



LAW SOCIETY
OF IRELAND

Submission on Jury Reform

Department of Justice

29 November 2024

Submission on Jury Reform

About the Law Society

The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland. The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the *Solicitors Acts 1954 to 2015*. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council delegates those statutory functions.

Introduction

The Law Society appreciates the opportunity to provide this submission to the Department of Justice (the **Department**) in response to its Consultation Paper dated October 2024 on Jury Reform.

The Consultation Paper has been organised under 10 general Chapters with a series of questions in each chapter. We therefore structure this submission around each Chapter with answers to the questions as applicable.

Chapter 1: Jury selection and qualification for Jury Service

Q.1. What would be the benefits of extending juror eligibility beyond citizenship?

Q.2. What would be the risks of extending juror eligibility beyond citizenship?

Q.3. Should jury duty be linked to citizenship? Why do you think so?

Q.4. Should long-term residents be eligible for jury service? If so, how long should someone be a resident to be considered a long-term resident?

The right to jury trial in Ireland is provided for under Article 38.5 of the [Constitution of Ireland 1937](#). There is an entitlement to a jury who is selected from a jury pool broadly representative of a cross-section of the community, as set out in *de Burca v Attorney General*.¹ The [Juries Act 1976](#) specifies that, in order to be elected for jury service in Ireland, an individual must be over 18 years of age, be registered on the Dáil electoral register, and be an Irish citizen.

The benefits of extending juror eligibility beyond citizenship include:

- (i) Better representation of the current Irish population: In view of the increasingly diverse demographic in Ireland, with 12% of residents having non-Irish citizenship,² excluding those residents with *non-Irish citizenship* potentially influences the representativeness of the population within juries. In addition, it is worth noting that 15% of the prison population in Ireland is from a foreign national background.³

¹ *De Burca v Attorney General*, 1972 No. 2130 P.

² 'Migration and Diversity', Central Statistics Office, 30 May 2023, Accessed 05 November 2024, <https://www.cso.ie/en/releasesandpublications/ep/p-cpsr/censusofpopulation2022-summaryresults/migrationanddiversity/>.

³ 'Ireland: the Rights, Needs, and Experiences of Foreign Nationals and Minority Ethnic Groups in the Irish Penal System', European Commission, 17 May 2022, Accessed 05 November 2024,

- (ii) Increase of the pool of jurors: The extension of juror eligibility beyond citizenship would increase the availability of jurors, potentially making juries available quicker and combatting the current situation where only one-in-five people called to a jury are attending court.⁴
- (iii) Civic inclusion: Enhanced civic inclusion of those without citizenship by allowing them to directly serve the communities they are living and working in is beneficial for society. Indeed, research indicates that those having served as jurors have a more positive view on courts, and increased trust in the justice system.⁵ As a result, greater trust in the rule of law and societal cohesion could be the result of the extension of juror eligibility beyond Irish citizenship.

The risks of extending juror eligibility beyond citizenship include arguments that if non-Irish residents are prevented from voting in national Dáil elections, and excluded from the rights and responsibilities of full citizens, why should they be expected to fulfil all the corresponding duties? There may also be arguments that non-Irish residents may not understand or support the Irish legal system, values, and the general trial process. These concerns are further elaborated in Chapter 3 (Capacity).

In summary weighing the risks and benefits above,⁶ the Law Society proposes that long-term residents should qualify for jury service. The Law Society recommends that we align the definition of long-term residents with the [EU Long-term Residents Directive 2003/109/EC](#), qualifying anyone having resided in the country over a period of five years or longer. This captures many long-term residents thereby supporting their chance of integration into civic life in Ireland and an association with Irish values and an understanding of the justice system.

Chapter 2: Jury challenges

Q.1. What are the benefits and risks of peremptory challenges?

In theory, the function of a peremptory challenge is to secure a fairer and more impartial jury by enabling litigants to remove jurors whom they perceive as biased, even if the jurors are not subject to a challenge for cause shown.⁷

Benefits:

The New Zealand Law Reform Commission observed that peremptory challenges have the benefit of affording the accused some degree of control over the composition of the jury which is consistent with securing a representative jury, and that it also ensures that competent and impartial jurors are selected.⁸ In short, the retention of peremptory challenges are supporting

https://migrant-integration.ec.europa.eu/library-document/ireland-rights-needs-and-experiences-foreign-nationals-and-minority-ethnic-groups_en.

