



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 8 February 2022

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

4th Meeting 2022, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Cabinet Secretary for Justice and Veterans)

Elaine Hamilton (Scottish Government)

Richard Leonard (Central Scotland) (Lab)

Louise Miller (Scottish Government)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 8 February 2022

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Maximum Number of Judges (Scotland) Order 2022 [Draft]

The Convener (Joe FitzPatrick): Good morning, and welcome to the fourth meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies for today's meeting.

Fulton MacGregor and Karen Adam are joining us virtually today, and Richard Leonard is also joining us. We welcome Richard to the meeting.

Our first agenda item is consideration of an affirmative instrument. I welcome to the meeting Keith Brown, Cabinet Secretary for Justice and Veterans, and his Scottish Government officials: Ryan McRobert, head of courts and tribunals, and Jo-anne Tinto, a solicitor in the legal directorate, who are joining us virtually. I refer members to paper 1, and I ask the cabinet secretary to speak to the draft order.

The Cabinet Secretary for Justice and Veterans (Keith Brown): The maximum number of judges is set out in section 1(1) of the Court of Session Act 1988. The draft order in council will increase the maximum number of judges of the Court of Session by one, from 35 to 36. Judges of the Court of Session also sit as judges of the High Court of Justiciary. An increase in the number of judges of the Court of Session has been precipitated by the recent appointment of Lady Poole as chair of the Covid-19 inquiry. Lady Poole is an outer house judge of the Court of Session on secondment to the inquiry. During the secondment, she will not be available to sit in court. However, she remains a judge for the purposes of the statutory limit in section 1(1) of the 1988 act.

As that inquiry is expected to last for several years, the Lord President requested an additional judge to meet the demands of the business in the Court of Session and the High Court. The appointment of Lady Poole to chair the Covid-19 inquiry, coupled with the current high level of court business, means that the appointment of a further judge will provide additional judicial resource during these challenging times.

The Lord President does not consider that it is possible to appoint a further series of temporary judges drawn from the shrieval bench for this period of time, as that would place additional pressure on the sheriff courts and would therefore not secure the most efficient disposal of court business.

I am happy to answer any questions from members.

The Convener: Thank you, cabinet secretary. Pam Duncan-Glancy has a couple of questions.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning to you, minister, and to your officials. Thank you for setting that out.

Have you taken account of the numbers in the backlog during the Covid-19 period when considering the number of judges that might be required? Do you think that the proposed number of judges is enough? Have you considered the Lord President's suggestion that there should be primary legislation to base the maximum number of judges on the number of full-time equivalent judges?

Keith Brown: The answer to the second point is no, I am not sure that we have considered that suggestion from the Lord President.

However, the draft order before us comes at the request of the Lord President, and that is partly for the reasons that you mention. We are keen to tackle the backlog, and that is perhaps why we have gone beyond the previous limit of 35, which was increased from 34 in 2016. We do not want the business to deal with the backlog to slow down, and that is why we want to appoint a further judge.

We have considered other things that may help. Sheriffs are sometimes elevated, but that would put more pressure on the sheriff courts. We are trying to balance that. The measure increases capacity for the Court of Session at a time when it would otherwise reduce because of the appointment of Lady Poole to the inquiry.

I am pretty sure that the Lord President said to me in his letter that the measure was to do with the backlog, too. That is being taken into account.

The Convener: There are no further questions for the cabinet secretary, so we move to item 2, which is the formal business in relation to the Scottish statutory instrument. We will now consider the motion for approval of the affirmative instrument.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Maximum Number of Judges (Scotland) Order 2022 be approved.—[Keith Brown]

Motion agreed to.

The Convener: I invite the committee to delegate to me the publication of a short factual report on our deliberations on the affirmative SSI that we have considered today. Is that agreed?

Members indicated agreement.

The Convener: Brilliant. That concludes consideration of the affirmative instrument.

Obviously, the cabinet secretary is staying with us for the next item. The ministers' officials online are free to leave.

Miners' Strike (Pardons) (Scotland) Bill: Stage 1

10:04

The Convener: The next item of business is to take evidence from the cabinet secretary as part of our stage 1 scrutiny of the Miners' Strike (Pardons) (Scotland) Bill. I welcome to the meeting the Scottish Government officials who are accompanying the cabinet secretary: Elaine Hamilton, who is head of forensics policy in the police powers unit, police division, and Louise Miller, who is a solicitor in the legal directorate. I refer members to papers 2 and 3, and I invite the cabinet secretary to make a short opening statement.

Keith Brown: This landmark bill honours the commitment that the Scottish Government made to bring forward legislation to pardon miners of certain offences relating to the miners strike of 1984 to 1985. It follows up a recommendation made by an independent review group that a pardon should be granted to miners who were convicted of certain offences during the strike, subject to qualifying criteria. The pardon was intended to recognise the disproportionate impact felt by those miners as a result of taking part in the strike, to restore dignity to them, and to help the mining communities heal old wounds.

To establish what the qualifying criteria should be, the Scottish Government undertook a public consultation last year. The provisions in the bill reflect both the outcome of that consultation and careful consideration of the available data. It is important to emphasise at this point that there is very little surviving evidence from police and court records from the time of the strike, which is why I do not propose to put in place an application scheme for the pardon. I wish to make the qualifying criteria for the pardon as simple as possible so that people are able to assess for themselves whether the criteria are met, without having to find documentary evidence.

The bill proposes a collective pardon to miners that will apply automatically to those who meet the qualifying criteria, which are that the miner's conviction relates to an offence committed while on a picket line, demonstration or similar gathering in support of the strike, or while travelling to or from such a gathering. The qualifying offences are breach of the peace, breach of bail conditions and those under section 41(1)(a) of the Police (Scotland) Act 1967, commonly known as obstruction.

