The Court of Appeal
Criminal Division

Review of the Legal Year
2006 / 2007

Review of the period October 2006 to September 2007

Introduction

The year 2007 marks the centenary of the assumption by the Court of Appeal of its criminal jurisdiction. The Court of Criminal Appeal was established by the Criminal Appeal Act 1907 to hear appeals against conviction and sentence by those convicted at Quarter Sessions, the Assizes and the Central Criminal Court. In 1966 the Court became the Court of Appeal, Criminal Division, and remained so under the consolidating Criminal Appeal Act 1968. Today, the Court is very much an established part of the legal landscape but it should be remembered that this was not always so.

Between 1844 and 1906 Parliament considered no fewer than 31 Bills with a view to establishing a criminal appellate jurisdiction. Many commentators were tenacious in their support for such a reform but others, including it has to be said more than one Lord Chief Justice, were obdurate in their opposition. Finally, it took two notorious miscarriages of justice, those of George Edalji in 1903 and of Adolf Beck, who was twice wrongly convicted, in 1904, to finally overcome that opposition. An excellent history of the attempts to establish the Court, and its subsequent history, is to be found in *English Criminal Appeals 1844-1994* by Rosemary Pattenden, Reader in Law at the University of East Anglia. More recently the story of George Edalji formed the subject matter of *Arthur and George* by the distinguished novelist Julian Barnes. Each, in its own way, removes any doubt as to the necessity for the Court's creation.

The Annual Review this year therefore reports on the state of health of a centenarian. I am pleased to report that for the most part it is in good heart. The number of cases has increased slightly. The number of conviction applications last year stood at 1598, an increase of 68 and the number of sentence applications 5176, an increase of 262. It is of course too early to say whether this is the first manifestation of a new trend. The average waiting time in conviction appeals was 10.9 months, a further and welcome reduction on the previous year, and a remarkable 4.2 months in sentence appeals, now well below the target of 5 months which we had set ourselves.

In relation to conviction cases it is doubtful whether further significant reductions in waiting times can be achieved unless steps are taken to discourage hopeless applications and, still more, hopeless conviction renewals to the full Court. Last year there was an increase of 16% in conviction renewals and 14% in sentence renewals. For the new legal year steps are being taken to enable the single judge to indicate more readily when he or she considers an application to be hopeless, and where such applications are renewed to the full Court it is highly likely that a loss of time order will follow. The Court's resources are necessarily finite, and must be concentrated on those appeals which have some real prospect of success.

As expected there has been a slight increase in the number of prosecution appeals against terminating rulings, as prosecuting authorities become more familiar with the possibilities of this jurisdiction.

In my judgment in ***R v Cain*** [2006] EWCA Crim 3233, I drew attention to the number of cases where unlawful sentences were passed, and the essential role which counsel must play in assisting judges to unravel the excessively complex sentencing legislation with which they must grapple. I am very pleased that the Attorney General has now amended the guidance to prosecutors by providing for a plea and sentencing document in every Crown Court case. Much will depend on the quality of these documents which will most certainly be kept under review, by the Court itself, over the coming year.

At our invitation, and to mark our centenary, the Criminal Procedure Rule Committee produced a new set of rules governing all proceedings before the Court. I am also pleased to report that the Lord Chancellor has responded very positively to our proposals for modest, but important, amendments to the Criminal Appeal Act 1968 and related legislation.

Ninety years after the foundation of the Court of Criminal Appeal, the Criminal Cases Review Commission was established and this year a number of judges and the Registrar attended a conference to mark its 10th birthday. The Commission performs invaluable work. In relation to some appeals it has become virtually the investigative arm of the Court itself. As with the Court, one may well ask how the criminal justice system managed without it.

This year saw the retirement of Lord Justice Auld and I should like to pay tribute to his contribution to the administration of criminal justice, both as a judge of the Court and also as the author of the most far-reaching report into the administration of criminal justice over the last 100 years.

Finally, I should like to thank Sir Igor Judge, the President of the Queen's Bench Division and Lord Justice Latham, the Vice-President of the Court of Appeal, Criminal Division, for the strong leadership they have provided to the Court over the last year.

A recent Swedish judicial visitor remarked that the Court provided a modern and effective service, in an atmosphere marked by grace and tradition. Our aim will be to continue to do so over the Court's second century.

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

1 Summary for the period October 2006 to September 2007

1.1 The Court plays an important role in protecting and promoting public confidence in the criminal justice system and 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 Since 2002, the number of applications received by the Court has fallen slightly every year, but this trend appears to have changed over the last year, with the Court receiving a total of 6774 applications (5176 sentence applications and 1598 conviction applications). This was 262 more sentence applications and 68 more conviction applications then those received in the previous year. Despite this increase in cases, the Office has continued to manage its workload efficiently and the number of applications outstanding has continued to fall to its lowest level for the last 5 years (see **Annex A**).

1.3 The average waiting time of cases disposed of by the Court over the previous 12 months was 10.9 months for conviction cases and 4.2 months for sentence cases (see **Annex B**). In contrast, in 2003/2004 the average waiting time for conviction cases was 14.7 months, in 2004/2005 it was 14.1 months and last year in 2005/2006 it was 12 months. This downwards trend clearly reflects the progress the Court is continuing to make in reducing waiting times, although the Court is aware that there is still work to be done to reduce waiting times further.

1.4 Over the year, 2131 sentence applications and 495 conviction applications resulted in a full appeal hearing and of those appeals, 72% of sentence appeals and 38% of conviction appeals were allowed by the Court. In respect of conviction cases, the percentage of conviction appeals which were allowed increased by 6% from the previous year, whereas the percentage of sentence appeals which were allowed remained approximately the same (see **Annex A and D**).

1.5 A total of 1598 conviction applications were received in the reporting year and 445 appellants were granted leave to appeal by the single Judge or had their application referred to the Court by a single Judge or the Registrar of Criminal Appeals. Out of the 1153 remaining applicants who were refused leave to appeal by the single Judge, 533 applicants then renewed their applications to the Court. This resulted in the number of renewed applications for leave to appeal against conviction being dealt with by the Court increasing by 16% from the previous year (see **Annex A and G**).

1.6 Similarly, there were 5176 sentence applications over the reporting year and 1807 appellants were granted leave to appeal or had their application referred to the Court. 896 of the cases that were refused leave then renewed their applications to the Court. This has also resulted in the number of renewed applications for leave to appeal sentence being dealt with by the Court increasing by 14% from the previous year (see **Annex A and G**).

1.7 There were an increased 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 25 cases where the Prosecution exercised their right of appeal under the Criminal

Justice Act 2003. This was more than double the cases heard the previous year. Although still a relatively small number of cases, these applications often have to be listed at very short notice which can mean that the Court Lists often have to be completely re-organised to accommodate them. The number of interlocutory applications also more than doubled to 33 cases.

