

sentence review commissioners

ANNUAL REPORT 2012/13

Report for the year ended 31 March 2013



SENTENCE
REVIEW
COMMISSIONERS

Annual Report 2012/13

Report for the year ended 31 March 2013

Presented to Parliament pursuant to Schedule 1(6)
of the Northern Ireland (Sentences) Act 1998

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Chairman Mr. Brian Currin

Theresa Villiers MP
Secretary of State for Northern Ireland
Stormont House
Stormont Estate
BELFAST
BT4 3SH

Dear Secretary of State,

Sub-paragraph 6(1) of Schedule 1 to the Northern Ireland (Sentences) Act 1998 requires me, as Chairman of the Sentence Review Commissioners, to make a report to you, as soon as practicable after the end of the financial year, on the performance of the Sentence Review Commissioners' functions during the year. Annual Reports have accordingly been forwarded to you and your predecessors every year since the first in 1998/99.

This, the fifteenth report, covers the year ending 31 March 2013. The layout and, generally, the content of this Report follow the line adopted in last year's report. It should be noted that all our previous Reports are readily available on the Commissioners website: www.sentencereview.org.uk.

Chapter One summarises the background to the Commissioners' role and Chapter Two describes some issues that were addressed during the year including policy reviews, issues relating to the quality of Damaging Information provided. Chapter Three gives details of the caseload processed throughout the year and Chapter Four deals with staff and resources.

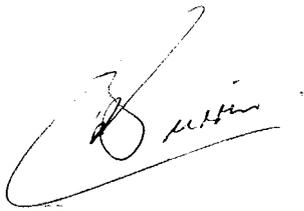
I am pleased to report that the NIO have taken on board concerns raised by Commissioners regarding the quality and quantity of the Damaging Information provided. The Commissioners have also introduced a new policy on appointment of Special Advocates and the handling of Damaging Information.

The 2012/13 reporting year has brought changes within the body of Commissioners. On 31 July 2012 four Commissioners, namely Dr Silvia Casale, Dr Peter Curran, Mrs Mary Gilpin and Mr Donal McFerran took the option not to renew their contracts with the SRC. I would like to take this opportunity to thank them for the exemplary hard work and dedication demonstrated throughout their many years of service. On 31 October 2012 I also ended my fifteen year association as Chairman of the SRC. I would like to thank everyone with whom I have worked throughout those fifteen years and express my gratitude for the support, commitment and professionalism of my fellow Commissioners which has made my tenure most enjoyable. With their help we have carried out extremely important work to a high standard and I believe we have made the streets of Northern Ireland a safer place.

My replacement, Ms Clodach McGrory was appointed as Chairperson of the SRC on 21 January 2013. I wish Ms McGrory all the best in her new role and am confident that she will utilise her expertise to uphold the high standards and professionalism which has become commonplace in the SRC.

Finally, I would like to thank the Secretariat for maintaining their excellent standard of administrative support which the Commissioners have come to rely on and I have no doubt they will carry this through to 2013/14.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Currin', with a large, sweeping flourish underneath.

BRIAN CURRIN
Chairman

**Chairman
Ms Clodach McGrory**

Theresa Villiers MP
Secretary of State for Northern Ireland
Stormont House
Stormont Estate
BELFAST
BT4 3SH

Dear Secretary of State,

I would like to take this opportunity, on behalf of myself and my Commissioner colleagues to record our appreciation to Brian for his outstanding leadership over the past fifteen years.

By its nature, the work of the Commissioners has at times been challenging, both in terms of the legal complexities involved and the potentially contentious issues at stake. Brian's courage, integrity and clear vision underpinned his dedication to the role of Joint Chairman and ensured that difficult issues were resolved efficiently and fairly. His remarkable capacity to build relationships was pivotal in ensuring the independence and integrity of one of the potentially most difficult processes of the Good Friday Agreement. An incisive legal mind and a strong adherence to principle are the other cornerstones of Brian's successful leadership.

