



Submission on behalf of the Jersey Human Rights Group

To: Deputy Catherine Curtis
Chair of Children and Home Affairs Scrutiny Panel

March 2026

Dear Chair,

Thank you for the invitation to make a submission to your panel in relation to your review of the Criminal Procedures Amendments.

The Jersey Human Rights Group met on 2nd March, and part of the business discussed was your review. Our comments in this paper primarily relate to the narrow point of whether retrials should be allowed in cases of a hung jury. Our position is that they should not, for the reasons outlined below. We also believe that the current system reflects the long-standing principle of the prosecution needing to prove their cases beyond reasonable doubt in criminal trials.

Our group is mindful that a previous iteration of your scrutiny panel, in 2018, looked at this matter in depth, and concluded that there were three main problems with seeking retrials. These concerns remain just as relevant today.

They can be summarised as:

- Publicity of the first trial impacting on the re-trial process.
- The resource implications for the Royal Court and Viscount's Department.
- A shift in the balance of fairness to the prosecution which could be seen as unfair.

[The Scrutiny Panel's Report to the Amendment, 2018](#) contains the following evidence from former Bailiff, Commissioner Sir Michael Birt, and Commissioner Clyde Smith relating to the practical difficulties of retrials in a small island:

*The Sub-Panel will be aware of the prominence given by local media to trials in the Royal Court, **particularly if they are of a sensational nature**.... Thus the jury in the re-trial are*

*likely to be aware of the earlier reports and that it is a re-trial. This will mean that a re-trial is held in very different circumstances to that which the courts have striven to achieve in relation to original trials. There are strong rules of court ...to protect the integrity of the trial process and ensure, as far as is practicable, that the members of the jury consider the matter solely on the basis of the evidence which they hear in court. **That cannot be achieved in the case of a re-trial.**" [My emphasis]*

The case that the current Minister references in her report to p.38/2026 as a basis for change, is one that can itself be described as 'of a sensational nature'. It is difficult to see how in the case of L'Ecume II, a retrial could have taken place fairly as any new jury in the re-trial would, indeed, have been 'likely to be aware of the earlier reports'.

The JHRG agrees with the two Commissioners and with the previous scrutiny panel about the strong risk of publicity of the first trial impacting on the re-trial process.

The second, and over-riding concern of the JHRG is one of **fairness**. It is a long-established legal principle in criminal trials that the defendant's **guilt needs to be proven beyond reasonable doubt** to secure a conviction; and that one is innocent until proven guilty. In other words, the burden of proof is on the prosecution, not just to convince the jury that the defendant probably did it, but that the defendant *surely* did it (i.e. beyond reasonable doubt). In terms of a jury, this means more than 75% of jurors are find the defendant guilty (more than 9 out of the 12).

The jury can be seen as a gestalt mindcollective decision making body which acts as an alternative to having a single judge. imagine a scenario where that single judge were weighing up the facts of a case and the subsequent guilt or innocence of the defendant. There are 4 broad scenarios. The judge can conclude: 1) S/he is almost certain the defendant did it; 2) S/he thinks the defendant probably did it, but is not confident. 3)) S/he thinks the defendant probably did not do it, but is not certain. 4) S/he is almost certain the defendant did not do it.

In only one of these scenarios should and would the judge rightly pronounce a 'guilty' verdict, that is the first. Where the judge is only 30%, 50% or 70% sure of the defendant's guilt, the judge will accept that there is 'reasonable doubt' and s/he must pronounce the defendant 'not guilty'.

The current Minister's states in her report:

Today, we have seen the significant confusion, expense, and distress that is caused by a trial ending in this uncertain manner. To ensure that this unfortunate outcome does not reoccur, I have worked with the Law Officers and the judiciary to develop the proposals

detailed in Part Two of this report, which will allow retrials in cases which result in a hung jury.

These assertions need to be carefully deconstructed.

Firstly, there is nothing objectively 'unfortunate' about a scenario where a jury cannot reach a majority. That is the margin for reasonable doubt being shown to work in practice.

This is also the point made by Commissioner, Sir Michael Birt in his evidence to the previous scrutiny panel:

"I am not sure there is anything inherently wrong in saying if you cannot convince 10 out of 12 of the defendant's guilt the first time around, well, so be it. Certainly, when balanced against the cost and the prejudice, to my way of thinking our present system is satisfactory."

This point was again reaffirmed his fellow commissioner:

Commissioner Clyde-Smith: *"I agree. All I would add is it seems to me it comes down to the balance of fairness. At the moment, I think the system is fair. You can see in trials the stress both upon the prosecution witnesses and on the defence witnesses. **It seems to me fair that if the prosecution are unable to persuade 10 people to convict, then a person is acquitted.** It comes down to deciding whether the balance of fairness should be shifted towards the prosecution **to allow them to have 2 bites at the cherry and for everybody to have to go through the stress of a second trial.**"*

The 'second bite of the cherry' was also the term that came up in our discussions of the JHRG. Indeed, it was noted that it could also be seen as 'sour grapes'. Where the prosecution has failed first time around, they could try again, with a new jury, perhaps learning what did not work the first time around and refining their case a second time around.