⁴ *Courts Service Annual Report 2023*, The Courts Service (September 2024), <https://www.courts.ie/acc/alfresco/2b552955-e0f9-41a2-80e7-c526d24651e2/Courts%20Service%20Annual%20Report%202023.pdf/pdf/1>.

⁵ Liana Pennington and Matthew Dolliver, 'Understanding the Effects of Jury Service on Juror's Trust in Courts', *Law & Society Review* Vol 56, Issue 4 (01 January 2024): <https://www.cambridge.org/core/journals/law-and-society-review/article/understanding-the-effects-of-jury-service-on-jurors-trust-in-courts/7BD4060323EEB150968DF09D074F1250>.

⁶ Niamh Howlin, 'Multiculturalism, Representation and Integration: Citizen Requirements for Jury Service', *Dublin University Law Journal* 35, 148 (2012): [file:///C:/Users/JuliaV/Downloads/Citizenship,_Integration_and_Irish_Juries_\[ppp\].pdf](file:///C:/Users/JuliaV/Downloads/Citizenship,_Integration_and_Irish_Juries_[ppp].pdf).

⁷ Under the 1976 Juries Act, defendants' and plaintiffs' legal representatives are entitled to remove 7 of the 12 jurors under peremptory challenges.

⁸ Law Reform Commission of New Zealand *Juries in Criminal Trials Report* 69 (2001) at paragraph 229.

the perceptions of fairness by the accused. Rooted in common law tradition, peremptory challenges are often cited as supporting enhanced trust in the justice system and the equality before the courts.

Risks:

Concerns have been expressed that peremptory challenges may be exercised solely based on biased perceptions about the impact of a person's attributes on their decision-making. Excluding jurors from juries in this way may undermine jury representativeness of the population and therefore the effectiveness of any proposed reforms. For example, Canada has recently abolished peremptory challenges due to evidence of bias against indigenous jury members having been continuously exhibited, leading to the condemnation of courts' judgements.⁹ Indeed, there has been evidence that exclusions from juries were allegedly both sexist and racist in the Canadian and US-American contexts.¹⁰ In addition, in 2007, peremptory challenges were abolished in Northern Ireland due to concerns associated with identity politics.¹¹

In summary, peremptory challenges have been a contentious subject for decades, without international consensus on the topic. There is a lack of research on the effect of peremptory challenges on the representativeness of Irish juries and on their judgements. The Law Society recommends keeping peremptory challenges in any proposed Jury reform and the reasons are further elaborated in the answer to questions 2 to 5 below.

Q.2. What would be the effect of reducing peremptory challenges?

Q.3. What would be the effect of abolishing peremptory challenges?

Q.4. Would guidelines on the use of and process of peremptory challenges be useful? Why do you think so?

Q.5. Should there be some level of judicial oversight over the use of peremptory challenges? Please discuss.

As mentioned above, there are limited studies on the effects of peremptory challenges on the jury composition in the Irish context. Indeed, racial and gender bias that has been evidenced in other contexts are not evidenced in the Irish system.

When discussing the effect of reducing or abolishing peremptory challenges, it is important to consider four factors, as informed by the Law Reform Commission's 2013 report and recent academic research:

1. the rights of prospective jurors,
2. the need to prohibit any injustice one or other party might suffer as a result of an unrepresentative jury,
3. the effect on the accused and their potential loss of control, and
4. the effect on the public confidence in the justice system.

Turning to each of these four points we comment as follows:

⁹ Kona Keast- O'Donovan, 'A Bandage on a Broken System: Moving Beyond Peremptory Challenges to Increase Indigenous Juror Representation in Canada', *UCLA Criminal Justice Law Review* Vol. 6, 227 (2022): <https://heinonline.org/HOL/LandingPage?handle=hein.journals/uclaclj6&div=9&id=&page=>

¹⁰ E.g., Nancy Marder, 'Race, Peremptory Challenges, and State Courts: A Blueprint for Change', *Chicago-Kent Law Review*, 98, 65 (2023): <https://heinonline.org/HOL/LandingPage?handle=hein.journals/chknt98&div=8&id=&page=>

¹¹ Justice and Security (Northern Ireland) Act 2007, Section 13: Abolition of Peremptory Challenges in Criminal Cases.

Regarding the rights of prospective jurors (1.), it is arguably less personally hurtful to potential jurors to be excluded from jury by peremptory challenges than challenges for cause shown. Whilst a reduction or abolition of peremptory challenges could potentially contribute to quicker proceedings of justice, jurors are in no other way significantly affected.

