

THE UPPER AGE LIMIT FOR JURY SERVICE OBSERVATIONS OF THE CRIMINAL SUB COMMITTEE OF THE COUNCIL OF HM CIRCUIT JUDGES

- 1 We represent the Circuit Bench in England and Wales. The Judges sitting in the Crown Court deal with the majority of work passing through that Court where contested matters are almost invariably tried by juries. We have a body of experience with juries and with jurors in practical situations in the Court setting. Circuit Judges sitting in the Crown Court are used to working with jurors and have an understanding of their requirements and needs.
- 2 There have been successful attempts to engage a greater proportion of the community in the important constitutional duty of jury service in recent years. Larger groups in the community are now regarded as eligible and the reasons for excusal have been reviewed. Excusal is no longer to be expected by those who were disengaged in the past and even where there is an excuse deferral is now the norm. This has resulted in a far larger pool of potential jurors drawn from greater ranges within the community. Section 1 of the Juries Act 1974¹ is inclusive in the sense that only those suffering from a mental disorder² and those who are on bail or who have been convicted and sentenced³ are exempt. There are only two restrictions upon eligibility. A juror must be registered to vote. A juror must be aged between 18 and 70 years. Although this paper does not raise the issue there are currently many who are eligible but are not registered to vote and are not called for jury service. This, in itself, may require consideration if it is felt that the current pool is insufficiently large or there are some excluded from the process.
- 3 There are two points of a general nature that should be made. First we do not consider that the current eligibility provisions restrict the available numbers to the point where there are insufficient numbers in the pool. A consideration of the available figures demonstrates that there are 46,000,000 eligible and registered to vote. It is accepted, of course, that some will be disqualified, some will be overseas and there will be a number over 70 but even allowing for those variables in excess of 30,000,000 are likely to be in the available pool. We believe that currently 446,703 jury summonses are issued each year and 319,073 jurors are actually required to attend. The size of the pool and the numbers required clearly indicate that the pool is more than adequate. There is no evidence

¹ As amended by section 321 and Schedule 33 of the Criminal Justice Act 2003

² As defined in Schedule 1 Part 1

³ As defined in Schedule 1 Part 2 which provides for both indefinite and limited periods of disqualification

of a shortage of jurors. Indeed the reverse is the case with initiatives on jury utilisation reducing the numbers of jurors called to serve at many Court centres. In our view, therefore, there is no necessity at this time to enlarge the pool.

- 4 We appreciate that there are some who might suggest that increasing the upper age limit for compulsory eligibility will increase the numbers who are not seeking financial recompense for jury service. Increasing well beyond the normal retirement age might be thought to be a means of reducing costs on the basis that no compensation for loss of earnings need be paid to those who are retired and thus not in receipt of earnings. Leaving aside the fact that such an argument would not be an acceptable basis for such a fundamental change it takes no account of the fact that many older people are more susceptible to illness and disability than those who are younger. We have not attempted to reflect that in any estimated statistics since we believe that such an attempt would be little better than guesswork. It is clear, however, that the risks of non availability or unintended disruption to proceedings would increase. That would carry with it an increased risk of greater cost in the long run. It may be that any potential savings would turn out to be illusory.

- 5 There is then the question of existing retirement ages for those involved in the judicial process. Currently magistrates are subject to compulsory retirement at the age of 70. Tribunal members are required to step down at 70. Judicial Tribunal members serve until the age of 70 although there is discretionary power to extend on an annual basis until 75 if it is in the public interest to do so. Judges retire at 70⁴ although there is discretionary power to extend on an annual basis until 75 if there is a business case for extension. The reality is that in recent times such extensions are being substantially curtailed. The exception to what is effectively a judicial retirement age of 70 is the Parole Board whose members serve for periods of 3 years but are not subject to an upper age limit. It will be clear that an increase in the upper age limit for jurors might create problems. First the public might be concerned that those considered to have reached compulsory retirement from judicial service remain performing a similar service. Second there is the position of those who have retired after reaching the compulsory retirement age. The most obvious comparison is with magistrates who are the “jurors” in the Magistrates Courts. Are they to be compulsorily retired from that function but then required to perform a very similar function on jury service? It may be thought that would result in an almost unanswerable case for an increase in the upper age limits for magistrates. Of course it would not end there. There would also be the Tribunal members and the judiciary. Over the years the upper age limit for the judiciary has been reduced first to 75, then to 72 and now to 70 with the opportunities to sit beyond, either full time or part time, being reduced. Is that to be reversed? If not how can compulsory retirement at 70 be justified in the light of any requirement to sit in a judicial capacity as a juror beyond that age? These difficult

