



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 7 September 2017**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**19<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

**DEPUTY CONVENER**

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

**COMMITTEE MEMBERS**

\*Mary Fee (West Scotland) (Lab)

\*Jamie Greene (West Scotland) (Con)

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

David Torrance (Kirkcaldy) (SNP)

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jan Anderson (Access to Industry)

Lucy Hunter Blackburn (Howard League for Penal Reform in Scotland)

Michael Clancy (Law Society of Scotland)

Tom Halpin (Sacro)

Patrick Harvie (Glasgow) (Green)

Chris Highcock (Electoral Management Board for Scotland)

Professor Fergus McNeill (Scottish Centre for Crime and Justice Research)

Beverley Smith

David Strang (HM Inspectorate of Prisons for Scotland)

Pete Wildman (Scottish Assessors Association)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Robert Burns Room (CR1)



**Scottish Parliament**  
**Equalities and Human Rights**  
**Committee**

*Thursday 7 September 2017*

*[The Convener opened the meeting at 09:15]*

**Interests**

**The Convener (Christina McKelvie):** Good morning and welcome to the 19th meeting in 2017 of the Equalities and Human Rights Committee. I make the usual request that mobile phones and digital devices be switched off or switched to flight mode.

We have received apologies from our colleague David Torrance. I am sure that we send our best wishes to him.

Under agenda item 1, I invite Jamie Greene MSP, who is a new member of our committee, to make a declaration of interests.

**Jamie Greene (West Scotland) (Con):** My only interest that is relevant to the committee is that I am a co-convener of the cross-party group on LGBTI+.

**The Convener:** Thanks very much, Jamie, and welcome to the committee. We look forward to working with you.

**Decision on Taking Business in**  
**Private**

09:16

**The Convener:** Agenda item 2 is a decision on whether to take agenda item 4 in private. Does the committee agree to take item 4 in private?

**Members** *indicated agreement.*

## Prisoner Voting in Scotland

09:16

**The Convener:** Our substantive agenda item this morning is prisoner voting. We are glad to have here Patrick Harvie MSP, who wrote to the committee in June to request that we consider the blanket ban on prisoner voting in Scotland. The committee considered that request, and this morning's evidence sessions, which will involve him and then a panel, are the result of that. Patrick Harvie has only half an hour with us because he has to be at another committee meeting, so we will go straight into the session with him. I know that he has an opening statement for us.

**Patrick Harvie (Glasgow) (Green):** Good morning, convener and colleagues. Thank you for allowing me a chance to speak to you for a few minutes before I go to my own committee. I also thank you for showing an interest in the topic.

The reason why I think that I have something to contribute on the issue is that, during the scrutiny of the Scottish Independence Referendum (Franchise) Bill a few years back—members will recall that that franchise was established in a piece of legislation that was separate from the referendum legislation—Alison McInnes and I raised the issue of prisoners voting in the referendum, the franchise for which had been temporarily devolved. That franchise did not quite trigger the same hard-and-fast human rights compliance issues that the parliamentary franchise does, but we both felt that the same arguments and principles deserved to be aired. The approach that we took was to give the Referendum (Scotland) Bill Committee and the Government a range of options to consider for making changes to the blanket ban.

The current blanket ban on prisoners voting in the parliamentary franchise is not compliant with human rights. As the Scottish Government and most of those on the Scottish political spectrum support the continued existence of the Human Rights Act 1998 and compliance with human rights legislation, it is unreasonable to think that we will simply continue to ignore the fact that we are currently not in compliance with that legislation in continuing the franchise as it stands. The blanket ban is not in compliance with human rights principles.

The committee will be aware that there are a range of ways in which we could go. For example, we could remove the ban altogether or allow prisoners who are nearing the end of their sentence to vote. An argument for that is that prisoners who are preparing for release ought to face issues to do with what it means to be a fully

active participant in society. Voting is only one small aspect of that, but it could be an important symbolic aspect. Alternatively, we could allow judges to have discretion.

For me, the fundamental question is why the prison wall is the appropriate boundary. For example, people are convicted of offences that used to attract prison sentences but that now attract community sentences, and there seems to be no argument in principle why such people ought to have lost the right to vote in previous decades but ought no longer to lose that right. There are also offences that attract a non-custodial sentence that members might feel ought to trigger a question about whether those who are convicted of them should have the right to vote. For example, if someone committed an offence under electoral law, there might be an argument in principle that one of the consequences should be their losing the right to vote in a system that they had abused. As such a person would be unlikely to be seen to pose a threat to the safety of society, they would be unlikely to attract a significant prison sentence. I hope that the committee will consider such issues.

My final point before taking questions is that I hope that the issue is not viewed in isolation. I am glad that it is being discussed by the Equalities and Human Rights Committee rather than merely in the context of electoral administration, because there are other equalities issues that ought to be thought about in the context of the franchise, such as the future voting rights of EU citizens in the event that this country is ultimately taken out of the European Union. There is also the issue of the right to vote of citizens of non-EU countries. There is an argument for taking national identity out of the equation altogether and making residence the only requirement to vote.

When it comes to disability and Gypsy Traveller communities, there are other barriers to participation in voting. Although those issues have been looked at previously, a refresh will be required if we are to find practical ways of removing such barriers to ensure that everyone is able to vote. I hope that the issue of prisoners voting is seen in the context of that wider equalities and human rights agenda.

**The Convener:** Thank you very much, Mr Harvie. We will look at all the various aspects of the issue, several of which you have touched on. A number of arguments go along with each of those aspects. One of the issues that you mentioned was how, practically, prisoner voting could be introduced. We all know what the headline-grabbing points will be, but do you have any ideas about practical ways in which we could tackle the issue, whether we are talking about ending the ban on prisoner voting completely or

allowing a restricted group of prisoners—such as people at the end of their sentences or those on remand—to vote? How could we roll out the right to vote to such people?

**Patrick Harvie:** I think that it would be entirely possible to do that in a prison context; it would not be a case of letting prisoners out on day release to go and vote in the local school. It would be the job of a few minutes to make a phone call to any one of the vast majority of European countries that already operate something other than a blanket ban to ask about their experience of the practical operation of such a system. If only a particular group of prisoners is to be allowed to exercise the right to vote, that needs to be done in a way that does not overly draw a distinction between people and that does not allow one person to oversee another's vote or potentially intimidate them. There are some practical issues to address in that regard.

I suspect that there are more anxieties, concerns and stereotypes in play here than would in practice be the case if the proposal were implemented. It might well be the case that not many prisoners would have a huge interest in voting. That would be a matter of regret, because I think that prisoners—particularly in the run-up to release—ought to be faced with challenging arguments about what it means to be a member of the society that they are about to return to, and participation in democracy is part of that.

I would like to think that the proposed revision of the law will be seen in positive terms—not as something that we are forced to do, but as an opportunity to look at a better balance between the different purposes of punishment and where the deprivation of the right to vote sits within that.

**The Convener:** Three other aspects are relevant to whether prisoners should or should not have the right to vote. First, there is the moral argument, to which there are two sides. There are people who will say that it is morally wrong for a prisoner to get the right to vote and there are people who will say that it is morally right for them to get it. Secondly, there is the ethical argument that, if we want a free and fair society that believes in redemption and rehabilitation, we should give prisoners the right to vote, although I am sure that people will find ethical arguments against that, too. Thirdly, there is the legal argument, which has been brought to our attention and yours by the Supreme Court ruling and the position into which that has put the Governments and Parliaments in Scotland and at Westminster. Do you have any insight into how we should handle that and the areas that we should consider in order to gather the purest and best evidence?

**Patrick Harvie:** On the balance between the moral argument, as you put it, and the legal

argument, I understand the instinctive moral argument that some people express. David Cameron put it in what might be described as rather headline-grabbing terms when he said that he felt physically sick at the idea of prisoners voting. However, I do not understand why that moral argument can be made in relation to those who are in prison but not in relation to those who receive non-custodial sentences.