The bill is about reconciliation and dealing with the past in a sensitive way. The conditions of the pardon recognise that miners and police officers

found themselves in extremely challenging situations where relationships came under unprecedented strain. Miners who took part in industrial action did so to protect their jobs, their way of life, and their communities. Police officers were only exercising their duty to uphold the law, in circumstances and on a scale that they had never encountered before.

The pardon will apply both to living people and posthumously, given the passage of time since the strike. The pardon does not quash a conviction; neither does it create any rights or entitlements. I am clear that the bill should not cast any doubt on decisions made by the judiciary at the time or seek to place blame on any individual or group of individuals. Once again, I am happy to take the committee's questions.

The Convener: I am keen to probe a little bit further in relation to the decision and reasoning around having an automatic pardon system rather than a process. From the evidence that we have heard from people in mining communities, they would appreciate some sort of official confirmation of the pardon, particularly when it is a posthumous pardon in circumstances where there is a widow, for example. There was a feeling that a person having something to show that their loved one had been pardoned would be particularly welcome.

Is it possible to do that without some sort of process, so that there is an automatic pardon but people can still get a piece of paper and know that, even though their loved one has now gone, they have been pardoned? One of the challenges that we heard about is that many of the people impacted have passed away.

Keith Brown: That is a very good point. We are examining what we can do around that. The reason for the automaticity of the pardon is to make it as easy as possible for people who cannot necessarily provide evidence or documentation—in fact, we cannot provide much of the evidence and documentation. However, the idea that people really have to know that they have been pardoned is an important point.

We are looking at whether we can, first of all, work with the National Union of Mineworkers to look at its records and reach out to as many people as possible. However, there may be data protection issues in relation to that, which we will of course observe.

Beyond that, whether we can make a written statement will have to rely in some cases on people getting in touch with us, because we will not have the necessary information. We will not be able to go into the details of anybody's particular conviction, mainly because those records are no longer held. The written letter, if we are able to do that, would make explicit the details of and

qualifying criteria for the pardon, and it would make it clear to that individual and their family that they are being pardoned. We are looking at that just now.

The Convener: Would that be a request, or would that be the right—[*Inaudible.*]

Keith Brown: We are still looking at that, but that is likely to be the case. We have started discussions with the NUM about using its records to identify a number of people in relation to the convictions that they had. If we can do something proactively in relation to that, we will look at that. However, there are bound to be people who are not captured by that, and we want to make it as clear as possible that if they want to get in touch with us, we will give them as explicit a statement as possible, in writing, about the pardon.

Maggie Chapman (North East Scotland) (Green): I hear what you say about the scope of the pardon and its being limited to actions around and travel to and from picket lines. We have heard from miners who were directly involved in the strike and we have heard from members of the wider community that supported striking miners. One of the concerns with the limit of actions around and travel to and from picket lines is that it does not cover everybody. In one evidence session, somebody said that the pardon is welcome but will not mean anything unless it covers everybody.

I will give you an example that does not relate to a picket line. As you know, miners who broke the strike were living in the same communities as striking miners and there were often tensions around that. Sometimes, the attribution of blame for violence—not violence to people but damage to property—was problematic. There are questions around why those kinds of incidents that were directly related to the strike but not at or around picket lines cannot be covered as well. Can you say more about why we cannot extend the criteria? Have you considered the option of extending the criteria to actions associated with the miners strike, which would include those kinds of activities in the community?

Keith Brown: We will listen to any representations that are made. We have had substantial consultation with interested parties, mining communities, trade unions and others. As you say, there have been calls for other offences to be included. Some of those will fall under the Conspiracy, and Protection of Property Act 1875, which I am sure that we are all familiar with, which covers a wide spectrum of behaviours relating to attempting, without legal authority, to compel another person to support a strike or not go to work, which relates to your point about miners who continued to work during that time. Convictions under the 1875 act could cover the use of violence

to intimidate another person or their family or damage their property; behaviour such as persistently following another person from place to place or following, along with others in a disorderly manner, another person on or through any street or road; or things such as watching, or what the 1875 act calls “besetting”, a house.

The lack of any surviving police or court records is a problem, and makes it very difficult to confirm the exact circumstances of the offences that were committed during the strike. We could not confirm, for example, the degree of violence or malice that was involved or where they actually occurred. It is also very difficult to determine the motivation behind such conduct. In some cases that have been reported, previous disputes between people were the basis for some of the things that happened during the strike.

We have extended the independent review group’s recommended criteria—for example, we are not introducing a constraint that says that someone is disqualified if they have had a previous or subsequent offence—but we do not think that it would be right to extend the pardon to those other potential offences when we cannot ascertain their details. We have tried to make the pardon applicable exclusively to miners and incidents that took place in the specified locations, or when travelling through a community to them. That is why we followed the views of the independent review group and have those qualifying criteria, although we have extended them slightly.

10:15

Maggie Chapman: I appreciate what you say, and I appreciate that the act that you mentioned might cast the net wider than we think appropriate, but I am interested in exploring whether there is a way through. I do not necessarily mean that we should include the activities that you described, because we cannot assess things such as the degrees of malice involved, and, in many ways, we cannot make judgments about what happened at picket lines or on the journeys to and from them. However, it is important to understand that the strike happened in the context of the community, and not only at the picket lines. Recognising that aspect somehow is important, although I am not sure exactly how we do that.

Keith Brown: You are absolutely right that it comes down to judgments. However, it is also true that, if we were to seek to pardon those convictions, it would set quite a precedent for similar offences that are committed now or in the future. Based on the consultations that we have had, I think that there would be a lot less sympathy when it comes to offences such as street fights,

intimidatory conduct, violence or damage to property.

The point about the picket line is important. Our view—which, as you said, is based on a judgment that we have to make—is that, on the balance of probabilities, the miners’ conduct on a picket line or demonstration, or when going through a community to attend one of them, was directly related to support for saving jobs, rather than being an action born of anger or retribution against an individual. Therefore, you are right that it is a question of judgment, and that is the judgment that we are making. However, we will, of course, listen to other points of view.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning, cabinet secretary. There is no doubt that there is stigma attached to the situation. As I have said in previous committee meetings, I do not remember a more bitter and divisive industrial dispute in my lifetime. As a youngster, I watched, as many did, the situation unfold in the media and on the television. Communities were really badly affected.