⁴ For those appointed prior to 1995 the age is 72 but the numbers are dwindling.

questions do not appear to have been addressed and would have to be answered.

- 6 Having made those points of general principle we emphasise that we understand that the community is growing older. Improvements in lifestyle and medicine result in many enjoying a longer and more active life than their forebears. Many play an active and very useful part in community activities. Many continue to work beyond pensionable age as a matter of choice. The fact that so many older people engage in this way has to be recognised and applauded. There is no doubt that there are many who wish to play a full and active part. That may include the discharge of civic functions such as jury service. We recognise, however, that there are many who do not enjoy the best of health for whom jury service after the age of 70 would be a substantial burden. Problems with mobility, hearing and eyesight together with difficulties in travel all increase with age. Many would feel concerned about the effects of these problems if jury service was required. There are also many who would feel that, having reached pensionable age, retired and then been subject to eligibility for a further 5 years, they had discharged their obligations to civic duties over the years. There is, in our view, a need to respect the positions of those categories.
- 7 There can be no doubt that increased numbers of jurors who do not enjoy the best of health would risk substantial disruption to proceedings. There would, inevitably, be an increase in “days lost” as a result of illness or incapacity. Proceedings might be hampered by poor hearing, poor vision or physical disability. The costs that might be incurred by disruption have to be taken into account. We do not have the facilities to conduct a “cost benefit analysis” but common sense dictates that older people are susceptible to more health problems than their younger counterparts. We have seen some suggested projections which appear to indicate that there is a “modest” risk of disruption as regards the effects of advancing age. We would not disagree with that as a broad statement although we would caution against the production of what might turn out to be meaningless statistics to identify what “modest” might mean in more precise terms. The costs of disruption are likely to exceed any cost benefit by utilising greater numbers of jurors who are not seeking recovery of lost earnings unless the numbers are unreasonably⁵ skewed.
- 8 We have noted that it has been suggested that if there was the opportunity for older jurors to “opt out” some 50% of those asked to serve might do so. We agree that may represent a reasonable assumption and it rather underlines the points we have made above. A figure of 50% feeling that they are not up to service or that they have reached an age where they have already contributed to civic obligations is significant and cannot be ignored.
- 9 It has to be recognised, of course, that the higher the age limit the greater the potential problems and the risks of disruption. We believe that it is

⁵ and perhaps unlawfully if the ballot is not truly random

unrealistic to consider increasing eligibility beyond the age of 80. There will be some who feel able and willing. We have nothing but admiration for those but the numbers will be small.

- 10 We consider that there is a balance to be drawn reflecting the interests of the community as a whole, the desires of those who are ready and able to serve on juries and wish to do so and the views those who do not feel able or willing as a result of their advancing years..
- 11 We believe that there is a sufficiently large pool of available jurors at present and no need to increase that further. There are also potentially adverse consequences in maintaining the existing retirement age of 70 for the vast majority of existing judicial office holders. Finally we consider that there would be increased risks of disruption arising from age related problems. If, despite, our firm conclusion that there is no compelling case to alter the status quo, further consideration is given to increasing the age beyond 70 we are firmly of the view that those who have attained the age of 70 and do not wish to serve as jurors should be entitled to decline the offer

HH Judge David Swift
Chairman
Criminal Sub Committee
Council of HM Circuit Judges
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