



**Response of Unlock: The National Association of Reformed Offenders to the consultation produced by the Department for Constitutional Affairs:**

*'Voting rights of convicted prisoners detained within the United Kingdom-*

The UK Government's response to the Grand Chamber of the European Court of Human Rights judgement in the case of Hirst v. The United Kingdom'

March 2007

For further information contact:-

Bobby Cummines, Chief Executive  
[bobby.Cummines@unlock.org.uk](mailto:bobby.Cummines@unlock.org.uk)

Julie Wright, Deputy Chief Executive  
[julie.wright@unlock.org.uk](mailto:julie.wright@unlock.org.uk)

UNLOCK is unique and effective independent UK charity founded by ex-offenders. Unlock know only too well through bitter and sometimes painful experience, the effects of imprisonment and the barriers, discrimination and prejudices facing anyone with a criminal record. We understand the problems of ex-offenders and speak their language, having credibility *because* we have shared their experiences. Our track record is now proven and we are therefore able to act as a front line organisation, fighting for effective resettlement and equal opportunities on political, intellectual, moral and - importantly - *practical* levels.

**Vision: *Equality for reformed offenders***

“A society in which every individual, whatever their past convictions, is able to fulfill their potential through the enjoyment of equal opportunities, rights and responsibilities”

**Mission Statement:** Driven by the needs of former offenders, work to reduce crime by overcoming the social exclusion and discrimination that prevents people with convictions from successfully reintegrating into society.

Empower former offenders to break down barriers to reintegration by offering practical advice, support, information, knowledge and skills, and by acting as the voice of former offenders to influence discriminatory policies, behaviours and attitudes.

**Campaigns**

**Anti-discrimination Legislation:** Influence the relevant organisations to establish ex-offenders as a discriminated group, enshrined in legislation, on a par with Ethnic, Disability and Sex discrimination.

**Financial Inclusion:** Influence relevant organisations to recognise offenders in prison and in the community as a key financially excluded group which requires access to financial services, tailored basic financial capability training and one-on-one information, advice and guidance, separate from the option to study for vocational finance qualifications

**Centres of Excellence:** Establish a programme to create an alternative to prison for low-tariff offenders that focuses on Education, Training and Employment, as described in the UNLOCK: Centres of Excellence document.

**Voting for Prisoners:** Influence relevant organisations to ensure convicted UK prisoners are enfranchised and enabled to vote in line the European Court of Human Rights judgement (Hirst v UK Government) on voting rights for serving prisoners.

President: The Lord Ramsbotham GCB CBE

Chief Executive: Bobby Cummines FRSA

Deputy Chief Executive: Julie Wright LLB (Hons) FRSA

#### Trustees

Dave Smith (Chair)

Anthony Dunn (Secretary)

Paul Kyle

#### Patrons

Lord Corbett

Judge John Samuels

Baroness Helena Kennedy Q.C

Professor Andrew Coyle

Dr Phil Bayliss

Dr Sylvia Casale

Dr Deborah Cheney

Flo Krause- Barrister of Law

Anne Piggott OBE

Matthew Hyde

#### OFFICE CONTACT DETAILS

Telephone: 01634 247350      Fax: 01634 247351

Website: [unlockprison.org.uk](http://unlockprison.org.uk)

Address: 35A High Street

Snodland

Kent

ME6 5AG

Charity number: 1079046

Unlock are seriously concerned about the nature and direction of the present consultation and find that the emphasis is mean spirited, petulant and avoids the real issue of how the UK government should be implementing voting rights for all prisoners. Unlock has made the decision that it will take part in the consultation but would also like to lodge a formal complaint over the content and the process of the consultation. Unlock considers that the way that this consultation continues to be operated has been severely biased from the;

- 1) opening page of the consultation with a serious breach of ministerial and departmental duty and
- 2) inappropriate use of John Hirst's personal history as a tactic to ensure potentially offending public opinion.

Unlock will also be making a formal complaint to the Parliamentary Ombudsman and the Commission for Equality and Human Rights (CEHR) about the Department of Constitutional Affairs.