1.8 **Annex E** shows the proportion of all work which was 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 reporting year. A conviction appeal can take anything from one and a half hours to many days for the Court to hear and determine. Factors such as the hearing of fresh evidence and the number of grounds of appeal and their complexity all contribute to the length of time a case requires. 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
2001-2002	676	266	1098	402	270	89
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

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

The number of sitting days for Lord Justices decreased slightly during the year but increased slightly for High Court Judges. This reflects an increase in the number of Courts consisting of two High Court Judges, which can deal with certain renewed applications for leave to appeal against conviction and sentence, and certain appeals against sentence where the sentence is less then 10 years imprisonment. Lord Justices also have extra judicial duties including membership of the Judicial Appointments Commission and other administrative matters which account for their increased number of "reading days" in comparison with the other Judges.

1.11 Retired Judges also sit regularly as part of the constitution of the Court and over the reporting year the retired Judges sat for 108 days in Court and required a total of 41 reading days.

1.12 The Court habitually sits in six constitutions, with the exception of the summer vacation, when one constitution was sitting in August and two or three constitutions were sitting in September.

1.13 As has been the case in previous years, the number of directions hearings has increased again from 109 hearings the previous year, to 149 hearings. This demonstrates not only the increasing complexity of conviction cases, but the Court's function in supporting active case management.

1.14 In terms of costs, 584 bills of costs were received which were over £4000. This represents a fall by 0.23% (when compared to the total number of all bills received) from the previous year; but there was also a 37% increase in the number of payments made against claims in excess of £50,000 in the reporting year. These cases are the most complex and include diversion fraud cases and high profile appeals.

1.15 In their totality, these statistics clearly reflect the increasing complexity of cases and also the efforts the Court is making to reduce the number of outstanding applications and waiting times.

2 Criminal Appeal Office Organisation

2.1 The Court is supported by the Registrar and the staff of the Criminal Appeal Office, comprising lawyers and administrative personnel. The office is structured into four different casework groups, one of which deals exclusively in sentence only cases. 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 also provide advice on procedural matters to practitioners and applicants in person and they prepare summaries for the assistance of the CACD. Within the Office, there are also specialist senior lawyers, who deal with the more complex cases, prosecution appeals against terminating rulings and interlocutory applications.

2.3 Dedicated teams of administrative staff support the lawyers and 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 Following the review of the CACD and the wider Royal Courts of Justice, the recommendation for a single manager with responsibility for both divisions of the Court of Appeal has now been implemented. The new post holder, Loraine Ladlow has recently taken up the role of Area Director for the Court of Appeal. Her primary focus has been to gain a greater understanding of the working practices within the organisation and the operational structures currently serving the two divisions. This change in management structure has been met with a positive response from members of staff and the judiciary and creates an opportunity for the new Area Director to look anew at working practices and resources to make sure they are being put to good effect and to identify areas where improvements can be made across the two divisions. The Area Director is also very committed to improving staff retention and development and is working closely with the Regional Director to formalise a fund supported training plan.

2.5 This year saw the official retirement of the Deputy Registrar, Lynne Knapman, who has served in the Office for over 30 years. Lynne's commitment and hard work over this period has been greatly valued by other members of staff and the judiciary alike. Lynne has since been appointed as a Deputy Master and her knowledge and experience of both criminal and administrative law matters continues to benefit the Courts.

2.6 The Criminal Appeal Office also said farewell to Mary Soskin, following nearly 30 years of work as a lawyer in the Royal Courts of Justice. Mary started her career in October 1978 at the Civil Appeals Office, but was a key member of staff, managing other lawyers at the Criminal Appeal Office for many years, before she took early retirement in July 2007.

3. Cases and legislative developments

3.1 The modern applicability of the M'Naghten Rules (formulated in 1843) relating to insanity arose for consideration in ***R v Johnson*** [2007] EWCA Crim 1978.

3.2 The Court observed that they had to be approached with some caution as they had been formulated by the judges without the benefit of argument from counsel as the answers to a series of questions posed by the House of Lords. There was a conflict between the English decision in ***R v Windle*** [1952] 2 QB 826 and the Australian decision in ***R v Stapleton*** (1952) 86 CLR 358 as to whether the defendant had to know his act was legally or morally wrong. Windle had never been doubted in England and had to be followed but the area was one which was notorious for debate. There was room for reconsideration of rules which had their genesis in the early years of the nineteenth century.

3.3 An analysis of the difficult question of the liability of secondary parties where the act of the actual killer may have been fundamentally different to that contemplated was undertaken in ***R v Rahman and others*** [2007] EWCA Crim 342.

3.4 In a case where there was an attack by an armed group, one of whom (who cannot be identified) caused the death with the necessary intent to kill or cause really serious harm, each member of the group who either intended or realised that one of the group might kill, intending to do so, was guilty of murder. Where the intent or foresight was the lesser one of causing serious bodily harm, if the defendant foresaw the act which caused death, he was guilty. If he did not foresee this act but it is not fundamentally different from acts he did foresee, he was guilty.

3.5 Similarly, in ***R v Rafferty*** [2007] EWCA Crim 1846, where the appellant had taken part in an assault on the deceased but had left the scene before his co-accused drowned him, a conviction for manslaughter was quashed. In the unusual circumstances of the case, the Court took the view that the nature of the act causing death was fundamentally different from the acts which the appellant had foreseen as part of the joint enterprise.

3.6 In ***R v Cole***; ***R v Keet*** [2007] EWCA Crim 1924 the Court considered the admissibility of written hearsay evidence which was sought to be adduced under the provisions contained in Chapter 2, Criminal Justice Act, 2003. It concluded that both Strasbourg and domestic jurisprudence had moved away from an absolute rule that the evidence of a statement could not be adduced in evidence unless the defendant had an opportunity to examine the maker. The sole issue was whether the admission of the statement was compatible with a fair trial. Where the defendant was responsible for the non-availability of the witness, he would be in no position to complain. In other circumstances, where for example the witness had died, fairness would depend upon the particular facts.

3.7 Not every conviction in which the jury (contrary to instructions) undertake their own research on the internet during retirement will be unsafe. Where the material was extraneous to the jury's deliberations, the Court of Appeal may examine it. If there was any real possibility that a juror may have been influenced improperly by the material to convict, the conviction would be unsafe. Unlike ***R v Karakaya*** [2005] EWCA Crim 346 where the material was of a

campaigning nature asserting that acquittals for rape were too frequent, in this case, it related in the main to sentencing. It was clear by the enquiries which the jury made of the judge as to the law that they were turning to him for authoritative rulings about the law. ***R v Marshall & Crump*** [2007] EWCA Crim 35.

3.8 In two cases the Court gave consideration to issues of consent in rape and the statutory presumptions which apply.

3.9 In ***R v Bree*** [2007] EWCA Crim 804 the Court considered the issue in the light of a complainant's voluntary intoxication, following the enactment of s74, Sexual Offences Act, 2003. Where, through intoxication, a complainant had temporarily lost the capacity to consent, the act was rape. Where, however, the complainant, despite intoxication, remained capable of consenting (and did so), the act was not rape. The problems did not arise from the legal principles but from the infinite circumstances of human behaviour and the evidential difficulties which inevitably arose from an act which usually involved the presence of the participants alone.

