



GOVERNMENT CONSULTATION PAPER

JURY REFORM

**“ A FAIRER AND MORE EFFECTIVE
SYSTEM”**

**MINISTRY FOR JUSTICE
No 6 Convent Place
Gibraltar**



JURY REFORM

A FAIRER AND MORE EFFECTIVE SYSTEM

Tuesday, 15 April 2008

1. MINISTERIAL FOREWORD

- 1.1 Gibraltar is a small closely knit community with a population of 29,257 of which 23,692 are adults¹ living in an area of 2.75 square miles. It is inevitable that empanelling a jury in a small community like ours creates its own problems and that there are those who hold the view that the jury system cannot work in such a small community.
- 1.2 The issue of reform of the jury system was raised within the Working Group on Reform of the Criminal Justice System (“the Working Group”) which was formed last year. That Group is composed of representatives of the Bar Council and leading members of the legal profession, as well as representatives of the RGP, HM Prison service, the judiciary and the Attorney General’s Chambers.
- 1.3 In particular, concerns were raised about the disparity between conviction rates for locals tried by juries as opposed to non-locals. The Government made it clear that it would not contemplate substantial reform in this area in the absence of clear evidence that reform was necessary. It therefore asked the Attorney General to conduct a study into jury conviction rates from 1983 to the end of 2007. The results of

¹ 19,045 are Gibraltarian, 2540 are UK British and 2107 are other nationalities. Jury service is based on residence and age not nationality. UK British in the armed forces and “aliens” who have been resident for less than 10 years are excluded from jury service (s19-21 Supreme Court Act). An Alien means a person who is neither a Commonwealth Citizen nor a British protected person nor a citizen of the Republic of Ireland (s. 50 (1) British Nationality Act 1981).

that study are annexed to this consultation paper as Appendix 1. The study was conducted on the following basis:

- (a) The information was principally taken from the Court Minute Books in the Supreme Court Registry. In some cases reference was made to the individual case files.
- (b) The Attorney General only recorded cases where juries were called upon to make their own decisions. Directions to acquit by a Judge, no case to answer submissions etc were not recorded.
- (c) A fair proportion of cases for the period studied ended in mixed verdicts. These are verdicts in which juries have found defendants guilty on some counts and not guilty on others. The statistics provide a further breakdown in respect of these mixed verdicts where, for example, juries have found Defendants guilty of the lower alternative charges (e.g. not guilty for possession with intent to supply drugs but guilty for possession). Most of these mixed verdicts are cases where a jury has acquitted on the higher charge. Even though there is an argument that an acquittal on a higher charge where someone could be sent to prison but conviction on a lesser charge which may carry a fine is an effective win for the Defendant, these have all been categorised as guilty verdicts².
- (d) In a small number of cases, juries could not agree on a verdict. These cases were categorised as 'hung juries'. There were no such cases involving non-locals but there were 10 such cases where local people were tried. The break down is provided between guilty, acquittals and hung verdicts but the Working Group believes that hung verdicts should be excluded when comparing conviction/acquittal rates between local and non-

² Under the study conducted by Christian Rocca in the early 1990's these were categorised as an effective acquittal.

locals. Most of these cases were retried. The re-trial statistics are included in the overall acquittal and conviction rates.

- 1.4 The Government (as indeed the Working Group) is concerned that there appears to be a marked disparity between the acquittal and conviction rates between local and non-locals. The study shows that locals were found guilty (inclusive of mixed verdicts) in 35.1% of cases and acquitted in 64.9%. Non locals were found guilty in 73.2% of cases and acquitted in 26.8%.
- 1.5 The Government is committed to a fair, impartial and effective system of justice for all and under the Constitution everyone who is charged with a criminal offence is entitled to a “fair hearing” by an “independent and impartial” tribunal. For the first time in Gibraltar’s history, the Government, under the new Constitution, has responsibility for the overall administration of the justice system which previously fell under the responsibility of the Governor.
- 1.6 The Government takes this new responsibility seriously and is engaged in a wide ranging review of the criminal justice system. It is also committed to detailed consultation in all the areas which it is reviewing.
- 1.7 As part of this review, Government is considering new approaches to the use of juries. Such new approaches will be informed by Gibraltar’s own special circumstances, but also by the experience of other countries, particularly other small jurisdictions. The Government however will listen to the views of the community before deciding what action it should take.

