

<b>Title:</b> Juror Misconduct  <b>IA No:</b> MOJ230  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Attorney General's Office The Law Commission	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 13/01/2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> general.queries@justice.gsi.gov.uk			

**Summary: Intervention and Options** **RPC Opinion:** Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as Zero Net Cost
N/A	N/A	N/A	No	Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**  
 The consequences of juror misconduct are potentially very serious; miscarriages of justice may arise, giving rise to a risk of the acquittal of the guilty and conviction of the innocent, or may give rise to appeals or aborted trials which prolong the prosecution process and can result in substantial costs. A report by the Law Commission published in December 2013 highlighted a number of issues with the current approach of prosecuting juror contempt.

**What are the policy objectives and the intended effects?**  
 Our overall policy objective is to ensure that the law and criminal procedures strike a balance between the public interest in the administration of justice, the defendant's right to a fair trial and the rights of jurors. Our proposals seek to make certain types of juror misconduct a criminal offence and make provision for two related measures. The measures provide for a discretionary power for a judge to order the temporary removal of electronic communication devices and the disqualification from jury service for 10 years for a person who has been found guilty of a contempt offence.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing. This represents no change in the current law.

Option 1: Take forward a legislative programme which would create four new juror misconduct offences and make provision for other measures including a discretionary power for a judge to order the temporary removal of electronic communication devices and the disqualification from jury service for 10 years for a person who has been found guilty of a contempt offence.

<b>Will the policy be reviewed?</b> It will be reviewed. If applicable, set review date: Month/2019					
Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible  
 SELECT SIGNATORY:  Date: 

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

### Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise costs.

### Other key non-monetised costs by 'main affected groups'

There will be some familiarisation costs to the police, prosecuting authorities and the judiciary. It has not been possible to estimate costs to Her Majesty's Courts and Tribunals Service (HMCTS).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

### Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise benefits.

### Other key non-monetised benefits by 'main affected groups'

There could potentially be a more efficient use of court resources, if fewer trials are stopped because of juror misconduct. Assuming that juror misconduct cases heard in the Divisional court (with two or more judges) are costlier than those heard in the Crown Court, it is possible that costs to HMCTS may be lower.

### Key assumptions/sensitivities/risks

Discount rate (%) N/A

Most of the general public are potentially jurors so new offences that might apply to them are likely to be of interest. We have assumed that the numbers of cases of juror misconduct would remain broadly similar to now.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	Zero net cost

# Evidence Base (for summary sheets)

## Background

1. In 2012 the Law Commission launched a review of the law of contempt of court.<sup>1</sup> Between November 2012 and February 2013 the Commission consulted on four areas concerning contempt - contempt by publication, the impact of new media, juror contempt and contempt in the face of the court - and in December 2013 published a report making recommendations concerning the new media and juror contempt strands.<sup>2</sup> The Government proposes to take forward recommendations from this report to create four offences of juror misconduct and implement associated measures.<sup>3</sup> A second Law Commission report on court reporting was published in March 2014, but does not require legislation.<sup>4</sup>
2. The Commission's review was conducted against a background of legal cases and concerns that the law on contempt had not adapted appropriately to reflect modern developments, particularly in relation to the internet and media behaviour. These issues were raised in a number of speeches by the Attorney General<sup>5</sup> and in Parliament in December 2011.<sup>6</sup> In response to concerns expressed by peers, Lord McNally referred to the problems with contempt law and said the Government had referred the matter to the Law Commission. He added that the Government would 'approach any Law Commission report with a due sense of urgency'.<sup>7</sup> The review thereafter was prioritised by the Law Commission.
3. This impact assessment draws on the material presented by the Law Commission during its consultation and in its report, supplementing the evidence as necessary to reflect the reform proposals that the Government is putting forward.

## Problem under consideration

4. The law of contempt of court (at Common Law) allows the courts to 'act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally'. The law therefore needs to protect the right of a defendant to a fair trial and protect the public's interests in the administration of justice while also protecting the rights of jurors. We seek to reform the law of juror misconduct to ensure it continues to meet these requirements in the modern age.

## Juror Misconduct

5. Jurors take an oath or make an affirmation promising to give true verdicts according to the evidence presented in court – it is important, if there is to be a fair trial, that they consider only evidence which has been seen and tested by all parties in the courtroom. It is also important that the process of deliberation is protected – that it is seen to be fair and that jurors do not discuss the case with or disclose deliberations to non-jurors during or after the trial. Such discussion risks influencing deliberations, bringing in views from those who have not heard the evidence and of disclosing information which is confidential to the jury.