It must be acknowledged that his commitment to the work of the Sentence Review Commissioners over his fifteen year tenure has at times demanded personal and professional sacrifice on Brian's part. We owe him a huge debt of gratitude.

As a colleague, Brian has been unfailingly good-natured, approachable and enormously generous of his time and wisdom over the many years of his Chairmanship. For my own part, it has been a privilege to work with and learn from Brian Currin and in my new role as Chairman of the Sentence Review Commissioners I shall endeavour to maintain the very high standards set by him.

Yours sincerely



CLODACH MCGRORY
Chairman

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chapter 1 - background



Background

The work of the Commissioners has its origins in the Agreement reached on Good Friday (10 April) 1998 between the participants in the multi-party negotiations, subsequently endorsed by referendum.

The part of the Agreement dealing with prisoners committed both Governments to putting in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or of similar offences elsewhere. The arrangements were to protect the rights of individual prisoners under national and international law.

Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.

The Act and Rules

The Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998 ('the Act') and through various pieces of subordinate legislation made under it, most particularly the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998 ('the Rules'). Both were passed by Parliament in late July 1998.

The Act provides for the appointment of Commissioners and sets out the criteria that must be met for a prisoner to be eligible for early release on licence. It also provides that the extent by which an eligible sentence is reduced shall be one third of the time that the prisoner would otherwise have spent in prison. For a fixed-term prisoner this means release after one third of the sentence pronounced by the court (since all such prisoners would, but for the Act, have been entitled to 50% remission).

The Rules set out in detail the procedures under which prisoners apply for early release and the Commissioners consider their applications. Within the terms of the Rules there is provision for the views of the Secretary of State (represented by the Northern Ireland Office) to be made known and taken into account by the Commissioners. The Rules normally give both parties access to the same information. However, in certain circumstances information classified by the Secretary of State as 'damaging' may be withheld from the prisoner (and any representative nominated by the prisoner). If this happens, there is provision for the Attorney General to appoint a Special Advocate to represent the interests of the prisoner.

The papers submitted by the prisoner (known as the 'applicant') and the Secretary of State (known as the 'respondent') are considered by a panel of three Commissioners who give their initial view in writing in the form of a 'preliminary indication'. The Rules allow either party to challenge the preliminary indication and have the issues considered afresh at an oral hearing. If there is no such challenge, or after an oral hearing, the final decision of the Commissioners is given to both parties in the form of a 'substantive determination'. The Commissioners have no power to reconsider a substantive determination, so the only way in which either party can challenge the outcome is by way of judicial review.

Prisoners who are successful in their applications are released on licence. The Act also makes provision for the suspension of a licence by the Secretary of State if she believes a person has broken or is likely to break a condition of his/her licence.

The Rules set out in detail the procedures to be followed in these circumstances.

Eligibility for Early Release

The eligibility criteria laid down by the Act are that:

- the prisoner is serving a sentence of imprisonment in Northern Ireland;
- the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10 April 1998;
- if the sentence was passed in Northern Ireland, the offence:
 - was a scheduled offence; and
 - was not the subject of a certificate of the Attorney General that it was not to be treated as a scheduled offence;
- if the sentence was passed in Great Britain, the offence:
 - was committed in connection with terrorism and with the affairs of Northern Ireland; and
 - is certified as one that would have been scheduled, had it been committed in Northern Ireland;
- the prisoner is not a supporter of a specified organisation;
- if the prisoner were released immediately, he would not:
 - be likely to become a supporter of a specified organisation; or
 - be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
 - if a life-sentence prisoner, be a danger to the public.

Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those most likely to be committed by terrorists. They include murder and manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

It should be noted that the Act does not require offences in Northern Ireland to have been committed by or on behalf of a terrorist organisation but simply requires them to have been tried as scheduled offences.

The Specified Organisations

Section 3(8) of the Act requires the Secretary of State to 'specify' by subordinate legislation any organisation believed to be concerned in terrorism connected with the affairs of Northern Ireland which has not established or is not maintaining a complete and unequivocal ceasefire. Specification of an organisation means that its supporters are not eligible to benefit from the early release arrangements.

The Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 2008 sets out the current list of specified organisations as follows:

- The Continuity Irish Republican Army
- The Loyalist Volunteer Force
- The Orange Volunteers
- The “Real” Irish Republican Army
- The Red Hand Defenders
- Óglaigh na hEireann (ONH)

The Accelerated Release Date

The Act provided that any prisoners given release dates after the second anniversary of the Act’s commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the later.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners’ declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

Licence Arrangements

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

For a fixed term prisoner the licence remains in force until the date when he or she would otherwise have been entitled to be released from prison under the legislation in place at that time. For a life prisoner, the licence remains in force for the rest of his or her life.

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again. Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements or subject to a further application from the prisoner.

The Rules make provision for successive applications to be made by any prisoners where circumstances have changed since the most recent decision of the Commissioners or it comes to light that there was some material information, document or evidence which was not placed before the Commissioners when the most recent decision was made.

The Commissioners

The Sentence Review Commissioners are part-time judicial office holders who were appointed by the Secretary of State for a term of office which ended on the 31st July 2012.

During the first four months of the report there were eight Commissioners and a Chairman. At 31st July 2012 four of the eight Commissioners chose not to renew their term of office and four were reappointed under new terms and conditions.

On 31st October the Chairman, Mr Brian Currin, chose not to renew his appointment.

At the time of writing the current Chairman is Ms Clodach McGrory who was appointed to the position on 21st January 2013.

Mr Brian Currin Chairman (1998 – 2012)

A South African lawyer working in mediation and institutional transformation. Founded the National Directorate of Lawyers for Human Rights, in 1987 and headed it for eight years. Involved in political prisoner releases, amnesty and Truth and Reconciliation processes in South Africa. Has worked in Sri Lanka, Rwanda and the Middle East on political transformation and civil rights issues. In June 2007 was appointed an international adviser to the Consultative Group on the Past set up to look at ways for Northern Ireland to deal with its troubled past. Also works extensively on peace process facilitation in the Basque Country. He is convener and member of the International Contact Group for the Basque Country. Mr Currin is currently also involved in the peace process in Madagascar.

Dr Silvia Casale CMG

Independent Criminologist. Advisor to the Council of Europe National Preventive Mechanism (NPM) Project. Former President of the United Nations Subcommittee on Prevention of Torture (UN SPT) and former President of the European Committee for the Prevention of Torture (CPT). Currently works as a member of the International Contact Group for the peace initiative in the Basque Country. Has worked in Sweden and the United States and is a member of the Parole Board for England and Wales. Has published extensively on prison issues.

Dr Peter Curran

Consultant Psychiatrist and Fellow of the Royal College of Psychiatrists. Has an interest in the victims of violence and has lectured and published on the psychological and social impact of civil disorder and violence. Formerly a member of the Mental Health Commission, the Criminal Injuries Compensation Appeal Panel (Northern Ireland) and transitional Life Sentence Review Commissioner. Was President of NI Medico-Legal Society in 1999 - 2000.

Mr Donal McFerran

A qualified solicitor who practised as partner in a litigation firm in Belfast. He has served as a Deputy Resident Magistrate, and was appointed a Deputy County Court Judge in 1990 and is a legal member of the Mental Health Tribunal. He also served as a Parole Commissioner for Northern Ireland.

Mrs Mary Gilpin

A former member of the Scottish Probation Service and a retired social worker. She was a member of the Board of Visitors for HMP Maze from 1985 to 1997 and served two terms as a Chairperson as well as being Secretary to the Northern Ireland Association of Members of Boards of Visitors. She was closely involved in the establishment of Dismas House, a hostel for use by prisoners and their families.

Current Sentence Review Commissioners

Ms Clodagh McGrory Chairman

Practiced at the Bar in Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and served a term of office on the Irish Human Rights Commission from December 2000 until August 2006. She was a member of the Prison Review Team which was appointed by the Minister for Justice in June 2011 to conduct a comprehensive review of the Northern Ireland Prison Service and reported in October 2012. She is currently a part-time Chairperson of Social Security Appeal Tribunals and has been a Life Sentence Review Commissioner/Parole Commissioner since 2001. Ms McGrory was appointed Chairperson of the Sentence Review Commissioners on the 21st January 2013.

