



PRESIDENT OF THE
QUEEN'S BENCH DIVISION

Jury Irregularities in the Crown Court: a Protocol issued by the President of the Queen's Bench Division

1. 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'. Anything that compromises the jury's independence, or introduces into the jury's deliberations material or considerations extraneous to the evidence in the case, may impact on the jurors' ability to remain faithful to their oath or affirmation.

During the course of the trial

2. Any irregularity relating to the jury should be drawn to the attention of the trial judge in the absence of the jury as soon as it is known.
3. Irregularities take many forms: some may clearly appear to be contempt by a juror, for example, searching for material about the defendant on the Internet; others may appear to be an attempt to intimidate or suborn a juror; on other occasions, for example, where there has been contact between a juror and a defendant, it may not be clear whether it may be a contempt or an attempt at intimidation. The judge may also be made aware of friction between individual jurors.
4. Difficult situations do arise and, although the trial process must not be delayed unduly, the trial judge may wish to consult with the Registrar of Criminal Appeals. Contact details for the Registrar and the Criminal Appeal Office are given at the end.
5. When an irregularity is drawn to the attention of the trial judge, the judge should consider whether the juror(s) concerned should be isolated from the rest of the jury if that has not already been done by the usher. If it appears that a juror has improperly obtained information, consideration should be given as to the risk that the information has already been shared with other members of the jury or that the information could be shared if the jury remain together.
6. The judge should consult with the advocates and invite submissions. This should be in open court in the presence of the defendant(s) unless there is good reason not to do so.
7. The trial judge should try to establish the basic facts of what has occurred. This may involve questioning individually the juror(s) involved. Unless there is good reason, again this should be in open court in the presence of the defendant(s). However, if there is suspicion about the defendant's conduct in the irregularity then the hearing should take place with all parties represented, but in the defendant's absence. The hearing should be held in court

sitting in chambers, not in the judge's room. If there is any suspicion of tampering, the defendant ought to be taken into custody, if not already.

8. The judge's inquiries should be directed towards ascertaining whether the juror(s) can remain faithful to their oath or affirmation; the trial judge should not inquire into the deliberations of the jury. The inquiry should only be to ascertain what has occurred and what steps should be taken next. It may be appropriate for the judge to ask the juror(s) whether they feel able to continue and remain faithful to their oath or affirmation.
9. In the light of the basic facts as they appear to be, the trial judge may invite further submissions from the advocates, including on what should be said to the jurors, and take time to reflect on the appropriate course of action. The judge may consider the stage the trial has reached and in cases of potential bias whether a fair minded and informed observer would conclude that there was a real possibility that the juror or jury would be biased. Judges should be alert to attempts by defendants or others to obstruct or thwart the trial process.
10. In relation to the conduct of the trial, the trial judge may:
 - i) Take no action and continue the trial. If so, the judge should consider giving some explanation to the jurors to reassure them that nothing untoward has happened that need concern them.
 - ii) Continue the trial but, if appropriate, give a reminder to the jury, tailored to the requirements of the case, that their verdict is a decision of the whole jury as a body and that they should give and take and try to work together. It is, in every case, essential that no undue pressure is exerted on the jury.
 - iii) Discharge the juror(s) concerned and continue the trial if sufficient jurors remain. The minimum number required to continue is nine: Juries Act 1974, section 16(1). Consideration must be given as to what to say to the remaining jury members when one or more have been discharged and to the juror(s) on discharge. The juror(s) must be warned not to discuss the circumstances with anyone and it may be necessary to discharge the juror(s) from current jury service.
 - iv) Discharge the whole jury and re-list the trial. Again the jury should be warned not to discuss the circumstances with anyone. Consideration should be given to discharging them from current jury service. If the jury has been discharged and there is a danger of jury tampering in the new trial, the Crown may make an application under s.44 Criminal Justice Act 2003 at a preliminary hearing for a trial without a jury if jury protection measures would be insufficient.
 - v) If the judge is satisfied that jury tampering has taken place, discharge the jury and continue the trial without a jury: s.46(3) Criminal Justice Act 2003, or discharge the jury and order that a new trial take place without a jury: s.46(5) Criminal Justice Act 2003.
11. Contempt by jurors should generally be dealt with by the Attorney General; however it may be appropriate for the trial judge to deal with a very minor and clear contempt in the face of the court admitted by the juror. The procedure in such a case is provided for in Section 2 of Part 62 of the Criminal Procedure Rules. If, after the preliminary inquiry, it appears to the trial judge that someone may be in contempt and it is not appropriate for the trial judge to deal with it, or that a criminal offence may have been committed, an investigation by the police may be appropriate to clarify the factual position or to gather evidence.
12. Before the name(s) and address(es) of any juror(s) are provided to the police or the police are requested to take any action, the approval of the Court of Appeal (Criminal Division) (the 'CA(CD)') to the release of information must be obtained. The court manager, on behalf of the trial judge, should contact the Registrar of Criminal Appeals setting out the position neutrally and seeking the approval of the CA(CD) to release the names and addresses of the

juror(s) to the police. The initial approach may be by telephone, but the information must be provided in writing; e-mail is acceptable.

