



In the Court of Appeal Criminal Division

2014 / 2015

Contents

Introduction by the Lord Chief Justice Lord Thomas CJ	2
Vice President CACD	3
Overview of Year Registrar of Criminal Appeals	4
Cases of Note	6
Criminal Law	6
Procedure	9
Evidence	11
Sentencing	13
The work of the Criminal Appeal Office	17
Summary and Statistics	19

Introduction by the Lord Chief Justice

This is the nineteenth formal review of the work of the Court of Appeal (Criminal Division). As in previous years the review chronicles the most significant decisions made by the court and its performance statistics.

This year also represents the tenth anniversary of the establishment of the Criminal Procedure Rules Committee. In his seminal report *A Review of the Criminal Courts* published in 2001, Auld LJ made clear that a code of criminal procedure was essential to the proper conduct of a criminal trial. He summarised the need as follows: "Fairness, efficiency and the effectiveness of the criminal justice system demand that its procedures should be simple, accessible and, so far as practicable, the same for every level and type of criminal jurisdiction". The first of the new Criminal Procedure Rules set out in clear terms the overriding objective that is the guiding spirit of the Rules. Since then the Rules, read with the Practice Direction, have been developed to encompass a considerable range of subjects, from the security of prisoners at court and handcuff applications, case management and complex terrorism cases, to handling the media and live tweeting from the courtroom. Another achievement has been the work of the consolidating of the Criminal Practice Direction which has brought together everything contained in numerous protocols, guidance and special agreements made over the years which were never readily ascertainable. We are beginning to see the usefulness and applicability of the Rules and Practice Direction in the Criminal Division. In handing down judgement in *Lubemba* (summarised in the body of the Review) the Vice President of the Court referred at length to the text of the Practice Direction when dealing with issues of questioning vulnerable witnesses. It is now impossible to see how any advocate can be regarded as competent to practice in the criminal courts unless familiar with the content of the Criminal Procedure Rules and Practice Direction.

Finally I would like to thank Master Egan QC and his team of lawyers and support staff, who continue to do such excellent work in facilitating the efficient progress of cases through the Criminal Division. The judiciary is grateful to them all.

Lord Thomas

Lord Chief Justice of England and Wales

Vice President of the Court of Appeal (Criminal Division)

The law on sentencing is highly complex and generates many unnecessary appeals. This is a waste of precious time and resources. Earlier this year the Law Commission launched its work on codifying sentencing procedure. In launching the project Professor David Ormerod QC, Law Commissioner for Criminal Law, said: "We know from discussion and informal consultation with practitioners and sentencing judges that the volume, complexity and, on occasion, obscurity of current sentencing legislation causes real problems in practice, not least a startlingly high rate of unlawful sentences and consequent appeals". I echo those comments and welcome the review. The current law of sentencing procedure lacks structural clarity and many sentencing statutes are themselves only partly in force. A single statute will help not only this Court but also defence advocates whose duty it is to advise and represent clients during the sentencing process.

The year has also seen the publication by the Sentencing Council of a new Definitive Guideline for theft offences (taking effect on 1st February 2016). Theft is one of the most common offences – more than 91,000 offenders were sentenced last year. The Guideline will apply to the full range of theft offences. The value of items stolen will remain an important factor in sentencing but the Guideline requires a clear focus on the impact of thefts on victims beyond financial loss. Theft offences can cause emotional distress, loss of confidence and great disruption and inconvenience. The Guideline provides, therefore, a clear process for the assessment of harm to the victim.

During the year the Court has continued to take advantage of the video-link facilities. This saves scarce resources and enables appellants and witnesses to attend a hearing and/or give evidence without having to come to the Royal Courts of Justice.

The work load of the Court remains heavy and makes enormous demands upon the judges and staff of the Criminal Appeals Office. Yet, there has been a steady decrease in the average waiting time for disposal of conviction cases. This could not have been achieved but for the enormous hard work and dedication of everyone involved. I am very grateful to them all.

Lady Justice Hallett

Vice President of the Court of Appeal (Criminal Division)

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

It is regarded by the Lord Chief Justice as an important and useful exercise for the Court of Appeal to sit outside London and this year the practice has been extended to Manchester, Sheffield, Newcastle, Preston, Exeter, Lewes and Leeds.

Applications for leave to appeal lodged by applicants acting in person have increased by 25.3%¹ this year: a significant proportion. Although the numbers are still comparatively low, the proportion of such applications to applications received is increasing, from 4.7% in 2013/14 to 6.04% in 2014/15. And I anticipate that this trend may well continue. The case management of these type of cases places a greater demand on the resources of my Office, in terms both of advice to applicants and support to the judiciary.²

I have been pleased to notice that the requirement for fresh legal representatives to check the facts before submitting Grounds of Appeal as set out in *R. v. McCook*³ has resulted in an increase in the standards of these applications; with less simple mistakes as to facts. Trial counsel's willingness to respond to such requests is a very important part of this process and for the most part it is provided. Where trial counsel fails to respond, or to respond in a timely manner, the Court's task is made more onerous and there is the risk of an adverse inference being drawn as to trial counsel's actions.

In his "Review of Efficiency in Criminal proceedings" the President of the Queen's Bench Division emphasised the principle of "Getting it right first time"⁴. The consequences of getting it wrong on technical matters can be a drain on scarce appellate resources. Sentencing has become more technical in the last 10 years and many mistakes occur here and are rectified by the Court of Appeal. Examples include global extension period dealt with in *R v DJ*⁵ at paragraph 52 (included in the LCJ review) and hybrid extended sentences (ordering one part of an extended sentence to run concurrently but another part to run consecutively) see paragraph 51 of *R v Francis and Lawrence*⁶. The Law Commission is at present actively engaged in important work with a view to producing a Sentencing Code which will undoubtedly help in this respect but other matters such as victim surcharge orders and criminal courts charges still have the capacity to occupy valuable Court time despite guidance provided in *R v Bailey and Ors*⁷

1 Up from 308 to 381

2 Not all "own grounds" are bad or unfocused by any means, but the lack of legal input can sometimes result in grounds that are ineffective in that they disclose no arguable ground. Applicants without legal representation must have access to an appellate remedy but the Court has to look for compliance with Appeal Rules 68.3(2) by all applicants.

3 [2014] EWCA Crim 734

4 Summary of recommendations at Chapter.2.1.

5 [2015] EWCA Crim 563, see page 14 supra.

6 [2014] EWCA Crim 631

7 [2013] EWCA Crim 1551

This year has also seen important changes and renumbering to the Criminal Procedure Rules and the Office is extremely focussed on continuing to ensure that applications are compliant with the Rules and relevant Practice Directions.

The new “jury offences” now contained in sections 20A to 20D of the Juries Act 1974 and the associated repeal of section 8 of the Contempt of Court Act 1981 (confidentiality of jury’s deliberations) has brought with it changes to my role in relation to juror problems which arise during or post -trial which have been reflected in changes to the Criminal Procedure Rules⁸.

Our Office continues to have a strong relationship with the Criminal Cases Review Commission (CCRC). The Court relies entirely upon them in directed investigations under section 23A Criminal Appeal Act 1968 into allegations of jury impropriety and examples this year continue to illustrate the thoroughness and impartiality of their investigations.

There have been some changes for the Criminal Appeal Office, we have lost some staff but also gained some outstanding new recruits. I would like to pay tribute to Gill Rorke who has departed from us for a well-earned retirement in October but who stands out as the paradigm example of the standard of legal support which the lawyers in the Office strive to deliver. The CAO office has a very powerful team of lawyers and administrative staff who approach the next year with a very good spirit.

