



**CCRC Intern Project 2020/21 – Loss of time Orders**  
**Research Report**  
**Kiran Telhat**

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Finally, I would like to acknowledge with much appreciation the assistance provided by YCG. Despite the current pandemic, they very helpfully provided some brilliant anecdotal information to support our data.

## **1. Introduction**

The purpose of this report is to explore the Court's power to make loss of time orders and how they can act as a barrier to appealing.

Section 29 of the Criminal Appeal Act 1968 enables the Court of Appeal (Criminal Division) (CACD) to direct that all or part of the time that an applicant for leave to appeal has spent in custody since the commencement of the appeal proceedings shall not count in relation to the sentence they are required to serve. This power is exercisable by both the Full Court and the Single Judge, although it appears that the Single Judge exercises the power sparingly, instead preferring to "initial the box" on the Form SJ and warn the applicant of the risks of renewing, leaving the Full Court to make the order if necessary. A loss of time order cannot be made when leave has been granted or when the appeal comes to the Court by way of a reference from the Criminal Cases Review Commission (CCRC).

One of the themes that have arisen from the CCRC's visits to prisons is the growing fear amongst the prison population of having their sentence increased by the Court via a loss of time order. This fear comes with the misconception from prisoners that they could be made to serve years, or even the whole of their sentence again. This fear is widespread, particularly amongst vulnerable groups of prisoners, and it is a fear which is stopping people from appealing to the Court and may well contribute to the CCRC's high number of 'no appeal' cases.

The idea behind this research project came from Lord Justice Fulford after 'loss of time' was raised as an issue during his visit in early 2020 to the CCRC. This idea is also against the background of the number of appeals to the Court of Appeal having dropped considerably over the last 3 years, and therefore raises the question whether loss of time orders are now needed as a deterrent. This project forms part of the CCRC's objective to have an increased awareness of applicants' understanding of the Criminal Justice System so that we can better respond to the needs of applicants and protected groups. At the end of this report I will be making recommendations to the Court of Appeal, legal representatives and the CCRC on how to deal with loss of time orders.

### **1.1 Aims and objectives**

The aims of this project, as set by Cathy Dilks (Manager of Applicant Engagement) are:

- More quantitative data on how many times loss of time orders is raised as an issue in CCRC 'no appeal' cases and the Helpline rota.
- Through a literature review a greater understanding of the current situation on loss of time orders
- Qualitative and quantitative data from prisoner groups and CCRC staff on how many times and when loss of time orders is raised as an issue by applicants and potential applicants
- A deeper understanding of the key messages the CCRC should be sending out to applicants about loss of time orders.
- To feedback to the Criminal Appeal Office relevant data and findings in relation to loss of time orders.

## **2. Methodology**

In order to carry out this research, the following steps have been undertaken:

- 2.1 Literature Review – the purpose of which is to provide a greater understanding of the current situation on loss of time orders. Having carried out a review of loss of time orders using multiple databases/sources, I produced a literature review which aims to set out the historical background to loss of time orders and the current position. As well as the impact of loss of time orders on vulnerable groups within the prison system. A copy of the literature review can be found at Appendix A.
- 2.2 Quantitative analysis of recent CCRC applications from ‘no appeal’ cases – I carried out a review of no appeal cases, this is where the applicant had not yet appealed their conviction or sentence, before making an application to the CCRC. The time period for this data is pre-pandemic, from 1 June 2019 until 31 December 2019, a total period of 6 months. The data did not include cases from Northern Ireland or summary offences.
- 2.3 Qualitative analysis of how many applicants and potential applicants raise loss of time orders as an issue – the purpose of this analysis was to obtain a wider picture of how and where the issue of loss of time is raised. To carry out this research, the following data sources were analysed:
- 2.3.1 Feedback questionnaires – the CCRC sent out short questionnaires to current applicants to ask specific questions about their knowledge of loss of time orders. The completed forms were then analysed.
  - 2.3.2 Helpline logs – I carried out a review of the CCRC’s helpline logs, reviewing calls between 1 June 2019 and 31 December 2019, to establish how many times loss of time order is raised as an issue and whether any themes in relation to loss of time orders were apparent from these telephone calls.
  - 2.3.3 CCRC staff responses – I communicated with CCRC staff to ask for their recollections of how many times loss of time has been raised and their anecdotal experiences of dealing with applicants who raise this as an issue.
  - 2.3.4 Your Consultation Group (YCG) response – the prisoner support group, YCG were asked for their anecdotal experiences of how, when and why loss of time orders are raised by the prisoners they support.

### **3. Findings**

#### **3.1 Quantitative data**

I carried out a review of ‘No Appeal’ cases received by the CCRC between 1 June 2019 and 31 December 2019. This consisted of a total of 271 cases where the applicant had not yet appealed either their conviction or sentence before making an application to the CCRC. For each case I reviewed the application form, the case record, any correspondence and the statement of reasons/decision notice. I looked for any references to the word loss of time or similar phrases as well as any sentences which indicated that the applicant was referring to loss of time orders.

From this review I found that five applicants (approx. 1.84%) were informed of loss of time orders by their legal representative, however the advice provided was not always correct. One particular applicant was told:

*“You have previously suggested that you would like to appeal your conviction in any event, but currently you would be doing this against a barrister’s advice. Your appeal is almost certain to be unsuccessful and the consequences are likely to be an increase in your sentence. This could also mean that the court also look to re-start your current sentence of which you have served the equivalent of 250 days”.*

From my research on loss of time orders, I did not find any cases where the Court has ordered an applicant to restart a sentence by 250 days or a similar number of days, as implied by the above advice. The greatest number of days the Court of Appeal has ever ordered according to my research is 90 days<sup>1</sup>. The particular individual who received this advice suffered from bipolar disorder and schizophrenia, the applicant was 36 years old and convicted of rape. The case was considered by the CCRC, after obtaining the CPS file, it was decided that the applicant’s mental health was at the forefront of the court’s consideration and there were no exceptional circumstances as to why he could not put an appeal forward himself.

Of the 271 applications I reviewed, three of these applicants (approx. 1.1%) mentioned loss of time orders as being a barrier to them appealing. All three applicants were male, aged between 35 and 47. Applicant A was sentenced to eleven years and eight months’ imprisonment, applicant B was sentenced to six years’ imprisonment and applicant C was sentenced to ten years and six months’ imprisonment. The first applicant, A, explicitly wrote in his application form:

*“I would not like to appeal if it means I will serve a loss of time order”.*

The applicant was 34 years old at the time of his application, he was convicted of possession of a firearm, possession of ammunition and possession with intent to supply Class A. The CCRC’s considered the applicant’s case and determined that there were no exceptional circumstances in this instance. In relation to the loss of time order, the CCRC stated:

*“Your desire to avoid a Loss of Time Order does not amount to Exceptional Circumstances”.*

The second applicant, B, who identified loss of time orders as a barrier to appealing was convicted of rape, coercive and controlling behaviour, ABH, affray and criminal damage. The applicant was 45 years of age at the time of his application. In his application form he stated:

*“I want to be 100% sure from you that I can’t get any more time or made to start my sentence again, as I am nearly halfway through my sentence”*

The applicant sent in further correspondence, in one of these letters the applicant stated:

*“My biggest concern is I don’t want to get any extra time or [lose] the time of what I’ve already done”*

The CCRC considered the applicant’s case and concluded that there were no exceptional circumstances in his case. The CCRC did not explicitly address the loss of time issues made in the application, nor the correspondence.