If the view is that someone who has committed a crime and has been convicted of it loses the right to participate in society by virtue of that—that they lose some of the freedoms that non-offenders take for granted and have a right to access—why do we not deprive all offenders of the vote on conviction until their sentences, including community sentences, have been carried out? Some people might say that we should, although the point of a community sentence is to enable an offender to live their life as part of society while still experiencing a punishment and making some recompense to society for the offence that they have committed, so it is not appropriate to remove the right to vote from all those people. If there is a moral argument, surely it is about committing offences, not about prison walls.

As for the legal argument, I stress again that, as the Howard League for Penal Reform Scotland has reminded the committee in its written submission, the United Kingdom is one of the very few countries that are signed up to the Council of Europe that still enforce a blanket ban. The Howard League cites Armenia, Bulgaria, Estonia, Russia and the UK. The opportunity should be taken to learn from many of the other European countries that have been more successful than the UK at reducing reoffending and building rehabilitation into the purpose of the criminal justice system. We are not short of examples in the rest of Europe of how that can be done better.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning, Patrick. Thank you for coming to see us. I echo a lot of what you say. I am a long-time supporter of the Howard League for Penal Reform. I also thank you for recognising the work of my colleague, the former Liberal Democrat MSP Alison McInnes. We are fellow travellers with you on the issue.

The convener talked about three factors that underpin the issue. There is a fourth factor in that prisoners have to endure prison conditions and the vagaries of the criminal justice system yet they still potentially pay taxes on earnings that come in outside prison. As with all discussions about franchise, there is an argument about the right to representation in the Government on those conditions.

I have experienced the testimony of two constituents in HMP Edinburgh with whom I am

working, who have views on the conditions in which they are held and on the criminal justice system through which they are progressing. The range of options that you present is interesting, but I struggle to see why you would not remove the ban for all prisoners. They should all have the right to challenge the Government of the day on, or hold their decision makers to account for, the conditions in which they are held and the way in which the money that they might contribute is spent on their incarceration and the criminal justice system. Where do you personally land on those considerations that we might take forward?

**Patrick Harvie:** If I thought that there was a consensus in favour of removing altogether the ban on prisoners voting, I would have no difficulty with that. My suspicion is that that will not be where the consensus lies on the issue.

The Supreme Court ruling requires us to revise the blanket ban, which gives us the opportunity to talk about questions of principle. If somebody in the debate—whether in this Parliament or anywhere else—wants to advance an argument of principle why a particular category of prisoners ought not to be able to participate in elections to this Parliament or at any other level, I would welcome hearing such a principled argument. I do not think that I have heard one so far other than the simple, instinctive “They done wrong”, which, for me, does not really cut the mustard.

09:30

You will recognise this feeling yourself. I am a member of one of the smaller parties in the Parliament, and I often think that we are right and everybody else is wrong. That is not enough, either. If the Scottish Parliament is going to make a change, it must get majority support across the chamber and the change must be one that the majority of people in Scotland will understand. I suspect that we will end up making a change that is somewhere between where we are now—a blanket ban—and complete removal of the ban. However, I understand that there are certain categories of offence that people might feel are so serious that the offender’s right to influence the government of the rest of society ought to be suspended.

Underlying your point is also the argument that people are still part of our society while they are in prison. They still have a right to have their governance carried out in a way that respects their human rights and recognises the conditions in which they are living. I do not think that any of us would want politicians to go around prisons courting votes, but we should recognise that prisoners are human beings and that the conditions in which they live are our responsibility.

In the past, the Scottish Parliament has made serious errors about prison conditions and, on some occasions, has failed to respect the human rights of prisoners. Perhaps the connection between a prisoner’s right to vote and the politician’s responsibility to take seriously the welfare and conditions of our prisoners and the prison estate is another aspect of the argument.

**Alex Cole-Hamilton:** Thank you for that. I disagree slightly in that I think that politicians should try to engage. If we extended the franchise to the prison population, it would be incumbent on us to engage with that population as it cast its vote and maybe to engage in hustings in prison. I think that lots of people would like to see us in prison from time to time.

**Patrick Harvie:** A few of us have made it there.

**Alex Cole-Hamilton:** I would like to explore the idea that, given their demographics and the voting patterns that we see in those demographics outside prison, prisoners might not be engaged. My experience with the prisoners whom I have worked with in this job and previously is that prison is the first time that they have come cheek by jowl with public policy decision making. Because they have time to consider it, and because they sometimes have to represent themselves or build cases for their own liberation, they become far more energised and engaged than they would have been on the outside. I would expect to see a surprising number of prisoners taking up the opportunity to vote.

If I may, I would like to explore a final point. It had not really occurred to me before that we hand down all kinds of sentences in this country—some are community-based, some are financial and some involve incarceration—and that it is only at the point at which the key is turned in the lock that a person loses their right to vote. On Tuesday, we all heard the First Minister talk about her programme for government, in which she happily took up the long-time Liberal Democrat policy—which is shared by the Green Party—of limiting short-term sentences to no less than a year. That policy will allow people who need it rehabilitation time and time to focus on any interventions that we can make in prison to see that they take hold. That will move the goalposts, because people who were in prison and did not have the vote will now have the vote. Perhaps Patrick Harvie agrees with me that it undermines the whole principle of removing the votes of prisoners if we have arbitrary goalposts for when we use incarceration and when we do not.

**Patrick Harvie:** You are right that I will welcome the change that the Scottish Government proposes when we see the detail. It is another example of how the use of prison has been changing over the years.

I think that it is appropriate that we have prisons and use them sparingly for those situations in which somebody poses a genuine threat to society and the work that can be done with them inside a prison is the most effective way of getting their life back on track and making them less likely to commit offences in the future. However, the arbitrary nature—you were right to use the word “arbitrary”—of the relationship between an offence and the loss of the right to vote is an issue that the committee should look at.

There will be many examples of two people having committed exactly the same offence on exactly the same day, perhaps together, but, because of different circumstances in their lives, one receiving a custodial sentence and the other receiving a non-custodial sentence. Alternatively, they might be sentenced on different days and, because of when a weekend falls, serve a different length of time in prison. One of them might happen to be in prison during the course of an election or before the cut-off date for registration for voting in an election while the other might be luckier and be able to exercise the right to vote.

The deprivation of the right to vote does not directly relate to the offence that has been committed or the circumstances in which it was committed, so the arbitrary nature of that aspect of punishment seems inconsistent. We have to change the blanket ban, and the opportunity should be taken positively to look at the wider issues that the question raises.

**Mary Fee (West Scotland) (Lab):** It is interesting to look across Europe at how prison populations are treated, the numbers of offenders and the levels of reoffending. There are different models for how prisoners are treated, whether they are allowed to vote and what exceptions there are. There is a huge amount that we can learn from our European partners’ treatment of people who are offenders, with an end goal of reintegrating them into society.

I would be concerned if we went down the road of allowing judges discretion over whether someone given a custodial sentence should continue to be able to vote, as that would open up a whole range of options. At one end of the country someone could decide that a person in custody should have the right to vote, while someone at the other end might decide that they should not.

One area that we have not covered this morning is the geography of where the person votes. Quite often, people are sentenced to a prison that lies outwith the area they live in; moreover, a number of prisoners will not even be registered to vote. Do you have any views on where they should vote? Should they vote in the part of the country where

the prison in which they are incarcerated is, or should their vote be for their home address?

**Patrick Harvie:** I am open to arguments on that, but my instinct is that they should be registered to vote in the place where they were resident at the time when they were sentenced, rather than in the place where the prison is located. There are communities that might find it unreasonable if a very large number of people were able to vote in the constituency where they live, simply because the prison happened to be located there.

