



# Criminal Cases Review Commission Annual Report and Accounts 2008/09

# Criminal Cases Review Commission Annual Report and Accounts **2008/09**

Annual Report and Accounts of the Criminal Cases Review Commission  
1 April 2008 – 31 March 2009

Presented to Parliament by the Lord Chancellor and Secretary of State for  
Justice in pursuance of paragraph 8(3) of Schedule 1 to the Criminal Appeal Act  
1995 and by the Comptroller and Auditor General in pursuance of paragraph 9(4)  
of Schedule 1 to that Act.

Ordered by the House of Commons to be printed on 16 July 2009



# Our purpose:

is to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts

# Our vision:

is to give hope and bring justice to those wrongly convicted, to enhance confidence in the criminal justice system, and based on our experience to contribute to reform of and improvements in the law

# Our aims:

- to investigate cases with thoroughness and care as quickly as possible
- to work constructively with our stakeholders and to the highest standards of quality
- to treat applicants, and anyone affected by our work, with courtesy, respect and consideration
- to promote public understanding of the Commission's role

# Our values:

- independence
- integrity
- impartiality
- professionalism
- accountability
- transparency

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ISBN: 9780102958546

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## Chairman's Foreword

This is my first annual report since I became Chair of the Commission in November 2008.

I would like first to pay tribute to my predecessors, Professor Graham Zellick CBE, and Sir Fred Crawford and to all the staff and Commissioners. It is thanks to their hard work that I find myself at the helm of an organisation much admired and respected at home and abroad.

That reputation has been earned through the professionalism and integrity of those who have worked at the Commission over the years. The creation of the Commission in 1997, as the first organisation of its kind in the world, marked a sea change in the way alleged miscarriages of justice are treated.

In the years before the creation of the Commission, a small unit within the Home Office, called C3, looked into alleged miscarriages and The Home Secretary made referrals at an average rate of ten per year. In the 12 years since the Commission started work it has considered some 11,000 applications and referred more than 420 cases to the appeal courts at an average rate of 35 a year. Most of those, around 70% in fact, have resulted in convictions being quashed or sentences varied.

In recent years the Commission's performance has improved dramatically. For example, in 2005 someone applying to us who was in custody, and whose case was complex, would have waited 20 months for a review to begin. Today that time is 20 weeks.

Over that same period the backlog of cases awaiting allocation for review has fallen by half, from 225 in March 2006 to 112 in March 2009. Everyone at the Commission deserves a share of the credit for those achievements.

They are all the more impressive when set in the context of our finances. By the end of the current spending review period, the Commission's budget will have been reduced in real terms by around ten percent. So, performance has been significantly improved against a background of large scale expenditure and staffing cuts.

We will continue to do what we can to sustain performance against a background of further planned reductions in our resources. We are, however, under no illusions about how challenging that will be in the current circumstances.

The Commission is as busy, and its work as important now as it has ever been. In 2008/9 we received 918 applications for review, closed 941 cases and referred 39, or 4%, of those to the appeal courts.

British justice is considered by many, including me, to be the gold standard. Its principles, structures and safeguards ensure that it is one of the safest and fairest systems in the world.

But no system is ever perfect. Whether the causes are incompetence or negligence, malice or dishonesty, honest mistake or simple bad luck, miscarriages of justice can and do occur.

The existence and implications of miscarriages of justice - known only too well at the Commission - are made apparent to the wider world from time-to-time by the handful of cases that make news headlines.

Two such cases are those of Sean Hodgson and Barry George.

Mr Hodgson's case was referred to the Court of Appeal by the Commission in March 2009. He was freed, having served 27 years in prison for murdering Teresa De Simone in 1981, after modern DNA test results, in the words of Lord Chief Justice, Lord Judge, "demolished the case for the prosecution".

Barry George spent seven years in prison before being acquitted in July 2008 at his retrial for the murder of Jill Dando. The original conviction was quashed following a referral by the Commission in 2007.

Both are sobering reminders of what can happen when things go wrong and that miscarriages of justice remain a fact of life.

Such high profile cases are the exception however. Of the 900 or so cases that the Commission typically considers each year, most are neither reported in the media nor taken up by miscarriage of justice campaigners.

It is one of the strengths of the Commission that, in all but a handful of cases, it is the applicants who choose the Commission rather than the Commission who chooses the applicants.

We are, properly speaking, disinterested as to who they may be or what their conviction may be for. We consider all applications carefully and, where there are grounds, we look for new evidence or argument that might shed significant new light on the safety of a conviction or correctness of a sentence.

Some critics of the Commission claim that we are too concerned with the safety, or rather unsafety, of a conviction and not concerned enough with the innocence of the person.

This criticism is misguided. The fact is that we have never come across, and cannot conceive of, a situation where we would not refer a case where there was compelling evidence of innocence. If there were such evidence of innocence, it would, necessarily, also be compelling evidence that the conviction was unsafe.

But even if compelling evidence of innocence is lacking, a conviction can still be unsafe and if so should be quashed.

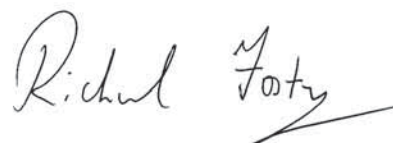
Consider the situation of someone trying to overturn a conviction and have the presumption of innocence restored. They may, for instance, know of new evidence relating to a key prosecution witness. That evidence may be sufficient to convince an appeal court to quash the conviction as unsafe, but still fall well short of what would be required to establish innocence.

It is absolutely right that the Commission concerns itself with safety, not only because it is the standard applied by the appeal courts, but also because it is a far sterner test of the integrity of the criminal justice system than innocence alone would be.

Some believe that the Commission refers too few cases and that this counts as evidence that we are too cautious or too conservative in our decision making. The fact is that we refer those cases where we judge that the "real possibility" test is met and that justice requires it. That is the test set out for us in the Criminal Appeal Act 1995. It says the Commission may refer a case where it believes there is a real possibility that the conviction would be quashed or a sentence varied.

The test does not tell us which cases, or how many cases we should refer. It requires that we use our skill, experience and our judgement to decide whether a case raises a "real possibility". Where the answer is yes, and where there is some benefit in doing so, we will refer the matter to the relevant appeal court. Our reputation is built on the fact that we do this with integrity, impartiality and professionalism.

My aim as Chair is to ensure that we continue to do exactly that.

A handwritten signature in black ink, reading "Richard Fotherby". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

# The year in numbers:

in 2008/9 there were 919 applications received, compared with 984 last year. 941 cases were completed, compared with 1,087 last year. There were 397 cases under review at 31 March 2009, compared with 450 cases under review at 31 March 2008. 225 cases were waiting compared with 194 at March 31 2008. Of those, 112 had been categorised and were awaiting allocation. The remainder were in the process of being prepared and categorised or were new applications just received. 39 cases were referred to the appeal courts (compared with 27 last year). 4% of completed cases were referred to the appeal courts. This figure compares with 2.5% last year and a long term average of 3.9% since the Commission was set up in 1997. 76% of Commission referrals heard by the appeal courts in 2008/9 resulted in convictions being quashed or sentences varied. A total of 29 referrals were heard. Of those, 22 resulted in convictions quashed or sentences varied.

Section One

# The work of the Commission

## Paediatrician faces new misconduct allegations

**Munchausen's syndrome  
neer already under ban  
C to hear claims of  
ppropriate behaviour**

en Carter

Leading paediatrician who was found guilty of professional misconduct after publicly accusing a father of murdering his sons is to face fresh allegations today. David Southall, who accused the husband of Sally Clark of murdering the couple's children, was found guilty of serious professional misconduct by the General Medical Council in 2004 and banned from child protection work for three years. At the time, Professor Southall's conduct was described by Denis McDavitt, chairman of the GMC's professional conduct committee, as "a serious departure from the standards expected from a registered medical practitioner". Despite the ruling, the University Hospital of North Staffordshire, in Stoke-on-Trent, said Prof Southall would not lose his job. Today Prof Southall is due back before the GMC accused of abusing in a way that

"amounted to keeping secret medical records on them".

The charges state that he failed to treat the children's mothers politely and considerately and in a way which "respected their privacy and dignity".

Prof Southall pioneered the use of covert video surveillance to detect cases of Munchausen's syndrome by proxy, the condition of carers who deliberately fabricate or create illnesses in their children to receive medical attention. He is one of the leading proponents of the diagnosis of the condition. Some of his videos revealed that children were being deliberately injured.

In August the Guardian revealed that Prof Southall was being investigated over claims that he had left a child brain damaged after a controversial breathing experiment 15 years ago. South Wales police broadened their inquiry into an allegation that he assaulted the boy by carrying out the test. Prof Southall denied his treatment harmed a child.

Prof Southall has attracted praise and controversy during his career. Many of his peers defend his work, saying a witchhunt is being carried out against him. They say paediatricians involved in child protection work are being subjected to a campaign by groups defending parents accused of child abuse. The Royal College of Paediatrics and Child Health has expressed concern and Child Health has expressed fear for their

## over former pat Re-examination convictions ord

Sandra Laville

Convictions in nine manslaughter cases, in Lin and Megan Russell Stone, are being re-examined by a Home Office pathologist.

The Criminal Cases Review Commission is reviewing the case of Michael Heath to establish if the miscarriages of justice took place from the Home Office in serious criticisms about work were raised by a witness.

The CCRC found five cases gave cause for concern about the work of the

**Michael Heath  
resigned as a Home  
Office pathologist  
in September after  
his work was found  
to be unacceptably  
speculative**

investigated in more than 100 cases were already being investigated, including that of Stone.

Michael Stone was convicted of killing Lin Russell and her daughter Megan in a house in Chillenden, Kent. Mrs Russell's daughter, Josie, nine, survived. The convictions were quashed in 2004.

DN  
man

By Jason  
Crime Corres

## Introduction

The Criminal Cases Review Commission was the first statutory body in the world created to investigate possible miscarriages of justice and, where necessary, to refer cases back to the appeal courts. We remain one of only three such bodies in the world. The others are in Scotland and Norway.

Created by Parliament in 1997, our role is to look into cases where a miscarriage of justice is alleged or suspected and to decide if there is any new evidence or new argument which raises a real possibility that an appeal court would quash a conviction or reduce a sentence.

The Commission is entirely independent. We do not represent the defence or prosecution, police, judiciary or any other part of the criminal justice system.

## How we work

Anyone convicted of a criminal offence in England, Wales or Northern Ireland, who believes they have been wrongly convicted or sentenced, can apply to have their case reviewed. Applicants usually need to have exhausted the normal appeal process before approaching us.

It is our role to review cases and to identify any new factors which might shed light on the safety of the conviction or the correctness of the sentence.

The Commission considers cases impartially and employs people with a wide variety of skills and experience, including lawyers and investigators, to carry out this task.

In the course of a case review we may interview new witnesses or re-interview people involved in the original case. We may

also commission new expert reports or arrange fresh forensic tests such as DNA profiling.

The Criminal Appeal Act 1995 which created the Commission provided us with the power to obtain documents and information from any public body in England, Wales and Northern Ireland.

In addition to basic material from court and prosecution files, there are times when we need to obtain other material such as medical records or files from social services or other agencies. Sometimes we also need to look at defence files or obtain material from private companies or individuals and will seek their co-operation in providing their records.

The majority of applications we receive can be dealt with quite quickly, within weeks or months. Other cases, however, can be very complicated and can take months or sometimes even years to review.

The Commission receives several new applications every day and there is a period between the arrival of an application and the start of a review.

During this period, staff at the Commission will usually start work on the case by obtaining some of the papers that are required for a review such as the prosecution files and judgments from the trial and the original appeal.

There are around 40 case reviewers and 11 Commissioners who are chosen for their wide ranging experience and skill in relevant areas.

When a review is complete we will consider, in light of everything that is known about the case, whether there is anything that raises a

“real possibility” that the appeal court would quash the conviction or reduce the sentence if we referred it.

Cases originally dealt with in a Magistrates’ Court are appealed in a Crown Court and cases originally dealt with in a Crown Court are appealed in the Court of Appeal.

Whenever a referral seems possible, a committee made up of three Commissioners will meet to consider the case and decide whether or not to make a referral. A decision not to make a referral can be taken by a single Commissioner (see appendix 2 on pages 71 to 73 for a detailed explanation of the case review process).

When a referral is made, the relevant appeal court must hear the case. It is for the court to decide whether or not the conviction should be quashed or the sentence reduced.

The Commission’s decision about whether or not to refer a case is communicated to the applicant and his or her legal team or designated representative in a document called a Statement of Reasons. This sets out in detail the Commission’s analysis of the case and the reasons for its decision.

When the Commission is minded not to refer a case it will send a provisional Statement of Reasons setting out the reasons why the Commission is currently not minded to refer the case. At this stage the applicant is invited to make any further representations in the light of the provisional statement. The Commission will then consider those representations before making its final decision.

The fact that a review is under way does not automatically mean that the case will be referred. In fact, in the great majority of

cases, the Commission concludes that there are no grounds to refer the case to the appeal court.

In those cases it is usually only the applicant and a small number of people involved in the case who are aware that there has been a review. The Commission does not publish or actively publicise details of cases where a review has been held but no referral made.

Whenever we do make a referral, we issue a press release to the media and publish the release on our own website.

Because most cases we review are not referred to the appeal court, we do not routinely inform victims of the original offences, or the families of victims, that we are reviewing an application from the person who was convicted.

We recognise that, in some cases, the fact that the Commission is reviewing a case or has decided to refer a case, can have significant implications for the victim of the original crime and sometimes for others close to the victim.

The Commission will try to inform victims or other relevant people if a referral is imminent or if news of a Commission review is likely to come to their attention or enter the public domain.

We try our best to minimise the distress that can be caused to victims and others and we work with other agencies such as the Police, Crown Prosecution Service and the Probation Service to do so. We are committed to the Government’s Code of Practice for Victims of Crime. (Our victim notification policy is available on our website at **[www.ccr.gov.uk](http://www.ccr.gov.uk)**)

## Other duties of the Commission

The Criminal Appeal Act 1995 sets out the Commission's powers and duties. It says that as well as our remit investigating alleged or suspected miscarriages of justice, the Commission can also be called upon by the Court of Appeal to look into cases that have come directly to it, or to find out more information about specific aspects of cases that have been referred by the Commission.

The Commission also has a wider role to inform the development of the criminal justice system and build public confidence in that system.

We have the power to recommend the use of the Royal Prerogative of Mercy and can also be asked for advice on the use of the prerogative by the Secretary of State for Justice.

## Our statutory background

The Commission is an Executive Non-Departmental Public Body financed by Grant in Aid through the Ministry of Justice. The Lord Chancellor and Secretary of State for Justice is answerable to Parliament for the Commission and responsible for making financial provision to meet its needs. The Secretary of State for Northern Ireland has similar responsibilities in respect of Northern Ireland.

The Criminal Appeal Act 1995 provides that the Commission shall have no fewer than 11 Commissioners, appointed by The Queen on the recommendation of the Prime Minister, one of whom is appointed as Chair by The Queen.



The majority of applications we receive can be dealt with quite quickly, within weeks or months. Other cases, however, can be very complicated and can take months or sometimes even years to review.

