IF YOU INFORM THE CLERK TO THE MAGISTRATES COURT that you wish to plead guilty to the offence set out in the summons, without appearing before the Court, and the Court proceeds to hear and dispose of the case in your absence under s 12 of the Magistrates' Courts Act 1980, the following Statement of Facts will be read out in open Court before the Court decides whether to accept your plea. If your plea of guilty is accepted the Court will not, unless it adjourns the case after convicting you and before sentencing you, permit any other statement to be made by or on behalf of the prosecutor with respect to any facts relating to the offence.

STATEMENT OF FACTS
On 29 March 2007 at 10.00 hours you were the driver of a Suzuki Vitara car reg. no FJ 123, travelling north on George Road, Barchester. On approaching the junction with Marks Road you collided with a Ford delivery van N113 PJC which was parked at the kerbside. When asked by the Police Reporting Officer what had happened you said: 'I had the sun in my eyes. I did not see the van.'

Signed *Peter Green*
(on behalf of the Prosecutor)

Freda will be advised that under s 8 of the Road Traffic Offenders Act 1988 her driving licence must be at the court by the date of the hearing and that failure to comply could lead to the suspension of the licence and a fine.

Freda is unlikely to get legal aid for a lawyer to defend her (see criteria earlier in this chapter). Many magistrates are reluctant to give legal aid in motoring offences. This contrasts with persons pleading not guilty in the Crown Court. They are likely to get legal aid whatever the offence.

Effect of the Magistrates' Courts (Procedure) Act 1998

When considering summary trial before magistrates (other than in a youth court), the provisions of the Magistrates' Courts (Procedure) Act 1998 should be addressed. It amends the Magistrates' Courts Act 1980. The Act revises the procedure of pleading by post. Previously many defendants did not respond to the summons. In other words, they did not take the opportunity to plead guilty by post which the summons gives. Where guilt was not admitted in this way, the case had to be adjourned in order that the Crown Prosecution Service could obtain detailed statements from witnesses or make arrangements for them to attend the court. The 1998 Act contains provisions under which the police *may* prepare witness statements rather than a mere statement of the facts and serve these with the summons. The witness statements are then admissible as evidence, provided the defendant does not object. Thus, where a defendant does not plead guilty by post and does not attend court to plead not guilty, the magistrates can try the defendant in his or her absence and the prosecution may base its case on the witness statements which have been served on the defendant as described above. As the example given in the text indicates, the procedure of pleading guilty by post is usually used for certain driving offences. In this connection, the 1998 Act makes provision for the Driver and Vehicle Licensing Agency to supply a printout, which is admissible as evidence of the defendant's previous convictions, and there is no need to give the defendant advance notice of the intention to refer to previous convictions.

The trial

Freda could plead guilty by letter since the offence is summary only and imprisonment is not involved (Magistrates' Courts Act 1980, s 12). In fact, as we have seen, it is punishable

only by a fine (subject also of course, to discretionary disqualification and penalty points). If Freda does plead guilty by letter she must, under s 8 of the Road Traffic Offenders Act 1988 give notification of her date of birth and sex. However, on the assumption that Freda is to attend court and plead not guilty, the main aspects of the procedure are as set out below.

The charge. Freda appears in answer to the summons and the first thing that happens is that the clerk to the magistrates or a legal adviser identifies Freda as the defendant and then reads out the offence with which she is charged and asks her if she pleads guilty or not guilty.

Election to trial by jury. This does not arise in Freda's case because the offence of careless or inconsiderate driving under s 3 of the Road Traffic Act 1988 cannot be tried on indictment before a jury. However, if the police had decided to charge her with dangerous driving under s 2 of the Road Traffic Act 1988, the question of trial on indictment would have arisen because the offence is triable either way.

Attendance of defendant. We shall assume that Freda having refused to plead not guilty by letter will actually attend court to plead not guilty. If she does not and has not given a reasonable explanation for her absence, the matter may be heard without her attending. If there is a reasonable explanation, the case is adjourned.

Freda's plea. Since Freda's case will be dealt with summarily by the magistrates, the clerk or legal adviser will, as we have seen, ask her whether she pleads guilty or not guilty. If Freda pleads guilty, such a plea in itself constitutes a conviction and the magistrates have the power to sentence her without hearing evidence, though they also have the power to decide that even on a guilty plea it is desirable in the circumstances to hear evidence on oath.

