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Northern Ireland Court Service

# Widening the Jury Pool

## Summary of Responses

January 2010

Northern Ireland Court Service  
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## **Foreword**

**by Bridget Prentice MP,  
Parliamentary Under-Secretary of State**



I am very grateful to all those who responded to this consultation exercise. All the responses have been carefully considered and are summarised in this publication.

There was a high level of interest in the consultation, and a wide variety of views were expressed. Several issues distinct to Northern Ireland were raised, and I recognise that many of the arguments for, and against, changes to the arrangements applying to certain occupations are finely balanced. Giving effect to many of the proposals would require primary legislation, which it would not be possible to bring forward during the current Parliament. Beyond that, I am conscious that responsibility for juries would transfer to the Northern Ireland Assembly, as part of any wider transfer of responsibility for policing and justice, and in those circumstances any legislation would fall to be enacted by the Northern Ireland Assembly.

In this context, and also in recognition that proposals in relation to the excusable occupations touch upon matters which are already the responsibility of the devolved administration (such as health and education), I consider that it would be better not to proceed to reach decisions in these areas now, in advance of a decision being taken on the transfer of responsibility for juries to the Assembly. This approach will be reviewed once there is greater clarity about the likely timeframe for devolution.

In the meantime, however, a number of areas can be further explored in order to help inform final decisions. It is intended, therefore, that officials will take forward further work to evaluate proposals relating to the alignment of the disqualification and rehabilitation periods, the strengthening of the disqualification criteria, and further vetting. Officials will also liaise with colleagues in the Department of Health, Social Services and Public Safety about the planned Assembly legislation in relation to mental health and mental capacity, in order to evaluate any implications for a possible consultation exercise in Northern Ireland on mental health and jury service. Finally, the Court Service will carry out an equality impact assessment on the upper age limit for jury service, as suggested by the Equality Commission, so as to help inform future policy decisions.

A handwritten signature in cursive script that reads "Bridget Prentice".

**Bridget Prentice MP**  
**Parliamentary Under-Secretary of State, Ministry of Justice**

# 1. Introduction

- 1.1 This document is the summary of responses to the consultation paper *Widening the Jury Pool: Increasing Participation in the Criminal Justice System*.
- 1.2 Further copies of this report and the consultation paper can be obtained by contacting:

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- 1.3 A copy of this report is available on the Northern Ireland Court Service website at: [www.courtsni.gov.uk](http://www.courtsni.gov.uk). Alternative formats (including large print, audio cassette, Braille, computer disc and other languages) are also available on request.
- 1.4 You may make additional copies of this report without seeking permission. If you require further printed copies of this report, we would invite you to access the document through our website and make copies yourself. If you do not have access to the internet and require us to provide you with further copies, please contact the Consultation Co-ordinator at the address shown at paragraph 1.2 above.

## 2. Background

2.1 On 29<sup>th</sup> May 2008, the consultation paper *Widening the jury pool: Increasing participation in the Criminal Justice System* was published to seek views on proposals to widen the jury pool in Northern Ireland. It was aimed at the general public, as well as at targeted stakeholders.

2.2 The overarching proposal was to significantly reduce the categories of people who are automatically ineligible for, or excusable as of right from, jury service by virtue of their occupation, and to replace this with a robust system of discretionary deferral and excusal which would apply to any person called for jury service. The key aims were:

- to ensure that juries better reflect the community from which they are drawn;
- (as a result) to improve confidence in the justice system as a whole;
- to reinforce jury service as a civic duty; and
- to ensure that the burden of jury service is more equitably shared throughout society.

2.3 The paper included a questionnaire seeking views on the following key issues:

- whether the time is right to widen the jury pool in Northern Ireland;
- whether the disqualification criteria for those with criminal convictions should be reformed;
- whether we should abolish categories of persons who are ineligible for, or excusable as of right from, jury service by virtue of their occupation and instead, introduce, by way of administrative guidelines, a system of discretionary deferral and excusal, applicable to everyone;
- whether the draft guidelines on discretionary deferral and excusal are adequate;
- whether there should be a separate consultation exercise on

the issue of jury service by those with a mental disorder or who are unable to understand English;

- whether the excusal as of right of persons aged 65 to 70 should be removed and whether the age limit of 70 should be extended; and
- what period should elapse before a person who has served as a juror is liable to be selected again (currently 15 years).

2.4 The consultation period ended on 4<sup>th</sup> September 2008 but was extended to 28<sup>th</sup> November 2008, at the request of some consultees. Further consideration of certain technical aspects of the proposals took place with relevant stakeholders, and we continued to receive views until June 2009. This report summarises the responses.

### 3. Approach to analysis of responses

- 3.1 63 responses were received, all of which were recorded in a database and analysed. Both quantitative and qualitative analysis techniques were employed. A full list of respondents is at Annex B.
- 3.2 In addition, the Northern Ireland Court Service offered consultees the opportunity to meet with officials to discuss the proposals. 12 such meetings were subsequently held. A full list of meetings is at Annex C.
- 3.3 Of the 63 responses analysed, 60 were in written form and 3 were the recorded views of those respondents who attended meetings but did not submit a written response. Out of the 60 written responses, 17 used the questionnaire as a template, 28 were submissions which included references to the questionnaire, and 15 were short responses which did not refer to the questionnaire.
- 3.4 Some comments, where there may have been some degree of ambiguity, required interpretation, for example, where:
  - respondents did not use the questionnaire, and made comments of a general nature;
  - respondents did not use the questionnaire, but made comments which related to specific questions; and
  - answers to the questionnaire were not clear.
- 3.5 Interpretation was necessary in order to ensure that as many of the respondents' submissions as possible were considered in our analysis. While some responses could not be included in the quantitative analysis, such comments were noted and analysed qualitatively. All such comments, our interpretation, and the reasoning for such interpretation, were recorded so as to ensure consistency. Nonetheless, the requirement for interpretation means that the *quantification* of responses should be treated with a degree of caution.
- 3.6 The total number of respondents for each question varied. It ranged from 4 to 36 respondents. Therefore, where in Chapter 4

(‘Summary of key findings’) and Chapter 5 (‘Summary of responses to specific questions’) a reference is made to “the majority of respondents”, it is to be read as a reference to the majority of respondents to that *particular* question, rather than to the majority of respondents to the whole consultation.