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We have made further improvements regarding complex in-custody cases.

At the end of 2008/9, the age of the next C case was five months, well within our target of 16 months and better than the position at the end of 2007/8 when it stood at six months.

Section Two

# Directors' Report

## Commissioners

There are 11 Commissioners, including the Chair of the Commission. Each Commissioner is appointed for a period of five years and can serve for a maximum of ten years.

Commissioners meet regularly to review and decide on policies, performance and other matters of strategic importance. Directors attend those Commission meetings.

Mr Richard Foster CBE is the current Chair of the Commission. Mr Foster took up the post in November 2008. He succeeded Professor Graham Zelikson CBE who stepped down at the end of his five year appointment.

### **During the year 2008-09, the other Commissioners were:**

Mr Michael Allen  
Ms Penelope Barrett  
Mr Mark Emerton  
Mr James England  
Miss Julie Goulding  
Mr David Jessel  
Mr Alastair MacGregor QC (Deputy Chair)  
Mr Ian Nichol  
Mr Ewen Smith  
Mr John Weeden CB

In November 2008, Mr Ian Nichol was reappointed to serve for a second five year period at the Commission. Mr Alastair MacGregor QC and Ms Penelope Barrett completed their first five year terms early in the financial year 2009/10.

## Directors

The day-to-day running of the Commission is the responsibility of the Directors who together comprise the Senior Management Team. In 2008/9 the Senior Management Team consisted of:

Mr Colin Albert, Principal Director and Director of Finance & IT (and Accounting Officer), and Miss Karen Kneller, Director of Casework.

## Code of Best Practice

The Commission has adopted a Code of Best Practice for Commissioners which includes a register of Commissioners' interests which is available for inspection at the Commission by arrangement.

## Risks and uncertainties

The Commission's systems of internal control have been designed to manage the risks faced by the Commission in order to safeguard its assets against unauthorised use or disposition, to maintain proper accounting records and to communicate reliable information for internal use or publication.

## Audit Committee

This ensures high standards of financial reporting and systems of internal control and reporting procedures. It reviews internal and external financial statements on behalf of the Commission. The Audit Committee's external Chairman is Mr Terry Price.

## Auditor

Arrangements for external audit are provided under paragraph 9 of Schedule 1 to the Act, which requires that the Comptroller and Auditor General examines, certifies and reports on the statement of accounts. That report, together with the accounts, is laid before each House of Parliament.

No remuneration was paid to the auditor for non-audit work during the year. As far as the Accounting Officer is aware, there is no relevant audit information of which the Commission's auditor is unaware. The Accounting Officer has taken all the steps which he ought to have taken to make himself aware of any relevant audit information and to establish that the Commission's auditor is aware of that information.

## Personal data related incidents

The Commission takes great care to protect personal data relating to applicants, witnesses, victims and others connected with cases under review, and section 23 of the Criminal Appeal Act 1995 makes it an offence to disclose any information obtained by the Commission in the exercise of its functions except in very specific circumstances.

There were no personal data related incidents in the year, or in any previous year, which had to be reported to the Information Commissioner or were otherwise recorded as being of significance.



The Commission referred 39 cases to the appeal courts in 2008/9. That means that just over four per cent of the 941 cases closed in the year resulted in a referral.

Section Three

# Casework

We reported in last year's annual report that the changes to our casework processes introduced in 2006/7 had begun to have a positive impact on our performance and we suggested there would be two particular challenges to be faced in 2008/9.

One would be to close some of the older, more complex cases which were still in the system from before the casework changes took place. The other would be to maintain our casework performance in light of significant budget reductions and the resulting moratorium on replacing case reviewers who leave the Commission.

Over the last couple of years, the Commission has had to cope with a significant drop in the number of staff due to the recruitment freeze.

To illustrate, at 31st March, 2007, there were 51 individuals working as case reviewers with a full time equivalent (FTE) of 46.75 people. At 31st March, 2009, the number had fallen to 44 individual case reviewers with an FTE of 40.86. That is a drop of 12.6%.

The two-year recruitment freeze helped produce a planned underspend in 2008/09. The Commission was determined to use as much of its available resource as possible on our core business of casework. We were therefore pleased to be able to offer two internship opportunities for the first time in 2008/9 on eight month fixed term contracts.

The interns, both recently called barristers, went through a rigorous recruitment process and then received intensive training with close on-the-job supervision and coaching. There is no doubt that in terms of their effectiveness, judged by their impact on casework performance, the appointments were a great success.

Whilst actual and FTE staffing levels vary across each business year, the loss of case reviewers and the two-year moratorium on their replacement has had an effect on morale as the remaining staff work hard to maintain performance and review cases as effectively and thoroughly as they possibly can.

Commissioners are another key element in the casework process. We now have 11 Commissioners, including the Chair. Eleven is the statutory minimum with which the Commission can operate. Until 2007/8 we typically operated with a full complement of 16 Commissioners.

In spite of the significant falls in the numbers of staff and Commissioners engaged in caseworking and decision making, we have continued overall to perform well.

## Cases in progress

It is important that we complete case reviews in a reasonable time.

We measure this only for B and C cases as these cases take longer to review than the relatively straightforward cases reviewed as category A. (For a breakdown of how the Commission categorises and handles cases according to complexity see Appendix 2 on pages 71 to 73 "The Casework Process in Detail".)

Our target, set out at KPI 1, is that there should be fewer than 20 category B cases that take longer than six months from allocation to a case reviewer to reach the provisional decision stage. All KPI data is set out at Appendix 1 on pages 68 to 70. At the end of March 2009, we had 31 such cases. At just over 14 months old, the average age of these cases was also higher than we would have liked.

However, this is set against the significant improvements we have made with C cases. The average time taken to reach provisional decision stage in these complex cases has fallen dramatically from 42 months at the end of 2007/8 to 32.5 months at 31st March, 2009.

This brings the Commission very close to achieving its target of reaching a provisional decision within 32 months. There is no doubt that the improvement is a result of progressing those much older cases mentioned in earlier annual reports. While there has been a substantial reduction in their average age, the number of C cases over-running the 32 month target was 35. That is five more than the target.

### Age of next case for allocation

One of the main concerns for applicants is how long they wait before their case is allocated to a case reviewer so that a review can begin.

KPI 2 measures both the average age of all review cases not yet allocated to a case reviewer, and the age in months of the next case due be allocated. A distinction is drawn between the cases of applicants who are in custody and those who are at liberty with the custody cases taking priority.

Overall, we have maintained the good position we achieved last year. At 31st March 2009, the age of the next category A case to be allocated was five months, fractionally shy of the target of less than five months.

For B in-custody cases, the age of the next case was also five months, well within the target of nine months.

For B at-liberty cases the age of the next case to be allocated was 17 months, well within the target of 21 months.

We have made further improvements regarding C in-custody cases. At the end of 2008/9, the age of the next C case was five months, well within our target of 16 months and better than the position at the end of 2007/8 when it stood at six months.

C at-liberty cases have risen by one month since 2007/8 to stand at 18 months at the close of 2008/9. This is well within our target of 28 months.

The average age of cases waiting is well within our targets for all types of cases with the exception of A cases, for which the average is 3.08 months, slightly over the target of three months.

### Case completion times

It is important that once a review has begun, cases are completed within a reasonable time.

KPI 3 on page 69 measures the number of cases which reach the provisional statement of reasons stage and the final decision stage within our benchmark times expressed as a percentage of all cases.

As the KPI 3 table on page 69 shows, we are reaching and beating the target for C cases reaching final decision but marginally missing the target for reaching the provisional decision stage. Overall, we consider that we are performing satisfactorily on C case completion times.

For A and B cases the picture is less straightforward. While A cases perform better at reaching the final decision stage than the provisional decision stage, we are missing both targets. It is apparent from detailed

examination of category A files that we may have been too ambitious in setting those targets. Indeed, a more realistic target had been recommended as part of the internal review, but the Commission decided at the time to leave the more challenging target in place for the time being. Work is now underway examining that issue again.

While B cases are performing better than A cases, there is still some room for improvement. Much Commission resource has been expended on progressing and closing C cases and we now need to re-focus our attention on B cases whilst maintaining the healthy position on C cases.

### Caseflow balance

If we close fewer cases than we receive, the number of cases waiting to be allocated for review will increase and the waiting times to allocation will grow.

In addition to allocating new cases, we have to re-allocate the case loads of those staff who leave and are not replaced because of the recruitment freeze.

These re-allocations place a significant burden on our resources and necessarily result in duplication of work as the new case reviewers must start by familiarising

themselves with the work done before re-allocation.

In our more complex cases, re-allocations invariably cause delay and increase the amount of time a case is open and under review. During the year there were approximately 50 re-allocations.

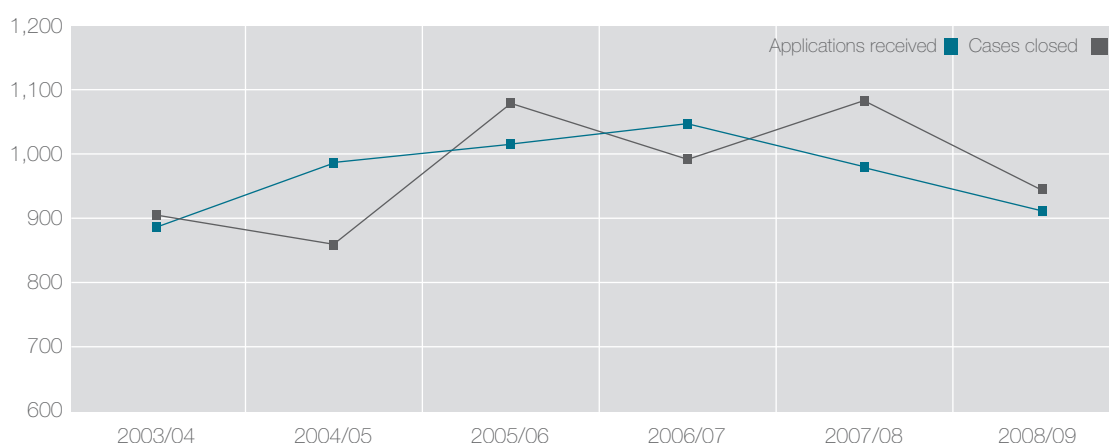
Our aim, as set out in KPI 4, was to close more cases than we received and we have achieved this by closing 22 more cases than we received in 2008/9. While a fall in the number of new applications (919 in 2008/9 compared to 984 in the previous year) was some help in achieving KPI 4, the fact that we closed more cases than we received is also a testament to the Commission's ability to remain focused on progressing and closing cases in spite of falling staff numbers.

### Referrals

The Commission referred 39 cases to the appeal courts in 2008/9. That means that just over four per cent of the 941 cases closed in the year resulted in a referral.

Of the 39 referrals, 33 related to convictions and six to sentences. All referrals during the year were made to the relevant Court of Appeal. None were summary matters to be appealed in the Crown Courts.

### Applications received v cases closed



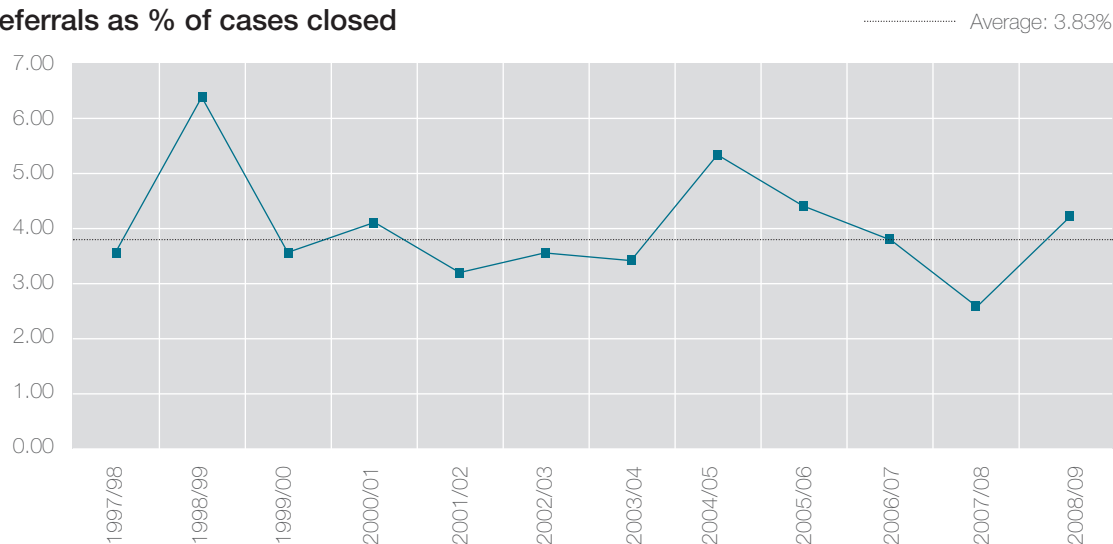
This year's 39 referrals mean that the Commission has referred 423 out of the 10,979 cases closed between the start of its work in 1997 and the 31st March, 2009. That gives an overall referral rate of 3.8%. Of the 39 cases referred, 27 were to the Court of Appeal in England, and 12 references were to the Court of Appeal in Northern Ireland.

### Referral conclusions

During 2008/9 the appeal courts decided 29 appeals on referral by the Commission. Last

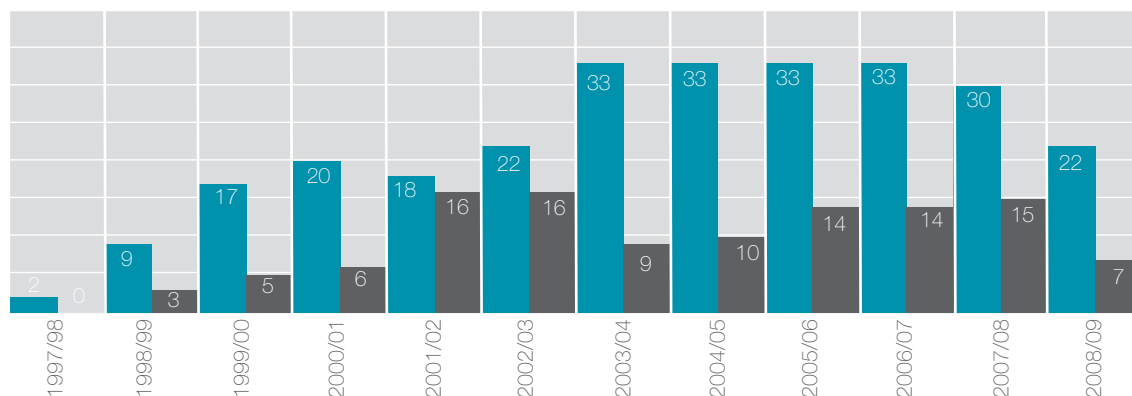
year the figure was 47. Of the cases heard in appeal courts during 2008/9, 22 resulted in convictions being quashed or sentences varied. That represents a 75.9% "success" rate. That is within the 60 to 80% set out in KPI 6 (page 70). Between the Commission starting work in April 1997 and the 31st of March 2009, the appeal courts heard 387 appeals on referral from the Commission. Of those 272 have resulted in convictions being quashed or sentences varied while 115 conviction or sentences have been upheld. The referral "success" rate over the lifetime of the Commission has been 70.3%.