It was irresponsible of the Secretary of State for Constitutional Affairs and Lord Chancellor Lord Falconer of Thoroton, in his ministerial statement on the 14<sup>th</sup> December 2006, to express a view in his first paragraph which he should know is in direct contravention of the judgement in **HIRST v. UK (No.2)**. That is, that both the Chamber and Grand Chamber ruled that a right to vote is precisely a right and not a privilege as was argued by the government. It is irresponsible of the UK government to continue to pursue this stance as the European judgement was clear. The Department of Constitutional Affairs is responsible for justice, rights and democracy, and it appears to be abusing its Departmental and Ministerial public power by being economical with the truth. At the outset Unlock is of the view that this consultation is not open and above board and does not provide a proper and considered response to **HIRST v. UK (No.2)**. Therefore it makes it difficult to respond positively to something as the closed questions in the consultation process make that debate impossible. This calls in to question the motivation and honesty behind holding the consultation but also the level of procrastination and duplicity displayed by the UK government.

Ironically the UK were instrumental in allowing all prisoners in Iraq to have the vote as a measure designed to bring democracy to the area, whilst at the same time denying convicted prisoners the vote in the UK. This double standard reeks of duplicity and hypocrisy.

It is also a false statement to claim that a number of other Council of Europe States support the UK government in its erroneous view. The other Council of Europe States must do the same to comply with the judgement and their obligations under the Convention. Although South Africa is outside of Europe the Grand Chamber did examine the decision of the Constitutional Court of South Africa in **AUGUST AND ANOTHER**, and it noted:

“The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says everybody counts”.

The UK government continues to try to demonise and destroy the rehabilitation process and should take note that: -

“The present case highlights the status of the right to vote of convicted prisoners who are detained. In this case, the court would begin by underlining that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right of liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention” [**HIRST v. UK (No.2) paras. 63 and 69**].

Whilst it is true that on 2<sup>nd</sup> February 2006, the government committed to consult on the issue of voting rights for convicted prisoners, it took the UK government until the 14<sup>th</sup> November 2006 (a delay of 9 months) to publish a consultation document which it claims considers the principles of prisoner enfranchisement. However it excludes the principles upon which the Chamber and Grand Chamber applied in reaching their respective judgements, for example, the principle of universal suffrage. The Grand Chamber stated that Article 3 of protocol No. 1 of the Convention requires the government to ensure that the right guaranteed under this Article is not thwarted and must take positive measures as opposed to the negative ones it has so far chosen since the case was judged. The responsible position for the UK government to have taken would have been to fully meet the UK's obligations under the Convention. One of the benefits of the right to vote for prisoners as cited by the Chamber and Grand Chamber in **HIRST v. UK (No. 2)** is that it is an important means of teaching prisoners democratic values and social responsibility. Being irresponsible does not set a good example for prisoners to follow. The same applies for maintaining that the disenfranchisement of prisoners is a proper and proportionate punishment, when the government knows full well that the Chamber and Grand Chamber have decided otherwise. The UK government needs to stop

using the “Prisoners Right to Vote” as an issue of being seen to be tough on crime and move away from the intolerance and supposed negative public opinion which has surrounded this issue and look at the Convention system and rights which are the hallmarks of a democratic society. **The right to vote is a human right and not a privilege.** Therefore it is with a heavy heart that Unlock will try and respond to the closed questions of the consultation, whilst acknowledging the Department of Constitutional Affairs’ blatant disregard of the Grand Chambers General principles of:-

- i) Article 3 of protocol No. 1
- ii) Democratic principles
- iii) Universal Suffrage
- iv) Legitimate aim
- v) Proportionality
- vi) Margin of appreciation.

Question 1. **Do you support the proposal that enfranchisement of detained prisoners should be determined by reference to the length of sentence they receive?**

Comments: **NO- Unlock believes that all prisoners should have the right to vote.**

The circumstances of the case show that John Hirst was serving a discretionary life sentence for manslaughter, and the case had to go through an admissibility procedure to determine whether it was arguable. The case got through the admissibility stage as it was not believed that the length of sentence was an issue in the determination of human rights. Secondly, John Hirst was a post-tariff lifer, this meant that he was imprisoned for longer than the length of sentence for punishment and even the extra length of sentence did not count as an exclusion clause as far as the European Court of Human Rights were concerned.

Therefore the length of sentence should not exclude the right to vote.

The UK government keeps harking back to section 3 (1) of the 1983 Representation of the People Act, which bans all convicted prisoners from voting but the whole issue is that it is incompatible with the Human Rights Act 1998 and was unable to withstand the challenge from Article 3 of the First Protocol. The UK government needs to stop entrenching its position and move forward and give all prisoners the HUMAN RIGHT TO VOTE.

Question 2. **What length of sentence do you consider appropriate as the threshold above which prisoners will be disenfranchised? Please give reasons for the threshold you suggest.**

Comments: Unlock do not consider that the length of sentence is relevant to the principle of universal franchise, which is the principle adopted by the Grand Chamber in HIRST v. UK (No.2), therefore there should be **NO** threshold limit and the UK government should adopt the principle.

