

LAW SOCIETY SUBMISSION



SUBMISSION TO THE JUSTICE SECTOR WORKING GROUP ON JURY SERVICE

DEPARTMENT OF JUSTICE AND EQUALITY

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ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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Introduction

The Law Society of Ireland welcomes the opportunity to make a submission to the Department of Justice and Equality's Justice Sector Working Group on Jury Service ('the Working Group') and, in so doing, help shape the future of jury service in Ireland.

This submission is based on the views of members of the Law Society's Criminal Law Committee. The Criminal Law Committee is comprised of solicitors who have extensive experience and expertise in the practice of criminal law and a comprehensive understanding of the manner in which the Irish criminal justice system operates.

The Working Group is examining the issues raised in the Law Reform Commission's [2013 Report on Jury Service](#) (the '2013 Report') and relevant academic and policy developments since the publication of the Law Reform Commission's Report. In due course, the Working Group will produce a Report and draft General Scheme of a Juries Service Bill which may lead to a radical overhaul of the current jury system.

The Society wishes to commend the approach adopted by the Working Group of consulting with relevant academic, legal and policy experts with an interest in the area to inform the development of legislative proposals. The objective of the approach is to take account of intervening developments and new challenges which now face jury selection, participation and management. In due course, the Law Society would welcome the opportunity to contribute its observations on the Working Group's Report and Heads of Bill.

Framework: Selection for Jury Service - Seven Key Themes

The Working Groups' Terms of Reference set its objective as being to examine "how people are selected for jury service and related matters" with a focus on the following seven key themes. The Society makes its recommendations in line with these themes.

1. Representativeness of Juries
2. Excusals as of right
3. Persons with disabilities/capacity issues
4. On-line activity
5. Inspection of jury panel lists
6. Lengthy/complex trials
7. Remuneration of jurors

Key Society Recommendations and Observations

The Society's recommendations are confined to the specific areas of the Law Reform Commission's Report which are currently being examined by the Working Group and are made within the framework of the Working Group's Terms of Reference as follows:

1. The register of electors likely still remains the only source from which jury panels can currently be drawn
2. Expand the list of qualified and liable persons to serve on juries as recommended by the law reform commission
3. Reform excusals as of right to ensure jury pools are representative of the community
4. Implement the law reform commission's recommendations on physical capacity and enact section 1 of the disability (miscellaneous provisions) bill 2016 which amends section 7 of the juries act 1976
5. Implement the law reform commission's recommendations on mental health capacity and enact section 1 of the disability (miscellaneous provisions) bill 2016 which amends the first schedule of the juries act 1976
6. Implement the law reform commission's recommendations on reading and language capacity
7. Implement the law reform commission's recommendations on independent investigations and internet searches by jurors
8. Examine the benefits of a statutory requirement on jurors to surrender of electronic communication devices for some trials
9. Implement the law reform commission's recommendations to reduce the risk the right to inspect jury panel lists poses to jury intimidation/tampering
10. Implement the law reform commission's recommendations on the remuneration of jurors

A. REPRESENTATIVENESS OF JURIES

1. **Law Society observation:** The register of electors likely still remains the only source from which jury panels can currently be drawn
 - 1.1. The Working Group is examining the issue of whether existing law and processes for jury selection involves selection of juries from panels that are representative of the community, i.e. are limited to Irish citizens and exclude long term residents including EU citizens. Current law qualifies every Irish citizen aged 18 years or upwards who is registered in the register of Dáil Éireann electors for jury service (paragraph 2.02). Significant increases in the number of non-Irish citizens living in Ireland raise the questions of whether the current jury selection pool remains representative of Irish society (paragraph 2.04). Accordingly, the use of the electoral register as a database from which to select jurors does not adequately ensure a demographically representative the jury pool.
 - 1.2. As identified in the 2013 Report, the Public Services Card could, in time, provide a viable alternative to the electoral register as a possible jury source list. It could certainly provide a greater and more representative pool of prospective jurors (paragraph 2.16, 213 Report.) However, since the publication of the 2013 Report, privacy and data protection concerns have been raised about any potential broader use of a Public Services Card. Pending the potential more wide-spread implementation of a Public Services Card and/or the establishment of the Electoral Commission, the Law Reform Commission's recommendation that the register of electors continue as the source from which jury panels are drawn remains the only current practical option.
2. **Law Society observation:** Expand the list of qualified and liable persons to serve on juries as recommended by the Law Reform Commission.
 - 2.1. The Law Reform Commission concludes, at paragraph 2.58:

... just over 3 million Irish citizens over the age of 18 are eligible to vote in general elections and are, therefore, qualified for jury service under the Juries Act 1976. The Commission also notes that over 112,000 UK citizens live in the State and are eligible to vote in general elections under the Electoral Acts but are not qualified to serve on juries. By contrast, Irish citizens are eligible to vote in general elections in the UK, and are qualified to serve on juries there, including in Northern Ireland. The Commission also notes that a further 100,000 adults, EU citizens and non-EU residents, are registered on the local election register. Taking account of these indicative numbers, the Commission notes that, if these adults were eligible for jury service, in the region of 200,000 additional persons, representing much of the non-Irish citizen population changes since 2002, would be available for jury service.
 - 2.2. Accordingly, the Society supports the extension of the jury pool as recommended by the Law Reform Commission:

... in addition to the current position under which Irish citizens who are registered to vote as Dáil electors in a jury district are qualified and liable to serve on juries, the following persons should also be qualified and liable to serve: every citizen of the United Kingdom aged 18 years or upwards who is entered in a register of Dáil electors in a jury district; and every other person aged 18 years and upwards who is entered in a register of local government electors in a jury district. [paragraph 2.65]

... a non-Irish citizen referred to in paragraph 2.65 must, in order to be eligible for jury service, be ordinarily resident in the State for 5 years prior to being summoned for jury service. [paragraph 2.65]

B. EXCUSALS AS OF RIGHT

3. **Law Society observation:** Reform excusals as of right to ensure jury pools are representative of the community.
 - 3.1. The Working Group is considering the current law which allows a wide group of persons, such as doctors, nurses, teachers and public servants, to be excused “as of right” from jury service in Ireland. The current position is that very few professionals actually serve on juries and this is difficult to reconcile with the fundamental principle that the jury pool be broadly representative of the community and that jury selection should, in general, be random in nature.
 - 3.2. The Society notes that submissions to the Law Reform Commission’s Consultation process indicated general agreement about the need to restrict excusals as of right from jury service (paragraphs 5.51 and 5.57).
 - 3.3. Consequently, the Law Society fully supports the following reforms proposed by the Law Reform Commission:

... 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, should be repealed and replaced with a general right of excusal for good cause, and that evidence should be required to support applications for excusal. [paragraph 5.56]

... the Courts Service should prepare and publish guiding principles to assist county registrars in determining whether to grant or refuse the application for excusal for good cause. [paragraph 5.57]
- 3.1. The Society notes the importance of ensuring that the decision to exempt a person for a specific reason is retained by the respective county registrar or judge.

C. PERSONS WITH DISABILITIES/CAPACITY ISSUES

4. **Law Society observation:** Implement the Law Reform Commission's Recommendations on physical capacity and enact section 1 of the Disability (Miscellaneous Provisions) Bill 2016 which amends section 7 of the Juries Act 1976.
 - 4.1. Another aspect of the Working Group's deliberations will be whether persons with issues around physical or mental capacity, who, with reasonable support and accommodation, would have the capacity to act as a juror, are not receiving such accommodation.
 - 4.2. The Law Society commends the extensive consultation and research undertaken by the Law Reform Commission in Chapter 4 of their 2013 Report and encourages the implementation of the Commission's reform recommendations.
 - 4.3. The Society also commends the Courts Service's continued commitment and effort to achieving its obligations under the Disability Act 2005 (achieving "Ability Company" status in the "Environmental Accessibility" category of the Ability Awards 2010) (paragraphs 4.06 and 4.07). The Courts Services, through continued investment in new and existing court buildings, enable persons with physical disabilities to access our court houses around the country. These investments and supports also facilitate the participation of people with physical disabilities on juries. The Criminal Courts of Justice complex provides universal access for persons with mobility difficulties entering the courthouse as well as the jury box specifically and these facilities are being implemented across the country in other courts on a phased basis (paragraph 4.29).
 - 4.4. The following research and reform recommendations proposed by the Law Reform Commission are supported by the Law Society:

... the current provisions of the Juries 1976, which provide that persons are ineligible to serve as jurors if they have an enduring impairment such that it is not practicable for them to perform the duties of a juror, should be replaced with a provision to the effect that a person is eligible for jury service unless the person's physical capacity, taking account of the provision of such reasonably practicable supports and accommodation that are consistent with the right to a trial in due course of law, is such that he or she could not perform the duties of a juror. [paragraph 4.41]

... the application of this provision should not involve an individual assessment of capacity. The Commission also recommends that the provision should be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts as to their physical capacity to carry out the functions of a juror to identify themselves. In making this decision, the judge should apply the presumption of capacity as well as the requirement of juror competence that forms part of the right to a trial in due course of law. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises. The Commission also

recommends that if there is a conflict between the 134 accommodation of a prospective juror in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities and the right to a fair trial, the fairness of a trial must be given priority. The Commission recommends that where the judge considers that, even with reasonable and practicable accommodation, a juror will not be capable of carrying out their duties as a juror, the judge should excuse the prospective juror as ineligible to serve. The Commission also recommends that a physical disability that may require accommodation or support may constitute “good cause” for the purposes of an application for “excusal for cause.” [paragraph 4.42]

... the Disability Act 2005 should include express recognition for the provision of physical accessibility, such as wheelchair ramps and other reasonable accommodation such as induction loops, that make participation by persons with disabilities in a jury practicable and achievable. [paragraph 4.43]

... it would be appropriate that, as to physical disability, the research on jury service recommended in paragraph 11.18 of this Report should include research into permissible and practicable supports and accommodation for this purpose, based on international best practice and experience. The Commission also recommends that, in the specific context of potential jurors with hearing or sight difficulties, a dedicated research project should be developed that takes full account of the ongoing development of best practice codes of conduct and standards for Irish sign language interpreters and CART operators, and that also has regard, where relevant, to the potential that the presence of a 13th person (or more) in the jury room may have an impact on the fairness of a trial. This research project would take into account developing codes, standards and practical experience from other jurisdictions, and would then determine whether it would be feasible to apply these in the context of the jury system in Ireland. [paragraph 4.44]

- 4.5. [Section 3\(1\) of the Irish Sign Language Act 2017](#) recognises the right of Irish Sign Language users to use Irish Sign Language as their native language and the corresponding duty on all public bodies to provide Irish Sign Language users with free interpretation when availing of or seeking to access statutory entitlements and services. This provides a right to appear before a court to be heard and to understand legal proceedings, to be able to participate in legal proceedings before a court. A natural extension of this right would be to be facilitated to be a juror. The Society recommends the commencement of section 3 without delay.
- 4.6. [The Disability \(Miscellaneous Provisions\) Bill 2016](#) (the ‘2016 Bill’) recently passed Committee Stage in the Oireachtas. Section 1 provides for amendment of the Juries Act 1976 so that a person who is deaf shall not be ineligible for jury service by reason only of his or her requiring the services of a sign language interpreter. The Society welcomes the provision which will ensure that no deaf person will be ineligible to serve on a jury because they will need an Irish sign language interpreter and, accordingly, recommends the enactment of the 2016 Bill.

5. **Law Society observation:** Implement the Law Reform Commission's Recommendations on Mental Health Capacity and enact section 1 of the Disability (Miscellaneous Provisions) Bill 2016 which amends the First Schedule of the Juries Act 1976.

5.1. The Commission's Consultation Paper emphasised the importance of juror competence in ensuring the right to a fair trial for the accused and, therefore, recommended that persons with an intellectual incapacity should continue to be ineligible for jury service. In regard to impaired mental health, the Commission's Consultation Paper recommended that people should not be excluded automatically from jury service, but instead that persons believing themselves to be incapacitated should apply for an excusal (paragraph 4.51).