The plea of guilty must be unambiguous, i.e. 'guilty'. The court sometimes receives an equivocal plea, e.g. in a trial for theft the defendant may answer, 'Guilty but I had no intention of stealing'. Since this strikes at the heart of the offence, because intention is required, the defendant should be advised to make an unequivocal plea. If he still does not do so, the magistrates can enter a plea of guilty on the defendant's behalf.

The prosecution's case. Since we know that Freda will plead not guilty, the prosecution will have to prove its case. If the prosecution opens the case, the prosecutor will give a succinct outline of the facts and a succinct summary of the law, particularly if a technical defence is expected. The prosecution will then call its evidence, which may be oral evidence and/or written evidence. If oral evidence is called, the prosecution asks questions of witnesses (called examination-in-chief). It is then open to Freda or her solicitor to cross-examine the witnesses for the prosecution and the prosecution may re-examine them.

The defence. When the case for the prosecution has been presented the defence may:

(*a*) submit that there is no case to answer; or
(*b*) proceed to open the case for the defence.

The choice in (*a*) above could be taken where, for example, the prosecution has failed to establish a main ingredient of the offence, or where the prosecution's evidence is so weak that the court could not reasonably convict Freda on it. Freda's solicitor may support his submission of no case to answer by a speech in which he may draw the attention of the court to inconsistencies and omissions in the prosecution's case. Since these are matters of law, the prosecution may reply.

The court will then consider the submission and may retire in order to do so. Should the court accept the submission the case is dismissed. If it finds that there is a case to answer, the defence proceeds. On the assumption that the court does not accept the submission of no case to answer, defence witnesses may be called or their statements admitted in the same

way as the prosecution evidence was. If oral evidence is given by witnesses for the defence and by the defendant, they may be examined by the prosecution and may be re-examined by the defence. The defence may make the closing speech provided that the defence has not opened the case which the defence rarely does because then the right to make a closing speech is lost. The prosecution does not make a closing speech as such but may reply on disputed points of law raised by the defence in the closing speech, but the defence will always address the court last.

Decision and sentence. When the case for the defence is closed, the court must consider whether to convict the defendant or dismiss the information. In general, a magistrates' court has no power to return a verdict of not guilty as charged in the information but guilty of a lesser offence (*Lawrence* v *Same* [1968] 2 QB 93). There are exceptions under s 24 of the Road Traffic Offenders Act 1988 where, e.g. the offence charged is dangerous driving an alternative verdict is careless or inconsiderate driving. The court decides by a majority and lay justices do not normally give reasons for their findings, though some district judges (magistrates' courts) do. There is no need for unanimity and if magistrates are equally divided a new trial is ordered. The justices may ask their clerk to give them advice privately on matters of law (and see *R* v *Uxbridge Justices, ex parte Smith* (1985), Chapter 2), but they must not ask for or listen to the views of the clerk on issues of fact, and it is certainly improper for them to ask the clerk to retire with them when no issues of law arise in the case.

If the magistrates decide to convict, they will then enquire whether the accused has any previous convictions or breaches of court orders recorded against her and may hear both the prosecution and the defence as to her character. The matter of previous convictions is governed by s 151 of the Powers of Criminal Courts (Sentencing) Act 2000, which provides that in considering the seriousness of any offence the court may take into account any previous convictions of the offender or any failure to respond to a previous sentence, e.g. probation. The defendant may ask the court to take into account other offences with which he or she has not been charged but wishes to confess to and be sentenced for. This does not arise in Freda's case. The defence may also address the court in what is called mitigation. This could consist, for example, of an address outlining the defendant's domestic stress, perhaps in Freda's case, that her boyfriend had recently been severely injured in a road accident. The court will then decide upon the sentence and announce it. Once the court has done this, or has dismissed the summons, it will not normally change its decision. However, as we have seen, magistrates' courts are given the power to re-open a case to rectify a mistake in any order they have made within 14 days. The court on the second occasion must be constituted in the same way as it was on the first occasion or with a majority of the same justices. This procedure could be used, for example, where the magistrates had omitted to order the endorsement of a defendant's driving licence. (See also Chapter 2.)