The final applicant who mentioned loss of time orders as a barrier to appealing, applicant C, was aged 37 at the time of his application to the CCRC. The applicant was convicted

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<sup>1</sup> See appendix A

of conspiracy to supply class A. In providing an explanation as to why the applicant had not appealed before, he wrote:

*“I would have changed the grounds myself and put these points in but I was scared I would have got a time order and had my sentence would have to start again”*

The application was considered by the CCRC and it was determined that there were no exceptional circumstances in the applicant’s case. Loss of time orders were not explicitly addressed in the decision notice.

## 3.2 Qualitative Data

### 3.2.1 Feedback questionnaires

In order to obtain feedback from applicants of the CCRC, we sent out questionnaires which asked specific questions about the applicants’ knowledge of loss of time orders. The questionnaire asked the following two questions:

1. Have you heard of something called a Loss of Time Direction or a Loss of Time Order? (Yes/No)
2. If you have ticked yes to the above question, in your own words what do you think a Loss of Time Direction or Loss of Time Order is?

We received a total of 39 completed questionnaires of which 28 individuals had indicated that they do not know what a loss of time order is and 11 had indicated that they did know what a loss of time order is. However, of the 11 that ticked yes, only three applicants were somewhat correct in their explanation of what a loss of time order is, seven applicants provided an incorrect explanation suggesting that they may not really understand what a loss of time order is and one applicant did not provide any reasoning.

In one example, the applicant had initially ticked ‘No’, however then changed his answer to ‘Yes’ and wrote “having read your handout and form NG I ticked yes, if in jail a period of 14 – 56 days of your sentence may not count or if not in jail you may be ordered to pay costs for wasting court time”. Although the number of days cited by the applicant are not entirely correct, it seems he had gained an understanding of what a loss of time order is through the information sent to him.

Some of the more troubling responses we received were as follows:

*“If you lose your appeal your time already spent in prison, doesn’t come off your sentence”*

*“A loss of time order gives you more time to appeal”*

*“Basically, if you get 4 years and put in an appeal as you disagree with the length, if a judge refuses leave to appeal then it could cause a loss of time”*

It is misconceptions like the above which can act as a barrier to appealing and it seems that it is this misinformation which is passed on to other prisoners.

### 3.2.2 Helpline rota

The CCRC run a telephone service known as Helpline. The line is a public communication service, where applicants, potential applicants or representatives can call to enquire about our function. The service is covered by Case Review Managers (CRMs). When CRMs take a call, they create a ‘helpline log’ providing a short description of the call.

I carried out a review of the helpline logs created between 1 June 2019 and 31 December 2019 – a total of 201 calls were logged during this period. I initially searched these logs for references to 'LOTO', 'LOT', 'loss of time' and 'time order', I then reviewed each log individually to identify any cases where the caller had not specifically referenced loss of time orders by name but indicated that they did not want to receive extra time or restart their sentence. I found ten logs where loss of time was mentioned by the applicant during the phone call.

All ten of these applicants mentioned that they were worried or frightened about loss of time orders, and that they did not want to risk getting one. All of these applicants had mentioned that they had not yet appealed.

In one example, once the CRM explained what a loss of time order was, the caller stated that he did not wish to pursue an appeal as a result. Two of the callers mentioned to staff that they did not understand what a loss of time order was, on each occasion staff took the time to explain what loss of time orders were and how they could affect the applicant.

This information supports the theory that loss of time orders can act as a barrier to appealing. In many cases individuals do not know exactly what they are. Even where they are clearly explained, applicants still express fear towards them and therefore do not wish to appeal because of it. It is important to note that although the data from helpline logs provides important anecdotal information, they are limited in that they rely on the individual who took the call to log details of the call. In lengthy calls, where loss of time may have been briefly mentioned as a concern, it may not always be noted within the log.

### 3.2.3 CCRC staff response

I approached members of staff from the CCRC asking for their recollections of conversations with applicants and if loss of time orders had ever been raised by applicants. Staff members consisted of Group Leaders, CRMs, Interns, the Casework Administration Team and the Business Administration Team.

One CRM mentioned that they had taken hundreds of calls during the 15 years that they worked on the helpline. The CRM also took part in a few prison surgeries over the years. The CRM noted that nearly all prisoners who had not yet appealed believed either that the Court could order that their sentence begin again, or that extra time could be added, if their appeal was turned down. The CRM observed that applicants who had appealed and been turned down by the Single Judge but had not renewed to the Full Court believed that a renewed application would result in having to serve extra time, regardless of whether the box on the SJ Form had been initialled.

Another key observation the CRM made was that many prisoners were also concerned that a failed application to the CCRC might also result in a loss of time order. He also noted that a few years ago, prisoners were asked where they had been told this misinformation after it appeared to have become embedded in prison folklore, and it seemed that the information had come from legal representatives just as much as from other prisoners who were merely repeating what they had heard from others.

Another CRM who had also worked on the helpline noted similar comments; loss of time order is raised by most prisoners and they regularly ask if their whole sentence will start again regardless of the number of days that they had already spent in prison. Most prisoners appeared to believe that if they appealed they would receive a loss of time order automatically, and they did not realise that it is usually only ordered if the appeal application is deemed to be without merit. The CRM also observed that a lot of the



prisoners that they had spoken to appeared to have formed this impression from their lawyers.

The recurring theme from the recollections of staff members was that there is a misconception amongst prisoners of what a loss of time order actually is, with most CRMs mentioning that most prisoners who had not yet appealed, thought if they appealed and lost their appeal the Court would make them restart their sentence. In one example, an individual who called the helpline and was at liberty mentioned that he was afraid to appeal because he thought he could be returned to prison through a loss of time order. The fear or risk associated with loss of time orders appears to be raised quite often by prisoners. In another example, a Group Leader mentioned a case under review where the applicant had been given permission to appeal to the Full Court by the Single Judge, however the applicant abandoned his appeal stating that he may get a longer sentence if he lost his appeal. In a further example, one prisoner who had served a long part of his sentence felt a loss of time order was a definite threat and did not wish to appeal because of this.

One of the CCRC Interns, who regularly deals with potential applicants, estimated that within potential correspondence loss of time orders are raised by around 3 – 4 applicants for every 20 received (15%-20%). Potential applicants will usually say something along the lines of “I don’t want the court to extend my sentence” or “I don’t want the court to make me repeat my sentence”.

#### 3.2.4 Your Consultation Group (YCG) response

The CCRC also contacted the prisoner support group, Your Consultation Group (YCG). YCG is a group of legally qualified prisoners who provide support for fellow prisoners on legal matters, they are based in HMP Oakwood and HMP Leyhill. The CCRC asked for their anecdotal experiences of how, when and why a loss of time order is raised by the prisoners they support. As a result of the Covid-19 pandemic and the restrictions in prisons, it has been difficult for YCG to speak with prisoners regarding loss of time orders. The YCG representative had hoped to survey HMP Oakwood’s demographic to see if any evidence could be gained to support the anecdotal information provided, unfortunately this was not possible in the current climate. Nevertheless, the anecdotal information alone is very useful.