5.2. Following research and consultation, the Commission emphasised the importance of differentiating clearly between, on the one hand, ill-health and, on the other hand, decision-making capacity and recommended:

...the test for ineligibility in the Juries Act 1976 should be reformulated to provide that a person is eligible for jury service unless, arising from the person's ill health, he or she is resident in a hospital or other similar health care facility or is otherwise (with permissible and practicable assisted decision-making supports and accommodation that are consistent with the right to a trial in due course of law) unable to perform the duties of a juror. The Commission recommends that, as to decision-making capacity, the test for ineligibility in the Juries Act 1976 should be reformulated to provide that a person is eligible for jury service unless his or her decision making capacity, with permissible and practicable assisted decision-making supports and accommodation that are consistent with the right to a trial in due course of law, would be such that he or she could not perform the duties of a juror. (paragraph 4.59)

5.3. Section 1 of the Disability (Miscellaneous Provisions) Bill 2016 proposes the replacement of an existing prohibition on a person who has a mental illness or disability, and is receiving medical treatment or is resident in a hospital or similar institution, from serving as a juror with a functional capacity test which will provide that a person must have the mental and intellectual capacity to serve as a juror.

5.4. This amendment broadly replicates the Law Reform Commission's recommendation at paragraph 4.59 and the Law Society supports its enactment.

5.5. In tandem with the enactment of section 1 of the 2016 Bill the Law Society recommends the implementation of the Commission's recommendations at paragraph 4.60:

... the application of this provision should not involve an individual assessment of capacity. The Commission also recommends that the provision should be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts, arising from their ill health or decision-making capacity, about being able to carry out the functions of a juror to identify themselves. In making this decision, the judge should apply the presumption of capacity as well as the

requirement of juror competence that forms part of the right to a trial in due course of law. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises. The Commission also recommends that if there is a conflict between the accommodation of a prospective juror in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities and the right to a fair trial, the fairness of a trial must be given priority. The Commission recommends that where the judge considers that, even with reasonable and practicable accommodation, a juror will not be capable of carrying out their duties as a juror arising from ill health or decision-making capacity, the judge should excuse the prospective juror as ineligible to serve. The Commission also recommends that ill health or decision-making capacity that may require accommodation or support may constitute “good cause” for the purposes of an application for “excusal for cause.”

5.6. It is difficult to measure the adequacy of supports for those with issues relating to mental capacity, as potential jurors would tend to outline their respective concerns with judges in private. It is therefore difficult to determine the frequency of need or adequacy of any potential supports. Consequently, the Society endorses the Law Reform Commission’s call for research into permissible and practicable supports and accommodation in connection with health and decision-making capacity at paragraph 4.61.

6. **Law Society observation:** Implement the Law Reform Commission’s Recommendations on reading and language capacity.

6.1. The Society supports the Law Reform Commission’s recommendations about reading and language capacity:

... in order to be eligible to serve, a juror should be able to read, write, speak and understand English to the extent that it is practicable for him or her to carry out the functions of a juror. The Commission also recommends that this should not involve an individual assessment of capacity but that it should continue to be a matter that is considered by court officials, judges and practitioners using their knowledge and experience to discern indications of capacity or otherwise on a case-by-case basis. The Commission also recommends that these arrangements be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts as to their capacity to identify themselves. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises. (paragraph 4.88)

... as to reasonable accommodation in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities concerning reading and linguistic understanding, any such arrangements must ensure that the trial process retains the fundamental attributes of a trial in due course of law. The Commission also recommends that it would be appropriate that the research on jury service recommended in paragraph 11.18 of this Report should include research into

permissible and practicable supports and accommodation for this purpose, based on international best practice and experience. (paragraph 4.89)

D. ON-LINE ACTIVITY

7. **Law Society observation:** Implement the Law Reform Commission's Recommendations on independent investigations and internet searches by jurors.
- 7.1. The Terms of Reference for the Working Group request examination of the impact of online activity and, in particular, the extent to which the availability of wireless technology might allow jurors in the jury room to search online for information about an accused rather than limit their decision to the evidence presented.
- 7.2. Chapter 8 of the Commission's Report examines the challenge of jurors engaging in independent investigations, such as searching for information on the internet about the case or visiting a crime scene alone. The adequacy of the juror's oath to arrive at a verdict "according to the evidence" is also examined.
- 7.3. Participants in the Law Reform Commission's Consultation Process which took place prior to the publication of the Report agreed that the risk of extraneous investigations in the internet and social media age was in need of specific reform (paragraph 8.25). While juror misconduct may be relatively rare, the consultation process reaffirmed the importance, which had been identified by the Commission, of introducing suitable measures to ensure public confidence in the deliberations of juries (paragraph 8.26). The Law Reform Commission's research had indicated a number of cases involving juror misconduct in New South Wales which had led to the introduction of an offence to prohibit jurors from making inquiries about the accused or disclosing the jury's deliberations (paragraph 8.21 and 8.22).
- 7.4. Since the publication of the Report in 2013, a number of trials have collapsed because of allegations that jurors brought outside information to bear on their deliberations. [Dr Mark Coen writing in the Irish Times on 4 May 2017](#) reported on three trials which collapsed because of internet research by jurors and noted:

The internet is perceived as posing a unique threat to the integrity of trial by jury, however. This is because of the ease with which it can be searched, its potentially indefinite storage of information and its ubiquity in most people's lives. The natural inclination to research everything online collides dramatically with the legal imperative that jurors may only act on information that is provided to them in court.

- 7.5. While it is difficult to measure the effectiveness of a trial judge's warning to juries in addressing potential juror misconduct and the corresponding need for reform, the Law Society is conscious of the fundamental nature of the right to a fair trial and trial in due course of law protections which necessitate jurors to reach their verdict solely on the evidence presented in the course of the trial. Accordingly, the Society supports the following evidence-based reform recommendations proposed by the Law Reform Commission:

... the judge's direction to a jury should inform jurors clearly of the type of conduct that is inconsistent with the juror oath to arrive at a verdict "according to the evidence"; that specific mention ought to be made of the use of phone or internet sources to either seek or disseminate information about the case in which they are involved; that the judge should state that jurors should not expect that misconduct is likely to happen, but that they should also be informed clearly as to how to go about reporting misbehaviour if it occurs, in particular to avoid the situation in which this is reported after the verdict. [paragraph 8.28]

...possible juror misconduct should also be addressed by providing for two specific offences. The first should be 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. The second offence should 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 function 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. These offences would be without prejudice to other offences involving the administration of justice, notably contempt of court and perverting the course of justice, and without prejudice to the recommendation in paragraph 11.18 of this Report concerning jury research. [paragraph 8.29]

8. **Law Society observation:** Examine the benefits of a statutory requirement on jurors to surrender of electronic communication devices for some trials
- 8.1. In England and Wales, section 69 of the Criminal Justice and Courts Act 2015 inserts a new section 15A into the Juries Act 1974 which gives judges the discretionary power to order jurors to surrender their electronic communications devices for a period of time while on jury service. It is a contempt of court to fail to surrender their devices in accordance with a direction to do so. Section 70 inserts a new section 54A into the Courts Act 2003 and gives a court security officer the power to search a juror (if ordered to do so by a judge) and seize such a device.
- 8.2. The Law Society recommends the examination by the Working Group of the potential benefits of introducing a similar provision in Ireland to empower the judiciary to require electronic devices be surrendered for some trials.

E. INSPECTION OF JURY PANEL LISTS

9. **Law Society observation:** Implement the Law Reform Commission's Recommendations to reduce the risk the right to inspect jury panel lists poses to jury intimidation/tampering.
- 9.1. The Working Group is exploring whether the general right to inspect jury panel lists runs the risk that jury members are open to intimidation or jury tampering.
- 9.2. Section 16(1) of the Juries Act 1976 confers a right on every person to reasonable facilitates to inspect a panel of summoned jurors and provides a party to criminal or civil proceedings to be tried by jury to a copy free of charge. Access includes alterations and excusals and access to summoned jurors and not exclusively those jurors actually selected (paragraph 7.29). In 2003, the then Director of Public Prosecutions recommended reform of section 16 to provide jurors with greater anonymity given that, in effect, section 16 provides access to the names and addresses of potential jurors which may indirectly facilitate jury tampering (paragraph 7.30).
- 9.3. The Commission's Consultation process indicated general agreement that some elements of anonymity could be introduced to protect jurors from intimidation. The following recommendations were proposed by the Commission.