- 3.7 In addition, comments which were outside the scope of this consultation were recorded separately with a view to taking them into account in any future review activity.
- 3.8 The responses received to this consultation have greatly assisted the Northern Ireland Court Service and we are grateful to all those who took the time to respond, or to meet with us.

## 4. Summary of key findings

4.1 Some key findings from the responses received are set out below:

- The vast majority of respondents agreed with the overall principle of widening the jury pool to ensure that it is fully representative of society.
- The majority of respondents considered that the juror disqualification periods should be aligned with the rehabilitation periods. Several respondents regarded this as an appropriate way of rectifying what they viewed as an anomalous situation.
- The question relating to disqualification criteria and further vetting of jurors generated mixed views. A majority of respondents agreed that the disqualification criteria were adequate but a majority also felt that further vetting was required.
- Questions relating to occupations concerned with the administration of justice generated the most interest, with a majority of respondents indicating that *all* such occupations should not be included in the jury pool.
- Answers in relation to individual administration-of-justice occupations indicated that:
  - (i) a majority was opposed to members of the judiciary and police officers being included in the jury pool;
  - (ii) a majority was in favour of prosecutors being included in the jury pool; and
  - (iii) in relation to other occupations (for example, legal professionals and prison officers), of those respondents whose views could be discerned, a majority was in favour of eligibility.
- One recurrent argument amongst those opposed to the inclusion of certain occupations (such as the judiciary and the legal profession) was that the small size of the Northern Ireland jurisdiction created a greater risk of conflict of

interest (resulting from personal familiarity) and of perceptions of bias than would arise in other jurisdictions.

- The vast majority of those whose views in relation to the eligibility of members of the Forces could be discerned, was in favour of their inclusion in the jury pool.
- The question relating to the desirability of a separate consultation exercise on the issue of jury service by those with a mental disorder, or who are unable to understand English, generated very diverging views. On the one hand, a small majority of respondents did not think that a consultation on these issues would be helpful. On the other hand, several respondents thought that a further consultation could usefully examine issues relating to definition and equality of opportunity.
- Questions relating to occupations excusable as of right generated great interest. A small majority of respondents agreed that these occupations should no longer be excusable as of right. One recurrent argument in favour of this proposal was that members of these occupations could provide useful input to a jury. Amongst those opposed, many argued (in relation to health professionals and teachers in particular) that it could lead to disruption to the provision of public services.
- Questions relating to age generated mixed views. Whilst almost all the respondents agreed that persons aged between 65 and 70 should be eligible, a small majority considered that the upper age limit of 70 should not be extended. Several respondents, however, argued in favour of the complete removal of the upper age limit.
- No clear view emerged as to the length of time which should elapse before a person previously selected for jury service should be liable to be selected again, with responses ranging from 1 year to 15 years.
- All those who responded to the question on the draft guidelines on discretionary deferral and excusal agreed that

they adequately balanced the needs of those summoned with the need to have sufficient numbers of jurors. Several respondents, however, called for a careful application of any discretionary arrangements. Comments made in respect of the draft guidelines, in general, suggested that amendments be made to clarify certain concepts.

- Most respondents to questions relating to the equality screening and the impact assessment were satisfied with the evaluations carried out.

## 5. Summary of responses to specific questions

**Question 1 - Do you agree that the time is now right to widen the jury pool in Northern Ireland?**

- **33 respondents**
- **29 agreed with widening the jury pool**
- **4 did not**

5.1 The vast majority of respondents addressed only the principle, and not the timing, of widening the jury pool. No specific comment opposing the timing of the proposals was made.

5.2 The vast majority supported the principle of widening the jury pool – a recurrent argument was that the pool needed to be representative of society as a whole. Despite this broad support, answers to subsequent questions suggested that support was often conditional on certain categories of people remaining ineligible or excusable as of right.

**Question 2 - Should the disqualification periods under the Juries (Northern Ireland) Order 1996 be aligned with the rehabilitation periods under the Rehabilitation of Offenders (Northern Ireland) Order 1978?**

- **18 respondents**
- **11 were in favour of alignment**
- **7 were opposed**

5.3 The majority of respondents considered that the juror disqualification periods should be aligned with the rehabilitation periods.

5.4 The views expressed were varied. Some respondents considered that convicted criminals should never serve on juries. The Probation Board for Northern Ireland, whose role includes supervising offenders in the community, considered it appropriate to align the disqualification and rehabilitation periods, commenting that there were clear anomalies between the two. Sinn Féin was concerned that some ex-prisoners who, under the current criteria, would be

disqualified for 10 years, would be permanently disqualified should the periods be aligned.

**Question 3 - Do you agree that the disqualification criteria currently set out in the Juries (Northern Ireland) Order 1996 are adequate, or should additional provision be taken to allow for further vetting of potential jurors?**

- **11 respondents**
- **4 agreed that the disqualification criteria were adequate; 2 did not**
- **5 considered that further vetting was required; 3 did not**

- 5.5 In the interests of clarity, responses were analysed separately in relation to the adequacy of the current disqualification criteria and the need for further vetting of potential jurors. Not all respondents addressed both strands of the question.
- 5.6 Four respondents agreed that the criteria were adequate. The PSNI, however, considered that additional criteria should list specific offences (such as sexual offences) that would permanently disqualify a person for jury service, and also suggested that police cautions should be taken into account when determining whether or not a person should be disqualified for jury service.
- 5.7 Five respondents considered that further vetting of jurors should be allowed. Several, including the Probation Board, considered that it would be beneficial in certain cases, such as those concerning sexual, drug-related and terrorist offences. The University of Ulster, however, was concerned that further vetting may create a *de facto* hierarchy of offences, under which a juror would be acceptable in one trial but not in another.