If Freda's defence has failed, the magistrates can fine her. They have a discretion as to whether to disqualify her from driving, though an endorsement of her licence is obligatory (Road Traffic Offenders Act 1988, Sch 2).

Section 152 of the Act of 2000 gives the court a discretion to impose a lesser sentence where the defendant has pleaded guilty and saved a trial particularly but not only where there was an early guilty plea. If the court gives a reduction it must say so in open court. There is no obligation on the court to say what the sentence might otherwise have been. This discretion does not apply in Freda's case because she pleaded not guilty.

Admissibility of previous convictions and bad character evidence

Although s 151 of the Powers of Criminal Courts (Sentencing) Act 2000 remains in force, the CJA 2003 in Chapter I of Part 11 gives the prosecution power to bring evidence to show

that the defendant has committed the offence such as evidence of previous convictions *before the court finds the defendant guilty or not* (see s 98). The 2003 Act also abolishes the restrictions on the admissibility of previous convictions before verdict that were contained in the common law (see s 99). The same procedure can be used by the prosecution in regard to *witnesses*. In the case of the defendant such evidence can be excluded by the court if it thinks that the adverse effect it would have on the fairness of the proceedings requires this and as regards witnesses the permission of the court is required. Evidence as to 'bad character' is also admissible before verdict and is also provided for by the CJA 2003 under similar provisions. There are provisions preventing admission of pre-age 14 offences.

In *R* v *Hanson and others* [2005] 1 WLR 3169 the Court of Appeal stated that since the object of the 2003 Act was to assist in the *evidence-based* conviction of the guilty without putting at risk those who were not guilty it was to be hoped that the prosecution would not *routinely* make application to admit bad character and previous conviction evidence.

Costs

Freda may also be ordered to pay all or part of the costs of the prosecution. A court order will specify the sum.

Proceedings in the youth court

Apart from the specific exceptions listed below, no charge against a person who is under 18 (i.e. between 10 and 17) can be heard anywhere other than in a youth court. In consequence, juveniles are not given the option of electing to be tried by a jury. The public does not have access to youth courts and there are restrictions on press reporting. For this reason, a news story may carry a piece that says that the defendant or another person, e.g. a parent, cannot be identified 'for legal reasons'.

Under s 24 of the Magistrates' Courts Act 1980 there are the following instances where a person under the age of 18 years must be tried in the Crown Court on indictment or where the magistrates have a discretion to deal with the juvenile or commit him or her for trial:

- if the juvenile is charged with homicide, i.e. murder or manslaughter, the trial must be on indictment in the Crown Court;
- if a juvenile is charged with an indictable offence, e.g. causing grievous bodily harm, and the youth court or magistrates' court considers that its sentencing powers are insufficient, it may commit the juvenile for trial on indictment;
- if a juvenile is charged jointly with an adult who is to be tried on indictment, the magistrates may, if it is in the interests of justice, commit the juvenile for trial with the adult.

Sentences in a youth court

The sentences available to a youth court, both custodial and non-custodial, appear in the section of this chapter devoted to that subject (see p 151 and subsequently).

Youth Justice Board

Section 41 of the Crime and Disorder Act 1998 sets up the Youth Justice Board. The Board has the duty, among other things, of monitoring the system of youth justice and is, therefore, concerned with the proceedings in youth courts. The Board consists of between 10 and 12

members appointed by the Secretary of State for the Home Department. The members have extensive experience of the system of youth justice and are appointed for a fixed period of five years. They may be re-appointed but the total length of service cannot exceed 10 years.

Trial on indictment in the Crown Court

Defendants will have reached the Crown Court for trial on indictment by a jury in two ways as follows:

- by being *sent for trial* by the magistrates where the offence is triable only on indictment e.g. murder (there are no committal proceedings for indictable offences); or
- by being *committed for trial* by the magistrates where the offence is triable either way.

Reference should be made to the relevant material in Chapter 2 for further details.

Obviously, the accused will have appeared before the magistrates and may have been remanded in custody or on bail. Issues of bail or no bail will have been decided and the accused will have been instructed how to apply for legal aid and given the necessary form. The usefulness of the duty solicitor at this stage has already been described.

Legal aid

Legal aid in criminal proceedings is given only to those charged with offences and is not available to persons wishing to bring a prosecution.