Regarding a potentially unrepresentative jury (2.), there are no studies evidencing bias in the peremptory challenges process in Ireland. In order to avoid any potential bias applied in peremptory challenges, guidelines could be published explaining the goal and means of peremptory challenges in more detail.

Arguably, the accused (3.) with their potential loss of control are the most impacted by any reduction or abolition of peremptory challenges. These changes could impact levels of trust in court decisions by the accused.¹²

It is uncertain whether or not the public would lose confidence in the justice system by a change in peremptory challenges (4.).

In summary, the Law Society does not support a change to the current legislation on peremptory challenges. The Law Society submit that guidance on the use of the process of peremptory challenges would be useful to bring greater clarity to the process. The Law Society does not recommend having judicial oversight over the use of peremptory challenges.

Q.6. What would be the pros and cons of reducing the number of challenges for cause shown?

Challenges for cause shown are rare in the Irish system due to the current rights available to defendants and plaintiffs to peremptory challenges. The current system also means that counsel for both defendant and plaintiff have limited, if any, information about candidate jurors prior to their empanelment. Since jurors are chosen through the electoral register, there is rarely more information known than their name, gender, and postal address. In addition, the 1976 Juries Act does not exactly define what constitutes a *cause* but leaves it up to the serving judge to uphold or withdraw a cause.

Due to the rarity of challenges for cause shown in Ireland, it is difficult to comment on the pros or cons of reducing the number of challenges for cause shown. Therefore, and due to the fact that the current number of unlimited challenges do not appear to pose administrative challenges to the justice system, the Law Society agrees with the Law Reform Commission's assessment to retain the current legislation on challenges for cause shown.¹³

Q.7. What impact would the introduction of pre-trial juror questionnaires have on jury selection? Would this impact be a net positive or negative? Why?

Pre-trial juror questionnaires are currently not used in Ireland.¹⁴ Their introduction would therefore cause a significant shift in current practice.

¹² *Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey On Drivers of Trust in Public Institutions*, OECD (2021): <https://www.oecd-ilibrary.org/docserver/b407f99c-en.pdf?expires=1731669343&id=id&accname=guest&checksum=5ABD92536DD26933E6AB03E0BD421E7A>.

¹³ *Jury Service Report*, The Law Reform Commission (April 2013), page 47: https://www.lawreform.ie/_fileupload/Reports/r107.pdf.

¹⁴ 'Superior Court Forms', The Courts Service, Accessed 15 November 2024, <https://www.courts.ie/content/commercial-proceedings>.

In the United States, where pre-trial juror questionnaires are frequently used, these can detail anything including background characteristics, general experiences, case-related experiences, knowledge of the witnesses, attorneys, or parties, opinions, and awareness of the case at hand. They often reach up to 50 pages of questions.¹⁵ It is clear that a lot of information can be gained from these questionnaires which have the potential to better inform lawyers before deciding to introduce challenges to the potential jurors. In particular, questionnaires promise a better assessment of potential bias in jurors. This further information could then be used to pose additional challenges for cause shown. At the same time, the assessment of pre-trial questionnaires would take up significant periods of time for both lawyers and judges, potentially adding to the already considerable backlog of Irish cases. In addition, the introduction of pre-trial juror questionnaires would add a barrier to jury service: not only would it add significant time commitment to the jury selection process, but potential jurors might also feel unjustly scrutinised by potential questionnaires.

In light of the rare use of challenges for cause shown, and in consideration of courts system resources, the Law Society submits that the implementation of pre-trial questionnaires would be a net negative.

Chapter 3: Capacity to carry out the functions of a juror

Q.1. What do reasonably practicable supports and accommodation look like to you?

Reasonably practicable supports and accommodation should include the accessibility of court buildings for people with physical disabilities, accommodating their needs effectively. The Law Society have consistently called for a modernisation of court buildings in Ireland as not all courts are currently equipped to the same standards. This would benefit not only jurors but anyone using the courts systems.

At the same time, not every enduring impairment can be accommodated for potential jurors: whilst some courts have the infrastructure in place to accommodate partially deaf people for example, this might not be the case in other settings where staffing issues do not allow for such arrangements. The Law Reform Commission has highlighted issues with confidentiality in the court room where interpreters are used.¹⁶ Further, some enduring impairments might exclude jurors from eligibility, for example when key evidence is presented as CCTV camera footage that cannot be examined by blind jurors.

