

## Chapter 4. Jurors who serve and do not serve

The analysis of the representative nature of juror summoning by computerised random selection from local electoral lists revealed that, with the exception of two courts, the proportion of ethnic minorities summoned for jury service did not differ significantly from the local population in any Crown Court in England and Wales. The next stage of the analysis examines who serves and who does not serve once summoned for jury service. In particular, it addresses the question of whether the proportion of ethnic minorities who eventually serve as jurors in each Crown Court differs significantly from the local population. To do so, this chapter examines the impact of juror eligibility rules, which by necessity disqualify some individuals from jury service, as well as individual decisions made by the Jury Central Summoning Bureau to grant excusals from jury service. The findings are based on the survey of all jurors summoned for jury service for Crown Courts in England and Wales in one week in 2005.

### Aims and objectives

A number of widespread beliefs about the extent to which juries are representative of the population appear to have become entrenched in this country, although they have not been substantiated with any reliable research evidence<sup>184</sup>. For several decades there have been frequent claims that ethnic minorities are under-represented among those doing jury service, that the middle class avoids jury service, that those serving on juries are primarily the retired and unemployed, and that women<sup>185</sup>, young people<sup>186</sup>, the self-employed<sup>187</sup> and those over 65<sup>188</sup> are all under-represented among those doing jury service. These claims led the Auld Review to conclude that juries in England and Wales do not reflect the broad range of skills and experience or ethnic diversity of the communities from which they are drawn<sup>189</sup>, and that excusals from jury service have created a widespread belief that jury service is only for those “not important or clever enough to get out of it”<sup>190</sup>. As the previous chapter noted, it has also been claimed that most people try to avoid jury service and that this is the case for almost all those summoned in London<sup>191</sup>. The Jury Summoning Study was designed to provide a systematic analysis of the representative nature of the jury summoning process, and to

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<sup>184</sup> The most extensive study of jury representation to date, the Crown Court Study, did not find evidence to substantiate most claims of unrepresentative juries. See Zander and Henderson *supra* note 12.

<sup>185</sup> *Justice for All* *supra* note 51, section 7.24

<sup>186</sup> J. Gobert “The Peremptory Challenge – An Obituary” [1989] *Crim. L.R.* 528

<sup>187</sup> Auld claimed that the self-employed are virtually exempt from jury service. Auld *supra* note 23, Chapter 5, paragraphs 27-40.

<sup>188</sup> A claim that clearly contradicts the claim that the retired are over-represented on juries.

<sup>189</sup> Auld *supra* note 23, Chapter 5 paragraph 11.

<sup>190</sup> *Ibid*, paragraph 13. Zander, who conducted the Crown Court Study, went on record as disputing many of these claims in the Auld Review. See Zander “Lord Justice Auld’s Review of the Criminal Courts: A Response” *supra* note 72.

<sup>191</sup> Darbyshire et al *supra* note 37, p.58.

determine whether any of these claims about the lack of representation among those doing jury service are borne out in reality.

As discussed in Chapter three, the first main aim of the study was to examine ethnic minority representation in the jury system on a court-by-court basis. Considering juror representation on a national aggregate basis can present a misleading picture of the nature of juror representation as jurors are only summoned from specific local populations in individual Crown Court areas. The second main aim of the study was to understand the importance of ethnicity in relation to a range of other socio-economic factors. Previous research on the court system in this country and on juries in other jurisdictions has indicated that examining ethnicity alone may misconstrue the role of ethnicity in juror representation. This chapter examines how ethnicity affects juror representation in relation to a range of demographic characteristics (such as gender, age, employment, income, language and religion). The objective was to provide a more refined understanding of jury summoning and representation by examining diversity in terms of more than just ethnicity. This wider approach to understanding the impact of diversity was a unique aspect of this research project. The specific questions addressed in this chapter include:

1. Whether the proportion of ethnic minorities who serve as jurors in each Crown Court reflects the proportion of ethnic minorities in the local population.
2. Whether excusals or disqualifications from jury service disproportionately affect ethnic minorities and result in the under-representation of ethnic minorities among serving jurors at each Crown Court in England and Wales.
3. Whether other socio-economic factors such as income, employment, age, gender, religion and language have a greater influence than ethnicity on whether those summoned do serve.

This chapter examines the representative nature of those serving as jurors on a court-by-court basis. It explores the impact of disqualifications and grants of excusals on BME group representation among serving jurors at each Crown Court, as well as the influence of other socio-economic characteristics of summoned jurors on whether or not they serve. This part of the analysis explores the validity of a number of common assumptions about who does and who does not do jury service in this country, exploring the representative nature of serving jurors in relation to a range of socio-economic factors. The project conducted two juror surveys, one in 2003 and one in 2005, before and after the introduction of new juror eligibility rules. The chapter

examines what impact the introduction in 2004 of these new rules may have had on BME representation among serving jurors. The representation of two specific social groups was also examined: the Irish and Welsh. In the context of the criminal justice system, it has been argued that the Irish need to be considered as an individual group that may have particular concerns about the fairness of the legal process. The findings examine the nature of Irish representation in the jury process and what this may indicate about their willingness to do jury service. The issue for Welsh jurors is different, and concerns the possible introduction of bilingual juries in Welsh courts. The government recently carried out a consultation process on introducing bilingual juries in Wales<sup>192</sup>, and the analysis in this chapter explores the extent to which the current summoning process produces sufficient numbers of Welsh speaking jurors to support bilingual jury trials.

### Findings on serving and not serving

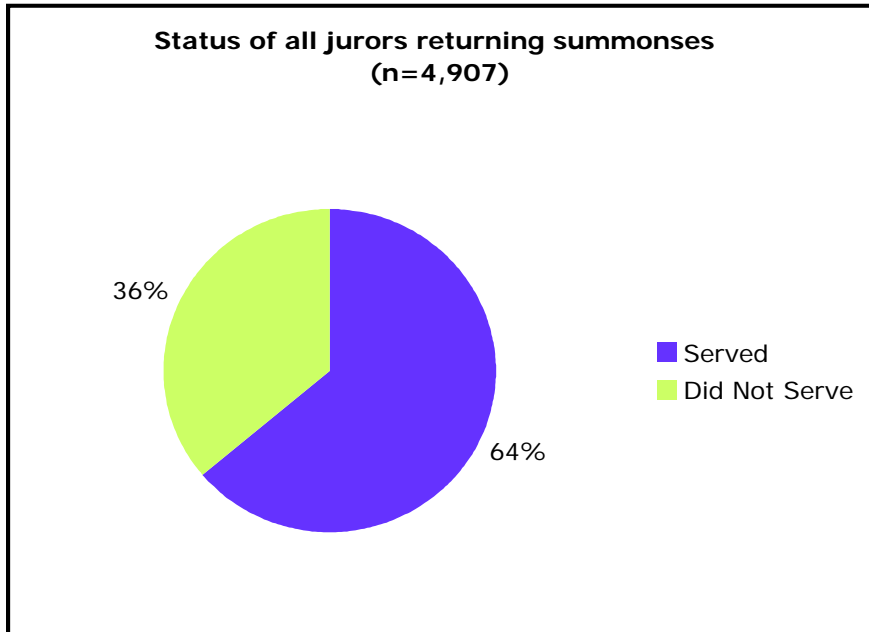
Throughout this chapter, the following definitions apply to categories used to describe the status of those summoned for jury service.

<b>Table 4.1. Definitions of juror status categories</b>	
<b>Juror Status</b>	<b>Definition</b>
Served	Those who served on the date for which they were summoned, and those who had their jury service deferred and serve at a later date.
Did Not Serve	Those who returned their summons but were excused or disqualified.
Non-returns	Those whose summonses were returned to the JCSB as “undeliverable” and those who did not reply to the summons.

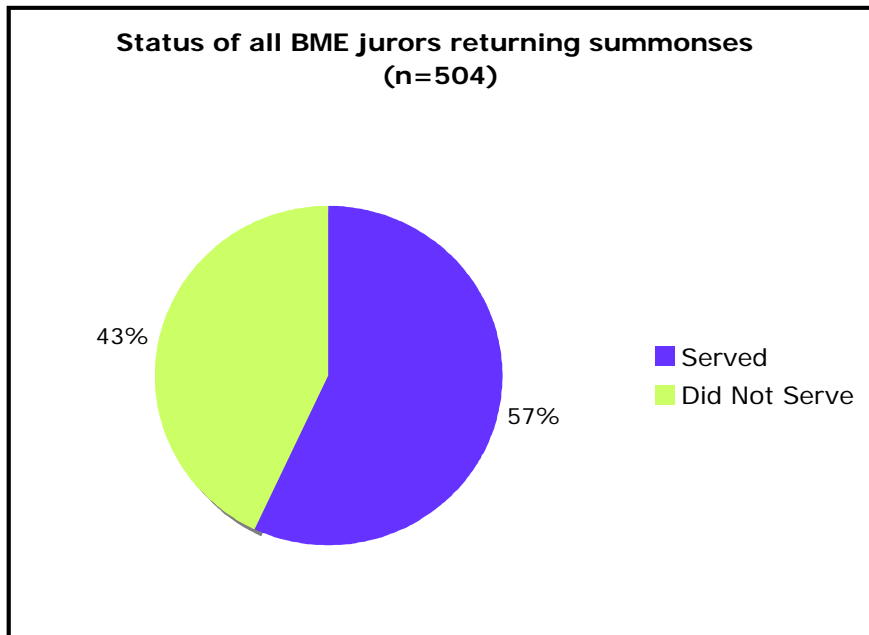
Figure 4.1 below shows that, of all those individuals summoned during the survey who returned their summonses, 64% served as jurors. Figure 4.2 below shows that among all those summoned from among BME groups, a slightly smaller proportion (57%) served as jurors.

<sup>192</sup> *The Use of Bilingual (English and Welsh-speaking) Juries in Certain Criminal Trials in Wales: A Consultation Paper*, Office for Criminal Justice Reform (December 2005)

**Figure 4.1. Percentage of all summoned jurors who served and did not serve**

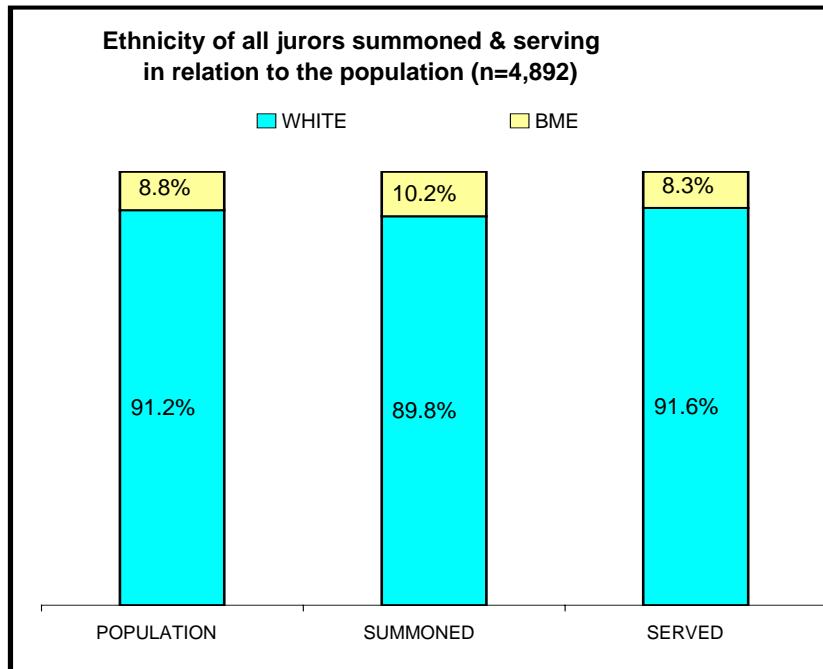


**Figure 4.2. Percentage of BME jurors summoned who served and did not serve**



Despite the fact that a higher proportion of those summoned from BME groups did not serve compared to all those summoned, Figure 4.3 below shows that the proportion of BME jurors serving is almost identical to the proportion of BME in the population of the combined juror catchment areas for all Crown Courts: 8.3% BME serving compared to 8.8% BME in the population.

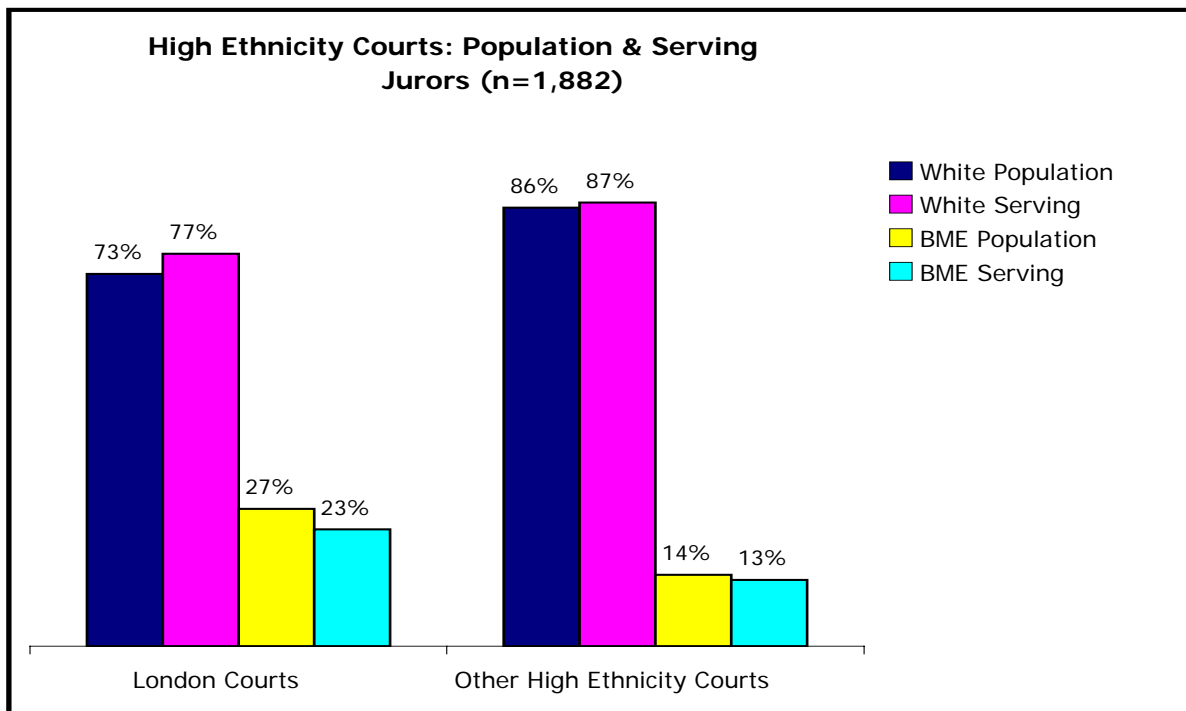
Figure 4.3. Ethnicity of all jurors summoned and serving



Among those summoned for High Ethnicity Courts (those courts with the highest proportion of BME groups in the juror catchment area), BME groups are represented among serving jurors almost exactly in proportion to their representation in the population in those High Ethnicity Courts outside of the London Region. Figure 4.4 below shows that BME groups comprise 14% of the population in these non-London High Ethnicity Courts<sup>193</sup> and they comprise 13% of all serving jurors. The figure also shows that in the London Region, BME groups are under-represented among serving jurors, where they comprise 23% of all those serving but comprise 27% of the population in the juror catchment areas for London combined.