**Question 4 - Do you consider that all of the occupations currently ineligible for jury service should be included within the jury pool?**

- **36 respondents**
- **11 considered that all of the currently ineligible occupations should be included within the pool**
- **25 did not**

5.8 Most respondents did not consider that *all* of the currently ineligible occupations (i.e. those persons concerned with the administration of justice and members of HM Forces) should be included within the jury pool. This was the view of the vast majority of those respondents who are involved in the administration of justice.<sup>1</sup>

5.9 This does not necessarily mean that respondents who answered 'no' to this question considered that *none* of these occupations should be included within the jury pool. Some of those who answered 'no' indicated that certain individual occupations should be included, while others should remain ineligible.

5.10 Several respondents variously listed individual occupations which they thought should remain ineligible (including prosecutors, police officers, and members of the judiciary<sup>2</sup>, legal professionals and probation officers). Some also or alternatively listed those occupations which they thought should become eligible (including legal professionals and members of the Northern Ireland Court Service).

5.11 Others responded more generally in relation to "*those involved in the administration of justice*" or "*those involved in the criminal justice system*".

5.12 Recurrent arguments made against the inclusion of administration-of-justice occupations within the jury pool included:

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<sup>1</sup> Those respondents categorised as involved in the administration of justice are listed as such at Annex B.

<sup>2</sup> Separate questions have been asked in relation to these occupations and the responses are dealt with below.

- Northern Ireland is a small jurisdiction with a high degree of interconnectedness among those involved in the administration of justice or the criminal justice system;
- persons involved in the administration of justice possess specialist and/or insider knowledge which may give them an undue influence over fellow jurors or create a conflict of interest; and
- any possible *perception* of bias is as detrimental to public confidence in the criminal justice system as *actual* bias.

5.13 The Law Society said that persons involved in the administration of justice and the legal system, in particular members of the judiciary, lawyers and police officers, should remain ineligible. It argued that the inclusion of such occupations would endanger the integrity of the decision-making process of the jury and an individual's right to a fair trial under Article 6 of the European Convention on Human Rights. It considered that public perceptions were of great importance when assessing whether an individual's right to a fair trial had been properly protected, yet public suspicions could arise from the inclusion of these occupations.

5.14 The Society also considered that including these occupations would be administratively imprudent because, as a result of the small size of the jurisdiction and the consequent familiarity within the legal profession, the majority of potential jurors coming from these occupations would have to be excused.

5.15 In relation to the proposal to include members of the legal profession, the Alliance Party said that it was unconvinced that "*having people from one side of the system sitting on the other side*" was helpful. The Social Democratic and Labour Party also highlighted the need for members of the PSNI, the judiciary and the Public Prosecution Service to publicly preserve their independence.

5.16 One recurrent argument in support of including all currently ineligible occupations was that each case should be considered on its own merits rather than by way of blanket ineligibility. Those respondents who made this argument thought that the draft guidelines on deferral and excusal would allow for an assessment on merit.

5.17 The NSPCC, which was in support of the inclusion of most criminal justice occupations, considered that there is an untested assumption in the judgments from England and Wales that members of such occupations would side with their own when on a jury. It considered that such an assumption of bias does not acknowledge that those with a working knowledge of the criminal justice system may bring a critical eye to proceedings, which could benefit a jury's decision-making. It also said that such an assumption would lead to a system of jury selection, such as that in the United States, where potential jurors are questioned at length about attitudes and beliefs.

5.18 In relation to the members of the Forces, of those respondents whose views could be discerned, the vast majority was in favour of their inclusion in the jury pool.

**Question 5 - Do you consider that an employee of a prosecuting authority should be eligible to sit as a juror on trials in which their employing department is not the prosecutor?**

- **33 respondents**
- **20 considered that employees of a prosecuting authority should be eligible to sit as a juror on trials in which their employing department is not the prosecutor**
- **13 did not**

5.19 The majority of respondents considered that an employee of a prosecuting authority should be able to sit on a jury in a trial in which their employing department is not prosecuting.

5.20 Amongst respondents from those involved in the administration of justice, a small majority considered that an employee of a prosecuting authority should *never* sit on a jury.

5.21 The arguments against the inclusion of prosecutors centred on the potential for perceptions of bias. Whilst some respondents considered that there was a risk that prosecutors would be biased towards the prosecution, others felt that a mere perception of bias may cause a loss of confidence in the criminal justice system.

5.22 The Director of Public Prosecutions was of the view that all his employees should remain ineligible for jury service, and emphasised that, since the Public Prosecution Service (PPS) presently carries out virtually all prosecutions in the Crown Court in Northern Ireland (including those on behalf of other prosecuting authorities), there would never be a trial in which the PPS was not the prosecutor. In light of this, the Director felt that it would not make sense to include prosecutors in the jury pool, as they would never be able to serve as jurors. The Director also argued that allowing his staff to serve on juries in criminal trials could increase the number of convictions which would be open to challenge on appeal, and that this would not be in the public interest.

5.23 Larne Harbour Police and the Nautical Institute, who supported this proposal, requested that safeguards be put in place to ensure impartiality and to protect relevant employees' identities. The Presbyterian Church and the PSNI, who also supported this proposal, emphasised the need for a strict and clear application of the guidelines to avoid the risk of unsound convictions. The NSPCC argued that including prosecutors would result in juries availing of a wider and more balanced set of skills, knowledge and experience from across society. It also referred to the House of Lords judgment in *Abdroikof*<sup>3</sup> and commented that the logic of the judgment was sound.