The phrase "hung jury" is a loaded one; all it signifies is that the jury was not sufficiently convinced by the prosecution's evidence to deliver a conviction.

The confusion, expense and distress, that would be caused by a retrial does not seem to be recognized by the Minister in her comments. And we would ask the panel to note that a trial ending in acquittal is no more expensive than one ending in unanimous guilty or not guilty verdicts. It is a retrial will incur addition costs to the taxpayer, in addition the distress will be relived by both the defendant and the alleged victim or their families.

The question of equality of arms also needs to be considered here, where the prosecution has the full force and resources of the State at its disposal to fund a new trial, it is questionable whether the same can be said for the defendant.

When it comes to the cost of a retrial, that cost will not only fall on the public purse, but also on employers. Jurors will be excused work, and many employers will meet the cost of salaries in what may turn out to be long trials. This will affect those in the private, third and public sectors. This point might also be of consideration to the panel when issuing comments on the Minister's Amendment to have 4 additional jurors as 'spares' when a trial is likely to last over 30 days.

Whilst the Panel might be of the opinion that retrials are catered for elsewhere in the British Isles we would point out that other models are also available by way of comparison, even in the British Isles.

Scotland

Criminal procedure in Scotland is generally regulated by the Criminal Procedure (Scotland) Act 1995 (as amended) and various Acts of Adjournal passed by the High Court of Justiciary, with some significant amendments by the Victims, Witnesses, and Justice Reform (Scotland) Act 2025. Juries in these cases consist of 15 people; if jurors drop out e.g. because of illness the trial can continue with a minimum of 12 jurors. The jury has a choice of two verdicts: guilty or not guilty. A guilty verdict requires a two-thirds majority i.e. a minimum of ten jurors with a full jury, dropping if the size of the jury drops. Failure to reach the majority for a guilty verdict is treated as a verdict of not guilty, so it is not possible to have a hung jury.

We would argue that the same principle should apply in Jersey, namely that failure to reach the majority for a guilty verdict is treated as a verdict of not guilty.

We also note that in 2025, MSPs voted for reforms to their Criminal Justice Procedures and that the size of juries will be reduced from 15 to 12. A two-thirds majority will remain necessary for a conviction (this was recently changed from a 'simple majority' (8/15)).

Double Jeopardy

The principle of 'Double Jeopardy' was also one that came up in the JHRG's discussions.

In Scotland one will not be tried for the same crime twice.

However, the Double Jeopardy (Scotland) Act 2011, allows for a retrial in three narrow circumstances after an acquittal:

1. Tainted Acquittals

If the original acquittal was influenced by offenses against the course of justice, such as bribery, perjury, or other forms of corruption, a retrial may be permitted. This ensures justice is served even if the original verdict was compromised by dishonest practices.

2. Credible Admissions of Guilt

If the person who was acquitted later makes a credible admission of guilt regarding the crime, this can be grounds for a retrial. Such admissions must be clear and often require corroborative evidence to justify reopening the case.

3. New Evidence

A retrial may also be pursued if new evidence emerges that was not available during the original trial. This evidence must be substantial enough to suggest that it could have led to a different outcome had it been presented initially. The new evidence must significantly strengthen the case against the accused.

Double Jeopardy

The Panel will also be aware that the principle of Double Jeopardy is enshrined in the fifth amendment of the US Constitution, and for sound reasons.

The final question we would ask the panel is, what is the problem that the Minister is trying to solve here?

Ostensibly, the Minister seems to be saying that any verdict where the jury is 'split' by a margin of more than 10/12 results in an 'unsatisfactory' result. But unsatisfactory for whom? She suggests it is unfair on both parties. However, a non-majority verdict is, we would reiterate, a demonstration of that the jury system is doing exactly what it was designed to do. An unsure jury should not convict.

If the Government, the Judiciary or Prosecution thinks that the threshold of 10 out of 12 jurors is too high, then a case needs to be made for changing that – not to allow for retrials, with all the cost, distress, prejudice to a fair trial that a retrials would inevitably entail. To date, that case has not been made.

Similarly, if the argument is that juries cannot be trusted to deliver fair verdicts, then there is a bigger problem, and the authorities need to make the case for abolishing jury trials altogether or to limit them to certain types of offence. We do not comment on the merits or otherwise of doing this, but we do note that such moves occurring in England and Wales at the moment.

Conclusion

Allowing for retrials would necessarily favour the prosecution by allowing them to 'have another go' at securing a conviction where they failed the first time around. This is not justice and the JHRG does not believe that the Minister has made a sufficiently strong case to justify the cost, distress and likely prejudice to a fair trial that would be caused by this change.

We thank you for your time in reading this submission and wish you all the best with your deliberations.

Deputy Montfort Tadier on behalf of the Jersey Human Rights Group