3.10 ***R v Jheeta*** [2007] EWCA Crim 1699 was a bizarre and unpleasant case raising interesting issues of consent and the statutory presumptions of the Sexual Offences Act, 2003. The appellant and the complainant had a consensual sexual relationship. He was responsible for her receiving repeated threatening text messages about which she confided to him. He took responsibility for informing the police on her behalf and masqueraded as a succession of police officers in a lengthy series of text messages. She wished to terminate their relationship but whenever she raised the issue she received a message purporting to come from the investigating police officer instructing her to take care of the appellant and to have intercourse with him.

3.11 The appellant pleaded guilty to Blackmail (not in issue on appeal) and to a number of counts of rape, having been advised that the conclusive presumption of the absence of consent provided by s76, Sexual Offences Act, 2003, applied.

3.12 The Court held that s76(2)(a) did not apply in these circumstances, being limited to a deception as to "the nature and purpose" of the act of the offence charged, the "act" being in cases of rape vaginal, anal or oral penetration. Circumstances giving rise to the presumption in this subsection would be comparatively rare. However, the Court did not view the conviction as unsafe in the light of the written basis of plea which did not call into question unequivocal admissions in interview that there had been occasions of intercourse where the complainant had not truly consented.

3.13 In ***R v Hamilton*** [2007] EWCA Crim 2062 the Court reviewed the origin of the common law offence of Outraging public decency and both the nineteenth century and the modern authorities as to its elements. Using a hidden camera so positioned as to enable the taking of images of the underclothes of women surreptitiously (a practice apparently known as "Upskirting") was capable of constituting the offence. Whether it was in public was a matter for the jury.

3.14 In ***R v El Kurd and others*** [2007] EWCA Crim 1888, the Court dealt with four references by the Criminal Cases Review Commission made as a result of the clarification in the law (as to the differences in the mens rea required for conspiracy to commit a money laundering offence and

the substantive offence) represented by the House of Lords' decision in ***R v Saik*** [2006] UKHL 18. The Court extensively reviewed the authorities on the test to be applied when considering the safety of a conviction, particularly in the light of indictments which were defective. The Court held that the convictions for conspiracy were unsafe in the light of what were now understood to be misdirections on the necessary mens rea. It indicated that no authority had been found permitting either the jury to convict of the substantive offence on an indictment charging conspiracy or the substitution by the Court of Appeal of such a verdict. Given that conspiracy was the agreement to commit an offence, as a matter of logic, that allegation did not invariably amount to or include the substantive offence. Retrials were ordered in all four cases.

3.15 The number of cases relating to proceedings instituted for terrorist offences appears to be rising. By nature such cases are often complex, both factually and legally, and urgent because they may take the form of interlocutory or prosecution appeals arising from ruling made before or during a trial.

3.16 In addition to ***R v Hamza*** [2006] EWCA Crim 2118 (paragraph 7.3 below), the Court considered a prosecution appeal in ***R v IK and others*** [2007] EWCA Crim 971 giving consideration to the rule against double-jeopardy where there had been prior proceedings before the Special Immigration Appeals Commission; an interlocutory appeal in ***R v F*** [2007] EWCA Crim 243 where it determined that there was no requirement in the Terrorism Act that the government which the terrorist act was designed to influence need be democratic or representative; two separate interlocutory appeals arising from a pre-trial preparatory hearing in ***R v M and others*** [2007] EWCA Crim 218 and [2007] EWCA Crim 970; and an appeal against conviction in ***R v Rowe*** [2007] EWCA Crim 635, all of which considered and clarified the interaction of sections 57 and 58, Terrorism Act, 2000.

3.17 The Court has continued its work of interpreting and explaining the operation of the so-called "dangerous offender" provisions contained in Part 5, Chapter 12, Criminal Justice Act, 2003.

3.18 In ***R v Johnson*** [2006] EWCA Crim 2486 the Court encapsulated what is a fundamental feature of these provisions: that the sentence was concerned with future risk and public protection and that, although punitive in its effect, it did not, strictly speaking, represent punishment for past offending. The Court also made very clear that the lack of resources within the prison system to enable a proper assessment of risk to be undertaken before the expiry of the minimum term could not be remedied in the Court of Appeal where the issue was whether the sentence was manifestly excessive or wrong in principle when imposed.

3.19 In ***R v Reynolds and others*** [2007] EWCA Crim 538, the Court had to deal with a variety of cases where dangerous offenders had been improperly sentenced. In a number of the cases, sentencers had purported to impose extended sentences in respect of serious specified offences (for which only an indeterminate sentence was mandated by statute). The Court determined that it could not impose the otherwise mandatory sentences in the light of the restriction on the Court of Appeal's powers contained in s11(3), Criminal Appeal Act, 1968.

3.20 It also reviewed some of the restrictions on the exercise of the power to vary sentence contained in s155, Powers of Criminal Courts (Sentencing) Act, 2000. It determined that it was permissible to rescind a sentence imposed within the 28-day period mandated by s155 and then to adjourn to a time outside the 28-day period to resentence

3.21 A further important (and very useful) feature of the judgment was that it emphasised the mandatory nature of the Chapter 5 provisions and set out in concise and clear form the nature of the process to be followed.

3.22 In ***R v C & others*** [2007] EWCA Crim 680, the Court had the assistance of counsel for the Home Secretary in giving guidance for the future as to the structuring of multiple sentences on dangerous offenders convicted of non-serious specified offences. "Old-style" extended sentences under s85, Powers of Criminal Courts (Sentencing) Act, 2000, were available only for offences committed between 30th September, 1998, and 4th April, 2005. Both the test for their imposition and their effect on release dates and "at risk" periods were greatly different from those which pertained to extended sentences passed on dangerous offenders post-4th April, 2005. Many of the sentence calculation problems which beset the earlier regime have been removed. Although consecutive extended sentences were not unlawful they should be avoided, where possible. Where consecutive determinate and extended sentences were imposed, the determinate sentence should, usually, be ordered to be served first. The Court of Appeal would only interfere where real calculation problems could be shown.

3.23 In ***R v Harries & others*** [2007] EWCA Crim 1622, the Court considered the problem which arose where indictments charging specified offences had been drawn as having been committed between two dates spanning the commencement date (4th April, 2005). Neither s234, Criminal Justice Act, 2003, nor the transitional provisions in the commencement order brought an offence actually committed before the commencement day within the provisions. When faced with a spanning count, the sentencer should not make use of the dangerous offender provisions unless satisfied that an offence had been committed after the commencement date. Care should be taken with the drafting of indictments and, where possible to do so, the drafting should reflect the significance of 4th April, 2005. Where that could not be done, the Judge should make whatever findings were appropriate in the light of the evidence, giving reasons for his conclusions.

