Consultation Response

Miners’ Strike 1984/85 Pardon

4 June 2021
Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Miners’ strike 1984/85 pardon (the consultation).¹

General

In December 2018, we responded to the Scottish Government - Policing during the miner’s strike; independent review.² This consultation follows on the acceptance by the Scottish Government of the recommendation by that independent review panel that, subject to establishing suitable criteria, the Scottish Government should introduce legislation to pardon the miners who were convicted for matters related to the strike. The consultation focuses on what the qualifying criteria should comprise for a pardon in respect of convictions relating to the miners’ strike of 1984/85.

It is appreciated that primary legislation will be required to give effect to the relevant criteria. We assume that the Scottish Government’s plans will be announced in the next legislative programme in autumn 2021.

We are also interested in obtaining an update to the then Cabinet Secretary for Justice’s statement in October 2020 that they will continue to press the UK Government to hold a full UK-wide public inquiry into the events of the 1984-85 miners’ strike.³ Is there any advance on that position as it was of course a national UK wide strike?

We recognise the motivation regarding the introduction of a pardon for those miners genuinely convicted of offences arising out of the circumstances of strike. We are interested to hear about the effect of the legislation once enacted as to how it will offer more than mere symbolism and distil into a practical impact. There must be criteria set as no matter what the background to the political situation was at the time, there is criminal conduct resulting in convictions that arose that should still remain inexcusable. It is about maintaining a balance in recognising the background to the strike that occurred over forty years ago and

3 Miners’ strike review: Justice Secretary statement - 28 October 2020 - gov.scot (www.gov.scot)
specifically, in the affected communities, given the challenging situations that arose and was highly divisive for many involved who found themselves on opposing sides.

Solicitors working in the relevant areas of Scotland were involved in representing those miners charged with criminal offences. One of the quotes from a miner quoted in the Report sums up that background and is informative for those who did not live through the circumstances of the strike:

“We were not on strike to have a fight. We were on strike for our lives. That [1972 strike] was a strike about money. This was about jobs and communities.”

A further illustration as to polarised views at the time lies in the case of Bradford v McLeod which was a case involving a local solicitor, the now deceased, Roy Penny who appeared locally for the National Union of Mineworkers (NUM). He attended a social event attended too by a local sheriff who made it clear at this event that he would “not grant legal aid to miners”.

Mr Penny was defending a miner at Kilmarnock Sheriff Court where Sheriff Smith was asked to stand down from dealing with the case on the basis that he had publicly shown a lack of impartiality insofar as the miners were concerned. Ultimately, convictions which followed were quashed on appeal 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.” This provides evidence too of the strongly held views in the community at the time.

In our earlier submission we recognised that the circumstances were very different from today; with the use of modern policing methods, many of these incidents would simply not arise and with the use of technology would have been better recorded and would have provided the best evidence to be assessed for the purposes of any trials and subsequent convictions.

What would also be useful is to ascertain how many are likely to be affected by any pardon.

We note from the Equality Impact Assessment set out in Question 14 of the consultation that the Independent Review Report indicated that in 1984 there were approximately 15,000 Scottish miners and over the course of the strike, there were an estimated 1,350 arrests in Scotland linked to the strike. Just how linked to the strike is defined has not been set. It states that there were approximately 470 court cases held in Scotland, of which 85% led to a conviction. This may allow these cases in which a conviction followed to be identified so that use of the differing criteria can modelled.

The Committee has the following comments to make.

**Consultation Answers**

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5 1986 S.L.T. 244
Question 1: Do you agree that miners convicted of a breach of the peace that related to the strike should be pardoned?

Yes.

The policing of the Miners' Strike 1984-1985 - Impact on Communities: Independent Review Report highlights, that the law in relation to convictions of breaches of the peace has been developed considerably since the miners’ strike. As we highlight above, the policing of strikes/ demonstrations as well as the ability to record first-hand with the use of technology has moved on and affects how a case would be presented now and what would constitute a case to answer to an any allegation of a breach of the peace in 2021.

What is important is what criteria that is set out to constitute the basis of any pardon. It is unclear in policy terms if those claiming to have been affected by relevant convictions will need to apply or whether the pardon is intended to apply as a blanket for all relevant convictions. We assume the latter.

Exactly what process will be used to achieve this ties in with our observations about the need for publicity and potentially legal advice and assistance referred to in our answer to Question 13.