<sup>1</sup> The Law Commission, Contempt of Court Consultation, available: <http://lawcommission.justice.gov.uk/consultations/contempt.htm>

<sup>2</sup> The Law Commission, Contempt of Court (1): Juror Misconduct and Internet Publications, [http://lawcommission.justice.gov.uk/publications/contempt\\_of\\_court\\_juror\\_misconduct.htm](http://lawcommission.justice.gov.uk/publications/contempt_of_court_juror_misconduct.htm)

<sup>3</sup> Clauses relating to the Law Commission's recommendations on strict liability contempt were originally in the Criminal Justice and Courts Bill and in the Impact Assessment previously published in February 2014. However, as announced in the former Attorney General's Written Statement of 30 June, the Government has decided not to pursue the measures and has removed the clauses. The Written Ministerial Statement can be viewed at the following link:

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140630/wmstext/140630m0001.htm>

<sup>4</sup> The Law Commission, Contempt of Court (2): Court Reporting, [http://lawcommission.justice.gov.uk/docs/lc344\\_contempt\\_of\\_court\\_court\\_reporting.pdf](http://lawcommission.justice.gov.uk/docs/lc344_contempt_of_court_court_reporting.pdf)

<sup>5</sup> See "Contempt of Court, Why it still matters", text available: <https://www.gov.uk/government/speeches/contempt-of-court-why-it-still-matters>, "Contempt – A Balancing Act" – text available: <https://www.gov.uk/government/speeches/contempt-a-balancing-act> Speech, "Trial by Google? Juries, social media and the internet", text available:

<https://www.gov.uk/government/speeches/trial-by-google-juries-social-media-and-the-internet>

<sup>6</sup> See the Parliamentary Question raised by Baroness Quin, answered by Lord McNally: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111214-0001.htm#11121475000783>

<sup>7</sup> Hansard, 14 Dec 2011 : Column 1275, available: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111214-0001.htm>

6. The consequences of juror misconduct are potentially very serious; miscarriages of justice may arise; it risks acquittal of the guilty and conviction of the innocent; and it may give rise to appeals or aborted trials which prolong the court process and result in substantial costs. In one recent case, a trial that had lasted several weeks had to be abandoned at a cost for prosecution and defence of over £300,000<sup>8</sup> and this excludes other costs, such as to the police and Her Majesty's Courts and Tribunals Service (HMCTS). In addition, retrials mean that victims and witnesses have to give evidence again (perhaps at considerable additional distress), defendants may be remanded for longer in custody (which has costs to the justice system) and overall a substantial amount of time is wasted, including that of jurors who served during the aborted trial.
7. Misconduct by jurors is currently treated as contempt of court. The law of contempt of court allows the courts to act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice, in relation to a particular case or generally. The present procedure for dealing with jurors in contempt involves proceedings being brought by the Attorney General or the court proceeding on its own motion. Defendants are currently subject to civil instead of criminal procedures<sup>9</sup> with cases being heard in the Divisional Court instead of in a criminal court (although the maximum penalty is two years imprisonment). The Divisional Court is a court which sits at the Royal Courts of Justice in London and consists of at least two judges, usually one from the High Court and one from the Court of Appeal (usually the Lord Chief Justice or the President of the Queen's Bench Division).
8. There have been five recent cases concerning juror contempt using the internet, and in each case the defendant was found to have committed contempt and received a sentence of imprisonment.<sup>10</sup> The Law Commission review concluded that there were a number of problems with the use of contempt proceedings. At present, the scope of some contempt cases depends on the specific form of words used by the judge when giving directions to the jury. It is preferable that all courts operate in the same way. Although this might be addressed by standardising processes, the Commission's view was that it would be better done through creating criminal offences to prosecute the misconduct. The Law Commission also noted that there are procedural advantages resulting from the creation of a criminal offence; a criminal prosecution process would allow for the use of police investigatory powers, and ensure clarity on the application of the Bail Act 1976.
9. The recent cases all involved use of the internet which provides easy and rapid access to a vast amount of information and makes it easy to communicate with others, possibly large numbers of people. A large proportion of jurors will have access to the internet (according to Ofcom, 80% of households have internet access<sup>11</sup>) and it is increasingly an essential part of people's lives. It would not be reasonable to prevent jurors from accessing the internet at all.