The idea of the pardon is being processed, but the work in communities now is just as important in allowing them to rebuild. It would be good to get a flavour of what support you think should be given to communities to achieve reconciliation, because there is a desire for truth and reconciliation. The pardon itself goes some way to address that, but it does not address what happens in the communities that were affected. What are your thoughts on that? As I have said in the past couple of evidence sessions, the pardon is perceived by some people as the rewriting of a bit of history. The events happened more than three decades ago, but the communities are still in turmoil today.

Keith Brown: You have made some good points. You spoke about how divisive the miners strikes were; however, there were other divisive disputes. If you remember the Wapping dispute, you will remember how divisive that was. As you said, the difference with the miners strikes was the communities. Whole communities were identified as mining communities—for example, the areas that you and I represent have a number of such communities, and there are others across Scotland. The geographical nature of those mining communities is such that the division has carried on for all these years.

On the issue of the pardon, it is important that the committee talks to former miners, as it has done. A number of them had never been in trouble with the law, and they felt a degree of shame about having a conviction. Others did not, because they felt that what they did was justified, which I acknowledge. The impact of a pardon on those who are still with us and know that feeling is quite

substantial. Therefore, I think that the pardon will have a big effect.

You are right to say that we have a continuing obligation to the mining communities. On Friday, I attended an event for the Hawkhill community centre, which took place at the centre. Representatives of the Coalfields Regeneration Trust were there, and I spoke to them at length. They still hold activities such as football for youngsters in the communities in Tullibody. We support the work of the Coalfields Regeneration Trust in the former mining communities. The annual grant is £754,000 this year, which has helped to fund grass-roots activity that tackles issues associated with poverty in the communities.

You are right to say that we are still dealing with a long tail of consequences from the dispute and people having lost their jobs. I do not think that the rest of the United Kingdom—I am not sure about Wales—has continued support for the Coalfields Regeneration Trust, but we have done so and will continue to work with the trust so that the grant addresses the new challenges. If we can concentrate our efforts on regenerating the communities that need it most and working with local people to deliver the change that they want to see, that will perhaps be the best and most effective thing that we can do to help those communities. However, the pardon will also have a tangible effect for many people who were involved.

Alexander Stewart: Perhaps because the pardon is, as you say, tangible, it will heal some of the individuals and families and what they believe. However, at the end of the day, it is more important that we try to rebuild and reorganise the community. The support mechanisms that are in place to help that to happen are vital. The bill should incorporate some of that to ensure that we consider not only something that happened 34-odd years ago but what happens today. The communities still have to manage the crisis today. Is there any scope to think about how that might be progressed through the bill, or are there other ways of doing it in the future?

Keith Brown: I do not think that the bill is the vehicle for doing that. The bill's legacy will be the impact that the pardon has on communities. I reiterate that that will be significant. The bill is us—not the state that was in control at the time but the Scottish Government that is now established—saying that we understand the pressures that obtained at the time of the dispute and that led people into the situations that we are talking about, and that, as a society, we want to pardon that.

We have made the bill simple and straightforward for those reasons. However, you are right that other work must continue. Work

started straight away. I used to work for Stirling District Council and, in its various different political guises, that council worked right from the strike to support communities such as those in Fallin and Plean. That was true throughout Scotland, so such work is not new. However, because of the time that has elapsed, the help for regeneration finds different routes. The main route that the Scottish Government takes is to support the Coalfields Regeneration Trust. We intend to commit to that.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I say good morning to the cabinet secretary and his officials.

I am glad to hear the commitment that the cabinet secretary made in response to Alexander Stewart. I have some mining communities in my constituency and I have witnessed first hand not only the impact of the Coalfields Regeneration Trust's work and the Scottish Government's support but the continuing need to regenerate those communities, which still struggle because of their mining past.

I have two questions. The first follows on from Maggie Chapman's line of questioning. It is about the definition of a miner. Obviously, we will produce our report and go into a stage 1 debate, but it is fair to say that the committee is inclined to think that the scope of the definition could be widened. Maggie Chapman's question was more about other things that happened in the community, but we heard some examples of miners' relatives being on the strikes. We heard from one miner's son who was on a strike. He was not charged, but there might be examples of that happening. Will the cabinet secretary consider widening the scope of the bill to cover that?

Keith Brown: The answer that I gave to Maggie Chapman still stands. We thought long and hard, as did the independent review group, about who was most directly affected, and we feel that it was the miners themselves. Many other people, including me, got involved in demonstrations at the time, but we do not think that the bill should cover them. Other people, including students, received convictions but, for the reasons that I mentioned, it is important that we restrict the qualifying offences under the bill to the miners who were involved.

You asked about the definition of a miner. That relates to employment in a mine that was owned by the National Coal Board. We considered a number of matters—it is not straightforward—in forming the Government's position on how a miner should be defined.

We consider that the people who were most adversely affected by the strike and the consequences of strike-related convictions were the miners themselves. Only males were allowed to work underground in the UK coal mining

industry in 1984 and 1985, so inevitably the focus in relation to the numbers of people who were arrested, prosecuted and convicted was on male miners. However, the definition has been drafted to recognise that there might have been other people—employed by the coal board or licensed under the Coal Industry Nationalisation Act 1946—who could meet the pardon criteria. The definition recognises that some surface employees experienced their livelihoods being directly threatened by mine closures and might have participated in or taken action in support of the strike—in fact, I know people who did so who were surface employees.

The policy intention is to capture people who worked underground in a coal mine, at the surface of the coal mine and at the larger workshops located outwith coal mines which were used to maintain and repair mining equipment and machinery. I think that you can draw a line regarding people whose livelihoods were directly related to the mine and under threat because of the strike itself.