We can envisage issues arising as the background and evidence that was presented in such cases and those who may have been witnesses who will no longer be available to ascertain exactly what the circumstances of each offence was. All that may be capable of being ascertained now is the evidence of the conviction and sentence - and as is now understood, the severity of the sentence imposed for a conviction varied enormously which was outlined a factor outlined in the Review Report:

“Naturally, different men dealt with by different police officers and tried or sentenced before different Sheriffs received different outcomes but, in comparing their own cases, many have formed the view that some of the differences were a result of inconsistent application of the law as opposed to merely reflecting the factual differences in each case. This perceived inconsistency is part of the general picture of unfairness.”

This may complicate the criteria which is set.

If we look to section 359 of the Armed Forces Act 2006 (the 2006 Act) as an example of the type of legislation which may follow, there are some important points of principle that we suggest must be clarified from the outset. Appendix A attached for reference sets out that section which forms the basis of the pardon for those executed in the First World War for certain disciplinary offences.

Relevant Period: Can we identify exactly what period the strike comprises- it does not have the strict and accepted parameters of the First World War? As convictions may arise after the date of the offence, the date of offence is going to need to be identified as falling within the relevant strike dates once set.

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Miner: What is the definition of a miner? Is it someone who worked for the National Coal Board? What about convictions that may have arisen at home or elsewhere between those who may have been miners and others over issues relating to the strike? Also, what is the definition of a miner as opposed to a collier?

Relevant to the strike: Miners may have been convicted of offences which are not relevant to the strike. There needs to be considerable care about the term and the meaning of “related to the strike.” The 2006 Act does detail a number of disciplinary offences that are relevant for the purposes of the pardon so these would need to be set out carefully because it is unclear that every breach of the peace conviction should be covered as this is potentially very wide. It covers a vast range of conduct. Would the locus/ sentence help to define which should be included?

This was recognised as an issue in the Report as a blanket pardon is not the same as other pardons such as the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 as the conduct could still be illegal today were it to occur. Issues may arise as to the actual prosecution route now as there is also much greater scope for diversion and use of alternatives to prosecution such as warning letters and Fiscal fines. These are not convictions but equally if the circumstances were the same today given rise to discontent on the basis of unfairness.

**Question 2: Do you agree that miners convicted of a breach of bail that related to the strike should be pardoned?**

Please see above. In principle this may be appropriate. However, how practical is this to ascertain? Breaches of bail relate to non-attendance at court as well as breach of bail conditions by reoffending. A bail order could relate to a separate matter such as a pending trial on some completely extraneous matter unrelated to the strike. Surely too a breach of bail in relation to any non-attendance at court should stand? It is a disregard to the justice system. This requires some consideration and care.

**Question 3: Any there any other offences which miners were convicted for, and which related to the strike that you think should be included in the qualifying criteria?**

There may be some other minor offending that could be relevant in which miners may have been involved such as picketing or where they may have faced additional charges related to minor road traffic offences. Where minor road traffic offences were part of the original complaint, they could be considered to be included in the qualifying criteria.

What may be more problematic are breaches of section 41 of the Police (Scotland) Act 1967 as these can include:

(a) assaults, resists, obstructs or hindering a police officer or
(b) rescues or attempt to rescue or assists or attempts to assist the escape of any person in custody.

These may be relevant as they may follow on from an original incident such as a breach of the peace related to the strike. Should miners then be pardoned for the raft of offences convictions which follow on. Consideration could be made to the circumstances of the breakdancing case of Cardle v Murray. The accused was breakdancing in a shopping precinct. When the police intervened, he started shouting and swearing for which he was arrested for committing a breach of the peace. The question was whether M had been unlawfully detained by the police officer, in which case he was entitled to resist as he did. The Crown appeal was refused as the original action was not unlawful and the arrest not justified. If the policing of arrest in an offence in relation to the miner’s strike was not lawful all offences which follow should also be unlawful.

**Question 4: Do you think that miners who were convicted of a single offence related to the strike should be pardoned?**

Please see our response above. That depends on the criteria of the offence and its relationship to the strike.

**Question 5: Do you think that miners who were convicted of multiple offences related to the strike should be pardoned?**

Please see our response above.

That depends on the criteria of the offence, its relationship to the strike and whether the multiple incidents were on one date related to one incident or multiple as in related to the strike but arising on more than one date.

**Question 6: Do you agree that miners who had been convicted of an offence before the strike began in March 1984 should be pardoned for offences committed before the strike?**

No.

This ties in with the issues which we highlight in response to Question 1 as to what dates the strike is taken to cover. It may also depend on the offences and their circumstances which may be hard to identify now. It is hard to envisage to what offences this may apply and if the question of sentence were a factor to be

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8 1993 SLT 525
assessed such as an admonition which is still effectively a conviction. The role of the absolute conviction may also be a factor to assess if the circumstances were pertinent.