3.24 The giving of an indication of sentence in accordance with ***R v Goodyear*** [2005] EWCA Crim 888 where the defendant was charged with a "specified" offence giving rise to the potential of mandatory sentencing under the dangerous offender provisions of Part 12, Chapter 5, Criminal Justice Act, 2003, was an area which had caused some difficulty. The Court gave some practical guidance on this topic in ***R v Kulah*** [2007] EWCA Crim 1701. If a Judge in his unfettered discretion gave an indication, he should make clear that the information necessary to make the required risk assessment was not available and that the assessment remained to be made; if, when made, the offender was assessed as dangerous, a sentence mandated by the provisions would be imposed. Where an indeterminate sentence was required, the indication could relate only to the notional determinate term which would be used in the calculation of the minimum specified term: where an extended sentence was required, it would relate to the appropriate custodial term and did not encompass the extension period. If the assessment was that the offender was not dangerous, the indication would relate in the ordinary way to the maximum determinate sentence which would be imposed. The Court reminded practitioners that Goodyear already imposed an obligation on the prosecution to draw to the court's attention any mandatory or minimum sentencing requirements.

4. The role of the Criminal Cases Review Commission

4.1 The Criminal Cases Review Commission ("the CCRC") celebrates its tenth anniversary this year and is the independent body established on 1 January 1997, 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.

4.2 Over the reporting year, the CCRC referred 33 cases to the Court, which were predominantly cases that had already had an appeal dismissed by the Court or other final determination. 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. Statistics from the CCRC show that since the CCRC was formed, just over two thirds of all the cases it has referred resulted in the referred conviction or sentence being quashed.

4.3 Many of these cases are referred by the CCRC because fresh evidence or new argument has come to light many years after the conviction. On 31 July 2007, the Court confirmed in ***R v Cottrell*** [2007] EWCA Crim 2016, that the CCRC should have regard to the law and practice of the Court when deciding to refer cases (in particular where the law had changed) but it must exercise its own independent and fact specific judgment on whether to refer a case.

4.4 Once the CCRC has referred a case, the case must proceed to a full appeal hearing and the appellant does not require leave from the Court or a single Judge to argue the referred grounds. However, in many cases, the appellant often seeks leave to argue grounds of appeal which the CCRC has not referred and this results in further delays to the hearing of the case, as the new Grounds may require further investigation and additional transcripts and documents may need to be obtained for the Court. Additional Court time is also then required to determine whether the additional grounds of appeal are arguable.

4.5 In exceptional cases, the CCRC can refer a case that has never been before this Court. In one such case, ***R v Gore*** (not yet reported), the defendant (who is now deceased) failed to seek immediate medical attention following the birth of her baby. The defendant pleaded guilty to infanticide, but the CCRC referred the case to the Court, given new evidence of the defendant's psychological condition at the time of her plea and following a review of the conviction by the Attorney General's Interdepartmental Group on infant deaths.

4.6 The case of ***R v Samuels*** [2007] EWCA Crim 1619, was another exceptional case which was referred by the CCRC because of fresh evidence coming to light after the defendant's conviction for sexual offences. The appeal was allowed by the Court in June 2007.

4.7 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. In the past reporting year, the CCRC has investigated nine cases following a direction of the Court and the Court has been extremely grateful for the prompt and thorough response of the CCRC in each case.

4.8 Often the Court asks the CCRC to investigate a number of sensitive and complex issues. Over the reporting year, in ***R v Pintori*** [2007] EWCA Crim 1700, it was alleged that one of the jurors in the case was a civilian member of the police and was biased against the defendant and in ***R v M, W*** [2007] EWCA Crim 1781, it was alleged that one of the jurors retained a mobile telephone for some of the deliberations and that he may have communicated with persons outside of the jury room. The Court referred both these cases to the CCRC to take a statement from the juror in question. In the case of ***R v Adams*** [2007] EWCA Crim 1, the CCRC first referred the case to the Court in September 2005. Following lengthy investigations, including the CCRC taking evidence from four jurors, the Court (in a Judgment delivered on 12 January 2007) quashed the conviction for murder.

4.9 The Court is always mindful that allegations against jury members are particularly difficult to resolve given the high risk that any inquiry of a juror will cross the threshold into the forbidden territory of the jury's deliberations. The Court has made it very clear that the circumstances in which it will hear evidence from a juror or jurors are likely to be rare and exceptional and that in all cases it would be improper for any person to interview a juror without the leave of the Court. The Court is also conscious that the status of the CCRC as an independent body, instils public confidence in these investigations.

4.10 It is hoped that the Court's unique relationship with the CCRC will continue to develop over future years, to achieve our mutual goal of a criminal justice system that is capable of recognising and rectifying potential miscarriages of justice when they occur.

5. The Criminal Procedure Rules

5.1 At the request of the Registrar of Criminal Appeals, the Criminal Procedure Rule Committee undertook a comprehensive review of Parts 65 to 70 of the Criminal Procedure Rules 2005, with a view to simplifying the existing rules and to ensure that they corresponded with the preferred practice of the Court.

5.2 As a result of this extensive review, the Criminal Procedure (Amendment No. 2) Rules 2007 came into force on 1 October 2007 (Statutory Instrument 2007 No. 2317) and mark the centenary year of the Court. They apply to any appeal, application or reference to the Court, made on or after that date and they were formulated by the Committee in close consultation with the Registrar of Criminal Appeals and staff of the Criminal Appeal Office. There is also provision for new, or amended, forms.

5.3 A new lettering system has been added to the forms to make them more identifiable. All notices and grounds of appeal are referred to with the prefix NG and likewise the respondent's notices are now identified with the prefix RN. The format of each form has also been standardised.

5.4 From a practical point of view, the forms now being used are clearer and provider greater guidance to practitioners and applicants in person. In respect of Form NG (Notice and Grounds of Appeal) and Form RN (Respondent's Notice and grounds of opposition to appeal against conviction or sentence), there is now clear guidance given in the notes section of the form as to how the grounds of appeal and Prosecution response should be set out in accordance with Part 68 of the rules. There is also clear reference to which documents and other information should be lodged with them. Applications for leave to appeal against a Confiscation Order have also now been separately identified on the forms to distinguish them from other sentence applications.

5.5 There has been a marked change in the way grounds of appeal are to be settled by Counsel, with an emphasis on clearly particularised Grounds of Appeal which cite any relevant statutory provision and any authority upon which Counsel relies. If a positive advice on appeal is given, it should be incorporated into the grounds of appeal. Discursive advices which are entirely for the benefit of the lay client are now actively discouraged and are not in accordance with the new rules.

5.6 The increasing role of the Prosecution in appeals has now been formally recognised in Part 66.5, as the Prosecution can now be asked to lodge Form RN. In determining the question of leave under Section 31 of the Criminal Appeal Act 1968, the single Judge may be assisted by having the Prosecution's response to the grounds of appeal. This is particularly so in cases raising disclosure and public interest immunity issues, fresh evidence and confiscation cases. The Registrar or single Judge can now formally direct that the Prosecution respond to the Grounds by lodging Form RN, before the question of leave is considered under Section 31. It also allows the Prosecution to make representations to the Court immediately after the applicant has served the appeal notice. Form RN also identifies whether the Prosecution seek leave to call a witness; as previously there was no formal document in which the Prosecution could communicate this to the Court, given that Form W (application to call a witness) was designed for use by an appellant only.