The definition would also cover female employees who meet the pardon criteria. However, we are not aware of any robust evidence to suggest that any female was convicted in Scotland for offences related to the strike. That is why we have come to that conclusion. We think that the miners are most directly affected and that to extend the definition further would be problematic, not least because of the poor quality of the evidence—records and so on—that is still available. We think that we have struck the right balance in relation to that. However, as I have said before, we will listen to representations.

Fulton MacGregor: We have heard that it might be difficult to establish the exact numbers of other people who are involved. When we spoke to retired police officers, they could not recall anybody who would be outside the current definition criteria. When we spoke to miners, they suggested that there might be some people but that it would be a limited number. I understand that there are difficulties with establishing a number. It might be quite a small number, but it might be very important and significant for those people if they could be included. However, I hear and take on board the points that you have made.

We have heard quite a bit about the compensation aspect as well. What are your thoughts on compensation for individual miners who have lost out—for example, miners who might have been dismissed because of being arrested?

Keith Brown: For the people who have called for the pardon, including former MSP Neil Findlay, this was about reconciliation. Neil Findlay's views on compensation might be different from mine, but

the rationale for the pardon was about reconciliation, as I said in my answer to Alexander Stewart.

A compensation scheme would not be consistent with the proposal for miners to self-assess their eligibility for a pardon. We would need a much more stringent process if people were applying for compensation, and, given the lack of records and so on, that would be problematic for quite a number of the individuals who are involved.

If we had such a scheme, we would run the risk of the bill moving away from its intended symbolic effect into the territory of questioning decisions that were made by the judiciary at the time. To be clear, we are not doing that—we are not quashing any convictions; we do not have the ability to look back in time, assemble the evidence and do that, in any event. Also, a compensation scheme would run the risk of creating a precedent for pardons that are granted. Other legislation for pardoning convictions such as the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 did not offer compensation, so there would be a risk of legal challenge.

Employment and industrial relations are reserved to the UK Government. The Scottish Government was not the employer, was not party to the dispute and was not in existence at the time. A compensation scheme for loss of earnings, pension and other rights would touch on employment issues, which are for the UK Government to consider. We have pressed—and will continue to press—the UK Government to hold a full public inquiry. That is the place where such issues should be discussed or addressed. For us, we think that the pardon is a reasonable measure to try to introduce some reconciliation in communities that were driven apart during the strike.

10:30

Fulton MacGregor: Initially, I was sympathetic to the issue of compensation for miners—and, of course, I still am—but, having heard the evidence and listened to what the cabinet secretary has said, I think that the bill is not the place to address that matter. Indeed, it could even hold up the passage of the bill and the miners getting the pardon that they need. As an MSP from a mining community, I—and I hope the whole committee—will join you in pushing the UK Government to do more on this.

You are absolutely right, cabinet secretary. Given where employment law lies, it is right for compensation issues to be taken and dealt with there. I am very satisfied with what you have said, and I would not want the bill, which is so needed in

communities around Scotland, to be delayed. That said, I remain sympathetic to these miners, who have missed out on so much, receiving the right compensation.

That is me, convener.

The Convener: Thank you. I call Pam Duncan-Glancy.

Pam Duncan-Glancy: I listened carefully to the cabinet secretary's answer to the previous question, but I would like to ask a bit more about it, particularly the issue of a public inquiry.

It is the Government's view that such an inquiry would have to be UK-wide, given that, as has been described, trade union and employment law is reserved. However, having read the public consultation and having heard the evidence from miners as well as from police and others who were involved in the strike, I have to say that the miners' evidence and the evidence from the police do not really add up, and I feel that the issue of how the strike was policed should be explored a little more. Of course, that will be a devolved matter; indeed, even prior to devolution, regional policing was in operation and decisions on strikes were taken by regional forces in Scotland. Given that, what would be your view on holding a public inquiry on the aspects of the strike that fall within devolved responsibilities?

Keith Brown: It would be consistent with my previous answer, and I would just point out that the Scottish Government and Parliament did not exist at the time. Indeed, policing itself was not devolved at the time. One of the allegations was that, at a Cabinet sub-committee, there was a reference to the way in which the policing of the strike should happen in Scotland. I do not know the exact terms, but it was around the Secretary of State for Scotland being asked at Cabinet to ensure that the strike was policed in the same way as the rest of the UK. That brings us back to the accusation that was made at the time about the policing of the strike being politically directed. There were also allegations about the involvement of security services, the use of phone tapping and so on.

However, we are in no position to examine those things—they do not fall within the competence of the Scottish Parliament. Indeed, if we tried to hold an inquiry without that evidence, we would undermine the calls that I, my predecessors and others have made for the UK Government to hold an inquiry. When I recently wrote to the UK Government on this matter, I said that the very process of introducing the bill and highlighting the issue would increase the pressure for a proper public inquiry to be held. I know that it can seem like a forlorn hope to make such calls to the UK Government, but I note that it recently

agreed—at last—to hold an inquiry into the treatment of people who were convicted of homosexual offences in the armed forces before 2000. It is therefore possible to achieve such an aim, and that is where our focus should be. After all, these are the people and the agencies that have the evidence.

As for your point about policing being devolved, I have already mentioned the extent to which policing records have been destroyed. That has happened sometimes for very good reasons—indeed, it is part of the process. There are what are called the 40/20 and 70/30 rules. If you reach the age of 40 and it has been 20 years since your conviction, the police will destroy the records; if we are talking about something more serious, the records will be destroyed if you reach the age of 70 and it has been 30 years since the conviction. As we do not have the records, they cannot be looked at with the rigour of a public inquiry, but, on the outstanding questions about the policing and management of the strike and its political aspects, I believe that the right focus for that is the UK Government. That will certainly continue to be my focus.

Pam Duncan-Glancy: I am not sure that the two things should be mutually exclusive, and I think that some questions need to be asked, particularly in Scotland. It could be helpful to have both.