One of the things that I know the Scottish Government is focused on, and which I welcome, is the need for prisoners to maintain contact with their families and communities. One of the most important factors in reducing reoffending is ensuring that somebody feels that they remain connected to a community and their family, if they have one. Voting and registering to vote might be a symbolic aspect of that wider question, but I would prefer to see it placed in the context of a relationship with the community to which the person will ultimately return when they leave prison. For that reason, my instinct would be that they should remain registered to vote where they were resident when they were sentenced or that they should be registered from within prison to vote in the constituency in which they were previously resident.

**Mary Fee:** Is there an opportunity to use postal votes in prison for offenders?

**Patrick Harvie:** I see no problem with that whatever. Whether we use the existing postal vote system or some bespoke system that the Scottish Prison Service or others feel better able to manage, I do not see the practical implementation of the process being a problem in any way. The problem is that of the instinctive recoil that David Cameron expressed and which some people continue to feel. I understand some people instinctively recoiling from the idea. However, as I have said, there is no point of principle that says that the prison wall should be the boundary between participating in voting and not participating in voting, particularly given the way in which sentencing policy has changed.

**Jamie Greene:** I come to this matter with a very open mind. This subject is new to me, and I am finding it absolutely fascinating. I have found the discussion to be enlightening, and I want to thank you for that, Mr Harvie.

I would like to clarify something. Are you arguing that the right to vote should be linked to the type of offence rather than the method of punishment?

**Patrick Harvie:** That would not be my personal view. I would be open to an argument that particular types of offences should, by their nature, result in the deprivation of the right to vote. As I

have said to Alex Cole-Hamilton, if someone wants to advocate a point of principle and makes a clear and comprehensive argument about why a particular category of prisoners should not have the right to vote, I will listen to it with as open a mind as you are bringing to this discussion today.

The blanket ban has to end. For me, that requires us to have a debate about whether there is any basis for removing the right to vote from a particular category of prisoners. I am more open to the idea that breaching electoral law should result in the suspension of someone's right to vote than I am to the idea that being sentenced to prison should do so. It seems to be reasonable to ask whether a person should be allowed to participate in a system that they have abused, but I personally am not going to advance an argument in favour of depriving any particular category of prisoner of the right to vote. What I am saying is that the blanket ban has to end, and if anyone wants to put forward an argument for continuing a particular type of ban, I will listen to it. However, the current status quo is not supportable.

**Jamie Greene:** You have given an example of two people committing the same crime but being sentenced differently because they are in different parts of the country or because of their circumstances. Is it not the case that, by default, when a person is given a custodial sentence, a judge has decided that certain rights should be removed from that person and that the same does not apply with a non-custodial sentence? A custodial sentence attracts a loss of liberty in different ways from a sentence that, say, involves community service. I hear your argument about voting being a human right, but I am still waiting for the punchline that will convince me that someone who has been given a custodial sentence, which, by default, removes a bunch of rights and liberties from them, deserves the right to vote. I am intrigued to hear you speak about your personal belief in relation to why people who are in prison should be given the right to vote.

**Patrick Harvie:** I suppose that it comes down to the long-running arguments about what the purpose of punishment is. We generally recognise one of the separate aspects of punishment as being that of deterrence—that is, passing a sentence in order to deter other people from committing a crime. I would question whether the loss of the right to vote is a significant deterrent to crime.

09:45

Another significant aspect is protecting the public from those who pose a serious threat to them. Again, I would question whether the deprivation of the right to vote protects the public in any way from the commission of other crimes.

Some people say that punishment is, in itself, a purpose or an objective instead of something that is simply carried out. I think that the purpose of something is the means, not the end, and I part company with those who say that punishment is an end in itself at a philosophical or ideological level. I would ask them whether losing the right to vote is a significant punishment to many people. It might be seen as a significant punishment to active political activists, but they are a relatively small proportion of the population.

The principal purpose of incarceration, and sentencing more generally, ought to be about getting someone to face up to what they have done, to change and to challenge their behaviour and to ensure that they are willing—or are more likely—to participate as a member of society, to get their life back on track and not to commit offences in the future. The signal to a person that they are a member of society is that they are able to participate in the democratic process. That approach is far more positive than any argument that I have heard about anything that society gains from depriving people of the right to vote.

**The Convener:** Gail Ross has a quick, final question, after which we will let Mr Harvie get off to his next committee.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning and thank you for coming along. This is, indeed, a fascinating topic. You might have seen in a particular newspaper this morning a bit of hysteria about prisoners running all over the country on polling day, creating social unrest and then escaping or not returning to prison. Returning to the practical aspect that we have touched on slightly, can you reassure people that such an article is nonsense and that prisoners will not be getting let out as it suggests?

Further to that, what are the practical aspects of voting within prisons? Would there be a mixture of postal voting, proxy voting and voting at polling stations, or would it be better to concentrate on one approach? How would you see it working?

**Patrick Harvie:** I suspect that you are referring to a newspaper that I rarely read but which I often enjoy offending, so I will try to catch up with what it has written later in the day.

I suggest that, if it agrees with the argument that some change to the blanket ban is necessary, the Scottish Government consult with the Scottish Prison Service and others on their preferences with regard to the administration of voting in the prison context. It might be that proxy voting would be one way to go, but I would suggest that either allowing a postal vote or having a bespoke system for voting inside prisons would be easily achievable.

The practical aspects are the least of our worries; the real objection that some people raise relates to the instinctive recoil that I have talked about. That is simply not a rational reaction, given that we have changed sentencing policy in recent years and that, as Alex Cole-Hamilton has said, we are likely to continue to change it.

**The Convener:** Thank you very much for your evidence this morning, Mr Harvie—we are grateful to you for it. We will now let you get off to your other committee. We will endeavour to keep you updated on the committee's work, given that you have brought the issue to our attention in the first place.

**Patrick Harvie:** Once again, I thank the committee for its interest in the issue. I repeat my earlier comment that prisoner voting needs to be seen in the context of wider equalities and human rights issues, such as national identity, equalities, disabilities, Gypsy Traveller communities and so on. There is a wider discussion to be had about franchise, too.

**The Convener:** We hear you.

**Patrick Harvie:** Thank you very much.

**The Convener:** I suspend the meeting for five minutes to facilitate a changeover of panel.

09:48

*Meeting suspended.*

09:55

*On resuming—*

**The Convener:** Welcome back. We continue our item on prisoner voting. We have changed our set-up to enable a round-table session. This set-up is to allow the information to flow a wee bit more freely, and it is a bit less formal than holding a panel session. Witnesses will need to catch my eye to let me know when they want to contribute. I hope to hear interesting information from all of you, which will be punctuated with interventions from committee members, who will come in and ask direct questions. I am sure that they have got them ready for you.

Most, if not all, of the witnesses were in the room for Patrick Harvie's evidence, so they will understand the genesis of the committee looking into this piece of work. We are happy to have the witnesses here. I thank those who passed on written evidence to us, which was gratefully received. That has given us all lots of reading to do over the past couple of nights.

I am going to go round the table to allow everyone to introduce themselves and to say

where they are from. That will give us a wee insight into who is here.

I am the committee convener.

**Alex Cole-Hamilton:** I am the deputy convener.

**Tom Halpin (Sacro):** I am from Sacro. I work with the rehabilitation of people in the justice system.

**Michael Clancy (Law Society of Scotland):** Morning, everyone. I am the director of law reform at the Law Society of Scotland.

**Gail Ross:** I am the MSP for Caithness, Sutherland and Ross.

**Pete Wildman (Scottish Assessors Association):** I am the chair of the electoral registration committee of the Scottish Assessors Association, representing the 15 electoral registration officers in Scotland.

**David Strang (HM Inspectorate of Prisons for Scotland):** I am Her Majesty's chief inspector of prisons for Scotland.

**Professor Fergus McNeill (Scottish Centre for Crime and Justice Research):** I am a professor of criminology at the University of Glasgow. I specialise in questions of punishment and reintegration.