The YCG representative noted that the CCRC was correct in identifying loss of time orders as something that individuals who have been convicted of a crime fear. From the representative’s personal experience such conversations generally tend to be heard early into individual’s sentences.

Category A and B prisons tend to be the point where individuals look to appeal their sentences, taking into account the 28-day period to make such an application. However, there are individuals who continue throughout the entirety of their sentences to appeal and those that make to it category C and D prisons before making such decisions.

There are a number of points to take into consideration with regard to the issue of loss of time orders. These can be summarised as follows:

1. The level of understanding the individual has of the system
2. The information available to the individual
3. The length of their sentence
4. The level of access they have to legal representatives

The following paragraphs are quoted from the anecdotal information provided by the YCG, the CCRC have highlighted some key issues:

1. The level of understanding the individual has of the system

When you take into consideration the levels of illiteracy or low levels of education within the prison estate it becomes evident that **a high percentage of individuals will find it difficult to understand the complex nature of the justice system.**

Having worked with a number of individuals, **YCG reported that they had noticed that many prisoners struggle to understand what appears to be an easily comprehensible concept.** Failing to identify that an individual is struggling can make the situation worse, as a level of pride will get in the way of the individual asking you to clarify what you mean. Alternatively, it can lead to frustration and/or anger. Many will cast things they do not understand to one side and only revisit if they are influenced by another to do so. Most issues pertaining to the lack of ability to understand can be overcome by simplifying the language you are using; it is also important that the individual feels comfortable speaking to the person giving the advice.

2. The information available to the individual

After the Court has passed sentence, the solicitor representing the individual will provide advice on the likelihood of bringing a successful appeal. Without surveying a demographic, it is difficult to understand how many individuals take that first advice as final and how many seek out a second or third opinion.

In most cases, once an individual has had their initial advice from the solicitor who represented them in Court, there is no official assistance available within the prisons to explain what options are available to them (YCG's primary objective is to ensure that individuals have a trusted source of information that is easy to access and follows a clear, simple and fair approach).

**A high percentage of the prison population will rely on listening to others and take on board poor information.**

**Loss of time orders is one such subject that has always been spoken about by those who do not really understand the subject area.** The result being that most individuals will not wish to take the chance of restarting their whole sentence again or risk it being elevated.

The prison system would claim that there is access to legal texts in the library; however, can the illiterate or low level educated comprehend such texts as the Archbold? Furthermore, most texts in prison libraries are out of date or do not touch on the subject area you require.

3. The length of their sentence

**The length of sentence will always make a difference because the shorter the sentence the less likely an individual is going to attempt to appeal it.** This comes down to the following factors:

- Costs
- A lack of drive
- The length of time it takes to appeal, and

- The possibility of ending up serving more time as a result of the loss of time order.

**With longer term prisoners the lack of support to understand next steps available to them, and the impact of being given such a long sentence may set them back into a mindset of having no hope.** Again, in such circumstances they will only consider appealing once their head has got around the sentence and/or they are encouraged by someone else.

However, this is where the loss of time order (if not understood) will act as a preventative to bringing an appeal.

#### 4. The level of access they have to legal representatives

Once an individual is convicted and they have been advised that they have no grounds for appeal. In most instances, they will not understand how the appeal system works and the fact that they can appeal the conviction if it is thought to be unsafe or they can appeal the sentence if it is thought to be manifestly excessive.

Most will understand that they can make an appeal in each instance but may not understand the difference and in most cases would not understand what would constitute a point of law.

**Accessing a solicitor whilst in prison is like playing the lottery.** There is no form of information available to allow an individual to evaluate their decision making. They literally have to pick one from the prison newspapers or a list (if available) from the library (in the current pandemic there are no library facilities available, therefore amplifying the issue).

**By the time the individual has engaged a solicitor (via writing), being permissioned to add their number to the telephone account, they will have surpassed the 28-day period to bring in appeal in time.**

This then brings about the fact that the individual is out of time and that the loss of time order may possibly cause them detriment.

#### 4. Research conclusion

The most vulnerable group negatively impacted by loss of time orders appear to be those who are serving short sentences. The fear of receiving a loss of time order may deter them from making an appeal, despite the fact that they may very well have meritorious grounds of appeal. The fact that receipt of legal advice that an appellant has grounds of appeal is not a defence to receiving an order can only exacerbate the issue.

The initial rationale behind the implementation of loss of time orders was to act as a deterrent to prevent appellants from making unmeritorious appeals, which wasted valuable time and scarce resources. However, since its implementation loss of time orders appear to have had a detrimental impact on the entire prison population than first imagined. Rather than acting as a deterrent to those wishing to bring unmeritorious appeals, it seems that the order can act as a fear mechanism, especially in cases where they are not clearly understood.

The feedback questionnaire data shows that many prisoners simply do not know what a loss of time order is, of those who have heard of loss of time orders many are unable to

correctly state what it is and how it can affect them. This could be due to the fact that there is very little wider understanding of the guidance around loss of time orders and how they are to be applied.

The failure to understand what a loss of time order is, can create a number of misconceptions, such as being made to start entire sentences again despite the amount of time served. It is these misconceptions which can act as a barrier to appealing and it seems that it is this misinformation which is passed on to other prisoners. However, the misconceptions come from some legal representatives just as much as from other prisoners. Again, this could be due to the lack of wider understanding.

In conclusion, I believe that the negative impact and fear associated with loss of time orders far outweighs deterring unmeritorious appeals. Over the years the number of appeals to the CACD have fallen considerably. In the accounting year 2019/20<sup>2</sup>, the CACD received a total of 3,323 applications to appeal either a conviction and/or sentence. Of these applications, I found 25 cases<sup>3</sup> where the Court made a loss of time order. This number in comparison with the number of applications that are never made due to the fear of receiving a loss of time order raises the question whether loss of time orders are needed as a deterrent.

Whilst this research aimed to provide as much data as possible, it merely scratches the surface of the impact of loss of time orders. The research does, however, illustrate the problems with loss of time orders and how they can act as a barrier to appealing. It is important to note that the CCRC has not done specific research on how loss of time orders can affect young people in Youth Offenders Institutions. Nor has any specific work on this area been done on females in custody. These are vulnerable groups who will have their own fears and misconceptions on loss of time orders and the CCRC will consider utilising the Research Committee to do a research call to academics on this topic for these specific vulnerable groups and possibly other groups such as foreign nationals.

## **5. Recommendations**

In light of this research, I make the following recommendations:

### **5.1 For the Court of Appeal:**

- Removal of the Single Judge's power to make a loss of time order<sup>4</sup>.
- In the alternative, amending loss of time orders to take into account the length of sentence being served before making an order. Following this recommendation, the Court of Appeal should:
  - Provide guidance on how loss of time orders are to be applied.
  - Provide guidance to legal representatives on how to explain loss of time orders to defendants.
  - Produce MythBusters (informative easy to understand leaflets/information on loss of time orders) and circulate these in prisons around the country.
  - Simplify the language around loss of time orders where possible.