A judge may have decided that a person convicted of a crime should not be given a sentence which means that there is no punishment and in summary cases, no conviction is recorded. However, it can appear as a previous conviction.⁹

**Question 7: Do you agree that miners who were convicted of any offence after the strike ended in March 1985, and which did not relate to conduct during the strike should be pardoned for a conviction related to the strike?**

No. Presumably the whole substance of the pardon is about offences related to conduct during the strike. Convictions that relate to the conduct that arose during and related to the strike but arise after the strike should be included.

**Question 8: In considering your responses to question 6 and question 7 do you think the severity of the offending is relevant?**

Yes. While the majority of the offending formed picketing and interaction with the police, other more serious offences were committed where one family was involved against another.

Some of these incidents were serious such as an assault to severe injury and these should not justify a pardon. This may again reflect the question of sentencing being a determining factor. All convictions on indictment should be excluded.

**Question 9: Do you agree that miners whose conviction relating to the strike that resulted in a non-custodial sentence (such as a fine or a community service order) should be pardoned?**

Yes. Whether they all should be pardoned should be considered further. There is the issue of a community service order being a direct alternative to custody, the role of previous “unrelated” convictions and the number of convictions for conduct relating to the strike that all need to be considered.

**Question 10 Do you think that miners whose conviction relating to the strike that**

resulted in imprisonment should be pardoned?

No. There are again issues to be raised over the actual headline conviction which gave rise to the sentence of imprisonment.

Was there a record prior to the conviction(s) for offences relating to conduct during the strike?

**Question 11:** Thinking about the fact that some miners were dismissed by the National Coal Board, as a result of a conviction relating to the strike, and others were not, which of the following statements most closely matches your view (please select one option only)?

All miners who meet the criteria should be pardoned regardless of whether they were dismissed by the National Coal Board. Questions about employment are irrelevant. What should be the issue is that of the conviction.

**Question 12:** Are there any other criteria that should be added to those mentioned previously?

We have nothing to add.

**Question 13** Do you have any further comments that you would like to make concerning the criteria?

Yes. As we highlight above, we assume that those affected will not need to apply for a pardon.

However, the process of a pardon being available needs to be clearly publicised and specifically to the right communities. Whether the Scottish Government would envisage a campaign direct to those affected is a possibility in line with the recent publicity around the miscarriages of justice in the Post office cases.\(^{10}\)

Careful consideration needs to be given how to manage this in order to achieve this effectively.

There may also be a question of making legal advice and assistance available to those affected or given the time which has elapsed, to their families, to understand whether they are included within the relevant criteria and the legal implications from the effect of pardon for instance on any criminal record.

\(^{10}\) https://www.bbc.co.uk/news/uk-scotland-54339004
Question 14: If you have any comments on the partial Equality Impact Assessment (EQIA), please tell us.

We have nothing to add.

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Appendix A

Pardons for servicemen executed for disciplinary offences: recognition as victims of First World War

(1) This section applies in relation to any person who was executed for a relevant offence committed during the period beginning with 4 August 1914 and ending with 11 November 1918.

(2) Each such person is to be taken to be pardoned under this section in respect of the relevant offence (or relevant offences) for which he was executed.

(3) In this section "relevant offence" means any of the following—

(a) an offence under any of the following provisions of the Army Act 1881 (c. 58)—

(i) section 4(2) (casting away arms etc);

(ii) section 4(7) (cowardice);

(iii) section 6(1)(b) (leaving post etc without orders);

(iv) section 6(1)(k) (sentinel sleeping etc on post or leaving post);

(v) section 7 (mutiny and sedition);

(vi) section 8(1) (striking etc superior officer);

(vii) section 9(1) (disobedience in defiance of authority);

(viii) section 12(1) (desertion or attempt etc to desert);

(b) an offence under any of the following provisions of the Indian Army Act 1911 (Indian Act, No 8 of 1911)—

(i) section 25(b) (casting away arms, cowardice, etc);

(ii) section 25(g) (sentry sleeping on post or quitting post);

(iii) section 25(i) (quitting guard etc);

(iv) section 27 (mutiny, disobedience, etc);

(v) section 29 (desertion or attempt to desert).

(4) This section does not—

(a) affect any conviction or sentence;

(b) give rise to any right, entitlement or liability; or
(c) affect the prerogative of mercy.

(5) Any reference in this section to a provision of the Army Act 1881 (c. 58) includes a reference to that provision as applied by any enactment, wherever enacted.