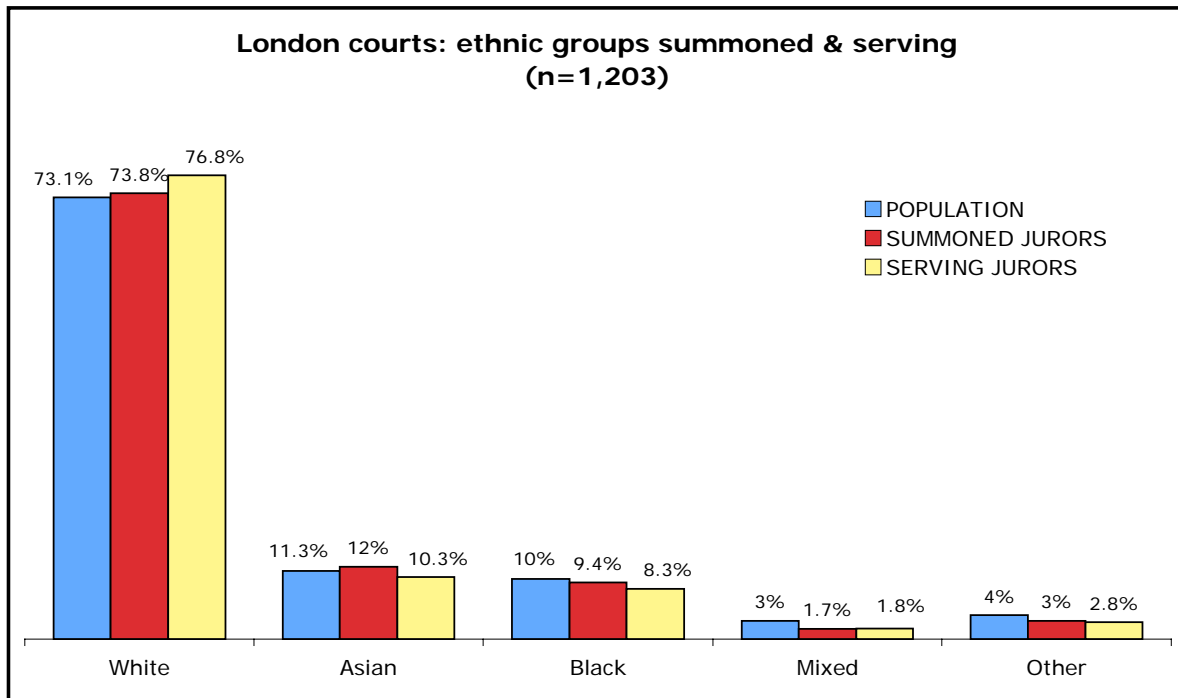
<sup>193</sup> Birmingham, Wolverhampton, Coventry, Leicester, Bradford, Manchester Minshull Street, Luton and Reading.

**Figure 4.4. Ethnicity of serving jurors and population in High Ethnicity Courts**



As the London Crown Courts summon over a quarter of all jurors and have the highest BME population levels in their juror catchment areas, this under-representation was examined in more detail. Figure 4.5 below shows that three of the four main BME groups (Asian, Black and Mixed) are slightly under-represented among serving jurors in relation to these groups' representation in the population for all the London courts combined. Black jurors are under-represented by 1.7%, Mixed jurors by 1.2% and Asian jurors by 1%. Those identifying themselves as belonging to any other non-White ethnic group are slightly over-represented (2.8% serving compared to 2.6% in the catchment area population), and White jurors are over-represented by 3.7%.

**Figure 4.5. Ethnic groups summoned and serving in relation to population for all London Courts combined**



However, as the previous analysis of ethnicity and juror summoning in Chapter three demonstrated, the representative nature of jury service needs to be considered on an individual court basis, as jurors can only be summoned and serve at a specific Crown Court. One of the difficulties in analysing jury service at the individual court level is that there are often relatively small numbers of BME jurors serving in many courts. However, it was still possible to determine whether differences between the percent serving and the percent in the local population were statistically significant, by employing an analytical method that takes into consideration the variations in the numbers of those serving per court<sup>194</sup>. The analysis showed that among all the Crown Courts in England and Wales covered in the survey there were only three courts where BME jurors were significantly under-represented among serving jurors in relation to the BME population in that court’s juror catchment area: Birmingham, Leeds and Manchester Crown Square.<sup>195</sup> In Birmingham, while BME groups comprise 22.3% of the juror catchment area population and 22% of those summoned, they comprise only 14.7% of those who served in the study week. In Leeds, while BME groups comprise 6.3% of the catchment area population and 3.6% of those summoned, there were no BME jurors who did jury service in the study week. In

<sup>194</sup> See Chapter 3 for details of the method used.

<sup>195</sup> Full details of the analysis of statistical significance of serving jurors can be found in Appendix 1.

Manchester Crown Square, while BME groups comprise 9.3% of the catchment area population, they were significantly under-represented among those summoned (1.8%) and there were no BME jurors who served in the study week.

Birmingham is the only High Ethnicity Court among the three courts where the under-representation of BME jurors was statistically significant, and the only one therefore where BME jurors could be expected to serve on juries. Figure 4.6 below shows that the under-representation of BME jurors was spread among three of the main BME groups: Asian, Black and Mixed, but that this under-representation was only just over 1% for each group. For presentation purposes White jurors are not presented in this figure, although they were summoned precisely in proportion to their representation in the population (78%) but over-represented among those serving (82%).

**Figure 4.6. Ethnic minority jurors summoned and serving in relation to local population at Birmingham Crown Court**

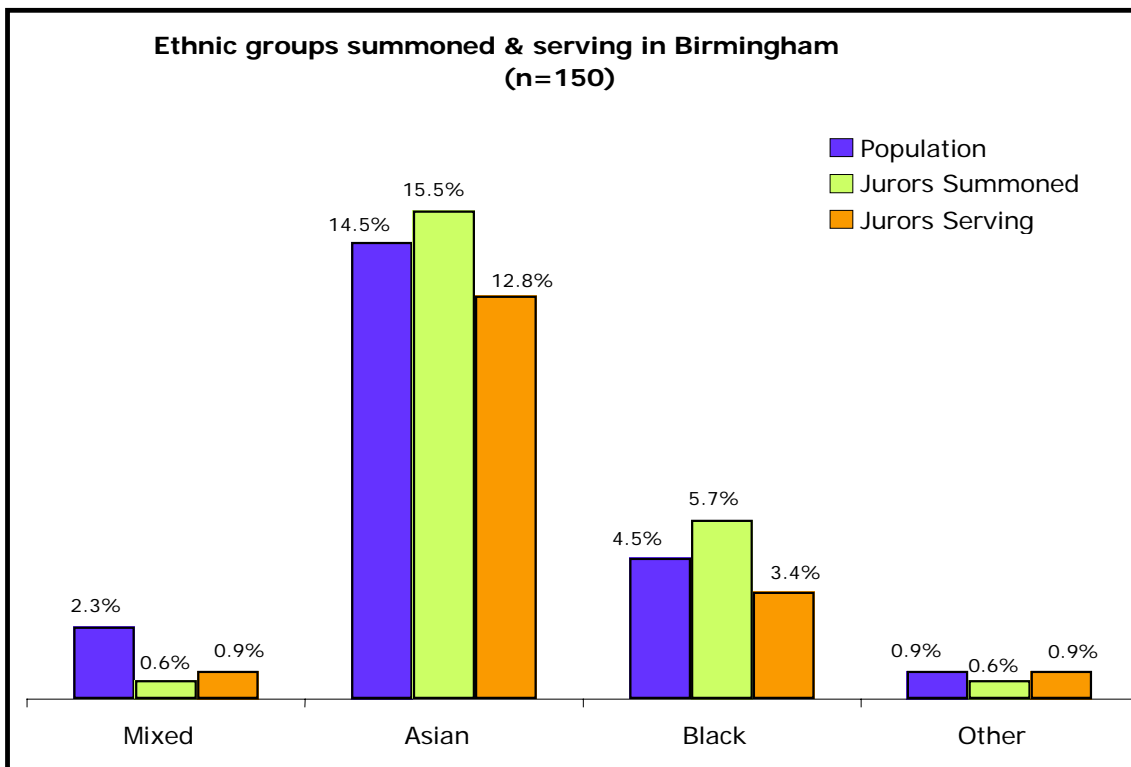
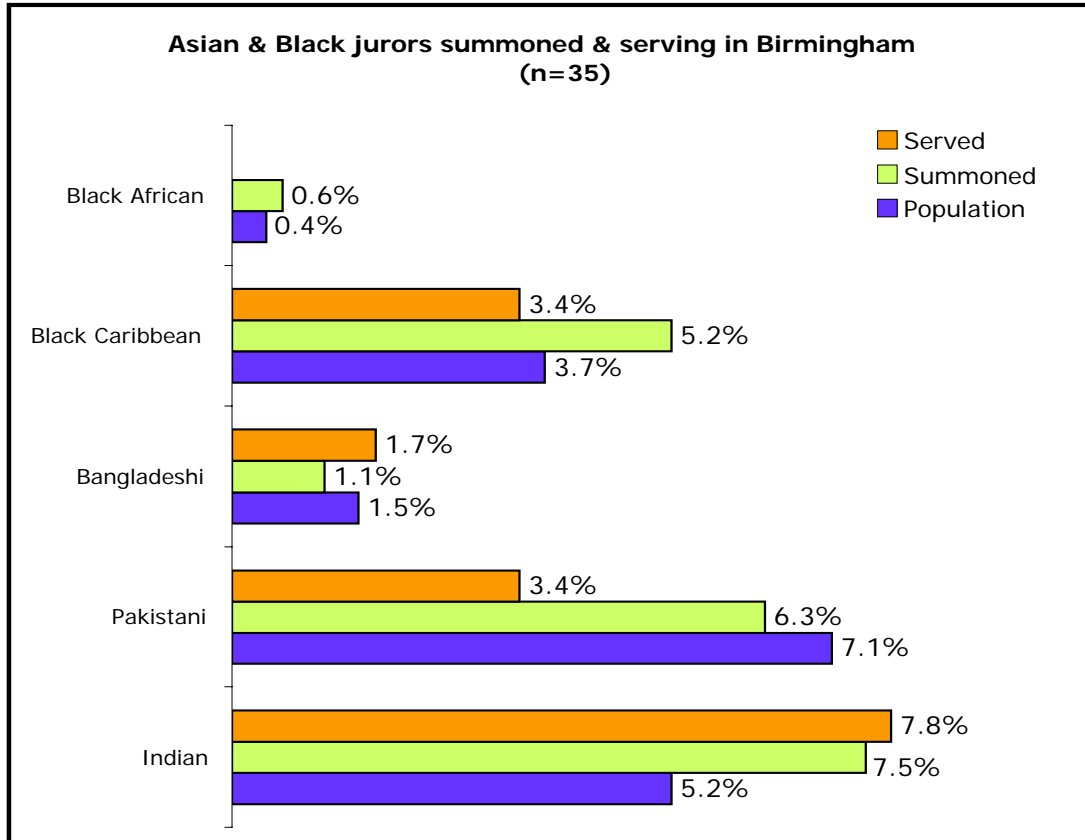


Figure 4.7 below looks in more detail at under-representation among Asian and Black jurors, the two largest BME groups in Birmingham. This shows that it is primarily Pakistanis that are under-represented among serving jurors in Birmingham, that Indians are over-represented in relation to their representation in the juror catchment area, and that Black Caribbeans and Bangladeshis are represented almost precisely in proportion to their representation in the local population.

This finding contrasts with the findings from Baldwin and McConville’s study in the late 1970s of serving jurors at Birmingham Crown Court, in which West Indian and Asian jurors had the highest levels of under-representation<sup>196</sup>.

**Figure 4.7. Representation of Asian and Black jurors at Birmingham Crown Court**



These results highlight the need, wherever possible, to disaggregate ethnicity when examining the representative nature of jury service. At first glance, the “Asian” population in the Birmingham catchment area appears to be under-represented among serving jurors. However, when this general group classification is broken down into specific Asian groups, it is clear that both Indians and Bangladeshis in the Birmingham area are not under-represented among serving jurors, but are in fact over-represented in relation to their representation in the local population. The reality is that all Asians are not under-represented among serving jurors at Birmingham Crown Court, only Pakistanis.

<sup>196</sup> Baldwin and McConville supra note 35.

## **Relative importance of ethnicity**

The analysis in Chapter three showed that, in the 84 Crown Courts covered in the project's summoning survey, BME groups were significantly under-represented only among those summoned in one Crown Court (Manchester Crown Square) and significantly over-represented among those summoned in another court (Great Grimsby). The analysis in this chapter also showed that BME groups were significantly under-represented among serving jurors in only three of the 84 Crown Courts covered in the study (Manchester Crown Square, Birmingham and Leeds), and that only one of these courts (Birmingham) was a High Ethnicity Court, where BME groups comprised over 10% of the juror catchment area population. All of this suggests that factors other than ethnicity may be more influential in whether a summoned juror serves or does not serve.

In addition to information on ethnicity, the survey also requested other demographic information from those summoned for jury service, including age, gender, income, employment status, religion and first language. This was done in order to explore the relative importance of ethnicity and other socio-economic factors to whether those summoned for jury service actually serve. This approach to the research reflects the findings of previous research on the need to examine diversity in its wider sense in order to understand the impact of ethnicity<sup>197</sup>. Furthermore, it provides the basis for examining whether numerous widespread but unsubstantiated beliefs about who does and who does not do jury service are borne out in reality.