I was interested in the comment in your opening remarks about the bill not seeking to apportion blame. I find that slightly at odds with the aim of giving a pardon, and I also think that it links to the point about compensation. What are your views on the way in which the strike was policed?

Keith Brown: I can speak from my own experience of watching the events contemporaneously. I was never on the picket line, but I am pretty sure that I was involved in demonstrations, and certainly supporting activities, as a student in 1984. As I am sure the committee will remember, there was a lot of activity among students and community groups to help with miners' welfare and so on.

Like everyone else at that time, I saw the pictures coming in from Orgreave, for example, where the policing seemed to me to be inconsistent with policing methods in Scotland. That distinction sometimes still appears to be there. For example, we might look at the policing of the recent 26th United Nations climate change conference of the parties—COP26—and the policing of the aftermath of Sarah Everard's murder and the conviction that followed.

Policing in Scotland followed a different path even back then. However, there were allegations at the time—for example, that officers did not have

numbers on their tunics and so on. I remember that there was a lot of grievance, because it was a time of heightened tensions at Bilston Glen and the other mines where there were issues. We are saying, therefore, that it was very difficult for the police, too, as they had not been put in such a situation before.

I do not have enough evidence to make a judgment on what the policing was like or where it fell down, but we know that miners were trying to defend their communities, their way of life and their livelihoods, and that led to some of the situations that happened on picket lines. For that reason, we are trying to see whether we can bring some reconciliation to the communities, and some comfort to the miners who were convicted and have had that conviction hanging around them for some time. That is the purpose of the bill; I do not pretend that it is trying to do anything else.

There are good reasons why we should not try to do a job that should be done by the UK Government. We do not have the facility to do that—we do not have the records, and the Parliament does not have the competence to look at some of those issues.

Pam Duncan-Glancy: I return to a previous question, in which you were asked about miners who travelled to participate in a picket.

I am interested in your point about convictions of women at the time. Looking at a broader scope for the bill, in order to support people who were convicted not for going to a picket line but for things such as collecting for the strike fund or participating in another way, could perhaps be a method by which women who were involved at the time could be pardoned.

It would also be interesting to broaden the scope of the bill from another perspective. A lot of people right now will look back and think that they would like to have stood in solidarity with the miners. I am one of those people. I was very young at the time of the strikes, but I heard about them and knew what was happening; they were a topic of conversation. I feel that, if we broaden the scope of the bill, we will be saying to people that it is okay to stand in solidarity with others and that they will not have to experience what those people did. That is quite important. I know that Unite the union and the Associated Society of Locomotive Engineers and Firemen—ASLEF—have both made that suggestion. How might we include in the bill's scope some of the activity that took place that was not about travelling to picket lines or being on a picket line?

Keith Brown: As I said previously, the bill does not exclude women—we have no evidence of any females being convicted, certainly not under the qualifying criteria, and I do not think that we have

much evidence beyond that. I think that the figure is 5 per cent for all the convictions that we are aware of in relation to those who would not fall under the qualifying criteria. Perhaps Elaine Hamilton can comment on that.

I have looked at the matter quite closely, and I think that there is a danger that the more we widen the scope of the bill to cover areas in which we are able to get less supporting evidence, the less value the pardon itself will have. That is my thinking, and I imagine that the independent review group, which included people such as John Scott and Dennis Canavan, would have had the same rationale.

Elaine Hamilton may want to come in with the figures, if she has them. I am sure that I saw somewhere that 5 per cent of convictions were for offences that do not qualify under the criteria in the bill, but perhaps not. We can provide the committee with that evidence in due course. That is the thinking behind the bill.

Elaine Hamilton (Scottish Government): That is correct. We have data from *Hansard* that was provided in response to parliamentary questions; a snapshot of data was taken in the first three months of the strike. A question was asked about how many people who were not miners had been arrested, and, as the cabinet secretary said, at that point, for those three months, the figure was 5 per cent. That covers students and unemployed people, and those who were bus drivers and teachers—a mix of occupations. However, that figure is only for arrests. We do not know whether those arrests led to convictions.

As I said, we have only that three-month snapshot, so we do not know whether the trend continued for the rest of the strike. Therefore, it is very difficult to know, or to have any evidence base on, how many non-miners were convicted as a result of participating in the strike.

Karen Adam (Banffshire and Buchan Coast) (SNP): I have found the whole meeting really interesting so far. As we have scrutinised the bill over the past few weeks, the evidence has thrown up memories of watching images of the miners strike on TV back in the day, as others have said. I have been moved—I am sure that other members of the committee have been moved, too—by some of the testimonies that we have heard. For example, Robert Young told the committee that he was arrested multiple times and personally dismissed by the National Coal Board following the strike. He said:

“People have to remember the psychological side of the miners strike ... You have to understand the psychological effect that that was having on people.”—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 January 2022; c 10.]

Another example is the miner Alex Bennett, who was heavily involved in the strike. That led to his arrest, a fine from the courts and, eventually, dismissal from his job.

The psychological scars of the strike are still being felt to this day. Some of that relates to the atmosphere at the time. It is important that we remember the impact on not only the miners but the people around them, those directly and indirectly affected, and the whole community.

In part, the pardon is an official validation of the struggles that the miners faced. I agree with Fulton MacGregor's point that, if we start to look into other aspects, such as compensation, that might delay the pardon. However, what more can be done? I know that this might be slightly outwith your remit, cabinet secretary, but you have been considering the bill. What can be done outwith or alongside the pardon to ensure that the struggles are fully recognised and never forgotten? Should we be calling on anyone else to take some responsibility, too?

Keith Brown: Yes, I think that more can be done, and I am more than happy to listen to any suggestions that members of the committee may have in that regard—indeed, they have made some ready.

There will be attendant publicity as a result of the committee's deliberations and when the bill progresses to the chamber and is—I hope—passed. That will bring additional awareness across the country. I also hope that seeing what is being done here will give heart to those in Wales and England who are in a similar position.