5.24 Other arguments made in relation to the inclusion of persons involved in the administration of justice generally (highlighted above under Question 4 at paragraphs 5.12 to 5.17) were also made in answer to this question.

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<sup>3</sup> In this judgment, the House of Lords found that convictions may be unsafe where a member of the jury was an employee of the Crown Prosecution Service (CPS) and the trial was conducted by the CPS. No issue of perceived bias arises where a CPS employee sits as a juror on a trial conducted by a different prosecuting authority. *R v Abdroikof, Williamson and Green (Conjoined Appeals)* [2007] UKHL. (See also paragraphs 4.7 and 4.8 of the consultation document.)

**Question 6 - Do you consider that PSNI police officers should be eligible for jury service, subject to the robust application of the guidelines on deferral and excusal?**

- **33 respondents**
- **14 considered that PSNI police officers should be eligible for jury service**
- **19 did not**

5.25 A small majority of respondents (most of whom were involved in the administration of justice) considered that PSNI police officers should not serve on juries.

5.26 Some (including the PSNI), who were in favour of police officers remaining ineligible, referred to the small size of Northern Ireland. The PSNI said that Northern Ireland was distinct from other parts of the UK, with a small population and a single police force. It also did not consider that Northern Ireland and the PSNI were ready to have police officers sitting on juries. Other arguments put forward by the PSNI included:

- there may be a perception that police officers would be biased in favour of the prosecution;
- there may be additional delay in the criminal justice system due to the potential discharge of juries and re-trials;
- there may be bureaucratic and administrative difficulties; and
- there may be security risks associated with a public discussion in court of a police officer's suitability to serve as a juror.

5.27 Several other respondents, including some criminal justice agencies, also raised the issue of actual and perceived bias as an impediment to inclusion in the jury pool. One solicitor said that the *"experience of gathering evidence and seeking to prosecute would render [police officers] partial, notwithstanding checks and balances that could be put in place"*.

5.28 Others, however, who supported the inclusion of police officers in the jury pool, disagreed with the argument about perceived bias. An individual respondent said that police officers *"must be the*

*most unbiased fair-minded people and would approach jury service with the same open-mindedness".*

5.29 An additional argument made against the inclusion of police officers related to the risk of undue influence over fellow jurors.

5.30 The Superintendents' Association was one of the respondents which considered that police officers could serve on juries, subject to guidelines, although it highlighted some potential problems, including:

- defence lawyers not choosing police officers as jurors if they were aware of their presence on a jury panel; and
- the operational implications of removing police officers from front-line duty to serve as jurors.

5.31 Finally, Larne Harbour Police considered that including police officers on juries would add to their personal professional development.

**Question 7 - If the answer to the previous question is "yes", do you consider that a police officer should be precluded from attending for jury service at a court which is in the same area as the district command unit in which they work?**

- **7 respondents**
- **All considered that a police officer should be precluded from serving as a juror at a court in the same district command unit in which they work**

5.32 All the respondents who answered this question agreed that police officers should be precluded from serving as jurors at a court which is in the same district command unit as the one in which they work.

5.33 The Superintendents' Association considered that this would avoid unnecessary challenges, whilst the University of Ulster referred to the small size of the jurisdiction as a justification for such a restriction.

**Question 8 - Do you agree that civilian employees of PSNI and other persons exercising the powers of a constable should be eligible for jury service subject to the option of discretionary excusal where this would be in the interests of justice?**

- **30 respondents**
- **20 agreed that civilian employees of PSNI should be eligible; 1 disagreed**
- **16 agreed that civilian employees of PSNI exercising the powers of a constable should be eligible for jury service; 10 disagreed**
- **15 agreed that other persons exercising the powers of a constable should be eligible for jury service; 9 disagreed**

5.34 In the interests of clarity, responses were analysed separately in relation to civilian employees of the PSNI; civilian employees of the PSNI who exercise the powers of a constable<sup>4</sup>; and other persons who exercise the powers of a constable<sup>5</sup>. Not all respondents addressed all the occupational categories within the question.

5.35 Almost all respondents considered that civilian employees of the PSNI should remain eligible for jury service. Smaller majorities considered that civilian employees exercising the powers of a constable and other persons exercising the powers of a constable should be eligible.

5.36 Larne Harbour Police, the Superintendents' Association and the Serious Organised Crime Agency were amongst the respondents who considered that PSNI civilian employees (whether exercising the powers of a constable or not) and other persons exercising the powers of a constable should be able to serve on a jury. The PSNI supported the inclusion of PSNI civilian employees who do not exercise the powers of a constable, subject to the application of strict guidelines on deferral and excusal.

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<sup>4</sup> For example, detention officers.

<sup>5</sup> For example, certain Police Ombudsman staff and Revenue and Customs officers.

5.37 Other respondents who supported the inclusion of civilian employees of the PSNI who do not exercise the powers of a constable, considered that clear and specific guidelines would avoid the possibility of unsound convictions. The Democratic Unionist Party, however, was opposed to the inclusion of civilian employees of the PSNI and, considered that because of their everyday contact with police officers, they would become identified with the PSNI and may be seen as “*built-in*” leaders in a jury because of their specialist knowledge.

5.38 Other arguments made against the inclusion of persons involved in the administration of justice generally (highlighted above under Question 4 at paragraphs 5.12 to 5.15) were also made in answer to this question.

**Question 9 - Do you consider that members of the judiciary should be eligible for jury service?**

- **33 respondents**
- **12 considered that members of the judiciary should be eligible for jury service**
- **21 did not**

5.39 The vast majority of respondents (including the vast majority of organisations and individuals involved in the administration of justice, the vast majority of politicians and the majority of churches) did not consider that members of the judiciary should be included in the jury pool.