**Lucy Hunter Blackburn (Howard League for Penal Reform in Scotland):** I am here on behalf of the Howard League for Penal Reform in Scotland.

**Mary Fee:** I am an MSP for West Scotland.

**Beverley Smith:** I am an ex-offender.

**Jan Anderson (Access to Industry):** I am a shine mentor working with women offenders.

**Jamie Greene:** I am an MSP for West Scotland.

**Chris Highcock (Electoral Management Board for Scotland):** I am the secretary to the Electoral Management Board for Scotland, which works with the returning officers and electoral registration officers in administering elections.

**The Convener:** Thank you very much. Chris Highcock will be aware that there have been lots of questions about the practicalities of prisoner voting. We may come back to him on those during the session.

I was hoping that the Howard League representative would kick off, because I know that the organisation has had a long-running campaign on the issue. As in our session with Patrick Harvie, the committee is interested to know why and how we should look into the issue. I ask that Lucy Hunter Blackburn kicks off with her understanding of that.

**Lucy Hunter Blackburn:** I echo a lot of what Patrick Harvie has said. We see this as a moral and ethical question rather than coming at the issue from a legal angle. It is about how you conceive the right to vote, how you think about prisoners and how you bring those two things together. We start from the position that the right to vote is fundamental and that, if it is to be taken away from people, there must be clear, good, sound reasons for doing so.

Another side of the coin for us is the status of prisoners in society. We see them as citizens. The blanket ban is based on a concept of civic death, because prisoners are not part of society. We cannot support that view. It is at odds with what is said elsewhere about the rehabilitation and integration of prisoners. Patrick Harvie made all those points clearly.

As I have said, our starting point is how we think about the right to vote and how we think about prisoners. What we do at the moment does not reflect well on either of those aspects. We take away that right. The arbitrariness of the ban cannot be overstated. It has arbitrary effects on people. Patrick Harvie mentioned the date of sentencing and how much time is spent on remand, because people are excluded from voting only for the period in which they are serving a sentence in prison. For example, someone who has spent eight weeks on remand might be banned from voting only for three or four weeks, as that is their sentence period because of when their sentencing date falls. The system is much more arbitrary than many people appreciate, particularly when short-term prisoners are included.

10:00

More generally, there is a view about whether we can justify a ban. The history is less coherent than many supporters of the ban tend to assume. How we got here was not through a proper democratic debate about the vote and the prison system. The process was more arbitrary. There was no ban for the 20 years prior to 1969, and it was brought in with no parliamentary scrutiny. In 1969 there was a process behind closed doors to look at electoral reform, and the ban was put into legislation with no real debate. Prior to 1949, I think it was, only people in the most serious cases were banned from voting, but from 1969 to 2000 we banned remand prisoners, who were people who had not been convicted of any offence.

We now need a proper debate about where we draw those lines. As Patrick Harvie has said, that debate has to be inclusive and involved. The opportunity is now here for Scotland to come up with a system that is more defensible and, above all, more in line with what happens in most other

democracies in Europe. That is where we start from.

**The Convener:** Thank you. I will come to Tom Halpin next, because part of the earlier discussion was about redemption, rehabilitation and participation as a citizen. I ask you to give us an insight into your work and your thoughts on this topic.

**Tom Halpin:** Thank you, convener. I found the discussion and arguments that Mr Harvie promoted encouraging and very fair. They generally captured the experiences of Sacro and our partners. We work across a number of organisations in public social partnerships such as the shine service, which you will hear about later. That gives us extensive experience of work with the groups that we are discussing. We help, support and challenge them to come to terms with the significant changes that they have to make in their lives that will lead to rehabilitation and reintegration into communities as active citizens.

That takes us back to what has been described as the ethical or moral argument. The fundamental question is whose moral compass we use. Dividing people into good or bad does not reflect the reality. The vast majority of the people who are termed “offenders” quickly reappear in different parts of the system as victims. They are citizens first and foremost. The stories of working with people as they make those changes are, frankly, inspirational. For so many, the root causes of the situations that brought them into offending behaviour go back to vulnerabilities and issues of deprivation and lack of opportunity—those are fundamental to their situations.

I can think of one man who I would describe as a fighting drunk—a newspaper headline would probably describe him as that as well. When we worked with that individual, we found that he had experienced at a young age horrendous family bereavement that he had never coped with and which left him deeply distressed and traumatised. When we worked with him, he turned around to become a leader within his cohort; he had a positive impact on the people around him and is now a true inspiration. When we work with someone like that, they go into deep issues in their life. To tell them that they are disenfranchised at the same time as telling them that they have a future as a citizen weakens that work.

That might be a moot point for many—does anyone really care?—but it means an awful lot to someone who is trying to understand what their purpose is in life and why they have been deprived of opportunity, and who is beginning to see that they have a positive future. That captures the essence of the question of whose moral compass we use. How do people get to that position?

**The Convener:** That is a good point.

Jan Anderson, we come to you next, and then Beverley Smith, on the shine service. What are your thoughts and reflections on the topic in front of us?

**Jan Anderson:** I have come to the topic quite fresh—I had not thought about it a lot before being invited to participate in the committee. Beverley Smith and I got together and looked through the committee papers, and we found the topic fascinating and are delighted to be here.

I work with a population of women offenders and would echo a lot of what Tom Halpin said. I would say that pretty much 100 per cent of the women who I am working with have experienced poverty and disadvantage, and have had a huge amount of psychological trauma and abuse in their lives. In many ways, I would describe them as the walking wounded. They use services but are quite often shut out of services or find it hard to access them. I do not really like the word “victim”, but the population I am working with are troubled and traumatised people.

I have been doing this for nearly three years and, in my experience, most of the people I work with do not vote. They feel a long way away from society and services and do not really connect. However, we have had some discussions about the difference that the Government of the day makes to their lives, particularly in relation to the issues that are faced by people dealing with universal credit when they come out of custody and have to wait six weeks until they get benefit payments and so on. I can see that people may become more politicised because of the things that they face on their release.

There were some specific issues in the committee papers. For example, identifying somebody’s address could be a problem, because a lot of the women I am working with are homeless. They were homeless before going into custody and they face homelessness when they come out. Postal voting would probably be preferable to voting from the prison address. Maybe those issues are too big to get into, but we would certainly be interested in discussing such issues in future, if that was welcome.

Another issue that came up in the papers was whether there should be campaign awareness raising in prison. I love the idea of something like a hustings. It could be really positive work if there was time in prison to engage the women in some of the issues of the day—it could be an opportunity to look at rehabilitation and reintegration.

**The Convener:** That segues well into what we are hoping to hear from Beverley Smith about her experience. What are your thoughts on this?

**Beverley Smith:** I feel, having been in prison, that many people in prison are not really interested in voting, but a wide variety of people would like to vote. It depends on the sentence. If it is a short sentence, people will be reintegrating back into society and so should be allowed to vote. People on longer sentences—I do not know how many years; that would be for other people to decide—are not making a contribution to society, so what right do they have to vote? That is me speaking as an ex-con.

The system of voting is easily manageable from in prison. I have seen the way prison works. There are certain regimes. About the address for voting, it is a good idea for the address of the next of kin to be used.

I do not have much to say at the moment—I have not had much time to think about things. I am better answering questions than speaking off the cuff.

**The Convener:** We are just about to hear from some of the other panel members. Catch my eye if you want back in.

**Alex Cole-Hamilton:** I was struck by the point that Tom Halpin made and that Jan Anderson took up, which is that we often forget about the backgrounds that have led people to offending behaviour and their reasons for ending up in prison. I am always struck by the horrific statistics on the proportion of people in the prison system who have been through the care system. Those people have suffered the failures of public policy and it is only at the nadir of that journey that they end up having their right to influence public policy taken from them. Offenders in prison, particularly those who have been through public care and other aspects of public support that have let them down and partly contributed to their offending behaviour have much to teach us about reshaping public policy in Scotland.

