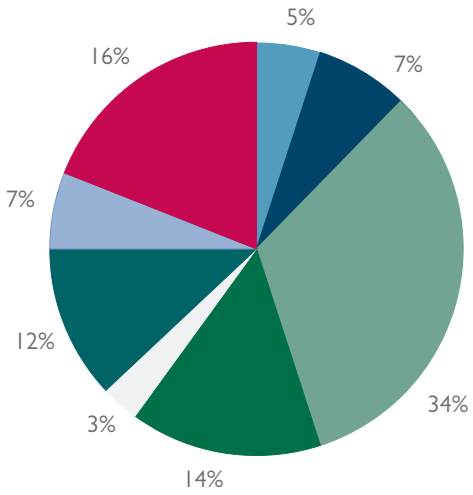

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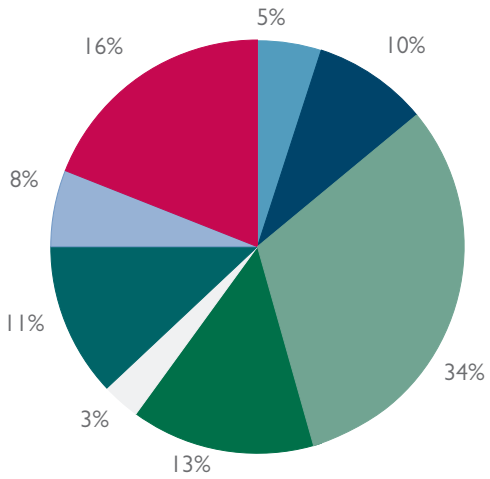

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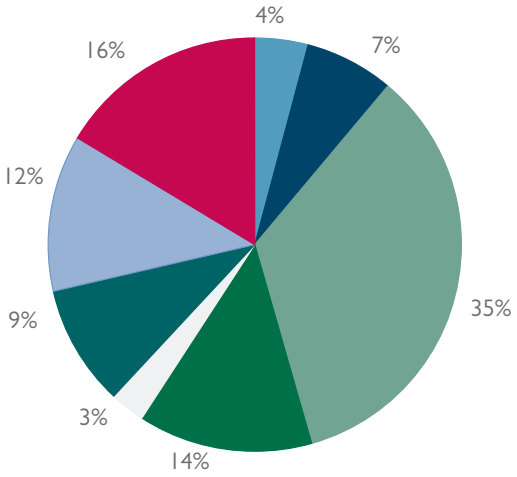
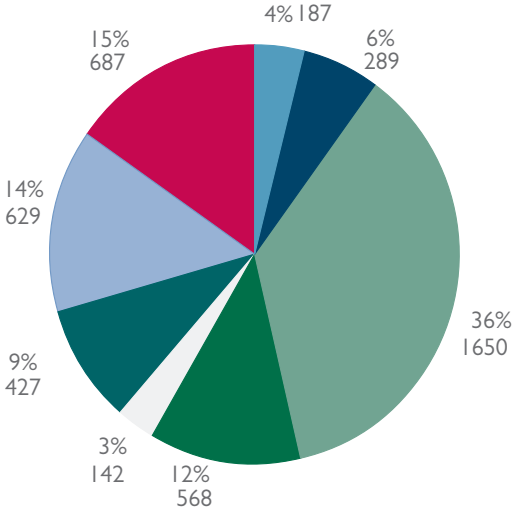
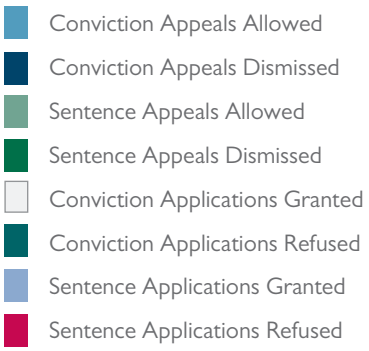
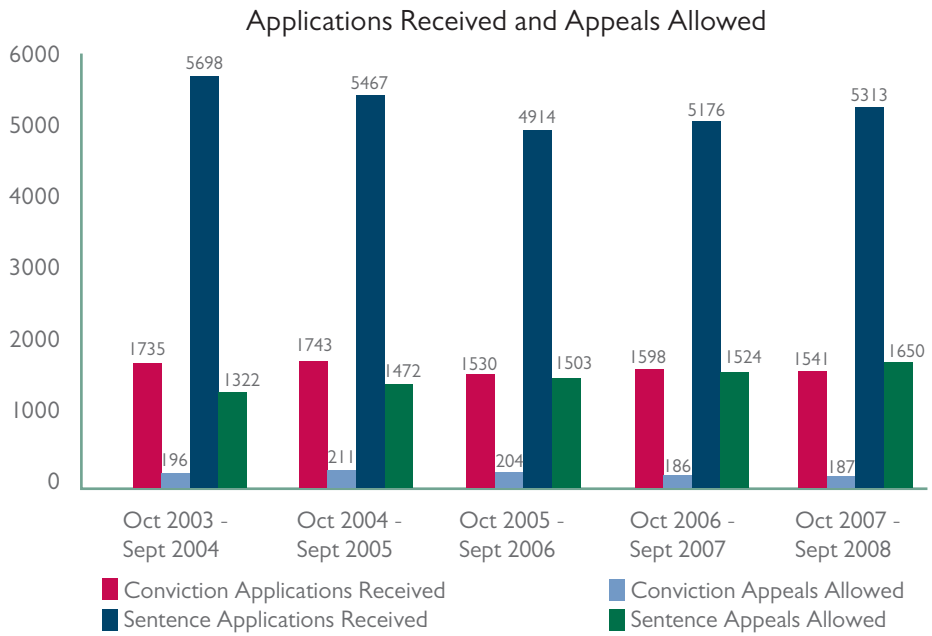