### **Rationale for intervention**

10. The conventional economic approach to government intervention, to resolve a problem, is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or if there are strong enough failures in existing interventions (for example, waste generated by misdirected rules). In both cases the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (for example, to reallocate goods and services to more needy groups in society).

<sup>8</sup> *Attorney General v Beard* [2013] EWHC 2317 (Admin). Paragraph 39 of the judgement outlines that the cost of the defence amounted to £119,712 and the prosecution costs had been between £190,000 and £200,000. The case was abandoned due to internet research undertaken by Mr Beard who typed the names of the defendants of the case he was trying into Google.

<sup>9</sup> Procedures fall under the Civil Procedure Rules Part 81.

<sup>10</sup> These cases are: *Attorney General v Frail and Sewart* [2011] EWCH 1629 (Admin), *Attorney General v Dallas* ([2012] EWHC 156 (Admin), [2012] 1 WLR 991), *Attorney General v Beard* [2013] EWHC 2317 (Admin), *Attorney General v Davey* [2013] EWHC 2317 (Admin)

<sup>11</sup> For further information see: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr13/internet-web/>

11. In this case intervention is based on both efficiency and equity reasons. Legislation creating offences of juror misconduct aims to reduce the overall risk of trials being abandoned and thus avoid the costs of associated retrials; ensuring courts are used in a more efficient way. Reform also has the potential to reduce the number of appeals and, in addition, there could also be a reduced risk of miscarriages of justice arising. Legislating will ensure that the procedure for dealing with these offences will be clear and dealt with in criminal courts. Reform of juror contempt would provide better equity by ensuring an appropriate balance between the rights of those concerned.

### **Policy objectives**

12. Our overall policy objective is to ensure that the law and criminal procedures strike a balance between the public interest in the administration of justice, the defendant's right to a fair trial and the rights of jurors. We also seek to ensure that the law operates effectively in relation to new technology and social media. To do this we propose to make certain types of juror misconduct a criminal offence so as to provide potential defendant jurors with the safeguards available under the Police and Criminal Evidence Act 1984 and the ordinary criminal procedure rules and to provide for full investigatory powers to ensure that cases can be brought.

### **Main groups affected by the proposed reforms**

13. The main group affected is jurors. Defendants, criminal justice practitioners and other justice practitioners including police, prosecutors, judiciary, coroners, lawyers, those administering legal aid and concerned with offender management will also be affected through their involvement in relevant proceedings and processes.

### **Description of options considered**

Option 0: Do nothing.

#### Juror Contempt

14. The current law regarding juror contempt is held both in the common law and the Contempt of Court Act 1981. Section 8(1) of the Contempt of Court Act 1981 makes it a contempt for a juror to "obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings." Since 2011, there have been two recent cases on this form of contempt.<sup>12</sup> There are also a number of other behaviours that give rise to contempt – these include trying a case not according to the juror's oath,<sup>13</sup> seeking extraneous information about the case<sup>14</sup> (including online research) and displaying bias.<sup>15</sup> Those found guilty of contempt are liable to up to two years imprisonment or a fine.<sup>16</sup>

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<sup>12</sup> *Attorney General v Frail and Sewart* [2011] EWCH 1629 (Admin), *R v Stephen Pardon* [2012] EWHC 3402 (Admin)

<sup>13</sup> *Attorney General v Dallas* ([2012] EWHC 156 (Admin), [2012] 1 WLR 991)

<sup>14</sup> *Attorney General v Dallas* ([2012] EWHC 156 (Admin), [2012] 1 WLR 991)

<sup>15</sup> *Attorney General v Beard* [2013] EWHC 2317 (Admin)

<sup>16</sup> Section 14 of the Contempt of Court Act 1981.

15. The present procedure for dealing with jurors in contempt involves proceedings being brought by the Attorney General or the court proceeding on its own motion.<sup>17</sup> This procedure falls under the Civil Procedure Rules part 81 and will normally be brought by the Attorney General before the Divisional Court. This is a court which sits at the Royal Courts of Justice in London and consists of at least two judges: usually one from the High Court and one from the Court of Appeal (usually the Lord Chief Justice or the President of the Queen's Bench Division). The civil rules of evidence apply, although the defendant is entitled to the enhanced fair trial provisions of Article 6(2)<sup>18</sup> and 6(3)<sup>19</sup> of the European Convention of Human Rights. The only right of appeal is to the Supreme Court.