5.40 The Right Honourable Sir Brian Kerr, then Lord Chief Justice of Northern Ireland, submitted a response to the consultation in his capacity as head of the judiciary, and highlighted the firm opposition of the judiciary. His comments related to three areas:

- he indicated that, due to the small size of Northern Ireland, judges serving as jurors would be known to the judge presiding in a case, the lawyers and many experts. He considered that this may result in challenges which could impact on the perception of judicial independence and confuse the public in their perception of the judicial role;

- he argued that bringing judges into the jury pool would have little or no impact on the size of the pool, given the small number of full-time salaried judiciary in Northern Ireland; and
- he believed that including judges in the jury pool could be detrimental to the efficient operation of the courts. He indicated that it would involve significant public expenditure to pay for deputy judges but that there would also be difficulties in ensuring such cover because, for judges in the higher courts, there is no pool of deputies.

5.41 The Law Society and the Probation Board also referred to the small size of the jurisdiction and the resulting interconnectedness within the legal profession and particularly the judiciary. The Law Society highlighted the common training that members of the judiciary receive throughout their careers, which it considered contributes to familiarity. Other respondents, including the PSNI and the Commission for Victims and Survivors, also mentioned the greater possibility of judges being familiar with other persons involved in a trial (e.g. presiding judge, expert witnesses, prosecutor, other legal professionals) in Northern Ireland than elsewhere in the United Kingdom.

5.42 The Democratic Unionist Party and the Progressive Unionist Party were concerned that judges would have an increased legal knowledge as compared with other jurors and that they could unduly influence the findings of a jury.

5.43 Respondents (including the University of Ulster) who supported the inclusion of members of the judiciary in the jury pool, however, argued that, because their profession requires objectivity and independence, judges would make ideal jurors. The NSPCC, whilst recognising that there would be benefits from the inclusion of judges, suggested that senior judges (such as the Lord Chief Justice and Appeal Court judges) should be excluded from jury service, as they could be seen as having line management responsibility for the relevant trial judge. (The NSPCC made similar points in relation to the heads of other criminal justice agencies.)

5.44 Other arguments made in relation to the inclusion of persons involved in the administration of justice generally (highlighted above under Question 4 at paragraphs 5.12 to 5.17) were also made in answer to this question.

**Question 10 - If the answer to the previous question is “yes”, do you consider that the excusals and deferrals policy is sufficiently robust to deal with the concerns that may arise (from members of the judiciary serving on a jury before a judge whom they may know, from counsel presenting the case who may have appeared before the judge, and where judges may be likely to know some of the professional witnesses)?**

- **4 respondents**
- **All considered that the excusals and deferrals policy is sufficiently robust to deal with concerns which may arise from judges serving as jurors**

5.45 Respondents to this question unanimously agreed that the policy was sufficiently robust to address these concerns.

5.46 The University of Ulster, however, commented that the guidance lacked clarity as to how Juries Officers would exercise their discretion in this respect. Furthermore, the Lord Chief Justice said that, considering the size of the jurisdiction, there would be no instances when the trial judge would not know a judge-juror.

**Question 11 - Are there any additional groups which you consider should be ineligible for jury service and why?**

- **12 respondents**
- **2 identified additional groups**
- **10 did not**

5.47 The vast majority of respondents considered that no additional groups should be made ineligible for jury service.

5.48 Suggestions made for additional groups were as follows:

- persons involved in restorative justice programmes (Superintendents’ Association); and
- accountants in complex fraud trials (individual respondent).

**Question 12 - Do you think it would be helpful to have a consultation exercise on the specific issue of jury service by those with a mental disorder or who are unable to understand English?**

- **16 respondents**
- **7 thought it would be helpful to have a further specific consultation exercise**
- **9 did not**

5.49 Responses to this question were almost evenly divided, with a small majority of respondents opposed to having a separate consultation on the issue of jury service by those with a mental disorder or who are unable to understand English. The PSNI, which was opposed to such a consultation exercise, argued that additional costs associated with providing interpreters and/or mental health assessments to facilitate those with mental disorders, or those with language barriers, would outweigh the benefits associated with widening the pool. An individual respondent made similar comments.

5.50 The Probation Board and the University of Ulster, which were in favour of a separate consultation exercise, considered that some individuals with a mental disorder might regard blanket ineligibility as discriminatory. They also felt that a separate consultation exercise would help clarify the rules on how eligibility would be assessed by defining “mental disorder” and setting out the level of understanding of English which is required to enable someone to contribute effectively as a juror.

5.51 The University of Ulster and Queen’s University thought that any such exercise should be part of a wider exercise conducted throughout the United Kingdom.

**Question 13 - Do you consider that all of the occupations currently excusable from jury service as of right should be included in the jury pool?**

- 32 respondents
- 19 considered that all of the occupations currently excusable from jury service as of right should be included
- 13 did not

**Question 14 - If the answer to Q13 is no, which occupations do you consider should remain excusable as of right and why?**

- 13 respondents answered “no” to the previous question and suggested occupations they considered should remain excusable as of right

5.52 For convenience, Questions 13 and 14 have been analysed together.

5.53 A small majority of respondents agreed that *all* of the occupations currently excusable from jury service as of right should be included in the jury pool. There was, however, considerable opposition expressed to the inclusion of particular occupations, especially from respondents representing or employing persons within these occupations.

5.54 Overall, respondents who agreed with this proposal considered that persons from these occupations could make a useful contribution to a jury’s deliberations. Several respondents said that it was difficult to assess which occupation was more important and that there was no valid reason to treat some occupations differently to others. The Presbyterian Church indicated that a balance needed to be struck, so as to ensure that the negative impact of removing occupations from their duties would not be greater than the positive impact of their inclusion in the jury pool. Several respondents indicated that some professionals would only be able to sit on juries for shorter periods of time.