### Referrals as % of cases closed



### Outcome of referrals heard

Quashed ■ Upheld ■



The Court has needed to call upon the CCRC this year to investigate a number of sensitive and complex issues.

Of particular note was the Commission's willingness and expediency in investigating allegations of juror bias in a number of conjoined appeals... Their findings were conclusive.

From Court of Appeal Criminal Division Review of the Legal Year, October 2008

## Analysis of Commission referrals to the appeal courts in 2008/9

**A list of all referrals made can be seen at Table 1 on page 66.**

### Types of offence

- Homicide convictions continue to make up a significant percentage of referrals: there were seven referrals of murder convictions and one referral of a manslaughter conviction.
- There were three referrals of drugs-related convictions. This tended to support the suggestion in last year's annual report that a predicted "flood" of drugs-related referrals was unlikely to materialise.
- There were two referrals of convictions relating to sexual offences, fewer than in previous years. One, that of Paul Flay, was founded largely on the 2008 report of the Royal College of Paediatrics and Child Health. The report suggested that some common physical findings noted by medical practitioners in child sexual abuse cases may not have the evidential significance attributed to them at the time of the original trial.
- There were five referrals of convictions relating to the use of non-fatal force, and two which can be categorised as dishonesty.
- Of the sentence-only referrals, one related to the tariff period set in a murder case, and four related to sexual offences.

### Northern Ireland referrals

The period under review has seen a significant number of referrals to the Northern Ireland Court of Appeal.

There were 12 referrals to the Northern Ireland Court of Appeal during the period under review. In part, this is due to the referral of six linked convictions for a high-profile offence of false imprisonment in 1991.

A further group of five referrals related to convictions dating back to "the Troubles" in the 1970s. There was no link between the cases, which related to completely separate incidents. The appellants were all aged 16 or under at the time of their arrest. They were all interviewed for long periods of time, and each of them made a confession which they later retracted.

## Analysis of decisions by the Court of Appeal in 2008/9

**A list of all decisions by the appeal courts can be seen at Table 2 on page 67.**

During the year the appeal courts considered the cases of 29 people referred by the Commission. These included the eight linked cases of James Martin, Veronica Ryan, Gerard Hodgins, Danny Morrison, Liam Martin, James O'Carroll, Daniel Caldwell and John Murray dealt with by the Northern Ireland Court of Appeal. The Commission referred the cases with very limited disclosure of reasons to the applicants because of the highly sensitive nature of the material giving rise to the referrals. Similarly, in quashing convictions, the Northern Ireland

Court of Appeal revealed very little about its reasons for doing so.

Among the conviction cases were four relating to homicide. One of these (*R v Hodgson* [2009] EWCA Crim 490) attracted more than ordinary attention from the press. It involved the re-examination of crime-scene material which yielded a DNA profile that was incompatible with the prosecution's case at trial. The Commission was able to prioritise the case and deal with it in days because the forensic work had already been done and the Crown Prosecution Service had made a prompt decision not to oppose any appeal.

Together with the remarkably similar case of *R v Shirley* [2003] EWCA Crim 1976, it is one of relatively few CCRC referrals in which DNA has assisted an appellant to overturn a conviction.

There were no strong trends among the rest of the cases, but it may be worth mentioning that all four of the references involving convictions for sexual offences raised issues relating to the reliability of the complainants in those cases. In three of those references convictions were quashed.

Taken together with similar referrals in previous years (particularly the group identified on page 28 of our Annual Report for 2006/7) these cases offer an insight into the reporting, investigation and prosecution of sexual offences that can often be overlooked in the frequent debates and consultations on this subject.

A reflection of similar problems in convictions of a non-sexual nature can be found in *R v Sneddon* [2009] EWCA Crim 430, where the complainant in a case of unlawful wounding and theft had been convicted of perjury after admitting that he had lied about the incident when giving his evidence.

Most of this year's decisions have turned on their own particular facts, and have not raised issues capable of affecting others.

However, the judgment in *R v Kempster* [2008] EWCA Crim 975 provided useful clarification on the correct approach to expert ear-print evidence, while *R v Rowe* explained that the recent 'change-of-law' legislation (s.16C of the Criminal Appeal Act 1968, inserted by s.42 of the Criminal Justice and Immigration Act 2008) does not always have the impact that might have been anticipated.

A case involving three applicants to the Commission, *R v James, Melnichenko and Richardson* [2008] EWCA Crim 1869, shed additional light on the Court's approach to confessions that were obtained irregularly before the implementation of the Police and Criminal Evidence Act 1984.

Among the four sentencing references, probably the most interesting was that of *R v F* [2009] EWCA Crim 319, which concerned a very young offender whose custodial sentence was, by just one day, of a length which meant that he would be subject to the sex offender notification requirements for the rest of his life.

The Court of Appeal considered the case just after the Administrative Court had found that the relevant legislation was in breach of Article 8 of the European Convention on Human Rights because it did not provide any method by which the requirement could be reviewed.

However, the Court of Appeal did not feel that the length of the sentence itself was manifestly excessive simply because of its statutory consequences.

Nevertheless, the Court also certified that a point of law of general public importance was

raised by the question of whether sentencing judges should take into account the notification requirements and Article 8 when fixing the length of custody, so it remains possible that the House of Lords will agree to consider the question.

From time to time, we notice cases appearing in the Court of Appeal's list which had previously been rejected by the Commission because the ordinary route of appeal had not been exhausted. It is usually only when the judgment happens to mention the Commission that we are able to spot these cases. They provide us with a certain degree of feedback about the cases we reject – something which we can otherwise obtain only from occasional judicial reviews.

The Commission is not aware of any cases arising in 2008/9 where the Court of Appeal has indicated that it felt the Commission should have accepted the case instead of directing it back towards the Court.

## Directions for investigation by the Court of Appeal

The Court of Appeal can direct the Commission to investigate and report on matters relating to ongoing appeals under section 23A of the Criminal Appeal Act 1968 and section 15 of the Criminal Appeal Act 1995.

We continue to be busy in this regard with five new directions from the Court in 2008/9. In addition, there were a number of directions to undertake further work in a long-running case which was first the subject of a direction made in the previous year. Because they relate to live proceedings in the Court of Appeal, such cases are always given priority and continue to absorb a

significant amount of review time. It is apparent that the Court continues to be appreciative of the work the Commission does in this regard. As in previous years, enquires relating to jury contamination or bias have been dominant features of this important aspect of the Commission's work. Indeed, the Court of Appeal Criminal Division Review of the Legal Year, published in October 2008, said: "The Court has needed to call upon the CCRC this year to investigate a number of sensitive and complex issues. Of particular note was the Commission's willingness and expediency in investigating allegations of juror bias in a number of conjoined appeals...[ ]... Their findings were conclusive and resulted in a great saving in terms of argument before the Court and delay to the hearing of the matters."

## Royal Prerogative of Mercy

Section 16 of the Criminal Appeal Act 1995 gives the Commission two areas of responsibility relating to the Royal Prerogative of Mercy. One is to recommend the use of the Royal Prerogative where the Commission sees fit. The other is to respond to requests from the Secretary of State in relation to the use of the Royal Prerogative. The Commission has had no cause to act in relation either of these areas of responsibility during 2008/9.

## Judicial Reviews 2008/9

In Judicial Review proceedings a judge reviews the lawfulness of a decision or action made by a public body. An application for Judicial Review is a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

Applications for judicial review are handled by the Administrative Court at the Royal Courts of Justice in London. Following a judicial review of a decision taken by the Commission, the Administrative Court can require the Commission to revisit the decision(s) in question.

During the year, the Commission was the subject of 21 applications for judicial review of case-related decisions. That compares with 30 such applications in 2007/8.

As in previous years, the majority of these challenges centred on Commission decisions not to refer cases to the appeal courts where it concluded there was no real possibility that the applicant's conviction would be quashed or sentence varied.

Five applications were resolved as a result of pre-action correspondence, in that no proceedings were issued at the Administrative Court. At the end of 2008/9 one application was still in pre-action correspondence.

This mirrors the pattern established in previous years. It illustrates the fact that the pre-action protocol for judicial review (introduced in England and Wales in 2002) can and does operate to reduce the number of claims issued in the Administrative Court.

No application has been re-opened as a result of judicial review proceedings in the period under review.

Permission to proceed with a judicial review of the Commission's decision not to refer was granted in two cases:

One was that of Paul Cleeland. This stemmed from a re-application in relation to Mr Cleeland's 1973 conviction for murder. The Commission had already referred the

conviction in 2000, but it was upheld by the Court of Appeal in 2002. The single judge granted permission on the basis that "Whilst I am not satisfied that the [...] grounds are arguable I consider it preferable simply to grant permission and allow the case to be argued".

Judgment was given in favour of the Commission. The case proved useful, however, in that the Court recognised that the case could have been resolved without the necessity for a full hearing and all the cost that entailed for the Commission, the Legal Aid fund and the Court Service. Scott Baker LJ offered the following advice to single judges who consider applications for permission to proceed with a judicial review of the Commission's decisions:

"I would wish to emphasise the very high threshold that has to be crossed to persuade this court that a decision by the Criminal Cases Review Commission not to refer a case to the Court of Appeal (Criminal Division) is unlawful. A grant of permission to apply for judicial review in a case of an alleged wrongful conviction, especially in a case with as long a history as the present one, is liable to raise the hopes and expectations of the convicted person. An alternative to granting permission on paper would have been to adjourn the permission application for an oral hearing on notice to the CCRC. Had that been done in this case, the CCRC could have been able to expand upon and explain the grounds for resistance in the acknowledgment of service, and it may very well have been that permission would not then have been given." *R (Cleeland) v CCRC* [2009] EWHC 474 (Admin).

The other was that of Brian Johnson. In March 2009 the Administrative Court granted permission for judicial review on one matter relating to this non-referral case. As this

annual report went to print the Commission was seeking a resolution of the matter without the need for a hearing.

The 21 of April 2009 marks the implementation of the May Report, "Justice Outside London", which recommended the regionalisation of the work of the Administrative Court. From 21 April, the Administrative Court will be fully operational at the Birmingham Civil Justice Centre, and it will also be possible for cases to be heard in Nottingham. This may be of assistance to the Commission, as it will be easier and less expensive to attend hearings in the Birmingham area.

## Complaints to the Commission in 2008/9

The Commission's Complaints Manager carries out a detailed investigation in the event of a complaint being made. The Complaints Manager has the power to make the decision to uphold a complaint or not. For complainants who are not satisfied with the outcome, there is a second stage to the process in which a Commissioner will consider the issues.

The Commission received 59 complaints relating to 52 cases last year. That compares to a total of 38 complaints (misrepresented last year as 40) relating to 33 cases in 2007/8.

Three complaints moved to stage two of the process in 2008/9 compared to three in 2007/8.

Of the 59 complaints in 2008/9, three (5%) were upheld. That compares with three (8%) upheld in 2007/8. The Commission considers a complaint to have been upheld if any aspect of the handling of the case that

gave rise to a complaint was found to be deficient whether or not the deficiency had any impact on the outcome of the case.

Just over half of all complaints (30) related to decisions or actions taken during the review of a case. Eleven (19%) related to communication with applicants or others – all the complaints upheld came from this category. Nine related to alleged failures to adhere to Commission values, seven to delays and two to Freedom of Information.

Most complaints (74%) followed provisional or final decisions by the Commission not to refer a case to the Court of Appeal. A further 14% related to the Commission's decision to refuse re-applications from former applicants.

Forty eight complaints (84%) were made by applicants, six (10.5%) were made by applicants' family members, two (3.5%) were made by legal representatives and one complaint was made by a campaign organisation.

The average time taken to complete a complaint investigation in 2008/9 was 15 days. Because the amount of time needed to investigate adequately can vary significantly according to the complexity of the complaint, we set no immutable time limit, but we aim to complete investigations within 20 days.

There is a firm target to give an initial response to each complaint within ten days of receipt. In 2008/9, the average time to initial response was two days. In 2007/8 it was three days.

The Commission is due to review its complaints procedure in 2009/10 when it will seek to refine and improve the way it deals with complaints in light of experience.

Section Four

# Resources

## People

The recruitment freeze introduced at the Commission in 2007/8 has continued throughout 2008/9.

It has meant that, for a second year running, the Commission has not been able to fill as many of the vacated posts as we would have wished. As a result, the number of case reviewers stood at 40 at 31 of March, 2009. That is three fewer than at the same point last year. Indeed, the number of case reviewers at the Commission is now at its lowest since 31 March, 2000.

In spite of the recruitment freeze, the Commission has had to plan additional cost saving measures in order to operate within the budget settlements expected in the next two years. These have included proposals to make further staff reductions.

Changes in the caseworking patterns at the Commission, combined with the need to find further cost savings, gave rise to proposals to discontinue the role of caseworker. The Commission decided that the right way forward under the circumstances was to propose compulsory redundancies.

The proposals affect four individuals. As at 31 of March 2009, the Commission was in a statutory consultation period on the proposed redundancies with the individuals directly affected and with their union representatives.

The Commission made some improvement in managing sickness absence among staff in 2008/9. The target set out in KPI 8 is that there should be fewer than nine days sickness absence per full-time equivalent (FTE) member of staff for the year.

As at 31 March 2009, the actual average was slightly over nine days per person (FTE). This means that, although the Commission narrowly missed the KPI target, there was a substantial improvement of almost two days per person (FTE) on the previous year.

Long term sickness was the most significant factor affecting the figure. The Commission will continue to work at improving the management of sickness absence. A new sickness absence policy is due to be introduced early in 2009/10.

During 2008/9 the Commission worked on developing a new staff appraisal scheme which is due to be implemented in October 2009. The early months of 2009/10 will be spent providing appraisal training for staff and developing objectives aligned with the Business Plan.

Training continues to be important at the Commission and a programme of legal training for case review staff is in place.

In 2008/9 the Commission also ran a programme of personal effectiveness training for all case review staff. The "Building Working Relationships" and "Building a Positive Reputation" courses were well received and the Commission is now looking to involve all staff in the training.

The Commission has identified a need to develop key skills among staff with line management responsibilities and providing training in this area is a key training strategy objective for 2009/10.

An Equalities Scheme has been approved. Implementation of the scheme, together with appropriate training, is expected to take place in the first half of 2009/10.

A comprehensive staff survey was commissioned and carried out during March 2009. Seventy-seven per cent of staff completed the confidential on-line questionnaire. A working group was formed and an action plan is being developed to address the issues raised by staff. The Commission plans to survey staff annually.

## IT and Security

During the year, the Commission has streamlined its IT and Security functions by amalgamating the roles of IT Security Manager and IT Manager and bringing in an experienced IT Systems Manager to cover both functions. The IT Strategy 2009-2012 has been revised and now focuses on investment on introducing virtualisation technology to reduce long-term IT support costs and bring in all of the associated benefits of such technology such as improved Disaster Recovery capability.

A complete hardware re-fresh is also scheduled during the IT Strategy period commencing this year along with upgrades to all major applications. Progress has been made in the past 12 months in improving IT Security within the Commission following the introduction of a software-patching program and additional security management tools being installed on all workstations.

