

# Procedure Committee

## Oral evidence: Sub judice resolution in the House of Commons 12 11 25, HC 933

Wednesday 12 November 2025

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Members present: Bambos Charalambous (Chair); James Asser; Sir Christopher Chope; Mr Lee Dillon; Gurinder Singh Josan; John Lamont; Mr Tom Morrison; Michael Wheeler; Sir Gavin Williamson.

Questions 40-61

### Witnesses

I: Sir Michael Ellis, former Attorney General, Dominic Grieve, former Attorney General and Sir Jeremy Wright, former Attorney General.

## Examination of witnesses

Witnesses: Sir Michael Ellis, former Attorney General, Dominic Grieve, former Attorney General and Sir Jeremy Wright, former Attorney General..

**Chair:** Good afternoon and welcome to this public evidence session of the Procedure Committee. This afternoon's session is the next in our inquiry into the sub judice resolution of the House of Commons. We are joined by several former holders of the role of Attorney General.

The Attorney General is the Government's chief legal adviser and, alongside other aspects of the role, maintains ministerial-level oversight of the Crown Prosecution Service. Our witnesses today are therefore well placed to provide us with some insight into the operation of the sub judice resolution within Government and in relation to the CPS, and with their views as current and former Members of Parliament. Good afternoon to you all. Before we begin, please introduce yourselves for the record.

**Sir Michael Ellis:** I am Michael Ellis. I was Attorney General in 2021 and 2022, and Solicitor General between 2019 and 2021.

**Dominic Grieve:** I am Dominic Grieve. I was Member of Parliament for Beaconsfield from 1997 to 2019, and Attorney General from 2010 to 2014.

**Sir Jeremy Wright:** I am Jeremy Wright. I took over from Dominic as Attorney General in 2014 until 2018. I am still a serving Member of Parliament.

Q40 **Chair:** The first question, as is tradition, is from me. Is the sub judice resolution clear? It needs to be comprehensible to Members of Parliament as they go about their daily parliamentary business.

**Dominic Grieve:** I think it is. Obviously, when I say that, I am always conscious that I am a lawyer. Therefore, if you are dealing with a layman, aspects of it may appear more complicated, particularly when it comes to, for example, how to operate the waiver or to get the necessary advice as to how the waiver might be applied. However, if you are asking me as a generality, "Does it make sense?"—as it presumably made sense in 2001, when it was drafted, which I had no role in—the answer is yes. As I am happy to amplify in due course, it is essential that there should be such a rule and, on the face of it, nothing in it immediately springs out at me to make me think, "Well, that is no longer fit for purpose in some way."

**Sir Michael Ellis:** The rule is clear to lawyers, but I fear that it may not be so clear to Members of Parliament. My concern would be that it is not really a rule that is susceptible to easy definition, because rather like self-defence, what amounts to sub judice really depends on the facts and circumstances of any individual case. One would need to exercise discretion accordingly. A Member of Parliament, however, may be concerned that they are going to get into some difficulties and might be overly self-restrictive. Although I agree with Dominic that the rule as laid



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out in 2001 is fine and comprehensive to lawyers, I would be concerned that MPs are sometimes overly restricted or feel overly restricted.

**Sir Jeremy Wright:** I am conscious, Chair, that you do not want us all answering every question, but the only thing I would add is that I think it is clear in the sense that it is clear when it starts and when it stops—it sets that out with clarity. The only thing that makes it unclear, aside from what my colleagues have already said, is that it allows the Speaker some discretion. That means that it might not apply in the way that it is set out to apply normally. As we might get on to, however, I think that that discretion is important, so I would not argue against it—it is important that it is there—but if your simple question is about clarity, then aside from what has been said, what diminishes its clarity is that it might not in fact be applied, because the Speaker has exercised his or her discretion for it not to do so, either in total or in part. We had an example just yesterday, in fact. As I say, I think that that is a good thing, but it probably does dilute its clarity somewhat.

Q41 **Mr Dillon:** Afternoon, gentlemen. Sir Michael, I will start with you, because you just referenced part of this question in your previous answer. Have you ever felt that the sub judice resolution was too restrictive and prevented you personally from making contributions to parliamentary proceedings? I am happy for you to expand on other Members feeling it is too restrictive as well.

**Sir Michael Ellis:** I did not find that it prevented me from making submissions during my 14 years in the House, so I did not encounter that personally, but that is slightly different from Members of Parliament generally. I had been in legal practice for 17 years before coming here, so looking at it more globally, in my view, the rule as it has been perceived has become too restrictive. I say that because—I am thinking particularly of the Southport example earlier this year—there is a perception that is being over-egged.

Frankly, I think that MPs are sometimes more restrained in what they can say than members of the public might be, because members of the public are covered by the Contempt of Court Act 1981, which is a piece of legislation that stems from the common law. Basically, in order to be covered by the Act, you have to do or say something that creates a substantial risk of serious prejudice. There are two very strong words there, and the Act is not often applied.

In Parliament there is a concern—I only left Parliament last year—that it applies where it does not actually apply. So there is a difference here between the actuality and the perception. My concern would be that there is a risk aversion here. People feel it is impacting on free speech because officials can be risk averse. I think the pendulum has swung too far in one direction.