5.55 The occupations which attracted the most comments were elected representatives, health professionals, the clergy and teachers.

### Elected representatives

5.56 Ian McCrea MLA and the President of Appeal Tribunals expressed concerns about the risk that decisions would be made from a political motivation rather than a genuine assessment of the case.

5.57 The Democratic Unionist Party considered that the inclusion of elected representatives would not be possible because of the public expectation that they should be carrying out their legislative duties.

### Health professionals

5.58 In its written submission, the Department of Health, Social Services and Public Safety highlighted concerns in relation to health professionals losing their excusal as of right because of cost and the role of these professionals within the community. Following a meeting with the Department, however, and an estimate of the likely demand upon health professionals, the Health Service expressed its contentment with the proposed arrangements.

5.59 The British Medical Association considered that all doctors should remain excusable as of right. It indicated, however, that, if the proposal to remove doctors' excusal as of right were to be implemented, all doctors should be excused on application and that the draft guidelines should be amended to that effect in order to provide clear guidance to Juries Officers. Arguments put forward in relation to maintaining an excusal as of right included:

- disruption to patient care;
- exacerbation of staff shortages;
- serving on a jury in a longer trial could affect the maintenance of doctors' clinical skills;
- cost, burden and inconvenience of arranging cover (by locum or by colleague); and
- impact on waiting lists.

5.60 The Royal College of General Practitioners considered that all doctors should remain excusable as of right, putting forward the following arguments in support:

- disruption to patient care; and
- cost, burden and inconvenience of arranging cover (by partner or by locum).

5.61 The British Dental Association did not raise any specific objections about the proposal that dentists and other occupations should no longer be excusable as of right, but suggested changes to the draft guidelines as detailed at paragraph 5.84 below. The Association noted the shortage of dentists in Northern Ireland and the fact that dentists are generally known to members of the community in which they work. It also highlighted the difficulties that could result from such a reform:

- delay in providing dental care to patients;
- cost and difficulty of arranging locum cover; and
- loss of income to the dental practice whilst expenses would continue to be incurred.

5.62 The Northern Ireland Orthodontic Group asked that dentists, orthodontists and their staff<sup>6</sup> remain excusable as of right, citing the following:

- the impossibility of arranging locum cover which would result in an interruption to patient care;
- the familiarity of orthodontists to the wider community; and
- for self-employed orthodontists, loss of income to the orthodontic practice whilst expenses would continue to be incurred.

5.63 Finally, the Royal College of Midwives considered that it was no longer appropriate for midwives to be excused solely on the basis of their profession, but requested that the "*critical shortage*" of midwives be taken into account when assessing requests for deferral or excusal.

#### The clergy

5.64 The Roman Catholic and the Methodist Churches considered that members of the clergy should remain excusable as of right. Their arguments included the potentially adverse effect on pastoral duties.

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<sup>6</sup> Under the current legislation, such staff are not excusable as of right, unless they qualify under another category.

5.65 Conversely, the Presbyterian Church was not opposed to the removal of excusal as of right, although it was concerned that jury service could hinder ministers' freedom to carry out pastoral duties, and that there could be tension between pastoral freedom and good citizenship. It urged that both be protected by whatever system is put in place.

### Teachers

5.66 The Management Side of the Teachers' Salaries and Conditions of Service Committee (Schools) accepted that teachers would no longer be excused as of right from jury service, but raised some concerns. The Council for Catholic Maintained Schools and the General Teaching Council said that teachers should retain their right to excusal. Comments made by the three organisations highlighted:

- the impact on continuity of education for pupils generally, especially during the examination lead-in period and also for special needs children, and those receiving a one-to-one tuition; and
- the financial burden that providing cover may place on schools' budgets.

5.67 The University of Ulster considered that academic staff should be included in the jury pool, noting that timetables could be varied provided that sufficient notice was given and that, where alternative arrangements could not be made, requests for deferral ought to be sympathetically assessed.

5.68 Other respondents to Question 14 also argued that certain public officials (including specifically the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints) should remain excusable as of right. The Alliance Party expressed concerns about the involvement of those providing necessary social services when there is no alternative provision.

**Question 15 - Are there any additional groups which you consider should be excusable from jury service as of right and why?**

- **17 respondents**
- **3 identified additional groups**
- **14 did not**

5.69 The vast majority of respondents was satisfied with the current list of occupations excusable as of right. There were, however, some suggestions of additional occupations that should be included in this category. These were:

- carers;
- emergency services personnel;
- elected representatives' staff; and
- dentists' and orthodontists' staff.

5.70 The NSPCC and the President of Appeal Tribunals, who supported the inclusion of all occupations currently excusable as of right in the jury pool, commented that applications for deferral or excusal made by social workers should be dealt with in the same way as those of other occupations currently excusable as of right, such as surgeons.

**Question 16 - Do you agree that persons aged between 65 and 70 should be eligible for jury service, subject to the discretionary arrangements for excusal/deferral? If not, please provide reasons.**

- **22 respondents**
- **21 agreed that persons aged between 65 and 70 should be eligible for jury service, subject to the discretionary arrangements for excusal or deferral**
- **1 did not**

5.71 Almost all the respondents agreed that persons aged between 65 and 70 should be eligible for jury service subject to discretionary deferral and excusal, in accordance with guidelines. Only one respondent disagreed but did not put forward reasons.

5.72 Comments made by respondents in support included:

- *“this is a very important group with a lifetime of experience which would benefit the jury pool”* (Larne Harbour Police);
- *“the draft guidelines on deferral and excusal offer sufficient safeguards to support such an inclusion”* (PSNI); and
- *“inclusion should be subject to assurance that such persons are in full control of their faculties”* (individual respondent).