## Financial Resources

The Commission is funded entirely by means of Grant in Aid from the Ministry of Justice, which is a cash grant. However, financial control is exercised by means of delegated Departmental Expenditure Limits (DELs) which are calculated on a resource accounting basis and therefore include non-cash items such as depreciation and provisions. Resource and capital DELs are separate and cannot be vired except from resource to capital with the consent of the Ministry of Justice. Resource DEL is also split between near-cash and non-cash. Near-cash items are those items of expenditure which normally result in cash flows in the immediate short term. Non-cash expenditure includes provisions and depreciation. When provisions become payable, a transfer is required from non-cash to near-cash. Near-cash became a principal budget control during the year.

At the time of writing the Commission is awaiting notification of its delegation for 2009/10 and is operating under provisional budgets. The amounts shown in the table below are estimates based on information to hand. A comparison of DEL figures for the previous, current and the next two years is shown below:

	Delegated DEL				Indicative DEL		
	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Near-cash	6,872	6,959	6,715	6,761	<b>6,694</b>	6,590	6,490
Non-cash	970	839	893	513	<b>513</b>	390	390
Resource total	7,842	7,798	7,608	7,274	<b>7,207</b>	6,980	6,880
Capital	620	163	56	95	<b>100</b>	353	205
TOTAL	8,462	7,961	7,664	7,369	<b>7,307</b>	7,333	7,085

\* no official indicative budget is available for 2010/11, except that a further £100k money efficiency saving needs to be delivered over 2009/10

The delegated budget for 2009/10, the indicative budget for 2010/11 and an estimated budget for 2011/12 will be used as the basis for the Commission's business and corporate plans which map the strategic direction of the Commission for the next three years, and the detailed activities, success criteria, projections and key performance indicators for 2009/10. The plans will be made available on the Commission's web site once approved. As part of the plans there has been a continuing recruitment freeze, and a programme of restructuring and workforce reduction has been undertaken during the year, to ensure that the Commission can operate within its lower near-cash budget into 2010/11. The principal risks and uncertainties which the Commission faces when planning and managing its financial resources concern the number and type of applications received, the Commission's ability to recruit and retain expert staff, the provision and maintenance of appropriate IT systems and the level of funding received. The Statement on Internal Control on pages 44 to 46 describes how these risks and uncertainties are managed. The cash Grant in Aid received from the Ministry of Justice in the year was £6.04M (2008 £6.83M), consisting of £6.00M for the

operating activities of employment and running costs and £0.04M for capital expenditure (2008 £6.74M and £0.09M respectively). In accordance with government accounting rules which require Grant in Aid only to be drawn when needed, the Commission aims to maintain its monthly end of period cash balances below £200k. This is used as a key indicator to measure the effectiveness of the Commission's cash management. The Key Performance Indicator target was achieved throughout the year, with an average month-end balance of £140,000.

### Financial performance

The primary indicator of financial performance is expenditure measured against the delegated Departmental Expenditure Limits (DEL).

Revenue DEL is made up of operating expenditure and cost of capital, including the interest element of the increase in the pension provision, but excludes the unrealised loss on revaluation of fixed assets. The Commission's actual expenditure compared with DEL was as follows:

	2008/09			2007/08		
	DEL*	Actual	Variance	DEL	Actual	Variance
	£'000	£'000	£'000	£'000	£'000	£'000
Near-cash	6,694	6,496	(198)	6,701	6,641	(60)
Non-cash	513	379	(134)	513	393	(120)
Total revenue	7,207	6,875	(332)	7,214	7,034	(180)
Capital	100	38	(62)	155	95	(60)
TOTAL	7,307	6,913	(394)	7,369	7,129	(240)

\* stated after virement of £60k from near-cash to capital

	<b>2008/09</b>	<b>2007/08</b>
	<b>£'000</b>	<b>£'000</b>
Actual revenue expenditure in DEL format	6,875	7,034
Unrealised loss on revaluation of fixed assets	6	25
Interest on pension scheme liabilities	(203)	(160)
Interest on dilapidations provision	(16)	(17)
Cost of capital	136	121
Operating expenditure per I&E Account	6,798	7,003

Actual expenditure in DEL format is reconciled to total operating expenditure as shown above in the Income & Expenditure Account.

Financial performance as measured by expenditure against DEL is one of our KPIs. The KPI targets are that for each of near-cash, non-cash and capital budgets, expenditure should not exceed budget, nor fall below budget more than a specified amount or % of the budget. Actual expenditure in 2008/09 was below budget in all three categories by more than the target amount. However, for near-cash, this was a planned consequence of freezing recruitment and making other staff reductions in year to ensure that we can operate within budget in the last of the spending review 2007 period years that we have indicative budgets for.

## Financial statements

The accounts for the year ended 31 March 2009 are set out on pages 43 to 64.

The Income and Expenditure Account on page 50 shows operating expenditure for the year of £6.80M (2008 - £7.00M).

Employment costs show a small increase from £4.84M in 2007/08 to £4.88M in the current year. However, the current year total includes severance costs payable in respect of restructuring and planned workforce reductions. Further details are given in note 21 to the accounts. Without these

payments, employment costs would have shown a reduction to £4.56M. As explained above, these savings are in anticipation of reduced budgets in 2010/11.

Savings have also been made in running costs, which have been reduced from £1.85M in 2007/08 to £1.73M in the current year. This has been achieved through efforts to economise in all areas, and the removal of certain non-essential expenses.

Investment in fixed assets during the year was mainly in respect of IT hardware, development and software, and totalled £38k. In addition, a further £18k was added to the dilapidations asset in respect of the provision made for returning the offices occupied by the Commission back to their original condition at the end of the lease. This treatment is explained in note 1 to the accounts under "Operating Leases". The net book value of fixed assets at the end of the year stands at £275k (2008 £413k).

This reduction in the book value of fixed assets, combined with the continued increase in provisions for pensions and dilapidations, has resulted in an overall negative balance sheet value at the end of the year of £4.21M (2008 £3.55M). The net liabilities largely fall due in future years, and will be funded as necessary from future Grant in Aid provided by the Ministry of Justice. As a result, it has been considered appropriate to continue to adopt a going

concern basis for the preparation of the accounts. This is discussed further in the Accounting Policies note on page 53.

During the year the Commission began preparations, as required by HM Treasury, towards the adoption of International Financial Reporting Standards in 2009/10.

### Compliance with public sector payment policy

The Commission follows the principles of the Better Payment Practice Code. The Commission aims to pay suppliers in accordance with either the payment terms negotiated with them or with suppliers' standard terms (if specific terms have not been negotiated), provided that the relevant invoice is properly presented and is not subject to dispute (see table below).

Performance has exceeded our 95% target both in terms of value and number of invoices. This is a significant improvement on last year.

No interest was paid under the Late Payment of Commercial Debts (Interest) Act 1998.

On 8th October 2008 the Prime Minister committed government organisations to speed up the payment process, paying suppliers wherever possible within ten working days. The Commission will ensure that systems are in place during 2009/10 to meet the ten-day target.

## Legal advice line

The Commission operates a free legal advice line which offers help for applicants and potential applicants, their supporters and representatives. Queries relating to Commission work are handled by experienced members of casework staff. In 2008/9 staff working on the advice line rota logged more than 750 calls. The advice provided ranged from basic information about how to apply or whether to apply to the Commission to complex advice on legal procedures and rules on the admissibility of evidence and so on. The legal advice line is a significant draw on staff time, but an important service for applicants and potential applicants.

## Environment

The Commission keeps the environmental impact of its operations under review and tries to find ways to improve its performance where possible.

The Commission now buys all its electricity from "green" sources and has reduced its consumption of power since 2007/8.

In 2008/9 every printer at the Commission was equipped with a duplex module to allow all staff to print double sided on recycled paper. We also recycle paper, toner cartridges and light bulbs.

The Commission has started using video conferencing facilities to hold monthly


	2008-09		2007-08	
	£'000	Number	£'000	Number
Total invoices paid in year	2,459	2,048	1,948	1,874
Total invoices paid within target	2,397	1,947	1,827	1,671
Percentage of invoices paid within target	97.5%	95.1%	93.8%	89.2%

meetings between the Senior Management Team and the sponsor unit within the Ministry of Justice. The video conference, held for two out of every three meetings, makes it unnecessary for several people to travel between Birmingham and London on each occasion it is used. We plan to invest in our own videoconferencing facilities and to expand the use of this technology.

This Annual Report has, for the first time, been produced in an electronic format. Previously the Commission would have printed 1,500 paper copies. The Commission will print around 100 hard copies of this report for laying before Parliament and archiving. The PDF version of the Annual Report will be made available on our website and e-mailed on request.

## Records management

Systematic records management is fundamental to the Commission's work. Our records are subject to the Public Records Acts of 1958 and 1967. The Commission creates, uses, manages and destroys or preserves its records in accordance with all statutory requirements and in consultation and cooperation with the National Archive, and any other body which may be concerned with the management of its records. We operate a retention / disposal schedule setting out a programme for appropriately managing all paper and electronic records in our possession.



It is absolutely right that the Commission concerns itself with safety, not only because it is the standard applied by the appeal courts, but also because it is a far sterner test of the integrity of the criminal justice system than innocence alone would be.

Chair's foreword 2008/9

Section five

# Corporate

## Planning and monitoring

Performance at the Commission is monitored by reference to a set of eight Key Performance Indicators (KPIs). The KPIs are set out in this report in Appendix 1 at pages 68 to 70. Commissioners consider and discuss performance and KPIs at every Commission meeting. Information on performance, including KPIs, is provided as part of the management information pack which is a standing item on Commission meeting agendas. The management information pack also forms the basis of our reporting to the Commission's sponsor unit. Our Senior Management Team meets monthly with representatives from our sponsor unit within Access to Justice at the Ministry of Justice to discuss performance and other management issues.

Performance is discussed with staff at monthly staff meetings held on the day after Commission meetings. A full break down of progress on performance indicators is presented to staff in each quarter. The Commission is in the process of revising its Business Continuity Plan and there are plans to test the plan in 2009/10.

## Select Committee Appearance

The Commission was called to appear before the Justice Select Committee at Westminster on 10th March, 2009. It was the first appearance of the Commission before the new Justice Committee. The Commission's previous select committee appearances have been before the Home Affairs Select Committee.

The Commission submitted a written memorandum to the Justice Committee before evidence was given in person by Mr

Richard Foster (Chair), Mr Alastair MacGregor (Deputy Chair), Mr Colin Albert (Principal Director) and Miss Karen Kneller (Director of Casework).

## Our wider contribution

The Commission has an important role to play bringing its experience to bear within the wider criminal justice system.

As already mentioned in the foreword to this annual report, the case of Sean Hodgson prompted the Commission to carry out a review of its own past cases and to suggest that prosecuting authorities might consider doing something similar.

Mr Hodgson's 1981 murder conviction was quashed after DNA testing of crime scene samples, requested by his solicitor, showed that genetic material left at the scene did not belong to him. Upon making the referral, the Commission decided to contact prosecuting authorities to suggest an exercise to identify and look again at cases where the circumstances of Mr Hodgson's case may have implications for the safety of a conviction.

The Commission responded to the April 2008 publication of Professor Brian Caddy's report into the reliability of Low Template DNA analysis. Professor Caddy of Strathclyde University was asked by the Forensic Science Regulator to investigate the reliability of Low Template DNA in the light of comments made by Mr Justice Weir in the Omagh bombing case (*R v Hoey* [2007] NICC 49).

Broadly speaking, the report's conclusions were that Low Template DNA techniques are scientifically robust and appropriate for use in police investigations, but that problems with

reliability could stem from the way samples are gathered and preserved. In light of those conclusions, the Commission is checking all 110 cases it has handled that make reference to Low Template DNA analysis to see if the Caddy Review has any implications for those cases. Nothing found so far has required us to re-open a closed case.

The Commission contributed to a number of consultations on criminal justice matters in 2008/9. These included work on changes to the Police (Northern Ireland) Act 1998 s.63(2) proposed by the Police Ombudsman for Northern Ireland, on a review of the Police and Criminal Evidence Act (PACE) in Northern Ireland, and on draft regulations relating to the provision of ID card information.

Representatives from the Commission also took part in the Ministry of Justice's Murder Review, making contributions in the areas of provocation, complicity and diminished responsibility.

The Commission is also a regular contributor to the work of the Criminal Justice Council.

## Communication

The Commission recognises that good communication is vital and continues to work to ensure potential applicants know who we are and how to reach us and that we communicate with them in a clear and straightforward way. We also aim to promote public awareness and understanding of our role within the criminal justice system. We have continued to issue a press release about every referral made during the year as well as about other important developments at the Commission. We respond to media enquiries and seek to work with the media to provide appropriate information to assist them in reporting accurately on referrals,

non-referrals and other Commission matters. Media highlights in the year have included the acquittal after retrial in June 2008 of Barry George whose conviction was referred to the Court of Appeal by the Commission in June 2007 and quashed.

The case of Sean Hodgson (discussed elsewhere in this report) received more media attention than any other referral during the year. The referral and subsequent quashing of Mr Hodgson's conviction appeared in virtually all national print and broadcast media in Britain and received extensive international coverage.

The position of Head of Communication at the Commission was vacant between April and August 2008 and some planned communications projects, including a redesign of the Commission's website, have been postponed until 2009/10. Work continues to ensure that the Commission's information for potential applicants and their representatives is as clear, accessible and understandable as possible.

## International Interest

The Commission was the first statutory body in the world to be set up to investigate and refer miscarriages of justice to the appeal courts when the usual appeal process has been exhausted. It remains one of only three such bodies along with the Scottish Criminal Cases Review Commission and a very similar organisation in Norway.

There is growing international interest in emulating the model established by the Commission. We have continued to share the benefit of our experience and expertise with a range of interested individuals and organisations from around the world. This year Commission staff have met and made presentations on our work to

delegations from the Iranian judiciary and from Thailand's Ministry of Justice. In the last 18 months we have also taken part in the Inquiry into Paediatric Forensic Pathology in Ontario and hosted visits to the Commission from Australia, Canada, Israel, Japan, Poland and the USA.

## Engaging with Stakeholders

The Commission's many and varied stakeholders include the judiciary, the legal profession, the police, other criminal justice agencies and various miscarriage of justice campaign groups as well as any convicted person who believes their criminal conviction unsafe or their sentence wrong. We continue to benefit from the contributions and scrutiny of those stakeholders.

In 2008/9 the Commission sent guest lecturers (Commissioners and staff) to university law schools at Leeds, Birmingham, Aston, Kent, Northampton, Middlesex, Nottingham, Coventry and Plymouth.

Commissioners regularly speak at events such as the annual Criminal Appeals Conference and the Criminal Bar Association Conference.