### **5.2 For Legal Representatives:**

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<sup>2</sup> 1 October 2019 – 30 September 2020

<sup>3</sup> See appendix B

<sup>4</sup> The CCRC understands that the CAO has made this recommendation to the Law Commission, the CCRC fully support this recommendation.

- Amending letters of advice to cover loss of time orders in more detail. Explaining that although not set, the minimum days the Court has issued and the maximum days regardless of sentence.
- Simplifying language where possible to take into account of the average reading age of the prison population.

### 5.3 For the CCRC:

- When an applicant raises loss of time as an issue that concerns them, ensure that the issue is addressed in some form of communication.
- Simplify language, where possible, when addressing loss of time orders.
- Provide a leaflet/information within the application packs that are sent out to potential applicants explaining what a loss of time order is, how it is applied and that wanting to avoid receiving a loss of time order would not amount to an exceptional circumstance.
- Utilising the Research Committee to do a research call to academics on this topic for the following specific vulnerable groups; young people, females and possibly other groups such as foreign nationals.

Appendix A



**CCRC Intern Project 2020/21 – Loss of time Orders**

**Literature review**

**Kiran Telhat**

<https://ccrc.gov.uk/research/>

The following sources have been used for information:

- Westlaw
- Lexis Nexis
- Lawtel
- Court of Appeal annual reports from 2013 – 2019
- Blackstones Criminal Practice 2021 First Supplement
- Archbold Criminal Pleading Evidence and Practice 2021 Ed.
- Current Sentencing Practice
- Banks on Sentence 14<sup>th</sup> Edition
- The Griffin Society Research Paper Righting Wrongs: What are the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal (Criminal Division)?

This report covers the following information:

- Case law setting out the position of loss of time orders
- Practice Direction
- Journals/research projects on loss of time orders
- Court of Appeal annual reports
- Statistics/Appendices

Section 29 of the Criminal Appeal Act 1968 enables the Court of Appeal to direct that all or part of the time that an applicant for leave to appeal has spent in custody since the commencement of the appeal proceedings shall not count in relation to the sentence they are required to serve.<sup>5</sup> This power is exercisable by both the Full Court<sup>6</sup> and the Single Judge.<sup>7</sup> A single judge refusing permission under s. 31 is now asked to identify on Form SJ cases without merit where the court should consider using the power under s. 29 should the refused application be renewed to the Full Court. There is also a box for the applicant to indicate why such an order should not be made, whether or not an indication has been given by the single judge. In *R v Brind*,<sup>8</sup> the Court of Appeal listed five renewed applications for leave to appeal together in order to reiterate its powers under s. 29. The Vice-President stated, where the single judge had indicated on Form SJ that the application was without merit, the would-be applicant must expect that the Court will order that the time served should not count.

The “going rate” for loss of time directions is difficult to discern, as is the rationale. While there is some broad correlation between the amount of work involved in bringing the unmeritorious appeal (conviction appeals attracting significantly lengthier loss of time direction than sentence cases), the CACD has yet to set out in clear terms the approach which ought to be adopted.<sup>9</sup>

Paul Taylor, writing in the *Criminal Law Review*, notes that the direction must come from the CACD, as there was little scope for challenging such orders: an appeal to the Supreme Court is not an option owing to the requirement in s.33 for there to have been an appeal (not merely an application) and that an appeal to the ECtHR would not be heard in time to make a difference unless the original sentence was of a significant length. He advocated indexing the loss of time direction to the original sentence length, suggesting the court adopt a fixed percentage with a maximum period of one month.<sup>10</sup> As to that suggested approach, it was suggested in [2015] Crim LR 522 that Taylor’s approach risked double punishment and was equally arbitrary on the basis that the matter in issue was the unmeritorious appeal, not the sentence for the offence giving rise to the application for leave. It is suggested that the periods should relate to the amount of unnecessary work caused to the CACD and the Criminal Appeal Office owing to the unmeritorious application.

#### *History / case law*

In the case of *R v Howitt*,<sup>11</sup> the single judge refused leave and ordered that 28 days of the time spent in custody up to that stage should not count towards the appellants’ sentence. The appellant had misunderstood the situation from his solicitors and was under the impression that there was no risk of loss of time at the single judge stage. He renewed his appeal on that basis, but then sought to abandon it. The Court held that notice of abandonment having been placed before the full court would be accepted; the court would, however, expunge the single judge’s order, since the appellant had been misled. The Court wished to make clear that an application for leave to appeal to the single judge is not a formality. It is just as important a step as an application to the full court and it must not be considered that an application to the single judge is merely one stage of no great consequence in the ultimate application to the full court, if the matter is pursued that far. There are cases where counsel may quite properly consider that the grounds that can be put forward in support of the appeal are ones which

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<sup>5</sup> Blackstones 2020, D26.12

<sup>6</sup> Section 29 Criminal Appeal Act 1968

<sup>7</sup> ss.31 (1) and (2)(h) Criminal Appeal Act 1968

<sup>8</sup> [2008] EWCA Crim 934

<sup>9</sup> Current Sentencing Practice, volume 2 – Part G: Appeals, G1-3750

<sup>10</sup> [2015] Crim LR 352 - 355

<sup>11</sup> [1975] 7 WLUK 72



justify an application to find out the advice of the single judge, but, if the single judge is adverse, then not worthy to pursue further. But in so far as there is a tendency ... to settle somewhat nebulous grounds of appeal merely to have the first bite of the cherry that tendency is to be discouraged.<sup>12</sup>

In *Monnell v United Kingdom*<sup>13</sup> the Court held that there had been no violations of the European Convention of Human Rights by the way in which the CoA ordered “loss of time served” in the case of some appellants who were refused leave to appeal against conviction and sentence. The power to make an order that a certain time spent in custody should not count towards a person’s sentence was an inherent part of the criminal appeal process and pursued a legitimate aim under Art.5(1). The orders in this case were executed by an appropriate authority and were not arbitrary; the limited nature of the grant or refusal of leave to appeal did not in itself call for oral argument at a public hearing, nor for representation nor for the personal appearance of the accused. The Court’s decision to impose loss of time was based on a full and thorough evaluation of the relevant factors. The applicants had not been denied a fair procedure as guaranteed by Art.6(1) and (3)(c). Although convicted persons not in custody did not risk loss of time, however unmeritorious their applications for leave to appeal, the difference in treatment had an objective and reasonable justification.

In *R v Hart*<sup>14</sup> the Court held that it would be appropriate to exercise its power under section 29 Criminal Appeal Act 1968 to direct that the period, or a part of the period, served by an applicant for leave to appeal since he had been sentenced should not count towards his sentence where his application lacked merit. It was worrying that, despite repeated reminders, a significant number of applications for leave to appeal against conviction or sentence which were wholly without merit were still being made. Applicants and counsel should be aware that the court would be exercising its power more frequently in the future than it had been in the past. The mere fact that counsel had advised (even to the extent of drafting an advice supporting grounds of appeal) that there were grounds of appeal would not always be a sufficient answer to the question of whether an application was without merit. 28 days of the period served since sentencing was discounted from three applicants’ sentences. However, in *R v Lewis*<sup>15</sup> no order was made. The Court held that this was a case in which the Court would have directed that certain of the period already served should not count towards this sentence. The only reason for not doing so is that the applicant’s counsel in this case took a wrong-headed and wholly illogical approach to the construction of what “wrong in principle” means in the context of an appeal against sentence. On the facts of the application, the applicant should not be penalised. Similarly, no order was made in *Meenan*<sup>16</sup>, where a “hopeless” application was renewed, the matter having been “entirely driven by counsel”.<sup>17</sup>

In *R v Greaves*<sup>18</sup> the Court wished to record that merely because a renewed application involves papers of great bulk and some complexity, the question whether the court should exercise its powers under section 29 still arises. Bulk and complexity do not operate as some kind of unspoken barrier to an order under section 29. Complexity and bulk do not turn an unarguable application into one which is arguable. If the applicant were still serving his

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<sup>12</sup> See paragraphs 328 – 329 of judgement.