5.7 Part 67, sets out the procedure to be adopted in Prosecution Appeals against Crown Court terminating rulings, pursuant to Section 58 of the Criminal Justice Act 2003. The procedure has been clarified in accordance with the Act and the rules also clearly set out exactly what the Appeal Notice and Respondent's Notice must contain and any documents or information that should be attached. It also sets out important procedural matters including live link hearings and time limits for renewing an application refused by a Judge or the Registrar.

5.8 One of the most important changes brought about by the new rules, is the duty of active case management by the Registrar and the parties under Part 65. This duty requires early identification of issues and the parties actively assisting the Court to avoid delay. The Registrar is now also required to appoint a case progression officer for each case which is a reflection of the existing practice of the Criminal Appeal Office.

6. Contacts

6.1 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.

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

- Judge Denys Barrow of the Eastern Caribbean Supreme Court.
- Mr Menberetsehai Tadesse and members of the Senior Judiciary, the police and the Prosecution in Ethiopia.
- Representatives of the Armenian judiciary to discuss criminal procedure.
- Kenyan Judges (visit organised by Sir Henry Brooke).
- A delegation of 13 visitors including Judges and representatives from the Sudan Study Tour.
- French Judges from the Ecole Nationale de la Magistrature.
- A delegation from the Supreme Court of Georgia regarding the proposed reform of the Georgian judicial system.
- Representatives from Ripa International (the delegation included Judges and Registrars from Brunei, Gambia, Nigeria, Sierra Leone, Zambia, Swaziland, Tanzania and Turks and the Caicos Islands).
- Wake Forest Students from the USA.
- Students from the Syracuse CPS Summer Law Programme.

6.3 The CACD User group also continues to be an important forum for the judiciary, senior support staff and court users to discuss new legislation, recent practice directions and the work of CACD and other CJS bodies. The User group comprises of representatives from both the Bar Council and the Law Society, to ensure both limbs of the legal profession are represented and also representatives from other official bodies including the Criminal Cases Review Commission, the Crown Prosecution Service, the Probation Service and, also, the Law Reporters.

7. Looking to the future

7.1 Over the coming year, the Court is likely to face further challenges as the rise in prosecution appeals against terminating rulings seems set to continue. This will place additional demands on the Court and in particular, the List Office, as such cases often demand immediate listing at short notice.

7.2 The Court is also conscious of the increase in the number of renewed applications for leave to appeal that take up valuable judicial time and overburden the Court when they are wholly without merit. Under Section 29 of the Criminal Appeal Act 1968, the Court has the power to order that the period, or part of the period served by an applicant since he was sentenced, should not count towards his sentence on the grounds that his application lacks merit. In ***R v Hart*** [2006] EWCA Crim 3239, the Vice President raised concerns that the frequency of applications without merit was so great that the Court should give greater consideration as to when that power should be exercised. A stark warning was given in that case that the Court is prepared to exercise this power with more frequency in the future. Against this background, applicants renewing their applications to the full Court are now being asked for their representations as to why the Court should not exercise this power under Section 29. In addition, in considering the question of leave under Section 31, the single Judge will also now be asked to identify cases where the Court should consider using this power should the application be renewed to the Court. It is anticipated that the warning of the Court in ***Hart***, combined with these additional measures, will offer a much needed deterrent against the pursuit of hopeless applications.

7.3 The rise in terrorism cases has also not gone unnoticed by the Court. These cases are often extremely complex and a single case can often demand many days of Court time. Over the past year, the Court has heard the appeal of ***R v Hamza*** [2006] EWCA Crim 2118, which occupied three days of court time. These cases are also a challenge for the lawyers in the Office as the summaries they prepare for the assistance of the Court can take anything up to a whole month to produce, given the complexities of the cases. There are also added security demands placed on the Court, although it is anticipated that the increased availability of live TV links to prisoners will alleviate some of these pressures.

7.4 Appellants can now participate effectively in their appeal by live video link. This prevents them having to be transported around the country in order to attend their appeal hearing pursuant to their entitlement. However, at present a live video link can only be used in one of the courtrooms occupied by the Court of Appeal Criminal Division and this restricts the use of this equipment to appellants who present a high security risk or to witnesses who are abroad. Plans are now underway to equip two further courtrooms with this facility and it is hoped that the use of live video links will continue to increase in the future, as the use of this technology eliminates the costs to the public of transporting an appellant. In many cases appellants would also prefer this option. Technical innovation in this area clearly has the potential to play a huge role in the efficiency and smooth running of the Court.

8 Conclusion

8.1 The Criminal Procedure Rules are a reflection that the procedure and practice of the Court needs to continue to evolve and improve to keep pace with change. Although it is inevitable that the rules and new forms will initially provide new challenges for practitioners, their introduction should provide greater clarity for the appeal process.

8.2 While the waiting times for conviction cases continues to decrease, there is still room for improvement and the emphasis on active case management by the parties themselves as set out in the new Criminal Procedure Rules should see improvements to the length of time a case takes to reach an appeal hearing. Overall, much progress has been made in reducing the cases outstanding and this is down to the dedication and hard work of the Judges who sit in the Court of Appeal and the support they are given by the legal and administrative staff of the Criminal Appeal Office.

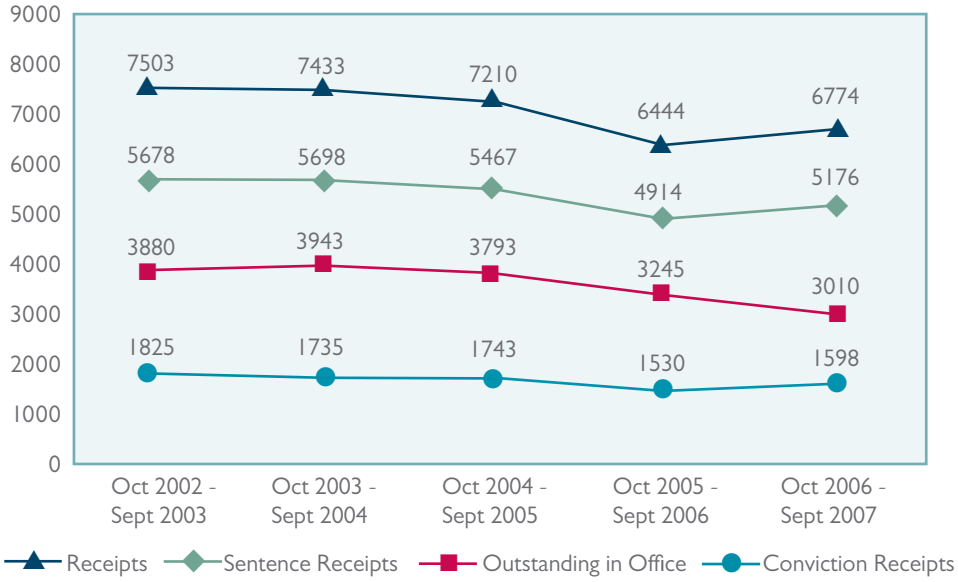
8.3 Despite the challenges that the Court continues to face in relation to changes in legislation and procedure, it continues to show significant progress on its performance year by year. We look forward to another productive year ahead.