I do not want to go on too long, but I would just say this: the mischief that the rule is supposed to address when you boil it down is about jury contamination. It is not to contaminate a jury by giving them the



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impression that a certain state of affairs exists—guilt or innocence or whatever it might be. I fear that now we are starting to see this mission creep, where sometimes people perceive that they cannot say anything, even if a jury is not involved, or if a case has been resolved, or if it is before the Court of Appeal or might be before the Court of Appeal. This rule was never really designed to interfere with that aspect of it, because judges are more than capable of ignoring things that they hear in the House of Commons—

**Sir Gavin Williamson:** So are the public.

**Sir Michael Ellis:** Yes, but that is where there is a difference between the actuality and how people are perceiving it and feeling overly restrictive.

Q42 **Mr Dillon:** I sit on another Select Committee, the Housing, Communities and Local Government Committee, and yesterday we had a sub judice ruling from the Chair because of a case going to appeal, which touches on exactly your point. Before I bring in Dominic and Sir Jeremy, did you ever approach the Speaker to discuss potential justifications for issuing a waiver where you had concerns that it was too strict?

**Sir Michael Ellis:** I can answer that quite simply: no, not in my time.

**Dominic Grieve:** I will deal with that last question first. I have no recollection at any time in my time as Attorney General of either waiver or there being some significant problem where there was a sense from the Crown Prosecution Service or anybody else that, "Goodness, Parliament is running away with itself and this is all out of control. There is some terrible problem taking place." I simply have no recollection. And I would remember because it would be a quite notable moment. There was an issue over super-injunctions, which is a separate issue, although it has a relationship. So I do not remember that.

I differ very slightly from Michael on this point. There are two reasons for having this rule. One is about comity. Ultimately Parliament is a court, and there are other courts in the land that deal with other things, including criminal and civil justice. They are ultimately the creation of this Parliament, because we have passed the Supreme Court of Judicature Act and all sorts of other things. For Parliament to be seen to be interfering or second-guessing or commenting on active criminal, but also civil, proceedings is an undesirable thing to happen because it has the capacity to subvert justice. It is not just about juries. It is about, for example, if Members of Parliament were expressing very strong views about some piece of civil litigation and saying that one side in the matter was damnable. Then anybody who might be a witness being called for the damnable might think that it was not in their own best interest to tell the truth, because it would invite or attract opprobrium, including opprobrium in this House or from Committees. So I think it exists to maintain that comity, as well as to ensure that justice can be delivered.

Obviously, I agree that there are different issues arising in criminal justice and civil justice proceedings. In criminal justice proceedings it does have



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the capacity of creating chaos, just as commentary by the press that is in breach of the Contempt of Court Act can lead to cases collapsing. That is what happened with the Levi Bellfield case—it collapsed. When I was Attorney General, I was actually very concerned about that issue, so I made it part of my business to try to ratchet the media back into line. My predecessors had in fact abandoned this, so I brought a number of quite high-profile prosecutions against *The Mirror*, *The Sun* and the *Daily Mail* for contempt of court because their coverage had gotten sloppy. It had the desirable effect—I was thanked afterwards by their legal advisors for providing a framework. That illustrates some of the issue.

I don't want to labour the point. I appreciate that because of the waiver there is a grey area on which you can go and get advice from a Clerk or the Speaker. The waiver is vital—of course it is. You don't want to close down legitimate parliamentary debate just because there is a criminal investigation. If there is a terrible pollution incident that is due to somebody's fault, you do not want to be in a situation in which you cannot ask the Minister what is being done to ensure this doesn't happen again, so of course that's there, but it is inherent. Let me put it this way: I would need some persuasion as to how you alter the terms of the waiver, apart from possibly changing the guidance that might be issued to MPs as to how they go about operating the waiver. I would need some persuasion that the current framework is wrong.

**Sir Jeremy Wright:** As would I. Between us we cover about a decade's worth of being in the Attorney General's Office, and I have no recollection of any incidents. Because I don't trust my own recollection, I went and asked the Attorney General's Office to check, and there was no such incident in the four years I did the job, so I don't think we are presenting you with evidence that there is a fundamental problem here that has arisen so as to make us, as Attorney General, have to go and speak to the Speaker about it.

That does not mean that, as Michael was saying, people aren't self-censoring because of their perception of what this means, and are therefore not saying things that they could actually quite properly say within the confines of this resolution, but I wouldn't change it either. What I would do is think about the discretion it gives to the Chair, which is set out at the very beginning of this resolution, and then what has been referred to as the waiver, which comes later and sets out the circumstances in which the rule might not apply.

The clearer we are about the sorts of things that might entail the better, but in the end, discretion has to be just that. If you try to set out every conceivable scenario in which you might exercise discretion, it is no longer discretion. To some extent, we have to trust the Speaker to decide what the appropriate approach is. That is the way in which the resolution is currently drafted, and it is probably the right balance because it is very hard to anticipate every conceivable circumstance.

**Mr Dillon:** I think we will come back on to that in later questions.



**Q43 John Lamont:** Good afternoon, gentleman. Sir Michael, you mentioned the Contempt of Court Act and how the liability on the assessment is slightly different in that it is about if a statement could substantially prejudice a case, as opposed to preventing any commentary at all. It has been suggested to us that the language of the Contempt of Court Act should be used for the sub judice resolution as well. You and Jeremy touched on it earlier, but do you think there is a case for following the language of that Act?

