

**SENTENCE  
REVIEW  
COMMISSIONERS**

**Annual Report 2013/14**

Report for the year ended 31 March 2014

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

*Ordered by The House of Commons to be printed*  
10 July 2014



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# SENTENCE REVIEW COMMISSIONERS

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## Chairman

### Ms Clodach McGrory

Theresa Villiers MP  
Secretary of State for Northern Ireland  
Stormont House  
Stormont Estate  
BELFAST  
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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 1998/1999.

This, the sixteenth report, covers the year ending 31 March 2014. 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](http://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, and the privacy of hearings. Chapter Three gives details of the caseload processed throughout the year and Chapter Four deals with staff and resources.

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 the 2014/15 reporting period.

Yours sincerely



CLODACH MCGRORY  
Chairman



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# Chapter One

# 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 certified 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**

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 list of specified organisations referred to in Section 3(8) of the Northern Ireland (Sentences) Act 1998 are currently:

- The Continuity Irish Republican Army
- The Loyalist Volunteer Force
- Óglaigh na hEireann
- The Orange Volunteers
- The "Real" Irish Republican Army
- The Red Hand Defenders

### **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 an independent body made up of a Chairman and three other Commissioners\* appointed by the Secretary of State to serve until July 2017. The following Commissioners served during the reporting period.

<p><i>Ms Clodach McGrory</i> <i>Chairperson</i></p>	<p>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.</p>
<p><i>Dr Adrian Grounds</i></p>	<p>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.</p>
<p><i>Dr Duncan Morrow</i></p>	<p>An academic in the University of Ulster currently developing engagement with communities and stakeholders as party 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 a Parole Commissioner for Northern Ireland. A native of Belfast, he is married with three teenage children.</p>
<p><i>Prof John Jackson</i></p>	<p>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 – 2008. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review.</p>

\* All Commissioners are paid on a part-time per diem basis and the Chairperson receives an additional annual increment in respect of her duties as Chairperson.

It is envisaged that additional Commissioners will be appointed in the 2014/15 reporting period.



# Chapter Two

# 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.

## **Privacy of Hearings**

During the year the Commissioners developed a policy on the application of rule 17(2), in accordance with legal advice obtained on the issue of privacy of hearings. The policy confirms the requirement that hearings before the Sentence Review Commissioners shall be held in private and clarifies the circumstances in which the discretion afforded to the Commissioners under rule 17(2) may be exercised. The attendance at a hearing of any person other than the parties and their representatives, the Commissioners and staff, and any witnesses in respect of whom leave has been granted under rule 21 requires the permission of the Commissioners, which must be sought by way of ancillary application.

The ancillary application must state and demonstrate that there is a legitimate reason for the applicant wishing the person, the subject matter of the application, to be present at the hearing. The authorisation by the Commissioners of a person's attendance at a hearing does not entail a direction under rule 17(2) that the hearing be held otherwise than in private. The hearing remains one to which the public does not have a right of access.

## **Further Applications**

During the year the Commissioners sought legal advice on the matter of successive applications made under sections 3(1) or 8(1) of the Act. It was confirmed that there is no clear legal requirement to admit cases for reconsideration after a period of one year on the basis of the passage of time alone. Each further application is considered on the basis of the supporting information and evidence about relevant change of circumstances and each case will turn on its own facts.



## **Legal Aid**

The payment of legal aid in cases coming before the Sentence Review Commissioners is governed by Schedule 2, paragraph 9 of the Northern Ireland (Sentences) Act 1998 and rule 24 of The Northern Ireland (Sentences) Act 1998 Sentence Review Commissioners Rules 1998.

Rule 24(3) provides that, “The Commissioners have the power to give legal aid directions and when doing so they shall specify the extent to which and the terms and conditions on which money is being made available thereby”.