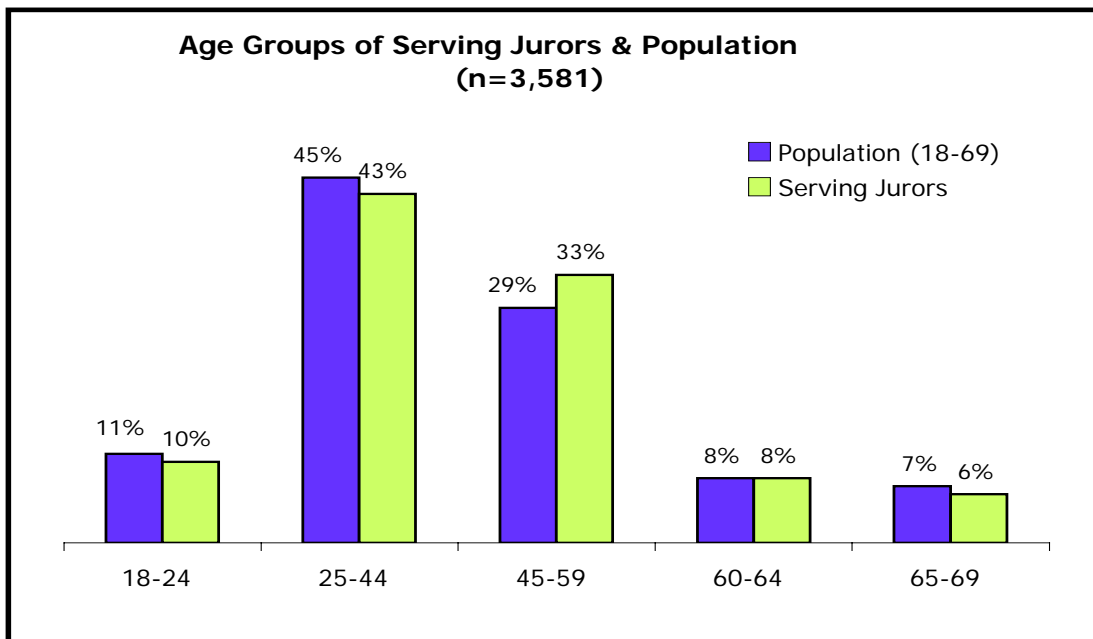
Two multilevel analyses were conducted exploring the relative significance of ethnicity to these other demographic factors. The first analysis examined the importance of various socio-economic factors in predicting whether those summoned served or did not serve. A more detailed analysis was subsequently conducted examining the importance of a range of socio-economic factors in predicting whether those summoned either (1) served on the date for which they were summoned, (2) served but deferred their jury service to a later date, (3) did not serve because they were disqualified or (4) did not serve because they were excused. Multilevel analysis is commonly used to analyse data where units are grouped at different levels (for instance, pupils within schools or survey respondents within households). The multilevel analysis of jury service takes into consideration that particular courts may have generally higher or lower rates of serving. Seven socio-economic factors were examined in the analysis: gender, employment status, religion, ethnicity, prior jury service, income and whether or not English was a juror's first language.

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<sup>197</sup> See discussion in Chapter 1 *supra* note 89.

Age was not included in the multilevel analysis because there was a high level of missing data for this one factor. The research survey did not request information from jurors on their age, because all jurors who are summoned are asked to provide their date of birth on the official summons document returned to the JCSB, and the project had access to these data. Unfortunately, even though the JCSB formally requests this information for all those summoned, 16% of respondents did not provide date of birth information to the JCSB<sup>198</sup>. Even though age was not included in the multilevel analysis, it is important to consider its impact on serving and not serving, as a number of claims have been made about the under-representation of certain age groups among those serving. For several decades there have been frequent claims that young persons are under-represented among serving jurors<sup>199</sup>. However, as Figure 4.8 below shows, those between the ages of 18 and 24 are represented among serving jurors in almost exact proportion to their representation in the population, comprising 10% of all serving jurors in the study week and 12% of the population.

**Figure 4.8. Age of serving jurors in relation to UK population**



<sup>198</sup> Response to the date of birth question was lowest among those who did not serve (25%) and highest for those who served (93%).

<sup>199</sup> This is despite the fact that the Crown Court Study found that, among serving jurors in 1992, 15% were in the 18 to 24 age group, which made up 14% of the national population at the time. See Zander and Henderson supra note 12 p. 236.

In *Justice for All*, the government also expressed concerns that those over 65 were under-represented among serving jurors<sup>200</sup>, and the new juror eligibility rules subsequently introduced in 2004 removed the right of those between the ages of 65 and 70 to request excusal from jury service. Figure 4.8 above shows that in the 2005 survey, after the new rule came into effect, 6% of serving jurors were 65-69 years of age, and that there is now no under-representation of the over 65s among serving jurors<sup>201</sup>. Results of the same survey conducted in 2003 showed that, under the old eligibility rules, those between 65 and 69 comprised 3% of serving jurors<sup>202</sup>, and that the rule change has had the desired effect by doubling the proportion of over 65s serving as jurors. In the 2005 survey, the overwhelming majority (79%) of jurors between 65 and 70 that are summoned for jury service did serve, and among those who were excused from jury service, the majority (56%) were excused for medical reasons that precluded them from serving.

The following presents the results for the multilevel analysis of who serves and who does not serve. Table 4.2 below shows the parameters of each juror background factor used in the analysis.

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<sup>200</sup> These concerns were based on the findings of the Crown Court Study, which found that only 2% of serving jurors in 1992 were over 65. Zander and Henderson *supra* note 12 p. 236.

<sup>201</sup> Census data in postcode district form only provide information on those 65 to 74 years of age, but half of this age group (those from 70 to 74) are disqualified from jury service. Therefore, data used in this analysis were the 2001 census figures for the United Kingdom.

See [www.statistics.gov.uk/census2001/pyramids/pages/UK.asp](http://www.statistics.gov.uk/census2001/pyramids/pages/UK.asp)

<sup>202</sup> In the 2003 summoning survey, of the 3416 serving jurors where age was known, 11% (377) were 18-24 years of age, 44% (91490) were 25-44, 31% (1060) were 45-59, 11% (392) were 60-64, and 3% (97) were 65-69.

<b>Table 4.2. Socio-economic factors examined in multilevel analysis</b>	
<b>Socio-economic characteristic</b>	<b>Parameter</b>
<b>Gender</b>	Male
	Female
<b>Prior jury service</b>	No
	Yes
<b>Income</b>	Under £10,000
	£10,000 - £19,999
	£20,000 - £34,999
	£35,000 - £49,999
	£50,000 - £64,999
	Over £65,000
<b>Employment</b>	Full time
	Part time
	Self-employed
	Retired
	Student
	Looking after family
	Looking for work
	Other
<b>Ethnicity</b>	White
	Mixed
	Asian
	Black
	Other
<b>Religion</b>	None
	Christian
	Buddhist
	Hindu
	Jewish
	Muslim
	Sikh
	Other
<b>First language</b>	English
	Other

Four different models were used to examine which factors were most likely to predict whether those summoned served or did not serve. One model included all the seven socio-economic factors. However, because ethnicity, religion and first language are likely to be related, other models either included ethnicity (but not religion and language), included religion (but not ethnicity and language) or included language (but not ethnicity or religion).

**Among the demographic factors examined, three (prior jury service, gender and religion) appeared to have no significant impact on whether those summoned for jury service served or did not serve.** Among all summoned jurors, 86% had not previously done jury service, and the analysis showed that whether a summoned juror had previously done jury service or not had no significant impact on whether or not they served. There was virtually no difference between the proportion of those with no prior jury service that served (70%) and the proportion of those with prior jury service experience that served (69%). Among those summoned for jury service in the study, a slightly higher proportion of women than men did not serve (33% of women compared to 27% of men). While this appears to reinforce the view put forward in *Justice for All* that women are under-represented among serving jurors, the analysis in fact found that gender had no significant impact on whether those summoned served or did not serve<sup>203</sup>. Among serving jurors, the proportion of men and women was almost identical (51% of those serving were women, 49% men)<sup>204</sup>. While Christians and Muslims are under-represented among both those summoned and serving in relation to the proportion of Christians and Muslims in the population<sup>205</sup>, and those with no religious affiliation are over-represented among those summoned and serving<sup>206</sup>, the multilevel analysis found that this background factor on its own had no impact on whether a summoned juror served or did not serve.

**There were, however, four socio-economic factors that were highly predictive of whether those summoned did or did not serve: income, employment status, ethnicity and first language.** For ethnicity, while all BME groups were less likely to serve, the only statistically significant difference was for Black jurors, who were less likely to serve than any other ethnic group. Figure 4.9 below shows that 59% of all Black jurors who were summoned did jury service compared to 73% of all White jurors summoned, 69% of all Mixed ethnicity jurors and 62% of Asian jurors summoned.

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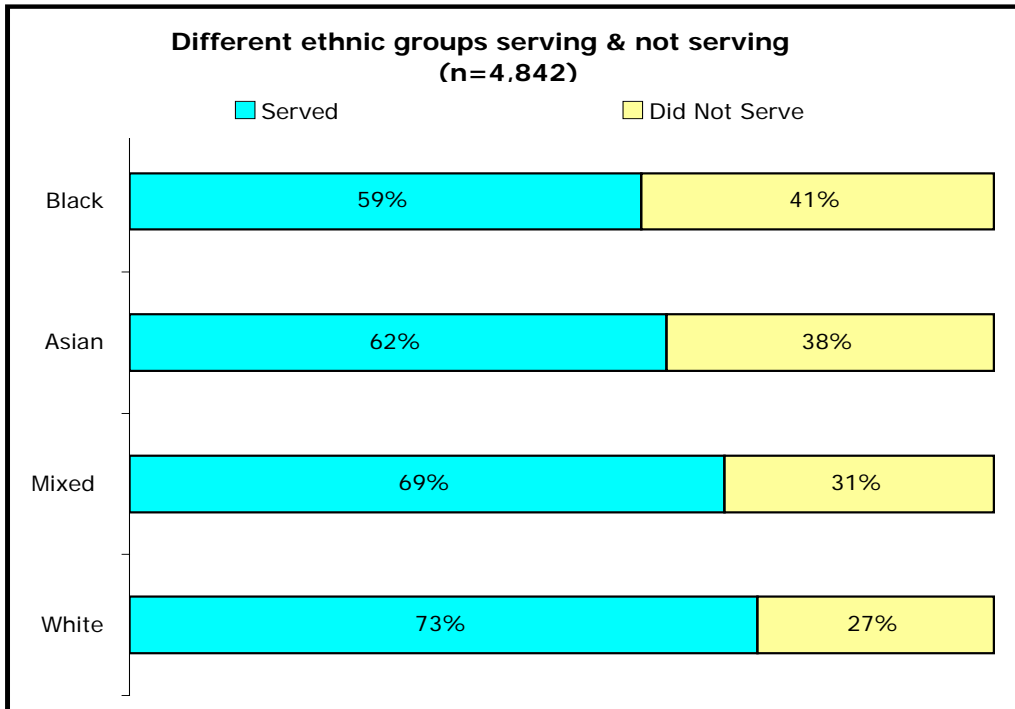
<sup>203</sup> See Appendix 5.

<sup>204</sup> In 1992, the Crown Court Study found that men made up 53% of serving jurors and women only 47%. See Zander and Henderson supra note 12 p.234. A decade later, in *Justice For All*, the government's claim that women were under-represented among jurors was based on this finding. *Justice for All* supra note 51, section 7.24.

<sup>205</sup> Christians make up 78% of the combined Crown Court catchment area populations, but comprise 70% of those both summoned and serving. Muslims comprise 3.2% of the combined court populations, 3.1% of all those summoned and 2.2% of all serving jurors.

<sup>206</sup> Those with no religious affiliation comprise 16% of the combined court catchment area populations, but 23% of all those summoned and 24% of all those serving.

**Figure 4.9. Proportion of different ethnic groups serving and not serving**

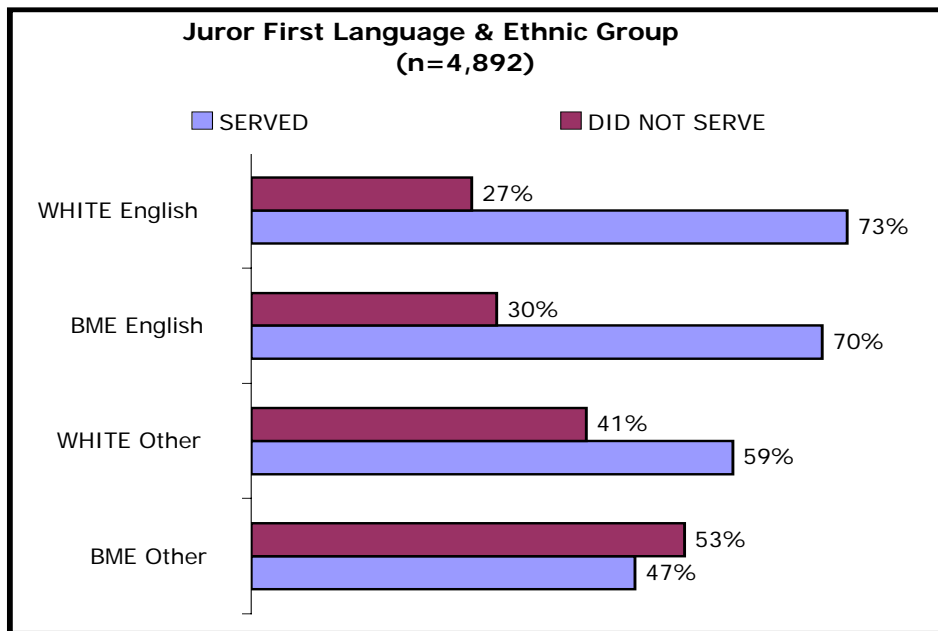


Even though ethnicity appears to have an impact on whether or not those summoned do serve, this needs to be viewed in the context of first language, which is able to explain much of the impact of ethnicity. Those whose first language was not English were significantly less likely to serve; only 51% of those with another language other than English as their first language served compared to 73% of those with English as their first language. Not surprisingly, there was a close relationship between ethnicity and first language: 65% of those whose first language was not English were from a BME group. And as Figure 4.10 below shows, **the only ethnic and language group where more did not serve than served was summoned jurors with a BME background who had a language other than English as their first language (53%)**. White prospective jurors with a language other than English as their first language served more often (59%) than did not serve.

Of all serving jurors where language was known, 4% had a language other than English as their first language (124 of 3420). This was exactly the same proportion of serving jurors who had another language as their first language in the Crown Court study in 1992<sup>207</sup>. In the 2005 survey, of serving jurors who had a language other than English as their first language, 41% spoke a South Asian language as their first language (either Gujarati, Punjabi, Urdu or Bengali) and 33% spoke a European language.

<sup>207</sup> Zander and Henderson supra note 12 p.242.