#### Option 1: Create juror misconduct offences

16. Option 1 would take forward a package of legislative provisions that would create four new offences of juror misconduct:
- juror research, covering intentional seeking of information relevant to the case being tried, whether through an internet search or by other means ("research" offence);
  - sharing research with other jurors, that is the intentional disclosure of information gained through research. The offence applies to a juror who carried out the research and passes it on ("sharing" offence);
  - engaging in other prohibited conduct. Specifically, this will cover conduct (such as expressing bias) where it may reasonably be concluded that the juror intended to try the case other than on the basis of the evidence ("bias" offence);
  - disclosing the jury deliberations. This in effect replaces section 8 of the Contempt of Court Act 1981 with a statutory criminal offence ("disclosure" offence).
17. The offences would be created for the criminal and civil courts in the Juries Act 1974 and for Coroners' Courts in the Coroners and Justice Act 2009.
18. The offences would be indictable only (heard in the Crown Court) and the consent of the Attorney General would be needed to prosecute. A person guilty of any of these offences would be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both). The offences will apply in England and Wales.

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<sup>17</sup> In some cases a judge will deal with contempt by a juror straight away, however when a more detailed investigation is needed, a judge will refer this to the Attorney General. For example see *Attorney General v Beard* [2013] EWHC 2317 (Admin)

<sup>18</sup> Article 6(2) of the European Convention of Human Rights provides that an individual charged with a criminal offence shall be presumed innocent until proved guilty according to law.

<sup>19</sup> Article 6(3) of the European Convention of Human Rights provides individuals with the following minimum rights: Article 6(3)(a) to be informed promptly, in a language understood and in detail, of the nature and cause of the accusation against him, Article 6(3)(b) to have adequate time and the facilities for the preparation of defence, Article 6(3)(c) to defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require, Article 6(3)(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, Article 6(3)(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## Other measures

19. Option 1 also makes provision for two other measures:

- creates a discretionary power for a judge to order for the temporary removal of electronic communications devices from jurors when deliberating and at other times.<sup>20</sup> Appropriate enforcement arrangements will be in place;
- adds conviction for a juror misconduct offence during the last 10 years to the list of criteria for disqualification of a person from jury service in Schedule 1 of the Juries Act 1974.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden);**

20. Option 0: If no changes are made to the law on contempt of court, we would expect similar numbers of cases. Although internet use continues to proliferate, juror misconduct cases are currently very rare and it is not expected that numbers would increase significantly.

21. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

## Option 1:

### **Costs**

22. The behaviour being made subject to the new criminal offences is already covered by common law contempt. The main difference would be the manner in which the misconduct was tried, and the procedures that would apply. Because of this reason, we do not expect there to be any difference in the number of cases tried. This view is supported by the Law Commission and the Attorney General's Office (AGO).
23. For the purposes of this analysis, the four offences of juror misconduct (research, sharing, disclosure and bias) are treated as interchangeable. Sentencing penalties are the same for each offence<sup>21</sup> and we have no reason to believe that any of the offences will be considered more serious than the others or that there are any other special features.
24. The costs will fall principally on the criminal justice system and will fall on the police, prosecutors, courts, legal aid, probation and prisons. However, when compared to the current position (Option 0), costs associated with the proposed provisions (Option 1) are likely to remain at a similar level, or possibly reduce if there is any deterrent effect, as current proceedings involve most of these agencies already. The volume of cases is likely to be low based on current levels. We are aware of five relevant contempt cases involving juror misconduct from 2011-2014:

2011 *Attorney General v Fraill & Sewart*<sup>22</sup> (Contempt under Section 8(1) of the Contempt of Court Act 1981, eight months imprisonment)

2012 *Attorney General v Dallas*<sup>23</sup> (online research, served three months imprisonment<sup>24</sup>)

<sup>20</sup> Subject to the judges discretion.

<sup>21</sup> A person guilty of any of these offences is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both). The offences will apply in England and Wales.