Master Egan QC
Registrar of Criminal Appeals

8 See CPD paragraphs 39.M.1-M.56. The role of Registrar of Criminal appeals is delineated at paragraphs 39.M.45-M.49.

Cases of Note

Criminal Law

Power to Re-Open an Appeal

In **R. v Yasain (Mohammed Abdullah) [2015] EWCA Crim 1277**, the Court (LCJ. Sweeney and Warby JJ.) considered its powers to re-open a concluded appeal to correct an error that had led to the quashing of a lawful sentence. The Court, relying on a Civil Division authority (*Taylor v. Lawrence* [2003] QB 528), concluded that it had an implicit power to re-open an appeal. It also said that “it would be appropriate (for) the Criminal Procedure Rules Committee (to) formulate a rule similar to that set out in to CPR r.52.17 (the rule embodying the Civil Division’s equivalent power) but which delineates the factors and circumstances applicable to the Criminal Division”.

Prosecution Closing Speech

The defendant in **Cojan [2014] EWCA Crim 2512** withdrew his instructions from his legal representatives four days before summing up. He declined the services of fresh representatives and chose to represent himself. He did not make a closing speech; the prosecution did. The Court (VPCACD. Cranston and Knowles JJ.) said that it was doubtful that there was still a rule that prosecution counsel could not make a closing speech where a defendant was unrepresented. As part of the judge’s duty to ensure fairness it would be incumbent upon him, faced with an unrepresented defendant, to assess all the circumstances of the case and decide whether or not it would be right to allow the prosecution to make a closing speech.

Trafficking

In **Ali and Another [2015] EWCA Crim 1279** the Court (Fulford LJ. Jay and Edis JJ.) considered inter alia the offence of trafficking within the United Kingdom for sexual exploitation contrary to section 58 of the Sexual Offences Act 2003. In issue was whether, applying the de minimis principle, a point was reached when the nature and quality of the “travel” was insufficient with the result that the case should be withdrawn from the jury. In the appeal it was argued that the travel arranged and contemplated did not involve sufficient distances, formality or regularity as to come within the natural and normal meaning of that concept. The Court said the offence was committed by someone who intentionally arranged or facilitated travel and had the necessary intention or belief, as set out in s.58(1)(a) or (b) of the Sexual Offences Act 2003. In order to prove the offence it was not necessary to show actual travel. The prosecution instead had to prove no more than the intentional arranging or facilitation of travel with the requisite intention, namely “to do anything to or in respect of the complainant” at any stage or any place which, if done, would involve the commission of a relevant offence. The crime was also committed if the perpetrator believed that someone else would treat the complainant in this way. The key factor was that travel – a journey – was contemplated and the fact that it might be short did not affect whether or not the offence was committed.

Misconduct in a Public Office

In **ABC and Others [2015] EWCA Crim 539** the Court (LCJ. Cranston and William Davis JJ.) gave guidance on the ancient common law offence of misconduct in a public office. There were four elements to the offence (see *AG's Ref. (No. 3 of 2003)* [2004] EWCA Crim 868) but the Court was concerned with the third element, namely the threshold test for the misconduct to be sufficiently serious as to amount to an abuse of the public's trust in the office holder. The Court said that in directing a jury it was unnecessary for a judge to use exact words but context was important. However a judge had to make two matters clear: first, the necessary misconduct was not simply a breach of duty or breach of trust and second to provide an explanation to the jury as to how they should determine whether the necessary threshold of conduct was so serious that it amounted to an abuse of the public's trust in the office holder. In assessing the question of seriousness a jury could be assisted in two ways. The first was to refer the jury to the need for them to reach a judgement that the misconduct was worthy of condemnation and punishment; the second was to refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest.

Disclosure – prosecution failures

During the year a number of cases have been heard in which criticism has been made of the failure of the prosecution to make timely disclosure. In **DS and TS [2015] EWCA Crim 662** evidence was served piecemeal throughout the trial. The Court (LCJ. MacDuff and Jeremy Baker JJ.) was critical of the actions of the prosecution and said that it would be asking "the Criminal Procedure Rule Committee to consider whether any further sanctions on those charged with the prosecution of a case could be imposed through new Rules or whether any other steps or sanctions should be taken to secure compliance with the Criminal Procedure Rules". Similar criticism was made in **Boardman [2015] EWCA Crim 175**. However in that case the defence too were criticised on two grounds. First, for not alerting the court to the problem of non-disclosure sooner; and second, the defence case statement went beyond a request for disclosure of unused material and sought to impose a burden on the police to undertake investigations on their behalf. Requests should go to no more than the law permitted and to seek to go further was to abuse the process set up by the Criminal Procedure and Investigations Act 1996.

Criminal Behaviour Orders

The statutory powers managing the transition from Anti-social Behaviour Orders ("ASBOs") to Criminal Behaviour Orders were considered by the Court (PQBD. Kenneth Parker and Stewart JJ.) in **Simsek [2015] EWCA Crim 1268**. The combined effect of section 33(1)(a) and (2)(a) of the Anti-social Behaviour, Crime and Policing Act 2014 meant that courts were empowered to impose ASBOs after 20th October 2014, the effective date when ASBOs were repealed, where the relevant "criminal proceedings" had begun before that date. A conviction was a necessary precondition before a Criminal Behaviour Order could be imposed and a conviction would be one after the coming into force of the Act.

Retrials

In **Burton [2015] EWCA Crim 1307** the appellant was convicted following a second retrial. On appeal he argued that the trial judge, who rejected a stay application, should not have permitted a third trial upon the same allegation to be conducted. The Court (Treacy LJ, Blake J. and HHJ Taylor) said that whilst the circumstances identified at paragraph 46 of *Bell [2010] 1 Cr App R 27* would usually be a sufficient test of where the interests of justice lay in most cases, a wider consideration of such interests stretching beyond those factors might be required in some cases. It was clear from the decided cases that permitting a case to go forward to a second retrial should be the exception rather than the rule and that it would therefore require the most careful consideration by a Judge before such a retrial was permitted to take place. The starting point was that a third trial should not be sought in the absence of special factors justifying such a course. In the instant case the prosecution had failed to demonstrate that it was one of those exceptional cases which justified proceeding to a second retrial. On analysis therefore it was not in the interests of justice for a trial to have taken place. The Court observed that the number of cases in which a third trial was permitted should be strictly limited in order to maintain public confidence in the criminal justice system and provide a degree of finality for a defendant and it was for that reason that the Court must proceed with extreme caution. However, if a crime was truly one of extreme gravity and the evidence was cogent despite the problems experienced by previous juries then it might well be an affront to justice and more likely to undermine public confidence not to pursue the aims of convicting the guilty and deterring the most serious crimes.

Unfitness to plead – Section 4A Domestic Violence, Crime and Victims Act 2004

During the year there have been a number of cases involving appeals against section 4A fitness to plead findings that defendants had committed the acts in question (Criminal Procedure (Insanity) Act 1964 as substituted by the Criminal Procedure (Insanity and Unfitness to plead) Act 1991 and amended by Domestic Violence, Crime and Victims Act 2004). In four separate cases defendants charged with criminal offences were found unfit to plead because, based on medical evidence, the court was satisfied that one or more of the following criteria was satisfied, namely that he or she did not have the ability to plead to the indictment, to understand the course of the proceedings, to instruct a lawyer, to challenge a juror and/or to understand the evidence. The Court (PQBD, Openshaw and Dove JJ.) in **Wells and Others [2015] EWCA Crim 2** provided a number of preliminary observations about the section 4A hearing and particularly what was required to prove that the defendant “did the act or made the omission charged”. The Court again confirmed that for the purposes of section 4A there was no requirement to inquire into the defendant’s state of mind or level of knowledge of the defendant concerned at the time when they did the act or omissions comprising the offence.

In the case of **Chingwundoh [2015] EWCA Crim 109** a restraining order made under section 5A of the Protection from Harassment Act 1997 (order made following an acquittal) was quashed. The Court (PQBD, Openshaw and Dove JJ.) ruled that a section 4A finding was not an acquittal.