Dr Adrian Grounds

Was a University senior lecturer in forensic psychiatry at the Institute of Criminology, University of Cambridge, and an honorary consultant forensic psychiatrist in the Cambridgeshire and Peterborough NHS Foundation Trust, until retiring in 2010. He is now an honorary research fellow at the Institute of Criminology. He is also a Parole Commissioner for Northern Ireland, and a Medical Member of the First-tier Tribunal (Mental Health) in England.

Dr Duncan Morrow

An academic in the University of Ulster currently developing engagement with communities and stakeholders as part of the University's Greater Belfast Development. Until 2011 he was Chief Executive of the Community Relations Council (CRC) and has taken an active role in peace building and the legacy of violence in the past. Dr Morrow is also a Parole Commissioner for Northern Ireland.

Prof John Jackson

A Professor of Law at the University of Nottingham and a qualified barrister. He was previously Dean of the School of Law at University College Dublin and has taught at several other universities including Queen's University Belfast, the University of Sheffield, the City University, London and University College Cardiff. He has held visiting professorships at Hastings College of the Law, University of California and the Faculty of Law, University of New South Wales and was a Fernand Braudel Senior Fellow at the European University Institute in 2007/08. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review.

*All Commissioners serve on a part-time per diem basis. The current Chairman receives an annual remuneration for 21 days work

chapter 2 - approach



Approach

The Commissioners are under a duty to implement one of the most sensitive parts of the Agreement, and their first priority continues to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held three plenary meetings at which they discussed in depth their approach with regard to aspects of their responsibilities that have either arisen for the first time or been brought into particular focus by experience relating to particular cases. The paragraphs that follow describe some of the issues thus considered and the conclusions that were reached.

Human Rights Act 1998

Section 6(1) of the Human Rights Act 1998 makes it “unlawful for a public authority to act in a way which is incompatible with a Convention right”. The Commissioners have been advised that each of them is a public authority for the purposes of the Northern Ireland (Sentences) Act 1998.

In giving effect to the 1998 Sentences Act, the Commissioners may, conceivably, be faced with a course of action that could be inconsistent with one or more of the Convention rights. They have been advised that, where they conclude that such inconsistency exists, their legal duty would be to comply with section 6(1). Accordingly, the Commissioners continually keep under review the policies and procedures that they have adopted in order to discharge their statutory responsibilities. To date these have been, and will continue to be, designed to reconcile, as far as practicable, the primary legislation (the 1998 Sentences Act) and the secondary legislation (the Commissioners’ Rules) with the Human Rights Act.

Damaging Information – Policy and Procedures

In view of their obligations under section 6(1) of the Human Rights Act 1998, the Commissioners have been required to further develop their policy and procedures in relation to “damaging information” cases in line with emerging jurisprudence.

The most recent and comprehensive consideration by the European Court of Human Rights [ECtHR] of the difficult issues presented where there is undisclosed material requiring the appointment of a Special Advocate was in the case of **A v UK** Appl No 3455/05, 19 Feb 2009. This ruling was followed by the Law Lords in **Secretary of State for Home Department v AF and another** [2009] UKHL 28 which was concerned with the issue of closed material and the duty of disclosure in the context of control orders under the Prevention of Terrorism Act.

These rulings represent the current legal position and together give clear guidance as to the approach which should be taken by the court/tribunal, in circumstances where the appointment of a Special Advocate is required, in order that any unfairness to the individual is minimised.

In summary, the Grand Chamber in ***A and others v United Kingdom*** and the House of Lords in ***AF and others*** have made clear that article 5(4), and now article 6, entitles defendants (in immigration detentions) to disclosure of an irreducible minimum of the case against them. The current rule does not require full disclosure of the evidence against a defendant. Rather it draws a distinction between the allegations (all of which must be known by the defendant) and the evidence supporting them (all of which need not be). Defendants must be given sufficient information about the allegations against him to give effective instructions to the Special Advocate.