**Question 17 - Do you consider that the upper age limit for serving as a juror should be extended?**

- **20 respondents**
- **9 considered that the upper age limit should be extended**
- **11 did not**

5.73 Responses to this question were fairly evenly divided, with only a small majority of respondents against the extension of the upper age limit of 70.

5.74 The Methodist Church argued that such an extension would constitute an undue burden for this age category. The PSNI considered that such an inclusion was likely to have a significant impact on issues surrounding the communication of evidence, facilities at court and transportation.

5.75 Conversely, several respondents, including the Probation Board, advocated an extension of the upper age limit beyond 70 or the complete removal of an upper age limit. They considered that the deferral and excusal policy should enable each potential juror’s ability to serve to be assessed on a case-by-case basis. For example, the University of Ulster noted the following:

- better health and greater longevity means that this category of people is more often than not physically and mentally fit;
- older people are often willing to undertake activities that benefit the community and society;
- considering the ageing population, it would be more representative of society to include this category in the jury pool.

5.76 The Equality Commission was amongst the respondents which wanted to see the upper age limit abolished. It considered that older age in itself should not be an impediment to serving on a jury, and that it should not prevent people from participating fully in society. The Commission's arguments centred on the growing proportion of older people in Northern Ireland, the social inclusion of older people, the removal of such limit in other jurisdictions, discrimination and older people's greater availability to attend for jury service. It further recommended that, should the upper age limit be removed, excusal should only be based on 'good cause' rather than an excusal as of right based on age.

**Question 18 - If a person is selected for jury service, what period should elapse before they are liable to be selected again?**

- **17 respondents**
- **Suggestions varied from 1 to 15 years**

5.77 There was no general consensus on the preferred length of the period. Rather a wide variety of suggestions was made. 10 years was the most popular suggestion and 7 years was the average.

5.78 Some of these suggestions were accompanied with comments such as:

- two years is not enough respite considering the constraints that some professionals might experience (Presbyterian Church); and
- the optimum lapse of time could be calculated on the basis of electoral data and the time actually spent serving on a jury (PSNI).

5.79 The Progressive Unionist Party commented that the lapse of time should be maximised, taking into account practicalities and how the proposed reforms might affect the size of the jury pool.

5.80 The Law Society, and an individual respondent, considered that the nature of the trial on which the juror had previously served should be taken into consideration.

**Question 19 - Do you have any views on the draft guidelines on discretionary deferral and excusal from jury service?**

- **26 respondents**
- **19 expressed views**
- **7 did not**

5.81 The comments made by respondents covered a wide range of issues, some of which are highlighted below.

5.82 Several respondents expressed satisfaction with the draft guidelines. The University of Ulster said that they were comprehensive, subject to sensitive consideration being given to full-time carers and persons with demonstrable hardship.

5.83 Paragraph 4 of the draft guidelines, which deals with the Juries Officer's discretion in assessing individual cases, generated comments. Some, including the PSNI, said that, on many occasions, deferral would be more relevant than excusal or ineligibility. One respondent, the NSPCC, suggested that the discretionary deferral and excusal criteria would need to be carefully constructed to ensure that they were not an administrative replication of the current legislative criteria for ineligibility and excusal as of right. The Probation Board said that "exceptional circumstances" should be further defined.

5.84 Organisations representing healthcare professionals requested that the guidelines clearly define the grounds on which Juries Officers would assess the merits of applications for excusal. The British Dental Association suggested that the draft guidelines be amended to provide for excusal on the grounds that jury service would:

- adversely affect service provision to the public, particularly in respect of public health and well being; or
- create a negative impact for a local community; or
- create an undue delay in a public service which the public could reasonably expect to receive.

- 5.85 The section relating to religious beliefs (paragraph 6 of the draft guidelines) was also mentioned by several respondents. Whilst the Presbyterian Church asked that the guidelines be clear and rigorous (to take account of ministers' concerns in respect of their freedom to act pastorally), the representative of Christians generally known as Exclusive Brethren asked that paragraph 6 be retained as is. The Probation Board, asked that "religious societies and orders" be further defined to include a personal conviction, where an individual is not a member of a religious society or order.
- 5.86 An individual respondent considered that paragraph 10, which provides that shift workers should be deferred to a period where they do not have to attend on a rest day, was not realistic.
- 5.87 The Law Society did not consider that paragraph 17 of the draft guidelines, which provides that a prosecutor should be excused when all the trials listed in a court are prosecuted by the prosecutor's employer, was sufficient to ensure the efficient operation of juries.
- 5.88 The Nautical Institute highlighted the importance of taking account of the working practices of the armed forces, masters of vessels and duly licensed pilots.
- 5.89 The Royal National Institute of Blind People considered that the principle set out at paragraph 20 of the draft guidelines, which provides that requests for excusal on the grounds of a physical disability should be treated "sympathetically", implies too readily an assumption that a disability is an impairment to the fundamental role of a juror. It considered that a juror's role *"is to sift, analyse, discuss and reach decisions and none of these functions relate to sight"*.

**Question 20 - Do the draft guidelines adequately balance the needs of those summoned with the need to have sufficient numbers of jurors available?**

- **14 respondents**
- **All considered that the draft guidelines adequately balance the needs of those summoned with the need to have sufficient jurors**

5.90 Respondents unanimously agreed that the draft guidelines adequately balance the needs of those summoned with the need to have sufficient numbers of jurors available.

5.91 In addition, the Law Society asked that a review be conducted to identify other groups for whom being summoned as a juror may cause severe hardship.

**Question 21 - Can you identify any additional relevant evidence or information which the Department should have considered in assessing the equality impacts of these proposals?**

- **10 respondents**
- **2 identified additional relevant evidence or information**
- **8 did not**

5.92 The vast majority of respondents did not identify any additional evidence or information which should have been considered in assessing the equality impacts of these proposals.