Procedure

Confiscation orders

The Court continues to receive a reasonable number of confiscation appeals. In dealing with such matters the Court (LCJ. Sweeney and Dingemans JJ.) in **Moss [2015] EWCA Crim 713** again reiterated the need for a court to take a rigorous, step-by-step approach to the process in order to identify the necessary issues.

In **Guraj [2015] EWCA Crim 305** a confiscation order was quashed as a result of the prosecution's substantial breaches of sections 14 and 15(2) of the Proceeds of Crime Act 2002 ("POCA") even where the proceedings were completed within 2 years. Following a review of the authorities the Court (Jackson LJ. Mitting and Jay JJ.) said it was necessary to consider whether Parliament had really intended for procedural breaches to invalidate subsequent proceedings. Courts had upheld confiscation orders in a variety of circumstances despite procedural breaches and prosecution delays. However in spite of this latitude a court could not act contrary to the express provisions of POCA.

Preparatory Hearings

In **Quillan and Others [2015] EWCA Crim 538** the Court (LCJ. Henderson and Edis JJ.) offered general procedural guidance about the management of legal issues in complex cases. In stressing the importance of holding preparatory hearings under the Criminal Procedure and Investigations Act 1996 and the Criminal Justice Act 1987 the Court elucidated the purpose, benefits, and proper conduct of such hearings to ensure the efficient administration of justice. The Court said: "It is axiomatic that important rulings should be made as early as they properly can be. The early identification of such issues will require vigorous case management by the judge and the assistance of the parties".

Split summing up

In **R v. NKA [2015] EWCA Crim 614** the trial judge gave his summing up in two parts. He summed up the law before counsel made closing speeches. Thereafter he returned to the summing up and summed up the facts. The Court (LCJ. Mitting and Jeremy Baker JJ.) deprecated such practice and said that in all cases judges in a criminal trial should sum up the law and the facts at the conclusion of counsel's speeches. **It should be noted that this has now been reversed by the Criminal Procedure Rules: see CrimPR 25.14(2).**

Guidance – long EOT – Fresh legal representatives

The Court (Bean LJ. Nicol J. and HHJ Collier) in **JH [2014] EWCA Crim B2** was faced with an application for a long extension of time in which to seek leave to appeal against conviction. Grounds lodged by fresh legal representatives contained implied, not express, criticism of trial counsel. The Court said that in such circumstances where the single judge considered there to be an apparent arguable point he should not grant leave but refer the matter to the full court with any appropriate representation order; and to give directions for the notice and grounds of appeal to be sent to trial counsel and solicitors for their comments, with the waiver of privilege procedure being used where necessary (following *McCook* [2014] EWCA Crim 734).

Loss of time orders

In **Gray and Others [2014] EWCA Crim 2372** the Court (VPCACD. Sweeney and Warby JJ.) once again addressed the powers under section 29 of the Criminal Appeal Act 1968 to make loss of time orders in cases involving unmeritorious applications for leave to appeal. Neither the fact that the single judge had not initialled the loss of time box on the Form nor that counsel had advised that there were grounds of appeal would protect a defendant who renewed from an order under section 29. If a court exercised its powers brief reasons should be given. A statement in the following terms would suffice: "Despite being warned of the court's power to make a loss of time order, the applicant chose to pursue a totally unmeritorious application which has wasted the time of the court. Such applications hamper the court's ability to process meritorious applications in a timely fashion."

Attorney General's Consent

Two cases were heard concerning the prosecution's failure to obtain the Attorney General's consent to prosecute until after matters had been sent to the Crown Court. In **CW and MM [2015] EWCA Crim 906** the Court (Rafferty LJ. Sweeney and Hickinbottom JJ.) said that the proceedings were null and void and section 25 of the Prosecution of Offences Act 1985 did not cure the deficiency. Insofar as indictable-only offences the Court (Rafferty LJ. Edis J and HHJ Rook) in **Welsh and Others [2015] EWCA Crim 1516** said that consent was required prior to the sending under section 51 of the Crime and Disorder Act 1998.

Evidence

Good character

A specially constituted five judge court (LCJ. PQBD. VPCACD. Globe and Coulson JJ) in **Hunter and Others [2015] EWCA Crim 631** considered the extent and nature of the good character direction. Following a comprehensive review of the case law and the provisions of the Criminal Justice Act 2003 the Court made clear that henceforth reliance in this area should be placed on the present case, *Vye and Others* [1993] 1 WLR 471 and *Aziz* [1996] AC 41 There were a number of different categories of defendants: (i) absolute good character – a defendant with no previous convictions or cautions and no reprehensible conduct alleged, admitted or proven was entitled to both limbs of the good character direction; (ii) effective good character – a trial judge was required to make a judgement as to whether or not to treat a defendant as a person of effective good character. In such cases a defendant may have previous convictions or cautions recorded which were old, minor or had no relevance to the present charge. It did not automatically follow that a judge was obliged to treat a defendant as a person of good character due to the age or irrelevancy of the previous matters. Where a judge treated a defendant as a person of effective good character the judge was obliged to give both limbs of the direction albeit modified as necessary in order not to mislead the jury; (iii) previous convictions/cautions adduced under section 101 by the defendant – a defendant with previous convictions or cautions had no entitlement to either limb of the good character direction. In such cases it would be a matter for the judge's broad discretion and based on what fairness dictated; (iv) bad character adduced under section 101 relied on by the prosecution – where a defendant had no previous convictions or cautions but evidence was admitted and relied upon by the prosecution of other misconduct the judge was obliged to give a bad character direction. In doing so the judge might, as a matter of fairness, consider that he should weave into his remarks a modified good character direction. Such should be left to the good sense of trial judges; (v) bad character adduced by the defence under section 101 and not relied on by the prosecution – where defendants with no previous convictions but who admitted reprehensible conduct, not relied on by the prosecution as probative of guilt, it would be for the good sense of trial judges to decide the appropriate direction. As a matter of good practice defendants should put the court on notice as early as possible that an issue as to character existed and discussion should take place prior to adducing evidence as to character. A non-direction or misdirection as to good character was not fatal to a conviction. The sole test for the Appeal Court was one of safety and where trial counsel had agreed directions or failed to take issue with directions given at trial that would be a good indicator that the trial had been fair by those present.

Vulnerable witness – fair trial

The question before the Court (VPCACD. Sweeney and Warby JJ.) in **Lubemba [2014] EWCA Crim 2064** was what measures a trial judge may legitimately take to protect a vulnerable witness without impacting on the right of a defendant to a fair trial. The Court drew attention to sections 27, 53 and 54 of the Youth Justice and Criminal Evidence Act 1999 and quoted extensively from the judgement in *Barker* [2010] EWCA Crim 4. In its judgement the Court endorsed the toolkits in *The Advocate's Gateway* and upheld the importance of ensuring transparency of all evaluations of the competence and willingness of a witness to testify. It said that whilst it was highly desirable that counsel and the trial judge met the child, or an adult witness with cognitive impairments, in advance of being called to testify, it should be done together (preferably with the court clerk also present) so that there was a common understanding of the basis for any issues which might be said to arise.

Cross-Examination

In **Pipe [2014] EWCA Crim 2570** the Court (LCJ. Coulson and Globe JJ.) said that a trial for three specimen offences of sexual activity with a child had been fair, even though the complainant's cross-examination was cut short due to her extreme distress. Although the appellant had admitted a physical element in his relationship with the complainant he had denied committing the sexual offences and said that the allegations were fabricated and therefore the credibility of the complainant was in issue. Her evidence was given by way of her video-recorded interview and cross examination was conducted over a live-link. There were a number of breaks and eventually, due to her distress, the judge concluded, with the agreement of all parties that the cross-examination should not continue. Having considered the matter further, he decided that the trial could continue. The Court held that the fact that a complainant was unable to complete her evidence was not necessarily a bar to a trial continuing. The Court also observed that whilst the complainant's evidence was important it was not the only evidence against the defendant. In addition the Court observed that in cases of this sort, it was often unnecessary and inappropriate for a complainant to be taken through their own medical records in huge detail, particularly where any potential inconsistencies could be identified and be the subject of written admissions.