**Figure 4.10. Serving and not serving by ethnic group and language combined**



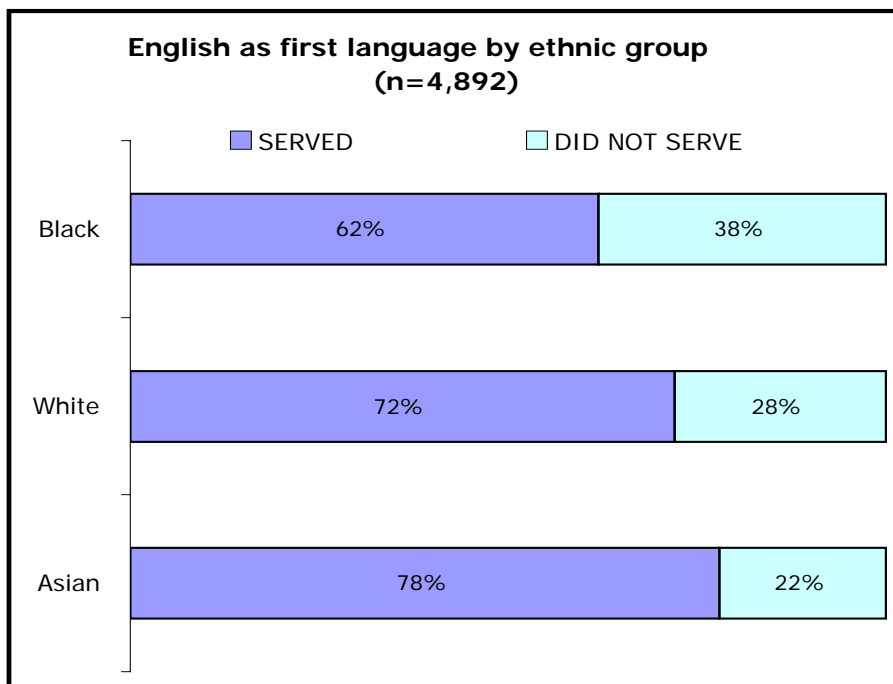
There was also some indication of a significant court level effect<sup>208</sup>, which suggests that in certain courts there are higher or lower rates of serving as a consequence of the ethnic make-up or languages spoken in the court catchment areas. This is supported by data from the JCSB showing that, in seven Crown Courts, 10% or more of all jurors who were excused from jury service were excused for language reasons: Birmingham (12.5%), Harrow and Isleworth (12%), Wood Green and Blackfriars (11%), Bradford and Southwark (10%). All of this sheds further light on the earlier finding that Birmingham was one of only three courts where BME groups were significantly under-represented among serving jurors (but not among those summoned for jury service). The analysis also showed that this under-representation was primarily among Pakistanis, who were summoned generally in proportion to their representation in the local population but almost half of all Pakistani jurors summoned did not serve. This high rate of excusal for language reasons appears to explain the significant under-representation among BME jurors in Birmingham, and does not suggest that there is any particular unwillingness to serve among Pakistanis in Birmingham, only an inability to serve due to a lack of sufficient command of English.

However, the fact that ethnicity still has an impact in the case of Black jurors summoned for jury service even when first language is taken into consideration suggests that differences cannot

<sup>208</sup> variance term = 0.043, SE = 0.021

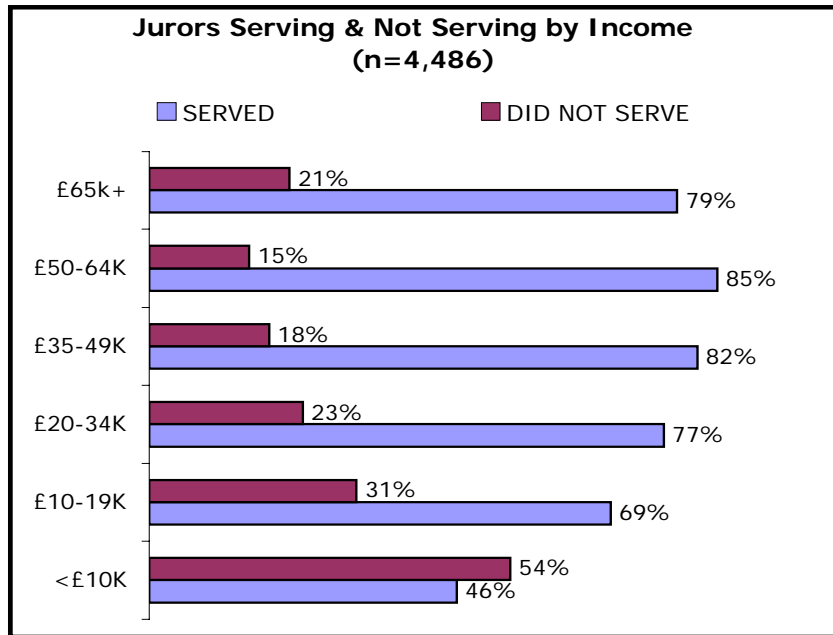
simply be attributed to language. As Figure 4.11 below illustrates, among those whose first language is English, only 62% of Black jurors summoned did jury service, compared to 78% of Asian and 72% of White jurors summoned. This suggests that other factors adversely affect the ability of Black jurors to do jury service. It is also interesting to note that Asian jurors with English as a first language have the highest level of jury service among all groups, even higher than White English-speaking jurors.

**Figure 4.11. Serving jurors with English as a first language by ethnic group**



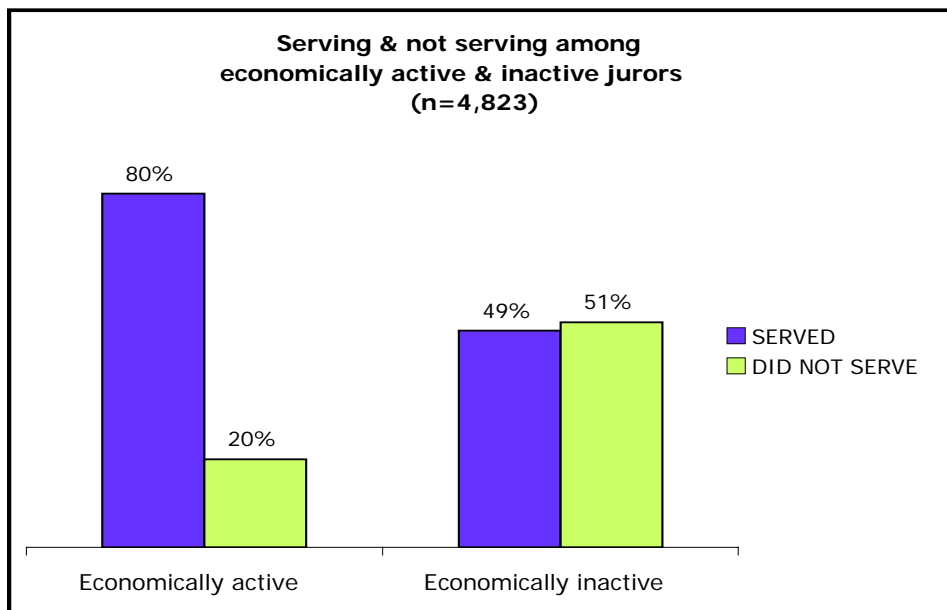
**The two remaining socio-economic factors, income and employment status, were found to be significant determinants of serving across all the models of analysis. These proved to be the most highly significant factors, and were more significant than ethnicity and language in determining whether a summoned juror served or did not serve.** Those with the lowest household income (less than £10,000 per annum) were by far the least likely income group to serve. All other income groups were highly significantly more likely to serve. As Figure 4.12 below shows, except for those earning less than £10,000, the likelihood of serving increased as income increased up to and including the highest income group (more than £65,000 per annum).

**Figure 4.12. Relationship between income and juror status**



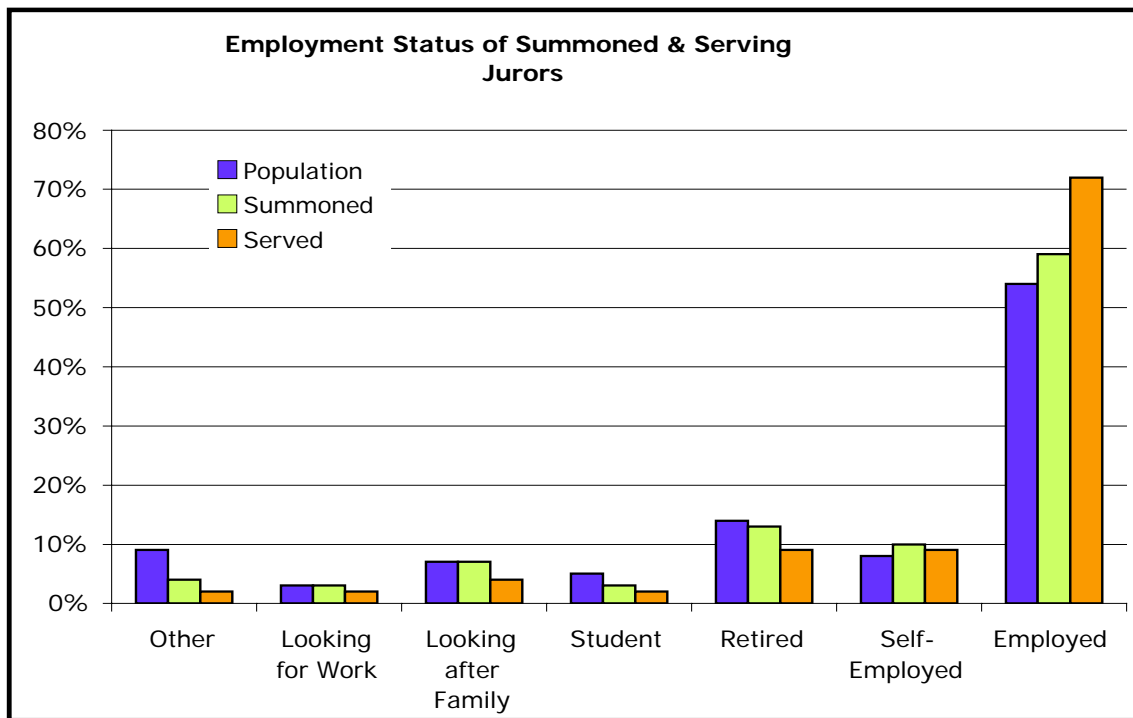
The final demographic factor influencing whether those summoned serve or do not serve is a juror’s employment status. **Whether summoned jurors are economically active or not is a significant factor in whether they serve or not.** As Figure 4.13 below shows, the vast majority (80%) of those summoned who are economically active (employed or self-employed) do jury service, while the majority (51%) of those summoned who are economically inactive do not serve.

**Figure 4.13. Relationship between economic activity and juror status**



The survey was able to look in more detail at different groups of the economically inactive, and Figure 4.14 below shows that almost all of the economically inactive groups are under-represented both among those summoned and among those serving. The only exception is among those looking after a family, who are slightly over-represented among those summoned, but they are nonetheless under-represented among those serving in relation to their representation in the population. This contrasts with the employed (full and part-time employees) who are progressively over-represented in the jury system, first among those summoned and then among those serving. Among summoned jurors that served, 81% were employed (either full-time, part-time or self-employed), and this almost exactly mirrors the results of the Crown Court Study of serving jurors in 1992, where 82% were employed<sup>209</sup>. The self-employed are slightly over-represented among those summoned, but they serve in proportion to their representation in the population. This demonstrates that, contrary to the view expressed in the Auld Review, the self-employed are not virtually exempt from jury service.

**Figure 4.14. Employment status of jurors in relation to population**



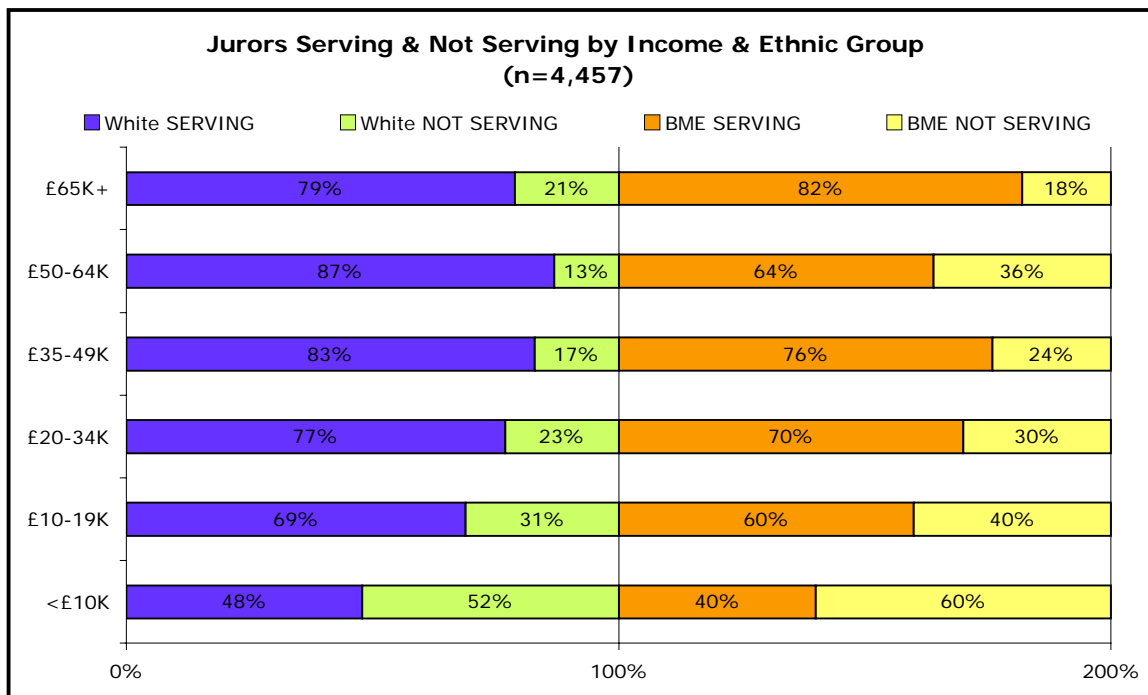
Compared to those in full-time employment, 86% percent of whom served, there were particularly low percentages of serving among those not employed (looking for work) and highly significant differences for those who were retired (only 49.5% served), those looking after families (only 45% served) and those in the 'other' category (only 27% served). The vast

<sup>209</sup> Zander and Henderson supra note 12 p.237.

majority of those classified as “other” described themselves as long term sick or on incapacity benefit. These findings on employment status and economic activity of those serving also contradict previous claims that juries are mostly comprised of the unemployed and the retired, or those described in the Auld Review as “not important or clever enough to get out of jury service”<sup>210</sup>. The reality is that the overwhelming majority of those doing jury service are the employed (including the self-employed), and that this economically active group is over-represented among those doing jury service.

For both White and BME jurors summoned, income is clearly related to serving and not serving, and this is illustrated in Figure 4.15 below. For both ethnic groups, more do not serve than serve from the lowest income bracket (annual household income under £10,000). The proportion of those serving increases for both ethnic groups as household income level rises. However, while White jurors in the second highest income bracket (£50-£64,000 per annum) had the highest percentage of serving jurors among all White jurors serving, BME jurors from the highest income group (£65,000 or more per annum) had the highest level of jury service of all serving BME jurors. This reflects a similar finding from research conducted in California on ethnic minority representation among jurors, where African Americans with higher incomes were significantly over-represented among African Americans doing jury service<sup>211</sup>.

