

Government Response to the Public Consultation Paper

on

‘Quashing Convictions: Report of a review by the Lord Chancellor, the Home Secretary and the Attorney General’

The consultation paper was issued by the Home Secretary for public consultation in September 2006. The paper related to the test applied by the Court of Appeal in England and Wales when considering applications to quash criminal convictions.

Similar issues arise in respect of applications to the Court of Appeal in Northern Ireland, and the relevant legislation is very similar in both England and Wales and Northern Ireland jurisdictions.

When the consultation paper was issued, the Secretary of State for Northern Ireland stated that the intention would be for any proposed legislative changes to be extended to Northern Ireland and therefore invited comments on the consultation proposals.

The responses received in Northern Ireland are also addressed in the attached response document.

Please contact Criminal Law Branch if you require a copy of the response document in any other format at:

Criminal Law Branch
Northern Ireland Office
Massey House
BELFAST
BT4 3SX
Telephone: 028 9052 7264
Email: CJPB.Public@nio.x.gsi.gov.uk

Quashing Convictions

A Report of a review by the Lord
Chancellor, The Home Secretary and the
Attorney General

Summary of Responses to the Consultation Paper and
Response of HM Government

October 2007

**QUASHING CONVICTIONS – REPORT OF A REVIEW BY THE
LORD CHANCELLOR, THE HOME SECRETARY AND THE
ATTORNEY GENERAL**

**Summary of Responses to the Consultation Paper and
Response of HM Government**

October 2007

This information is available on the Criminal Justice System website (www.cjonline.gov.uk), the Home Office website (www.homeoffice.gov.uk), the Ministry of Justice website (www.justice.gov.uk) and the Northern Ireland Office website (www.nio.gov.uk).

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Introduction

1. The Quashing Convictions Consultation Paper highlighted the Government's concern that some convictions are overturned because the Court of Appeal are dissatisfied with some aspect of procedure at the original trial, even if the person pleaded guilty, or if the Court are in no doubt that the person committed the offence.

The Consultation Process

2. The Consultation Paper was published on 18 September 2006, the three-month consultation period ending on 18 December 2006. A total of 33 responses were received from interested parties. A list of respondents to the Consultation is at pages 6 - 7.

3. The Consultation Paper invited views on the form that amending legislation might take to achieve the Government's desired aim: to ensure the original conviction is upheld where the Court are satisfied that the defendant committed the offence in question. The Paper set out three detailed options for consideration, while inviting any other proposals that would achieve the desired aim.

4. For further information about the Quashing Convictions consultation process, including copies of individual responses, please contact:

Liton Miah
Office for Criminal Justice Reform
Better Trials Unit
Ground Floor/ Fry Building
2 Marsham Street
London
SW1P 4DF

Tel: 020 7035 8471 Fax: 020 7035 8601 Email: liton.miah@cjs.qsi.gov.uk

5. The Secretary of State for Northern Ireland consulted on equivalent proposals in that jurisdiction, and responses to that exercise are also included.

Summary of Responses

1. Although the Consultation Paper made clear that the Government was seeking views about how, not whether, the test for quashing convictions should be changed, most legal respondents expressed the view that no reform is needed. They argued that the current test works satisfactorily and it is only in the most exceptional cases that the Court of Appeal quashes the conviction of a plainly guilty appellant.
2. Many respondents were concerned that the proposed changes might require the Court of Appeal to act as a 'jury' and that this would undermine the jury process. The view was that the Court of Appeal were not equipped to act as a jury, because they would look only at trial transcripts and would not be privy to the jury's deliberations or to the view that the jury had formed of witnesses, particularly as regards truthfulness.
3. Many respondents were concerned that the change could oblige the Court of Appeal to violate the right to a fair trial under Article 6 of the ECHR (which is also reflected in the Police and Criminal Evidence Act 1984 and the common law).
4. Some respondents were concerned that the change would produce legal confusion and unfairness in relation to abuse of process jurisdiction, in that it could require the Court of Appeal to disregard issues which would have caused the trial to be halted if they had been raised before or during trial.
5. Respondents argued that removing the Court of Appeal's ability to punish the Crown for gross prosecutorial misconduct would be damaging to the integrity of the Criminal Justice System and to public confidence in it.
6. Some respondents suggested that reform of the Criminal Appeal Act 1968 was required where the law has changed in the interval between the trial and the appeal as a result of judicial interpretation. In practice, the Court of Appeal are reluctant to quash a conviction where the appellant was properly convicted under the law as it was when he was tried, and will normally avoid having to do so by refusing leave to appeal on that basis. But where (as in cases that are referred by the Criminal Cases Review Commission) there is no requirement for leave, this course appears not to be open to the Court of Appeal, which is bound to apply the current law as stated in *R v Bentley*. In consequence, there have been cases where the Court of Appeal have been obliged to quash a conviction simply on the basis of a later change in the law that could not have been foreseen at the time of the trial.

Government Response

The Government has put forward proposals in Clauses 26 and 27 of the Criminal Justice and Immigration Bill. The Government will keep these provisions under review in the light of the responses to consultation and what is said in the course of the Bill's passage through Parliament.

Respondents

Judiciary

- Lord Lloyd of Berwick
- Council of H M Circuit Judges
- Criminal Justice Committee of the Court of Appeal (and the Rose Committee)
- Office of the Lord Chief Justice of Northern Ireland

Legal background (including representative bodies)

- Criminal Appeal Lawyers Association (CALA)
- Criminal Bar Association
- Edward Fail Bradshaw Waterson, Solicitors
- Independent Defence Lawyers Group (IDL)
- Institute of Legal Executives (ILEX)
- The Inns of Court School of Law
- The Law Society
- Nicola Padfield
- Stepsons, Solicitors
- Student Law Office, Northumbria University
- Dr Hannah Quirk
- Brian Woodhams, E Rex Makin and Co
- Professor Graham Zellick

Others working in the field of criminal law

- Police Inspector John Clucas
- Criminal Cases Review Commission
- Crown Prosecution Service

Human rights and miscarriages of justice groups

- Britain & Ireland Human Rights Centre
- British Irish Rights Watch

- Justice
- Liberty
- Northern Ireland Association for the Care and Resettlement of Offenders
- Northern Ireland Human Rights Commission
- South Wales Against Wrongful Conviction

Members of the public

- David W Coley
- David Delaney
- Mohamed Abdul Rakib
- Andy Roberts
- Trev (email response)