As a result, whilst we support the modernisation and increased accessibility of the courts, a case-by-case assessment for practicable supports should be in place, allowing potential jurors to self-report where they might not be eligible.

Q.2. What would be the benefits of individual assessments of capacity for jurors?

Q.3. What would be the disadvantages/risks of individual assessments of capacity for jurors?

The Law Society does not recommend individual assessments of capacity for jurors. Standard assessments of mental health capacity widely differ depending on the conditions assessed, and such assessments would be potentially stigmatising and humiliating for individual jurors, especially when they would be tested for a variety of potential conditions.

¹⁵ 'Jury Research Update: Getting the Most out of Pre-Trial Questionnaires', National Legal Research Group, Accessed 15 November 2024, <https://www.nlr.com/our-services/jury-research-division/jury-research-publications/getting-the-most-out-of-jury-questionnaires>.

¹⁶ *Jury Service Report*.

In 2008, New Zealand overhauled their Juries Act 1981 in order to re-evaluate capacity under the provisions of the 2006 UNCRPD guidance. As a result, previous individual capacity assessments were replaced for being overly broad in their assessment criteria. Instead, an excusal for mental disability was retained.¹⁷

The Law Society recommends maintaining the current practice of hospitalisation notices as excusal from jury service.

Q.4. If required, how could individual assessments of capacity be formulated?

N/A.

Q.5. Should jurors sign a declaration of capacity when they return their summons?

N/A.

Q.6. Is the current guidance on the requirements of eligibility for jury service sufficient?

The Law Society recommends that the Courts Service produce updated guidance for jurors to understand eligibility requirements for jury service. In line with the current practice of videos shown to increase the public's understanding of the Courts, video guidance might also be suitable.

Q.7. Should jurors have a responsibility to inform the court of any question of capacity regarding another juror?

No, the Law Society does not recommend that jurors have a responsibility to inform the court of any question of capacity regarding another juror.

Q.8. Should there be guidelines on what constitutes 'good cause' for the purposes of an application for 'excusal for cause' in relation to accommodation or supports for persons with capacity issues?

Yes, there should be guidance on what constitutes 'good cause' for the purposes of an application for 'excusal for cause' in relation to accommodation or supports for persons with capacity issues.

Q.9. Should juror eligibility include the ability to read, write, speak and understand English and/or Irish?

In general, juror eligibility should include the ability to read, write, speak and understand English and/or Irish in order to allow jurors to efficiently evaluate the material seen and heard relating to the case. It is important however to acknowledge that language comprehension can be a developing skill and should therefore not be regarded as an exclusion criterion but should result in a deferral of jury service.

In addition, it is important to acknowledge that language proficiency is not a problem specific to non-Irish nationals but does affect a wide range of Irish citizens, as well. Indeed, it is

¹⁷ Report of the Justice and Electoral Committee, Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill (232–1) and international treaty examination of the Convention on the Rights of Persons with Disabilities, pp.13-14. Available at: http://www.parliament.nz/NR/rdonlyres/CA9ED2D7-9ECA-4383-97AC4AF9C6C45439/91779/DBSCH_SCR_4163_6161.pdf.

estimated that 1 in 6 Irish adults struggles to read and write above a basic level.¹⁸ Accordingly, the language proficiency rate should not be set at a C2 standard (fluency) as currently the case but correspond with European language requirements which forbid institutional discrimination against anyone speaking at least at a B2, or working-level, proficiency.¹⁹

Chapter 4: Ineligibility, excusal and deferral

Q.1. Should all citizens be eligible for jury duty regardless of the position or office they hold?

No. The guiding principle in respect of juries and the administration of justice is that members must be seen to be independent and unbiased in order to ensure the right to a fair trial. The Law Reform Commission concluded that the retention of “exclusion” assists in reinforcing the impartiality of juries. The Law Reform Commission notes “exclusion” from jury selection helps underpin two important concepts:²⁰

1. The exclusion of certain categories protects the juries’ essential image as a representative body of lay people to counterbalance the legal professions in the administration of justice and;
2. The need to avoid the appearance of bias, which may arise if legal professionals were to sit as ordinary citizens, in determining if their colleagues had proved their cases beyond a reasonable doubt.

It has been noted that legal professionals may be deferred to in the jury room due to their status, knowledge, and access to information not established in evidence at trial.²¹

Q.2. Is there a risk that people in certain positions or offices could have undue influence over other lay jury members? If so, would a period of ineligibility post-employment serve to minimise the risk? If so, what should that period be?