**Figure 4.15. Income and ethnicity of those serving and not serving**

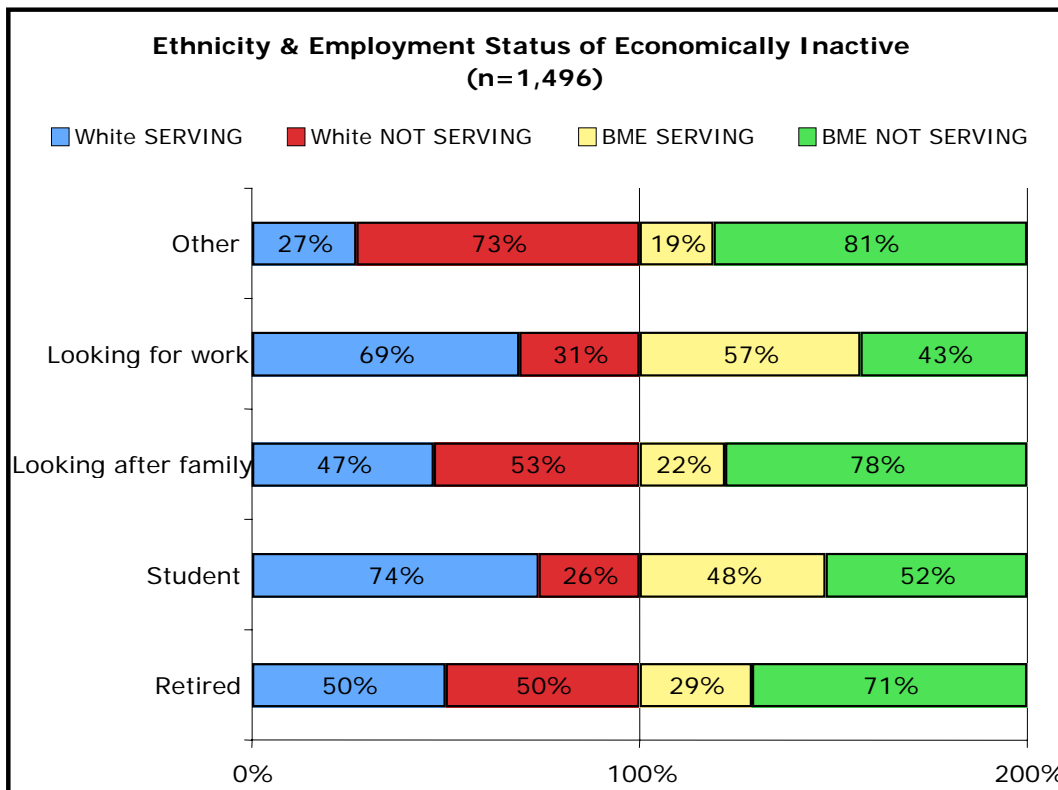


<sup>210</sup> Auld supra note 23.

<sup>211</sup> See Fukurai supra note 43.

While there are very few differences in the rates of jury service between BME and White jurors who are economically active, there were ethnic differences in serving rates among the economically inactive. Figure 4.16 below examines the serving status of the economically inactive by ethnic group. For White summoned jurors who are economically inactive, more do not serve than serve among those looking after family and those with other reasons for being economically inactive (most often those who are long-term sick). This contrasts with those from a BME group who are economically inactive, where all do not serve more than serve except those looking for work.

**Figure 4.16. Ethnicity and serving status among the economically inactive**



Given the significance of both income and employment status in predicting whether those summoned for jury service actually serve or not, the impact of income and employment status was also examined specifically among Black jurors summoned for jury service, the one ethnic group where ethnicity was significant in predicting juror status. Figure 4.17 below shows that most Black jurors in the survey were in the two lowest income brackets (45% of those serving and 63% of those not serving), and as lower income households generally are less likely to serve this in part helps to explain the particular under-representation of Black jurors among those doing jury service. Figure 4.17 also shows that the highest rates of serving for Black summoned jurors are

among those in the middle income bracket (£20-35,000 per annum) and the highest income bracket (over £65,000).

**Figure 4.17. Income and juror status of all Black jurors summoned**

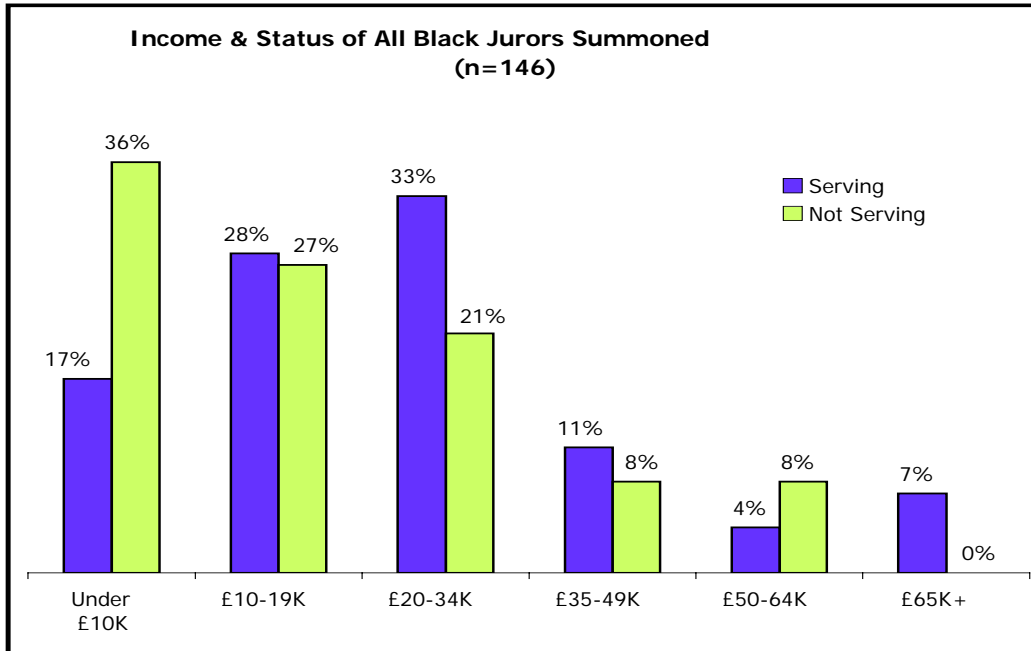
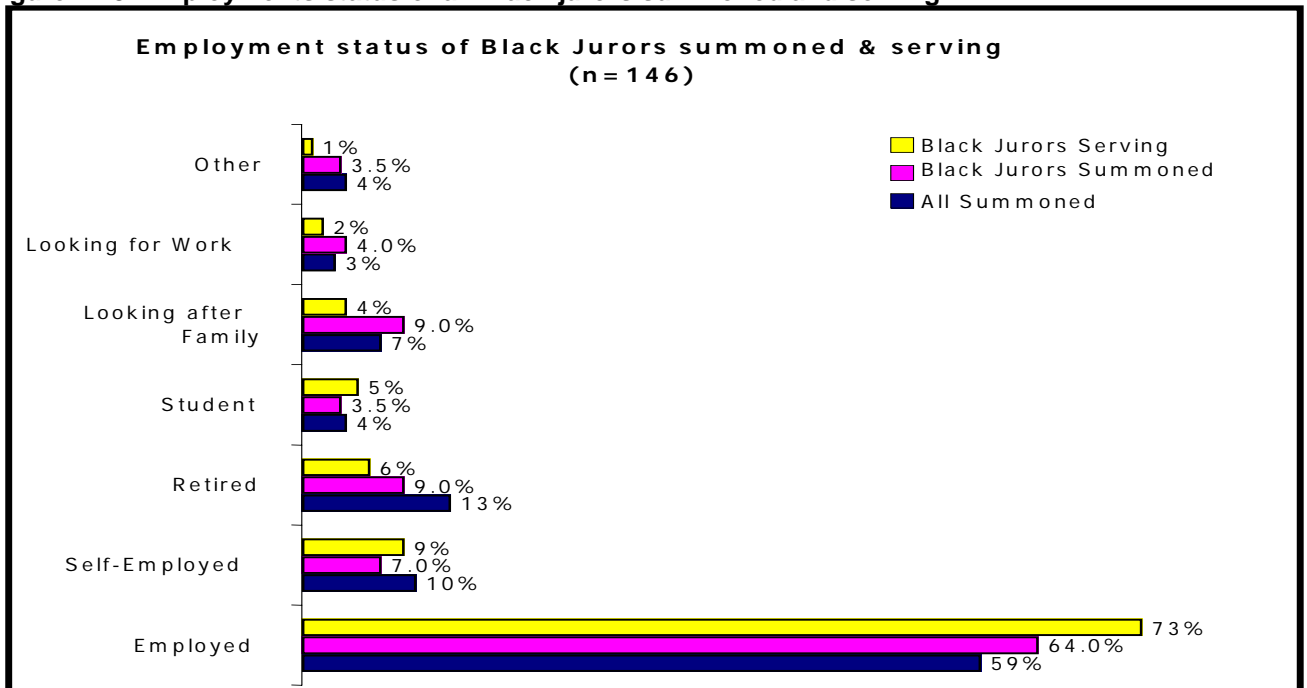


Figure 4.18 below also shows that Black summoned jurors were over-represented among those looking after family and looking for work, two groups which were less likely to serve.

**Figure 4.18. Employments status of all Black jurors summoned and serving**



## Reasons for not serving

The survey was able to determine not just whether each summoned juror served or did not serve, but if they did not serve, it was also possible to determine the reason for not serving. The first part of this analysis looks specifically at how ethnicity affects a juror's serving status. Figure 4.19 below shows that, for both White and BME jurors summoned, the overwhelming majority served either at the time summoned ("served") or at a later date ("deferred"). There is no difference in the rate of excusal from jury service (28%) for BME and all jurors summoned. However, a greater proportion of those summoned from BME groups are disqualified from jury service (15%) compared to all those summoned who are disqualified (8%).

Figure 4.19. Jurors disqualified, deferred, excused and serving by ethnic group

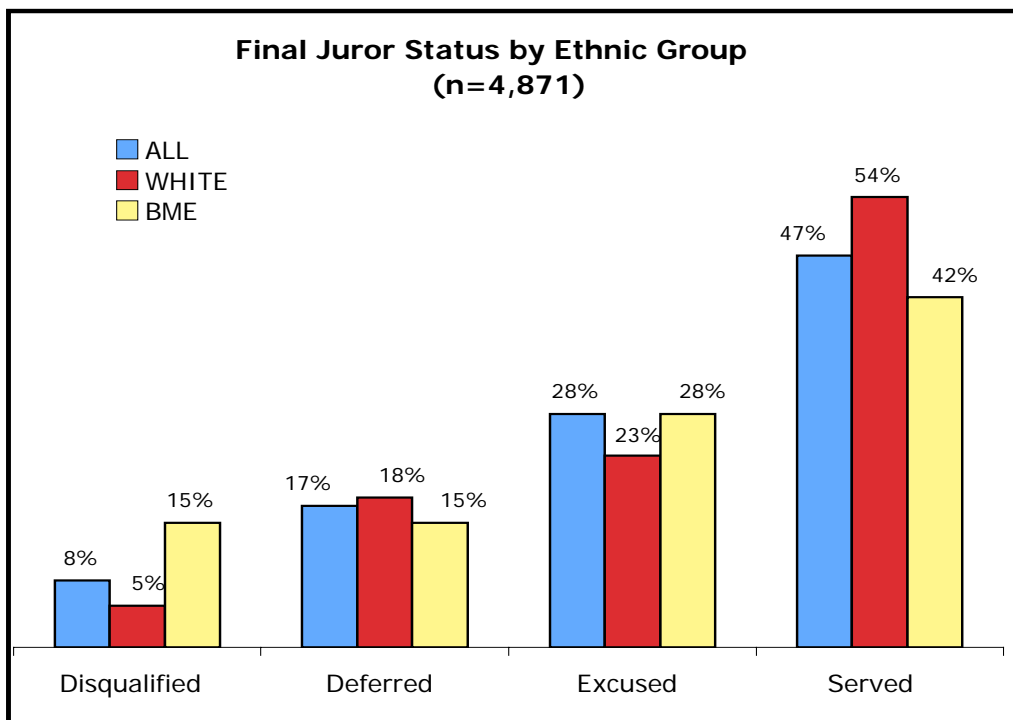
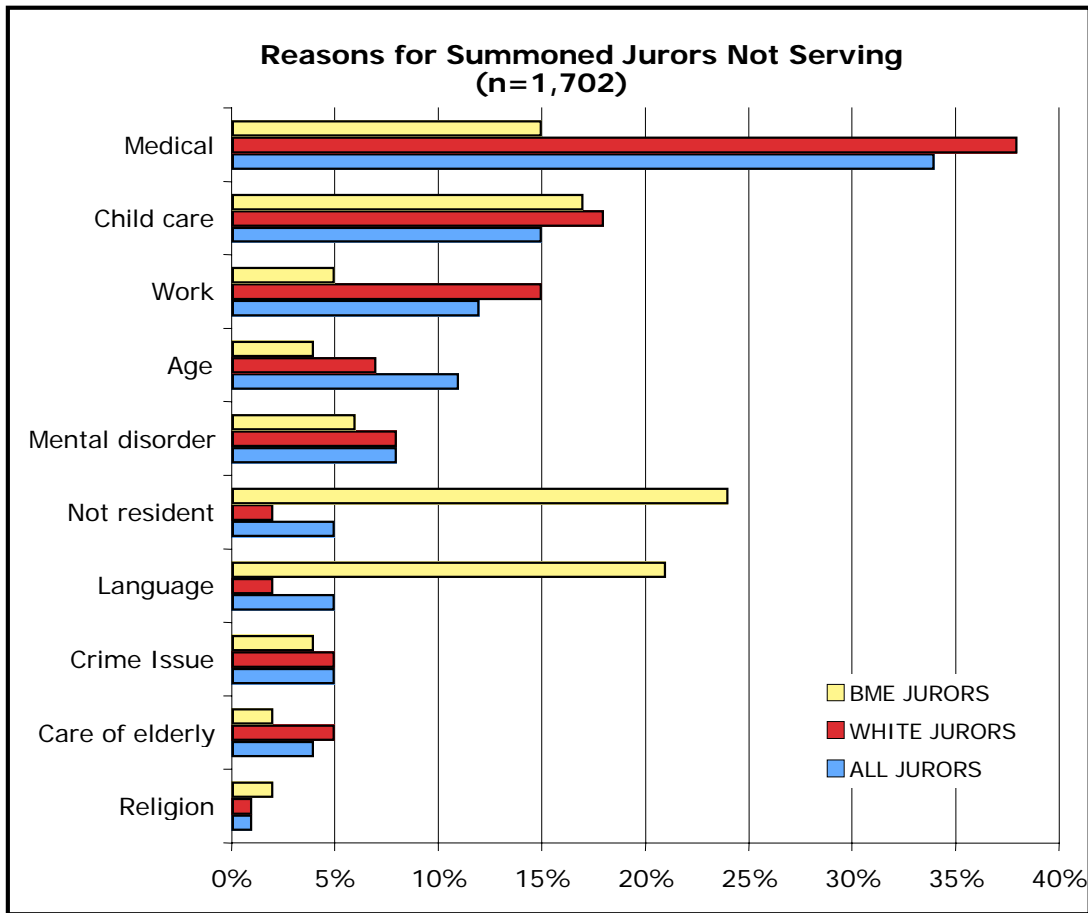