**Sir Michael Ellis:** I think there is a case for it. I am not actually arguing for a change to the rules as the Commons currently has them, but I am very concerned about the interpretation of them and this mission creep aspect. The advantage with the Contempt of Court Act outside is that the test is actually quite high. Substantial risk of serious prejudice—or even a minor risk of serious prejudice—wouldn't meet that criteria.

There are two other relevant aspects here that seem to be rarely mentioned. When Members of Parliament wish to mention a case, such as the Southport disorder examples, that is usually very proximate to the incident that has occurred. Whereas, a court case, if it is contested and there is a not-guilty plea, is likely to conclude many months or—sadly, now—years later. It can be two or three years before some cases are litigated.

That is a relevant factor, because if an MP makes a comment in the Chamber on the week of an incident, and it is two or three years later before the matter gets to court, that delay is relevant to the likelihood of prejudice.

The other point is that trial judges—I did criminal law for many years—give very assiduous warnings to the jury, and that should not be ignored. Nowadays, both before a case starts and when the case is summed up—the judge's summing up is very thorough—the judge will warn the jury that they should ignore anything they have heard on the outside, particularly in a case that has attracted attention. That warning is very carefully given. When you put those two facts together—the delay and the warnings given to the jury—the risk of prejudice from something that an MP said two years previously in the House of Commons is minimised further. So, if anything, we should interpret it more tightly than it is currently being interpreted.

**Sir Jeremy Wright:** I agree with part of that, but not all of it. It is certainly right, as Michael says, that the risk of prejudice diminishes over time, but there is a distinction to be made between the Contempt of Court Act process and sub judice in the House, which is that there are very significant penalties attached to the Contempt of Court Act. If you are found to be responsible for contempt of court, there are penalties that apply to you. With the exception of being told off by the Speaker, there are not such obvious penalties under the sub judice approach. I do not think there is a lack of reason for the distinction in wording. The fact that we have a higher standard to meet to be responsible for contempt of court is because there are penalties attached if you are responsible for it.



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We also have to recognise that, at the moment, the period of time that you are restricted from speaking about something under the sub judice resolution in the House is the period when the case is before the court. Although Michael is right that the court case may take a long time to come on, if that is the case there is a long period before it does when the sub judice resolution does not apply.

However, there is another interesting question to be asked in connection with that—the Committee will perhaps not get into it—which is whether there needs to be some other form of guidance, or even restriction, on people speaking about something that may come to trial but has not yet got as far as a court proceeding. The prejudice point still applies to that, although less so. If you are going to start talking about individual perpetrators, even before they have reached a courtroom, there is potential jeopardy there too.

I would simply say, specifically in relation to the sub judice resolution, that it is very clear when it starts and when it stops. That means that there is a period before it starts when you are not subject to it as a Member of the House of Commons.

**Q44 John Lamont:** Would that be at the point of arrest or the point of charge?

**Sir Jeremy Wright:** At the moment, it says, “Criminal proceedings are active when a charge has been made or a summons to appear has been issued,” so arrest doesn’t trigger it. We might want to consider whether that is the right starting point, but as things stand, there is likely to be a period of time immediately post incident when the sub judice resolution doesn’t apply. That doesn’t, in my view, mean that we should not exercise some self-denying ordinance to make sure none of us says things that might prejudice an emergent prosecution. At the end of the day, we would be horrified to think that condemnatory comments that we may want to make as Members of Parliament on something would undermine the prospect of the individual we are criticising being held to account in a criminal proceeding.

**Dominic Grieve:** Two thoughts. The first thing is to remember the power of Parliament and its privileges, including in its reporting. When I have prosecuted newspapers for contempt of court, the classic defence is, “Oh, well, perhaps we shouldn’t have said that, but it is such a long time to the trial and everybody will have forgotten about it.” Of course, it is right that if the newspaper had repeated the same thing two weeks before the trial took place, they would be bang to rights. If you, as Members of Parliament, decide to debate something at the time of arrest, there is nothing to prevent that from being reproduced two days before the trial takes place. That is the privilege of being able to do *Hansard* reporting. That is one point you might like to keep in mind, because it is, in fact, a distinction. Although you might think that it is a long time before any proceedings take place, the Contempt of Court Act does not apply to you, very properly, in Parliament, and you could find that those words were simply being republished. I think it would be difficult to prevent that.



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The other thing is about what happens between arrest and charge. This has always been quite a difficult issue, even outside of Parliament. Of course, there has been one significant change since 2001: the identity of people being arrested is no longer being publicised as it was, and that is about human rights violations. There may be an argument that, actually, the contempt of court rules need only kick in at charge. However, I certainly would not be advocating that you change your Standing Orders and the sub judice rules so that you take it back to arrest. I do not think that is necessary, but I just highlight the fact that there has been that change in practice. On the whole, we are not hearing about who it is that has been arrested, and the first time we ever hear about it is on the day they appear in court.

**Sir Gavin Williamson:** We all have ministerial experience—

**Mr Dillon:** Not all of us.

Q45 **Sir Gavin Williamson:** In time, I am sure. We have all seen how so many decisions are made outside of a ministerial body—the Department itself—through bodies such as regulators and external agencies. Do you think the sub judice resolution needs to contain an exemption for these bodies as well? Obviously, we can question a Minister, as in the example that was brilliantly raised, if an incident has happened, and you want to know what is happening there. Do you think there needs to be an exemption from the sub judice rule to cover those arm's length bodies or non-ministerial Government Departments?