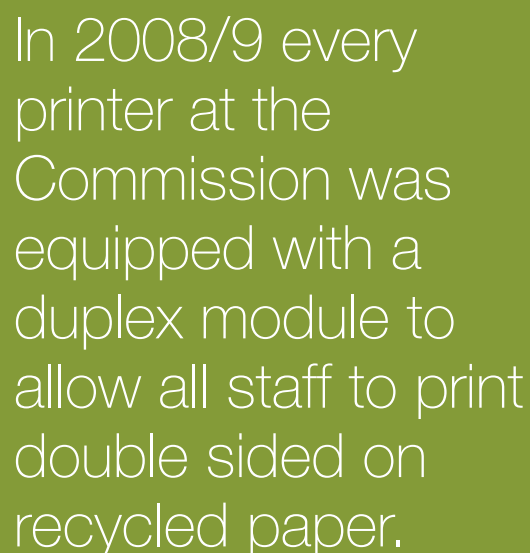
The year saw the continuation of the Commission's prison visits programme with Commissioners and staff making presentations to prisoners and staff at various establishments including HMP Dovegate, HMP Downview for women and young female offenders, HMP Grendon and HMP Feltham Young Offenders Institution. The prison visits programme will continue in 2009/10.

## Future Developments

The coming year will see some significant changes at the Commission with plans to recruit a Chief Executive in 2009/10.

Governance of the organisation will be strengthened by the recruitment two non-executive directors. They will be the first NEDs in the Commission's history.

During 2009/10 the Commission will take on responsibility for reviewing alleged miscarriages of justice arising from the Court Martial and the Service Civilian Court. The change, expected to take effect in October 2009, is part of widespread changes to military discipline introduced by the Armed Forces Act 2006.



In 2008/9 every printer at the Commission was equipped with a duplex module to allow all staff to print double sided on recycled paper.

Section Six

# Remuneration Report

## Remuneration policy

The remuneration of Commissioners is set by the Secretary of State for Justice taking account of the recommendations of the Review Body on Senior Salaries. The Review Body takes account of the evidence it receives about wider economic considerations and the affordability of its recommendations, as well as factors such as the need to recruit, retain and motivate staff and the Government's inflation target.

Further information about the work of the Review Body can be found at [www.ome.uk.com](http://www.ome.uk.com).

Although Commissioners are appointed with different weekly time commitments, all Commissioners, with the exception of the Chairman, are paid salaries at the same full-time equivalent rate.

Salaries of senior management and advisors are set by the Remuneration Committee, which is made up of the Chairman, three other Commissioners and the Principal Director. The Committee takes into account Treasury pay growth limits, affordability, and performance in determining annual salary increases.

## Service contracts

Commissioners are appointed by the Queen on the recommendation of the Prime Minister, one of whom is appointed by the Queen as Chairman. Appointments may be full-time or part-time, and are for a fixed period of not longer than five years. Retiring Commissioners are eligible for re-appointment, provided that no person may hold office for a continuous period which is longer than ten years.

Senior management are employed on permanent contracts of employment. The normal retirement age is 65, although pensionable age remains as 60. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.

## Salary and pension entitlements

The following sections provide details of the remuneration and pension interests of the Commissioners and the senior management team. These details have been subject to audit.

	2008-09		2007-08	
	Salary £k	Benefits-in-kind to nearest £100	Salary £k	Benefits-in-kind to nearest £100
Mr Richard Foster <sup>1</sup> – Chairman [from 01.11.08]	55 – 60	-	-	-
Professor Graham Zellick – Chairman [to 31.10.08]	60 – 65	-	95 – 100	-
Mr Michael Allen	85 – 90	-	85 – 90	-
Ms Penelope Barrett	85 – 90	-	85 – 90	-
Mr Mark Emerton	50 – 55	18,900	50 – 55	17,200
Mr James England	85 – 90	-	85 – 90	-
Miss Julie Goulding	85 – 90	-	85 – 90	14,600
Mr David Jessel	60 – 65	3,500	60 – 65	6,300
Mr Alastair MacGregor	85 – 90	-	85 – 90	-
Mr Ian Nichol	40 – 45	-	40 – 45	-
Mr Ewen Smith	85 – 90	-	85 – 90	-
Mr John Weeden	70 – 75	-	70 – 75	-
Mr Colin Albert – Principal Director and Director of Finance & IT	70 – 75	-	70 – 75	-
Miss Karen Kneller – Director of Casework	60 – 65	-	60 – 65	-

'Salary' includes gross salary or remuneration.

The monetary value of benefits-in-kind covers any benefits provided by the Commission and treated by the Inland Revenue as a taxable emolument. Benefits received by Commissioners relate to costs incurred to enable part-time Commissioners to work in the Commission's office in

Birmingham. These costs are reimbursed to Commissioners or incurred on their behalf free of tax and national insurance, and the amounts disclosed above include the income tax and national insurance contributions which are paid by the Commission. The total net costs actually incurred on behalf of the two Commissioners or reimbursed to them in the year was £11,900.

<sup>1</sup>Mr Foster was appointed full time for his first three months, and subsequently part-time (0.6 FTE)

## Pension benefits

These details have been subject to audit.

### Pension benefits

	<b>Real increase in pension and related lump sum at normal retirement age (bands of £2½k)</b>	<b>Total accrued pension at normal retirement age at 31/3/09 and related lump sum (bands of £2½k)</b>	<b>CETV at 31/3/08 to nearest £k</b>	<b>CETV at 31/3/09 to nearest £k</b>	<b>Real increase in CETV to nearest £k</b>
Prof Graham Zellick - Chairman to 31.10.08	0-2.5	7.5-10 *	145	177 *	22
Mr Michael Allen	10-12.5	20-22.5	125	331	25
Ms Penelope Barrett	0-2.5	5-7.5	78	102	16
Mr Mark Emerton	0-2.5 plus 0-2.5 lump sum	2.5-5 plus 12.5-15 lump sum	60	74	8
Mr James England	0-2.5	2.5-5	23	45	17
Miss Julie Goulding	0-2.5	2.5-5	23	45	18
Mr David Jessel	0-2.5 plus 0-2.5 lump sum	5-7.5 plus 20-22.5 lump sum	132	149	12
Mr Alastair MacGregor	0-2.5	7.5-10.0	138	166	7
Mr Ian Nichol	0-2.5	5-7.5	75	91	7
Mr Ewen Smith	10-12.5	10-12.5	30	229	15
Mr John Weeden	0-2.5	7.5-10	126	154	16
Mr Colin Albert - Principal Director and Director of Finance & IT	0-2.5	5-7.5	83	107	16
Miss Karen Kneller - Director of Casework	0-2.5 plus 0-2.5 lump sum	15-17.5 plus 50-52.5 lump sum	236	255	1

\* For Prof Graham Zellick, the figures are shown at his date of retirement of 31.10.08.

and may also be augmented by additional voluntary contributions paid by the individual.

No figures are shown for Mr Richard Foster (Chairman) as at the date of this report the setting-up of his individual broadly-by-analogy pension scheme had not been completed and no contributions had been made. Mr Foster is, however, entitled to pension benefits from his date of appointment.

Commissioners may choose pension arrangements broadly by analogy with the Principal Civil Service Pension Schemes and are entitled to receive such benefits from their date of appointment.

Total accrued pension may include benefits arising from transfers-in from other schemes,

Commissioners' pension arrangements are unfunded, and the Commission is responsible for paying retirement benefits as they fall due. Contributions are paid by commissioners at the rate of 1.5% and 3.5%

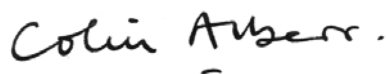
of pensionable earnings respectively depending on whether the individual's scheme is by analogy to the classic or premium/classic plus PCSPS schemes.

Pension benefits to staff are provided through the Principal Civil Service pension arrangements. Scheme members contribute 1.5% of salary to classic and 3.5% of salary to premium and to classic plus.

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are members' accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The CETV figures include the value of any pension benefit in

another scheme or arrangement which the individual has transferred and for which a transfer payment commensurate with the additional pension liabilities being assumed has been received. They also include any additional pension benefit accrued to the member as a result of their purchasing additional years of pension service in the scheme at their own cost. CETVs are calculated in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

The real increase in the value of the CETV reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the member (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.



Colin Albert  
Principal Director and Accounting Officer  
6 July 2009

Section Seven

# Accounts

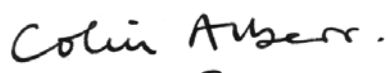


## Statement of the Commission's and Accounting Officer's responsibilities

Under the Criminal Appeal Act 1995, the Secretary of State (with the consent of HM Treasury) has directed the Criminal Cases Review Commission to prepare for each financial year a statement of accounts in the form and on the basis set out in the Accounts Direction. The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the Criminal Cases Review Commission and of its income and expenditure, recognised gains and losses and cash flows for the financial year. In preparing the accounts, the Accounting Officer is required to comply with the requirements of the Government Financial Reporting Manual and in particular to:

- observe the Accounts Direction issued by the Secretary of State (with the consent of HM Treasury), including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed, and disclose and explain any material departures in the accounts; and
- prepare the accounts on a going concern basis.

The Accounting Officer of the Ministry of Justice has designated the Principal Director as Accounting Officer of the Criminal Cases Review Commission. The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the Commission's assets, are set out in Managing Public Money published by HM Treasury.



Colin Albert  
Principal Director and Accounting Officer  
6 July 2009

## Statement on Internal Control

### Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound system of internal control that supports the achievement of the Commission's policies, aims and objectives, whilst safeguarding the public funds and departmental assets for which I am personally responsible, in accordance with the responsibilities assigned to me in Managing Public Money.

The Commission provides information regularly to its sponsoring Department, the Ministry of Justice, on financial and casework performance. Monthly meetings are held with the sponsor unit at which performance measured against key performance indicators and progress against the Commission's objectives are discussed.

### The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of departmental policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The system of internal control has been in place in the Commission for the year ended 31 March 2009 and up to the date of approval of the annual report and accounts, and accords with Treasury guidance.

### Capacity to handle risk

The lead on risk management is taken by me as Accounting Officer. Individual risks are assigned to named individuals, and I ensure that risks are reviewed on a systematic and regular basis in conjunction with the relevant groups and committees. Each review is endorsed by the Audit Committee and a report is made annually by the Audit Committee to the Commission. In addition, the assessment and monitoring of risk is embedded in the Commission's project management processes.

### The risk and control framework

The Commission has established a risk management framework which ensures its risks are properly identified, managed and monitored. Risks are identified for each of the Commission's key processes; for major projects being undertaken and for the Commission as a corporate entity. Risks are assessed in the light of their financial, operational and reputational impact and likelihood on the organisation. This assessment includes an indication of both the risks inherent in the Commission's work and the residual risk actually faced by the Commission after taking into account the measures which have been put in place to manage the inherent risks. Where additional action is identified as being necessary to mitigate the effect of risks, this is fed in to the planning process.

The Commission's control framework is based on the review of regular management information, administrative procedures including the segregation of duties, and a system of delegation and accountability. This is supported by regular meetings of the Commission at which the Commission's strategic direction and plans are reviewed, and performance against goals is reported.

During the year, the Commission has taken the necessary steps to ensure that it is managing the risks relating to information security appropriately. Information security and governance arrangements were already in place in broad compliance with the ISO 27001 Information Security Management standard. A management audit of the statement of compliance has identified some areas for improvement, and an action plan has been drawn up accordingly. Similarly, work has been undertaken to measure the Commission's compliance with the mandatory requirements of the Security Policy Framework relating to information assurance. An action plan to deal with improvements required has been drawn up; the main items relate to the need to update our protective marking regime to include the "protect" marking and improvement needed to business continuity planning.

Further work was carried out in the year to improve the Commission's business continuity planning processes, but it was not possible to conclude the work and proceed to comprehensive testing. Nevertheless, significant progress has been made, including the creation of an IT disaster recovery plan and a new general business continuity plan. These will be tested in the forthcoming year. The Commission's control framework also continues to identify those risks over which the Commission has limited control. These are principally the level of case intake and provision of financial resource. The Commission uses its management information to plan for the uncertainties associated with these areas of risk.

The Commission appointed Tribal, who operate in accordance with Government Internal Audit Standards, as internal auditors at the start of the year. Their work is informed by an analysis of the risks to which the Commission is exposed, and annual internal audit plans are based on this analysis. The analysis of risks and the internal audit plans are endorsed by the Commission's Audit Committee and approved by me. At least annually, Tribal provide me with a report on the internal audit activity in the Commission. Their reports include their independent opinion on the adequacy and effectiveness of the Commission's system of internal control based on the work undertaken together with appropriate recommendations for improvement. In their opinion the Commission has adequate management and governance processes to manage the achievement of its objectives.

Both internal and external audits provide a service to the Commission by assisting with the continuous improvement of procedures and controls. Actions are agreed in response to recommendations made, and these are followed up to ensure that they are implemented.

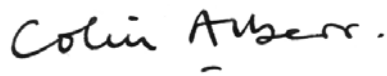
## Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed by the work of the internal auditors and the executive managers within the department who have

responsibility for the development and maintenance of the internal control framework, and comments made by the external auditors in their management letter and other reports. I have been advised on the implications of the result of my review of the effectiveness of the system of internal control by the Commission and the Audit Committee and a plan to address weaknesses and ensure continuous improvement of the system is in place.

The Commission has now committed to the appointment of a Chief Executive in 2009/10. I have previously reported that my appointment as Principal Director and changes made to our purchasing authority procedures had reduced to an acceptable level the inherent risks identified by our sponsor unit in me acting as Accounting Officer. The appointment of a Chief Executive, who will take over the Accounting Officer role, will eliminate these risks entirely.

Plans to expand the 'board' (which currently comprises the Commissioners) to include two independent members were placed on hold during the year pending the appointment of our new Chairman. The process has been resumed and it is expected that the appointment of two non-executive directors will take place later in 2009/10. This will strengthen the Commission's governance by introducing an outside perspective and improving the balance of expertise across areas such as business planning, finance, risk and performance management.

A handwritten signature in black ink that reads "Colin Albert." with a small horizontal line underneath the name.

Colin Albert  
Principal Director and Accounting Officer  
6 July 2009

There is growing international interest in emulating the model established by the Commission.

We have continued to share the benefit of our experience and expertise with a range of interested individuals and organisations from around the world.

## The certificate and report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the Criminal Cases Review Commission for the year ended 31 March 2009 under the Criminal Appeal Act 1995. These comprise the Income and Expenditure Account, the Balance Sheet, the Cash Flow Statement and Statement of Recognised Gains and Losses and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

### Respective responsibilities of the Commission, Accounting Officer and auditor

The Commission and Accounting Officer are responsible for preparing the Annual Report, which includes the Remuneration Report, and the financial statements in accordance with the Criminal Appeal Act 1995 and directions made thereunder by the Secretary of State with the consent of HM Treasury and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of the Commission's and Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements and the part of the remuneration report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Criminal Appeal Act 1995 and directions made thereunder by the Secretary of State with the consent of HM Treasury. I report to you whether, in my opinion, the information, which comprises the Year in Numbers and Management Commentary comprising sections 2 to 5, in the Annual Report is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the Criminal Cases Review Commission has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the Criminal Cases Review Commission's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or form an opinion on the effectiveness of the Criminal Cases Review Commission's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Report and consider whether it is consistent with the audited financial statements. This other information comprises the Chairman's Foreword, the unaudited part of the Remuneration Report, the subsection in Section 7: Statement of Accounts described as the Statement of the Commission's and Accounting Officer's Responsibilities and Section 8: Tables and Appendices. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with

the financial statements. My responsibilities do not extend to any other information.

## Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration Report to be audited. It also includes an assessment of the significant estimates and judgments made by the Criminal Cases Review Commission and Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the Criminal Cases Review Commission's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the Remuneration Report to be audited are free from material misstatement, whether caused by fraud or error, and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the Remuneration Report to be audited.

## Opinions

### **In my opinion:**

- the financial statements give a true and fair view, in accordance with the Criminal Appeal Act 1995 and directions made thereunder by the Secretary of State with the consent of HM Treasury, of the state of the Criminal Cases Review Commission's affairs as at 31 March 2009 and of its deficit, recognised gains and losses and cash flows for the year then ended;
- the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the Criminal Appeal Act 1995 and directions made thereunder by the Secretary of State with the consent of HM Treasury; and
- the information, which comprises the Year in Numbers and Management Commentary comprising sections 2 to 5, in the Annual Report, is consistent with the financial statements.

### **Opinion on Regularity**

- In my opinion, in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

## **Report**

I have no observations to make on these financial statements.

Amyas C E Morse  
Comptroller and Auditor General,  
National Audit Office, 151 Buckingham Palace Road, Victoria, London, SW1W 9SS.  
9 July 2009.

## Income and expenditure account

### For the year ended 31 March 2009

	Note	2008-09 £000s	2007-08 £000s
Employment costs	3	4,877	4,843
Running costs	5	1,726	1,852
Depreciation & amortisation	6, 7	189	283
Unrealised loss on revaluation of fixed assets	6, 7	6	25
<b>Operating expenditure</b>		<b>6,798</b>	<b>7,003</b>
Interest receivable		(6)	(15)
Interest on pension scheme liabilities	4	203	160
Interest on dilapidations provision	11	16	17
Notional cost of capital		(136)	(121)
<b>Net expenditure on ordinary activities</b>		<b>6,875</b>	<b>7,044</b>
Transfers from reserves	13	(174)	(299)
Notional cost of capital reversal		136	121
<b>Net expenditure for the year</b>		<b>6,837</b>	<b>6,866</b>

All activities arise from continuing operations

## Statement of recognised gains and losses

### For the year ended 31 March 2009

	Note	2008-09 £000s	2007-08 £000
Revenue Grant in Aid	2	(6,002)	(6,735)
Net operating expenditure for the year		6,837	6,866
Unrealised surplus on revaluation of fixed assets	6,7	(4)	(12)
Grant in Aid for capital expenditure	2	(37)	(95)
Actuarial (gains)/losses on pension scheme liabilities	4	(300)	(127)
Transfers to Income and Expenditure Account	13	174	299
<b>Total Recognised Losses for the Year</b>		<b>668</b>	<b>196</b>

The notes on pages 53 - 64 form part of these accounts.

## Balance sheet

### As at 31 March 2009

	Note	31 March 2009 £000	31 March 2008 £000
Fixed assets			
Intangible fixed assets	6	28	53
Tangible fixed assets	7	247	360
		<b>275</b>	413
Current assets			
Debtors	8	324	246
Cash at bank & in hand	16	85	95
		<b>409</b>	341
Creditors: amounts falling due within one year	9	(401)	(267)
Net current assets/(liabilities)		<b>8</b>	74
Total assets less current liabilities		<b>283</b>	487
Creditors: amounts falling due after more than one year	10	(22)	0
Net assets		<b>261</b>	487
Provisions for liabilities and charges			
Pension provision	4	(3,970)	(3,562)
Dilapidations provision	11	(510)	(476)
Total liabilities		<b>(4,219)</b>	(3,551)
Income and expenditure account	12	(4,467)	(3,932)
Other reserves	13	248	381
Total Government funds		<b>(4,219)</b>	(3,551)

The notes on pages 53 - 64 form part of these accounts.

Signed on behalf of the Criminal Cases Review Commission



**Colin Albert**

Principal Director and Accounting Officer  
6 July 2009

## Cash flow statement

### For the year ended 31 March 2009

	Note	2008-09 £000	2007-08 £000
Operating activities			
Net cash outflow from operating activities	15	<b>(6,018)</b>	(6,703)
Returns on investments and servicing of finance			
Interest received		<b>6</b>	16
Capital expenditure and financial investment			
Payment to acquire fixed assets		<b>(38)</b>	(84)
(Proceeds)/cost of disposal of fixed assets		<b>1</b>	0
		<b>(37)</b>	(84)
Net cash outflow before financing		<b>(6,049)</b>	(6,771)
Financing			
Capital Grant in Aid	2	<b>37</b>	95
Revenue Grant in Aid	2	<b>6,002</b>	6,735
Increase / (decrease) in cash	16	<b>(10)</b>	59

The notes on pages 53 - 64 form part of these accounts.

## Notes to the accounts

### 1. Accounting policies

#### **Basis of Accounts**

These financial statements have been prepared in accordance with the Accounts Direction given by the Secretary of State for the Ministry of Justice with the consent of the Treasury in accordance with paragraph 9(2) of Schedule 1 to the Criminal Appeal Act 1995. The Accounts Direction requires the financial statements to be prepared in accordance with the 2008-09 Government Financial Reporting Manual (FReM) issued by HM Treasury. The accounting policies contained in the FReM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful and appropriate to the public sector.

The financial statements have been prepared under the historical cost convention modified to account for the revaluation of fixed assets.

A summary of the Commission's principal accounting policies is set out below. These have been applied consistently throughout the year.

#### **Going concern**

The Balance sheet at 31 March 2009 shows net liabilities of £4,219,000. This reflects the inclusion of liabilities falling due in future years which, to the extent that they are not to be met from the Commission's other sources of income, may only be met by future grants-in-aid from the Commission's sponsoring department, the Ministry of Justice. This is because, under the normal conventions applying to parliamentary control over income and expenditure, such grants may not be issued in advance of need.

Grant in Aid for 2009-10, taking into account the amounts required to meet the Commission's liabilities falling due in that year, have already been included in the department's Estimates for that year, which have been approved by Parliament, and there is no reason to believe that the department's future sponsorship and future parliamentary approval will not be forthcoming. It has accordingly been considered appropriate to adopt a going concern basis for the preparation of these financial statements.

#### **Grant in Aid**

Grant in Aid received for revenue expenditure is regarded as funding and is credited direct to the Income and Expenditure Reserve in accordance with the Financial Reporting Manual. Grant in Aid for capital expenditure is credited to a Government Grant Reserve. Each year, an amount equal to the depreciation and amortisation charge on fixed assets acquired through Grant in Aid, and any deficit on their revaluation in excess of the balance on the Revaluation Reserve, will be released from the Government Grant Reserve to the Income and Expenditure Account.

#### **Fixed Assets**

Assets are capitalised as fixed assets if they are intended for use on a continuing basis and their original purchase cost, on an individual or grouped basis, is £100 or more. Fixed Assets are valued at current replacement cost by using the Price Index Numbers for Current Cost Accounting published by the Office for National Statistics, except in their year of acquisition when their current and historical cost will not be materially different. Any surplus on revaluation is credited to Government Grant Reserve or Donated Asset

Reserve as appropriate. A deficit on revaluation is debited to the Income and Expenditure Account if the deficit exceeds the balance of upwards revaluation previously credited to the relevant Reserve.

### **Depreciation and Amortisation**

Depreciation or amortisation is provided on all fixed assets on a straight-line basis to write off the cost or valuation evenly over the asset's anticipated life as follows:

IT hardware / development	four years
Software systems and licences	four years
Furniture and office equipment	up to 10 years
Refurbishment costs	over the remaining term of the lease
Dilapidations	over the period remaining to the next break-point of the lease

### **Donated Assets**

Donated fixed assets are capitalised at their fair valuation on receipt. Their value is credited to a Donated Asset Reserve. Each year, an amount equal to the depreciation charge on donated assets, and any deficit on their revaluation in excess of the balance on the Revaluation Reserve, will be released from the Donated Asset Reserve to the Income and Expenditure Account.

### **Notional Charges**

In accordance with the Financial Reporting Manual published by HM Treasury, a notional charge for the cost of capital employed in the period is included in the Income and Expenditure Account along with an equivalent reversing notional income to finance the charge. The charge for the period is calculated using the Treasury's discount rate of 3½% (2008 3½%) applied to the mean value of capital employed during the period. The value of capital employed excludes the value of assets donated to the Commission.

### **Pensions**

#### **(i) Staff pensions**

Staff are members of the Principal Civil Service Pension Scheme (PCSPS). The PCSPS is an unfunded multi-employer defined benefit scheme, and the Commission is unable to identify its share of the underlying assets and liabilities. In accordance with FRS17, the Income and Expenditure Account is charged with contributions made in the year.

#### **(ii) Commissioners' pensions**

Commissioners are provided with individual defined benefit schemes which are broadly by analogy with the PCSPS. These schemes are unfunded, and the Commission is liable for the future payment of pensions. The cost of benefits accruing during the year is charged against staff costs in the Income and Expenditure Account. The increase in the present value of the schemes' liabilities arising from the passage of time is charged to the Income and Expenditure Account after operating expenditure. Actuarial gains and losses are recognised in the statement of total recognised gains and losses, and taken direct to reserves.

The balance sheet includes the actuarially calculated scheme liabilities, discounted at an appropriate rate to reflect expected long term returns.

### **Operating Leases**

Payments made under operating leases on Land and Buildings and Equipment are charged to expenditure as incurred. Provision is made for the estimated costs of returning the leased office premises to an appropriate condition. The original lease expired in August 2006, and the provision has been charged over the period of that lease to income and expenditure. On

renewal of the lease, the estimated cost was revalued to the amount required at the first break point in the lease in August 2011. This revalued amount was discounted to the present value using the official Government discount rate for long term liabilities (GDP deflator - 3½%). The provision held at 1 April 2006 was increased to this amount. As the building alterations concerned give access to future economic benefits, a tangible asset was also created corresponding to the amount by which the provision was increased, in accordance with FRS12 "Provisions, contingent liabilities and assets". This tangible asset is amortised over the period to the first break point in the lease on a straight line basis, and the amortisation charged to income and expenditure account. The interest cost arising from the unwinding of the discount is also charged each year to income and expenditure account.

### Taxation

The Commission is not eligible to register for VAT and all costs are shown inclusive of VAT. The Commission has no trading income and is therefore not subject to corporation tax.

## 2. Grant in Aid

	2008-09 £000	2007-08 £000
Received for revenue expenditure:		
Ministry of Justice main estimate (Request for Resource 1, Subhead AE)	6,002	6,735
Received for capital expenditure:		
Ministry of Justice main estimate (Request for Resource 1, Subhead AE)	37	95
<b>Total</b>	<b>6,039</b>	<b>6,830</b>

## 3. Employment Costs

	2008-09 £000	2007-08 £000
<b>Commissioners</b>		
Salaries and emoluments	890	848
Social security contributions	100	98
Pension costs	245	249
	<b>1,235</b>	<b>1,195</b>
<b>Staff</b>		
Salaries and emoluments	2,869	2,828
Seconded-in, agency, temporary and contract staff	79	58
Social security contributions	180	210
Pension costs	514	552
	<b>3,642</b>	<b>3,648</b>
<b>Total employment costs</b>		
Salaries and emoluments	3,759	3,676
Seconded-in, agency, temporary and contract staff	79	58
Social security contributions	280	308
Pension costs	759	801
<b>Total</b>	<b>4,877</b>	<b>4,843</b>

At 31 March 2009, the Commission employed 86 staff (2008 94). The average number of employees, expressed as full time equivalents, during the year to 31 March 2009 by category of employment and status was:

	2008-09	2007-08
Category of employment:		
Executive	11	9
Case Review Managers	38	41
Administrative support staff	34	40
	<b>83</b>	90
Status:		
Staff with permanent employment contracts	81	88
Other staff (contract, agency/temporary)	2	2
	<b>83</b>	90

Staff numbers for 2007-08 were previously stated without contract and agency staff as 88.

## 4. Pensions

### (i) Staff

The Principal Civil Service Pension Scheme (PCSPS) is an unfunded multi-employer defined benefit scheme but the Commission is unable to identify its share of the underlying assets and liabilities. The scheme actuary valued the scheme as at 31 March 2007. You can find details in the resource accounts of the Cabinet Office: Civil Superannuation [www.civilservice-pensions.gov.uk](http://www.civilservice-pensions.gov.uk)

The cost of the Commission's pension contributions to the Principal Civil Service Pension Schemes is included in employment costs. For 2008-09, employers' contributions of £499,172 were payable to the PCSPS (2007-08 £550,595) at one of four rates in the range 17.1% to 25.5% of pensionable pay, based on salary bands. The scheme's Actuary reviews employer contributions usually every four years following a full scheme valuation. From 2009-10, the rates will be in the range 16.7% to 24.3%. The contribution rates are set to meet the cost of the benefits accruing during 2008-09 to be paid when the member retires and not the benefits paid during this period to existing pensioners.

Employees can opt to open a partnership pension account, a stakeholder pension with an employer contribution. Employers' contributions of £13,483 (2007-08 £10,788) were paid to one or more of the panel of three appointed stakeholder pension providers. Employer contributions are age-related and range from 3% to 12.5% of pensionable pay. Employers also match employee contributions up to 3% of pensionable pay. In addition, employer contributions of £892 (2007-08 £650), 0.8% of pensionable pay, were payable to the PCSPS to cover the cost of the future provision of lump sum benefits on death in service and ill health retirement of these employees.

There were no outstanding contributions due to the partnership pension providers at the balance sheet date, nor any prepaid amounts.

**(ii) Commissioners**

Commissioners may choose pension arrangements broadly by analogy with the Principal Civil Service Pension Schemes and are entitled to receive such benefits from their date of appointment.

Commissioners' pension arrangements are unfunded, and the Commission is responsible for paying retirement benefits as they fall due. Contributions are paid by commissioners at the rate of 1.5% and 3.5% of pensionable earnings respectively depending on whether the individual's scheme is by analogy to the classic or premium/classic plus/nuvos PCSPS schemes.