Yes, and while a 3-year period was mooted in respect of retired Gardaí per the Law Reform Commission Report, the Law Reform Commission following consultation concluded that retired Gardai should be ineligible. In light of the reply to question 1, it is essential that jury members are seen to be independent and unbiased in order to ensure the right to a fair trial. Given the small numbers involved and applying a risk/reward analysis it would be preferable for such persons to continue to be ineligible.

Q.3. Should solicitors’ apprentices, clerks and other persons employed on work of a legal character in solicitors’ offices continue to be ineligible for jury service?

Yes, on the basis of the reply to question 1 above.

¹⁸ ‘Literacy and Numeracy in Ireland’, National Adult Literacy Agency, Accessed 15 November 2024, <https://www.nala.ie/literacy-and-numeracy-in-ireland/#:~:text=Literacy%20and%20numeracy%20statistics,below%20level%201%20for%20numera cy.>

¹⁹ Decision on the language requirements of the Court of Justice of the EU in a recruitment procedure (case 1940/2022/EIS), The European Ombudsman (31 March 2023): <https://www.ombudsman.europa.eu/en/decision/en/167977>.

²⁰ Professor Dermot Walsh, *Walsh on Criminal Procedure* (Round Hall, 2002), cited in *Jury Service Report*, page 70.

²¹ *Walsh on Criminal Procedure*, page 824.

Q.4. Should officers attached to a court (which, having regard to the establishment of the Courts Service under the Courts Service Act 1998, should also include employees of the Courts Service) continue to be ineligible for jury service?

Yes, on the basis of the reply to question 1 above.

Q.5. Should persons employed to take court records (stenographers) continue to be ineligible for jury service?

Yes, on the basis of the reply to question 1 above.

Q.6. Should civilians employed by An Garda Síochána who perform entirely administrative functions be eligible for jury service?

The Law Reform Commission provisionally recommended that they should remain eligible, before accepting that the general agreement of the those involved in the consultative process was that they should be ineligible. Notwithstanding that the Law Reform Commission concluded that this category should continue to be eligible. It is worth noting that the distinction that a trained legal professional may make to appreciate the difference between Gardaí and a civilian employed by the Gardaí may not translate easily into civil society. Given the small numbers involved, and applying a risk/reward analysis, it is submitted that it would be preferable for such persons to be ineligible.

Q.7. Should Commissioners and staff of the Garda Síochána Ombudsman Commission be ineligible for jury service?

Yes, see above.

Q.8. Should members of the Permanent Defence Force, and members of the Reserve Defence Force while in receipt of pay for any service or duty, be eligible for jury service?

Yes.

Q.9. Should section 9(1) and Schedule 1, Part 2, of the Juries Act 1976, which provide for a list of persons excusable from jury service as of right, be repealed and replaced with a general right of excusal for good cause?

Yes, on balance per Law Reform Commission Report. There is an obvious tension between the difficulty "...to reconcile with the fundamental principle... that the jury pool should be broadly representative of the community and that jury selection be broadly random in nature..." and that as of 2013 nearly 200,000 people were excusable as of right. It should be noted that the Law Reform Commission has previously recommended, April 2013, that County Registrars be provided with written guidance to assist them in determining whether to grant or refuse the application for excusal for good cause. It is submitted that County Registrars should retain broad discretion on how they apply such guidance on a case-by-case basis, to ensure that the guiding principle is protected.

Q.10. Should Members of either House of the Oireachtas; Members of the Council of State; The Comptroller and Auditor General; The Clerk of Dáil Éireann; and The Clerk of Seanad Éireann be deemed ineligible for jury service?

Deeming them ineligible when they are currently excusable as of right, appears at odds with the thinking of the Law Reform Commission, who has put forward that Members of either House of the Oireachtas; Members of the Council of State; the Comptroller and Auditor General; the Clerk of Dáil Éireann; and the Clerk of Seanad Éireann may be excused on a certificate from the Clerk of that House, where it would be contrary to the public interest for the member to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.

Given that other members of this cohort are elected by the public, have publicly declared views and policies, and carry influence, it is submitted that they should be ineligible in particular in light of the guiding principle as it is essential that jury members are seen to be independent and unbiased in order to ensure the right to a fair trial. Given the small numbers involved and applying a risk/reward analysis it is submitted that it would be preferable for such persons to continue to be ineligible.

