



Ministry
of Justice

The Right Honourable
David Gauke MP
Lord Chancellor & Secretary of
State for Justice

Dame Vera Baird QC
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Dear Vera

DOUBLE JEOPARDY

Thank you for your letter of 24 June about the categories of offence for which it is possible to put on trial for a second time a person who has previously been acquitted. You are concerned, following the recent conviction of Bob Higgins for numerous such offences, that six further offences of which he had long ago been formally acquitted could not be added to the indictment because they were not 'qualifying offences' for the purposes of the retrial provisions in Part 10 of the Criminal Justice Act 2003. You propose that the list of qualifying offences should be reviewed.

As you rightly acknowledge, those provisions were restricted to the most serious of offences. The provisions in the 2003 Bill drew on a report from the Law Commission which recognised that it would be a major and contentious step to depart from the principle of finality by allowing exceptions to the double jeopardy rule. They considered that the exception should be limited to 'those types of case where the damage to the credibility of the criminal justice system by an apparently illegitimate acquittal is manifest, and so serious that it overrides the values implicit in the rule against double jeopardy'. The Law Commission concluded that it should be restricted to murder alone. The then government proposed a less restrictive approach, and (as you will recall) there was considerable, and vigorous, debate in Parliament about which offences should qualify.

Extending the list of qualifying offences in Schedule 5 to the 2003 Act is therefore not something we would undertake lightly; any amendment would be certain to prompt requests for other offences of arguably equal seriousness to be added as well. But the list cannot be regarded as being set in stone. When you met Edward Argar on 4 July, you agreed to come back with proposals for particular offences that you consider should qualify for retrial where the other statutory criteria are met.

Yours ever

RT HON DAVID GAUKE MP