Legal aid has been awarded for representation in cases coming before the Sentence Review Commissioners on the basis of guidelines which were agreed in 1998 following discussions between the Sentence Review Commissioners and the then Legal Services Commission, subject to some minor amendments in March 2003. In recent years legal representatives, and in particular counsel, have expressed concern to the Commissioners about the fee structure. The Commissioners themselves had concerns about the adequacy of the fee structure and recognised that a review would be timely in order to ensure that fair and reasonable rates are paid in cases coming before the Sentence Review Commissioners. In August 2013 the Chairperson initiated a review of the extent to which and the terms and conditions on which legal aid is payable to solicitors and counsel in applications to the SRC under the Northern Ireland (Sentences) Act 1998.

The consultees included the Bar Council, the Law Society, the NIO and the DOJ and a paper review of the rates and terms of payment of legal aid in other relevant jurisdictions was undertaken by the Chairperson. Following careful consideration of all available information, and with particular reference to equality of arms considerations, the Commissioners developed a revised fee structure setting out guidance on the extent to which and the terms and conditions on which legal aid is payable in cases coming before the Sentence Review Commissioners. The revised Fee Structure for the Application of Legal Aid was circulated to the consultees in March 2014 and legal aid is currently being awarded in accordance with this guidance. The Commissioners recognise that the extent to which and the terms and conditions on which legal aid is payable are matters which should be kept under review and the current guidance may therefore be subject to further changes in light of any relevant information made available to the Commissioners.

## **Damaging information**

Damaging information continues to be a concern for Commissioners and as such they have encouraged the NIO to submit any “damaging information” at the earliest possible stage in the proceedings in any case in which the Secretary of State considers that any information, document or evidence should be certified in accordance with rule 22. As previously reported, the approach 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 approach was adopted by the Commissioners in line with the rulings of the European Court of Human Rights in *A v UK* Appl No 3455/05, 19 Feb 2009 and the Law Lords in *Secretary of State for Home Department v AF and another* [2009] UKHL 28, which together represent the most recent and comprehensive consideration of the difficult issues presented where there is undisclosed material requiring the appointment of a Special Advocate.

It is envisaged that the Commissioners will continue to develop their policy and procedures in relation to “damaging information” cases in line with emerging jurisprudence during the 2014/2015 reporting period.

# Chapter Three

# 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.

In addition, there has increasingly been a reliance by the Secretary of State on Damaging Information in cases before the Commissioners. As outlined in Chapter Two, in light 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 the Special Advocate at an early stage of the proceedings and the engagement with the parties in the ‘gisting process’ requires a significant time commitment on the part of the Commissioners appointed to each case.

## **Applications to the Sentence Review Commissioners**

During the period of this report one initial application and one application for the review of a suspension of a licence was received.

## **Preliminary Indications, Oral Hearings and Substantive Determinations**

Commissioners held two oral hearings and two Substantive Determinations were issued, both to release. At 31 March 2014 there are currently two preliminary indications carrying through to the 2014/15 reporting period.

**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.

	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total 2013/14</b>	<b>Total 1998- 2014</b>
Applications received	0	2	0	0	2	642
Applications sent to respondent	0	2	0	0	2	585
Responses received	0	2	0	0	2	584
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	1	0	0	0	1	529
Applications withdrawn / lapsed after issue of preliminary indication	0	0	0	0	0	13
Challenges received	1	0	0	0	1	54
Oral hearings held	1	1	0	0	2	52
Applications withdrawn / lapsed following oral hearing	0	0	0	0	0	2
Substantive determinations issued	1	1	0	0	2	513
Applications transferred to PCNI following tariff expiry	0	0	0	0	0	1
Outstanding Applications under consideration at year end.						2



# Chapter Four

## 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 to the Commissioners and one case manager. 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 2014 was:

### Estimated Programme expenditure for 2013/14:

<b>Financial Year</b>	<b>2011/12 £000</b>	<b>2012/13 £000</b>	<b>2013/14 £000</b>
Commissioners' remuneration	41	46	25
Commissioners' travel, accommodation and expenses	39	25	3
Legal representation for applicants	20	12	27
Legal costs	5	6	9
General administration	6	3	4
Running Costs:	111	92	68
Accommodation	0	19	14
Staff Salaries	36	29	36
<b>Total Running Costs:</b>	<b>147</b>	<b>140</b>	<b>118</b>









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