Question 3. **Should the decision to either grant or withdraw voting rights from convicted prisoners be made by UK sentencers on a case by case basis, at the time of sentencing? Please give reasons to support your view, e.g. if you do not believe sentencers should be given a power to determine voting rights, is this because you believe it would place an unjustifiable burden on sentencers?**

Comments: The decision to grant prisoners the vote must be made by Parliament. Exceptionally, there should be the power for judges to remove the vote on a case by case basis, where there is a clear link between the crime, the criminal and the democratic process. The Grand Chamber judgement provides examples where someone has “seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundation”. The Grand Chamber goes on to say, “The severe measure of disenfranchisement must, however, not be undertaken lightly and the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. The court notes in this regard the recommendation of the Venice Commission that the withdrawal of political rights should only be carried out by express judicial decision... As in other contexts, an independent court, applying an adversarial procedure, provides a strong safeguard against arbitrariness”.

**However Unlock’s opinion is NO and that there is no need for courts to consider the matter on a case by case basis if all prisoners are franchised.**

Question 4. **If the Government were to follow this approach, which variant do you favour?**

**(i) that statute should provide that convicted and sentenced prisoners should automatically lose their right to vote, but subject to the sentencing judge’s right to specify that they shall be entitled to retain that right.**

Or

**(ii) that statute should remove the general rule of disenfranchisement of sentenced prisoners, but should confer on sentencing judges the right to disqualify sentenced offenders.**

Comments: Because section 3 of the Representation of the People Act (1983), imposed a blanket ban on all convicted prisoners, HIRST deemed it to be incompatible with the Human Rights Act (1998) and mounted a legal challenge. The Chamber and Grand Chamber both decided that this was a breach of human rights. Therefore such a measure as another statute providing the same result would be incompatible with the Human Rights Act. Notwithstanding the inclusion of a provision allowing judges to specify which prisoners should be entitled to retain the vote.

The approach of the UK government seems to be trying to hold on to the political rhetoric of being tough on crime rather than looking at this from a democratic and inclusive position. The Grand Chamber stated: “the right to vote is not a privilege”. Therefore Variant (i) must be a non-starter, which only leaves variant (ii) leaving it to sentencers on a case by case basis, where exceptionally, the vote may be removed for the reasons stated in answer 3. **However Unlock’s opinion is that neither are appropriate and the general rule of disenfranchisement should simply be removed.**

Question 5. **Should offences specifically related to the electoral process automatically attract a withdrawal of the franchise? Please provide reasons to support your answer.**

Comments: This could be justified under article 3 of the protocol No. 1, according to the Grand Chamber as there would be a link between the crime and the offender and the circumstances. However, it should remain for the trial judge to determine whether to disenfranchise on a case by case basis. **However Unlock’s opinion is that even a crime trying to manipulate the electoral process should not have the franchise withdrawn. By retaining the franchise those who have attempted to manipulate the process would be constantly reminded of the importance of an inclusive, democratic process.**

Question 6. **Should any voting rights given to prisoners detained in mental hospitals be determined on the same basis as ordinary prisoners, or are there any categories (See Annex B), that should be treated exceptionally? Please list those categories and give reasons.**

Comments: The principle of universal suffrage does not permit disenfranchisement based on social status. All categories should be enfranchised and it should be up to a trial judge to determine whether to disenfranchise on a case by case basis. The UK government need to be careful not to apply an arbitrary blanket ban. **Unlock's opinion is that ALL prisoners should have the right to vote.**

Question 7. **If your answer to question 6 was no, do you consider that any categories of detained offenders in mental hospitals should be enfranchised?**

Comments: Unlock's answer to question 6 was YES. All categories should be enfranchised and it should be a trial judge to determine whether to disenfranchise on a case by case basis. The UK government need to be careful not to apply an arbitrary blanket ban. **Unlock's opinion is ALL PRISONERS SHOULD HAVE THE RIGHT TO VOTE.**

Question 8. **Should any of the circumstances covered by the statutory provisions referred to in Annex B more properly be aligned with the position of pre-conviction remand prisoners?**

Comments: Unlock can find no reason in any of the statutory provisions referred to in Annex B which lead Unlock to conclude that any prisoner should be denied the vote. **Unlock's opinion is that unconvicted and convicted persons in the categories set out in Annex B should be enfranchised.**