Figure 4.20 below shows that, for all those summoned who were either excused or disqualified, the largest proportion did not serve due to medical reasons (34%), child care (15%), work related reasons (12%) and age (11%). For BME jurors summoned who did not serve, the single highest proportion (24%) were disqualified because they were not resident for the required period. The next highest proportion (21%) were excused for language reasons. These are both basic qualifications for jury service, and this indicates that where BME jurors do not serve this is due to circumstances beyond their control and does not represent any unwillingness to do jury service. After this, the next highest proportion of BME jurors not serving were those with child

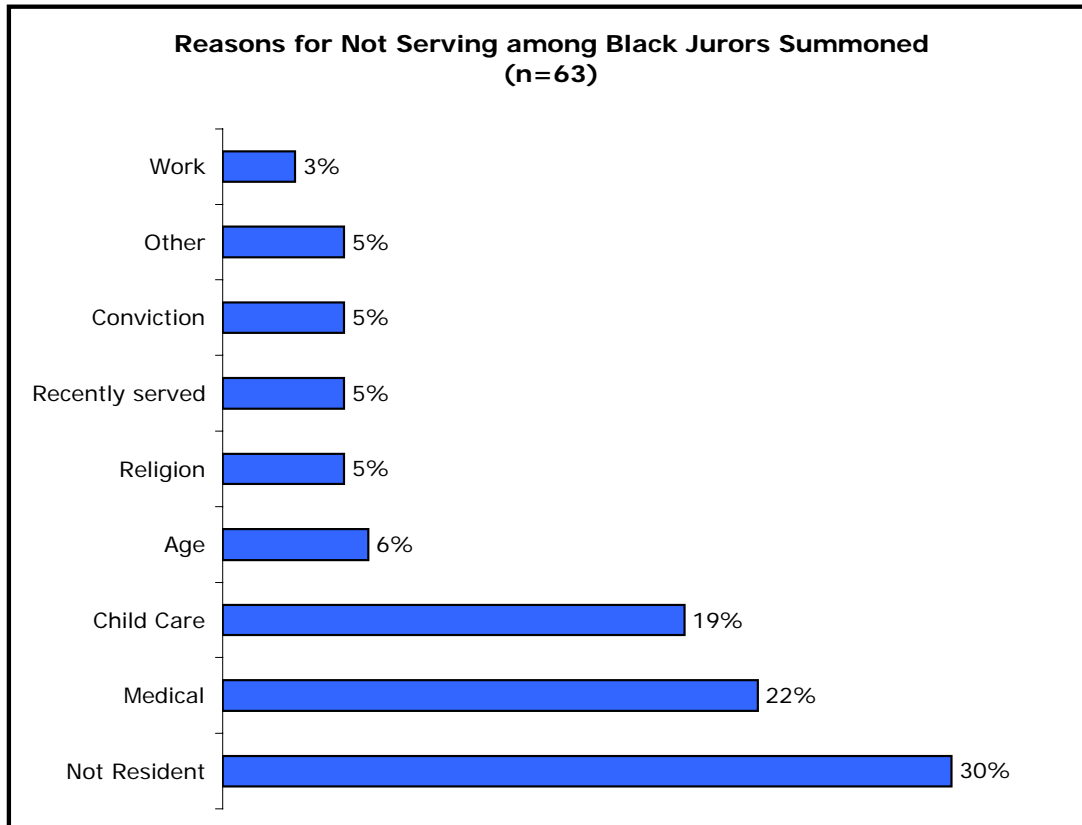
care issues (17%) and medical reasons (15%), which corresponds to the two main reasons for not serving among all those summoned regardless of ethnicity.

**Figure 4.20. Reasons for not serving by ethnic group**



Because Black summoned jurors were the one ethnic group where ethnicity was significant in predicting juror status, the reasons for not serving among this group of summoned jurors was examined in more detail. Figure 4.21 below shows that there are some differences between Black summoned jurors and the wider BME group in the reasons for not serving. The most prevalent reason for Black jurors not serving is disqualification from jury service as a result of not being resident for the required period. This is similar to all BME groups and, again, does not indicate any unwillingness to serve, but simply a lack of qualification to serve. However, one difference between Black jurors and other BME jurors summoned is that Black jurors do not have any substantial excusals from jury service on language grounds, unlike BME jurors more generally where this is the second most common reason for not serving.

**Figure 4.21. Reasons for not serving among Black jurors summoned**



In order to provide a clearer picture of why some summoned jurors served and others did not, a more detailed analysis was carried out examining the relative importance of a number juror characteristics in predicting whether summoned jurors: (1) served on the date for which they were summoned, (2) served but deferred their jury service to a later date, (3) did not serve because they were disqualified or (4) did not serve because they were excused<sup>212</sup>. In addition to controlling for clustering within courts, this type of analysis also takes into consideration how juror status varies on a court-by-court basis, for instance, by controlling for higher disqualification rates in certain courts that may be due to higher concentrations of people over 70 in particular court catchment areas. Because this analysis required complete socio-economic data on jurors, it encompassed a slightly smaller group of jurors than the previous analysis<sup>213</sup>. The socio-economic factors were also simplified into the following groups: gender, prior jury service, ethnicity (white British vs. BME only), first language (English vs. other), economic activity (active vs. inactive only) and income (up to £19k, £20k-34k, £35k+ only).<sup>214</sup>

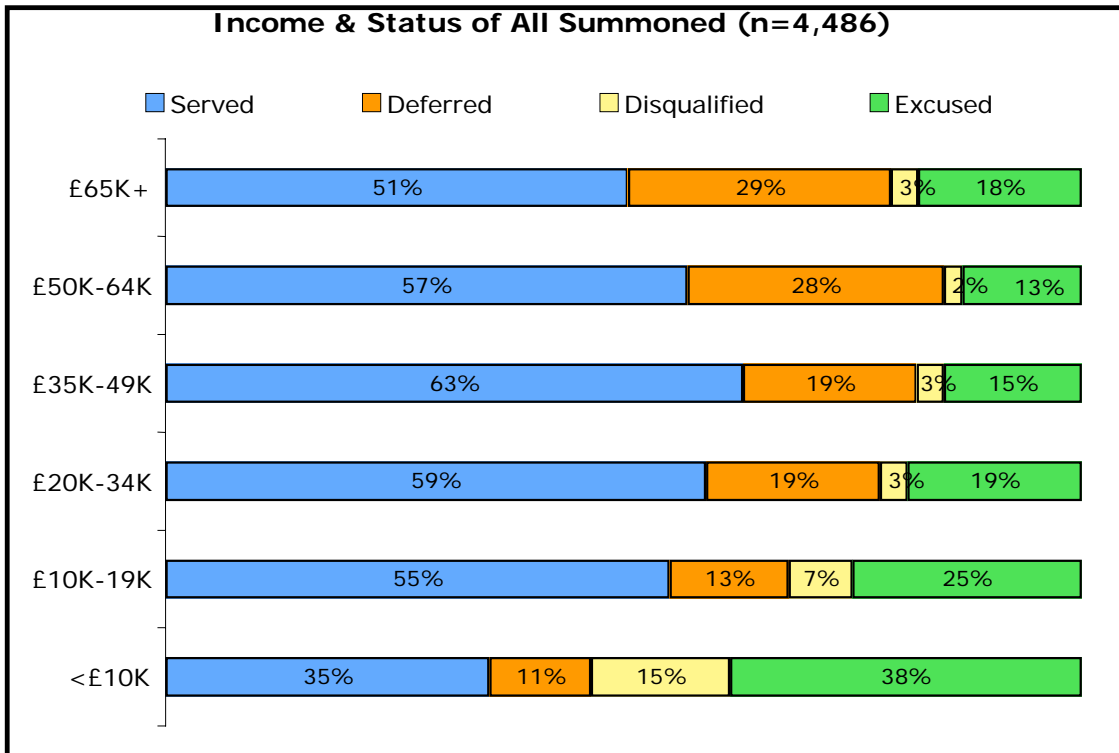
<sup>212</sup> In order to look at differences between all four status groups, a multilevel multinomial logistic regression model was used. See Appendix 5 for full results.

<sup>213</sup> This meant that this analysis included 4,340 jurors, compared to the earlier multivariate analysis, which included 4,907 jurors.

<sup>214</sup> See Appendix 5 for the results of this regression analysis.

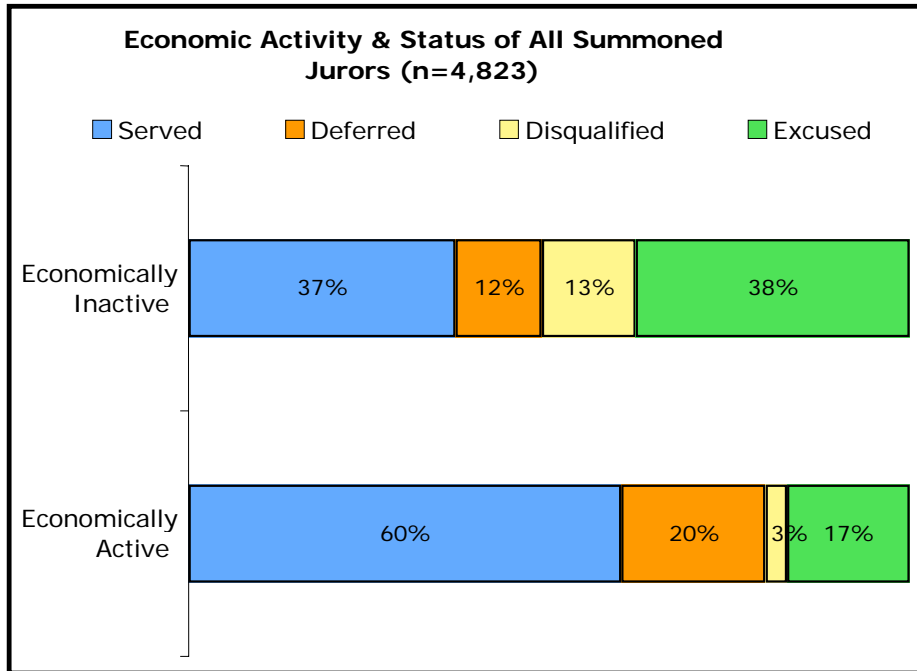
There were few socio-economic differences between those who served on the date they were summoned for and those who were deferred to another date. The one exception was income, where those with the highest household incomes (greater than £35,000) were more likely than other income groups to be deferred rather than serve (although they still served, just at a later date). Collapsing income into three groups may have diluted its impact somewhat, and Figure 4.22 below provides percentages in each status group using the original income categories. This shows that the proportion of deferred jurors rises with income, and those in the lowest income bracket (less than £10,000 per annum) were most likely to be disqualified and excused.

**Figure 4.22. Income and final status of all jurors summoned**



Of course, income is related to economic activity, and the analysis revealed that **economic activity is the most significant predictor of juror status**. As Figure 4.23 below shows, **the economically inactive show highly significant increases in the likelihood of being either disqualified or excused in comparison to those serving**.

Figure 4.23. Economic activity and final status of all summoned jurors



Breaking economic activity down into the individual employment categories showed particularly high percentages of disqualified among those who were retired (13%), looking for work (15%) or 'other' (22%). The highest percentages excused were among those looking after their families (49%) or in the 'other' category (49%), the majority of whom are long term sick.

Ethnicity and first language simultaneously had a significant impact upon status, though in slightly different ways. **Not having English as a first language led to far higher percentages of both disqualification (17%) and excusal (32%) compared to those serving. But ethnicity alone only had an impact on disqualification, not excusal.** Among summoned BME jurors, 13% were disqualified and 46% served compared to White jurors where 5% were disqualified and 55% served. This greater tendency for summoned BME jurors to be disqualified was statistically significant even when controlling for language. **What is clear here is that where summoned BME jurors are more likely not to serve than White jurors this is because they are more likely not to meet juror eligibility criteria (for instance by not being resident for the required period). This does not demonstrate any unwillingness to serve on the part of BME groups summoned for jury service, only an inability to meet the requirements for jury service.**

Finally, while the earlier multilevel analysis showed that gender was not a significant determinant of whether someone served or did not serve, this analysis showed that there were significant differences in the reasons why men and women do not serve. Men were significantly more likely than women to be disqualified, while women were significantly more likely than men to be excused from jury service. The earlier analysis showed that the second most common reason for granting excusals from jury service is child care, and it is therefore not surprising that women are more likely to be excused from jury service than men.

**All of this illustrates that ethnicity is not the key factor in whether a summoned juror serves or not. Whether a summoned juror is economically active or not is the single most significant factor related to whether that juror will serve. Ethnicity on its own only had an impact on disqualification, not excusal, from jury service. This in turn does not demonstrate any unwillingness to serve on the part of BME jurors summoned for jury service, only an inability to meet the requirements for jury service.**

### **Changes to juror eligibility**

In 2004 new juror eligibility rules came into effect<sup>215</sup>, and it was possible to analyse the impact of these changes on the representative nature of those doing jury service. In addition to the main summoning survey conducted in 2005 after the new rules came into effect, the project had conducted an identical summoning survey in 2003. The 2004 rule changes reduced the grounds for excusal (e.g., aged between 65 and 70, member of medical profession, MP or MEP) and disqualification (e.g., member of the clergy or involved in the administration of justice) from jury service, and the analysis was able to determine what impact, if any, this may have had on the proportion of those summoned who served and more specifically what impact it may have had on ethnic minority representation among serving jurors.

Figures 4.24 and 4.25 below show the proportion of all those serving, deferred, disqualified and excused from jury service in the 2003 summoning survey and in the 2005 summoning survey, respectively. The introduction of the new juror eligibility rules clearly resulted in a substantial overall increase in the proportion of those serving (from 54% to 64%), as well as an increase in those serving on the date for which they were summoned (from 35% to 47%). In addition, it resulted in disqualifications being reduced by a third and excusals falling by a quarter. The percentage of deferred remained constant.

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<sup>215</sup> See Criminal Justice Act 2003 Chapter 44, Section 321, Schedule 33, which amended the Juries Act.