**Sir Jeremy Wright:** Do you mean to cover decisions that they make on which we as parliamentarians might want to comment?

**Sir Gavin Williamson:** Yes, that's right.

**Sir Jeremy Wright:** The way I read the sub judice resolution is that it is designed to prevent the corruption or undue influence of legal proceedings when they begin. Frankly, I think that would apply to whichever route is taken to reach legal proceedings. I think, probably, what you are concerned about is already covered.

The issue may be in the language that is used for the waiver. Even then, I think there probably is enough flexibility to allow for what you are describing. It says, "where a ministerial decision is in question", which obviously would not cover your point, but then it says, "or in the opinion of the Chair a case concerns issues of national importance such as the economy, public order or the essential services". In those circumstances, whether the decision in question was taken by a Minister or another body, you would still be entitled to ask for that waiver to apply.

Subject to what my learned friends believe, I do not think that the situation you are describing needs any further adjustment in the wording, because it seems to me that you would be able to get it within the confines of what is already there.



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**Dominic Grieve:** I agree with that; it seems to me that it is already covered. It ought to be possible, in those circumstances, for the waiver to be applied, if you were asking those questions on those issues.

**Sir Michael Ellis:** I would be very concerned about any expansion of sub judice to regulators, quangos and the like. That is of principal importance to me, because this self-imposed ordinance on parliamentarians is already becoming unnaturally restrictive and affecting the impression of free speech. I would not want to expand that in any way, shape or form.

I am thinking particularly of an incident earlier this year where IPSO, the regulatory body for the press, made a ruling against the *Telegraph* about a speech that was made from the Dispatch Box in the House of Commons, and found the *Telegraph* in breach of IPSO's code of practice for editors. At the time, I criticised that publicly because I felt—I was not the only one—that that was serious interference in the reporting of proceedings in Parliament. It was almost unprecedented—

Q46 **Sir Gavin Williamson:** Sorry to interrupt. Do you think it would be useful for clarity to be given to such bodies that they should not try to restrict reporting of Parliament?

**Sir Michael Ellis:** To be fair, IPSO deny that they were trying to do that, but yes. To find a newspaper responsible for a breach because they have reported the words of a Minister from the Dispatch Box in Parliament is prima facie an interference in the reporting of proceedings in Parliament. At a time when we are seeing more and more overreach by quangos, regulatory bodies and so on, the principal thing to remember is, would the House want to expand that reach even further?

**Dominic Grieve:** To be clear, I misunderstood the question: I was looking at it from the other angle, which is asking questions towards such bodies. I cannot think of a good reason why quangos should have that protection. This is a protection for the House of Commons—this is your protection, and it goes with your privilege. That is what it is all about.

**Chair:** We want to focus on the Commons, and on what the effect is. Obviously, we do not have any control over what is decided by outside bodies or quangos.

**Dominic Grieve:** Indeed. I am rather sympathetic to the point. It is quite extraordinary if IPSO criticised the *Telegraph* for publishing a bit of Parliament—

**Sir Jeremy Wright:** Indeed, but there is nothing, as far as I can see, in the sub judice resolution that prevents anybody here from criticising that quango for acting in that way. The restriction is only in relation to judicial proceedings, and the activities of IPSO are not judicial proceedings.

Q47 **James Asser:** My question follows on neatly from some of your answers. In earlier evidence sessions we heard that it is ultimately for MPs to police themselves to avoid breaching the sub judice resolution and that, by and large, they manage to do so. Indeed, we have referenced a couple of high-



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profile examples of that in the last two weeks. What are your views on self-regulation?

**Dominic Grieve:** It is vital. You have to self-regulate. Nobody else is going to regulate you. Indeed, if you were to be regulated by somebody else, that thing called parliamentary sovereignty and your privileges would be ruthlessly undermined. I certainly would not recommend that that should be the case. You cannot have outsiders telling you how you should regulate yourselves on this matter.

**Sir Michael Ellis:** I agree 100% with that. My concern, as I have already expressed, is that Members of Parliament might overly restrict themselves in an abundance of caution.

**Sir Jeremy Wright:** I do not have much to add. The reality of this job is that you subject yourself to the judgments of the Chair. Control is in the hands of the Speaker or of the Chair of whichever Committee the proceedings are taking place in. It is up to them to decide whether the sub judice rule applies and, generally speaking, to say so before the debate begins, and then to decide whether, in their discretion, it should not or whether the waiver should apply.

As Members of Parliament, I think we are saying that, essentially, we will accept that. We do not have to, and if we misbehave, we know what happens. Disciplinary proceedings are available for our conduct in the Chamber or in a Committee. But, as Dominic says, in the end this comes back to parliamentary sovereignty and self-control. We all need to recognise that there is a good reason for this resolution, which the House has imposed on itself, of course, because only it can. It has said to itself, "We ought to do this because there is good reason for it, and if we fail to on an individual basis, the Chair is entitled to remind us of that." But in the end, this is a self-sanctioning mechanism because we are the only ones who can sanction ourselves.

Q48 **Mr Dillon:** Sir Jeremy, you sit on the Panel of Chairs. Did the Panel of Chairs, or Select Committee Chairs, have training on sub judice, to be able to make that decision?