<sup>22</sup> [2011] EWCH 1629 (Admin)

<sup>23</sup> [2012] EWHC 156 (Admin), [2012] 1 WLR 991

<sup>24</sup> [2012] EWHC 156 (Admin), [2012] 1 WLR 991, paragraphs 47 & 48

2012 *R v Stephen Pardon*<sup>25</sup> (Contempt under Section 8(1) of the Contempt of Court Act 1981, four months imprisonment)

2013 *Attorney General v Beard*<sup>26</sup> Beard (online research, two months imprisonment), and *Attorney General v Davey*<sup>27</sup> (displaying bias online, two months imprisonment)

Four of the five cases involved use of the internet. Further details of these cases is provided in Annex A.

25. In cases where a jury irregularity<sup>28</sup> occurs and is drawn to the attention of the trial judge, the judge will first consider whether the juror needs to be isolated from the rest of the jury. The judge will then consult with the prosecuting and defending parties, and invite submissions to establish the facts of what has occurred. The judge has numerous options – for example where a jury irregularity occurs, dependant on the facts of the case the trial may continue, the juror may be discharged or the full jury may be discharged. Where the contempt is very minor, it may be dealt with by the judge.<sup>29</sup> Where it is not appropriate for the behaviour to be dealt with by the trial judge, it will be dealt with by the Attorney General.
26. In this case, an investigation by the police may be appropriate to clarify the factual position and gather evidence. When the investigation is complete, the police will report to the Attorney General through the allocated AGO lawyer. If it appears that a contempt may have been committed, the Attorney General will consent to a prosecution and hand the file to the Crown Prosecution Service (CPS), or he may choose to prosecute the case himself.
27. It was noted by the Law Commission that it is unclear whether legal aid is available for contempt cases,<sup>30</sup> however with this option legal aid will be available as the offence will be indictable only. For the above offences that would now be heard by the Crown Court, the average weighted cost of legal aid is estimated at around £4,500<sup>31</sup> per defendant proceeded against.
28. As the maximum penalty for the new offences would be the same as the existing ones, we assume that the average custodial sentence length would not change. In this case, there would be no additional impact for prison and probation.
29. There would also be familiarisation costs for the police, prosecuting authorities<sup>32</sup> and the judiciary.

#### Removal of electronic communication devices

30. HMCTS policy and local court practice, as ordered by judges, is to prohibit electronic communication devices already during deliberations, but this is not consistently applied in courts.<sup>33</sup> With the introduction of discretionary legal powers, we would therefore expect very little impact in terms of additional costs as arrangements will be enforced by existing court security officers, appropriate facilities are generally available and compliance levels of individual jurors are assumed to be high.

<sup>25</sup> [2012] EWHC 3402 (Admin)

<sup>26</sup> [2013] EWHC 2317 (Admin)

<sup>27</sup> [2013] EWHC 2317 (Admin)

<sup>28</sup> Please see: Jury Irregularities in the Crown Court: a Protocol issued by the President of the Queen's Bench Division, available [http://www.judiciary.gov.uk/Resources/JCO/Documents/Protocols/jury\\_irregularities\\_protocol.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Protocols/jury_irregularities_protocol.pdf). A jury irregularity is anything that may prevent a juror, or the whole jury, from remaining faithful to their oath or affirmation as jurors to 'faithfully try the defendant and give a true verdict according to the evidence'.

<sup>29</sup> Section 2 of Part 62 of the Criminal Procedure Rules

<sup>30</sup> "Criminal proceedings" for which legal aid is available are defined under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This definition covers only contempts committed in the face of the court (s 14(g)), and although "other proceedings... may be prescribed", other types of contempts do not appear to have been so prescribed.

<sup>31</sup> Rounded to the nearest £100 and in 2013/14 prices.

<sup>32</sup> Including the Crown Prosecution Service.

<sup>33</sup> Law Commission, Consultation Paper No 209, Contempt of Court, Consultation Paper, Paragraph 4.9, available [http://lawcommission.justice.gov.uk/docs/cp209\\_contempt\\_of\\_court.pdf](http://lawcommission.justice.gov.uk/docs/cp209_contempt_of_court.pdf)



## Disqualification

31. Given the relatively few cases expected, we estimate the impact from disqualification of jurors for 10 years will be minimal<sup>34</sup>, though for the juror concerned it underlines the seriousness of their conduct. Increasing the number of disqualifications from jury service would not result in a change of the number of jurors supplied to court, as the latter is dependent on the rules on juror eligibility.<sup>35</sup>