Expert evidence

The Court (Davis LJ. King J. and HHJ Stokes) in **Brennan [2014] EWCA Crim 2387** provided clarification of the structure of the Homicide Act 1957, section 2, as amended by section 52 of the Coroners and Justice Act 2009 and gave guidance to experts and practitioners concerning the issues in respect of which an expert was permitted to express an opinion (including the "ultimate issue"). In the case there was uncontradicted and unchallenged evidence in the defendant's favour and a manslaughter conviction was substituted. The Court said that in cases where the prosecution proposed to contest a defence of diminished responsibility the provisions in section 2 as amended should be taken as an encouragement for the prosecution to adduce its own expert evidence to support its stance.

Sentence

Hospital Orders

In **R v Vowles [2015] EWCA Crim 45**, the Court (LCJ. Macur LJ. and Globe J.) set out general guidance on the approach to be adopted in cases involving mental disorder. First, it said that a court should not feel circumscribed by the psychiatric opinions. Even if two psychiatric opinions recommended a hospital order as required under section 37/41 of the Mental Health Act 1983 this was not a sufficient reason on its own for a medical disposal. The court's duty under section 37(2)(b) was to consider whether a hospital order was the most suitable method of disposal. Secondly, the court must consider (a) the extent to which the defendant needed treatment of the mental disorder from which he suffered; (b) the extent to which the offending was attributable to the mental disorder, or whether the defendant's responsibility was "diminished" but not wholly extinguished; and (c) the extent to which punishment was required. Thirdly, and also in relation to suitability, the court must have regard to the protection of the public, and must pay very careful attention to the different processes for deciding release and to the different effect in each case of the conditions applicable after release. Fourthly, in a case where the medical evidence suggested that the defendant was suffering from a mental disorder, that the offending was wholly or in significant part attributable to that disorder, and that treatment was available, and where the court considered that a hospital order with or without restrictions might be appropriate, it must address the issues in the following order: (i) the court must consider whether the mental disorder could be appropriately dealt with by a hospital order and limitation direction under the terms of the amended section 45A; (ii) if it could, and the defendant was aged 21 at the time of conviction, it should make such a direction under section 45A; (iii) If not, it should consider whether the medical evidence fulfilled the requirements for a hospital order under section 37(2)(a), and (where applicable) for a restriction order under section 41, and should consider whether such an order was the "most suitable method of disposing of the case" under section 37(2)(b); (iv) the wording of section 37(2)(b) required a court, when deciding on suitability, to have regard to "other available methods of dealing with" the defendant. Relevant to this was the power to transfer a defendant from prison to hospital for treatment, under section 47; and (v) if the court determined that a hospital order was the most suitable method of dealing with the defendant, the order should normally be made without considering an interim order under section 38 unless there was clear evidence that such an order was needed. This was because there was acute pressure on secure beds, administrative problems in re-listing cases, and the victim of the crime had no closure.

Sexual Assault

In **Clifford [2014] EWCA Crim 2245** the Court (Treacy LJ, Turner J. and HHJ Pert) upheld a total sentence of 8 years imprisonment for sexual offences. In doing so it addressed a number of additional issues including the “additional trauma” (the trial judge’s words) caused by the applicant’s “contemptuous attitude” to the court proceedings. This included his protestations of innocence on two occasions and some “clowning” behind the television cameras whilst outside of court. The Court commented that neither this nor his attitude should have been treated as aggravating the offending although it would have justified withholding any mitigation based on remorse or a guilty plea.

Environmental Offences

In **R v Thames Water Utilities Ltd [2015] EWCA Crim 960**, the appellant company challenged the level of fine following a guilty plea to an environmental offence. The Court (LCJ, Mitting and Lewis JJ.) gave guidance as to fines to be imposed on very large commercial organisations for environmental offences. It said that the starting point in such cases were the statutory provisions for all offenders in sections 142, 143 and 164 of the Criminal Justice Act 2003. The steps in the guideline had to be followed and it was of particular importance in the case of such very large commercial organisations to take into account the financial circumstances of the defendant. In environmental pollution cases, mitigation could include prompt and effective measures to rectify the harm caused by the offence and to prevent its recurrence, frankness and cooperation with the authorities, the prompt payment of full compensation to those harmed by the offence and a prompt plea of guilty and any significant expense voluntarily incurred in recognition of the public harm done.

Extended Determinate Sentences

The Court (Treacy LJ, Stewart and Simler JJ.) in **DJ [2015] EWCA Crim 563** once again reiterated that it was lawful to impose consecutive Extended Determinate Sentences under section 226A of the Criminal Justice Act 2003. However it was important for a court to make clear as to which offences those sentences were being attributed because it was the overall extended determinate sentences that had to be consecutive and not just the custodial terms.

Crediting Days Spent Under Qualifying Curfew

In **Thorsby and others [2015] EWCA Crim 1** the Court (Pitchford LJ, Popplewell and Edis JJ.) heard conjoined appeals concerning extensions of time within which to apply for leave to appeal against sentence. The single ground of appeal common to each was that the sentencing court failed to give credit under section 240A of the Criminal Justice Act 2003 for one half of the time spent by the offender on qualifying curfew before sentence. The Court gave guidance on the approach it would take in future when receiving such applications. An applicant would be expected to present to the Court of Appeal Office with his notice and grounds, either agreement with the prosecution, or the necessary

documents and other evidence to support his assertions (i) that he was entitled to be credited with section 240A days and (ii) as to the number of those days. This Court would not routinely become the investigator for applicants. It was the responsibility of his legal representatives to make the necessary enquiries. Applicants would be expected to demonstrate with some particularity in a witness statement when and in what circumstances they became aware of the entitlement for the first time and that upon discovery no further delay occurred. In a case of delay by the applicant himself the single judge or the full court would be likely to refuse the extension of time. An application fulfilling the criteria was likely to receive an extension of time from the single judge. If so, the application would be referred to the full court without a representation order.

Credit for time spent in custody having been recalled on licence

In two otherwise unconnected appeals the Court (VPCACD. Spencer and Patterson JJ.) in **Kerrigan and Another [2014] EWCA Crim 2348** considered whether defendants were entitled to credit for time spent in custody awaiting sentence which coincided with time spent in custody having been recalled on licence. Following a review of the relevant authorities the Court ruled that defendants did not qualify for any automatic reduction in their sentences.

Assistance provided after the time of Sentencing

In **ZTR [2015] EWCA Crim 1427** the Court (LCJ. Saunders and Edis JJ) was asked to consider reducing the minimum term of the applicant's life sentence for murder after he had provided significant assistance to the police a considerable period of time after his conviction. The statutory scheme under the Serious Organised Crime and Police Act 2005 was not applicable to this applicant and it was submitted that the common law position should be reconsidered in the light of the new statutory regime and in order to recognise the utilitarian and pragmatic rationale behind the common law. The Court ruled that there was no good reason to depart from the established common law principles to allow for a reduction in sentence for assistance provided after the time of sentence. There were two countervailing considerations, firstly the Court would not be acting as a court of review, but rewarding someone for good behaviour during his sentence which was not its function. Secondly, experience had shown that some might be motivated to manufacture assistance after conviction in the hope of a reduction in a long sentence and nothing should be done which might encourage that.

Whole Life Order – non-homicide

In **R. v Andrews (Donald Joseph) [2015] EWCA Crim 883**, the Court (Treacy LJ. Nicol J. and HHJ Tonking), following a review of the authorities, said that although the door was not conclusively shut to the imposition of a whole life order in serious non-homicide cases the practice of the court to date had been against the imposition of such sentence.