Q.11. Should a deferral system be introduced for jury service, where, if a person provides excusal from service for cause shown, his or her jury service should be deferred for a defined period? If so, why and what should that period be?

Yes, per Law Reform Commission Report to ensure that the jury pool is as representative as possible and that those selected are given the opportunity to balance their personal obligations against their duties and responsibilities to society. It is submitted that one year is a suitable period of time for a deferral.

Chapter 5: Disqualification from Jury Service

Q.1. Should disqualification from jury service be based on the type of crime committed, the sentence received or the time since the offending occurred?

Q.2. Do you agree with the LRC's recommendations (5.1, 5.2, 5.3 above) on disqualification, namely:

- *a person shall be disqualified from jury service for life where he or she has been sentenced to imprisonment (including where the sentence is suspended) on conviction for any offence for which the person may be sentenced to life imprisonment (whether as a mandatory sentence or otherwise),*
- *that, without prejudice to the immediately preceding recommendation, a person shall be disqualified from jury service for life where he or she has been convicted of: (a) an offence that is reserved by law to be tried by the Central Criminal Court; (b) a terrorist offence (within the meaning of the Criminal Justice (Terrorist Offences) Act 2005); or (c) an offence against the administration of justice (namely, contempt of court, perverting the course of justice or perjury), and*
- *that, in respect of an offence other than those encompassed by the two immediately preceding recommendations, a person shall be disqualified from jury service: (a) for a period of 10 years where he or she has been convicted of such an offence and has been sentenced to imprisonment for a term greater than 12 months (including a suspended sentence); and (b) for the same periods as the "relevant periods" in the Criminal Justice (Spent Convictions) Bill 2012 both in relation to custodial and non-custodial sentences within the meaning of the 2012 Bill.*

In the interests of jury representativeness, it is submitted that there should be some allowance for people convicted of a crime to serve on a jury once they have served their sentence. Such representativeness is important because some parts of the population, such as members of the Traveller community, are over-represented in the prison population and face harsher verdicts generally.²² A person's integration in the justice system through jury service after having served their sentences can enhance defendants' trust in the justice system and promote reintegration.²³

At the same time, the Law Reform Commission set out that certain limitations should be imposed in order to maintain the trust in the jury system. That is because it is arguable that a person who has been convicted of a serious offence may have a less favourable view of the State and the justice system which might add to their bias. Further, individuals with a criminal history could conceivably be susceptible to coercion or influence from criminal acquaintances. Therefore, the disqualification of a person with a history of serious crime is appropriate.

The Law Society agrees with the proposed dual qualification of reference to specific courts and offences and of the time someone had been sentenced. In addition, it is recommended to reduce the length of suspensions proposed from 10 to 7 years because the [2016 Criminal Justice \(Spent Convictions and Certain Disclosures\) Act](#) allows for a range of minor offences to be spent after 7 years. It makes sense to maintain uniformity with this legislation.

Q.3. Should persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial, be disqualified from jury service until the conclusion of the trial? Why/why not?

People remanded in custody awaiting trial and persons remaining on bail awaiting trial are not currently disqualified from jury service and there is little evidence that they should be in general. There is merit in deferring their potential service when they are selected as potential jurors, both to accommodate their possible court appointments and to avoid distrust in jury decisions where these persons might be convicted at a later date.

Q.4. Should a person convicted of an offence committed outside the State which, if committed in the State, would disqualify a person from jury service, be disqualified from jury service in the State on the same basis and for the same periods? If so, how could this be implemented or monitored?

In general, the Law Society agrees that a person convicted of an offence committed outside the State which, if committed in the State, would disqualify a person from jury service, be disqualified from jury service in the State on the same basis and for the same periods. Within the European Union, this can be implemented and monitored through the use of Interpol. Other international convictions could be monitored through occasional police vetting which could be applied to potential jurors who have spent extended periods abroad.

²² Sindy Joyce et al., *Irish Travellers' Access to Justice*, European Centre for the Study of Hate: University of Limerick (2022): https://www.drugsandalcohol.ie/36509/1/ITAJ_Final.pdf.