The Criminal Defence Service Act 2006 will, by reason of ss 1–3, set up a new regime for the funding of Criminal Defence Services. It makes changes in the arrangements for the public funding for representation in criminal cases. Under the old system of legal aid in criminal cases, which was established by the Legal Aid Act 1988, legal aid was granted only by following a means test to decide whether a person was eligible and also whether he or she should make any contribution towards the cost. This scheme was abolished by the Access to Justice Act 1999. This meant that there was no means test and legal aid was granted as of right in criminal cases.

The 2006 Act provides for the power to grant rights to representation to be conferred on the Legal Services Commission instead of the court. The Act also introduces a test of financial eligibility for the grant of funding and where there is eligibility contributions based on means.

The Commission manages the Criminal Defence Service and Criminal Defence Solicitors must work within the general criminal contract in order to carry out CDS functions. The Act gives the Lord Chancellor power to make regulations giving precise schemes for eligibility but these had not been approved at the time of writing. However in a Framework Document issued in 2005 there were proposals for a means test based on gross income as follows:

- any defendant with a gross income of £27,500 or more will be automatically ineligible;
- any defendant with a gross income of £15,000 or less will be eligible;
- between £15,000 and £27,500 there will be allowances made for any partner, dependants and housing costs;
- there is no test of capital assets in the scheme;
- any defendant receiving income support, job seekers allowance or pension credit will qualify automatically with no further assessment.

Court staff under contract to the Commission will process applications.

What is an indictment?

An indictment is a document setting out a list of charges (or one charge) made against the defendant to which he must plead guilty or not guilty. The alleged offences are set out separately in what are called counts and each count must allege only one offence. An indictment is usually drafted by the prosecution. It is then delivered to the Crown Court where it is signed by an officer of the Crown Court. Until the indictment is signed, it is called a bill of indictment. Delivery to the Crown Court is known as preferment of a bill of indictment.

Reporting

There are restrictions on the reporting of adult committal proceedings. There are also restrictions on reports of proceedings in which children or young persons up to 18 are concerned. Matters such as name, address and school cannot be published. There are also restrictions on the publication of the name of the complainant in rape trials.

Although committal proceedings usually take place in open court and the press may be present, any report in adult proceedings is restricted by s 8 of the Magistrates' Courts Act 1980 to the formal part of the proceedings, i.e. the names of the defendants and witnesses, the offence charged and the result of the proceedings. The object of these restrictions is to prevent a jury from being prejudiced by anything it may read in the newspapers so that in the Crown Court the jury will have to decide the case on the evidence presented to it there. It is for this reason that the press is not allowed to report the evidence given at committal proceedings. A defendant or any one of several defendants can require the reporting restrictions to be lifted and may do this, for example, if publicity may lead to the tracing of a vital witness whose identity is not known. An example of the infringement of the above restrictions is provided by *The Eastbourne Herald Case* (see below).

The Eastbourne Herald Case, 1973 – Criminal proceedings: excessive reporting (**20**) 

Alibi

Section 5 of the Criminal Procedure and Investigations Act 1996 is designed to prevent the use of 'sprung' or late alibis which were once so widespread in criminal trials. The section provides that, in general, notice of alibi must be given in advance of a trial on indictment. This is not required in summary trials, though it may appear in the defence statement, because of the ease with which the prosecution can ask for an adjournment where the defendant 'springs' an alibi on the prosecution at the last moment.

It must be made clear by a warning to the defendant that he will not be allowed to bring in evidence of an alibi, i.e. that he was somewhere else when the offence was committed, unless notice of it is given to the solicitor for the prosecution either as part of the committal proceedings or within seven days of the end of them.

Although this warning need not be given if it seems unnecessary having regard to the nature of the offence charged, it should as a general rule be given where there is any doubt, because the Act provides that failure to give it will allow the defendant to introduce a last-minute alibi at his trial.

There is a discretion in the trial judge to allow alibi evidence to be heard even though particulars of it were not given within seven days, provided the prosecution has been given time to investigate the alibi before the trial started (*R* v *Sullivan* [1970] 2 All ER 681). It is unusual for the defence to give notice of an alibi at the committal proceedings.