<sup>13</sup> [1987] 3 WLUK 9

<sup>14</sup> [2006] EWCA Crim 3239

<sup>15</sup> [2014] EWCA Crim 1496

<sup>16</sup> [2016] EWCA Crim 334

<sup>17</sup> Archbold Criminal Pleading Evidence and Practice 2021 Ed., 7-225

<sup>18</sup> 2008 EWCA Crim 647

sentence the Court would unhesitatingly have ordered that the maximum permissible period should not count towards his sentence.

Where a renewed application for leave to appeal against conviction and sentence was wholly without merit, a loss of time order was made for a period of six weeks. In *R v Fortean*<sup>19</sup> the Court held that the renewal application was wholly without any vestige of merit. Appeals were not built into the trial process but had to be justified on properly arguable grounds. The court had to cope with over 6,000 applications each year for leave to appeal. It was anxious to deal promptly with those which raised proper grounds, but the court's ability to do so was significantly hampered by meritless applications. For that reason, the court had express statutory power under s.29 Criminal Appeal Act 1968 to order that part of the time spent in custody pending appeal was not to count towards the sentence.

The Court of Appeal revisited the question of when it is appropriate to make orders for loss of time or costs against an applicant in *R v Gray*<sup>20</sup>. Five applicants sought to renew their applications for leave to appeal against their convictions for various offences. Each application had been considered by a single judge who had rejected it and warned of the court's power to make a loss of time order.

The applications were refused. The Court held that unmeritorious renewal applications took up a wholly disproportionate amount of staff and judicial resources in preparation and hearing time. They also wasted significant sums of public money. The only means the court had of discouraging unmeritorious applications which wasted precious time and resources was by using the powers it had under the Criminal Appeal Act 1968 and the Prosecution of Offences Act 1968, *Fortean* and *Monnell* applied. Single judges, faced with what they considered to be a totally unmeritorious application, generally preferred to initial the box on the form to indicate that if the application was renewed the full court would consider the making of a loss of time order. However, the fact that the single judge had not initialled the box did not deprive the full court of the power to make such an order.

Furthermore, applicants should not consider themselves protected by the advice of counsel; *Hart* applied. The Criminal Practice Direction Amendment No 2, 2014 repeated previous warnings about loss of time orders and the fact that renewing an application on the advice of counsel would not necessarily prevent such an order. Therefore, in every case where a court was presented with an unmeritorious application, consideration should be given to exercising its powers. The single judge should consider whether to initial the box, and if the application was renewed the full court should consider whether or not to make a loss of time order or costs order.<sup>21</sup>

In *R v Williams*<sup>22</sup> the appellant renewed his application for leave to appeal against conviction, after refusal from the single judge. The single judge indicated that the full court should consider making a loss of time order. The applicant made representations as to why the full court should not impose any costs order but made no observations or representations as to why a loss of time order should not be made. The Court held that a loss of time order should be made as there is absolutely no merit whatsoever in any of the complaints advanced. The Court further held that the prolixity of his grounds of appeal, handwritten and covering many, many, many pages, take time to read and take the time of the court. It is right that it should be made abundantly clear to those seeking to renew their applications that they will be at risk of a loss

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<sup>19</sup> [2009] EWCA Crim 437

<sup>20</sup> [2014] EWCA Crim 2372

<sup>21</sup> see paragraphs 1-3, 10 of judgment.

<sup>22</sup> [2014] EWCA Crim 2482

of time order in circumstances such as those which exist here where the pursuit of such a renewed application is wholly without merit. An order of 56 days was made under section 29.

In *R v O'Leary*<sup>23</sup> the Court held that it was wholly inappropriate on a renewed application for permission to appeal for counsel to ask the court whether it would be prepared to make a loss of time order if the application was unsuccessful so as to decide whether to withdraw the application rather than pursue it. By that time, the vice to which loss of time orders were intended to be directed had already occurred. Once a permission application was before the court, the court would, if necessary, consider making a loss of time order regardless of whether permission was sought to withdraw the application.

Where judges were prevented from making a loss of time order in unmeritorious cases owing to the fact that the applicant had been released from custody, they should take the steps outlined in the Criminal Practice Directions 2015 para.3.6 by notifying the applicant within 21 days of the transcript costs and requiring him to provide a full statement of means if he contended that he could not pay them. In the case of *R v Nolar*<sup>24</sup>, an applicant in receipt of state benefits was ordered to pay half of his savings towards the cost of obtaining transcripts for hearings of unmeritorious renewed applications.

Where partial leave is granted, no loss of time direction can be made if the Full Court rejects grounds where leave was refused.<sup>25</sup>

An abandonment of an appeal does not preclude the making of a loss of time order or the award of costs against the appellant.<sup>26</sup> However, in *R v Ebudo*<sup>27</sup>, the court did not make a loss of time order and held that they may well have done so had the applicant not made attempts to abandon his renewed application, albeit late in the day. Similarly in *R v Cook*<sup>28</sup> no order was made as the appeal had been abandoned during the course of the hearing, however if it had been maintained the court considered it had been so lacking in merit the court would have disallowed time.

No order was made in *R v Simmonite*<sup>29</sup> where the applicant wrote a letter to his previous solicitors stating that if there was any chance of a loss of time order he did not wish the matter to go ahead, this was sent to the Court by the previous solicitors. The Court held that in light of this letter, no order should be made.

Similarly, no order was made in *R v Makasejevas*<sup>30</sup>. This was an application where the single judge indicated that the full court should consider making a loss of time order. The Court held that ordinarily in a case of this kind where the renewed application is completely without any merit and is wholly unjustified, the court would make such an order. However, the court noted and agreed with the observation of the single judge that this was a stern sentence, it was a sentence of 26 years as the minimum term of a life sentence. Solely on the ground that this was indeed a lengthy and stern sentence in any event, the court held that in the particular circumstances it was not in the interests of justice demand that an order is made.

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<sup>23</sup> [2015] EWCA Crim 1706

<sup>24</sup> [2017] EWCA Crim 2449

<sup>25</sup> *R v Hyde and Others* 2016 EWCA Crim 1031

<sup>26</sup> Blackstone's Criminal Practice 2020, D27.33

<sup>27</sup> [2015] EWCA Crim 772

<sup>28</sup> [2017] EWCA Crim 353

<sup>29</sup> [2018] EWCA Crim 2124

<sup>30</sup> [2019] EWCA Crim 971

*Practice Direction (CA Crim Div: Criminal Practice Directions 2015: Amendment No.7) [2018] EWCA Crim 1760*

A Practice Direction was issued amending the Criminal Practice Directions 2015 to include the new case law on loss of time orders.<sup>31</sup> New sections on the commissioning of medical reports; medical reports for sentencing purposes, and witness anonymity orders were added. Amendments were made to the paragraphs concerning intermediaries; use of live links and telephone facilities; appeals to the crown court; direct lodgement; and loss of time.

