**Paul Johnson and Alistair Lexden**

**‘Turing pardons’ and the Army**

Since the turn of the century, legislators have been incrementally addressing the great historical injustices done to gay people in the UK. Between 2003 and 2009, the UK and Scottish parliaments enacted legislation to repeal centuries-old laws that criminalized consensual same-sex sexual acts between adults. In 2012, the UK government enacted legislation designed to ‘right historic wrongs’ by allowing gay men with cautions or convictions for now abolished offences to have them disregarded. The ‘disregard scheme’ applied first to England and Wales, and then in 2017 and 2018 was extended to Northern Ireland and Scotland respectively.

Perhaps the most significant way in which legislators have sought to right historical wrongs done to gay people is through the granting of posthumous pardons. The idea for this started with Lord Sharkey, who made two unsuccessful attempts to legislate, in 2012 and 2014, to extended the disregard scheme to offer ‘comfort and rehabilitation’ to families, relatives, friends and loved ones of those convicted who have since died. The government was not receptive to this, and Lord Sharkey turned his attention to obtaining a posthumous pardon for Alan Turing, as a ‘symbolic first step’ towards achieving the same outcome for all deceased men.

Lord Sharkey’s Alan Turing Bill received an enthusiastic reception in the House of Lords and achieved its third reading in 2013, at which point it was halted by the government successfully requesting that The Queen issue Mr Turing a posthumous pardon under the royal prerogative of mercy. Although this was widely welcomed by the public, there was also considerable support for the idea that all men convicted of abolished homosexual offences should be pardoned. As a consequence of this, the Conservative Party pledged in its 2015 election manifesto that it would introduce a new law to pardon men who suffered from ‘historic charges, even though they would be completely innocent of any crime today’.

As a result of this pledge, the UK Parliament, in 2017, enacted legislation that provided posthumous pardons for those in England and Wales, and Northern Ireland, convicted of certain abolished offences (principally, buggery and gross indecency) under law extending back to 1533. The Scottish Parliament enacted similar legislation in 2018 for those in Scotland. The legislation means that any deceased person convicted or cautioned for engaging in an adult, consensual same-sex sexual act is now automatically pardoned for the offence.

However, there is a significant problem with the pardons legislation relating to the armed forces. Whilst posthumous pardons have been granted to Naval personnel going back to 1661, pardons for Army personnel have only been extended back to 1881. This means that men serving in the Army prior to 1881, who were convicted of consensual same-sex sexual acts under military law, have not been posthumously pardoned like their civilian counterparts. A similar problem also relates to the Royal Marines.

This problem with the legislation was raised in 2016 during its passage through the House of Lords. Since then, we have raised the issue in a number of ways with the government, through written questions in the House of Lords, and letters to Ministers of Defence. The government acknowledges the problem, and states that there is a commitment to address it. However, three years on, soldiers convicted under military prior to 1881 still await their posthumous pardons.

The government states that one of the problems they face is the complexity of the legislation. We have some sympathy with this because, unlike in respect of the Navy, the way Parliament legislated for the Army prior to the late 19th century involved the enactment of annual ‘Mutiny Acts’, which saved to the Crown the authority to make Articles of War. It is under these Articles of War that men committing same-sex acts would most often have been punished. However, having carried out extensive research, we have provided the Ministry of Defence with a comprehensive draft of an amendment, listing all relevant Army and Royal Marine legislation extending back to 1688, which could be made to the legislation to rectify the problem.

We do not know how many gay men in the Army were convicted under military law prior to 1881 and how many should receive a posthumous pardon. This is partly due to the fact that publicly available records somewhat cryptically show Army personnel having been convicted of ‘unnatural offences’, therefore making it difficult to know precisely whether these involved consensual same-sex sexual acts. It is also the case that, where we have records of men in the army having been convicted of sodomy, we do not know the circumstances of the offences. However, like in the case of civilian offences, those Army personnel that were convicted of acts, that would now be lawful, deserve to be pardoned, so that any stain can be removed from their reputations and their families can be comforted.

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