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

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

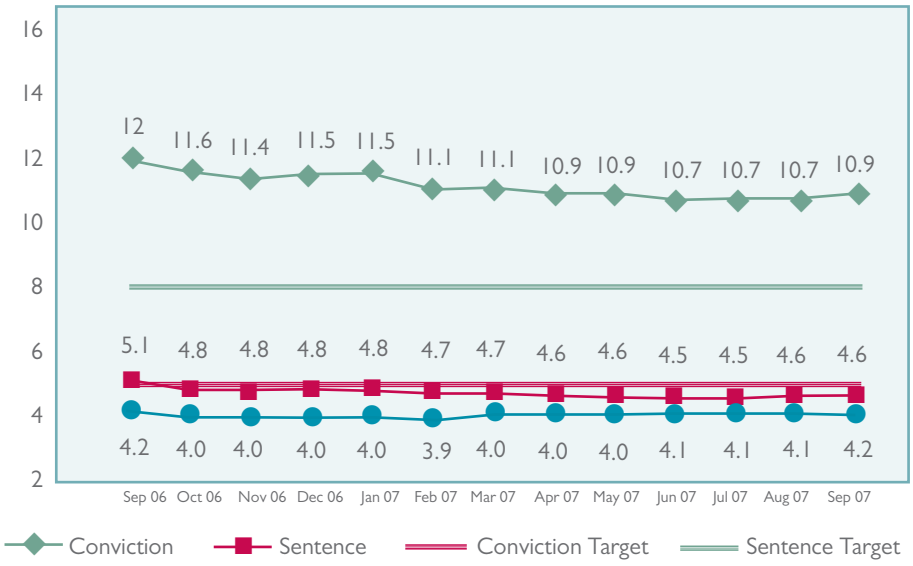
Annex A

Applications Received and Outstanding in Office



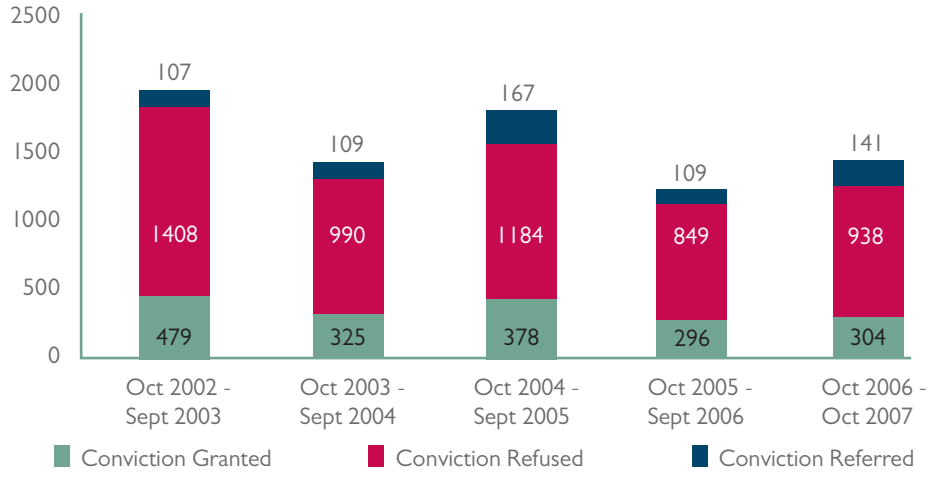
Annex B

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

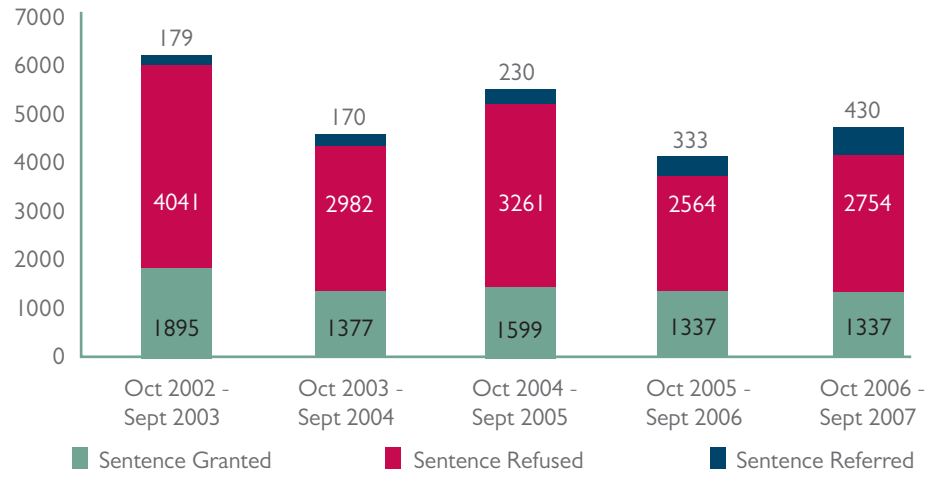


Annex C

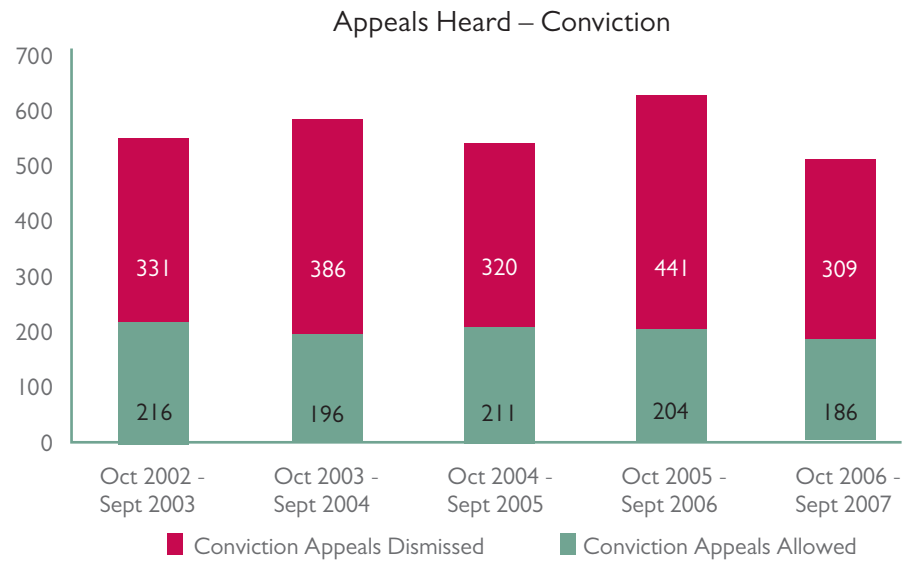
Section 31s – Conviction Applications dealt with