Suspension of payment of fine pending appeal

In **R (Natural England) v. Day [2014] EWCA Crim 2683** the Court (LCJ. Openshaw and Lang JJ.) made clear that a pending appeal did not operate to suspend the operation of any sentence or order of a Crown Court, whether it be imprisonment, payment of a fine or a confiscation order. Once made the order was enforceable in accordance with its terms in the absence of the exercise by a court of any power to the contrary. There was no statutory or other power given to any court to suspend payment of a fine or costs.

Victim Surcharge Orders

The Court (Macur LJ. Supperstone and Leggatt JJ.) in **George [2015] EWCA Crim 1096** said that when re-sentencing for the original offence following a breach of a Community Order a second victim surcharge order should not be made. The 2012 Regulations SI. 2012 No. 1696 made no provision for such.

The Work done by the Court of Appeal Criminal Division

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

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

Year	Lord Justice		High Court Judge (including Retired Judges)		Circuit Judge	
	CT	RD	CT	RD or S31	CT	RD
2014-15	523	468	839	770	213	151

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

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

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

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

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

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

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

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

The Registrar and/or the Senior Legal Managers (in the Registrar's absence) regularly receive overseas visitors. The visits help to build and strengthen global relations and international understanding of our legal system. During the period of this review the following have visited the Court of Appeal: A group of Magistrates/Registrars - Isaac Muwata and John Eudes Keitirima (Courts of Judicature, Uganda); Hazarena Hurairah and Zelda Skinner (State Judiciary Department, Brunei); Sani Ismail and Jamilu Sulaiman (Kano State Judiciary, Nigeria); Office Staff from the Turku Court of Appeal, Finland; Nthomeng Maseru, Chief Justice of Lesotho; Delegation of Judges from Palestine, accompanied by Mr R Venne QC; Delegation of Judiciary from the Republic of Macedonia, accompanied by Sir Robin Auld and Sir Henry Brooke; Judge Endo from the Tokyo District Court; Justice Otani, Justice of the Supreme Court, Japan; Lord Justice Clerk and officials from the Scottish Sentencing Council; Students from the Syracuse University USA; Mr Mark Pedley, Judicial Registrar Court of Appeal Supreme Court of Victoria; and Master Issac Tam, Master of the High Court, Criminal Appeals Registry.

Summary and Statistics

1 October 2014 to 30 September 2015

Overall number of cases received

During the year there has been a reduction in the number of cases received by the Court. A total of 6,036 applications were received, a reduction of 80 cases from last year. The number of sentence and conviction applications received was 4,518 and 1,518 respectively. This represents a reduction of 188 sentence cases but an increase of 108 conviction cases.

(See Annex A)

Applications for leave to appeal

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

Conviction applications:

In the reporting year a total of 1,232 applications were considered. Of these 158 (13%) were granted leave; 98 (8%) had their applications referred to the full court; and 976 (79%) were refused leave.

Sentence applications:

In the reporting year a total of 3,226 applications were considered. Of these 740 (23%) were granted leave; 235 (7%) had their applications referred to the full court; and 2,251 (70%) were refused leave.

(See Annex C)

Average waiting times

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

Conviction and Sentence cases heard by the full Court

There were 299 conviction cases heard by the full court of which 121 were allowed. The total represents a decrease of 98 cases from the preceding year. The corresponding figures for sentences heard was 1,424 (158 less than the preceding year) of which 997 were allowed.

(See Annex D)

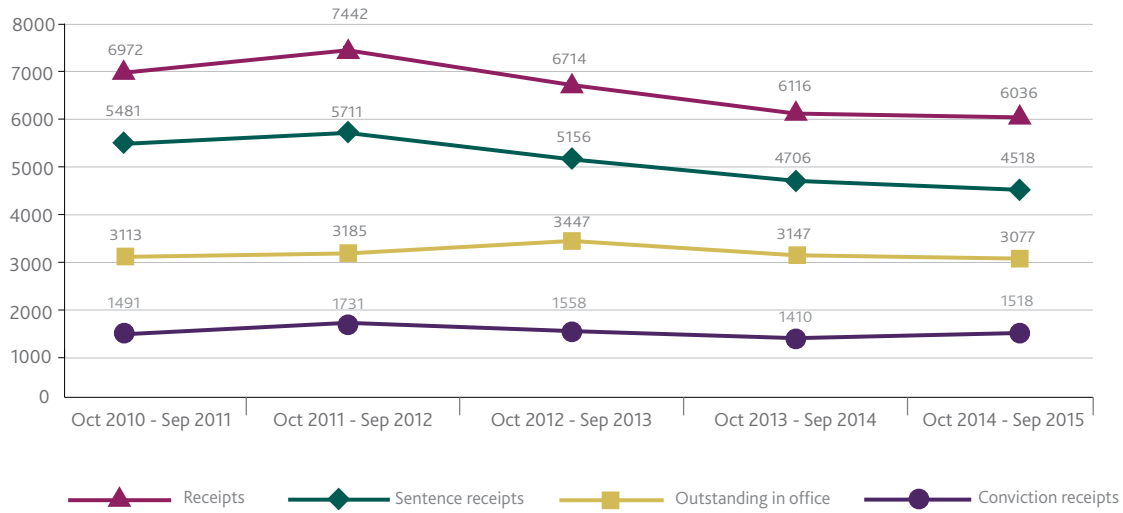
Success rate of appeals

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

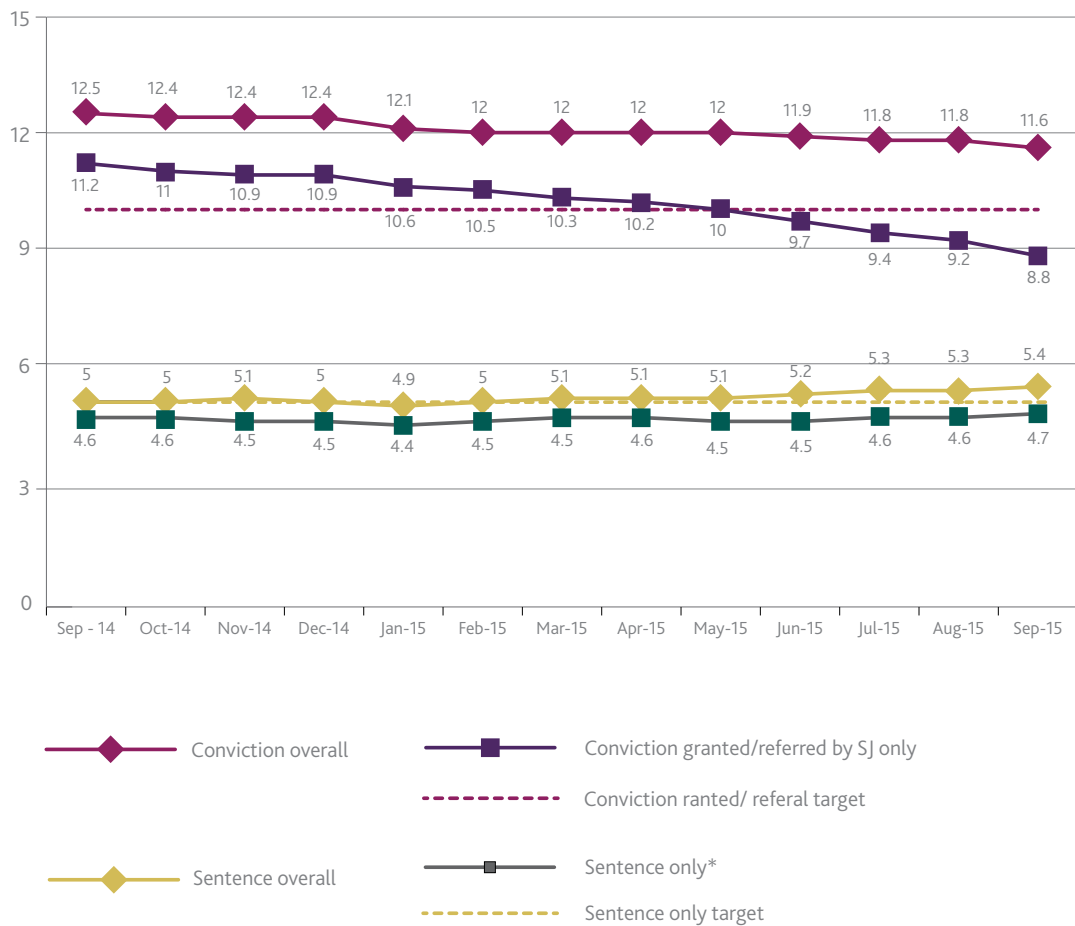
Over the last 4 years the number of successful conviction appeals has been between 8 and 14% when considered as a percentage of cases received. For sentence it is between 21 and 25%.