²³ Ginger Jackson-Gleich, 'Rigging the Jury: How each State Reduces Jury Diversity by Excluding People With Criminal Records', *Judges Journal* 65, 28 (2022): <https://heinonline.org/HOL/LandingPage?handle=hein.journals/judgej61&div=27&id=&page=>

Q.5. Do you agree with the LRC's recommendation (5.6 above) on the juror vetting system, namely that that the principal process for ensuring that a person on a jury list is not disqualified from jury service should continue to be that the Courts Service shall, from time to time, provide jury lists to the Garda Síochána Central Vetting Unit (to be renamed the National Vetting Bureau under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012), and that where the Garda Síochána Central Vetting Unit communicates with the Courts Service that a named person on the jury list is disqualified from jury service the Courts Service shall not summon that person for jury service? If not, how should juror vetting be undertaken? Are there particular organisations or bodies which should be responsible?

Yes, it is submitted that the current vetting system is working well, and we agree with the analysis of the Dundon case as provided by the Law Reform Commission in 2013.

Q.6. Are the fines for knowingly serving on a jury when ineligible or disqualified a sufficient deterrent?

We believe that the current fines are a sufficient deterrent due to the low rate of ineligible and disqualified jurors serving. In addition, anecdotal evidence suggests that jurors aim to 'get out' of jury service rather than knowingly serving when ineligible or disqualified, with a 75% no-show for jury service in some counties.²⁴

Chapter 6: Jury tampering

Q.1. What is your opinion on incorporating the common law offence of embracery and the offence of intimidation in section 41 of the Criminal Justice Act 1999 into a single offence that deals with all forms of jury tampering?

There is considerable overlap between the common law offence of embracery and the offence of intimidation under the Criminal Justice Act 1999, as has been pointed out by the Law Reform Commission Recommendations. Therefore, we support an integration of both offences into a single offence that should include any attempt to corrupt or influence or instruct a jury, or any attempt to incline them to be more favourable to the one side than to the other with an intent to obstruct, pervert, or interfere with the course of justice. This is especially pertinent due to recent media coverage of the increased pressure on jury members in front of courts. There are reports of jurors being hackled, threatened with violence or otherwise intimidated, often in front of the court buildings. It is noteworthy that only a third of cases against jury intimidation succeed.²⁵

Q.2. Should parties' access to jury lists be retained, modified or removed? Please discuss.

Q.3. Should parties maintain the right to access jury lists once a jury has been sworn? Why/why not?

Parties' access to jury lists needs to balance the accused's right to challenge a jury with the jurors' rights to security and privacy. Therefore, access to jury lists should be restricted only to legal advisors of all parties, and only for a restricted period of time before the trial. Once a jury is sworn in, there is little reason why parties should maintain access to jury lists.

²⁴ '75% No-Show for Jury Service in Some Counties', *The Law Society Gazette* (15 January 2019): <https://www.lawsociety.ie/gazette/top-stories/2019/01-january/75-per-cent-non-attendance-on-juries-in-some-counties/>

²⁵ 'Just 27% of Witness or Jury Intimidation Cases Result in Conviction', *The Irish Times* (July 2021): <https://www.irishtimes.com/news/crime-and-law/just-27-of-witness-or-jury-intimidation-cases-result-in-conviction-1.4612182>.

Q.4. Should the daily roll call be abolished? Why/why not?

Q.5. Should jurors be required to provide identification? Why/why not?

The daily roll call should be abolished to protect the privacy of jurors. In England and Wales, there is no roll call to protect jurors' identities. Especially in the context of the increased online targeting of individuals, the importance of protecting juror identities is paramount.

The provision of formal identification would assist in limiting the necessity for calling names in court on a repeated basis. This is a suitable requirement, bearing in mind that the jury lists are derived from the electoral register and that section 111 of the [Electoral Act 1992](#) requires voters to bring prescribed personal identification to a polling station.

Chapter 7: Juror misconduct, independent investigations and internet searches

Q.1. Should the judge's charge to a jury regarding juror misconduct be laid out in guidelines or legislation?

The judge's charge to a jury regarding juror misconduct should be laid out in guidelines.

Q.2. What is your opinion on including that a juror cannot use phone or internet sources in the juror oath?

It is submitted that the juror oath should include that a juror cannot use phone or internet sources.

