In The Dock
Reassessing the use of the dock in criminal trials

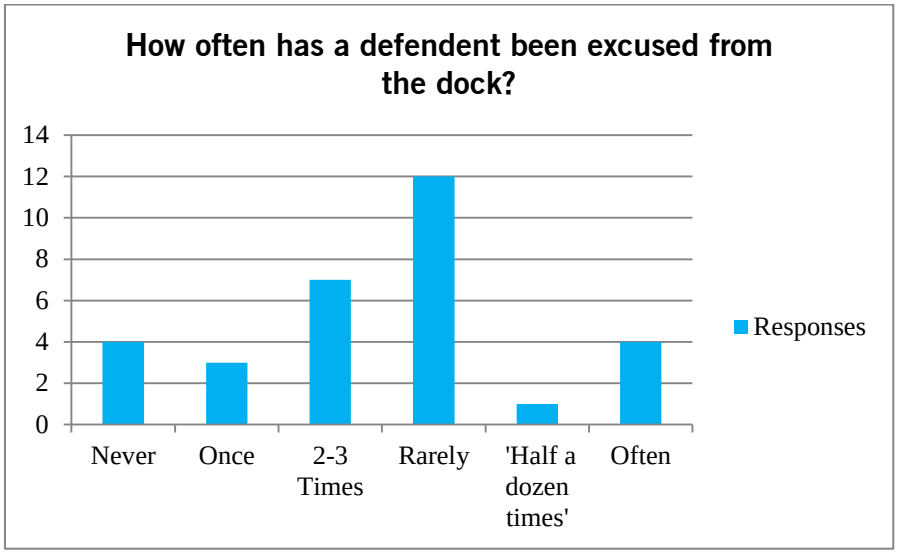
Annex – Survey Responses

A survey conducted by Dechert LLP for this Report during May 2015 provides a snapshot of current practice and attitudes regarding use of the dock. The Survey was sent to three barristers' chambers conducting a range of criminal work through all levels of seniority. 31 responses were received to the following questions:

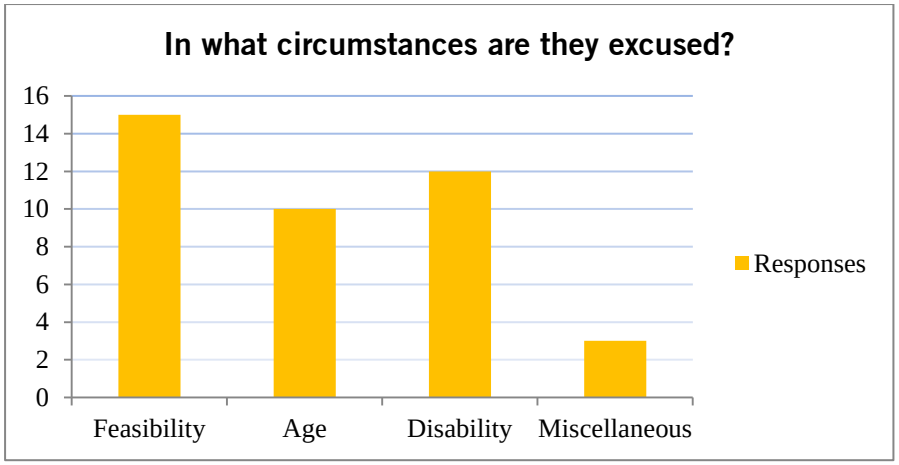
1. In your experience, how often has a defendant in a criminal trial in England and Wales not been required to sit in the dock for the duration of the trial?
2. How does this come about? Is permission sought from the judge for this alternative arrangement to be put in place?
3. What are the reasons generally given by the judge for allowing the defendant to sit outside of the dock?
4. If not required to sit in the dock, where are defendants generally permitted to sit during the trial? Are they required to sit in the dock for any part of the trial?
5. Is there ever a formal hearing to decide what form of alternative arrangement might be appropriate?
6. Do you have any other comments on the use of docks in criminal proceedings in the Courts of England and Wales?