The Lord Chief Justice issued the seventh amendment on 26 July 2018, which came into force on 1 October 2018. The following amendments concerning loss of time were made:

A new paragraph, 39C.4, was added to CPD IX Appeal 39C: Appeal Notices Containing Grounds of Appeal. Subsection (h) of this new paragraph states:

*on any renewal of an application for permission to appeal accompanied by an application under CrimPR 36.14(5), if the court refuses those applications it has the power to make a loss of time order or an order for costs in line with R v Gray and Others [2014] EWCA Crim 2372. By analogy with R v Kirk [2015] EWCA Crim 1764 (where the court refused an extension of time) the court has the power to order payment of the costs of obtaining the respondent's notice and any additional transcripts.*

An amendment was made to CPD IX Appeal 39E: Loss of time. New paragraphs 39E.1-39E.4 replaced the following existing paragraphs:

*CPD IX Appeal 39E: Loss of Time*

*39E.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 sections 29 and 31, to direct that part of the time during which an applicant is in custody after lodging his notice of application for leave to appeal should not count towards sentence. Those contemplating an appeal should seek advice and should remember that a notice of appeal without grounds is ineffective and that grounds should be substantial and particularised and not a mere formula. When leave to appeal has been refused by the single judge, it is often of assistance to consider the reasons given by the single judge before making a decision whether to renew the application. Where an application devoid of merit has been refused by the single judge, he may indicate that the Full Court should consider making a direction for loss of time on renewal of the application. However, the Full Court may make such a direction whether or not such an indication has been given by the single judge.*

*39E.2 Applicants and counsel are reminded of the warning given by the Court of Appeal in R v Hart and Others [2006] EWCA Crim 3239, [2007] 1 Cr. App. R. 31, [2007] 2 Cr. App. R. (S.) 34 and should 'heed the fact that this court is prepared to exercise its power ... The mere fact that counsel has advised that there are grounds of appeal will not always be a sufficient answer to the question as to whether or not an application has indeed been brought which was totally without merit.'*

The following new paragraphs were inserted:

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<sup>31</sup> Banks on Sentence 14<sup>th</sup> Ed., 4.80

39E.1 Both the Court and the single judge have power, in their discretion, under the Criminal Appeal Act 1968 sections 29 and 31, to direct that part of the time during which an applicant is in custody after lodging his notice of application for leave to appeal should not count towards sentence. When leave to appeal has been refused by the single judge, it is necessary to consider the reasons given by the single judge before making a decision whether to renew the application. Where an application devoid of merit has been refused by the single judge, he may indicate that the Full Court should consider making a direction for loss of time on renewal of the application. However, the Full Court may make such a direction whether or not such an indication has been given by the single judge.

39E.2 The case of *R v Gray & Others* [2014] EWCA Crim 2372 makes clear "that unmeritorious renewal applications took up a wholly disproportionate amount of staff and judicial resources in preparation and hearing time. They also wasted significant sums of public money... The more time the Court of Appeal Office and the judges spent on unmeritorious applications, the longer the waiting times were likely to be.... The only means the court has of discouraging unmeritorious applications which waste precious time and resources is by using the powers given to us by Parliament in the Criminal Appeal Act 1968 and the Prosecution of Offenders Act 1985. "

39E.3 Further, applicants and counsel are reminded of the warning given by the Court of Appeal in *R v Hart and Others* [2006] EWCA Crim 3239, [2007] 1 Cr. App. R. 31, [2007] 2 Cr. App. R. (S.) 34 and should 'heed the fact that this court is prepared to exercise its power ... The mere fact that counsel has advised that there are grounds of appeal will not always be a sufficient answer to the question as to whether or not an application has indeed been brought which was totally without merit.'

39E.4 Where the Single Judge has not indicated that the Full Court should consider making a Loss of Time Order because the defendant has already been released, the case of *R v Terence Nolan* [2017] EWCA Crim 2449 indicates that the Single Judge should consider what, if any, costs have been incurred by the Registrar and the Prosecution and should make directions accordingly. Reference should be made to the relevant Costs Division of the Criminal Practice Direction.

Criminal Practice Direction 2015 was amended further in 2019, however the further amendments made no changes to the sections on Loss of Time orders.

*Journal findings:*

Kate Malleson conducted an investigation into the accessibility of the Court of Appeal based on empirical research examining the work of the Criminal Appeal Office and reviewing the transcripts of the judgments of the Court of Appeal for a six-month period in 1989<sup>32</sup>. Her paper seeks to examine why so few appeals against conviction reach the Court of Appeal and, in particular, why less serious cases which make up the bulk of trials in the Crown Court are so under-represented.

Malleson identified that somewhere between trial and appeal, factors are present which weed out the more minor cases and filter in the rarer serious ones. She noted that by far the most illuminating work on this aspect of the appeal system is Michael Zander's review of legal advice and Criminal Appeals.<sup>33</sup> From a sample of 160 appeals Zander successfully interviewed 134 prisoners, two appellants not in custody, lawyers representing a number of the appellants and prison officers from the 44 prisons from which the prisoners had appealed. Zander's sample included a range of offences from driving offences to murder yet only four of the original 160 (2.5 per cent.) appellants in the sample had received non-custodial sentences. Zander's sample then, as expected, reflects the heavy over-representation of custodial sentences amongst appellants. In examining how these cases came to appeal Zander identified a number of factors which influence a convicted person's chances of successfully appealing. The following three issues were identified as particularly relevant to the question of access: Legal advice on appeal, delay and time loss.

The rules relating to time loss were found by Zander to have had a major impact on the number of appeals. Of particular importance was the practice direction of Lord Parker in 1970 stating that single judges hearing applications for leave could, and should, exercise this power. Zander concluded that: "The news of the warning must have flashed around the prisons since the number of applications dropped dramatically. Up to March 1970 appeals had been running at the rate of 12,000 per year; within a short time of the announcement, they had fallen to 6,000 a year."<sup>34</sup> This is the level, roughly, at which they have remained ever since. In interviews with prisoners Zander found that: "They gave up not because they were persuaded they were wrong but because they feared the loss of time."<sup>35</sup>

Malleson concluded that the time loss rules, identified by Zander as so influential in the appeal process, undoubtedly disproportionately penalise those serving short sentences. One of the effects of the rules is that the prisoner serving a short sentence could find it doubled after an unsuccessful appeal while the longer the sentence the less time, proportionately, will be added. In addition, the Court operates a limit of 90 days on time loss while the average period is currently 28 days so that a person serving a very long sentence has, relatively, most to gain and least to lose. While designed to deter unmeritorious appeals it undoubtedly discourages those serving short sentences from appealing. Lawyers, conscious of the danger of the time rules, reinforce their effects by emphasising the risks which those serving short sentences run if they appeal unsuccessfully on weak, even if meritorious, grounds. Interestingly, Zander found that, despite the directive on the subject, the sanction was very rarely used and the review of the judgments of the Court of Appeal in 1989 confirmed his findings. Clearly it is the threatened rather than actual application of the rules which keeps down the number of

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<sup>32</sup> Malleson, K. (1991). Miscarriages of Justice and the Accessibility of the Court of Appeal. *Criminal Law Review*, 323-332

<sup>33</sup> Zander, M., "Legal Advice and Criminal Appeals: A Survey of Prisoners, Prisons and Lawyers," [1972] *Crim.L.R.* 132-173

<sup>34</sup> p. 133 Zander

<sup>35</sup> at p. 167 Zander

appeals. Malleson also found that delays to bringing appeal proceedings and loss of time rules were identified as factors that disproportionately disadvantaged short-sentenced defendants.