Place and time of trial

Under s 7 of the Magistrates' Courts Act 1980 a magistrates' court transferring proceedings for trial in a Crown Court has to specify the Crown Court centre at which the accused is to be tried and in selecting that centre must have regard to:

(*a*) the convenience of the defence, the prosecution and the witnesses;
(*b*) the expediting of the trial;
(*c*) any directions regarding the distribution of Crown Court business given by the Lord Chief Justice or by an officer of the Crown Court with the concurrence of the Lord Chancellor under s 4(5) of the Courts Act 1971.

Under s 76 of the Supreme Court Act 1981 (becomes Senior Courts Act 1981) the Crown Court may alter the place of any trial on indictment by substituting some other place for the place specified by the magistrates or in a previous decision on the matter by a Crown Court. Under the 1981 Act the defendant or the prosecutor, if dissatisfied with the place of trial as fixed by the magistrates or by the Crown Court, may apply to the Crown Court to vary the place of trial. The Crown Court may deal with the application as it sees fit. An application under the 1981 Act must be heard in open court by a High Court judge.

The above materials relate to the *place* of trial but when committing *an either-way case* for trial in the Crown Court, the magistrates will fix a date for what is known as a *plea/directions hearing* in the Crown Court. The hearing must take place:

(1) within four weeks of committal where the defendant is in custody; or
(2) within six weeks of committal if the defendant is on bail.

The defendant will be required to plead to the charge(s) at the hearing. If he pleads guilty, he may be sentenced at the hearing. If he pleads not guilty, the judge will require certain information to enable him *to set a date for the trial*. This includes the number of witnesses together with a summary of the issues involved, any facts which are admitted and any alibi, the estimated length of the trial and the date of availability of witnesses and advocates.

When sending *an indictable-only offence* and defendant to the Crown Court for trial, the first hearing is called a *preliminary hearing* and allows a defendant to apply to the Crown Court for bail and allows the judge, following consultation with the prosecution, to set a date by which the prosecution should serve its case on the defence and to set the date for a plea and directions hearing as above. In this case, the first Crown Court appearance must take place:

- within eight days of the receipt of a notice from the magistrates specifying the charges on which the defendant is sent for trial;
- within 28 days of receipt of the above notice where the defendant is given bail.

The magistrates' notice must be given within four days of sending for trial.

The above provisions are designed to bring an accused person to trial as quickly as possible. However, the prosecutor and the accused and his advisers must be given time in which to

prepare the case properly. Accordingly, s 77 of the Supreme Court Act 1981 (as amended) (becomes Senior Courts Act 1981) provides for the laying down under Crown Court Rules of the minimum period from the date of committal when the trial shall commence. These minimum periods cannot be *shortened* without the consent of the accused and the prosecutor or *lengthened* without an order of the Crown Court.

The offence and indictment

Let us suppose that Jim Green has recently and successfully objected to the granting of planning permission to Fred Brown, his neighbour, which has prevented Fred from using part of his land for car-breaking. Let us also suppose that on the evening of 25 February 2007, Jim left home for work and shortly afterwards in a lane not far from his home he was attacked by Fred who was wearing a black balaclava over his head and had, on the evidence to be called, planned the attack. Fred attacked Jim with a knife. Jim suffered serious injuries requiring five stitches in his cheek, six on his right hand, and 16 in his stomach. Jim was detained in hospital for several days.

Fred is now to be tried on indictment for the offence. An indictment is a printed accusation of crime made at the suit of the Queen and read out to the accused at the trial. In Fred's case the main contents of the indictment will state the court of trial and be set out as follows:

INDICTMENT

No. 123456

The Crown Court at Barchester

The Queen – *v* – Frederick Brown

FREDERICK BROWN

IS Charged as follows:

COUNT 1 STATEMENT OF OFFENCE
Wounding or Causing Grievous Bodily Harm with Intent contrary to s 18 of the Offences Against the Person Act 1861.

PARTICULARS OF OFFENCE
Frederick Brown on the 25 February 2007 wounded James Green with intent to cause grievous bodily harm.

Signed *J. Bloggs*
Officer of the Court

In this case there is only one offence, but if there had been more, each would have appeared in a separate paragraph. Each paragraph is referred to as a 'count'.

There may be a motion by the defence to quash the indictment. This is quite rare because such a motion is appropriate only where there is an error apparent on the face of the indictment. A possible ground to quash the indictment is that a count set out in it is bad for duplicity, as where assault and theft are charged in the same count.