**Sir Jeremy Wright:** That is a very good question. You are sitting next to Sir Christopher, who has been doing it for a lot longer than I have. The answer specifically is, I do not think so, but that is likely to be because this hardly ever occurs, and certainly not in Committee proceedings. Of course, the Panel of Chairs will chair either statutory instrument proceedings or the Committee stage of Bills, and I suspect that, if the issue was going to arise, it would have arisen by the time the Bill got to Committee. It probably would have been dealt with by the occupant of the Chair in the Chamber before it came to Committee. I have not been doing this long enough for it to have occurred to me. I do not know if it has happened to Sir Christopher or to anybody else on the panel, but I do not recall specific training on it. I might be doing the Administration a disservice because I just cannot remember being told, but I do not recall it.

**Chair:** My understanding is that legislation is exempt from the resolution.

**Sir Jeremy Wright:** That is true, but I suppose it is conceivable that somebody would none the less, in the course of debate, choose to talk about a case that is sub judice.

Q49 **James Asser:** The point you made about over-self-regulation is interesting. In the case we had last week, where we had a statement on a live criminal case, Members felt a lot of pressure in terms of what they needed to ask for their constituents, but they were also concerned about not breaching the rules. That takes me quite neatly to my next question. The role of an MP, and the pressures on them, has changed quite significantly, particularly with the changing media and social media landscape. What MPs are expected to comment and touch on is much broader, and the range of events is much broader than it used to be. Often, there is an expectation of comment in live time. What effect, in your view, has that had on the operation of the sub judice rule, and do you think the rule should be updated to try to take that into account? If so, how could that be done?

**Sir Michael Ellis:** I do not think that social media has made that much difference. I certainly agree that Members of Parliament are under ever-increasing amounts of pressure from different quarters, but I do not necessarily think that that means they are obliged to comment on cases that may be in progress.

What I do think has put pressure on is an overreach, as I perceive it, of the judiciary in certain cases. If I may, I will give another example from this year, which rather alarmed me. I think it was in about February this year when the Lady Chief Justice criticised the Prime Minister and the Leader of the Opposition for an exchange at Prime Minister's questions over a court case. The court case had concluded, and it did not even involve a jury, but there was criticism of both the Prime Minister and the Leader of the Opposition. The Lady Chief Justice took it upon herself to criticise both those Members of Parliament, which I thought was an extraordinary overreach and, frankly, an improper intervention. Prime Minister's questions is a very important part of the proceedings of this place, and it is part of the privilege of Parliament. For a senior judge—the most senior judge—to intervene in that way has a chilling effect on the right of Members of Parliament to speak freely. Strictly speaking, it was not sub judice, because I think the case had concluded, but there was nevertheless criticism from a very high quarter of two of the most senior Members of Parliament.

If you are looking at this in context, part of the problem is that there are elements who feel that the judiciary ought not to be criticised in any way, shape or form. They are not above criticism. The sub judice rule is not about protecting the judiciary from all forms of criticism; it is about protecting the sanctity of cases to ensure that people are tried fairly, particularly in criminal cases. That is an example of a chilling effect that can be caused, and it is quite damaging.



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**Dominic Grieve:** I have just a couple of points. If you choose to do social media, you are not protected by parliamentary privilege—unless, I suppose, you are posting what you have said in the House of Commons—and you could be prosecuted for contempt of court. In the context of contempt of court, social media is undoubtedly a serious and significant problem, and there is no point in pretending otherwise. Of course, the mainstream media would argue that this has created problems for them because, as a consequence of their trying to compete with social media, they want to say more, because otherwise it is going to be said on social media.

As you will be aware, we have at times prosecuted people under the Contempt of Court Act for their social media posts. Particularly, we have done prosecutions where there have been court orders that are being violated. That has happened. I accept that social media, and the way in which information is now being generated and circulated, places a greater burden on MPs. I never tweeted when I was an MP. Apart from a website, I had no social media presence at all; I think you could get away with that then, and I accept that it may be harder to do now.

You do have to exercise self-restraint if you want to maintain that comity—I will come back to that in a moment. Ultimately, you are responsible, as MPs, for a properly functioning justice system. If we were ever to have an occasion—I can see that this could happen, despite the Bill of Rights 1688—where comments made in Parliament were deemed as reported to be of a nature, or to have generated further comment, such that a fair trial became impossible and got binned, and the judge said it could not take place, we would be somewhere I really would not like us to be. That is a very remote possibility, but it is not a good idea.

I will not comment on the Lady Chief Justice's comments, except perhaps just to say this: that was not about privilege; it was about comity. It comes back to this point. The judiciary are there to do a job. They are there because it has been ultimately willed by Parliament and the Government that they should do that job. They are certainly not immune from criticism, and certainly not immune from criticism from MPs. But it has been the custom, historically, that unless you choose to remove a judge by a resolution of both Houses of Parliament, the Government do not go around criticising judicial decisions—although we have seen examples of that happening, particularly in cases that have concerned Government. It is not an absolute rule. I suspect she was simply trying to make—whether she was right to do it is another matter—a rather more general point.

**Sir Jeremy Wright:** Just to follow on from that, it is absolutely a judge's responsibility to decide whether, in a case they are trying, a fair trial is possible. If a fair trial has been prejudiced by something that someone, even a Member of Parliament, has said, then it is absolutely not just the opportunity but the responsibility of the judge to say, "In that case, I have to act accordingly."