A more recent research paper published by The Griffin Society<sup>36</sup> noted that appeals to the Court of Appeal (Criminal Division) had dropped by 36% from 2011 to 2019. The research project set out to assess the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the CoA (Crim Division). The researcher sought to answer this question using a mixed methods thematic analysis of data including a set of letters from women in custody writing to APPEAL,<sup>37</sup> questionnaire responses from women in prison and responses to a survey by legal professionals.

The research paper identified that there are various methods by which it can be argued that the CACD stems the flow of appeals. Legal advice was identified as one of those methods, and reference was made to Zander's research. The research paper noted Zander found that loss of time directions and the risk of an increased sentence length had a significant impact on dissuading defendants from appealing. Zander found that while loss of time orders were rarely made, they discouraged those with short sentences from appealing. He also found that lawyers were emphasising the risk of added time to short-sentenced defendants. As Malleson explained, "clearly it is the threatened rather than actual application of the rules which keeps down the number of appeals"

In considering barriers to appeal, the reporter found from the letters of women in custody writing to APPEAL, the risk of a 'loss of time' order was mentioned infrequently; only 6 times in the sample of 132 (5%).<sup>38</sup>

Questionnaires of women in prison; of the 33 responses, just less than half (15) were convicted of violent crimes, and just over half (19) were serving a sentence of more than 12 months. For two thirds of women (22) this sentence was their first experience of the criminal justice system, a similar proportion to those that wrote letters to APPEAL. This sample had more knowledge of the appeal system than women writing letters to APPEAL. 18 women of the 33 had tried to appeal their sentences, of whom three had been successful. 11 had tried to appeal their conviction of whom none were successful. All but four of the questionnaire respondents were white and six foreign national women responded.

The barriers to appeal identified by women answering the questionnaires were similar to those highlighted in the letters, though women provided more nuanced responses to direct questions. The research found that 18 women had been told by their legal teams about the risk of a loss of time order, and 14 had not been told. 12 women said they had decided to appeal anyway, while 4 stated that the fear of losing time had made them decide not to appeal.

Some women determined that the risk of losing time was far outweighed by the potential benefits of a successful appeal. One woman stated it "didn't affect [my willingness to appeal] at all. I am determined to keep fighting as I still believe in justice". Another said, "I feel I have nothing to lose now. I feel I have lost everything already". Those that decided to appeal anyway, rarely said that losing time had no effect on their decision. One woman said, "obviously it was/is a concern, but I feel that purely on the grounds that justice should be secured I must take this risk". Another commented, "given that I was given a 10-year sentence at the time, although I was very worried about this added stress, I went forward accepting this because I felt that there was too much injustice". A woman who decided not to appeal when

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<sup>36</sup> Research Paper: What are the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal (Criminal Division)?

<sup>37</sup> A non-profit law practice specialising in criminal appeals

<sup>38</sup> p.28 research study by The Griffin Society

asked if the risk of losing time had affected her decision to appeal replied, “yes it did as I didn’t want to start my sentence again”. Two women mentioned feeling pressured, stating “I was very upset and scared me to appeal [sic]” and one commented that she felt “scared, blackmailed and traumatised” by the direction.<sup>39</sup>

Survey of lawyers; 20 legal professional who had responded had wide professional experience of criminal appeals. This included 9 solicitors or solicitor advocates, 6 barristers and 5 other legal professionals, including campaigners and paralegals responded.

The barriers to appeal identified by legal professionals had some overlap with the experiences of women in prison, however varied in key areas. Only one lawyer had ever had a ‘loss of time’ order against a client, and some commented that had never known anyone to receive one. Legal professionals, however, saw ‘loss of time’ directions having a significant effect on appeals. One paralegal commented, “It has gotten harder as the Court of Appeal seems increasingly harsh in dismissing out of time of appeals and making loss of time orders”. A barrister said, “The routine ticking of the box ‘adding on time’ if the single judge refuses an appeal has had a chilling effect on taking proper appeals”. One solicitor suggested there was a deliberate attempt to limit access: “The Court of Appeal have also acted to restrict access to the court in a series of decisions and procedural hurdles which have been introduced in recent years with the express intention of restricting access to the court, such as the increased use of loss of time orders.” One barrister commented, “The barrier is the lower the sentence, the more chilling effect the risk of adding on time to deter an appeal. This is more likely to affect women who in my cases seem likely to be convicted/sentenced of less serious offences”. All lawyers confirmed they always informed clients of the risk of a loss of time order, often in writing.<sup>40</sup>

The research study found that loss of time orders act as a ‘punishment’ for bringing a ‘time wasting’ appeal and while they are rarely given, the risk seemed to have a disproportionately chilling effect on women’s desire to appeal. The risk is more serious to women given short sentences and it was notable that very few short-sentenced women participated in the study. This seemed to further confirm that this cohort of women may simply not be participating in the appeal system, echoing the findings of Zander (1972) and Malleson (1991).

The study recommended that parliament should discard section 29 of the Criminal Appeal Act 1968 allowing for loss of time order to be made. They are not in the interests of justice and are discriminatory to women and others given short sentences.<sup>41</sup>

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<sup>39</sup> p.35 research study by The Griffin Society

<sup>40</sup> p.39 research study by The Griffin Society

<sup>41</sup> p.52 research study by The Griffin Society



### *Court of Appeal Criminal Division Annual Reports:*

I have conducted a search of the annual reports published by MOJ since 2013 – 2019<sup>42</sup>. Loss of time orders were first mentioned briefly in the 2013 – 2014 annual report. In a section titled 'Looking to the Future' the case of Gray was noted alongside a paragraph which states that "there are occasions when the Court is faced with applications, often renewed, that have absolutely no prospect of success. This wastes valuable time and scarce resources. The Court has recently re-affirmed the principle that, in appropriate cases, it will exercise its power under section 29 of the Criminal Appeal Act 1968 and make loss of time orders."<sup>43</sup>

The annual report for the following year, 2014 – 2015, confirms that CACD received 6,036 applications this year. A reduction of 80 applications from the previous year. The report specifically makes reference to loss of time orders reporting on the case of *R v Gray and Others* in a section titled 'Cases of Note'.<sup>44</sup>

According to the annual report for 2015 -2016, the CACD received 5489 applications. A decrease of 547 applications, with the largest decrease being applications for appeals against sentences. The report also included reporting of *R v Kirk*<sup>45</sup> concerning loss of time orders where the Court would but for the fact the applicant was no longer in custody have made a loss of time order. In a section titled 'Improving access to and delivery of justice to Litigants in Person' the report includes a paragraph which states, in cases where a litigant in person ignores directions or is being deliberately vexatious, the Court has indicated that it will support sanctions such as loss of time orders. At the time litigants in person represented 9.9% of applications CACD received.