Figure 4.24. Final status of all jurors summoned in 2003 survey

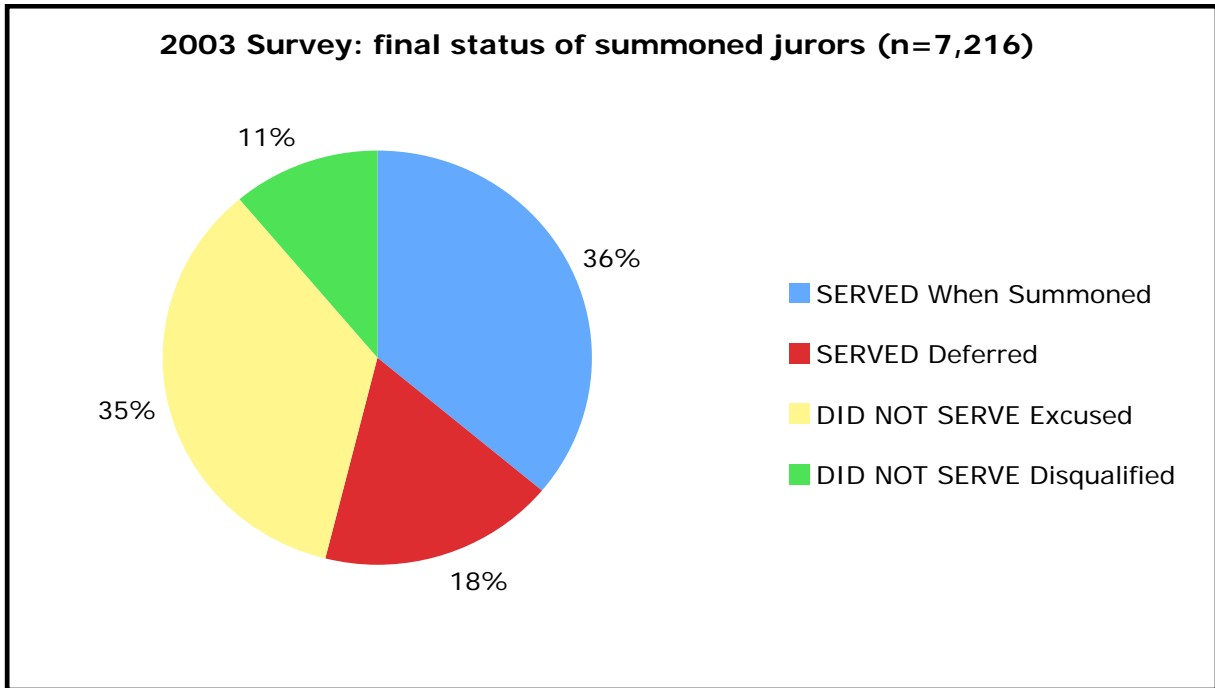
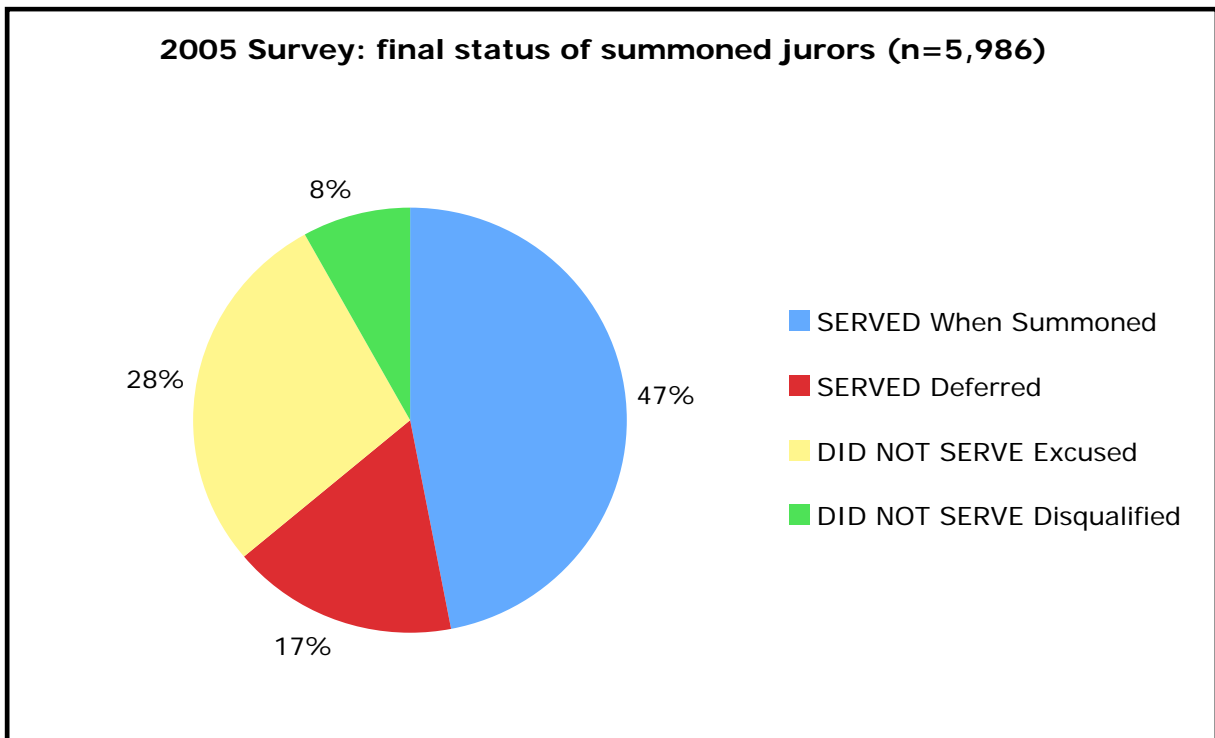
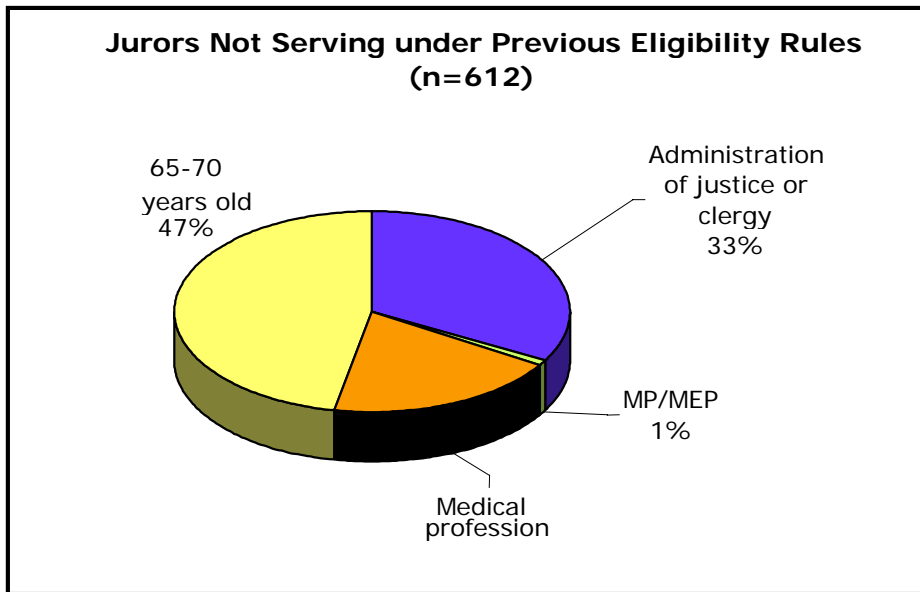


Figure 4.25. Final status of all jurors summoned in 2005 survey



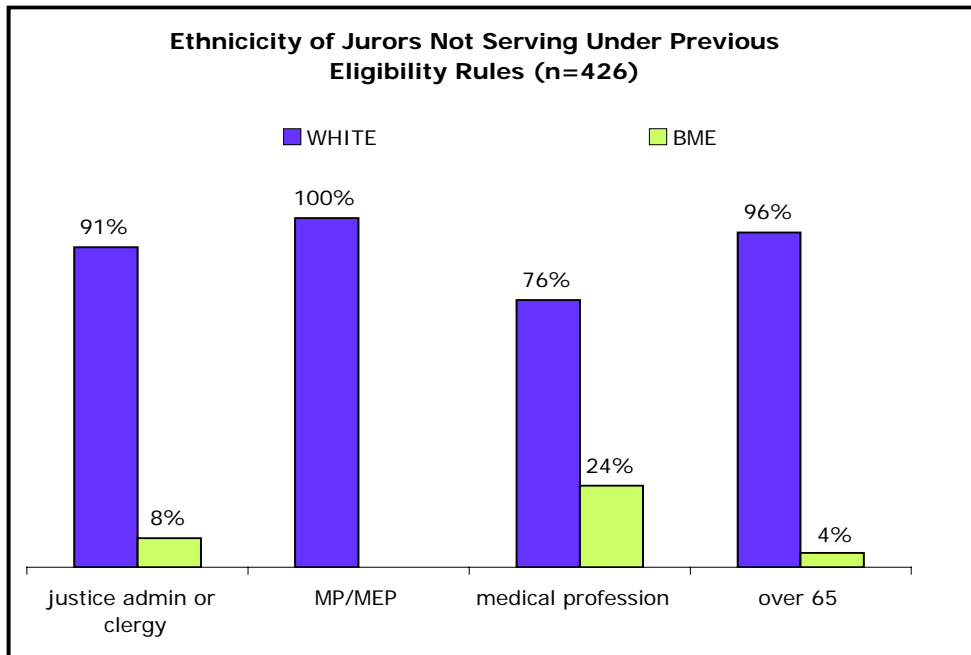
To examine whether the eligibility rule changes may have had any impact on the proportion of BME jurors summoned who served, the study examined the distribution of those who had previously been excused or disqualified from jury service in 2003 on grounds that have now been eliminated. Figure 4.26 below shows that almost half of these jurors were excused on age grounds (being between 65 and 70), and a third were those who were either involved in the administration of justice or a member of the clergy.

**Figure 4.26. Proportion of jurors previously exempt from serving**



As Figure 4.27 below shows, the elimination of these grounds for not serving as a juror are likely to have little impact on the proportion of BME jurors doing jury service under the new juror eligibility rules.

**Figure 4.27. Ethnic background of those previously exempt from jury service**



The only category where there was a substantial proportion (24%) of excusals among BME jurors under the previous eligibility rules was in the medical profession, and these make up only a small proportion (19%) of all those who would not now be excused from service but were excused in the 2003 survey. In actual numbers, this amounted to only 20 BME jurors summoned for all Crown Courts in the one week in 2003 who did not serve under the old eligibility rules. Therefore, while the introduction of the new juror eligibility rules has substantially increased the proportion of all those summoned who serve, the impact on ethnic minorities has been minimal.

### **Irish and Welsh representation**

It is also important to consider differences in juror representation among those who classified themselves in the “White” ethnic group. Two specific groups falling within the White classification where issues of juror representation may be of particular importance are the Irish and the Welsh. In the context of the criminal justice system, it has been argued that the recent history of miscarriages of justice involving Irish defendants means that the Irish need to be considered as a separate ethnic (or national) group which may have particular concerns about the fairness of the legal process. The following provides a brief analysis of Irish representation in the summoning process and among serving jurors, and what this may suggest about their willingness to do jury service. The analysis of Welsh-speaking representation in the jury process has been carried out in light of the government’s recent consultation paper on the

introduction of bilingual jury trials in Wales. At present any witness can give evidence in Welsh in a Welsh Crown Court, but there is no right to a bilingual jury<sup>216</sup>. The possibility of introducing the right to opt for a bilingual jury raises the question of whether sufficient numbers of Welsh-speaking jurors are summoned to sustain bilingual jury trials. The findings explore the extent of Welsh-speaking representation among those summoned and serving in the individual Welsh Crown Courts, and the implications this has for the introduction of bilingual juries.

Figure 4.28 below shows that Irish jurors are most likely to serve on juries in only two Crown Court regions: London and the South East. Three-quarters of all Irish jurors summoned were summoned for courts in these two regions: 53% were summoned for courts in the London region, and 22% for courts in the neighbouring South East region.

**Figure 4.28. Regional distribution of Irish jurors summoned**

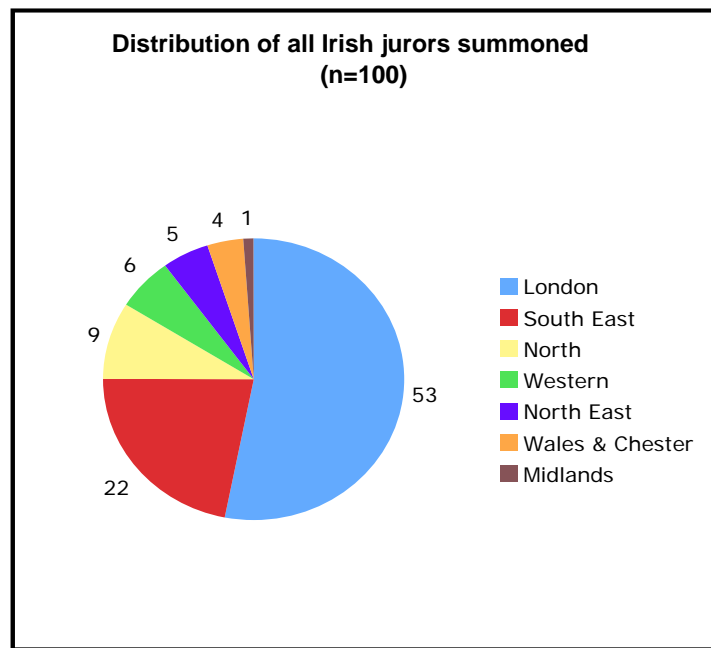
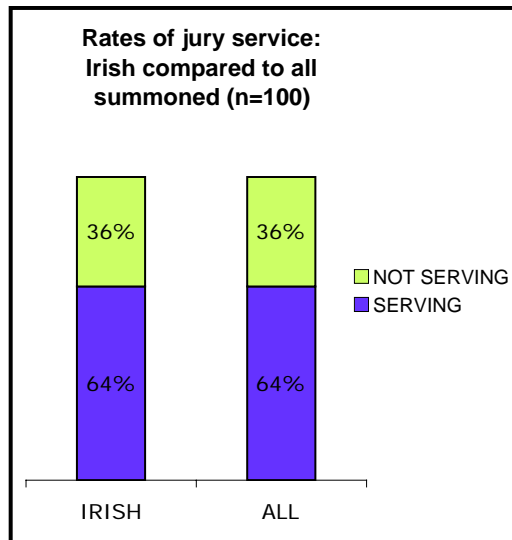


Figure 4.29 below also shows that there was no difference in the rate of jury service between all summoned jurors and those summoned who were Irish (64% of both served if summoned).

While there may remain concerns about Irish perceptions of the fairness of the criminal courts in England, the juror serving rate indicates no lack of willingness to serve among Irish jurors summoned for jury service.