The value of the scheme liabilities for the current and four previous years are as follows:

	<b>2008-09</b>	2007-08	2006-07	2005-06	2004-05
Liability in respect of					
Active members	<b>1,476</b>	1,102	862	1,298	1,705
Deferred pensioners	<b>-</b>	38	576	30	25
Current pensioners	<b>2,494</b>	2,422	1,999	1,358	235
Total present value of scheme liabilities	<b>3,970</b>	3,562	3,437	2,686	1,965

The scheme liabilities have been valued by the Government Actuary's Department using the Projected Unit Method. The main actuarial assumptions are as follows:

	<b>2008-09</b>	2007-08	2006-07	2005-06	2004-05
Discount rate	<b>6.04%</b>	5.30%	4.60%	5.40%	6.10%
Rate of increase in salaries	<b>4.30%</b>	4.30%	4.30%	4.00%	4.00%
Price inflation	<b>2.75%</b>	2.75%	2.75%	2.50%	2.50%
Rate of increase in pensions (deferred and in payment)	<b>2.75%</b>	2.75%	2.75%	2.50%	2.50%

The following amounts have been recognised in the Income and Expenditure Account for the year:

	<b>2008-09 £000</b>	2007-08 £000
Current service cost	<b>283</b>	286
Settlements and curtailments	<b>-</b>	-
Commissioners' contributions retained	<b>(38)</b>	(37)
Total charge to operating expenses	<b>245</b>	249
Interest on pension scheme liabilities	<b>203</b>	160
Total charge to finance and other costs	<b>203</b>	160

Actuarial gains and losses recognised in the Statement of Total Recognised Gains and Losses for the year and the previous four years are set out below, shown as an amount and as a percentage of the present value of the scheme liabilities at the balance sheet date:

	<b>2008-09</b>	2007-08	2006-07	2005-06	2004-05
Experience gains/(losses) on pension liabilities	<b>122</b> <b>3.07%</b>	3 0.08%	72 2.09%	83 3.09%	(97) -4.95%
Changes in demographic and financial assumptions	<b>(422)</b> <b>-10.63%</b>	(130) -3.65%	470 13.67%	198 7.37%	(96) -4.89%
Net actuarial gains/(losses)	<b>(300)</b>	(127)	542	281	(193)

The movement in scheme liabilities is analysed as follows:

	<b>2008-09</b>	2007-08
	<b>£000</b>	£000
Present value of scheme liabilities at start of year	<b>3,562</b>	3,437
Current service cost	<b>283</b>	286
Interest cost	<b>203</b>	160
Actuarial gains	<b>(300)</b>	(127)
Transfers in	<b>398</b>	0
Benefits paid	<b>(176)</b>	(194)
Present value of scheme liabilities at end of year	<b>3,970</b>	3,562

## 5. Running costs

	<b>2008-09</b>	2007-08
	<b>£000s</b>	£000s
Accommodation costs - general	<b>604</b>	599
Audit fee – external	<b>21</b>	16
Audit fee – internal	<b>10</b>	15
Information and publications	<b>47</b>	84
IT costs	<b>505</b>	486
Legal and professional costs	<b>27</b>	39
Library and reference materials	<b>43</b>	51
Loss on disposal of fixed assets	<b>2</b>	0
Office Services	<b>90</b>	107
Office Supplies	<b>80</b>	91
Case Storage	<b>17</b>	14
Operating lease payment for equipment	<b>3</b>	7
Payroll & pension costs	<b>16</b>	15
Recruitment	<b>12</b>	22
Relocation	<b>-</b>	22
Telephones	<b>24</b>	24
Training and other HR	<b>54</b>	60
Travel, subsistence and external case-related costs	<b>171</b>	200
Total	<b>1,726</b>	1,852

Accommodation costs include rent of £404,280 (2008 £409,391) on the premises held under an operating lease. The amount shown under 'Audit fee - external' includes £3,000 which relates to work done in 2008-09 towards the transition to International Financial Reporting Standards.

## 6. Intangible fixed assets

	<b>IT Software Licences</b>
	<b>£000s</b>
Cost/valuation at 1 April 2008	<b>333</b>
Additions	<b>8</b>
Disposals	<b>(9)</b>
Revaluation	<b>(11)</b>
Cost/valuation at 31 March 2009	<b>321</b>
Amortisation at 1 April 2008	<b>280</b>
Provided during the year	<b>32</b>
Disposals	<b>(9)</b>
Revaluation	<b>(10)</b>
Amortisation at 31 March 2009	<b>293</b>
Net Book Value at 31 March 2009	<b>28</b>
Net Book Value at 31 March 2008	<b>53</b>

## 7. Tangible fixed assets

	Refurbishment Costs	Furniture and Office Equipment	IT Hardware/ Development	<b>Total</b>
	<b>£000s</b>	<b>£000s</b>	<b>£000s</b>	<b>£000s</b>
Cost/valuation at 1 April 2008	856	465	1,284	<b>2,605</b>
Additions	18	9	21	<b>48</b>
Disposals	-	(39)	(23)	<b>(62)</b>
Revaluation	20	17	(43)	<b>(6)</b>
Cost/valuation at 31 March 2009	894	452	1,239	<b>2,585</b>
Depreciation at 1 April 2008	825	329	1,091	<b>2,245</b>
Provided during the year	15	40	102	<b>157</b>
Depreciation on disposals	-	(36)	(23)	<b>(59)</b>
Revaluation	20	13	(38)	<b>(5)</b>
Depreciation at 31 March 2009	860	346	1,132	<b>2,338</b>
Net Book Value at 31 March 2009	34	106	107	<b>247</b>
Net Book Value at 31 March 2008	31	136	193	<b>360</b>

## 8. Debtors

	<b>31 March 2009 £000s</b>	<b>31 March 2008 £000s</b>
Intra-government balances:		
Central government bodies	-	41
Local authorities	26	25
	<b>26</b>	<b>66</b>
Debtors	-	2
Travel loans to staff	24	11
Other prepayments	274	167
<b>Total</b>	<b>324</b>	<b>246</b>

## 9. Creditors due within one year

	<b>31 March 2009 £000s</b>	<b>31 March 2008 £000s</b>
Intra-government balances:		
Central government bodies:		
UK taxation & social security	110	125
	<b>110</b>	<b>125</b>
Trade creditors	76	75
Accruals & other creditors	215	55
Capital creditors	-	12
<b>Total</b>	<b>401</b>	<b>267</b>

## 10. Creditors due after more than one year

	<b>31 March 2009 £000s</b>	<b>31 March 2008 £000s</b>
Other creditors	22	0
<b>Total</b>	<b>22</b>	<b>0</b>

## 11. Dilapidations provision

The movement in the provision is analysed as follows:

	<b>2008-09</b>	2007-08
	<b>£000s</b>	£000s
Provision at start of year	<b>476</b>	459
Provided in year: creation of tangible asset	<b>18</b>	0
	<b>494</b>	459
Unwinding of discount	<b>16</b>	17
Provision at end of year	<b>510</b>	476

## 12. Income and expenditure account

	Note	<b>2008-09</b>	2007-08
		<b>£000s</b>	£000s
Income and Expenditure Account at 1 April 2008		<b>(3,932)</b>	(3,928)
Revenue Grant in Aid	2	<b>6,002</b>	6,735
Net expenditure for the financial year		<b>(6,837)</b>	(6,866)
Pensions: actuarial gains / (losses)	4	<b>300</b>	127
Income and Expenditure Account at 31 March 2009		<b>(4,467)</b>	(3,932)

## 13. Reserves

	Note	31 March 2009 £000s	31 March 2008 £000s
Government Grant Reserve			
Balance at 1 April 2008		381	573
Capital grant in aid	2	37	95
Depreciation transferred to Income and Expenditure Account		(174)	(274)
Unrealised surplus on revaluation of fixed assets		4	12
Unrealised loss on revaluation of fixed assets		-	(25)
Balance at 31 March 2009		248	381
Donated Asset Reserve			
Balance at 1 April 2008		0	0
Depreciation/amortisation transferred to Income and Expenditure account		-	-
Unrealised loss on revaluation of fixed assets		-	-
Balance at 31 March 2009		0	0
<b>Total</b>		<b>248</b>	<b>381</b>

	2008-09 £000s	2007-08 £000s
Transferred to Income and Expenditure Account		
Depreciation / amortisation		
Transferred from Government Grant Reserve	174	274
Transferred from Donated Asset Reserve	-	-
	174	274
Unrealised loss on revaluation of fixed assets		
Transferred from Government Grant Reserve	-	25
Transferred from Donated Asset Reserve	-	-
	-	25
<b>Total</b>	<b>174</b>	<b>299</b>

## 14. Movement in government funds

	Note	2008-09 £000s	2007-08 £000s
Reserves at 1 April 2008	12	381	573
Reserves at 31 March 2009	12	248	381
Decrease in reserves		(133)	(192)
Net expenditure for the financial year	11	(6,837)	(6,866)
Revenue Grant in Aid	2	6,002	6,735
Pensions: actuarial gains	4	300	127
Decrease in government funds		(668)	(196)

### 15. Reconciliation of the operating expenditure to the net cash outflow from operating activities

	Note	2008-09 £000s	2007-08 £000s
Operating expenditure		<b>(6,798)</b>	(7,003)
Depreciation and amortisation	6, 7	<b>189</b>	283
Net unrealised loss on revaluation of fixed assets	6, 7	<b>6</b>	25
Loss on disposal of tangible fixed assets	5	<b>2</b>	-
(Increase) / decrease in debtors		<b>(78)</b>	41
Increase / (decrease) in creditors		<b>156</b>	(141)
Pension provision	4	<b>283</b>	286
Pension transfers-in	4	<b>398</b>	-
Pensions in payment	4	<b>(176)</b>	(194)
Net cash outflow from operating activities		<b>(6,018)</b>	(6,703)

The decrease in debtors shown above excludes a debtor of £0 for bank interest receivable (2008 £388) as interest receivable is shown after operating expenditure in the Income and Expenditure Account. The increase in creditors shown above excludes capital creditors of £0 (2008 £12,163).

### 16. Analysis of changes in cash

	2008-09 £000s	2007-08 £000s
Balance at 1 April 2008	<b>95</b>	36
(Decrease) / increase in cash	<b>(10)</b>	59
Balance at 31 March 2009	<b>85</b>	95

### 17. Capital commitments

At 31 March 2009, capital commitments contracted for were £0 (2008 £474).

### 18. Commitments under operating leases

At 31 March 2009 the Commission had annual commitments under non-cancellable operating leases as set out below.

	31 Mar 2009		31 Mar 2008
	Building	Equipment	Total
	£000s	£000s	£000s
Operating leases which expire:			
Within one year	-	-	2
Between one and five years	514	10	7
In more than five years	-	-	532

## 19. Contingent liabilities

There were no contingent liabilities at the balance sheet date (2008 £nil).

## 20. Related party transactions

The Ministry of Justice is a related party to the Commission. During the year ended 31 March 2009, the Ministry of Justice provided the Commission with Grant in Aid as disclosed in the financial statements.

During the year ended 31 March 2009, none of the Commissioners, key managerial staff or other related parties undertook any material transactions with the Commission.

## 21. Losses and special payments

During the year, severance payments totalling £279,300 were payable to staff as part of a programme of restructuring and workforce reduction. All payments were in respect of entitlements under the Civil Service Compensation Scheme except for an amount of £12,722 relating to a payment in lieu of notice and an ex-gratia additional compensation payment. As these amounts were extra-contractual they constitute special payments, and were made with the prior consent of HM Treasury.

## 22. Financial instruments

FRS 29 (Financial Instruments: Disclosures) requires disclosure of the significance of financial instruments for the entity's financial position and performance, and the nature and extent of risks arising from financial instruments to which the entity is exposed, and how the entity manages those risks. Because of the largely non-trading nature of its activities and the way it is financed, the Commission is not exposed to the degree of financial risk faced by business entities. Moreover, financial instruments play a much more limited role in creating or changing risk than would be typical of the listed companies to which FRS 25 (Financial Instruments: Disclosure and Presentation), FRS 26 (Financial Instruments: Measurement) and FRS 29 mainly apply. The Commission has limited powers to borrow or invest funds and financial assets and liabilities are generated by day-to-day operational activities and are not held to change the risks facing the Commission in undertaking its activities.

The Commission is not therefore exposed to significant liquidity risks, interest rate risk or foreign currency risk.

## 23. Post balance sheet events

There are no post balance sheet events to report.

The accounts were authorised for issue by the Accounting Officer on the same day that the Comptroller and Auditor General certified the accounts.

In the Court of Appeal - Criminal

Section Eight

# Tables and Appendices

**BRID**

CPS Wolverhampton Branch  
St George's House  
Lever Street  
Wolverhampton  
WV2 1EZ  
DX: 702349 Wolverhampton 5

Sol Ref: \*\* unknown \*\*

<b>Date Rec'd.</b>	<b>22 May 2006</b>
<b>Our ref.</b>	<b>121403</b>

**Table 1: Commission referrals to the appeal courts 2008/9.**

Case Name	Reference	Referral date	Offences referred
BRANCHFLOWER, Paul	650/07	02.04.08	Murder
MARTIN, James	162/08	30.04.08	False Imprisonment
RYAN, Veronica	163/08	30.04.08	False Imprisonment
MARTIN, Liam	168/08	30.04.08	False Imprisonment
O'CARROLL, James	169/08	30.04.08	False Imprisonment
MURRAY, John	170/08	30.04.08	False Imprisonment
CULLEN, Darren	172/08	08.05.08	Murder – Sentence only
PURVIS, Dominic	204/07	04.06.08	Possession of indecent images of children – Sentence only
COX, Victor	3/07	01.07.08	Conspiracy to defraud / Conspiracy to use false instruments / conspiracy to facilitate UK entry – Sentence only
ZENGEYA, Patrick	643/06	16.07.08	Attempting to obtain services by deception
CALDWELL, Daniel	470/08	23.07.08	False Imprisonment
M (anonymised)	824/06	01.09.08	GBH with intent
S (anonymised)	316/07	04.09.08	Rape
PINFOLD, Terence	347/06	08.09.08	Robbery
SHEILS, Terence	2227/03	15.09.08	Membership of a Proscribed Organisation / Possession of a Firearm
FITZPATRICK, Joseph	268/05	19.09.08	Conspiracy to provide information to terrorists
FITZPATRICK, Joseph	226/07	19.09.08	Arson, belonging to a proscribed organisation.
F (anonymised)	591/02	25.09.08	Indecency with a child x 7 / indecent assault / rape (per anum)
G (anonymised)	678/07	30.09.08	Rape (x2). Causing or inciting a child under the age of 13 to engage in sexual activity (x2). Sexual assault (x1) Sentence only
LAWLESS, Ian	283/05	06.10.08	Murder
SNEDDON, Jamie	581/06	14.10.08	Unlawful wounding / Theft
GILES, Jason	343/06	27.10.08	Possessing a class A drug with intent to supply
FORD, Gary	1058/97	25.11.08	Burglary x12, Robbery x6, Attempted Robbery x1
MANSELL, Paul	299/01	25.11.08	Robbery x2 / Murder
MAXWELL, Daniel	861/98	25.11.08	Robbery x2 Murder
TYM, Jonathan	8/06	11.12.08	Assault occasioning ABH
TIERNEY, Stephen	9/06	11.12.08	Assault occasioning ABH
KENYON, Julie	772/03	16.12.08	Murder
BROWN, James	800/07	27.01.09	Conspiracy to communicate prohibited information /Causing Grievous Bodily Harm/Belonging to a proscribed organisation/ Attempting to cause GBH
HOWE, Paul	193/08	02.02.09	Making indecent photographs or pseudo photographs of children - Sentence only
DRURY, Christopher	242/02	23.02.09	Supplying Class B drugs / perverting the course of public justice
CLARK, Robert	329/03	23.02.09	Supplying Class B drugs / perverting the course of public justice
MCCOURT, Patrick	69/04	04.03.09	Hijacking. Membership of a proscribed organisation.
HODGSON, Robert	111/09	04.03.09	Murder
MACDONALD, Peter J	226/07	09.03.09	Conspiracy to discharge a firearm; conspiracy to communicate prohibited information; belonging to a proscribed organisation & conspiracy to cause an explosion
PLUCK, Michael	642/07	13.03.09	Murder x2
FINLAY, Paul	198/08	20.03.09	Manslaughter
A (anonymised)	812/08	27.03.09	Rape – Sentence only
MCCAUL, Stephen	719/08	30.03.09	Hijacking (x2), Carrying a firearm with intent (x3), Arson, Burglary (x2), Possession of firearms (x2)