I have a specific question for those people who have experience of prison—I am aware that we have David Strang, the chief inspector of prisons, with us.

**The Convener:** He is next up to speak.

**Alex Cole-Hamilton:** Excellent. Perhaps my remarks can segue into his. From my undergraduate degree, I remember a quote from some great thinker—someone like Rousseau, but certainly someone far more intelligent than me—who said that people are only free in a representative democracy in the five minutes when they are in the polling station casting their ballot and thereafter they are a slave to the whims of the Government of the day. That point about the importance of voting has always stuck with me. If we incarcerate someone and then deny them the

vote, we are depriving them of liberty in more than one way.

I have worked with many prisoners in my life and they all had strong opinions about their situation. Given that they have leverage in the democratic process removed from them, what avenues are available to them to raise concerns about their situation and make their voice heard right now?

**The Convener:** Who is that question directed to?

**Alex Cole-Hamilton:** It is an open question, but if you were going to bring in David Strang, as chief inspector of prisons, he would make a great start.

**David Strang:** I will leave it to Professor McNeill to answer the academic question. I have three brief comments. My first point is about the status of people in prison and the notion that they are citizens and members of society. When the Parliament held a debate on whether prisoners should be allowed to vote before the Scottish referendum, I heard people say that prisoners should be allowed to vote when they “return to society”. I make the point that prisoners are part of society and it is important that we see them as being among the residents of Scotland. They happen to be in prison because of what they have done and they are being punished by a court, as is right, but they have not lost their status as a citizen and a member of society.

My second point is about preparation for release and rehabilitation. I do not speak for the Scottish Prison Service, but it has a slogan about transforming lives and unlocking potential and it puts a heavy emphasis on that. What we all want is a situation where when a person leaves prison at the end of their sentence they are less likely to reoffend and are more likely to be a responsible citizen. Voting and taking part in the democratic process—as is taught in modern studies classes in school—is part of being a responsible citizen. I firmly support Patrick Harvie’s proposal. People who are coming to the end of a long sentence and those on short sentences should be allowed to register to vote as part of their preparation for release.

Finally, for some, there is a notion that not having the right to vote is a punishment, but if so, it is a very arbitrary one. As Jan Anderson and Beverley Smith said, many people in prison might not want to vote. I know that many people in prison are not on the register. However, some people are really keen. Again to go back to 2014, I remember speaking to some men in prison who were very animated about the referendum and had very strong views, but did not have a right to vote. It is an odd punishment because it punishes only those who want to vote. If you are someone who is

not registered and is not interested in voting, it is no punishment for you at all, because it does not change your life. We have the imposition of a secondary punishment, in addition to the deprivation of liberty, but only on those who have an interest in voting.

10:15

Alex Cole-Hamilton asked what avenues there are for people to raise issues and concerns. My counter would be that putting an X in a box is not an effective way for someone to raise a particular issue. People have the avenues of speaking to their MSP or MP, pursuing a complaint through the Scottish Public Services Ombudsman and raising issues with an independent prison monitor.

**Alex Cole-Hamilton:** I accept that, even with the proportional representation system that we have in Scotland, there are times when voting is slightly futile even when the voter is not in prison. However, the corollary to your statement that voting is not a very effective tool for achieving representation is that the first thing a person might do is have their MSP come and see them—I have done that for prisoners in HMP Edinburgh—and, if they are not satisfied with the outcome of that meeting, if they do not feel that they have been heard or if their MSP refuses to come and see them, they should have the right to at least try to change their MSP. That is where my argument rests, and I would like to see that piece of the jigsaw included for prisoners.

**David Strang:** I agree with you 100 per cent on that point. All that I am saying is that I have never told a prisoner who has complained about his treatment that he should vote for a different MSP when he gets out.

**The Convener:** I wonder whether Professor McNeill wants to come in at this point. Maybe you can deal with some of the academic points and provide your own reflections.

**Professor McNeill:** I will try. I brought some help on the academic points. In preparation for the meeting, over the course of the past day I looked along my bookshelves—as you do—and found the definitive book on the topic, which I have been reading with great interest over the past 24 hours or so. I knew about the work but had not properly engaged with it until I prepared for the meeting. It is Cormac Behan’s “Citizen convicts: Prisoners, politics and the vote”, and I will leave it with you as a gift. Cormac Behan is at the University of Sheffield, and his PhD was on prisoners, politics and the vote. It picks up the case of Ireland, where legislation was passed in 2007 to enfranchise prisoners. As well as dealing with the moral arguments in a very even-handed way—although he eventually reveals his own position as being in

favour of enfranchisement—he reviews the position globally, citing the countries that do and do not permit voting by people who are in prison. He looks at the practical arrangements that were introduced in Ireland and that are applied elsewhere, and he then does something really interesting—he conducts 50 interviews with prisoners about politics, participation and voting in the wake of prisoners' enfranchisement in 2007. The fieldwork followed the change in the Irish legislation. It is an outstanding piece of work, and even reading just the introduction and conclusion would be tremendously helpful to members of the committee. If you proceed with the issue in another fashion, you might want to consider Cormac Behan as a witness or an adviser if you are considering going down the line of an inquiry.

I will pick up some of the more academic points. Rousseau has been mentioned, and he gets a reference in the book. Rousseau was not a fan of representative democracy, as has been said; he was interested in direct democracy. In fact, some of his ideas about the importance of political participation, political dialogue, political engagement and how that affects the civic health of a polity, a community or a society are contemporary in the context of debates about Scotland—both in relation to the independence referendum and in relation to events since then. For me, the fundamental problem is this. We have heard from the Howard League for Penal Reform that disenfranchisement was conceived of initially as a form of civic death. Rousseau was a fan of the idea of the social contract and, even before him, back in the days of the Greeks and the Romans, the idea was pretty straightforward: if someone breaks the law, they lose the right to make the law. A person who steps outside the social contract and breaks the norms of the group has to be excluded and shunned from participation in the political process.

Originally, in ancient societies and into the middle ages, that exclusion could be permanent, with a person's civic status so demeaned by punishment that they no longer had the right to life. It was not the state that executed them; anyone could kill them if they wanted to with impunity, because they were non-citizens. That was the most brutal and extreme form of disenfranchisement. As we have moved forward, those extreme forms have diminished, but in more recent history, as we have heard from the Howard League, we have had an oscillation back to political disenfranchisement. I have big problems philosophically with the social contract argument; we could have a long talk about that, but I will be really brief, if I can. After all, we have heard about some of this already.

Picking up on Jan Anderson's comments about people in the criminal justice system carrying

wounds or being—in her phrase—“the walking wounded”, I realise that her point was more to do with questions of trauma or personal loss, but such people are also wounded in a civic sense, in that they have already been substantively disenfranchised before their formal disenfranchisement by punishment. They come from communities where their life opportunities are severely restricted, where health inequalities are profound and where levels of political participation are already minimal and deeply troubling. They are therefore civically wounded, and then as part of their punishment—or as an accidental consequence of it—we apply civic death in the form of full and formal disenfranchisement during their punishment. To make matters more absurd—in my view—we insist that they resurrect themselves civically at the moment of their release and enter back into society, fully prepared to make a robust and rounded contribution as politically and civically engaged citizens. That is completely paradoxical. The problem arises from the fact that we are holding on to ancient and medieval sentiments that drive the desire to exclude while at the same time trying to have a modern conception of reintegration. My fundamental view is that we cannot have both.

Other problems with the social contract are that, as Patrick Harvie has explained, it is arbitrary in the way in which we apply it. If you wanted to look at a group of people who could, legitimately, be excluded from political participation, the first group that I would suggest be targeted would be tax avoiders. If you do not pay tax, why should you have a say over how the tax is disbursed for the collective good? Strictly speaking, it is not an offence; it is certainly not a crime that is prosecuted through the criminal courts—unless it is full-blown evasion, and even that might still be a civil law matter. Nonetheless, we have a society in which people who avoid their tax liabilities still have profound influence in political processes, including through the funding of political campaigning. On the other hand, we remove from civically wounded people all their rights to participate and regard that as somehow just. In my view, there are absurdities in the broader social contract position.

