



## **CRIMINAL BAR ASSOCIATION**

### **Response**

#### **To The Ministry of Justice Consultation Paper**

#### **entitled**

#### **“The Upper Age Limit For Jury Service In England And Wales”**

#### **Introduction**

1. The Criminal Bar Association represents about 3,600 employed and self-employed members of the Bar who appear to prosecute and defend the most serious criminal cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts; ensuring that those who are guilty are convicted and those who are not are acquitted.
2. The Ministry of Justice published its consultation paper entitled “The Upper Age Limit For Jury Service In England And Wales” on March 16, 2010. The consultation period ends on 8<sup>th</sup> June 2010.
3. There is currently a statutory upper age limit of 70 for jury service in England and Wales. The Ministry states that “The aim of building a society where people are judged not by their age but by their capabilities and needs,

requires us to encourage more people of all ages to carry out civic duties in their community.”

4. The Criminal Justice Act 2003 removed almost all the grounds for exclusion from jury service which had formerly existed. The only disqualifications are mentally disordered persons and persons on bail or who have received certain criminal sentences.
5. There is power to excuse jurors where it appears that there is doubt about a person’s capacity to act effectively as a juror on account of physical disability, or insufficient understanding of English.
6. The Criminal Justice Act 1988 raised the age limit to 70, but allowed persons over 65 to be excused as a matter of right. The Criminal Justice Act 2003 retained the upper age limit of 70 and removed the right of persons over 65 to be excused.
7. The consultation paper sets out options for changing, retaining or abolishing the age limit.
8. The paper sought views on five alternative proposals: -
  - retain the present upper age limit of 70
  - raise the upper age limit from 70 to 75
  - raise the upper age limit from 70 to 75 but provide a right of self-excusals for those over 70
  - raise the upper age limit from 70 to 80
  - raise the upper age limit from 70 to 80 but provide a right of self-excusals for those over 70
  - abolish the upper age limit
  - abolish the upper age limit but provide a right of self-excusals for those over 70

9. The purpose of the consultation was to elicit views on whether the three considerations of inclusiveness, competence and practicality were the principal issues and how to balance them to the best effect.

### **Executive Summary of Answers**

10. We conclude that there is no good reason to retain an age limit that fails to take into account the improved mental and physical health of the population; it excludes from service a large number of people who are both relatively fit and able and are willing to serve. Accordingly we are in favour of abolishing the upper age limit entirely. We note that many other jurisdictions have no fixed upper age limit but give a right of self-excusals on the ground of age.
11. We take the view that those over 70 should have the right of self-excusals as there should be some upper limit on the age at which people are required to serve if they do not wish to. We also conclude that this right of self-excusals will have the practical consequence of greatly reducing the burden on the administration of adjudicating on requests to be excused on the grounds of incapacity.

### **Question 1**

**Should the principles of inclusiveness, competence and practicality be the key considerations governing policy on the upper age limit for jury service? Are there any other equally important principles to which we should have regard?**

12. The CBA agrees that the principles identified in the question; inclusiveness, competence and practicality, are key considerations governing the policy on the upper age limit. We come to this conclusion for a number of reasons:

13. One of the most important functions of the jury is that of maintaining public confidence in our system of criminal justice. Even the most marginalised members of our society can be confident that a jury will be made up of people from a variety of backgrounds, embodying a wide range of views, belief systems and life experience. In many respects, the jury system enables the various communities within our country to feel as though they are stakeholders in our criminal justice system. Accordingly, the more inclusive a jury is, the more public confidence will be enhanced in the criminal justice system.
14. No matter how diverse and representative a jury is, its usefulness is diminished if those who make up that jury lack the ability to meaningfully evaluate evidence and arrive at a verdict based on the evidence. Any system that results in juries being empanelled who are unable to engage in this process will quickly lead to a loss of public confidence in the criminal justice system.
15. The cost-effectiveness of any part of the adjudicative process is, of course, an important consideration. It is legitimate to ensure that any changes to the jury system to make it more inclusive should not result in an unsupportable increase in expenditure, especially when public finances are increasingly under strain.