I have already mentioned our looking at the idea of writing to as many people as we can legitimately identify. We are also looking at going beyond that measure, where that is possible. I am more than happy to commit to giving further thought to what else we can do to try to address the psychologically scarring effects of the strike and the scarring effects on individuals from having a conviction. For many, that will be their only conviction—they had never looked to get into trouble with the police at any other stage of their lives. I am certainly open to suggestions on how we can maximise the impact of our approach.

You are right about compensation. We have to remember what going through a compensation route would mean for those individuals who are still alive, rather than their getting an automatic pardon. I think that it is important that we focus on the pardon.

On your last question, I have tried to make the point that we will continue to put pressure on the UK Government to take responsibility. That is not to blame current members of the Government for things that happened in the 1980s, but the

Government has a responsibility to address some of the issues of concern. We have said that consistently, and we will continue to say that to the UK Government.

Pam Gosal (West Scotland) (Con): We have been told that, because the miners strike was so long ago, there is a lack of evidence and that an automatic pardon is the best course of action. Given that evidence is so scarce, do you agree that it would be somewhat precocious to suggest that the easiest way is to list the offences that should not fall under the pardon rather than those that do? The fact that more violent crimes were not written off by the fine is, of course, reassuring. Do you agree that listing only the offences not included in the pardon would leave the pardon open-ended and open to interpretation?

10:45

Keith Brown: I certainly think that that is problematic. It might surprise some people to find that the number of offences that are not listed is much greater than the number of ones that are, so we would have to do a much longer list to say which ones are not subject to the pardon. That approach will work only if Parliament is minded to favour a blanket pardon with very limited exceptions.

As things stand, there are three qualifying offences, but the 5 per cent covers a number of other offences, including vandalism, assault, possession of an offensive weapon and careless driving. We could set out the offences not to be included, but I think that it is easier—not least given that we have defined who is a miner, and that it is miners we are seeking to address—to say which offences, specifically, are being pardoned. I think that that is a more clear-cut approach for the public to understand and for the miners concerned themselves—if that addresses the question that you were asking.

Pam Gosal: Yes. We have heard from miners, and it has been heartbreaking to listen to what they have said about what happened at the time. We have also heard from police officers who were there at the time. What we are talking about today is indeed about miners, but we are also considering what the law was. Not everybody obeyed the law, in different circumstances. I could not possibly sit here and say what was right and wrong back then, but we are looking at the law, too. The law was there to help, as well; it was not always there to hinder. Looking back, we need to ensure that we also respect the police officers who got injured at the time through no fault of their own. I am trying to say that there should be no loophole. I agree that the proposed legislation should go forward, but we must also ensure that we are looking out for those who were injured.

Keith Brown: In relation to injuries and other aspects, the National Association of Retired Police Officers and the police pension fund have a responsibility to look after their members, as do bodies such as the Scottish Police Federation, and they will do that very effectively.

The miners often lost all of that. They had no pension fund. I am not sure about their pensions but, if they were dismissed from their job, they certainly lost their employment rights.

You are right to say that there are some things, such as serious assault, that we are not looking to pardon. We have made that clear.

There is a distinction between pardons in this case and, say, pardons in relation to historical sexual offences, about which the Parliament said that a whole category of offences was wrong. That whole category of offences breached people's human rights. We are not saying that in this case. We are not saying that the body of law that was brought to bear or the justice system itself was wrong. We are not in a position to say that they were wrong, as we do not have the evidence or the ability to go back in time. However, there was not the fundamental and systematic undermining of people's human rights, as there was with the sexual offences. Given that that is the case, we are not looking to quash any convictions. We are not doing that in this regard; we are providing a pardon, because of the exceptional circumstances.

You are right that there are some offences that would have had implications—sometimes serious implications—for individual police officers. You will have heard evidence on that from the National Association of Retired Police Officers. That is another reason for the approach that we are taking.

Richard Leonard (Central Scotland) (Lab): Thank you very much, convener, for allowing me to take part in this morning's evidence session—I really appreciate it.

Some of my questions reflect on what you have already told us, cabinet secretary. Did I hear you say earlier that those convicted of an offence under the Conspiracy, and Protection of Property Act 1875 will now be included in the pardon?

Keith Brown: There are some categories—but I will perhaps get the officials to come back on that. We are saying that there have been calls for those kinds of offences to be included within the scope of the bill, although it is worth pointing out that the independent review group did not make that specific recommendation. A conviction under the 1875 act could cover a wide spectrum of behaviour relating to attempting, without legal authority, to compel another person to support the strike or not go to work. The use of violence to

intimidate another person or their family will not be covered, for instance. It could also cover behaviour such as persistently following someone else from place to place, as we have discussed previously. We are not looking to cover that. As I have said, it could also cover the “watching” or “besetting” of a house.

The lack of surviving police and court records makes it difficult to confirm the exact circumstances that gave rise to any offences under the 1875 act that were committed during the strike, such as the degree of violence or the malice attached. That is why we have taken the position that we have taken.

I do not know whether Elaine Hamilton wants to come in to say anything in addition to that.

Elaine Hamilton: No; I think that you have covered it.

Keith Brown: That is not covered.

Richard Leonard: Okay, so it is not covered. I think that most people accept that, if there are public assaults involved, they are not included in the pardon. However, the 1875 act—I think that only a handful of people in Scotland were convicted under it—is about encouraging people to take part in strike action. That seems to me to be directly related to the activities around the strike, which in my view ought to be covered. However, I am sure that we shall debate that as the bill goes through Parliament.

Another thing that you mentioned earlier—again, keep me right on this, because I was obviously wrong about the first thing—was in relation to answers to questions about community-based convictions, which are currently excluded. You said something about “going through” communities. That reminds me of the case of one of your constituents, Jim Tierney, who was arrested and then convicted in Alloa sheriff court for allegedly throwing a missile at a working miners' bus outside the Fishcross miners welfare club. He was convicted, but he disputes the conviction and he has evidence to support his disputation. Are you saying that you are willing to accept that such a case could be covered by the pardon?