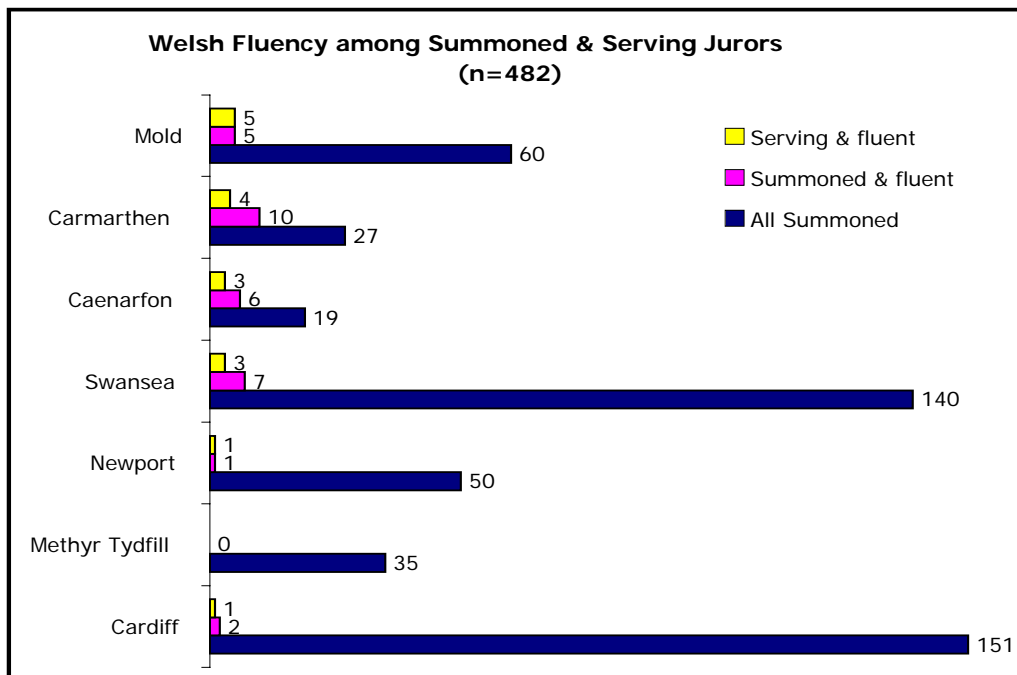
<sup>216</sup> *Welsh Language Policy*, Court Service (2000). For a bilingual trial, all jurors would have to be fluent in both Welsh and English.

**Figure 4.29. Rates of serving for Irish jurors compared to all summoned jurors**



The survey results on Welsh fluency for jurors summoned for the Welsh courts suggest how feasible it may be to conduct bilingual jury trials in Wales. As Figure 4.30 and Table 4.3 below show, in one week of summoning jurors for the Welsh courts, only a small number of those summoned (31) and an even smaller number of those serving as jurors (17) in all the Welsh courts combined consider themselves fluent in Welsh. Such a low level of Welsh fluency among serving jurors indicates that conducting jury trials with a full bilingual jury would be extremely difficult to achieve, certainly on any regular basis.

**Figure 4.30. Welsh fluency among all jurors summoned and serving in Wales**

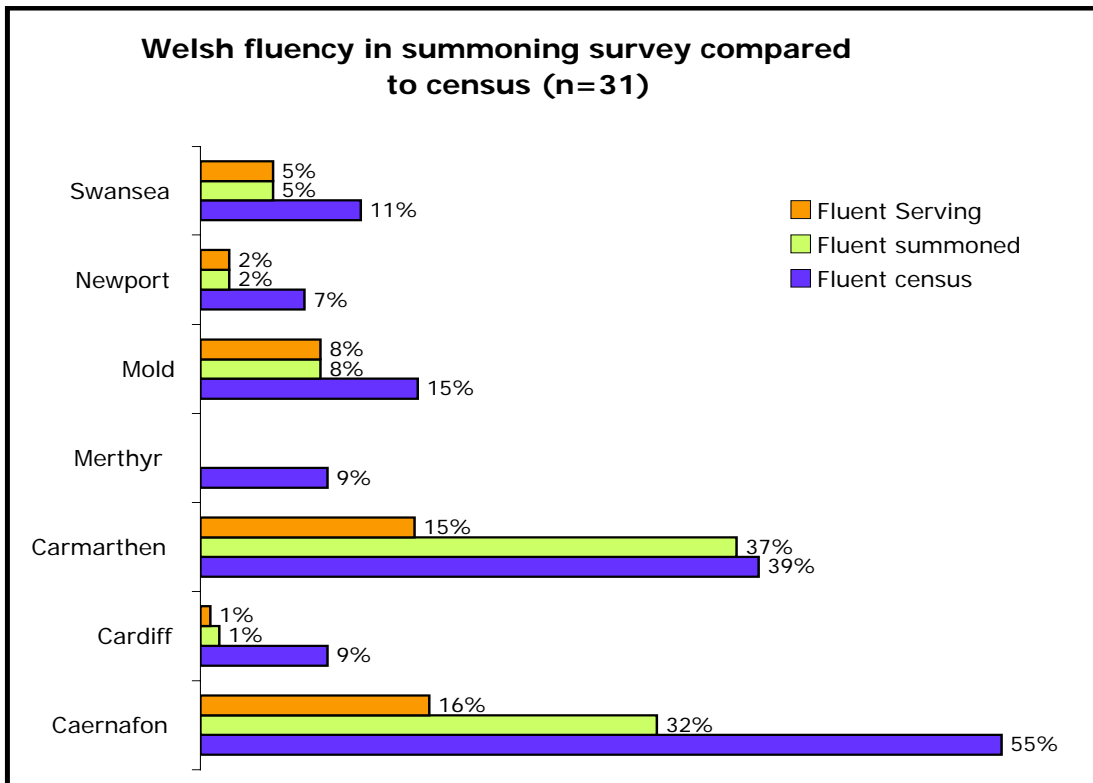


**Table 4.3. Number and proportion of Welsh-speaking jurors in summoning survey for all Welsh Crown Courts combined**

Total Jurors Summoned	Summoned & Fluent in Welsh	Serving & Fluent in Welsh
482	31 (6.4%)	17 (3.5%)

The findings from the summoning survey show some distinct differences in Welsh fluency levels in comparison to figures from the 2001 census. A far larger percentage of the Welsh population declared they were fluent in Welsh in the census than in the summoning survey. The census shows that 16.5% of the population in Wales speaks, reads and writes Welsh. However, as Figure 4.31 below shows, this is not reflected in the proportion of those summoned for jury service for Welsh courts who declared that they were fluent in Welsh (6.4%). It may well be that when asked to declare whether they were fluent when there may have been a possibility of having to perform an official function using the Welsh language (jury service), the respondents were less optimistic (or perhaps more realistic) about their level of proficiency in Welsh.

**Figure 4.31. Welsh fluency among jurors compared to 2001 census**



The government's recent consultation exercise recognised that bilingual juries would require a departure from normal summoning procedures. The results of the summoning survey confirm that it is highly likely in practice to be impossible to summon a fully bilingual jury using normal summoning procedures in any single Welsh Crown Court. Before bilingual juries can be instituted, an assessment would need to be made of the likely demand for bilingual juries, and this would need to be measured against the survey results showing the likely number of bilingual jurors available to meet this demand, along with the logistics of assembling such juries. In the survey week, summoning only produced a total of 17 serving jurors who were fluent in both Welsh and English.<sup>217</sup> This would be the bare minimum for a jury panel, but these jurors came from across all of Wales, and convening such a group as a jury panel would most likely be logistically and economically impractical.

## Summary

For several decades it has been claimed that ethnic minorities are under-represented among those doing jury service, that the middle class manages to escape jury service, that those serving on juries are primarily the retired and unemployed, and that women, young people, the self-employed and those over 65 are all under-represented among those doing jury service. Based on some of these assumptions, the Auld Review concluded that juries in England and Wales do not reflect the broad range of skills and experience or ethnic diversity of the communities from which they are drawn<sup>218</sup>. It also maintained that excusals from jury service have created a widespread belief that jury service is only for those not important or clever enough to get out of it<sup>219</sup>. The systematic analysis of the representative nature of those doing jury service carried out by this study was able to determine whether any of these claims about the lack of representation among serving jurors are borne out in reality. Like the findings on summoned jurors in the previous chapter, the survey findings on who does and who does not do jury service at Crown Courts in England in Wales have revealed that most current thinking about the representative nature of jury service in this country is based on myth, not reality.

The previous chapter revealed that, contrary to popular belief, BME groups are not under-represented among those summoned for jury service in virtually all Crown Courts in England and Wales. However, not everyone who is summoned will serve. People may be ineligible, disqualified or excused from jury service, even after the government restricted the grounds for

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<sup>217</sup> After English, the single largest linguistic group represented among serving jurors in the survey was Gujarati speakers: 44 were summoned and 21 served.

<sup>218</sup> Auld *supra* note 23, Chapter 5 paragraph 11.

<sup>219</sup> *Ibid*, paragraph 13.

ineligibility and excusal in the Criminal Justice Act 2003. There is a widespread belief that BME groups are under-represented among serving jurors, and the summoning survey was able to determine whether the proportion of ethnic minorities summoned who actually serve at each court reflects the proportion of ethnic minorities in each court's juror catchment area. It revealed that BME groups are not significantly under-represented among those doing jury service in virtually all Crown Courts in England and Wales. The only exceptions were among jurors at Manchester Crown Square, Leeds and Birmingham Crown Courts. This is a major finding, which dispels the myth that BME groups are under-represented among serving jurors.

This finding also clearly demonstrates that the process of excusal and disqualification from jury service does not significantly affect the representative nature of serving jurors. A further examination of all excusals and disqualifications from jury service also confirmed the lack of substance in a second widely held belief about jury service. Contrary to popular belief, there is no mass avoidance of jury service in England and Wales, either among all those summoned, Londoners or BME groups. Two-thirds of all those summoned for jury service actually do serve (either on the date summoned or at a later date). Among those who do not serve, 9% are disqualified or ineligible. Among those excused, the single largest group is excused for medical reasons that prevent them from serving.

The claim that five-sixths of all Londoners avoid or evade jury service is also a myth; close to five-sixths of Londoners reply to their summonses, and three-fifths of these Londoners do in fact serve as jurors. There is also no evidence to suggest that members of BME communities are unwilling to do jury service. Among BME jurors summoned who did not serve, the single largest group were disqualified because they were not resident for the required period, and the next largest group were excused for language reasons. Residency and language proficiency are both basic requirements for jury service, and these findings show that where BME jurors do not serve this is due in large part to circumstances beyond their control, not any unwillingness to do jury service.

In 2004, new juror eligibility rules came into effect, and summoning surveys were conducted both before (April 2003) and after (February 2005) the introduction of these new rules. Together these surveys show that the change in the eligibility rules had an immediate effect on juror participation. The new rules resulted in an overall increase in the proportion of those serving (from 54% to 64%), as well as an increase in those serving on the date for which they were summoned (from 35% to 47%). It also resulted in disqualifications being reduced by a third and excusals falling by a quarter. The only other specific effect was to double the proportion of

those serving between 65 and 69 years of age (from 3% to 6%), by removing the automatic right to be excused from jury service for this age group.

A unique aspect of this study was that it was able to determine the extent to which other socio-economic factors such as age, gender, income, employment, religion and language were significant factors in whether those summoned did jury service. In doing so it exposed several more myths about jury service in this country. First, it is a myth that the middle classes and what Auld referred to as “the important & clever” manage to avoid jury service. The reality is that the vast majority of middle to higher income earners actually do jury service when summoned, and that higher income earners are in fact over-represented among serving jurors. Second, it is a myth that women, young people and the self-employed are under-represented among serving jurors. In reality, gender had no significant impact on whether those summoned served or did not serve; among those serving as jurors, the proportion of men and women was exactly the same (50%). In addition, those between the ages of 18 and 24 were represented among serving jurors almost exactly in proportion to their representation in the population. Similarly, the self-employed were not under-represented, but in fact served in proportion to their representation in the population. This dispels the notion that the self-employed are virtually exempt from jury service. Third, it is a myth that juries are mostly made up of the retired and unemployed. The retired and unemployed are, in fact, under-represented among serving jurors, and in reality it is the employed that are over-represented among serving jurors.

The study was also able to determine whether other juror background characteristics were more significant than ethnicity in predicting whether summoned jurors would or would not serve. Diversity studies in other fields and in law in other jurisdictions have demonstrated that caution needs to be exercised in defining diversity only in terms of ethnicity, and that a more complex picture often emerges when ethnicity is considered in relation to other socio-economic factors<sup>220</sup>. Using the wide range of data collected from summoned jurors in the survey (on gender, income, employment status, ethnicity, religion and whether they had previously done jury service), different multi-level analyses were able to show which juror characteristics had the greatest impact on whether a summoned juror served or did not serve, and how important ethnicity is in relation to these other factors.

The gender, religion and prior jury service of those summoned had no significant impact on whether they served or not. However, there were four factors that did appear to influence whether those summoned did or did not serve: income, employment status, ethnicity and first

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<sup>220</sup> See discussion in Chapter 1 *supra* note 89.

language. Among these, income and employment status were by far the most significant. Those with the lowest household income and those who were economically inactive were the least likely to serve if summoned. Income was more likely to influence whether a juror did jury service than ethnicity among all serving BME jurors, those with the highest household incomes had the highest levels of jury service of all serving BME jurors.

In most cases, ethnicity was only relevant to whether a summoned juror served or not when ethnicity was combined with language. The only ethnic/language group where more did not serve than served was BME jurors who had a language other than English as their first language. This is not surprising, as those without a sufficient command of English are excused from jury service. There was also an increased likelihood of not serving among Black jurors summoned for jury service. However, when the socio-economic background of Black jurors was examined in more detail along with their reasons for not serving, it was clear this higher rate of not serving reflected either a lack of qualification to serve or economic difficulty in serving. The largest group of Black jurors summoned who did not serve were disqualified because they had not been resident for the required period. Most of the remaining Black jurors who did not serve were in the lowest income brackets and were economically inactive (looking after a family or looking for work), situations where all jurors (regardless of ethnicity) were less likely to serve.

Concerns about juror representation among two other specific groups, the Irish and the Welsh, were also explored. The survey found that, despite concerns about Irish perceptions of the fairness of the criminal courts in England, there was no evidence to indicate that the Irish are unwilling to do jury service. There was no difference in the proportion of Irish doing jury service compared to all others summoned. Concerns about the possible introduction of bilingual trials in Welsh courts prompted the study to also examine the level of Welsh fluency among serving jurors in these courts. The survey revealed that the normal summoning process did not produce sufficient numbers of bilingual jurors to enable trials to be conducted with fully bilingual juries in any of the Welsh Crown Courts. Summoning only produced a total of 17 serving jurors across all of Wales in one week who were fully bilingual in Welsh and English.