In this context it is clear that the disclosure function of the Special Advocate is critical and that the full potential of this role should be maximised by the appointment of a Special Advocate at the earliest possible stage in the proceedings in any case in which material is withheld from the prisoner. This may be when the information is received by way of inclusion with the application or response papers or at any subsequent stage by way of an ancillary application. Accordingly, the approach now adopted by the Commissioners is to request the appointment of a Special Advocate as soon as a certificate of “Damaging Information” is received and to invite submissions as to what aspects of the certified material could and ought to be disclosed to the prisoner consistent with avoiding damaging disclosure of sensitive material.

This process is consistent with the stated position of the UK Government in the Unilateral Declaration lodged with the European Court of Human Rights in the case of ***Brady v The United Kingdom*** (Application No. 37536/08) in November 2011. In that case, it was accepted by the government that there had been a procedural violation of Article 5(4) of the European Convention on Human Rights on the basis that the Special Advocate had played no part in the review of the Secretary of State’s decision to certify evidence as “Damaging Information”. Moreover, the government expressed its intention to ensure that in similar cases coming before the Sentence Review Commissioners, the Special Advocate would be fully involved in disclosure issues. The Commissioners see this as a constructive way forward and remain committed to the development of appropriate procedures.

chapter 3 - casework



Casework

The work of the Commissioners is mainly dependent on the number of prisoners who apply to them in accordance with the provisions of the Act and the review process initiated by Northern Ireland Office.

Cases processed by the Sentence Review Commissioners can raise novel and complex issues and are thus very time consuming. For example, during the period of this report the Commissioners considered the case of a prisoner whose life licence under the Northern Ireland (Sentences) Act 1998 had been suspended by the Secretary of State following his conviction for attempted murder in the Republic of Ireland. The prisoner contested the suspension of his licence and submitted that his licence should not be revoked on various grounds including jurisdictional grounds. The Commissioners considered lengthy and detailed written and oral submissions from the parties on the jurisdictional issues and ultimately concluded that they had jurisdiction to deal with the case, notwithstanding the fact that the prisoner remains in custody in the Republic of Ireland. This case not only raised complex legal issues to be resolved by the Commissioners but also presented a number of challenges in terms of the practical arrangements for the conduct of the hearings in these unusual circumstances.

In addition, there has increasingly been a reliance by the Secretary of State on “Damaging Information” in cases coming before the Commissioners. As outlined in Chapter Two, in view of their obligations under section 6(1) of the Human Rights Act 1998 the Commissioners have been required to further develop their policy and procedures in relation to “Damaging Information” cases in line with emerging jurisprudence. The appointment of a Special Advocate at an early stage in the proceedings and the engagement with the parties in the gisting process requires a significant time commitment on the part of the Commissioners in each case.

Preliminary Indications

During the period of this report Commissioners issued three preliminary indications. In one of these cases Commissioners were minded to refuse the application because they were not satisfied that, if released immediately, the applicant would not be a danger to the public. This preliminary indication was challenged and will progress to oral hearing. In the remaining two cases the Commissioners were minded to release. These Preliminary indications were not challenged and the applicants were subsequently released.

Oral Hearings

During this reporting period three oral hearings were held, all three hearings were carried over from the previous reporting period.