D A Feetham

Minister for Justice

2. THE CURRENT SYSTEM

- 2.1 Under the current system juries are used in criminal trials in the Supreme Court. They are also used in some civil cases and in coroner's inquests.
- 2.2 In criminal trials 9 persons serve on a jury except for murder trials where there must be 12 jurors.
- 2.3 In theory all persons between the age of 18 and 65 with a competent knowledge of English can be required to perform jury service unless they are disqualified by reason of their length of residence, physical or mental infirmity or previous criminal conduct.³ Possible jurors are selected from a list held by the Supreme Court by a computer program that is supposed to produce random results.
- 2.4 The Supreme Court Act, however, excludes many people from being able to perform jury service. These include doctors, dentists, nurses, barristers, solicitors and any person engaged in the administration of justice, school teachers, Members of Parliament, Ministers of Religion, Members of Her Majesty's Army, Navy and Air Force, members of the City Fire Brigade, officers of the Revenue Department, editors of newspapers, persons employed in the light or pilotage services, persons duly registered under the Medical and Health Act and carrying on the business of retailing, dispensing or compounding medicines or

³ The disqualification arises from a number of reasons set out in section 21 Supreme Court Act, namely Disqualifications.

21. Each of the following persons shall be disqualified for serving as a juror-
- (a) aliens who have been resident in Gibraltar for less than ten years;
 - (b) persons disabled by mental or bodily infirmity;
 - (c) Any person who has at any time in the last ten years been convicted by a court of law in any country of a criminal offence punishable by a term of imprisonment of three months or more;
 - (d) any person who has at any time been convicted by a court of law in any country of a criminal offence and
 - (i) sentenced to a term of imprisonment of five years or more;
 - (ii) had passed on him an order of detention during Her Majesty's pleasure or an order corresponding thereto under the law of any other country.

drugs, the Chairman of GBC, the General Manager of the Managing Agents of that Corporation and the manager of Radio Gibraltar, members of the Public Service Commission and the Chief Executive of the GHA.

2.5 The Government (and indeed the Working Group) believes that some of the above exclusions are not justified in a modern justice system and places an unfair burden on those included within the compulsory list. Just by way of example in the UK virtually everyone is included but individuals can provide compelling reasons as to why they should not serve in a particular case: death or illness of a close relative, health reasons, pre-booked holiday, and religious festivals etc. One of the few exceptions are full-time serving members of the armed forces where the commanding officer certifies that the person's absence would be detrimental to the armed forces.

2.6 As stated earlier presently "persons disabled by mental or bodily infirmity" are excluded from jury service. Whilst physical or mental disability may in some cases be a valid reason why someone should be excused from jury service that should not apply to every disability. This is discriminatory of disabled people, many of whom could provide valuable jury service and the Government intends to re-examine this exclusion. Under extensive infrastructure improvements currently being considered for both the Supreme and Magistrates Court, disabled friendly facilities will be provided. The Government would welcome the views of disabled people.

2.7 There are other problems with the current system:

- the method of initial call up often places unfair burden on particular households who may have more than one member called up at the same time. This indicates the system is not random enough;
- in small jurisdictions like Gibraltar some people are reluctant to serve as jurors and reluctant to convict. To force someone to serve does not

overcome this reluctance. Persons who volunteer for jury service will have balanced in his/her mind the downside of serving on a jury and may be less likely to be adversely affected by the same considerations. It is noteworthy that in the Coroner's Court juries have not been loath in returning a range of verdicts with riders (sometimes severely) critical of institutions (e.g. the GHA) and the consensus in the Working Group is that they work well. All juries in Gibraltar are selected on the same basis and any problem appears to be confined to criminal cases.