The responses were aggregated and categorised to produce the following graphs for analysis. The data reveals that while some uniformity exists, in certain instances there are varied experiences regarding use of the dock. The general feedback indicated that while many believe the dock is necessary for security reasons, it is also a hindrance in several ways. For instance, there were strong feelings that a dock: creates prejudice against the defendant, complicates how instructions are received from clients (especially in complex cases), and disadvantages the client by making it difficult to hear and understand the proceedings from within the secure dock.

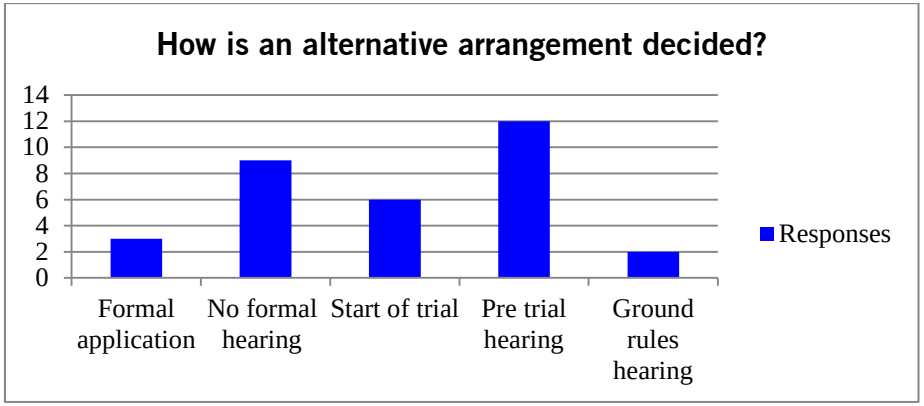
This, and other patterns, are revealed below.



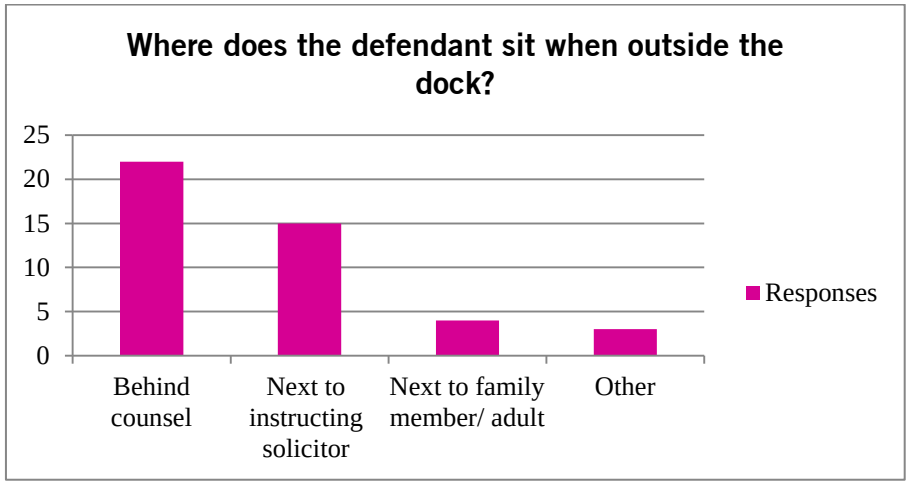
- At least one respondent noted that, 'the reason given for refusal is a practical one, namely that there is not enough room in the court for the defendants to sit outside the dock.'
- *Rarely:* respondents did not clarify the exact number of cases
    - 'Infrequently but more so in recent times.'
    - '… only occasionally… Most often in long fraud cases… More recently I have detected in High Court judges a reluctance to permit defendants in any case to sit outside dock.'
    - '… the matter is usually determined as one of convenience to the administrative process and little else – for example, even defendants on bail imposing no risk usually sit in the dock.'
- *Half a dozen times:* one respondent provided this response, and further clarified that these were only youth cases.
- *Often:* especially noted in fraud and white collar cases
    - 'Quite common' in white collar fraud and non-imprisonable cases.
    - 'Reasonably often in fraud… clients are generally on bail and there is a respectable basis for making the application.'
    - On 'several occasions' where there was 'a case of serious or complex crime, where the trial lasted a number of months.'