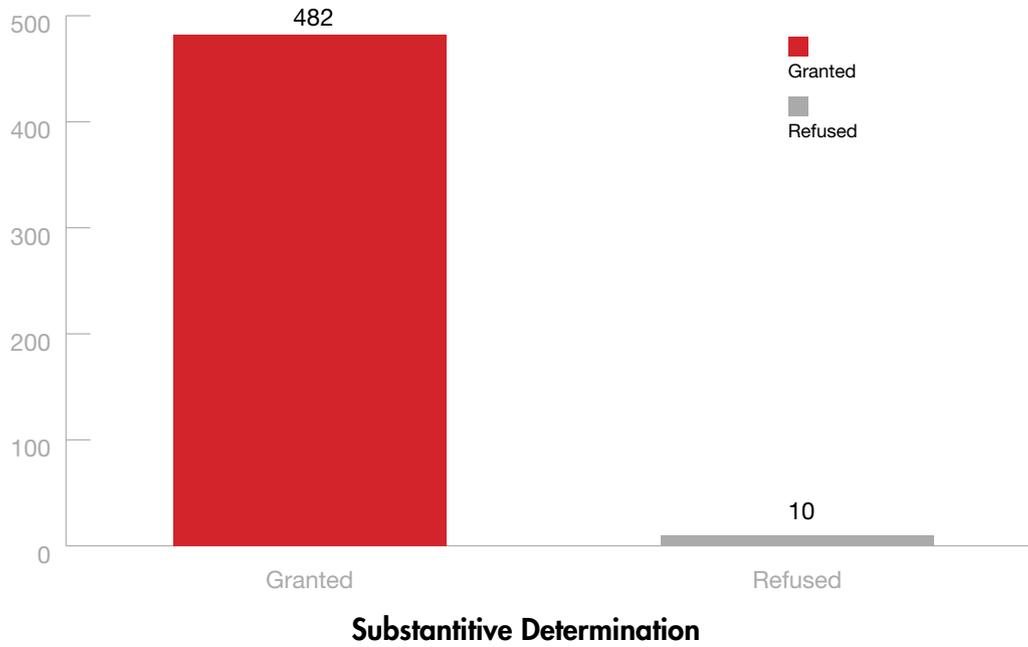
At 31 March 2013, two oral hearings remain pending.

Table 1

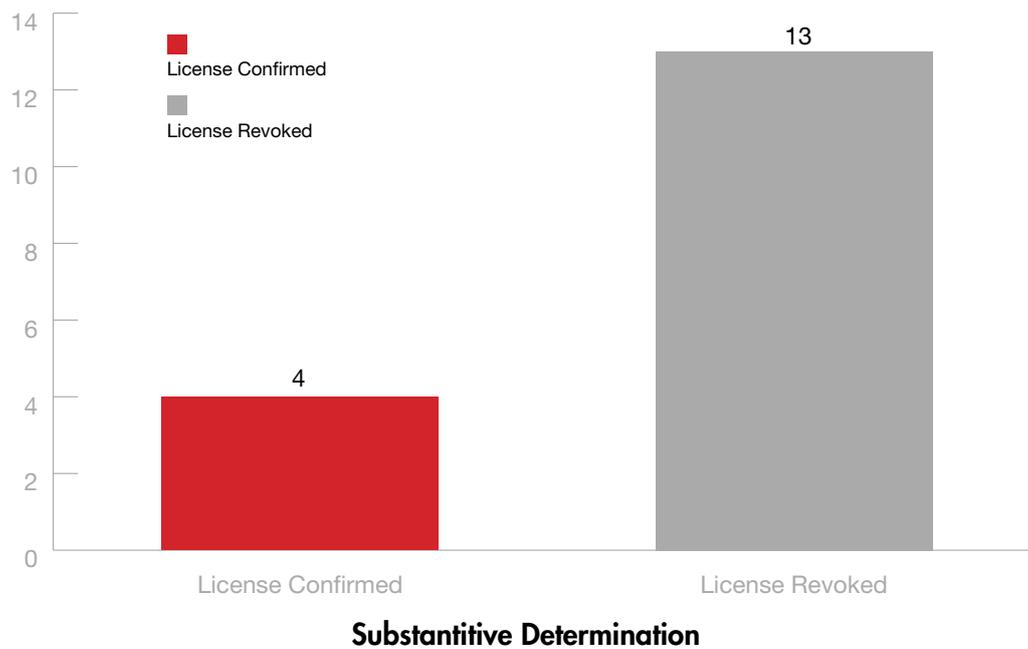
Table 1 shows the state of business at the end of each quarter, the total cases processed in the year and the total cases processed by the Commissioners since their appointment.