**Table 2: Commission referrals heard by the appeal courts 2008/9.**

<b>Name and neutral citation</b>	<b>Date of reference</b>	<b>Offence</b>	<b>Date of appeal decision</b>	<b>Decision</b>
GIGA, Zulfikar [2008] EWCA Crim 703	11/02/08	Incitement to cause GBH with intent, threat to kill Sentence Only	18/03/08	Upheld (see note below)
TUNBRIDGE, Justin [2008] EWCA Crim 949	08/02/07	Indecent assault	17/04/08	Quashed
RODEN, John and ATTWOOLL, Michael [2008] EWCA Crim 879	22/05/07	Murder	23/04/08	Upheld
DIAMOND, Stewart [2008] EWCA Crim 923	28/11/06	Murder	29/04/08	Upheld
KEMPSTER, Mark [2008] EWCA Crim 975	23/05/07	Burglary	07/05/08	Quashed
W (anonymised) [2008] EWCA Crim 1329	29/03/07	Buggery, indecent assault	19/05/08	Quashed
THACKERAY, David [2008] EWCA Crim 1960	13/08/07	Indecent assault	19/05/08	Quashed
ANDERSON, Thomas [2008] EWCA Crim 2085	20/12/07	Conspiracy to murder	15/07/08	Quashed. Retrial ordered.
HUSSAIN, Altaf [2008] EWCA Crim 1518	13/04/06	Conspiracy to import heroin	17/07/08	Quashed.
JAMES, David, MELNICHENKO, John, and RICHARDSON, Colin [2008] EWCA Crim 1869	16/01/08	GBH with intent	30/07/08	Quashed
PURVIS, Dominic [2009] EWCA Crim 319	04/06/08	Indecent Images of children Sentence only	31/07/08	Upheld
STOCK, Anthony [2008] EWCA Crim 1862	04/09/07	Robbery	08/08/08	Upheld
CULLEN, Darren [2008] EWCA Crim 2274	08/08/08	Murder Sentence only	15/09/08	Sentence reduced
HAMMILL, Martin [2008] EWCA Crim 2644	26/06/07	Unlawful sexual intercourse, Indecent assault	23/10/08	Upheld
ROWE, Christopher [2008] EWCA Crim 2712	08/01/08	Possession of an indecent image of a child	04/11/08	Quashed
COX, Victor [2008] EWCA Crim 3007	01/07/08	Conspiracy to defraud and default period reduced	25/11/08	Order reduced Sentence only
F (anonymised) [2009] EWCA Crim 319	30/09/08	Rape, Indecency with a child Sentence only	27/01/09	Upheld
SNEDDON, Jamie [2009] EWCA Crim 430	14/10/08	Unlawful wounding Theft	06/02/09	Quashed
HODGSON, Robert Graham (Sean) [2009] EWCA Crim 490	04/03/09	Murder	18/03/09	Quashed
HODGINS, Gerard, MORRISON, Danny, [2009] NICA 1	14/02/08	False Imprisonment	24/10/08	Quashed
MARTIN, James, MARTIN, Liam, MURRAY, John O'CARROLL, James, RYAN, Veronica, [2009] NICA 1	30/04/08	False Imprisonment	24/10/08	Quashed
CALDWELL, Daniel, [2009] NICA 1	24/06/08	False Imprisonment	24/10/08	Quashed

\*The decision on Zulfikar Giga should have been included in last year's annual report but was not. The cumulative figures have been adjusted to take this into account.

## Appendix 1: Key Performance Indicators

### KPI 1 Cases in progress

**Purpose:** Case reviews should be completed within a reasonable time. This KPI measures how many cases in progress are in excess of the benchmark completion time. **Definition:** The number of category B and C cases which were allocated more than 6 and 18 months ago respectively, and which have not yet reached the provisional decision stage, and the average age of these cases in months. **Calculation:** Recorded for the current period and for the last 12 months. **Frequency:** Monthly. **Data source:** Case statistics compiled from the case management system.

#### Plan and performance:

	Target number	Actual number	Target avge age (months)	Actual avge age
Category B	<20	31	<10	14.2
Category C	<30	35	<32	32.5

### KPI 2 Age of next case for allocation

**Purpose:** Of considerable concern to applicants is the length of time they must wait before their case is allocated for review. This measure gives an indication of these delays. **Definition:** The average age (in months) of all cases not yet allocated, and the age in months of the next case to be allocated (shown separately for in-custody and at-liberty cases for categories B and C). **Calculation:** Recorded for the current period and for the last 12 months. **Frequency:** Monthly **Data source:** Case statistics compiled from the case management system.

#### Plan and performance:

[months]	Target age of next case	Actual	Avge age of cases waiting	Actual
Category A	<5	5	<3	3.1
Category B custody	<9	5	<5	2.4
Category B liberty	<21	17	<11	8.9
Category C custody	<16	5	<8	2.8
Category C liberty	<28	18	<14	11.9

**KPI 3 Case completion times**

**Purpose:** In order to provide an optimum service to applicants, cases need to be completed within a reasonable time, taking into account the circumstances of the case. The time taken to complete cases will of course vary widely, although benchmarks have been set for each category. **Definition:** The elapsed time in months between allocation and the sending of the Statement of Reasons. The calculation is made twice, once to the sending of the provisional, and again to the sending of the final, Statement of Reasons. Cases involving an Investigating Officer and section 15 orders (investigations on behalf of the Court of Appeal) are excluded. **Calculation:** Recorded for the current period and for the year to date. **Frequency:** Quarterly and annually **Data source:** Reports generated from the case management system.

**Plan and performance:** Cases completed within time frame for 2008/09:

	Target to provisional SOR	Actual to provisional SOR	Target to final SOR	Actual to final SOR
Cat A	75% within 10 weeks	29.6%	75% within 20 weeks	45.5%
Category B	65% within 6 months	43.8%	65% within 9 months	47.9%
Category C	50% within 18 mths	47.2%	50% within 22 mths	54.0%

**KPI 4 Caseflow balance**

**Purpose:** A high-level measure of the time it takes to process cases efficiently is whether overall case closures exceed case intake. If they do, then backlogs will be eroded. If they do not, then cases will begin to accumulate and waiting-times will be extended. **Definition:** The total number of cases closed at all stages minus the number of applications received. Applications include section 15 directions from the Court of Appeal. **Calculation:** Recorded for the current period and for the last 12 months. **Frequency:** Monthly **Data source:** Case statistics compiled from the case management system.

**Plan:** Monthly: > -20, full year: >0. **Actual:** Monthly: positive 10 out of 12 months, full year: positive by 22 cases.

**KPI 5 Complaints and judicial reviews**

**Purpose:** The number of complaints and judicial reviews may provide a crude measure of the quality of service provided. However, the nature of the Commission's work means that applicants may complain or apply for judicial review simply because their case is not referred, rather than as a result of unsatisfactory service. **Definition:** 1 The number of cases re-opened as a proportion of complaints and pre-action protocol letters resolved and judicial reviews heard. 2 The number of complaints otherwise upheld as a proportion of complaints resolved. **Calculation:** Recorded for the current period and for the last 12 months. **Frequency:** Quarterly **Data source:** Records of official complaints maintained by the Complaints Manager and of judicial reviews maintained by the Legal Advisors.

**Plan and performance:**

	Target number	Actual number	Target rate	Actual rate
Cases re-opened	<3	1	<4%	1.0%
Other	<7	3	<9½%	8.1%

**KPI 6 Referral conclusions**

**Purpose:** The proportion of referrals which result in a conviction being quashed or a sentence varied is a measure of our interpretation of the 'real possibility' test. **Definition:** The number of referrals in which judgment has been given in the period which have resulted in a quashed conviction or varied sentence as a proportion of the total number of referrals heard in the period. **Calculation:** Recorded for the 12 months to date and cumulative. **Frequency:** Quarterly **Data source:** Judgments delivered by the Court of Appeal.

**Plan:** >60% and <80%. **Actual:** 73.3% for the 12 months with a cumulative figure of 70.3%.

**KPI 7 Expenditure against budget**

**Purpose:** The Commission is required to operate within its delegated budget. A key indicator of financial management is the extent to which expenditure in the period is aligned with the delegated budget. Whilst overspends are not permitted, efficient use of resources requires that the budget available is fully utilised.

**Definition:** Total expenditure less delegated budget, based on DEL and measured separately for resource near-cash, resource non-cash and capital, expressed as an amount and as a percentage of budget.

**Calculation:** Forecast for the year to date. **Frequency:** Monthly. **Data source:** Management accounts.

**Plan and performance:**

	Amount £000			Budget %		
	Target	Range	Actual	Target	Range	Actual
Resource:						
Near-cash	0 to	-135	-204	0 to	-2	-3.0
Non-cash	0 to	-15	-134	0 to	-2	-26.1
Capital	0 to	-15	-62	0 to	-12½	-62.0

**KPI 8 Staff absence**

**Purpose:** The extent to which staff and Commissioners are absent affects the Commission's productivity and its ability to achieve its casework targets. **Definition:** The aggregate number of days of employee and Commissioner absence (other than for normal annual leave, public holidays, unpaid leave and sabbaticals), divided by the full-time equivalent number of employees and Commissioners, recorded separately for sickness absence and other causes of absence. **Calculation:** Recorded for the current period and for the year to date.

**Frequency:** Monthly **Data source:** Internally generated data based on personnel records.

**Plan:** Sickness absence: < 9 days per annum Other: <3 days per annum

**Actual:** Sickness absence: 9.4 days per annum Other: 7.9 days per annum.

## Appendix 2: The Case Review Process in detail

### **The Commission reviews cases by:**

- Using its own resources and expertise (for example, case reviewers and Legal and Investigations Advisers)
- Using its powers under section 17 of the Criminal Appeal Act to obtain relevant material held by public bodies
- Commissioning outside experts to prepare reports
- Requiring the appointment of an Investigating Officer under section 19 of the Act

At the end of every review, Commissioners decide if the case should be referred to the relevant appeal court or not. A single Commissioner can decide not to refer a case but (as prescribed in the Act) only a committee of at least three Commissioners can decide to refer a case.

If a case is referred, the applicant is sent a Statement of Reasons setting out the reasons for the decision. The appeal court and prosecuting authority also receive a copy.

Where the Commission is minded not to refer a case, the applicant is sent a Provisional Statement of Reasons setting out the reasons for the provisional decision and the applicant is invited to make further representations to the Commission if they wish. These are considered before a decision is made and a final Statement of Reasons is issued.

## The process of a review

Upon arrival all applications are assessed for eligibility. The Commission does not review cases where the applicant is still in the

process of appealing their sentence or conviction. Applications from people still in an ongoing appeal process are closed. Applicants will usually have exhausted the normal appeal process before applying to the Commission. If an applicant has not appealed before applying, a Commissioner will consider whether (i) there is a real possibility that an appeal would succeed or that an investigation might give rise to such a real possibility; and (ii) whether there might be exceptional circumstances to justify a referral where there has been no previous appeal, the Criminal Appeal Act 1995 requires there be “exceptional circumstances” before the Commission can refer a case where there has been no previous appeal. If the answers to both (i) and (ii) are yes, the case will be categorised for review in the normal way.

Otherwise, the Commissioner will issue a provisional view in letter format to the applicant or representative, allowing 28 days for further submissions. If no further submissions are received or if submissions are received but they do not alter the Commissioner’s opinion, the Commissioner will close the case and issue a final letter to the applicant or representative. If the further submissions persuade the Commissioner that the answers to (i) and (ii) are yes, the case will be categorised for review in the normal way.

If an applicant re-applies to the Commission, a Commissioner who took no part in any previous application will determine whether or not anything new is being raised that justifies a further review. If not, the application will not be accepted.

Some cases are categorised as No Reviewable Grounds (NRG) cases. This can happen when an application clearly only repeats issues already considered at trial or appeal, when an application simply does not

contain any submissions or when an application does not present any plausible basis for referring the case. A case can also be categorised as NRG when a review is not possible because the evidence upon which the conviction was based and/or the facts upon which the sentence was based cannot be determined because key documents and relevant files are missing and there is no reasonable prospect of establishing these matters by other means.

The decision that a case should be categorised as an NRG case is made by a Commissioner at the categorisation stage where the Commissioner is satisfied that one or more of the above circumstances prevails and that there are no reasonable lines of enquiry that the Commission could pursue that could give rise to a real possibility of the Court of Appeal not upholding either the conviction or sentence. The Commissioner will send a provisional view explaining why the Commission has arrived at this conclusion. When a provisional view is given, an applicant will be given 28 days to respond. After those 28 days the application will either be categorised as a review case in light of the applicant's response to the provisional view, or a final decision not to refer will be issued.

For cases accepted for review, the Commissioner at Stage 1 will categorise the case according to its complexity and work content. Initial consideration by a Commissioner, for the purpose of case categorisation, will include an assessment of the application having regard to the submissions and all relevant documents

## Review cases

Each case is allocated to a case reviewer. Cases are divided into four categories:

### **Category A**

These are typically straightforward or raise issues which can be addressed thoroughly on the available case papers and are unlikely to involve complex points of law. They should normally be capable of being reviewed and passed to the decision-making stage within eight weeks of allocation.

### **Category B**

These are more involved and typically raise issues of some complexity, possibly with extensive material to review or the likely involvement of another agency. They are expected to be ready to go to the decision-making stage within 22 weeks of allocation.

### **Category C**

These are likely to require a more time-consuming review and typically the issues are extensive and complex, possibly requiring wide-ranging off-site enquiries or the input of other agencies. A Commissioner will be assigned to each C case to help the case reviewer plan and execute the review. There will be a Case Planning Committee in all C cases, which will usually set the target date for completion.

### **Category D**

These are exceptional cases which are referred to the Director of Casework when received. For example, they may be extremely large cases or ones in which the need for a section 19 investigation is evident from the outset. Once the appropriate approach has been decided, Category D cases will normally be assigned to and follow one of the A, B or C pathways for the review.

The above milestones relate to bringing the review to a point where the case is ready to go to a Commissioner or a committee of Commissioners for a decision to be made. Separate timetables apply to the decision-making phase and these may be affected by

external factors such as, in the case of a provisional decision not to refer, the volume, complexity and timeliness of further representations received in response. In the case of a referral, factors such as preparation of material for disclosure with the decision, or notifying affected parties, may affect the timetable.

## Case ordering and priority ranking

Most cases are dealt with in order of receipt. Category B and C cases, which are more time-consuming, wait in separate queues. B and C cases where the applicant is in custody are prioritised over cases where the applicant is at liberty.

Prioritisation factors such as the age and health of applicants and witnesses, and the possibility of deterioration of evidence, are taken into account. Priority may also be assigned to cases of particular significance to the criminal justice system where, for example, public confidence is an issue.

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