- anyone who has served in a jury could not have failed to notice the poor infrastructure arrangements for juries and the way call up is organised. Potential jurors have to wait in the courtyard of the Supreme Court mingling with defendants and witnesses. This is clearly unhelpful and will be addressed irrespective of this consultation process.

3. REFORM – THE ALTERNATIVES

3.1 The Working Group has considered various alternatives for reform of the jury system. These have included:

- (a) abolishing juries altogether in favour of trial by judge alone or judge with two lay assessors;
- (b) turning jury service into a voluntary as opposed to compulsory civic duty;
- (c) retaining the current compulsory jury system but reforming it in terms of:
 - (i) the way that juries are selected to increase randomness of selection;

- (ii) the organisation of the selection process immediately before a trial;
 - (iii) abolishing most of the current exemptions to jury service;
 - (iv) introducing practical safeguards against actual or perceived intimidation;
- (d) a combination of the above.

3.2 Opinion within the Working Group varied from abolishing juries altogether to retaining the current compulsory system with reforms. Everyone however felt that reform of the system was necessary.

3.3 Government's preference is to maintain a jury system but institute wide ranging reforms of it. Nonetheless, the views of the community and stakeholders in the justice system are sought in relation to all aspects of this issue, including, whether juries should be retained or not and if retained, whether for all cases or certain types of cases.

3.4 The Government would, in particular, like the views of the community on the following proposals for reform. It is emphasised that these are proposals for consultation and Government will consider both individual and collective views from associations before any policy decision is made.

4. ELIGIBILITY

4.1 The Working Group was unanimous in the view that many of the current exemptions from jury service are not justified.

4.2 The Government seeks the community's views as to whether the persons/professions listed below should now be included in the jury list:

- (a) Members of the Parliament;

- (b) Members of Her Majesty's Naval, Military or Air Forces (excluding heads of department) [*who have served in Gibraltar for longer than one year⁴ unless in the opinion of his [Commanding Officer] it would be prejudicial to the efficiency of the service if that member were to be required to be absent from duty⁵*];
- (c) ministers of religion;
- (d) barristers, solicitors and notaries public in actual practice;
- (e) a barrister or solicitors' clerks;
- (f) registered medical and dental practitioners;
- (g) school teachers and members of the nursing service in actual employment;
- (h) members of the City Fire Brigade;
- (i) officers of the Customs Department;
- (j) persons who immediately before the 1st day of September 1960 were included in the list of grand jurors⁶;
- (k) editors of newspapers;
- (l) persons actually employed in the light or pilotage services;

⁴ The parts in italics are proposals and one year is proposed to ensure that they are familiar with Gibraltar.

⁵ This is the position in the UK

⁶ This is a historical exemption which will be abolished in any event.

- (m) persons duly registered under the Medical and Health Act and carrying on the business of retailing, dispensing or compounding medicines or drugs;
- (n) the chairman of the Gibraltar Broadcasting Corporation, the general manager of the Managing Agents of that Corporation and the manager of Radio Gibraltar;
- (o) members of the Public Service Commission;
- (p) the Chief Executive of the Gibraltar Health Authority.

4.3 Some of these exemptions may be justified but the Government wishes to wait for the views of the community before making any final decision.

4.4 The issue of whether someone can or cannot serve on a jury by way of compulsory service because, for instance, that person is a nurse needed on duty, would be left to a judge to decide in the same way as he does under the current system (e.g. people have their holiday booked).

4.5 We would also wish to hear your views on

- (a) extending the eligibility age for jury service from 65 to 70 . The Government prefers not to impose jury service on the over 65 and prefers to deal with this on a voluntary basis;

and

- (b) whether UK British and non-British individuals resident in Gibraltar for longer than one year should also become eligible for jury service.