Keith Brown: No. I do not know enough of the details of the case. I know the Fishcross miners welfare club, which is no longer called that, very well. I related to you the story about things being thrown at my car, such as snowballs, in a different context. I am also familiar with Alloa sheriff court.

We cannot go into that. As I have explained already, we cannot go back, although if what you have said about Mr Tierney is correct, there are avenues of redress that can be taken forward by

him in relation to that. That is the best way to do that—through the judicial system.

What we are saying is that, if somebody was travelling through a community on their way to a demonstration, to the picket line or to their work, that is included. Just to make sure—because I seem to have caused some confusion with my previous answer; it may be me who was wrong, rather than you—we will maybe get Elaine Hamilton to be specific on that.

However, I will add a point for your information. You said—and you are right—that there were very few convictions in Scotland under the Conspiracy, and Protection of Property Act 1875. According to the records that we know about, there were 16 convictions, which were solely in the Strathclyde region. At the time of the strike, the maximum penalty was £50 or three months in prison. We do not know what the disposals were.

I do not know whether Elaine Hamilton wants to add anything to clarify that, specifically in relation to travelling through an area and where we are and are not covering that.

Elaine Hamilton: I clarify that the pardon covers conduct at a picket line, but also marches, demonstrations and rallies. Those could have taken place in the community. Any conviction for a demonstration that took place in the community would therefore be covered.

My other point concerns travel to or from an event such as a rally that happened in a community. Many of us have heard the story of the busload of miners who were stopped on the A8. Everyone was made to get off the bus and they were all arrested. Such a scenario would be covered if they were on their way to a demonstration somewhere else. Certain convictions for offences that took place within a community are covered by the bill. I do not think that it is fair to say that it covers only the picket lines, because that is not the case.

I am aware of Mr Tierney's story. Obviously, there is a strong sense of injustice for him and for the other gentlemen who were arrested alongside him at that incident. However, as we have said, once we move away from collective situations such as demonstrations, rallies and picket lines, it becomes difficult to be sure of the motivation for certain conduct. Was it one individual against another? The pardon is a collective pardon, which is aimed at areas where miners were acting collectively in support of the strike.

I know that people will raise issues to do with blanket pardons and where we draw the line—or, indeed, whether there should be a line—but, as the cabinet secretary said, there are good reasons why the criteria in the bill are as they are. The lack of records means that it is difficult to make an

assessment of the circumstances that gave rise to any of the convictions, whether we are talking about action on a picket line or elsewhere. Therefore, the feeling is that it is important that we pardon the miners collectively for what happened during the dispute.

Richard Leonard: This is a related point. Cabinet secretary, you mentioned the eastern villages—Fallin and Plean, for example—which were a flashpoint in the strike back in 1984 and 1985. Let us consider the village of Fallin, which is where the Polmaise colliery was. The miners at Polmaise were 100 per cent out, so there was no question of there being a need to take action to discourage people from going into the pit. However, it was reported to the Scott inquiry that there was nonetheless a very heavy police presence in the community, which led to tensions in the community and to arrests and subsequent convictions in the community.

Do you not think that there is a case for extending the scope of the bill in recognition of the fact that the dispute was conducted not just at the gates of the colliery or at demonstrations, but in communities as well?

Keith Brown: There is no question but that it was something that impacted on communities. I note that we launched and publicised the bill at the Polmaise Murray outdoor mining museum in Fallin, which I have been familiar with for many years.

As you said, even if the miners were 100 per cent out, if there was a heavy police presence and arrests emerged from that, those people will be pardoned. Whether people were at a demonstration, on a picket line or wherever something took place in the community, those things should be captured by the qualifying criteria that we have. I am genuinely not aware of any instance of someone in Fallin being convicted for reasons that are outwith the qualifying criteria for the pardon.

I have given the reasons why we think that we should restrict the pardon in the way that we have. Our approach also makes the pardon more meaningful for the people to whom it will apply. As you will know, quite a lot of secondary picketing went on. People from one community would go to another to support it. However, the approach is legitimate and it has been taken for the best of reasons. The pardon is restricted to miners and to the qualifying offences, which will include being on a picket line or at a demonstration in the community in Fallin.

Richard Leonard: I accept that you are not aware of any convictions in Fallin in that context, but you are aware of the conviction of Jim Tierney, for example, who is one of your constituents.

There is a final area that I want to probe a little bit more. We have heard members of the committee say that they are not in favour of a compensation scheme. I am in favour of a compensation scheme, and the reasons are pretty straightforward. We know from the Scott review that there was

“an element of arbitrary application”

of the criminal law by the police, prosecutors and the sheriffs. The review found an inherent injustice. It also spoke about dismissals being

“disproportionate, excessive and unreasonable”.

In one of the committee’s previous evidence sessions, the former Lothians police officer Tom Wood said that, in his opinion, the dismissals represented “extrajudicial punishment.” He thought—he is a former serving police officer who policed the strike—that the National Coal Board’s actions were “spiteful” and excessive.

You mentioned Orgreave, but the figures show that someone in Scotland was twice as likely to be arrested as someone at a coalfield in any other part of the UK, and they were three times as likely to be dismissed. People have spoken about the then National Coal Board area director, Albert Wheeler, conducting almost a vendetta. Anybody who was convicted was automatically dismissed. In other areas of the National Coal Board, that was not the case. There was a mood of reconciliation—at the time, in 1985—and people returned to their jobs. Do you not see that there is a Scottish dimension that needs to be addressed?

11:00

There has been psychological and emotional scarring, and family lives changed for ever as a result of what happened, including what happened to those people who were convicted and then dismissed. We have spoken about women not being included in those who were convicted. That might be true, but many women who were married to or had relationships with miners, or were daughters of miners, were condemned by those decisions and suffered huge hardship as a result of them.