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This goes back to the point we have been making. It is up to us to exercise some caution and responsibility and to recognise that we do not want—I would hope—to prejudice proceedings. Therefore, doing so because we are incautious and careless is to be avoided. This is there to help us do that; that is what the sub judice resolution is for.

The answer to your original question—as the only witness still subject to these pressures, as you are—is yes. Absolutely, the pressures are greater—no question. The demands of the 24-hour news media, as well as social media, mean that we are all being invited routinely to make immediate comment on everything. That does not mean that we have to accept the invitation, and the sub judice resolution is a helpful reminder that there are reasons why we might want to decline.

I take Michael's earlier point that we could be talking about a substantial delay, but we are talking about delay rather than prohibition here. The sub judice resolution does not prohibit you from speaking about material that is subject to trial; it just delays the point at which you can until the trial process is over. We might have another interesting conversation as to whether that point should be as late as it is set out in the resolution, though again I would say that the discretion here is sufficient to protect us from any adverse consequences of that.

In the end, we are being told that you have to wait—you might have to wait a long time, but you are right to speak about this. It is not being banned altogether; it is just being moved in time to a point at which you do not prejudice other proceedings, for all the reasons Dominic gives.

**Q50 Gurinder Singh Josan:** In your time, when you held the position of Attorney General, can you outline how you interacted with the sub judice rule?

**Sir Jeremy Wright:** As we indicated earlier, I think the answer to that is very little. It is very different when you are talking about contempt of court more broadly, but if you are asking about the specific workings of the sub judice resolution in the House of Commons, I do not think I had a single occasion where I was obliged, as Attorney General, to deal with it directly. That does not mean that I did not feel, as a Member of Parliament, that I ought to be wary of it, but not as Attorney General did I have to intervene in order to uphold it—or complain about it, for that matter.

**Dominic Grieve:** I certainly did not. I can recall a few occasions when I might have been stopped in the corridor by a colleague saying, "Can you explain to me what this is all about?" and I would have done so. Actually, that is—dare I say it—one advantage of having the Law Officers in the House of Commons: we are available for that purpose.

**Sir Michael Ellis:** Free and independent legal advice.

I can confirm that I also had no such experience in my time. I did, as Sir Jeremy was saying, outside the Commons—there were issues of the press



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and so on—but that is a different question. But if you are asking about in the House of Commons, I had no such experience.

**Q51 Gurinder Singh Josan:** Can you recall how closely your officials worked with House authorities on sub judice matters?

**Sir Jeremy Wright:** Again, the same would apply. Essentially, the thing about the Attorney General's Office is that it is broadly a reactive department, not a proactive one. If somebody came to us with an issue, we would absolutely have been engaged as Attorneys General, but we would also have engaged our staff in the Attorney General's Office. I do not think there were any such occasions in my time.

**Dominic Grieve:** Just to emphasise, there is no difficulty in communication between the Attorney General's Office and Parliament. There were a couple of occasions when I was Attorney General when I provided advice to Parliament. This may come as a surprise, but as long as there is no conflict of interest with the advice you are providing Government, Law Officers can be asked to advise Committees. There is a well-established channel of communication between the Speaker and the Speaker's Counsel. If there was any need to consult the AGO, it did not have to be through us personally; it would come via the office.

**Sir Michael Ellis:** I can briefly say the same: I do not think my department at all during my time, or as Solicitor General for that matter, had liaison with the Speaker's Office on this topic.

**Q52 Michael Wheeler:** Turning to prejudicing a trial, given your experiences as Attorneys General, in what circumstances do you think that comments in the House could prejudice a trial and lead to it being abandoned? Did this ever happen, or come close to happening in the past, to your knowledge?

**Sir Jeremy Wright:** Again, I think I can say I do not think it did happen, and I do not think it even came close to happening in my time. There is a distinction to be made between the application of the sub judice rule and contempt of court proceedings, where certainly things did happen that required our intervention—sometimes by way of warning, by the way; it is not always necessary to take people to court in order to deter them from behaving as you would not wish them to. That certainly did happen, but in relation to the sub judice proceedings, no.

On the other part of your question, essentially what we are concerned about here is that the tribunal of fact, whether it is a jury or a bench of magistrates—more often a jury, given the nature of the proceedings we are usually talking about—might be unduly influenced by something they hear outside the courtroom. What is always said to a jury in a criminal trial is, "You must decide this case based on what you hear in the courtroom and nothing else. Do not go away and Google things. Do not do your own research. Do not visit the site of the offence, just to see what it looks like to you, without everyone else being present." That is always said to a jury, and for good reason.



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It is important that both sides of the argument, and everyone else involved in the process, know what everybody has heard. Therefore, I think that we are seeking not just to avoid things being said that might push the jury one way or the other, but to avoid anything that might influence a jury that they have not heard in the courtroom being presented properly in evidence to them.

Beyond that, of course, we are keen to make sure that people have not said things that would make it hard for a jury to decide openly and fairly on guilt or innocence. Suggesting that somebody is clearly guilty from somewhere as authoritative—I say this seriously—as the House of Commons is important. You don't do that, because you do not want members of the jury to think, "Ah, well, I've heard it said in Parliament that these people are guilty, so I have to decide accordingly." That is really important to the integrity of the trial process.

That is what we are seeking to avoid here; I think most of us would want to avoid doing that. As I say, I think the sub judice rule is really a self-imposed restriction, so that we keep ourselves away from that danger.