... in order to ensure that the accused may exercise a right to challenge effectively while at the same time protecting as far as practicable the security and privacy of jurors, access to jury lists should be possible only by the parties' legal advisers (or the parties if they are not legally represented) and only for a period of four days prior to the trial in which the parties have an interest. The Commission also recommends that access to the jury list should not be permitted once the jury has been sworn, except for some exceptional reason and only with the sanction of the court on application; and that, where a party is legally represented he or she may be provided with the information in the jury list but not a copy of the list. [paragraph 7.51]

... in order to protect juror privacy and assist in preventing potential intimidation, the daily roll call of the jury after empanelment should be abolished. [paragraph 7.52]

... the juries legislation should expressly provide that prospective jurors be required to bring a valid form of personal identification when attending for jury selection, and that this should take the same form as the prescribed personal identification required under section 111 of the Electoral Act 1992. The Commission also recommends that the failure to produce suitable identification should not, in itself, prevent a juror from serving and in such a case the juror should be required to confirm their identity by oath or affirmation. The Commission also recommends that the form or notice accompanying the jury summons (as currently required by section 12 of the Juries Act 1976) should include a statement referring to the benefits of bringing such personal identification, including that the person may positively identify themselves in court and that this may limit the extent to which the person's name is called out in public. [paragraph 7.53]

- 9.4. The Law Society supports the proposed reforms. The recommendation of limiting the inspection time afforded to legal advisors (and presumably An Garda Síochána) in considering the panel list to four days prior to jury selection balances the right to challenge, and the right to a fair trial, with the need to avoid any risk of jury tampering. The abolition of the daily roll call of the jury after empanelment, or the introduction of a provision that it is done other than in public, is a helpful suggestion to protect juror privacy and assist in preventing potential intimidation.
- 9.5. Solicitors are bound by ethical and professional obligations and are also officers of the court and, accordingly, jurors are conferred with this considerable protection when a solicitor accesses jury lists both before and after empanelment. Therefore, the Society recommends examination by the Working Group of what comparative measures might confer the same protections to jurors when an accused (who has decided to not be legally represented) seeks access to jury lists for their trial.
- 9.6. In addition, the Society recommends consideration of the feasibility of not providing access to identifying aspects of a person's home address such as house or apartment number and street name etc.
- 9.7. The Society also supports the introduction of a single offence of jury tampering as recommended by the Commission (paragraph 7.49).
- 9.8. The Society agrees with the Law Reform Commission's conclusion, at paragraph 7.50, that there is "a strong argument, as described in the 2002 Report of the Committee to Review the Offences Against the State Acts 1939-1998, in favour of a re-examination of whether the use of scheduling of offences for the purposes of the Offences Against the State Act 1939 complies with the State's obligations under international law and whether a more individualised case-by-case approach may be justified". Given that the Irish Human Rights Commission has expressed the view that "while the scheduling approach...was consistent with the Constitution it did not appear to meet international human rights standards" (paragraph 7.20), the Society urges the Working Group to examine the current approach.

F. REMUNERATION OF JURORS

10. **Law Society observation:** Implement the Law Reform Commission's Recommendations on the remuneration of jurors
- 10.1. Chapter 9 of the Commission's Report examines the current position, comparative approaches, recommendations submitted during the consultation process and potential solutions. The Report notes the need to balance the fact that jury duty is civic duty with encouraging service and minimising any disadvantage or loss. The issue of employers being required to pay a person's salary during jury duty can be problematic and, sometimes, temporary staff cover can be required and result in an additional expense. In addition, jurors are not compensated for travel expenses or other incidentals.

- 10.2. The Law Reform Commission's research indicated that small business owners and the self-employed often cite the financial/economic hardship that jury service would cause in support of an application to be excused from jury service and, accordingly, self-employed people are underrepresented on juries (paragraph 9.04).
- 10.3. In addition, some solicitors have indicated to the Law Society that they receive a large volume of enquiries from people called to jury service with financial/economic hardship being the most frequent concern.
- 10.4. The Law Society encourages, at a minimum, the implementation of the Law Reform Commission's recommendation at paragraph 9.18:

... the introduction of a modest flat rate daily payment to cover the cost of transport and other incidentals involved in jury service. The Commission also recommends that consideration be given by the Government (notably, the Department of Finance, the Department of Jobs, Enterprise and Innovation, and the Department of Justice and Equality) as to what other means could be used to alleviate the financial burden that jury service involves for small businesses and self-employed persons, including the use of tax credits and insurance. [paragraph 9.18]

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