Arraignment

When the day of Fred's trial arrives the clerk of the court will confirm Fred's identity, read out the indictment and ask Fred whether he is guilty or not guilty. This is called the arraignment.

If Fred pleads guilty, counsel for the prosecution will give the court a summary of the evidence together with details of Fred's background and record. The defence will put in a plea for mitigation of sentence and sentence will then be passed. In this situation, it will not be necessary to empanel a jury to hear the evidence.

Fred may, while intending to plead 'not guilty' to the s 18 offence, be prepared to plead 'guilty' to a lesser offence which is not on the indictment. In this case Fred may be prepared to plead guilty to unlawful wounding under s 20 of the Offences Against the Person Act 1861. This carries a maximum period of five years' imprisonment, whereas the s 18 offence carries a maximum term of imprisonment for life. This is known as 'plea-bargaining'. The proper practice in such a case is for the defence lawyer to tell the prosecution in advance of Fred's intention or willingness to plead guilty to the lesser offence not appearing on the indictment. If the prosecution accepts the plea, the lawyers concerned in the case must explain to the judge why they think this course of action is appropriate, and the judge must approve the course of action proposed.

If the prosecution (or the judge) refuses to accept the plea to the lesser offence, the trial will continue, and if Fred is acquitted, he cannot be sentenced on the basis of his guilty plea to the lesser offence (*R* v *Hazeltine* [1967] 2 All ER 671) which is regarded as withdrawn if not accepted by the prosecution or judge. It should be noted that a trial judge may allow a defendant to change his plea to not guilty at any time before sentence is passed, even though a formal verdict of guilty has been returned by the jury on the direction of the judge after the trial has begun (*R* v *Drew* [1985] 1 WLR 914).

Some persons may, of course, be too mentally disordered to plead at all. This is referred to as 'unfitness to plead' and is further considered in Chapter 25.

We will assume that Fred pleads not guilty and in this case a jury must be sworn in.

Jury trial

The membership of the jury

As regards membership of a jury, s 321 of and Sch 33 to the Criminal Justice Act 2003 substitutes new provisions into the Juries Act 1974 under which *every* person is qualified to serve as a juror in the Crown Court, the High Court and county courts and is liable to attend for jury service if summoned if:

- they are registered as a parliamentary or local government elector and not less than 18 nor more than 70 years old;
- they have been ordinarily resident in the UK, the Channel Islands or the Isle of Man for any period of at least five years since attaining the age of 13;
- they are not mentally disordered persons; and
- they are not disqualified for jury service.

The definition of mentally disordered persons appears in a new Sch 1 to the Juries Act 1974. It includes persons suffering from mental illness, psychopathic disorder, mental handicap or severe mental handicap and who are resident in hospital or other institution or are

under treatment by a medical practitioner or under guardianship or subject to a receivership order made by a judge of the Court of Protection.

Persons disqualified are set out in the new Sch 1 and are:

- persons who have at any time been sentenced in the UK, the Channel Islands or the Isle of Man:
  - to imprisonment for life, detention for life, imprisonment for public protection, an extended sentence under s 227 of the CJA 2003 or to a term of imprisonment, youth custody or detention of five years or more; or
  - to be detained during Her Majesty's pleasure or during the pleasure of the Secretary of State.
- persons who at any time in the last 10 years have in the UK or the Channel Islands or the Isle of Man:
  - served any part of a sentence of imprisonment, youth custody or detention; or
  - been detained in a young offender institution; or
  - had passed on them or (as the case may be) made in respect of them a suspended sentence of imprisonment or order for detention; or
  - had made in respect of them a community service order, a community punishment order or community order as defined in s 160 of the CJA 2003.
- persons who at any time in the last five years have in the UK or the Channel Islands or the Isle of Man had made in respect of them a probation order or a community rehabilitation order.

The various sentences are considered later in this chapter.

There are also provisions under which full-time serving members of the Forces may be excused on a certificate from the appropriate commanding officer that their absence would be prejudicial to the efficiency of the service.

Many well-known previous exemptions, e.g. for lawyers, are repealed.

The court has power to excuse a person from jury service where it is felt that the particular juror would not be able to perform the duties properly as where a person has a conscientious objection to jury service. (See *R* v *Guildford Crown Court ex parte Sinderfin* [1989] 3 All ER 7.)