**Dominic Grieve:** I agree entirely with that. It is worth bearing in mind that the biggest problem—I am not thinking so much of the sub judice rule as of contempt of court—is, for example, where there is a terrible case of a murder taking place, then a person is arrested and very quickly information gets out that they have committed a similar offence in the past, or that there was a long pattern of behaviour that should have alerted people to the fact that this person might constitute a serious risk. Although it is possible that that might be admissible at the trial, it is equally possible that it might all be kept out. Then you get the media talking about it, or you get parliamentarians very understandably wanting to talk about it, and that is where the sub judice rule stops that from happening.

Of course, that does not mean that when the trial is over there may not be all sorts of questions that you will want to ask the Minister in Parliament: "Why did the police not do this? Why did social services not do that? Why did mental health at the NHS push this person out on to the street, and then they went and stabbed somebody five minutes later?" These are all matters that we have seen coming out in recent cases. But because you do not know until the person has pleaded guilty whether they are going to plead guilty or not, and because our rules are rightly so tightly drawn, so that people are not convicted on the basis of prejudicial material that is not related directly to the offence—sometimes it can be admitted, but not always—that is why the rule for criminal cases is there and why it is so important.

**Sir Michael Ellis:** I agree with my learned friends' answers, but I would add one point, because I think it is quite instructive. If I heard you correctly, you asked if there has been a case that has collapsed due to something said in the Commons—

Q53 **Michael Wheeler:** Or come close to collapsing.



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**Sir Michael Ellis:** The answer to that question is, "Not that we are aware of"; I think I am right in saying that. That itself is instructive on my point about the over-interpretation, or the self-restriction, that MPs sometimes put themselves under.

Despite all the cases that take place every year over many years, I am not aware—I did look into this before this hearing—of a single case that has collapsed because of something that has been said in the House of Commons. There are examples of cases that have collapsed because of something said outside of the House of Commons, but not because of what has been said here. Bearing in mind how many tens or hundreds of thousands of cases that there are, I think that is quite instructive.

However, I also want to emphasise that I think the rules should apply much more strictly to juries. As Dominic says, there are ways of fatally harming a criminal court trial in front of a jury; referring to antecedents is one way of doing that and in many cases the jury should not have that information. There are ways of doing that. It would all have to be looked at in the context of the individual case. In that sense, it is helpful to say that there have been no such examples.

Q54 **Michael Wheeler:** Okay. I think I know the answer to this question, as you have all alluded to it, but I want to quickly confirm something: do you think the risks of prejudicing a trial are higher in certain cases—for example, jury trials—than in other types of cases?

**Sir Michael Ellis:** Much more.

**Dominic Grieve:** Massively so. In terms of the risk of prejudice in civil proceedings, I think judges are robust enough not to be influenced by what people say. But the point was made earlier that if a climate is generated, particularly in Parliament, which is a very important body, saying that a party to civil proceedings is effectively bad, witnesses who might otherwise say something contrary to that might be deterred from doing so. One has to bear in mind that it can have an impact on civil proceedings, but I accept that it is likely to be much more subtle and rather different.

**Sir Jeremy Wright:** It is probably worth restating Dominic's earlier point about comity. There is a reason that judges are undoubtedly more robust than juries. It is not about judges being clever and juries not; it is about their experience of determining what evidence is relevant and what is not. That is what we train judges to do; they do it every day. They can discount things that they do not think are relevant more easily than juries can. However, there is still the point that intervention by the Houses of Parliament in the processes of a court is undesirable. We should say that anyway, even if we do not think it is likely that a judge would be influenced by what we say.

There is perhaps one caveat to that: it probably can and should affect the exercise of the Speaker's discretion. The case of Nathan Gill was specifically mentioned by the occupant of the Chair in the Chamber



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yesterday. The determination was made that because that case had moved past trial—guilty pleas had been entered and we were into the sentencing stage where it was a decision purely for a judge and not any longer for a potential jury—it was easier to allow commentary because the risks of prejudice were lower. Therefore, although I should not want to allow people free latitude to say whatever they wanted just because only a judge was involved, I do think that when the occupant of the Chair is making a decision about when to exercise discretion, that is a relevant consideration.

**Sir Michael Ellis:** The risks are massively higher for juries than in other parts of the court process. My concern is that we are starting to see the application of this rule in magistrates court cases, cases being dealt with by a single judge, cases that have been concluded and are about to go off for sentence, and cases that are about to or might go for appeal in front of three very senior lords justices of appeal. In those sorts of cases, the risk of effective interference is absolutely minuscule because, as my learned friends have said, the judiciary dealing with a criminal trial will have 30 years of experience in most cases and certainly will not be swayed as to guilt, innocence or anything else by what is said here.

Dominic mentioned—quite rightly, if I may say so—civil proceedings. I am aware of an effect on civil proceedings—not from this House, but from the House of Lords. There was an injunction and a Member of the House of Lords made a comment about that injunction. That is slightly different but again, one would have to look at that from the point of view of the Chair, at least in the House of Commons. I realise that this Committee deals with the House of Commons only. There are examples where that has happened, but the lack of frequency of it being a problem tells you how rare an actual problem will be.

Q55 **Michael Wheeler:** Finally from me—honest—is there a difference between passing reference to a case and its particulars, and continued and repeated reference to and discussion of the arguments that might be made in a case?