5. SELECTION

5.1 The Ministry for Justice has received a number of representations from people who have had two and three members of their household called for possible jury service at one and the same time. This clearly places an unfair burden on particular households who often have to wait for a decision to be made outside the Supreme Court for a number of hours even if they are not selected. In one instance seven members of the same family with the same surname (some in the same household) were called for possible jury service. The Government proposes to reform the call up system to ensure this does not occur.

6. MEASURES TO PROTECT AGAINST INTIMIDATION

6.1 Consideration is also being given to whether there is a need to introduce, firstly additional measures to protect jurors from either actual or perceived intimidation and secondly to ensure that those who, for whatever reason, should not serve in a particular case do not do so.⁷

6.2 The following measures are being actively considered and in some cases are already being implemented -

- (a) The re-structure of the courtroom to ensure that the jury box is situated so as to avoid visual contact with the public gallery

⁷ Kerr LJ in The matter of an application for judicial review by John MacParland and Patrick MacParland (Neutral Citation No. [2008] NIQB 1) put the issue of perceived intimidation in this way “the perception of intimidation is in many ways as serious as actual intimidation ... As Lord Diplock observed, ‘a frightened juror is a bad juror even though his own safety and that of his family may not actually be at risk’.”

(b) The reform of the arrangements for empanelling jurors to avoid potential jurors from coming into contact with witnesses and defendants. Plans for the reformation of the Supreme Court are well under way.

(c) The introduction of a limited form of Voir Dire conducted by the judge to determine the competence of prospective jurors to sit in a particular case. A Voir Dire is the process by which a court can select, or perhaps more appropriately reject, certain jurors to hear a case.

6.1 The Government will also explore ways in which it can best educate and inform citizens about the history, nature, function and importance of the citizen participating in the administration of justice through jury service.

7. MORE CASES TO BE DEALT WITH BY THE MAGISTRATES' COURT

7.1 The Government proposes to increase the threshold of cases that can be dealt with in the Magistrates Court. There has been no reform in this area for many decades and as a result, defendants can choose to have relatively trivial cases dealt with by a jury. This is a waste of resources and the Government is advised that the trend in favour of choosing trial by jury is on the increase. The perception that juries are more lenient to locals, has not helped in this respect.

8. FINANCIAL CRIME ASSESSORS

8.1 In relation to financial crime (e.g. money laundering and fraud) the Government proposes to introduce a system of either judge alone or judge and two lay assessors with relevant experience in financial

matters. Whether it is one or the other will depend on whether sufficient people volunteer to serve as Financial Crime Assessors.

- 8.2 The majority of research undertaken across a number of jurisdictions into the jury system indicates that juries are not suitable for complex financial cases and that this increases the chances of miscarriages of justice.
- 8.3 The pool of assessors would be no more than 15. Service would be voluntary for a fixed period of years. Those who volunteer for the pool would have an obligation to sit as assessors subject to the normal rules of conflict and other matters which may excuse them from service on any particular case.
- 8.4 The Government proposes that barristers and solicitors would be allowed to serve as assessors. Convictions in trials with assessors will be based on a minimum two to one majority with the judge having only one vote of equal weight to the two assessors.
- 8.5 Should such a system be introduced, the Government would invite applications from persons to serve as Financial Crime Assessors. Applications would be scrutinised on the basis of the qualifications and experience of the applicant to understand detailed financial or technical (not necessarily legal) information. It is proposed the selection process would be undertaken in the same manner as the selection process for Lay Magistrates.

9. VOLUNTARY JURY SERVICE

- 9.1 The Government would in particular like to seek the views of the Community on whether the bulk of trials should be dealt with by judge and jury as under the current system but where juries are selected from a pool of voluntary jurors. Persons who are interested in

volunteering for this important civic duty are asked to say so. The Government has not made a decision on the number of people in the Voluntary Jury Pool and we would ask people to complete the enclosed questionnaire or write to the Ministry of Justice at No 6 Convent Place if they would wish to be considered and for their views generally.