13. The Registrar will put the application before the Vice-President of the CA(CD) or a judge of the CA(CD) nominated by the Vice-President to consider approval. The Court of Appeal judge will consider the application and, if approval is granted, may also give directions as to the scope of the investigation. It may be that any investigation is made in stages. The Registrar will also inform the Attorney General's Office, who may allocate a lawyer and assist the police in the direction of the investigation.
14. Where there is to be an investigation by the police, it will be necessary to act expeditiously to obtain witness statements whilst memories are still fresh. Such statements may be required for criminal or contempt proceedings. Police investigating the matter must pay scrupulous regard to s.8 Contempt of Court Act 1981.
15. When the investigation is complete, the police should report to the Attorney General through the allocated AGO lawyer. If it appears that a criminal offence may have been committed, the Attorney General will hand the file to the Crown Prosecution Service; if a contempt may have taken place, the Attorney General will decide whether or not to instigate proceedings in the Divisional Court.

After verdicts have been returned

16. A trial judge has no jurisdiction in relation to enquiries about jury irregularities that come to light after the end of the trial. A trial will be considered to have concluded for these purposes when a jury has delivered all verdicts or has been discharged from giving all verdicts on all defendants in the trial. In *R. v Thompson and others* [2010] EWCA Crim 1623, (2010) 2 Cr. App. R. 27 the Lord Chief Justice, Lord Judge said:

*Much more difficult problems arise when after the verdict has been returned, attention is drawn to alleged irregularities. This may take the form of a complaint from a defendant, or his solicitors, or in a very few cases it may emerge from one or more jurors, or indeed from information revealed by the jury bailiff. It is then beyond the jurisdiction of the trial judge to intervene. Responsibility for investigating any irregularity must be assumed by this court. In performing its responsibilities, it is bound to apply the principle that the deliberations of the jury are confidential. Except with the authority of the trial judge during the trial, or this court after the verdict, inquiries into jury deliberations are "forbidden territory" (per Gage LJ in *R v Adams* [2007] 1 Cr App R 449).*

17. If information about a jury irregularity comes to light during an adjournment after verdict but before sentence, then the trial judge should be considered functus officio in relation to the jury matter, not least because the jury will have been discharged. The trial judge should inform the Registrar of Criminal Appeals about the information. Unless there is a good reason not to do so, the trial judge should proceed to sentence.
18. If at any stage after trial, a juror contacts the trial judge about the trial, that communication should be referred to the Registrar of Criminal Appeals to consider what steps may be appropriate. The Registrar may seek the direction of the Vice-President of the CA(CD) or a judge of the CA(CD) nominated by the Vice-President.
19. If the communication suggests any issue of contempt or criminal offence, the Registrar will inform the Attorney General. If it appears to suggest a possible ground of appeal, the defendant's legal representatives will be informed. Where it raises no issues of legal significance (for example, a general complaint about the verdict from a dissenting juror or expressions of doubt or second thoughts,) the Registrar will respond to the communication explaining that no action is required.

20. If the prosecution become aware of an irregularity which might form a basis for an appeal then they should notify the defence in accordance with their duties to act fairly and assist in the administration of justice: *R v Makin* [2004] EWCA Crim 1607, (2004) 148 SJ 821.
21. If the defence become aware of an irregularity which would found an arguable ground of appeal, whether they are informed directly or via the prosecution or the Registrar of Criminal Appeals, they may wish to lodge a notice and grounds of appeal. The defence should be mindful of the provisions of s.8 Contempt of Court Act 1981.
22. If an application for leave to appeal is received with grounds relating to a jury irregularity then the Registrar may refer the case to the full court to consider whether the court would wish to direct the Criminal Cases Review Commission (C.C.R.C.) to conduct an investigation in to the irregularity under s.23A of the Criminal Appeal Act 1968 and s.5(1) of the Criminal Appeal Act 1995.
23. An investigation may be directed before or after leave is granted: s.23A and s.23A(1)(aa) Criminal Appeal Act 1968.
24. If the Court directs that an investigation should take place, directions will be given as to the scope of the investigation. The C.C.R.C. will report back to the court. Copies of the report or other appropriate information are provided to the parties and the court either refuses leave or grants leave and subsequently hears the appeal.



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November 2012

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