I want to finish by moving on to the legal position, although I should first point out that I am not a legal expert or a law academic. All that the European judges were arguing was that an arbitrary ban was wrong and that, if we were going to exclude people from political participation as a result of the imposition of the punishment of imprisonment, we would need to justify that. That was all that they said—it had to be justified. The basis of their argument is that the punishment is the deprivation of liberty and nothing that is not an inevitable consequence of the deprivation of liberty

is entailed by the deprivation of liberty, and they apply that principle across a range of issues in respect of the continuing civil rights of prisoners. The judges said to us—or to the UK Government directly—“You have to decide. Either you make law to determine whom you want to exclude from the political process, or you get your judges to disqualify people from voting and make it an explicit, public and transparent part of their punishment.” Both positions are fine, tenable and can be argued; personally, I disagree, but I can live with the situation if we are prepared to justify it. It is the fact that we are prepared to do this thoughtlessly and routinely, without even any discussion of the question of the link to the offence, that I find particularly problematic.

My view would be that the current position is philosophically inconsistent to the point of being morally wrong and absurd. It is not that we cannot exclude people from the process; it is just that, as the Howard League has said, we must be much more careful about deciding if, how and when we do that and who we do it to.

**The Convener:** You have given us a lot to think about. I thank everyone for those comments.

**Mary Fee:** I have a question that follows on from the point that has just been made. I would be interested to hear the views of all members of the panel on whether we should be looking at a ban that is based on type of crime and length of sentence. I struggle to understand how we can justify a complete blanket ban and removal of the right to vote. I simply do not understand why we should do that, and I would be interested in panel members' views on how we should apply a ban if we apply any ban.

The other question that I would like to pose is about the practicalities of allowing prisoners to vote. Currently, some prisoners do vote, and it would be good to get on record information about the process whereby prisoners on remand vote and the practicalities of how that is managed in the prison.

**The Convener:** At this point, I will bring in Michael Clancy to give us some background on how we arrived at the current position in law and to answer some of the legal questions, and then we will turn to the two members of the panel who are interested in the practicalities. That way, we can bring both of Mary Fee's questions together. Would that work?

**Mary Fee:** Yes.

**Michael Clancy:** I would not profess to be an expert on how the Representation of the People Act 1983 came into being, but what we heard earlier from Lucy Hunter Blackburn and from Professor McNeill clearly tells us something about the way in which civil disability was imposed as an

incident of judicial decision making. For example, Lucy Hunter Blackburn's point about civil death is an interesting one that was picked up by Fergus McNeill. Courts could determine that people could be civilly dead, because there was a death sentence in place for most of that time.

I was reflecting on how divorce in Scotland was created by the reformers in the post-1560 period, because someone could get divorced on the basis of adultery. Adultery was a crime, and the decision of the criminal court—because it carried a penalty of death—meant that the surviving partner was able to remarry, even if the sentence had never been carried out, because the court had determined that the person was subject to a sentence of death and was therefore civilly dead, while the other party was free to marry. [*Laughter.*] There you are.

That just shows what imagination people can bring to the law, and imagination is something that we have to perceive here, because the real issue revolves around the European convention on human rights. Article 3 of protocol 1 of the ECHR states:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

That is the article on which free elections are based, and that is a reaction to the unfree elections that were perpetrated on Europe, principally under the Nazi regime but also under other dictatorships. When the European convention came around—it is worth reminding everyone once more that the United Kingdom was a motivating factor in the creation of the European convention—we were able to say that that is not the way that we expect Governments to behave now. That formulation is the starting point from which issues around eligibility to vote stem in the context of the number of court cases that have been taken to the European Court of Human Rights in Strasbourg over the past few years.

10:30

Everyone knows about the case of Hirst, so I will not reiterate that too much, but there are some key factors that members will want to reflect on. They can be found in paragraph 82 of the judgment, which goes to the issue of the blanket restriction on voting. The judges say that the provision

“imposes a blanket restriction on all convicted prisoners in prison. It applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.”

That is important, because it gives us the answers and is the key to unlocking how to make something comply with article 3 of protocol 1. It says, in other words, “Don’t be indiscriminate, don’t make it a blanket restriction, don’t apply it automatically, don’t have it irrespective of the length of the sentence and don’t have it irrespective of the nature or gravity of the offence.” Those are the keys to use to unlock the position that we are now in, which is that, as a matter of general principle, the UK should seek to comply with its international obligations, including those under the European convention on human rights. It is important that we seek to get to that position because, fundamentally, it is a rule-of-law issue.

If it comes to the Scottish Parliament looking to exercise the powers under the Scotland Act 1998 that apply to elections, certain factors must be borne in mind. Section 29(2)(d) requires compliance with ECHR, so a law that is made that is not compatible with ECHR is not law under section 29. These areas of the law are protected subject matter areas, because the protected subject matter provisions in sections 30 and 31 of the Scotland Act 1998 make it clear that if the Parliament were to look at provisions for electors, the Presiding Officer must identify that, and a bill will not be passed unless the number of members voting is two thirds of the number of MSPs.

The UK Government has tried to look at the issue in the past. The draft voting eligibility (prisoners) bill in 2013 did not go very far, but it got to the position where options were put before parliamentary committees, and it would be useful to look at those options again. They seem to focus exclusively on the term of sentence, which might not meet the unlockability requirements with regard to Hirst. However, in the leaflet “Prisoners’ Rights to Vote” issued by the European Court of Human Rights in Strasbourg, you can read about the seven UK cases and six other cases from the rest of Europe—it is not as good a present as leaving a book, but I might leave it anyway. [*Laughter.*]

What can I say in addition to that? We have to think hard about how to make our system comply with the law to which we have agreed in terms of the convention.

**The Convener:** As usual, that was absolutely fascinating, and with a bit of history chucked in. Thank you very much, Michael. It is always a joy to hear from you.

I now want to look at the practicalities, and I invite Pete Wildman to start the discussion. Perhaps we can get some insight from Chris Highcock, too. They will have heard about some of the practicalities this morning, and I ask them to enlighten us.

**Pete Wildman:** I will start with how remand prisoners are dealt with at the moment. Those who are on remand for a short time can simply remain registered at their own address, because they are not really absent long enough to break that resident connection. Alternatively, they can register by way of declaration of local connection annually or they can make a declaration to their previous address or, if they are homeless, an address near a place where they spend a substantial amount of time during the day or the night. Most declarations tend to come ahead of an election, because that tends to be the point at which remand prisoners opt in to the registration process. The important thing to bear in mind is that it goes not to the registration officer for the prisons but to the registration officer where the person was previously resident or had a connection.

That leads me on to the issue of address, where a person registers and how that shows up. If a person declares to a local connection, their address does not appear in the register; their name simply appears at the end of the relevant section under the heading “other electors”. If prisoners were registered at the prison and the registration was done in the same way as for a normal resident, the prison’s address would appear and the prisoner’s name would appear against it. Registers of electors have long shelf lives. That, too, is something to bear in mind.

Reference has been made to not removing the blanket ban entirely but linking a ban to the length of sentence. One practical issue for electoral registration officers is how they would know which prisoners were or were not enfranchised. That is a practical issue, and a bit of thought would need to be given to how that information would be communicated.

From the viewpoint of electoral registration officers, there are no fundamental barriers to removing the ban. Care would need to be taken to consult widely with all stakeholders on how it could be delivered to ensure that any system that was introduced worked—and, indeed, worked as efficiently as possible for the electors and the administrators.

That sums up our position, but I am happy to take any questions.

**Chris Highcock:** It is clear from the Scottish Assessors Association’s written submission and ours that we are not here to talk about what should happen, but to comment on how it would be implemented. It is for the committee to determine the should question—we will talk about the how.