October 2007 - September 2008





Annex F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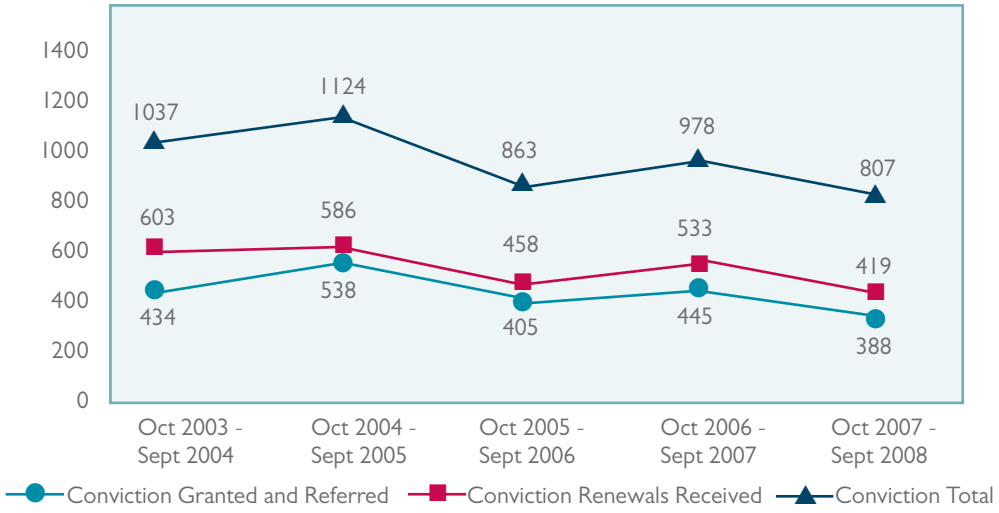
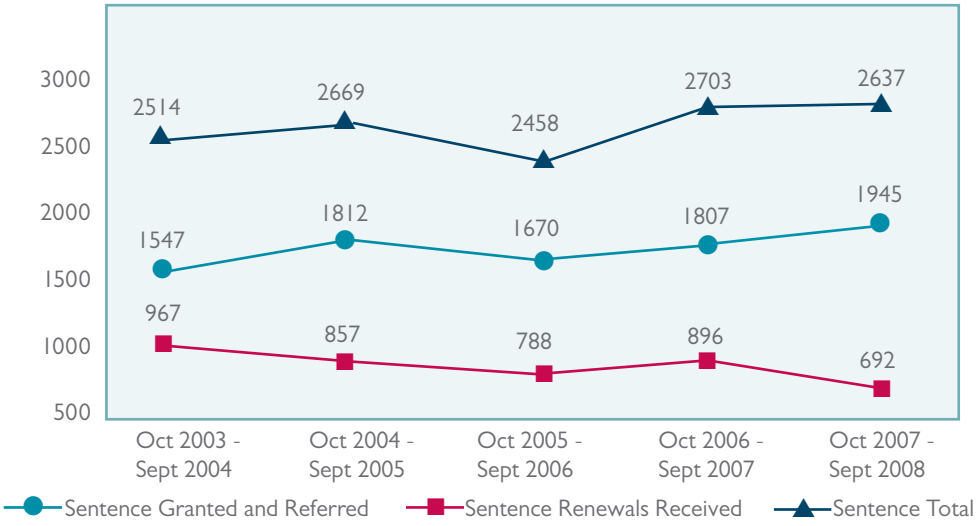
204
4914
1503
1598
186
5176
1524
1541
187
5313
1650
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Oct 2007 - Sept 2008
Conviction Applications Received
Sentence Applications Received
Conviction Appeals Allowed
Sentence Appeals Allowed