(See Annex F)

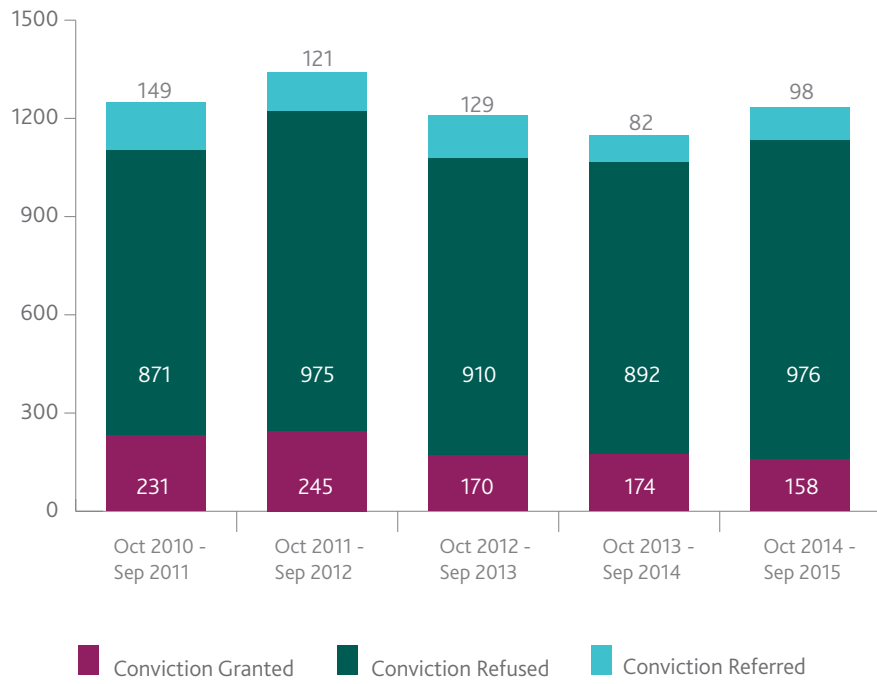
Applications Received and Outstanding in Office



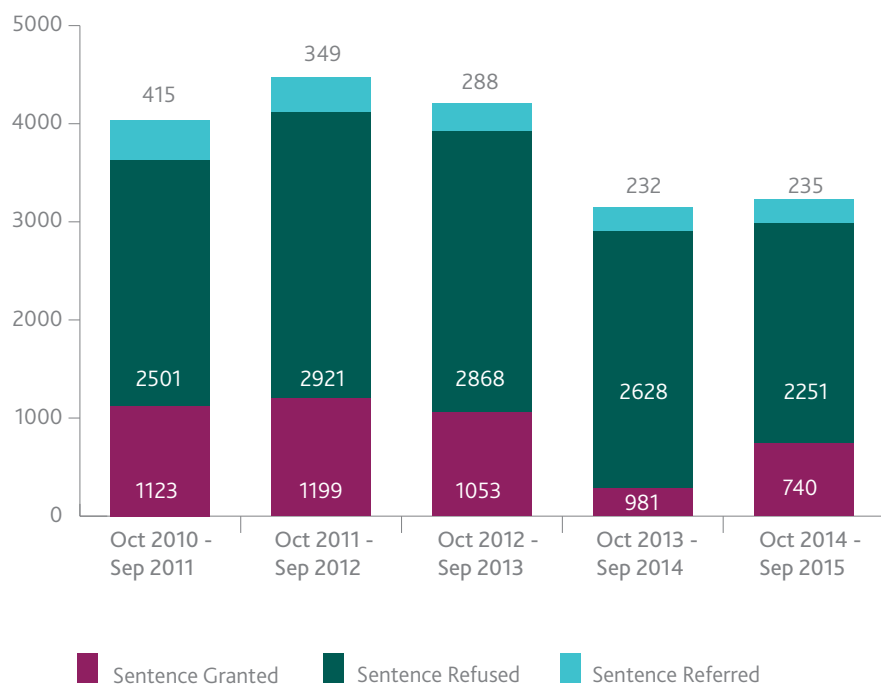
Average waiting times (in months) rolling average of cases disposed by full court over previous 12 months



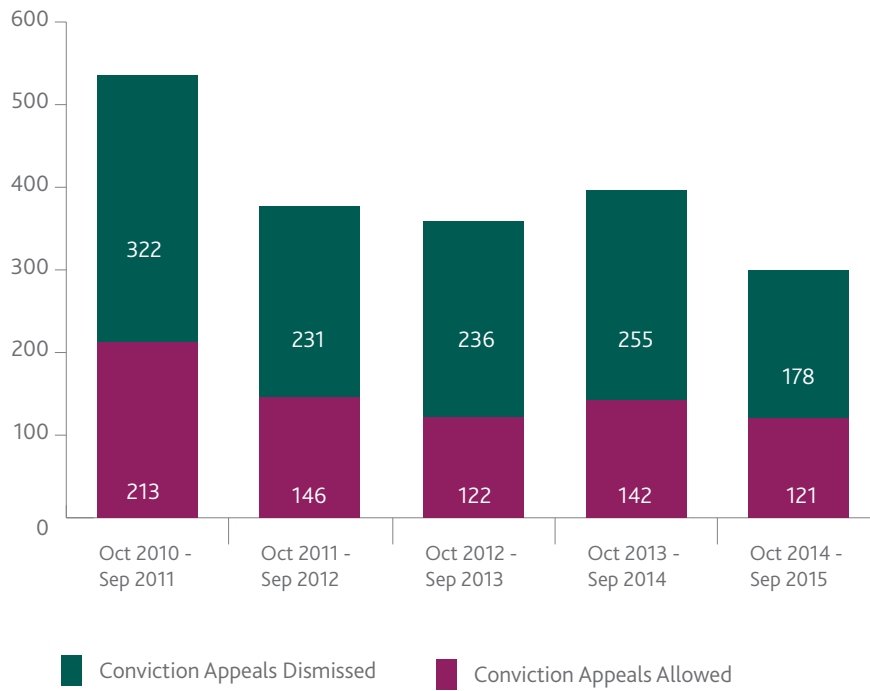
Section 31s - conviction applications dealt with