Section 31s – Sentence Applications dealt with



Annex D


Appeals Heard – Conviction
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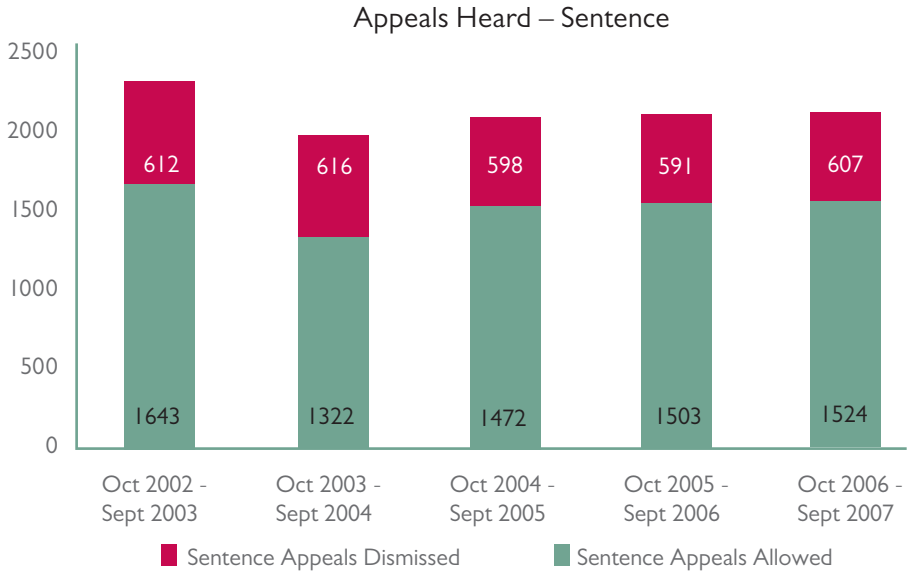
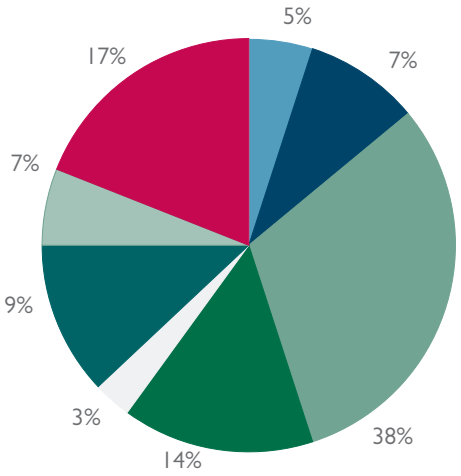
600
500
400
300
200
100
0
331
386
320
441
309
216
196
211
204
186
Oct 2002 - Sept 2003
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Conviction Appeals Dismissed
Conviction Appeals Allowed

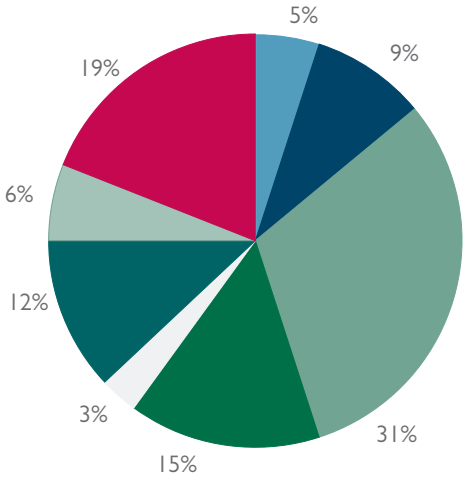

Appeals Heard – Sentence
2500
2000
1500
1000
500
0
612
616
598
591
607
1643
1322
1472
1503
1524
Oct 2002 - Sept 2003
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Sentence Appeals Dismissed
Sentence Appeals Allowed

Annex E

October 2002 - September 2003



October 2003 - September 2004



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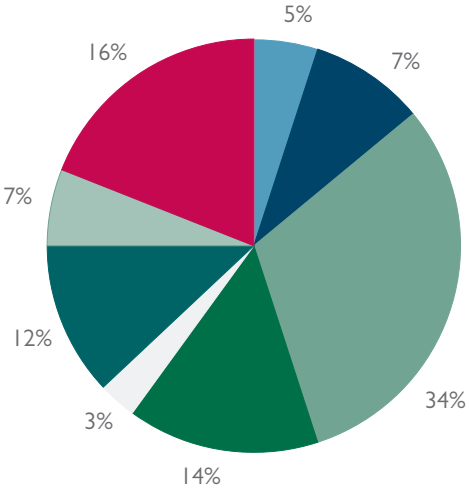
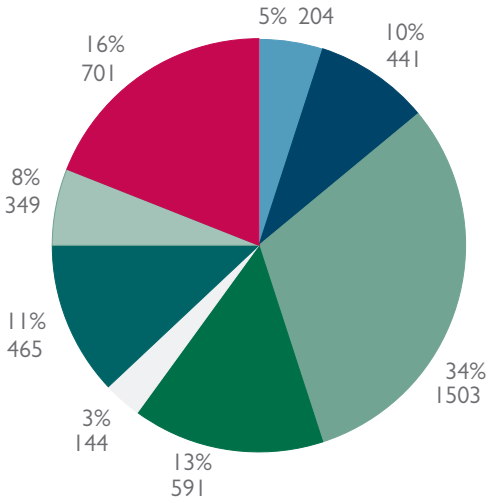
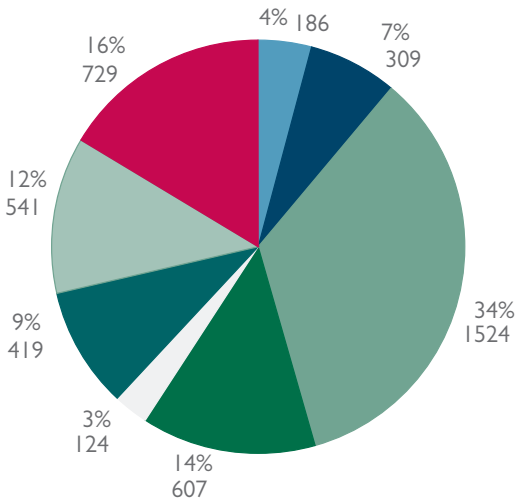
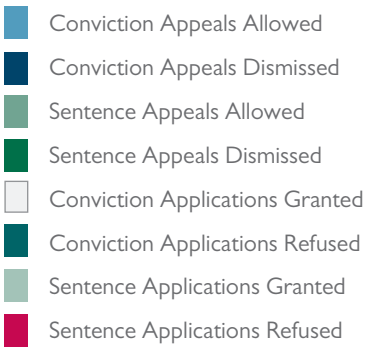