When we look at the mechanics and logistics of running an election, we see that there are issues of who can vote and how they vote. The electoral

registration officer is concerned with who is on the electoral roll and who is allowed to vote. There are many issues to do with getting on the roll and how the roll is compiled, composed and maintained, and then we get into the question of how people go and cast their votes in practice.

It is worth making the remark that policy on both matters has changed over time. The categories of those allowed to vote have changed from people who owned property to men only, then to women and now to 16 and 17-year-olds. As policy and law change, administrators such as us are tasked with delivering those changes, which is what we do. Such changes are generally the product of the sort of philosophical debate that we are having and of consultation. It is essential that there be consultation and input on the mechanics of such matters in the medium term, as that will draw out many practical issues from a broader variety of sources than the people who are in this room.

There are also changes in how people vote. Postal voting, for example, has grown in recent years; indeed, what we have now is very much postal voting on demand. Associated with that, however, is the fact that the method of postal voting has changed in reaction to alleged widespread electoral fraud. People now have to put a signature and date of birth on their postal votes to prevent what was happening in certain places. The mechanics change.

In our written evidence, we talk about how people currently vote. There is postal voting, and there is also proxy voting, whereby you nominate a trusted individual to vote on your behalf. There are rules about that, and Pete Wildman might want to comment on how a proxy is appointed and how someone qualifies to be a proxy. It might be interesting to draw that out. People can vote in person at a polling place, and we have talked about some of the issues and concerns that might arise if the polling place was outwith the prison. If the polling place was in the prison, there would be issues about the nature of the franchise. If the franchise was such that people were registered all over the UK, there might be 30, 40 or 50 ballot boxes and lots of ballot papers, and people would have to get the right one.

The obvious approach would seem to be postal voting, which I believe is the approach taken in Ireland for those who qualify. Postal voting in itself is not without difficulty and cost. About 20 per cent of the electorate are registered to vote by post—it varies across constituencies. The mechanics of postal voting could be made to work in a prison, but there would have to be provision made for some of the elements that exist in postal voting at the moment, such as the replacement of spoiled or lost postal votes. Normally someone can turn up at the returning officer's office and say, "I've spoiled

my ballot paper. Can I have another one?" If we get the old ones back along with proof of identity, we will issue new ones. Obviously, that would not work to the same extent in a prison. We would have to look at certain technical issues, but, overall, postal voting could be made to work. It was interesting to read the part of the Scottish Prison Service's submission about how that applies at the moment for prisoners on remand.

Professor Clancy referred to a paragraph on human rights. Our submission refers to the fundamental right to vote in secret. We sometimes sway away from the fundamental secrecy of the ballot, and it was interesting to read what the Scottish Prison Service's submission says on how the postal vote is completed by prisoners on remand. That is a concern, so steps are taken to ensure that the vote is cast in secret. We would always want to preserve the principle that a vote is private and that people should be able to cast it free from influence, bullying or threats from other people.

In summary, it is for you to determine how things should be. We will do what you tell us. Practically speaking, there are issues to address, but we can tease them out through consultation and work around them.

**The Convener:** I have to say that we do not often hear the phrase, "We'll do what you tell us." Perhaps Pete Wildman can give us an update on proxy voting.

**Pete Wildman:** Yes. A person is entitled to appoint another person to be their proxy and to cast their vote for them, but that other person must be a registered elector and must be registered within Scotland. A proxy can act for only two people, unless they are a close family member, in which case the limit does not apply. Anybody can apply for a proxy up to six working days prior to the election. After that date, there are strict rules on emergency proxies, which are limited to those with occupation, service and employment issues or health issues. You would have to make sure that the option of an ordinary proxy was available to prisoners and that the law allowed them to obtain a proxy vote easily. I do not have the rule in front of me, but I am not aware of any barriers to that.

**The Convener:** We have now heard from everyone this morning. I am keen to open the meeting up to questions and to allow colleagues to add anything that they wish to the discussion.

**Lucy Hunter Blackburn:** We have touched a few times on the role of public opinion in all this. I want to say a word or two about our experience of campaigning on this issue during the referendum bill, which surprised us. One wonderful quote, which is from Professor Richard Korn, is:

"The public is one of the 'sacred cows' of criminal justice, often deferred to but never consulted."

You hear a lot that the public will not stand for change. We campaigned in quite a high-profile way in 2013—we deliberately sought to get press coverage across papers with a range of readerships—and what really struck us was how little the heather went on fire, if you like. There was no sense of great public outrage at this issue being raised. The kind of debate that the public is capable of having on criminal justice is massively underestimated. That might be a common theme of criminal justice academia, but it is also true.

10:45

When we asked journalists whether they had got many complaints about this or that piece, the answer was no. When we asked Alison McInnes and Patrick Harvie whether they had got a lot of hostile stuff in their inboxes about the amendments, the answer was no. Opinion polling of the public, such as there is, suggests that, in a generally hostile press environment, about a third of the public already support some lifting of the blanket ban. It is important that we are not afraid of raising a debate and that we do not make the mistake of not involving the wider public in that debate. If you are talking about the vote and citizenship, that is exactly the moment at which you need to take people with you.

When Westminster did a big public consultation on the bill that Michael Clancy mentioned, it got just 31 submissions from across the whole of the UK on what is supposedly a hot topic, three of which opposed change. It is really worth feeling that we have the space to have this debate.

**The Convener:** Are there any other comments?

**Tom Halpin:** I want to reiterate the point about public confidence. We have significant experience of community sentences, including, for example, the supervision of unpaid work. Time and time again, initial engagement with the local community has raised all the sorts of questions and fears that you would expect, but the biggest issue at the end of that consultation has been how we meet the increased expectations and demands for assistance from people who are doing that type of work. An informed public is very engaged.

My only other point is about dividing things along the lines of the type of offence rather than the length of the sentence or whatever. Using an actual crime as some sort of title is a very blunt tool. There is tragedy involved in homicides, and many have an impact on both sides. For example, a woman who has spent her life being abused can end up in court in tragic circumstances. Taking someone's life is the most heinous crime—it is at the top of the tree—but should this exception be

applied in those circumstances? It could also go into, say, crimes of acquisition in which the people involved are in real poverty and so on. I just want to sound an alarm bell about using the type of crime as the arbiter in these circumstances.

**Alex Cole-Hamilton:** My remarks come very handsomely on the tail of Tom Halpin's comments. They are a great segue into the discussion that I have been having in my head—which is something that I tend to do quite a bit.

The session has been incredibly helpful in cementing my view that we should lift the blanket ban in its entirety. It comes down to a couple of things that have been said, the first of which is the notion of civic death. It is a bit like that old joke that you cannot be half pregnant—you cannot be half dead. Either we say that custodial sentence leads to civic death or we ensure that it does not. It is a binary equation.

Professor McNeill made a really elegant remark, which I think is his, although he might have been reading it. He said that nothing that is not inevitable as a result of the deprivation of liberty should be included in punishment. For me, that sums up our approach to custody in this country, and the removal of the franchise is just an arbitrary by-product of that. It might not even happen; for example, you could be serving a three-year prison sentence and never lose your right to vote, depending on the timing of the electoral cycle. That just strikes me as arbitrary.

As such, I do not believe that, even if there were an incremental approach to lifting the ban, doing so according to length or severity of sentence or severity of crime would be appropriate, simply because of the inconsistent application of sentencing by the Scottish courts—and indeed the nature of offences that might come up, and the interpretation of the law relating to them. For that reason, I am completely convinced by the argument.

**The Convener:** That was more of a declaration than a question, Mr Cole-Hamilton.

**Jamie Greene:** I am trying to take stock of the various views around the table. Given that there seems to be consensus and that no one is particularly against changing the status quo, it strikes me that there is a spectrum here. At one end of the spectrum is the status quo—a blanket ban—and at the other is a complete reversal of the ban, which would mean by default that anyone and everyone who is eligible to vote could vote, and there also seem to be a lot of places in the middle.