## **Question 2**

**Does the possible impact on the competence of juries of admitting older age groups to the national jury pool justify retaining an upper age limit? If so, at what level should it be set so as to include the maximum number of capable potential jurors from older age groups while keeping the number of incapable potential jurors at an acceptable level?**

16. The CBA would suggest that should be no upper age limit for jurors. In coming to this conclusion, we have relied on the data contained in the tables from the “Health Survey for England”, below paragraph 29 of the consultation paper.
17. There is an inherent risk that any person’s capacity to act effectively as a juror may be impaired as a result of many factors besides disability, either congenital or acquired, whatever their age. The jury system has survived thus far with these risks and reliance is placed upon the individual juror to make known their own personal difficulties. Jurors must be trusted to do so. Whilst it is accepted that it is more likely that those aged 70 or over will suffer more health problems than those aged under 70, the principle remains that people should be deemed to be fit to sit as jurors unless they are clearly not capable of doing so or they bring this fact to the attention of the relevant authority/judge.
18. The tables list a number of health problems likely to adversely impact on the competence of jurors (such as those relating to sight, hearing, geriatric depression, memory loss and mental illness). In our view there is no sufficiently significant variation in the degree to which health problems which are likely to adversely impact on the competence of jurors between the ages of 65-69, 70-74 and 75-79, to justify automatically excluding those aged over 70 from the jury process.
19. We have also taken into account that the jury system is, and should be, able to cater for a degree of disability suffered by any juror, whatever their age. We have assumed for example that courts today are designed to allow for wheelchair access and that hearing loops are installed for those who have impaired hearing.
20. We accept that those over 70, and even more people over 80, suffer with health problems likely to affect their ability to function effectively on a jury. However, we are of the opinion that the impact of this on juror competence would be greatly diminished by providing a right of self-excusals for those over 70.

### **Question 3**

**Have we fully and correctly identified the factors relevant to assessing the practicality of raising or abolishing the upper age limit? Are our assumptions reasonable, especially regarding a higher “drop-out” rate for older jurors? Do you agree that the financial benefits outweigh the financial costs?**

21. The CBA agrees that the Ministry of Justice has correctly identified the relevant factors. We accept that the assumptions concerning drop-out rates are correct. Finally, we agree that the financial benefits clearly outweigh the financial costs.

### **Question 4**

**If the upper age limit were to be raised or abolished, should that be accompanied by a right of self-excusal for those over 70?**

22. The CBA is of the view that the abolition of the upper age limit should be accompanied by a right of self-excusal. We are of the view that if afforded such a right, those aged over 70 who lacked the competence to serve on a jury, are likely to exclude themselves from jury service, thereby maintaining the integrity of the jury system.
23. From looking at the practices in other jurisdictions (Annex), the majority have a right of self-excusal. There is a common trend that the elderly should be afforded this right. There will be those aged over 70 who, although potentially fit and well enough to sit as jurors, would dread the long days sitting and the burden of going to court. They have lived beyond the retirement age, and therefore it would be wrong to force them to sit on a jury. The CBA echoes

the sentiments contained within paragraph 37 of the Consultation, namely: “Placing such demands (jury service) on people who may have good grounds for believing that they have already made sufficient contribution to society as citizens and tax payers and asking them to give up their free time without payment might be asking too much”.

24. Without this right of self-excusal, we could end up in a position where elderly jurors are forced to sit and it is only after a trial has begun, for example, that it becomes apparent that they should not be sitting on a jury. The potential for the discharge of jurors would be great and of course there would be inevitable costs implications as whole juries may have to be discharged and trials started again. By providing a right of self-excusal, the likelihood of this happening is greatly diminished.
25. The CBA further believes that the right of self-excusal will alleviate the concerns that, by abolishing the upper age limit, the competence of the jury will be diminished.
26. The manner in which the right of self-excusal operated would be relevant to this issue. We would propose that potential jurors should not be required to give reasons for self-excusal, as jurors might choose to avoid the embarrassment of articulating their lack of competence.

### **Question 5**

**Which of the above options do you prefer and why? Do you have an additional proposal? If so, please explain it.**

27. The Criminal Bar Association prefers option D2 – Abolish the upper age limit but provide a right of self- excusal for those over 70.

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