Q.3. Do you agree with the LRC's recommendation (7.2 above) on creating two new offences for juror misconduct, namely

- *an offence for a juror wilfully to disclose to any person during the trial information about the deliberations of the jury or how a juror or jury formed any opinion or conclusion in relation to an issue arising in the trial (this offence would not apply where a juror discloses information to another juror, or where the trial judge consents to a disclosure); and*
- *a second offence which would prohibit jurors from making inquiries about the accused, or any other matters relevant to the trial, but would not prohibit a juror from making an inquiry of the court, or of another member of the jury, in the proper exercise of his or her functions as a juror nor would it prevent a juror from making an inquiry authorised by the court. It would also provide that anything done by a juror in contravention of a direction given to the jury by the judge would not be a proper exercise by the juror of his or her functions as a juror. In this offence, "making an inquiry" would be defined to include: asking a question of any person, conducting any research, for example, by searching an electronic database for information (such as by using the internet), viewing or inspecting any place or object, conducting an experiment or causing someone else to make an inquiry.*

Yes, we agree with the Law Reform Commission recommendation on creating two new offences for juror misconduct.

Q.4. Should there be an agreed protocol on prosecutions for the various offences provided for in the legislation on jury service? Why/why not?

Yes, there should be an agreed protocol on prosecutions for the various offences provided for in the legislation on jury service to bring clarity to the process.

Chapter 8: Juror compensation and expenses

Q.1. Should a flat rate daily payment for jurors be introduced? If so, how much? If not, why not?

Q.2. What measures could be introduced to alleviate the financial burden that jury service places upon small businesses and self-employed persons?

Jury service is a civic duty to which no financial incentive should be attached. Indeed, research shows that most jurors do not expect or require a payment for jury service but understand it as a valuable service for their community.²⁶ However, participating in jury service should not result in a disproportionate financial burden on a citizen. According to a recent UCD study, the main financial obstacles are the cost of transport, the cost of childcare, and, for those self-employed, the cost of lost income. It is acknowledged that self-employed persons do currently have a right to be excused from jury service if they can prove that it prevents them from earning a living. UCD have found that the alleviation of the financial obstacles mentioned would not only increase the participation in jury service but is supported by judges and court services staff.²⁷

In summary, the Law Society recommends a flat rate compensation of transport costs based on the distance to the court room and a compensation for childcare costs where those can be evidenced.

Chapter 9: Lengthy trials and juror comprehension

Q.1. What would be the benefits of appointing an assessor?

Q.2. What would be the risks of appointing an assessor?

The Department of Justice, in the context of the [Defamation \(Amendment\) Bill 2024](#), has argued that juries are unsuitable for certain trials on grounds that they (a) are unreliable in their evaluation of complex arguments, (b) award unreasonably large amounts in damages, (c) create delays in trials, and (d) increase legal costs for all parties. These arguments were disputed in the Joint Committee on Justice in 2023,²⁸ with some witnesses arguing that judges could equally cause delays, award high damages, and produce inconsistent decisions. There was however some agreement that juries might struggle to comprehend complex evidence and have a higher risk of being traumatised during hearings. The appointment of an assessor could aid juries to understand complex evidence by explaining it in the context of the law and guide juries on their questions. In high profile cases with complex evidence the employment of an assessor might increase the trust in juries' final decision-making. On the other hand,

²⁶ Mark Coen et al., 'Respect, Reform, and Research: An Empirical Insight into Judge-Jury Relations', *Irish Judicial Studies Journal*, Vol.4 (2) (2020): <https://www.ijsj.ie/assets/uploads/documents/pdfs/2020-Edition-02/7.%20Coen%20et%20al.pdf>

²⁷ 'Irish Judges 'Frustrated' by Lack of Reform to Ease Burden of Jurors', UCD Sutherland Law School, 18 March 2020, Accessed 15 November 2024, <https://www.ucd.ie/newsandopinion/news/2020/march/18/irishjudgesfrustratedbylackofreformtoeaseburdenonjurorsnewresearchreveals/>.

²⁸ *Report on Pre-Legislative Scrutiny of the General Scheme of the Defamation (Amendment) Bill*, Joint Committee of Justice, Houses of the Oireachtas (September 2023): https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2023/2023-09-27_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-defamation-amendment-bill_en.pdf.

claims of potential undue influence of an assessor on the jury due to their expert status would have to be considered and adequately moderated.

Q.3. Would an assessor usurp the role of the expert witness?

Please see answer to question 2 above.

Chapter 10: General questions on juror reform

Q.1. Are there other aspects of jury reform not covered in this paper that you think should be addressed? Please elaborate.

N/A

Conclusion

The Law Society appreciates the opportunity to provide this submission to the Department of Justice.

The Law Society, in particular through its Litigation Committee, remains available to assist in any further developments in Jury reform.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie



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