One of the factors that jump out at me is that deciding who can or cannot vote is a three-dimensional problem. Some of the parameters, such as the type of offence, have been mooted.

Other things that strike me are whether the sentence is custodial or non-custodial, which seems to be the status quo. There has been a bit of discussion touching on the length of sentences and whether they are short or long, and following on from that is the other dimension of where the person sits in the cycle of their sentence relative to electoral cycles. For example, if someone is serving a long sentence, the term of an election that they might be eligible to vote in is not relevant, because they will still be in custody by the end of the electoral cycle, and we have to consider whether that has an effect on their ability to vote or on their interest in voting.

There seems to be a lot of unpicking to be done, and I am keen to hear more views on the parameters that we use. Do we just go from one end of the spectrum to the other, or do we try to find somewhere in the middle that meets the criteria of some of those quite complex dimensions? Added to that there may even be a fourth dimension, which is the arbitrary application of the ban on voting. Is it mandatory that primary legislation should dictate the rules? Would judges have an element of arbitrary decision making if we went down the route of an offence-led rather than a sentence-led ban? It is clearly a complex matter, but I am keen to explore what kicked off the thought process and to consider what Beverley Smith said about whether people serving long sentences should have the right to vote and whether the issue affects them if they are not leaving prison during the cycle of that electoral term anyway. I am keen to hear more thoughts and ideas on that.

**The Convener:** Do you have anything to say on that, Beverley?

**Beverley Smith:** I think that I have already said what I wanted to. People who are serving longer sentences are not contributing to society and will not immediately be affected by any changes made at an election. That is all that I wanted to say.

**Professor McNeill:** There is a paradox in the social contract position that if you break the rules you cannot make the rules. If a person is in custody for the full term of a Government, should they have a say over the composition of the Government through parliamentary elections? One of the conundrums for the people who support the social contract position is that it means that that prisoner has no say in the laws that are formed to which they will subsequently be subject, and since they did not play any part in the political process by which they are bound, should they be bound by those laws? Philosophers genuinely regard that as a significant problem, and even a contradiction, in the social contractarian position.

**Jamie Greene:** The same could be said of people who do not vote.

**Professor McNeill:** Indeed it could, and that is why people such as Rousseau argue that it is not just a question of electing a representative body but a question of real political participation that underlines consent to being governed, and in the absence of consent all that the state is doing is exercising power illegitimately on people who did not opt into that.

There are big questions at stake but, on a more practical point, to pick up on what Tom Halpin said, I am slightly torn on the question of judicial discretion over disqualification. I think that the European judges are arguing for the punishment to fit the crime; the question is not the severity of the crime but the nature of the crime. Disenfranchisement is a political punishment, so the crime to which it should be applied should be a political crime, such as misconduct in a public or political office or offences against acts that seek to govern the proper conduct of elections. Those would be the sorts of things that might feasibly and logically lead to disenfranchisement as a punishment. The mere fact that the crime is serious enough to warrant a long prison sentence does not create a logic for disenfranchisement, according to the European judges if I have understood their position correctly. I am not a lawyer, so I am probably straying into territory that I should not.

**David Strang:** The two previous contributions seemed to suggest that the law affects people only after they have left prison, but it affects them while they are in prison. Examples are changes to early automatic release for long sentences and the Scottish Prison Service announcement that every prison in Scotland will be smoke free by the end of next year, which they are not at the moment. Those changes are the direct consequences of decisions made in this building. Laws agreed by local and national politicians have an impact on people's lives while they are in prison.

**Tom Halpin:** I return to the point about a person who is serving a sentence from which they will not be liberated during the time of that Parliament. That person has an interest in their disenfranchisement, but if there was a representative of our fellow organisation Families Outside here, they would make the point about the families that are affected by imprisonment. The situation impacts on them, which immediately opens up their interest in what is happening. If we look at what works to aid desistance and reduce reoffending—there is Scottish Government and academic research into that—we know that the relationship with family is hugely important to whether someone has a positive future. Someone who is not outside in the community still has a reason to be enfranchised.

**The Convener:** I was struck by Professor McNeill's understanding of what the law requires of us, and I wonder whether Michael Clancy can confirm that understanding.

**Michael Clancy:** That understanding is exactly right. Cases in Italy where people have been involved in electoral fraud have resulted in disenfranchisement. There may be a case for entering into a discussion with the Scottish Sentencing Council about that sort of thing. At the moment, disenfranchisement does not come up in that way. It is not an add-on or an option; it is a consequence. Therefore, Parliament and the Government have to make up their minds as to which route they want to follow. You can then figure out the other consequential changes that would be necessary.

**Professor McNeill:** Criminologists refer to that phenomenon as the collateral consequences of punishment. I think that Michael Clancy used the term "incidental"—it is not necessarily an intended and deliberate part of the punishment that has been imposed, but something that just happens as a result of it. People like me who study processes of desistance—how and why people stop offending and achieve successful reintegration—are very concerned by collateral consequences. Evidence internationally is overwhelming that the collateral consequences of the punishments that we intend—the unintended aspects of the penalties that we impose—produce profound barriers to the outcome that we wish the punishment to secure: ultimately, the successful reintegration of the person as a law-abiding member of society.

11:00

I will read a single short quote from a serving prisoner in Ireland who was interviewed by Cormac Behan. He opens his book with this comment, which gets to the nub of the issue in terms of the impact on people in prison of political participation. Gavin, who was serving a life sentence when he was interviewed, said:

"Voting allows the prisoner to feel part of a wider community, something incarceration takes away. It also allows the prisoner to vote for and against changes which may affect his/her time in custody and upon release. I do hope that our vote is not a wasted one—if we are valued enough to be asked to vote, then I hope our wants, needs and requests are listened to. Being in custody takes away a large part of a person's feeling of self-worth, being allowed to vote gives back some of that lost feeling. This in turn will make better citizens",

or so he hoped.

Most criminologists would probably argue that enfranchisement is important symbolically, as Gavin expressed, but it is only the beginning. If we really want to support desistance from crime and

reintegration, much more practical effort to create more substantial forms of enfranchisement, engagement and participation is required. That is the thrust of Scottish penal policy at the moment, so the position on voting is inconsistent with the general thrust of our policy just now.

**David Strang:** An example of the collateral impact of a prison sentence relates to people trying to get employment after they have left prison. They have lost their liberty for four years, six years or whatever through the prison sentence and we talk about their debt to society having been paid, but the impact continues because it is much more difficult for someone to get employment if they have a criminal conviction and a prison sentence behind them. No one designed that, but it is a consequence and it goes completely against all the best practice of rehabilitation and reintegration if someone cannot get a job. It is not just an unfortunate consequence but a very damaging consequence.

**The Convener:** We are bumping up against the end of our time, but I invite Michael Clancy to come in.

**Michael Clancy:** I will not keep the committee long. Some of the discussion that we have had in the past few minutes has emphasised how important the right to vote is. There is sometimes a danger that we might forget what a struggle it was for people to obtain the right to vote. People in this room will know people who participated in that struggle, and it is important that we reflect on that. As citizens rather than as residents, we have a right to vote and participate in the democratic project that is determined by law. When we talk about having the right to vote, we must remember that everyone has the right to vote and that the act of disenfranchisement is an action of the state to remove that right. We should not forget exactly what that relationship is all about.

**The Convener:** I hope that everyone agrees that that is a good place to finish our evidence taking this morning. I offer grateful thanks from myself and the committee for all your evidence. You have given us some clear routes to pursue, which we will talk about in private session. We are grateful for your assistance in our inquiry. If you go away and think that you should have said or asked something, please get back in touch with the clerks, as the issue will be on-going for a while in the committee, because we have to come up with a resolution. Thank you for your participation.

11:04

*Meeting continued in private until 11:29.*



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