## **Benefits**

32. The creation of the new criminal offences means that it will not be necessary to rely on consistency between judges when giving directions to jurors. The offence will be applied consistently in courts everywhere. Jurors will be notified prior to the trial about their obligations as a juror, including guidance on conduct.
33. There could potentially be a more efficient use of court resources, if fewer trials have to be stopped or appealed because of juror misconduct. In terms of the number of potential cases of juror misconduct, despite the increasing use of the internet and social media, there may be a reduction in the number of cases, due to clearer guidelines and a deterrence effect of new criminal offences. Caution is needed in terms of the deterrence effect, as the evidence on deterrence is mixed
34. The Law Commission suggests that the new offences will also bring clarity regarding the applicable investigative process, and allows for procedural benefits including applying the rights and powers under the Police and Evidence Act 1984, the Bail Act 1976, the usual rules of evidence and prosecution, criminal disclosure obligations on the prosecution and the application of the criminal legal aid regime.
35. Currently, cases of juror contempt are heard in the Divisional Court, with at least two judges. The new criminal offences would be indictable only, meaning they would be heard in the Crown Court, with only one judge and a jury. We do not have information on the costs per sitting day in the Divisional Court, but based on the assumption that the judicial costs for at least two High Court judges would be higher than the cost per sitting day for a Crown Court judge (and jury), then it is possible that the costs per case may in fact be lower (as also indicated by the Law Commission). For example, the average staff and judicial cost<sup>36</sup> per sitting day in the Crown Court is £1,500 in 2013/2014 prices,<sup>37</sup> and this includes just one judge, instead of two judges.
36. Data provided by the AGO regarding the five cases previously mentioned, suggests that the average cost to the Attorney General to prosecute a juror contempt case is £16,300. However, this figure represents the costs of counsel's legal fees, and does not include court costs. Under this option, the Attorney General would still decide whether to prosecute a juror, and either the CPS or the Attorney General would prosecute in court. If more cases were prosecuted by the CPS than by the Attorney General, it is possible that prosecuting costs could be lower.<sup>38</sup>

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<sup>34</sup> In addition, MoJ internal analysis suggests that the proportion of registered voters in England and Wales aged 18-75 who would be summoned for jury service on two or more occasions over a ten year period would be very low, approximately 4%.

<sup>35</sup> For example, those who have been in prison for the last 10 years are not eligible for jury service, <https://www.gov.uk/jury-service/overview>

<sup>36</sup> This may be an underestimate as other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example, juror costs.

<sup>37</sup> HMCTS Annual Report and Accounts 2013-14 (rounded to the nearest £100), available at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323112/hmcts-annual-report-2013-14.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323112/hmcts-annual-report-2013-14.PDF)

<sup>38</sup> The weighted average CPS cost for a Crown Court case, including pre-charge decision costs and advocacy, is £2,900 (rounded to the nearest £100 and in 2013/14 prices). This includes £1,600 advocacy costs which are based on the offence type: "Offences against public justice and similar offences". The current CPS costs (excluding advocacy) are based on Activity Based Costings (ABC), the primary purpose of which is resource distribution. The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.

## Risks and assumptions

37. The main assumptions and risks are summarised below.

Assumption	Risk
We assume the number of contempt cases tried will not change.	<ul style="list-style-type: none"> <li>It is possible that availability of an offence could lead to more prosecutions. Jurors may be more willing to report cases where they suspect misconduct and prosecutors may be more willing to prosecute since the normal criminal process is available,<sup>39</sup> with more certainty on rights.</li> <li>However, this may be offset by jurors being more reluctant to engage in misconduct which is now clearly criminalised. This could reduce the number of cases and the consequent costs and disbenefits of abandoned trials or miscarriages of justice.</li> </ul>
We assume that the judicial costs for at least two High Court judges would be higher than the cost per sitting day for a Crown Court judge (and jury).	<ul style="list-style-type: none"> <li>It is unlikely that the cost of two judges would be higher than one judge and a jury. If judicial costs are higher in the Crown Court, where there is a jury, then the potential benefit from a reduction in judicial costs may not be realised.</li> </ul>
We assume that if more cases were prosecuted by the CPS than by the Attorney General, then prosecuting costs could be lower.	<ul style="list-style-type: none"> <li>The current CPS costs (excluding advocacy) of £1,200<sup>40</sup> are based on Activity Based Costings (ABC), the primary purpose of which is resource distribution. The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that benefits from lower costs may not be realised.</li> </ul>
We assume that the Average Custodial Sentence Length (ACSL) given for the new offences will be the same as for the current offences.	<ul style="list-style-type: none"> <li>There is a risk that the ACSL given could be longer or shorter. This would have an impact on prison, and probation costs.</li> </ul>

## Wider impacts

38. These changes are likely to be of interest to the public, many of whom are possible future jurors, and the legal profession.