October 2005 - September 2006

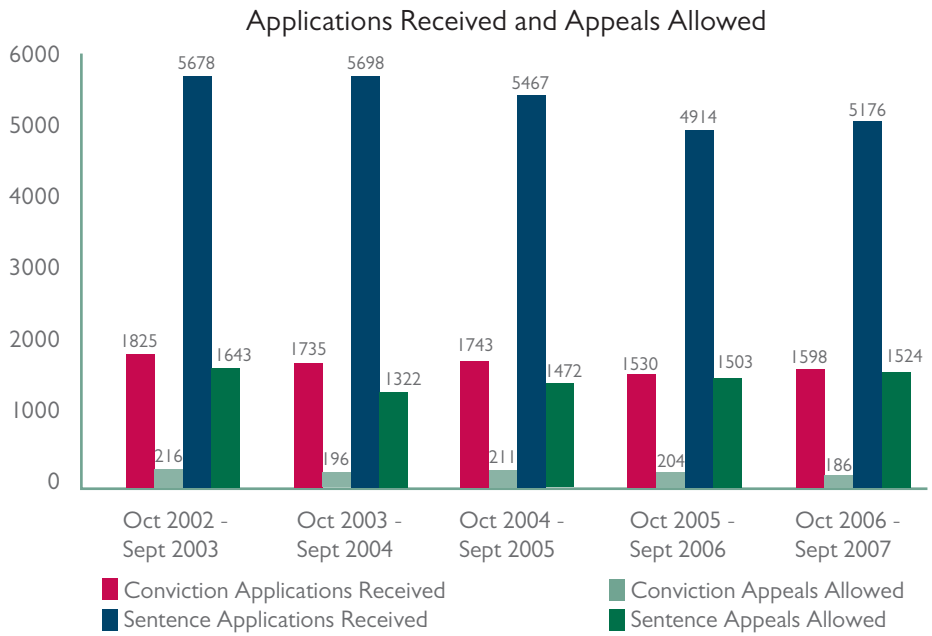


October 2006 - September 2007





Annex F


Applications Received and Appeals Allowed
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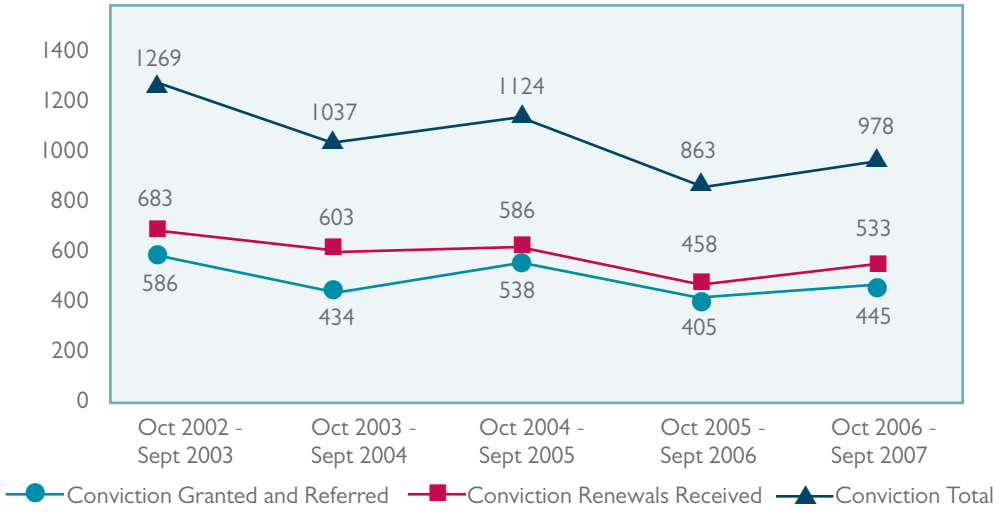
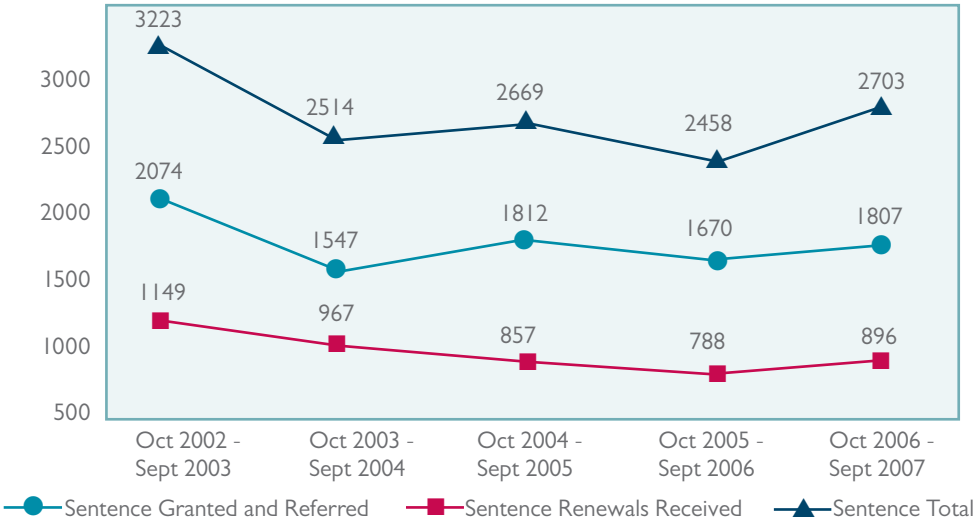
5000
4000
3000
2000
1000
0
1825
216
5678
1643
1735
196
5698
1322
1743
211
5467
1472
1530
204
4914
1503
1598
186
5176
1524
Oct 2002 - Sept 2003
Oct 2003 - Sept 2004
Oct 2004 - Sept 2005
Oct 2005 - Sept 2006
Oct 2006 - Sept 2007
Conviction Applications Received
Sentence Applications Received
Conviction Appeals Allowed
Sentence Appeals Allowed

Annex G

Applications Granted / Referred and Renewals Received (Conviction)

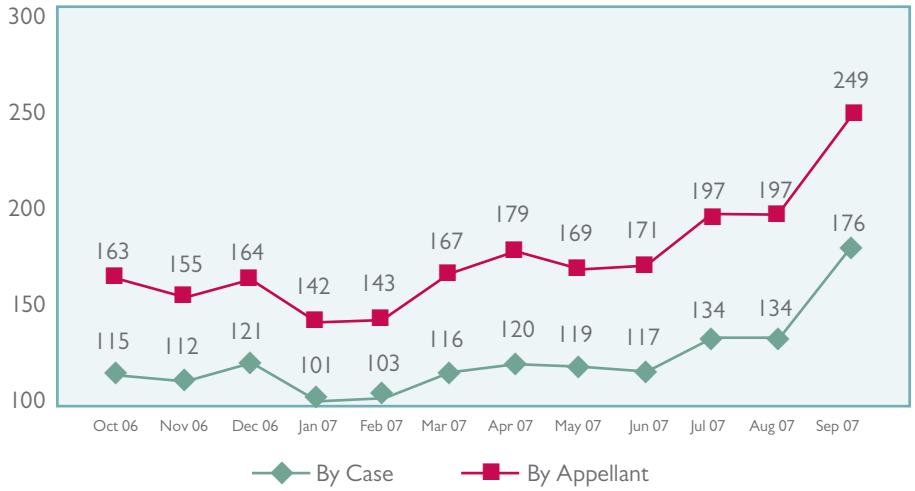


Applications Granted / Referred and Renewals Received (Sentence)



Annex H

Conviction Old Cases – Outstanding over 8 months



Sentence Old Cases – Outstanding over 5 months