Annex G

Applications Granted / Referred and Renewals Received (Conviction)

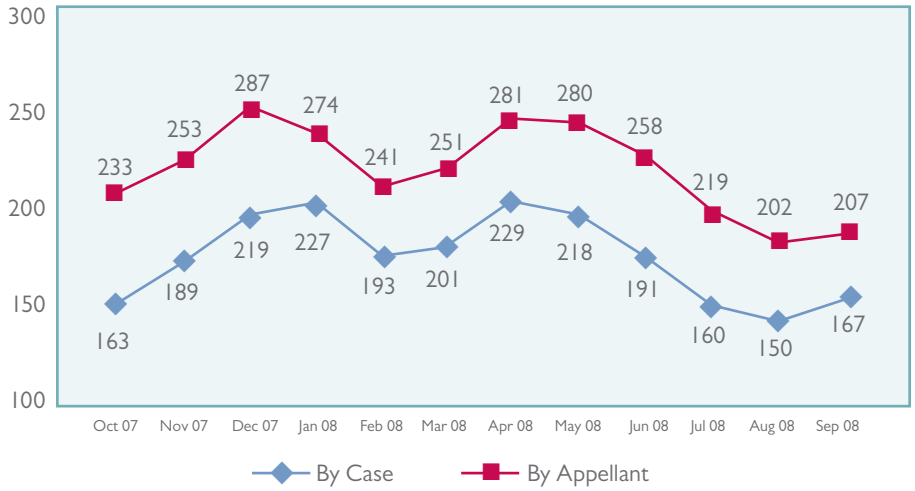


Applications Granted / Referred and Renewals Received (Sentence)

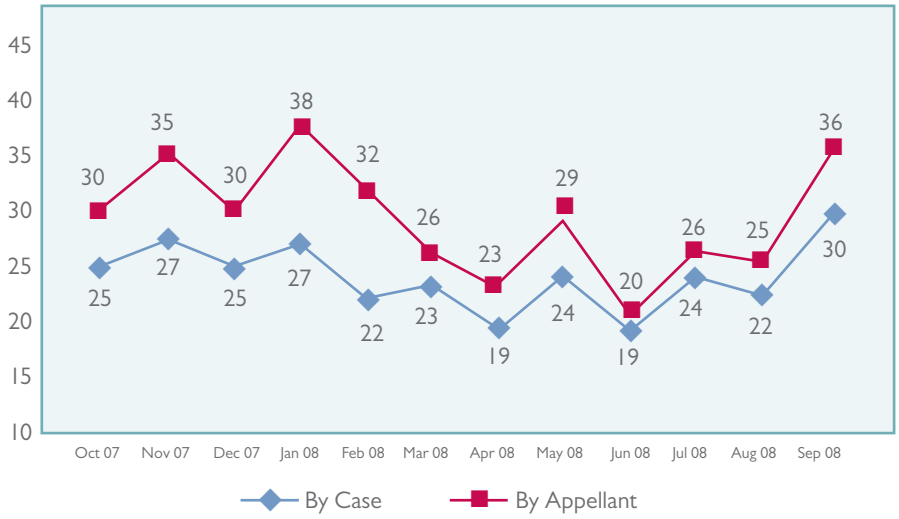


Annex H

Conviction Old Cases – Outstanding over 8 months



Sentence Old Cases – Outstanding over 5 months



The Court of Appeal
Criminal Division
Review of the Legal Year
2007 / 2008