Furthermore, since the widening of the base for jury service, a Practice Direction has been issued by the Lord Chief Justice stating that with more professionals and others with public service commitments being available judges should be alert to excuse or discharge a juror should the need arise.

The Juries Act 1974 also provides for exemptions to be granted administratively for prior jury service; previously only the trial judge could grant exemption. Under s 5 of the Juries Act 1974 the defence has a right to see the names, and in London the addresses as well, of the jury panel. This could assist 'jury nobbling' but it remains a right at the present time (but see below).

Under s 61 of the Administration of Justice Act 1982 questions may be put to a prospective juror to ascertain whether he is qualified for jury service *at any time*, and not just when he attends following a jury summons. If a juror refuses without reasonable excuse to answer, or knowingly or recklessly gives a false answer to the questions which are customarily set out in the jury summons, he will commit an offence punishable with a fine. This applies also to a juror who pretends to have a disqualification which he does not have in order to try to avoid jury service.

As regards disabilities, the 1974 Act provides that the court may also exclude anyone from jury service because physical disability or insufficient understanding of English makes his ability to act effectively as a juror doubtful. However, s 18 provides that no judgment after verdict should be reversed by reason, amongst other things, that any juror was unqualified or unfit to serve. Thus, in *R* v *Chapman* (1976) 63 Cr App R 75 where, after a trial at which both

defendants had been found guilty by a unanimous verdict, it was discovered that one juror had been deaf so that he was unable to follow the proceedings, it was held that that did not make the verdict unsafe or unsatisfactory and was a situation covered by the Juries Act 1974, s 18. However, a judge has a discretion *to discharge* a juror *during the trial*, e.g. for bias, as where on a charge of shoplifting from a store a juror reveals that she is employed by that store (*R* v *Morris* (1991) *The Times*, 24 January).

Under s 3 of the 1974 Act the responsibility for summoning jurors is placed upon the Lord Chancellor. The court's administration at each centre acts as summoning officer. However, selection from the electoral register is now effected randomly by computer at the Central Summoning Bureau at Blackfriars in London. Juries are paid travelling and subsistence allowances and are compensated for loss of earnings and other expenses.

Advantages and disadvantages of jury trial

Some take the view that the verdict of a jury is more acceptable to the public than the verdict of a judge, and certainly the jury system gives ordinary persons a part to play in the administration of justice. It is perhaps better that lay men and women should decide matters of fact and the credibility of witnesses. The jury system also tends to clarify the law, in that the judge has to explain the more important points arising at the trial in clear and simple terms, so that the jury may arrive at a proper verdict.

On the other hand, juries may be too easily swayed by experienced advocates and the random method of selection sometimes produces a jury which is not as competent in intellectual terms as it might be in weighing the evidence and following the arguments presented. It has been suggested that trial by, say, three judges would be better, particularly where difficult issues are involved.

There is also the possibility that a member or members of a jury may be subjected to threats by organised crime or by delinquent associates of the accused or his family to achieve an acquittal. Therefore, the prosecution will, in some cases, ask for police protection of the jury, which the judge may grant. The prosecution's application is not made in court but to the judge in the presence of the defendant and his lawyer(s).

Indictable offences are triable before a jury of 12 persons. A panel of more than 12 jurors is brought into court and the clerk will select 12 jurors by a ballot.

Challenge

The names of the jury as selected by the clerk's ballot are called out on selection and each person goes into the jury box to be sworn. Under s 118 of the Criminal Justice Act 1988 the right to challenge jurors without cause (reasons), in proceedings for the trial of a person on indictment, is abolished.

Now a challenge must be supported by reasons. The defence may, before a potential juror is sworn, say 'Challenge for cause' in order, e.g., to challenge the inclusion of a man who has published anti-semitic articles where the defendant is of the Jewish faith. The cause should not be stated in the presence of the potential juror and the other potential jurors who are waiting to be sworn: they should be excluded from the court while the matter is argued before the judge. Jurors may also be challenged because they know the defendant.

The prosecution can also challenge for cause. However, it has, in effect, a right to challenge without cause under the 'stand by' procedure. The prosecution may call on a juror to 'stand by for the Crown', i.e. to be excluded unless it is impossible for a jury to be empanelled without calling on him. In practice, such persons are not called again. This right should not be used to ensure a pro-prosecution jury.