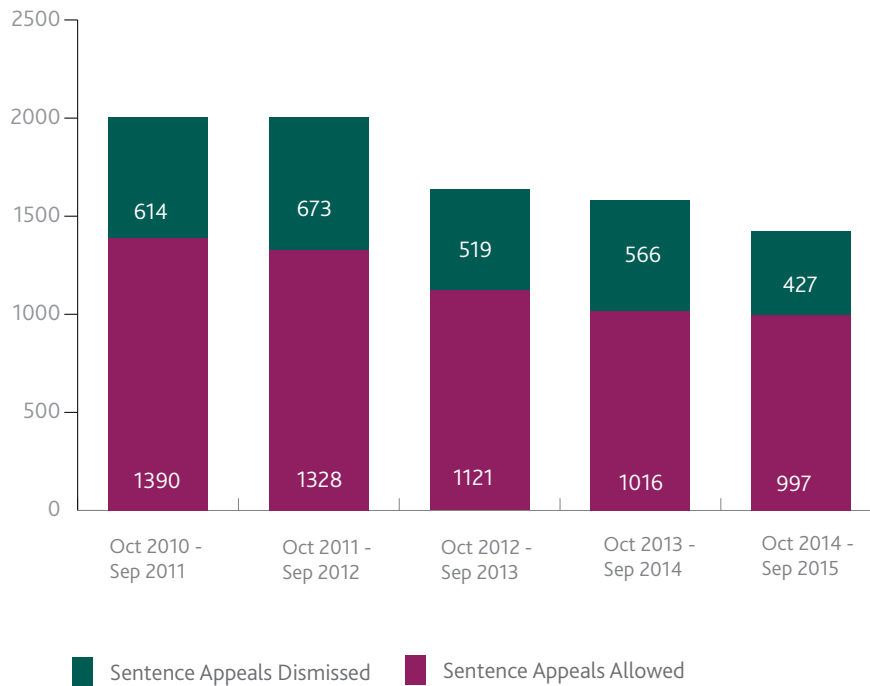
Section 31s - sentence applications dealt with