	Jun	Sep	Dec	Mar	Total 2012/13	Total 1998-2013
Applications received	3	1	0	0	4	640
Applications sent to respondent	3	1	0	0	4	583
Responses received	3	1	0	0	4	582
Applications not proceeded with after response received	0	0	0	0	0	55
Applications withdrawn / lapsed before issue of preliminary indication	0	0	0	0	0	3
Preliminary indications issued	0	2	1	0	3	528
Applications withdrawn / lapsed after issue of preliminary indication	0	0	0	0	0	13
Challenges received	0	0	1	0	1	53
Oral hearings held	1	1	0	1	3	50
Applications withdrawn / lapsed following oral hearing	0	0	0	0	0	2
Substantive determinations issued	1	2	1	1	5	511
Applications transferred to PCNI following tariff expiry	0	0	0	0	0	1
Outstanding Applications under consideration at year end.						2

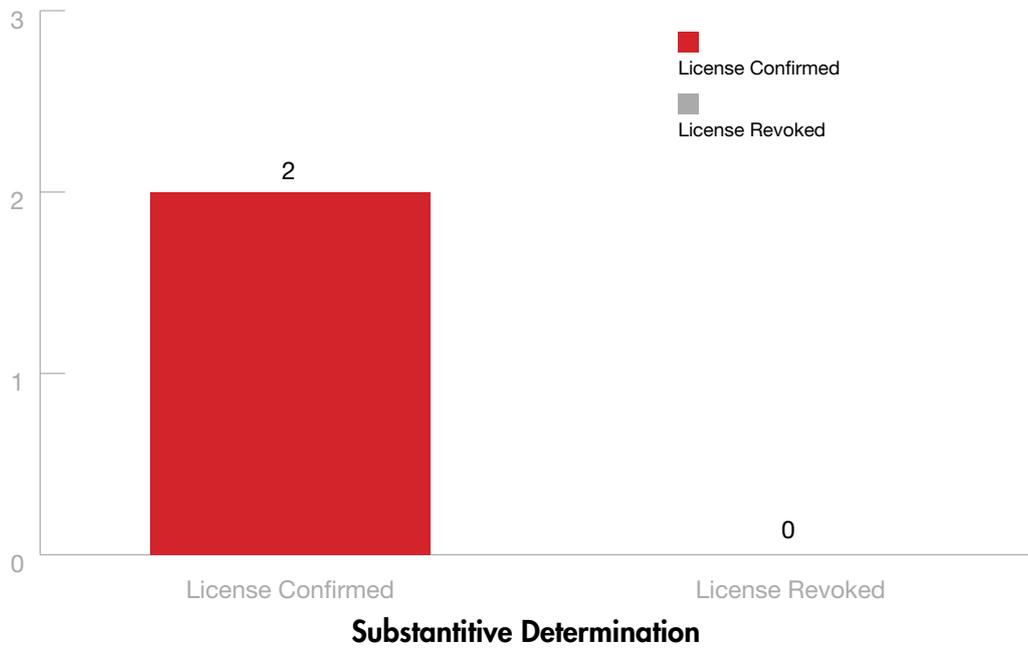
Initial / Further Applications for Release



Suspension of Licence



Revocation of Licence



chapter 4 - staff and Resources



Staff and Resources

For most of the year covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary and a small team. A memorandum of understanding has been developed between the Northern Ireland Courts and Tribunal Service and the Northern Ireland Office the purpose of which is to set out the arrangements relating to the administration of the Sentence Review Commissioners. They occupy shared accommodation with the Parole Commissioners for Northern Ireland on the 9th floor of Linum Chambers, Belfast.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2013 was:

Estimated expenditure for 2012/13:

Financial Year	2010/11 £000	2011/12 £000	2012/13 £000
Commissioners' remuneration	33	41	46
Commissioners' travel, accommodation and expenses	35	39	25
Legal representation for applicants	39	20	12
Legal costs	2	5	6
General administration	9	6	3
Running Costs:			
Accommodation	0	0	19
Staff Salaries	27	36	29
Total Running Costs:	145	147	140



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