5.93 Two respondents, however, made comments in relation to evidence and information:

- the Equality Commission considered that the assessment of the potential impact on age lacked supporting data; and
- Queen's University felt that there was limited evidence that the opinion of private sector employers had been sought.

**Question 22 - Can you identify any other potential adverse impacts, with supporting evidence, which might occur as a result of these proposals being implemented?**

- **11 respondents**
- **1 identified other potential adverse impacts**
- **10 did not**

5.94 The vast majority of respondents did not identify any additional potential adverse impacts. The Equality Commission, however, expressed concern at the potential adverse impacts that the retention of an upper age limit might have.

**Question 23 - Do you agree that the needs of the section 75 categories of people have been fully considered in this equality screening exercise? If not, please provide details and supporting evidence.**

- **12 respondents**
- **8 agreed that the needs of the section 75 categories of people had been fully considered**
- **4 did not**

5.95 The majority of respondents agreed that the needs of the section 75 categories of people had been fully considered. Some of the comments made by those who did not agree are noted below.

5.96 The Equality Commission considered that older age in itself should not be an impediment to serving on a jury and advocated the removal of the upper age limit and advised that a full equality impact assessment was required to address the age issue.

5.97 The NSPCC considered that the issue of gender balance was an area of further reform which the Northern Ireland Court Service should consider.

5.98 Queen's University considered that the section 75 categories of persons had been considered, but could not comment on whether the needs of people within these categories had been fully considered.

5.99 Finally, Disability Action recommended that the Northern Ireland Court Service identify negative differential impacts on people with sensory, hidden and learning disabilities in a full equality impact assessment.

**Question 24 - Have you any comments on the impact assessment which has been prepared for these proposals?**

- **11 respondents**
- **3 commented on the impact assessment**
- **8 did not**

5.100 The majority of respondents, who answered this question, did not have any comments relating to the impact assessment. Larne Harbour Police, however, considered that it was very comprehensive, whilst two respondents (the British Medical Association and the Department of Health, Social Services and Public Safety) commented on the cost implications relating to the proposed inclusion of the medical profession.

5.101 The British Medical Association considered that the estimates used in the impact assessment in relation to doctors' salaries did not reflect the wide range of salaries available to hospital doctors and did not take account of general practitioners' salaries. It further argued that the figures used did not reflect the actual costs which would be incurred by the Health Service should doctors not be excused from jury service.

5.102 The Department of Health, Social Services and Public Safety highlighted the cost implications of having to increase spending on locum doctors and on agency nurses and midwives.

## **Annex A**

### **Criteria for public consultation**

#### **Criterion 1 - When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

#### **Criterion 2 - Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

#### **Criterion 3 - Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

#### **Criterion 4 - Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

#### **Criterion 5 - The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

#### **Criterion 6 - Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

#### **Criterion 7 - Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

## **Annex B**

### **List of respondents**

The Northern Ireland Court Service was grateful to receive responses from the following organisations and individuals. Respondents are listed by category.

#### **Administration of justice**

Chair of the Criminal Injuries Compensation Appeals Panel for Northern Ireland

The Director of Public Prosecutions for Northern Ireland

Forensic Science Northern Ireland

Larne Harbour Police

The Law Society of Northern Ireland

The Lord Chief Justice of Northern Ireland

Oliver Loughran

John Mackin

William R. McCurdy

Richard Monteith

Northern Ireland Office

Northern Ireland Prison Service

Eric Thompson JP

Peter M Thompson

Police Service of Northern Ireland

President of Appeal Tribunals, Northern Ireland

President of the Industrial Tribunals and the Fair Employment Tribunal for Northern Ireland

Probation Board for Northern Ireland

Serious Organised Crime Agency

Superintendents' Association of Northern Ireland

Youth Justice Agency

## **Politicians**

Alliance Party  
Democratic Unionist Party  
Green Party  
Ian McCrea MLA  
Progressive Unionist Party  
Sinn Féin  
Social Democratic and Labour Party

## **Public officials**

The Chief Electoral Officer for Northern Ireland

## **Churches**

Christians generally known as Exclusive Brethren  
Exclusive Brethren Church  
The Methodist Church in Ireland  
Presbyterian Church of Ireland  
Roman Catholic Church

## **Education**

Council for Catholic Maintained Schools  
Council for the Curriculum, Examinations and Assessment  
General Teaching Council for Northern Ireland  
Queen's University Belfast  
Teachers' Salaries and Conditions of Service Committee (Schools) -  
Management Side  
University of Ulster

## **Health**

British Dental Association  
British Medical Association  
Department of Health, Social Services and Public Safety  
Northern Ireland Orthodontic Group  
Royal College of General Practitioners

Royal College of Midwives  
Southern Health and Social Care Trust

### **Other professions**

British Veterinary Nursing Association  
Commissioners of Irish Lights  
Nautical Institute

### **Equality**

Action Mental Health  
Disability Action  
Equality Commission for Northern Ireland  
Royal National Institute of Blind People

### **Others – organisations**

Ards Borough Council  
Commission for Victims and Survivors  
Down District Council  
D5 Consulting  
North Down Borough Council  
NSPCC  
Omagh District Council

### **Others – individuals**

Denise Turner  
W. J. Whitley

## **Annex C**

### **List of meetings**

All consultees were offered the opportunity to meet with officials to discuss the proposals. Meetings were held with the following:

#### **Administration of justice**

The Law Society of Northern Ireland  
Northern Ireland Office  
Northern Ireland Prison Service  
Police Service of Northern Ireland

#### **Politicians**

Lady Sylvia Hermon MP

#### **Churches**

Roman Catholic Church

#### **Education**

Council for the Curriculum, Examinations and Assessment  
Teachers' Salaries and Conditions of Service Committee (Schools) -  
Management Side  
University of Ulster

#### **Health**

British Dental Association  
British Medical Association  
Department of Health, Social Services and Public Safety





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