The annual report for 2016 – 2017 further reported a decrease in applications for both sentencing and convictions, with 5,093 applications received. There were no references to loss of time directions in this report. This trend continued and it was reported in the 2017 – 2018 annual report that CACD received 4830 applications, 3633 were appeals against sentence and 1197 were appeals against conviction. The annual report noted that since 2014, there had been an increase of litigants in person to 10%. The most recent report, 2018 – 2019, reported CACD received 4434 applications, a decrease of 396. The rise of litigants in person reported in the previous annual report was attributed to the implementation of easy-read application forms.

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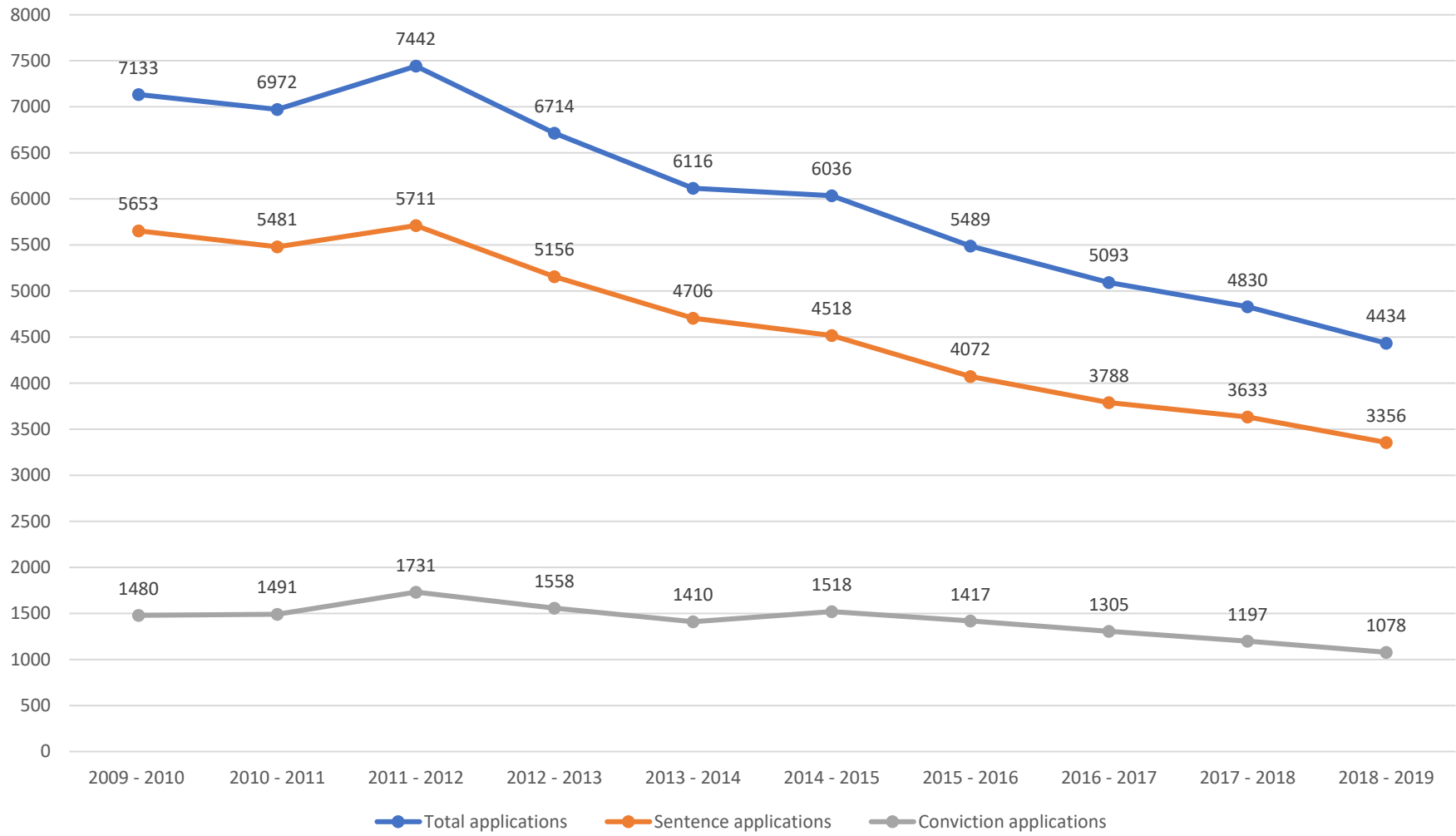
<sup>42</sup> 2020 Annual report has not yet been published.

<sup>43</sup> Page 3, 2013 – 2014 annual report

<sup>44</sup> Page 10, 2014 – 2015 annual report

<sup>45</sup> 2015 EWCA Crim 1764

Applications to CACD over the last 10 years



Statistics: the following have been found using a keyword search of 'Loss of Time' on Westlaw, refined by topic 'Crime':

Dates	Number of Cases	Minimum order	Maximum Order	Cases where no order made
01/01/2014 – 31/12/2014	16	14 days	3 months	3
01/01/2015 – 31/12/2015	13	14 days	56 days	3
01/01/2016 – 31/12/2016	11	14 days	42 days	3
01/01/2017 – 31/12/2017	26	21 days	90 days	3
01/01/2018 – 31/12/2018	16	14 days	70 days	2
01/01/2019 – 31/12/2019	18	14 days	56 days	0
01/01/2020 – 20/11/2020	11	28 days	56 days	0

## Appendix B

The following were available on Westlaw as cases where the Court of Appeal has made a loss of time order between 1 October 2019 and 30 September 2020:

- R v Rambaran [2020] EWCA Crim 1463
- R v Cobb [2020] EWCA Crim 1206
- R v Clarke [2020] EWCA Crim 1190
- R v Yousaf [2020] EWCA Crim 1082
- R v Smith [2020] EWCA Crim 994
- R v Reynolds [2020] EWCA Crim 1024
- R v GK [2020] EWCA Crim 593
- R v Reville [2020] EWCA Crim 693
- R v Allison [2020] EWCA Crim 465
- R v Saghir [2020] EWCA Crim 512
- R v Cattermole [2020] EWCA Crim 710
- R v Helm [2020] EWCA Crim 367
- R v Ohin [2020] EWCA Crim 215
- R v Beckford [2020] EWCA Crim 59
- R v King [2019] EWCA Crim 2434
- R v Hanson [2019] EWCA Crim 2298
- R v Munt [2019] EWCA Crim 2085
- R v Agbugba [2019] EWCA Crim 2124
- R v Hussain [2019] EWCA Crim 2065
- R v Gjoka [2019] EWCA Crim 2248
- R v Swallow [2019] EWCA Crim 2105
- R v Mohammed [2019] EWCA Crim 1873
- R v Sellen [2019] EWCA Crim 1818
- R v JR [2019] EWCA Crim 1854
- R v Brearley [2019] EWCA Crim 1690