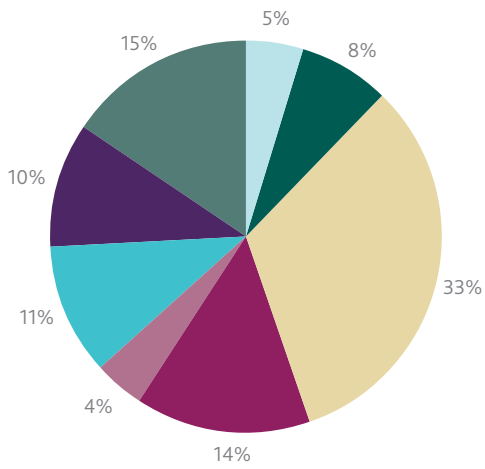
Appeals heard - conviction



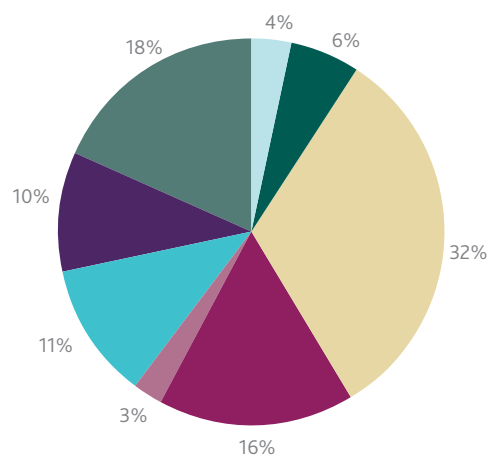
Appeals heard - sentence



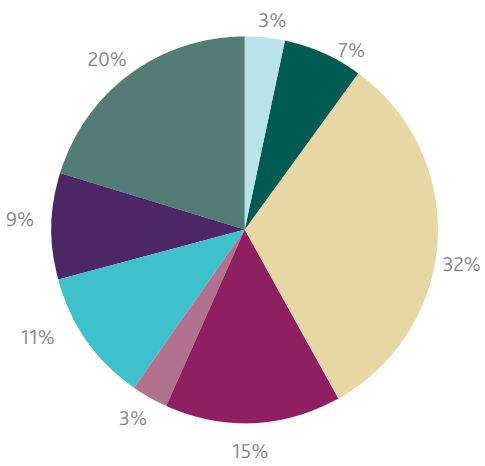
Oct 2010 - Sep 2011



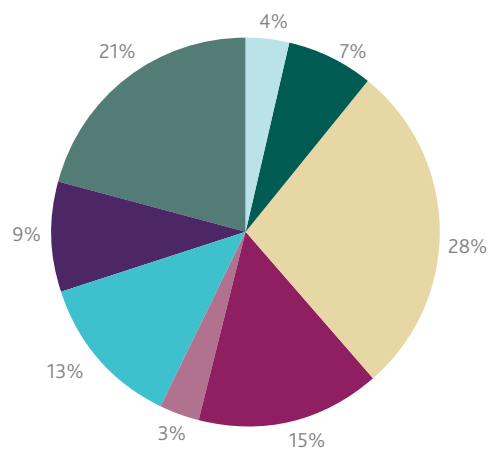
Oct 2011 - Sep 2012



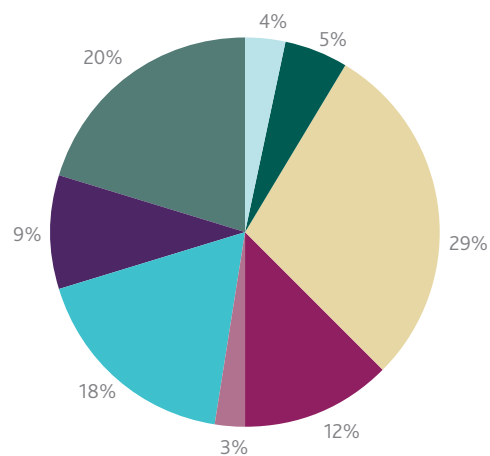
Oct 2012 - Sep 2013



Oct 2013 - Sep 2014

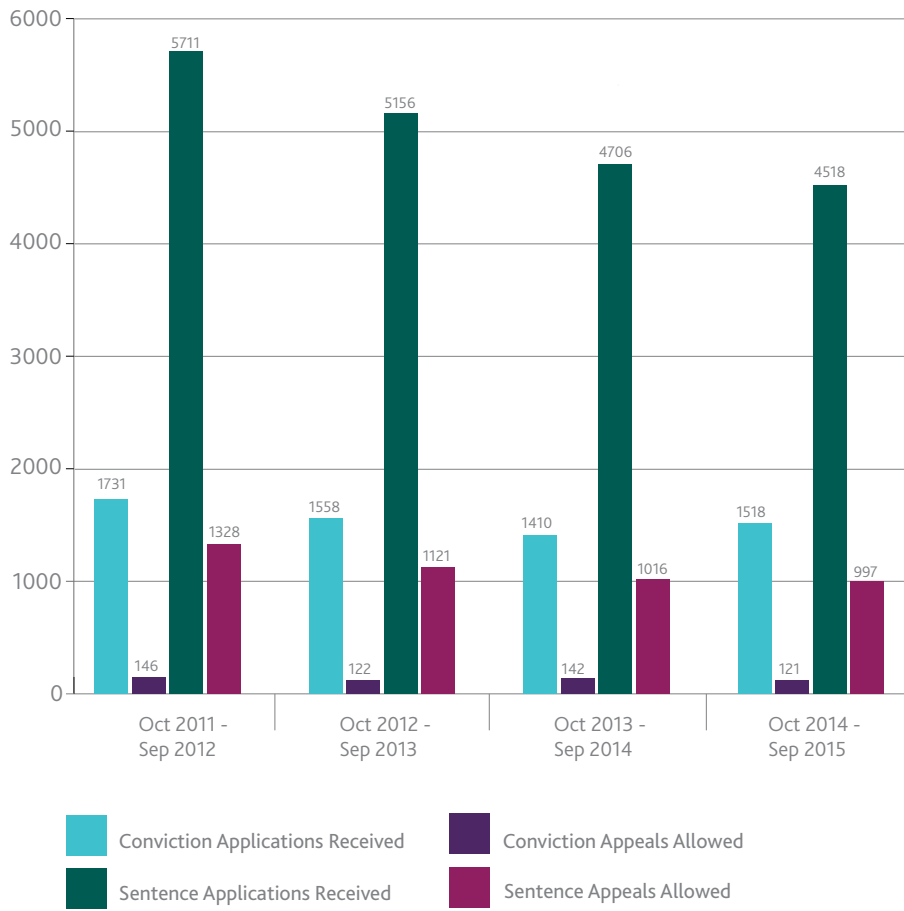


Oct 2014 - Sep 2015

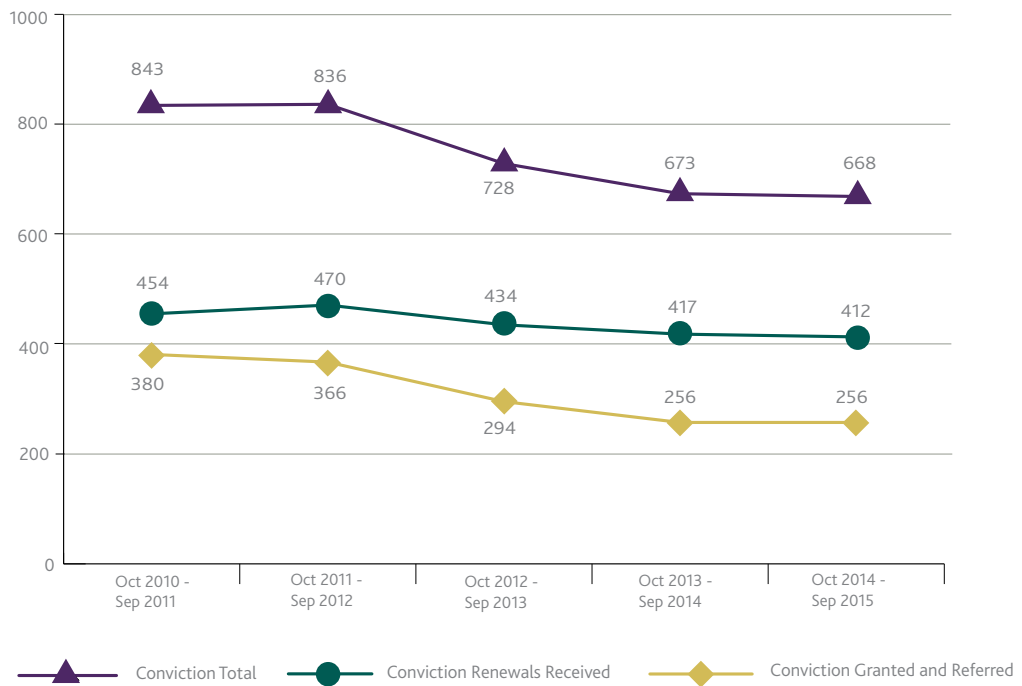


- Conviction Appeals Allowed
- Conviction Appeals Dismissed
- Sentence Appeals Allowed
- Sentence Appeals Dismissed
- Conviction Renewals Granted
- Conviction Renewals Refused
- Sentence Renewals Granted
- Sentence Renewals Refused

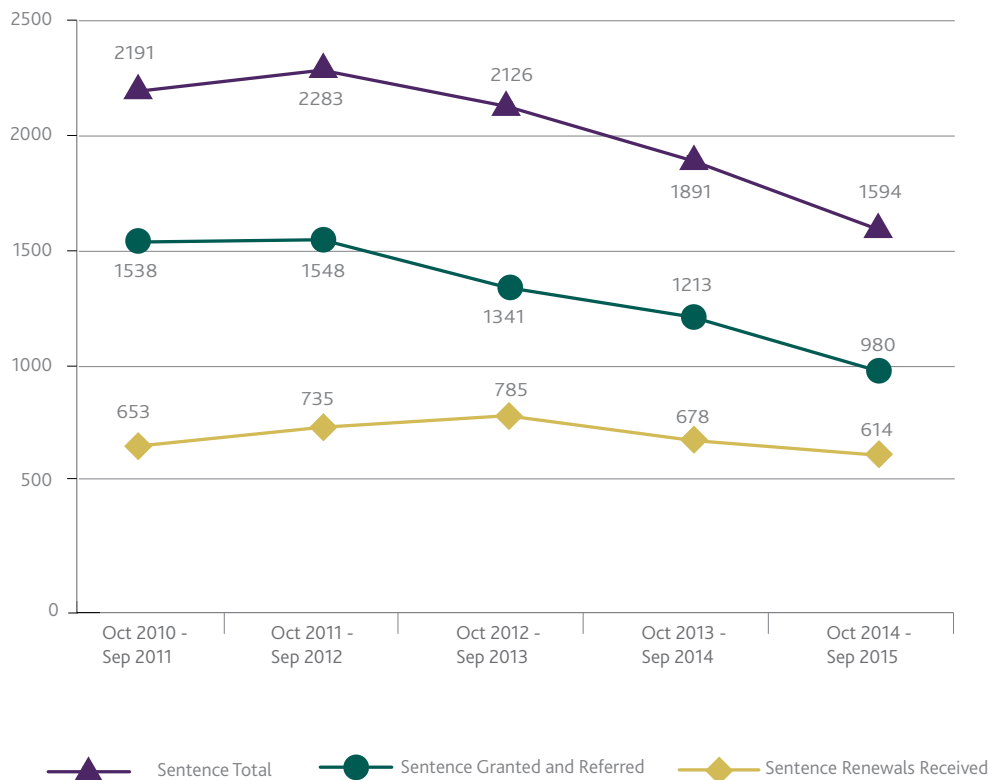
Applications Received and Appeals Allowed



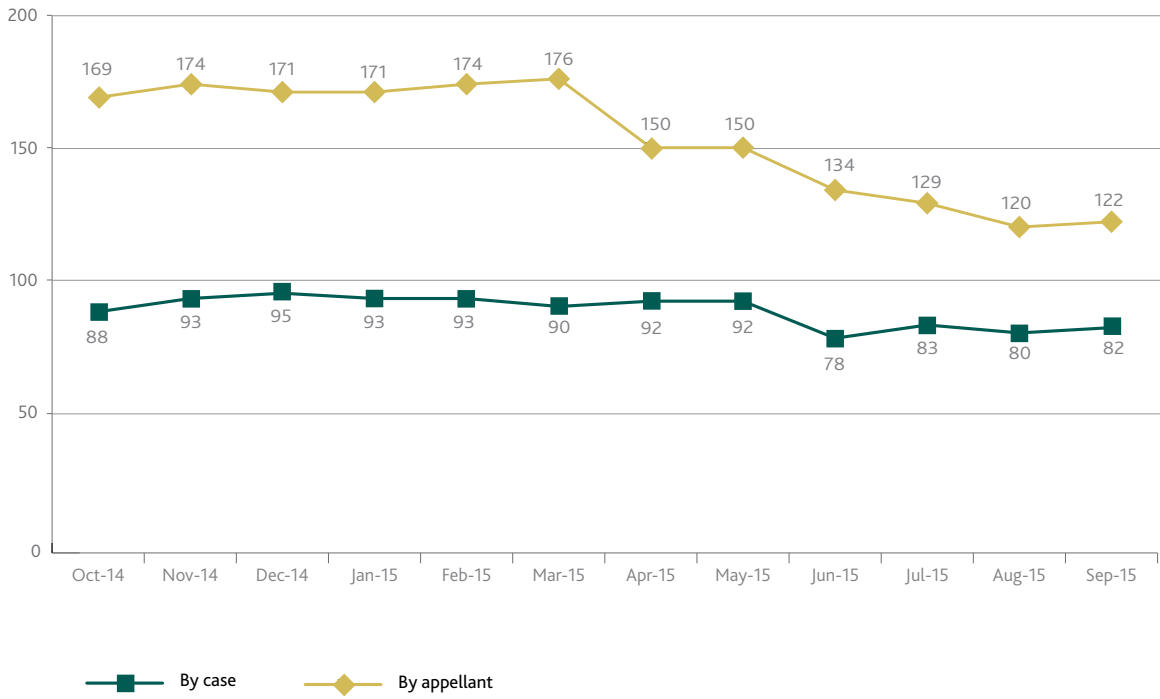
Applications Granted / Referred and Renewals Received



Applications Granted / Referred and Renewals Received



Conviction Old Cases - Outstanding over 10/13 months



Sentence Old Cases - Outstanding over 5 months