Do you not at least accept that there is a principle that there ought to be some compensation? You may say that it could be paid at a UK level rather than as part of the bill, and members have spoken about a delay to the pardon. It seems to me that, if you set out the principles in the bill, it would be possible to address that. It has been done in other instances where there have been injustices and the Scottish Government has decided to address those.

Where do you stand on the principle of compensation? Surely you understand the

arguments about the impact that the dispute had and the injustices that were perpetrated on the miners and their communities, but also their families.

Keith Brown: I do understand that. As I said, I followed what happened during the strike in some detail. In the places where I lived and worked, I was well aware of the impact not just on the miners, but on their families and entire communities. I am well aware of that.

Because of the way that the dismissals were carried out, there were quite a few reinstatements afterwards. There were probably more in Scotland because, proportionately, there were higher numbers of dismissals in the first place. However, they were dismissals by the employer—the National Coal Board—that applied across the UK, and they relate to employment law, which is reserved to the UK.

I am not quibbling with anything that has been said about the loss that was endured by people, which is sometimes very hard to quantify because it was so huge. However, if there is a case for compensation, that is for the state that was the authority at the time. It has the reserved powers to look at employment legislation and to look into wider issues about the policing and the extent of political involvement in the policing. We do not have those powers. If we tried to introduce some kind of compensation scheme, it could delay the pardon, as one or two members have mentioned, but it is also important to note that we have neither the legislative competence to deal with that and get all the facts around employment and so on, nor the ability to get all the necessary information.

I am not sure why somebody would want to oppose the idea that the UK Government should be held to account for this. It has the ability to look at it, to get such records as still exist and to question things such as whether there is any substance to the idea that the intelligence services were involved. The UK Government can do that, but we cannot. That is why I take the position that, if there is to be a compensation scheme, it will be for the UK Government to consider. I give my commitment that I will continue, on behalf of the Scottish Government, to call on the UK Government to hold a full public inquiry, which could cover the issues that you have mentioned.

Fulton MacGregor: I want to make a point of clarification on the last point that my friend and colleague Richard Leonard made. I put on the record my thanks to him for all that he has done for mining communities. I know that he is a big supporter of those communities. However, he said that other members who have talked about the subject, one of whom is me, are not in favour of compensation.

I want to make it clear for any miners or people from mining communities who are watching that I am very much in favour of compensation. However, having heard the evidence from miners and others, and from the cabinet secretary, I am now convinced that the bill is not the best place for a compensation scheme. It would not suit the purpose of the bill. In our private evidence session, we heard from miners that they are very much aware of and content with the purpose and scope of the bill. It would not be fair to say that I am not in favour of a compensation scheme. I just do not think that it should be in the bill.

The Convener: Thank you, Fulton. I do not think that there was a question there, cabinet secretary, so we will move on to Maggie Chapman.

Maggie Chapman: In response to my earlier question, cabinet secretary, you talked about some of the reasons for not extending the bill's scope to certain aspects of community tensions. I have been thinking and listening to your answers to my colleagues, and I wonder about that. We know and accept that the bill is about a pardon and not about quashing convictions, so what would be the harm in doing that? You said that it would set precedents elsewhere, but we are not talking about quashing convictions; we are talking about, as you said, recognition of the wider circumstances, which were different from the normal functioning of society.

Will you say a bit more about the setting of precedents and why, given that the bill is not about quashing convictions, that would be the consequence? I am not sure that I quite understand that link, given that it is a pardon and not a quashing.

Keith Brown: It is really around the idea of being as relevant to what we are discussing as it is possible to be. That is why we are looking at the miners who were most directly affected. That is why we look at the offences that were related to the exceptional circumstances on the picket line when the person's community, their job and the industry itself were under threat. We are trying to recognise those particular circumstances.

With other potential offences and convictions, we have much less ability to say what the motive and the circumstance behind them were. We do not have the records to do that. If we included those in the bill, we could be pardoning things that included serious assaults or intimidation of people. That might happen in very few cases, but it would be possible. That is why we think that the right way is for the bill to be about the miners who were most directly affected and what happened on the picket lines in defence of their jobs and communities.

We understand that what happened then was extremely unusual—it was extraordinary. I think that it was Alexander Stewart who made the point that it was probably the most divisive strike that any of us can remember, in terms of its longer-term consequences. We are trying to recognise that. For the bill to be wider would be very problematic for the reasons that I have mentioned. It is a judgment, as I have said before, and that is the judgment that we have made in relation to this.

The Convener: What is the scope for people such as Jim Tierney, who will not be caught by the pardon but nonetheless feel that an injustice was done to them as part of the strike, to seek redress? Perhaps one of your officials can answer that.

Keith Brown: Louise Miller is the expert on that.

Louise Miller (Scottish Government): The criminal appeal route is available now and would have been available at the time. We probably need to be realistic about the fact that, given the number of years that have gone by, pursuing an appeal would be difficult, because the case would be decided on its merits and the facts of what took place, but the details relating to those—the evidence—are most likely to have been lost.

I have seen some of the material relating to Mr Tierney and I saw part of the interview with him on Twitter. On his relationship to the pardon scheme, he has two problems. One of them is that it seems that the offence did not happen at a picket, a demonstration or something similar, or while he was travelling to or from one of those. I am also not clear from the information that I have seen what offence he was convicted of. If it was breach of the peace, which it could have been for throwing a stone, that is on the list, but I do not know whether it was in fact something else. There are other possibilities that throwing a stone at a bus could have been charged as. There is a lack of information there.

Individual appeal routes are still available, but they might well turn out not to be profitable to follow at this time rather than decades ago. If that is not a realistic prospect, it is a question of whether the scope of the pardon is wide enough, and that is really a judgment call. The reasons why the pardon scheme has been created in the way that it has have been fully set out by the cabinet secretary.

The Convener: As members have no more questions, that ends our session. I thank the cabinet secretary and his officials for giving evidence.

11:09

Meeting continued in private until 11:37.

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