<sup>39</sup> The Law Commission has assessed that the procedural benefits include applying the rights and powers under the Police and Evidence Act 1984, the Bail Act 1976, the usual rules of evidence and prosecution, criminal disclosure obligations on the prosecution and the application of the criminal legal aid regime.

<sup>40</sup> Rounded to the nearest £100 and in 2013/14 prices.

## **Summary and preferred option with description of implementation plan**

39. Our preferred option is Option 1. The Government believes that intervention is needed based on the Law Commission's recommendations to modernise our approach to contempt of court.
40. Option 1 will take forward a legislative programme which would create four new juror misconduct offences and make provision for other measures including a discretionary power for a judge to order the temporary removal of electronic communication devices and the disqualification from jury service for 10 years of a person who has been found guilty of a contempt offence.
41. The creation of the new criminal offences will modernise the way we deal with juror misconduct. There are not expected to be significant costs, and there could be some limited savings, resulting from the introduction of these provisions.
42. Overall, we believe that intervention is necessary to ensure that the law strikes a balance between the public interest in the administration of justice, the defendant's right to a fair trial and the rights of jurors. The consequences of juror misconduct are potentially very serious; miscarriages of justice may arise, risking acquittal of the guilty and conviction of the innocent, or may give rise to appeals or aborted trials which prolong the trial process and result in substantial costs.

## Annex A

### Juror Misconduct – Case Overview

#### *Attorney General v Fraill and Sewart*<sup>41</sup>

The juror, Fraill, was found guilty of contempt of court as she communicated with one of the defendants through the internet and conducted an online discussion on Facebook about the case when the jury deliberations were ongoing. This conduct contravened the provisions of section 8(1) of the Contempt of Court Act 1981. She was also guilty of contempt of court for conducting research on the internet into the defendants, for the purpose of obtaining further information of possible relevance to the issues at trial.

#### *Attorney General v Dallas*<sup>42</sup>

The juror, Dallas, was found guilty of contempt of court as she conducted internet research about the case she was trying and thereafter disclosed the results of that research to her fellow jurors. The judgement set out four elements which were used to establish the contempt in cases where there had been deliberate disobedience to a judge's direction or order: 1) the juror knew that the judge had directed that the jury should not do a certain act, 2) the juror appreciated that that was an order, 3) the juror deliberately disobeyed the order, and 4) by doing so the juror risked prejudicing the due administration of justice.

#### *R v Stephen Pardon*<sup>43</sup>

The juror, Pardon, approached one of the defendants of the case he was trying and discussed the jury's deliberations with him. The jury was unable to reach a verdict and was discharged. The juror was found guilty under Section 8(1) of the Contempt of Court Act 1981, as it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

#### *Attorney General v Beard*<sup>44</sup>

The juror, Beard, undertook internet research on the case he was trying by typing the names of the defendants into Google. The Court concluded that Beard's use of the internet to find out information about the case was "an act which created a real risk of interference with the administration of justice" and which "was specifically intended by him to interfere with the administration of justice".

#### *Attorney General v Davey*<sup>45</sup>

The juror, Davey, posted a status on Facebook about the case he was trying. The Court concluded that Davey had intentionally committed an act which created a real risk of interference with the administration of justice. He was found to have deliberately disregarded the duties he had undertaken as a juror to act fairly towards the defendant and to decide the case on the evidence. He had also discussed the case with people other than his fellow jurors, when he had known that this was something he was not meant to do.

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<sup>41</sup> *Attorney General v Fraill and Sewart* [2011] EWCH 1629 (Admin)

<sup>42</sup> *Attorney General v Dallas* ([2012] EWHC 156 (Admin), [2012] 1 WLR 991)

<sup>43</sup> *R v Stephen Pardon* [2012] EWHC 3402 (Admin)

<sup>44</sup> *Attorney General v Beard* [2013] EWHC 2317 (Admin)

<sup>45</sup> *Attorney General v Davey* [2013] EWHC 2317 (Admin)