- 9.2 In the event of a jury trial being heard, potential jurors would be randomly selected from the Voluntary Jury Pool. However, the Government is conscious of the words of The Right Honourable Lord Justice Auld in the Auld Report 2001⁸ that:

“Randomness is not an end in itself. It does not necessarily improve the quality of the decision-making. Its value is that it is considered to be the best, albeit a rough and ready way, of empanelling a jury that is likely to be collegiately independent and to reflect the community at large.

Not only does randomness not equal representativeness, but it can result in juries in individual cases being grossly unrepresentative”.

- 9.3 Some members of the Working Group made the valuable suggestion that rather than have a system based on randomness, the Government should ensure that the Voluntary Jury Pool is representative of the community by specifically targeting individuals from all walks of life. This may involve engaging Trade Unions and other associations to ensure that any Voluntary Jury Pool is truly representative. Employment laws will be amended to ensure that no one who is a member of the Voluntary Jury Pool is discriminated against. It would

⁸ “Review of the Criminal Courts of England and Wales” by The Right Honourable Lord Justice Auld September 2001 (chapter 5 Juries) (link: <http://www.criminal-courts-review.org.uk/auldconts.htm>).

not be lawful to ask someone whether they form part of the Voluntary Jury Pool at job interviews.

- 9.4 While much will depend on the number of jury trials required in any one year, a system will be devised to ensure that no one juror is required to serve for a disproportionate amount of time in any given year.
- 9.5 In the event that no (or no full complement of) jurors can be selected by the courts from the Voluntary Jury Pool for a particular case, there will be a secondary system under which jury selection will be made from the general population and jury service would be compulsory (“the Compulsory Jury List”). In other words, there would be an obligation to exhaust the Voluntary Jury Pool before anyone was chosen from the Compulsory Jury List drawn from the population at large. With a sufficient pool of people in the voluntary list, it is not envisaged that it would be necessary for a court to rely on the compulsory pool. The crucial aspect to the viability of this proposal is the number of volunteers.
- 9.6 This system, whilst unique to Gibraltar, draws on the experience of other small communities. In Jersey and Guernsey, for instance, a system of jurats has operated for hundreds of years where juries are drawn from a pool of 12 to 20 permanent jurors. The Government would seek a far higher number of volunteers for the voluntary pool than 20.

10. THE PARTIES PROVIDED WITH A CHOICE

- 10.1 The Government seeks your views on whether it should introduce legislation to allow a judge alone or judge and two lay assessors where the Prosecution and Defence both request it or at the discretion of the judge where the Defence makes that request irrespective of whether the subject matter is financial crime.

11. CONSULTATION

11.1 The Government welcomes views on these proposals.

11.2 Views should be provided in writing by 31 May 2008 and should be sent to the Ministry for Justice at No 6 Convent Place. Emails will be accepted and should be sent to moj@gibraltar.gov.gi.

We should be grateful if you would use the enclosed form when responding. Your response shall be treated confidentially however should you wish to reply anonymously your response will still be considered.

We thank you for your participation.



Please send to:
Ministry of Justice
No.6 Convent Place

RESPONSE TO CONSULTATION ON JURY SERVICE

1. Should the following persons/professions be eligible for jury service (please tick):

	Should be allowed to sit on jury Yes	Should not be allowed to sit on jury No
Members of the Parliament	<input type="checkbox"/>	<input type="checkbox"/>
Ministers of religion	<input type="checkbox"/>	<input type="checkbox"/>
Barristers, solicitors and notaries public in actual practice	<input type="checkbox"/>	<input type="checkbox"/>
Barrister or solicitors' clerks	<input type="checkbox"/>	<input type="checkbox"/>
Registered medical and dental practitioners	<input type="checkbox"/>	<input type="checkbox"/>
School teachers	<input type="checkbox"/>	<input type="checkbox"/>
Members of the nursing service in actual employment	<input type="checkbox"/>	<input type="checkbox"/>
Members of the City Fire Brigade	<input type="checkbox"/>	<input type="checkbox"/>
Officers of the Customs Department	<input type="checkbox"/>	<input type="checkbox"/>
Editors of newspapers	<input type="checkbox"/>	<input type="checkbox"/>
Persons actually employed in the light or pilotage services	<input type="checkbox"/>	<input type="checkbox"/>