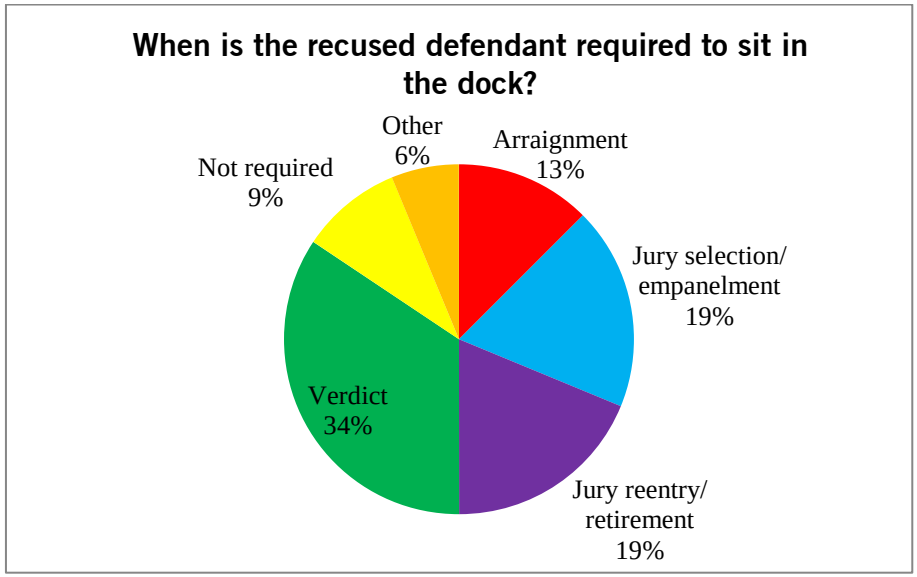
- *Feasibility:* Several responses indicated that satisfactory security was a precondition for allowing the defendant to sit outside the dock for feasibility reasons.
    - Paper-heavy trials where defendant and lawyer are exchanging instructions.
    - Fraud cases, where defendant is on bail.
    - 'To enable the defendant to follow the case more easily and to facilitate communication with his legal representative.'
    - 'When there is Electronic Presentation of Evidence and the screens are not easily visible from the dock.'
    - Where a defendant required 'proper workspace to follow the trial and prepare his defence…[and] access to his laptop…[which] was impermissible…in the dock.'
- *Age:* most responses concerned a defendant's youth.
    - Young people may be 'intimidated' by the court room
    - Where defendant is especially young it is 'unnecessarily heavy-handed to confine [them] to the dock.'
    - Some respondents mentioned that if the defendant was old he/she might also be allowed to sit outside the dock.
    - Where defendants range in age 'from say 13 years to 18 years the likelihood is that they will all remain in the dock for reasons of consistency/appearance even though the 13 year old if tried alone would be allowed to sit behind his/her lawyers.'
- *Physical/Mental Disability:* where a respondent indicated that a defendant was deemed 'vulnerable,' it was determined to mean that the defendant suffered from a physical or mental disability, such as:
    - A condition 'preventing access to the dock either at all or for a reasonable period of time.'
    - 'Learning difficulties' and required 'assistance of an intermediary.'
    - 'Would be better able to cope with the mental stress of the trial.'
    - 'In one trial, defendant expressed what amounted to a "phobia" about being in the dock.'
    - 'To enable more effective participation in trial by removing distractions or potentially intimidating features of the process (such as secured docks or uniformed security officers).'
    - However, one respondent noted, 'I have been involved in a case where a psychologist was allowed to sit in the dock with a defendant to ensure that he understood the proceedings and to provide comfort if appropriate.'
- *Miscellaneous reasons:*
    - The trial room used did not have a dock.
    - The judge suggested the dock was unnecessary.
    - Where the charge was of a certain nature and defendant was of 'good character.'



