



Law Society
of Scotland

Consultation Response

Policing during the miner's strike: independent review

10 December 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: Policing during the miner's strike; independent review. The Committee has the following comments to put forward for consideration.

General

This is a general call for evidence on the impact of policing on affected communities in Scotland during the period of the miner's strike from March 1984 – 1985. We understand that evidence is sought from affected individuals and representative groups.

Solicitors working in the relevant areas¹ were involved in representing the miners charged with criminal offences. Our members can provide recollections for the purposes of the consultation's review which is to consider lessons learned and any recommendations for further action. Other than our reference to the reported case of *Bradford v McLeod*², we would not comment on any individual cases.

We can highlight the role of the profession in providing access to justice and supporting the rule of law, particularly at such times of conflict. Should any further information be required on the legal system, we would be happy to provide this if requested.

Background

¹ This contribution was substantially contributed with thanks to Peter Lockhart Member of the Criminal law Committee who qualified in 1978 and commenced practice in Lockharts, Ayr in 1979.

² 1986 S.L.T. 244; [1985] 11 WLUK 41 (HC)

As noted in the consultation, Ayrshire was one of the communities that was particularly affected by the miners' strike. Both the Ayrshire Courts, Ayr and Kilmarnock, were involved in many cases concerning the miners' strike:

- Kilmarnock dealt with most of the disturbances which occurred around Hunterston Nuclear Power Station. In particular, tensions arose when coal was brought in to the power station using non-union members. Large picket lines were massed at Hunterston where several disturbances took place.
- In Ayr, there was still a coal mine operating at Killoch near Cumnock. Pickets were in place where there were disturbances with the police.

The length of the strike and the hardship caused also resulted in conflict among local communities and families, which resulted in additional criminal prosecutions.

Points to consider

1. Reforms: Attitudes towards prosecution and policing differed substantially at the time of the miners' strike from those that exist today. All incidents took place in a very different legal landscape to that which now applies. The police methods of arrest, detention, interview and court appearances, have all changed markedly³.

Likewise, the trial process in relation to admissions to the police and how these are viewed, has altered significantly. The most significant issue around that time concerned alleged admissions made to Police officers. The accused would claim no such admission had been made or that physical force had been used to obtain some sort of admission. Since police interviews were neither video nor audio recorded then, few admissions, if any, were ever signed or authenticated by the accused.

The climate on police interviews is rather different now. The case of *Cadder*⁴ has radically affected the obtaining of admissions. All those arrested since the commencement of the Criminal Justice (Scotland) Act 2016 must be offered legal advice. Any strike and civil disturbance now arising would need to be viewed against the changes and development of the criminal law since the 1980's. Some of the initial criminal procedural reforms may well have resulted from concerns about how such admissions were then obtained.

2. Appeal mechanism: As with all criminal prosecutions, an appeal mechanism allowed for redress where there had been an alleged miscarriage of justice. The effect of appeals can be seen below in the decision of the case of *Bradford*.

³ There are many routes now that do not result in prosecution for offences even where there is sufficient admissible evidence. That includes warnings by the police including senior officers, warning letters from COPFS and use of both police and COPFS fiscal fines and work orders.

⁴ [2010] UKSC 43

The impact of appeals can help lead to changes in the law and in police procedure, including interview procedures and alleged confessions.

3. Legal aid: The period of review was prior to the Legal Aid (Scotland) Act 1986 and legal aid was operated then by the Law Society of Scotland. Grants of legal aid in criminal prosecutions were a matter for the local Sheriffs. This did not cause any particular conflict in Ayr. However, conflict arose in relation to the *Bradford v McLeod* case at Kilmarnock Sheriff Court.

This case involved a local solicitor, the now deceased, Roy Penny who appeared locally for the National Union of Mineworkers (NUM). At a social function, he attended an event which was also attended by a local sheriff, Sheriff David Smith. Sheriff Smith made it clear at this event that he would “not grant legal aid to miners”. Mr Penny understood the remark to have been made seriously.

Mr Penny was defending a miner at Kilmarnock Sheriff Court. Sheriff Smith was asked to stand down from dealing with the case on the basis he had publicly shown a lack of impartiality insofar as miners were concerned. The motion was refused; the sheriff proceeded to convict the miner. Similar motions rose in fourteen other cases which were refused. All appealed successfully.

The question was not whether the sheriff was biased in disregarding his judicial oath but whether the circumstances were such as to create in the mind of a reasonable man a suspicion of the sheriff's impartiality.

The convictions were quashed in that

“a reasonable person, on hearing that the sheriff had made that observation, would be likely to conclude that the sheriff was biased so far as cases involving miners were concerned.”

4. Professional commitment: Local solicitors provide an important role during times of conflict, and many were involved with those who were facing police investigations or criminal prosecutions. One local solicitor⁵, still practising, was heavily involved from an office in Cumnock. After the strike was over, he received a commendation from the National Union Miners for his hard work and dedication to the miners throughout the strike.

5. Evidence: In a deeply polarised dispute, issues of credibility and reliability would always be challenging. Today, the police have technological support such as the use of body cameras to record crowd incidents and reducing the reliance on individual police officers' oral testimony. Similarly, police are now able to more quickly call for and receive back up when required.

⁵ Robert Logan

Evidence from a similar incident presented today would likely be very different from the time of the miners' strike and would reflect the professionalism and accountability of the police.

For further information:

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