Persons duly registered under the Medical and Health Act and carrying on the business of retailing, dispensing or compounding medicines or drugs	<input type="checkbox"/>	<input type="checkbox"/>
The chairman of the Gibraltar Broadcasting Corporation, the general manager of the Managing Agents of that Corporation and the manager of Radio Gibraltar	<input type="checkbox"/>	<input type="checkbox"/>
Members of the Public Service Commission	<input type="checkbox"/>	<input type="checkbox"/>
The Chief Executive of the Gibraltar Health Authority	<input type="checkbox"/>	<input type="checkbox"/>
Members of Her Majesty's Naval, Military or Air Forces (excluding equivalents of heads of department) [who have served in Gibraltar for longer than one year unless certified by the Commanding Officer that service of that individual would be detrimental to the armed forces]	<input type="checkbox"/>	<input type="checkbox"/>

2. Do you think that trial by jury should be abolished? For all cases? For some?

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.....

3. If so what system would you have in its place?

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.....
.....

4. Would you support introduction of specialist financial crime assessors for fraud and financial crime trials? Or for any other specialist area?

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5. Would you be interested in volunteering for voluntary jury service or the role of Financial Crime Assessor?

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6. Who should be on the list of voluntary jurors? Should there be a particular balance? What method should be used to recruit voluntary jurors to the jury pool?

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7. Should service on the jury pool be for a fixed period of years (for example 4 years) and if so for how many years.

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8. If jury service is for a fixed period, should a person be eligible to re-volunteer at the end of the fixed period?

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About You (optional):

To help us understand your responses it would be helpful if you would complete the following-

Name (individual/organisation/group).....

Address:

Gender (please tick box) Male Female

Should we wish to contact you regarding any of the views you raise in your response may we contact you? (please tick box)

No, you may not contact me

Yes, you may contact me

My details are:

Address:

Telephone number:

E-mail:

			APPENDIX 1
Jury Verdicts - 1983 to 2007			
Locals			
	<u>No of cases</u>	<u>%</u>	
Guilty	21	17.4	
Mixed	18	14.9 (a)	
TOTAL GUILTY	39	32.3	
Hung	10	8.3	
Acquittals	72	59.5	
	121		
WITHOUT HUNG DECISIONS			
Guilty (including mixed verdicts)	39	35.1	
Acquittals	72	64.9	
	111		
Non - locals			
	<u>No of cases</u>	<u>%</u>	
Guilty	22	53.7	
Mixed	8	19.5 (b)	
TOTAL GUILTY	30	73.2	
Hung	0	0.0	
Acquittals	11	26.8	
	41		
Guilty (including mixed verdicts)	30	73.2	
Acquittals	11	26.8	
	41		
Unknown/others			
	<u>No of cases</u>		
Unknown Nationality	3		
Local & non-local tried together	4		

(a)	Locals - Mixed verdicts			
			<u>%</u>	
	1 Def guilty, other acquitted	3	16.7	
	Guilty of lower/alternative charge	7	38.9	
	Guilty of equally serious charge	4	22.2	
	No decision on some charges, acquitted on others	2	11.1	
	Other/unknown	2	11.1	
		18		
(b)	Non-Locals - Mixed verdicts			
			<u>%</u>	
	Guilty of lower/alternative charge	5	62.5	
	Guilty of equally serious charge	2	25.0	
	Other/unknown	1	12.5	
		8		