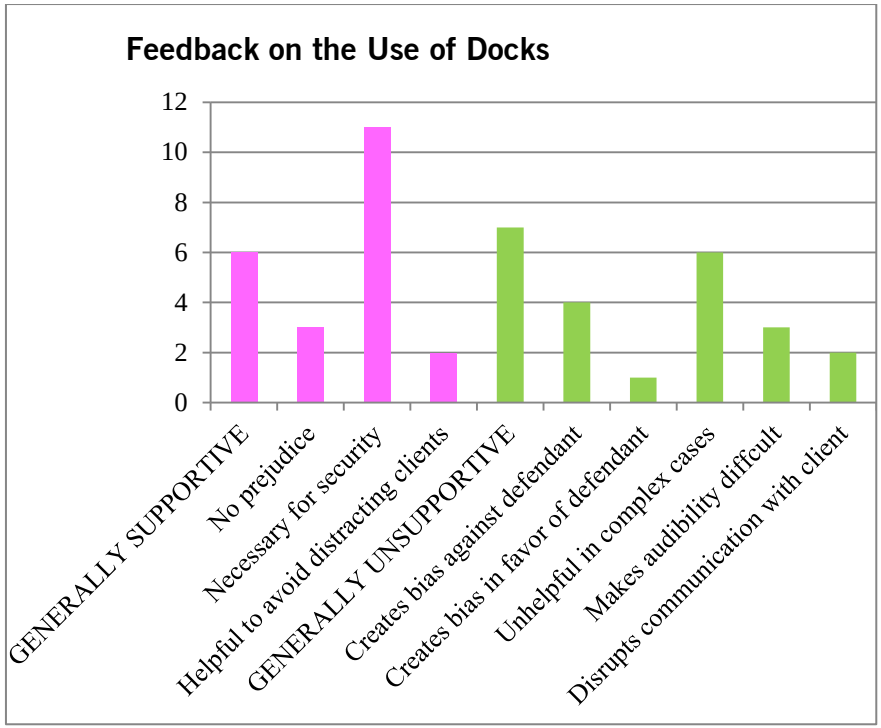
- *Formal hearing:*
  - ‘Takes place within a formal hearing, but not one dedicated to the issue.’
  - ‘It would always be by formal application to the Judge in Court (unless, as has happened once in my experience, the Judge takes the initiative and raises the matter of his own volition).’
- *Start of trial:*
  - ‘I make the application as part of the general housekeeping measures dealt with on day 1 of the trial.’
  - ‘… it will normally be dealt with as a preliminary matter at the outset of the trial.’
  - ‘There was no formal hearing as such. It was a short submission made prior to selection of the jury panel.’
- *Pre-trial hearing:*
  - Respondents noted that the issue is determined in a Plea and Case Management Hearing or some other pre-trial or interlocutory hearing.
  - ‘The issue is usually raised at a pre-trial hearing (often the first hearing). Whenever I have raised it for defendants charged with fraud, the issue has been adjourned to the trial.’
- *Ground Rules hearing:*
  - One respondent indicated that in 18 years, he had seen two defendants receive permission from a judge to sit outside the dock ‘to aid communication with their lawyer.’ In both cases the defendants were considered vulnerable because of ‘learning difficulties’, and required the assistance of an intermediary.
  - Another had never seen a trial where the defendant sat outside the dock, but noted it was being considered for an upcoming trial where the defendant was ‘vulnerable.’



- *Next to instructing solicitor:*
  - In many responses it was noted that where the defendant sits next to their instructing solicitor, they were still behind counsel.
  - 'Child defendants often sit with their lawyers in the youth courts.'
- *Next to family member/adult:* This was generally the case where the defendant was a youth.
  - 'If they are youths, they usually sit at the rear of court with an accompanying adult.'
- *Other:*
  - 'Either to one side or with the defence teams.'
  - 'On the back row in court.'
  - 'There are occasions when the defendant's attendance is excused if the evidence that is to be called does not affect them.'



- *Jury selection/empanelment:*
  - ‘Required to sit in the dock during arraignment, initial formalities e.g., jury selection and empanelment, and once the jury have retired, whenever the Court is reconvened.’
  - ‘During jury selection, empanelment and being put in charge.’
- *Not required:*
  - ‘In the two matters I dealt with [unspecified by respondent, but likely concerning vulnerable defendants] they were not required to sit in the dock at any point.’
  - ‘If there are youths… they are not required to surrender to the dock.’
  - ‘In my experience, once a very young defendant is permitted to sit behind his lawyers, that continues throughout the trial (subject to the defendant being disruptive etc.). It may well be the case that at pre-trial hearings the defendant appeared in the dock.’
- *Other:*
  - ‘Once speeches begin the defendant goes back into the dock.’
  - ‘In my experience, they would be required to sit in the dock for arraignment (although that would routinely be at an earlier hearing) and generally for the Opening.’
  - ‘Unless the judge orders otherwise, the defendant will normally answer to his bail by surrendering to the prison officer in the dock.’
  - ‘The defendant is required to be in the dock for arraignment, verdict and sentence (unless there are compelling reasons for his absence, e.g. medical).’



- *Notable responses in general:*
  - ‘Consideration might have to be given in some cases to precisely where the defendant sits… [since the] defence always sits nearest the jury there can be dangers in some of the smaller courts of exchanges between the defendant and his legal advisers being overheard. Indeed this can be inadvertent or, with a devious defendant, intentional.’
  - ‘Where it is possible and there is sufficient accommodation within the courtroom to allow defendants to sit outside the dock, it would in many cases be appropriate. The difficulty is that, were it to become common, the prejudice felt by those who were not permitted this privilege would be all the more acute.’
  - ‘The decision as to where the defendant sits ought to be one for their lawyers as opposed to the lay client.’
- *Generally unsupportive of docks:*
  - There is ‘[n]o sensible reason to retain the dock in non-security circumstances.’
- *Creates bias in favour of defendant:*
  - ‘Some advocates prefer the constant visual reminder that their client is in jeopardy, which the use of a dock provides.’
- *No prejudice:*
  - ‘… The defendant’s place in that part of the Court is usually explained by the judge in very neutral terms and a clear direction is given if the defendant gives evidence that it makes no difference that he comes to the Witness Box from the dock. ...Does it prejudice a defendant? Probably not, in my experience, but unless there is a sensible, rational basis for maintaining the presence of the defendant in the dock, rather than sitting behind his legal representatives, then why take the risk?’
  - ‘If the defendant is in custody, sitting in the dock must be justified on the grounds of risk of escape.’
  - ‘… if all defendants on bail are allowed to sit with their lawyers, and all defendants in custody have to sit in the dock then (a) the jury will always know who is on bail and who is in custody, which might be unfair (especially in a multi-handed case) and (b) if there is indeed a disadvantage to being in the dock, the latter group may suffer disproportionately.’

- *Creates bias against defendant:*
    - ‘However the jury is directed there is an inevitable stigma attached to sitting in the dock, particularly in modern ones which are generally enclosed by a protective glass.’
    - ‘In cases where security is not an issue then the dock serves no purpose other than to stigmatise the, *at least at that stage,* innocent defendant. Courts are in the best position to assess the issue of security.’
    - ‘No amount of warning can compensate for the visual impact of your client sitting in the dock – behind a barrier.’
    - ‘A defendant who is on bail [is more likely to be acquitted] than a defendant who is in custody.’
- *Helpful to avoid distracting clients:*
    - ‘The advocates and their instructing solicitors do not always want to be sat very close to their clients, as it can be off-putting and an unnecessary distraction.’
- *Unhelpful in complex cases:*
    - ‘It is unnecessarily disruptive having to trail back to the dock or ask the court to rise whenever instructions have to be taken…’
    - ‘Cases of real complexity would be better served if the defendant were to, when required, sit by his lawyers.’
- *Makes audibility difficult:*
    - ‘It cuts the defendant off from the trial. It is difficult to hear in some docks and the defendant is usually behind their counsel at the back which further separates them from the process.’
- *Disrupts defendant’s engagement:*
    - ‘[I]n some court centres (Southwark Crown Court for example) there should be courts without docks so that defendants in suitable cases – fraud for example – can sit behind a desk w/a computer etc.’
    - ‘In most docks there are insufficient facilities for defendants to access files in paper heavy cases.’

We are grateful to Dechert LLP for producing this survey, and the respondents to it. This summary of the survey responses was prepared by Jodie Blackstock, author of the *In the Dock* report and director of criminal justice, and Sarika Arya, intern, at JUSTICE