**Dominic Grieve:** Yes, clearly.

**Sir Jeremy Wright:** One is worse than the other.

**Dominic Grieve:** One is likely to be much worse than the other. These are very difficult areas. Parliament is entitled to express its view, and Back-Bench MPs particularly so. The fact that you may have a Sentencing Council set up by a previous Government and that judges are operating within its guidelines does not mean that a Back Bencher has to agree with that, although maybe the criticism should be aimed at the way the Sentencing Council has drawn up its rules rather than at the judge.

These are real, live issues, but clearly the more Parliament is seen to be—forgive my using the word—usurping the role of the Court, the more you risk the breakdown of the system. This comes back to the comity point. The system is there because judges do not answer back; they do not



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engage in public debate about their decisions. They may sometimes give lectures when they have retired where they opine on some of the things they have done, but normally they do not. It is a fundamental question of whether you wish to maintain a free and independent justice system. While clearly that should not operate to constrain MPs from commenting on matters that are clearly relevant to their constituents and asking questions, it is really important that that should be done with that in mind.

I detect from Michael that, certainly on some matters, he would like to see more flexibility. I simply raise the question, which you have to ask yourselves: is there a lot of evidence that there are a lot of MPs who are being deterred from asking what they think are relevant questions by the existence of the sub judice rule? When one looks at the waivers—we were most helpfully sent a copy—there are not very many of them, which suggests either that MPs do not understand how they might get a waiver or that, in fact, there are not many instances in which a waiver is being sought. I simply raise it as a question, particularly if you are thinking of rewriting the rules or the guidelines, to look at that, because I do not know the answer. Sir Jeremy made the point—and I made it, and I think Sir Michael did too—that when we were Attorney General, this point did not come up. That might indicate that there is a suppressed problem because nobody came and raised it, or it might indicate that actually there is no real problem at all.

**Sir Jeremy Wright:** There cannot be any harm in making Members of Parliament more aware than they are now of what the sub judice resolution actually says. There is no downside to greater education. By all means, let us find a way of making sure everybody understands clearly what it says, but, as Dominic said, that is a very different thing from whether you want to seek to change it on the basis that it is in some way defective. I think we probably all agree that it is not defective, and that there is enough flexibility and discretion within it to allow us to cope with pretty much all conceivable circumstances. Were that otherwise, we probably would have found that out at some point in our 10 years doing the job.

Q56 **Mr Morrison:** Are you able to tell us whether the Crown Prosecution Service ever raised concerns about the operation of the sub judice resolution with you during your time as Attorney General?

**Sir Jeremy Wright:** My answer is no. The only circumstance in which they would have done so is if something had been said in Parliament that they believed would prejudice a prosecution, and I think we are of the view that there have not been cases that have got to that level of concern. I cannot think of one, no.

**Dominic Grieve:** The same applies to me.

**Sir Michael Ellis:** And the same applies to me.

Q57 **Sir Gavin Williamson:** I apologise, Mr Chairman, but I am going to go a bit off script, because the witnesses have already answered the question.



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Really, we have been asked to look at this off the back of Southport, when the country was talking about something but Parliament was silent. You are all KCs and very learned in your field, but you are not there just as lawyers; you are also there as politicians. You are that sort of bridge between the two.

What advice would you give the Committee? Parliament starts to become a bit irrelevant if, when something that everyone is worried about happens, it feels as if it cannot speak about it. No one wants to jeopardise a trial. Dominic, you spoke about a free and independent judicial system. No one at all wants to see that eroded, but it is important that Parliament has the ability to have a voice. I think it just felt very jarring. Do you have any suggestions for how Parliament could speak on something even if the Speaker is saying, "There are certain lines that you mustn't cross"? How do we find a practical way to do that—using both your political mind and your legal mind?

**Sir Jeremy Wright:** It is a fair question. We have talked about why there is a sub judice resolution. It is not just to be irritating to Members of Parliament; it is because there is good reason for protecting the integrity of criminal process. That is largely because, as I said earlier, I think we would all want to see those responsible for criminal acts held accountable for them. Our mechanism for doing so is criminal trial, and if you do not allow criminal trial to operate as it should, there is a risk, at least, that people who should end up being found guilty do not end up being found guilty. There is a reason for it.

I am going to sound like a broken record, but I come back to the point on discretion. In the end, there is enough in the resolution that allows the Speaker, or whoever the occupant of the Chair is, to understand what it is we are seeking to avoid and allow Members of Parliament to go up to that point and no further. As I said, we saw a good example of that yesterday, when it was said, "Look, we've reached a point in these criminal proceedings where we're past a jury and we're into sentencing, so as long you don't say something that is specifically related to considerations of sentence, by all means talk about the case." That is an exercise of discretion within the confines of what the resolution already says, and it seems to me a very sensible approach. I think there is enough in this to allow the occupant of the Chair to do that in each and every case.

You are right that the more heightened the emotional atmosphere and the more prominent the case, the more difficult the exercise of that judgment might be, but I think there is enough latitude for the occupant of the Chair to make the best judgment they can and allow Members of Parliament to say what they need to say, which of course may be much broader than the specifics of the criminal proceedings, and say it in a way that does not trespass on the integrity of the criminal process.

**Sir Gavin Williamson:** Members tend to be quite broad in their comments.



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**Sir Jeremy Wright:** They can be, but I think with sufficient guidance we can all understand what we can say and what we cannot. As I said, the majority of Members of Parliament—I know you are one of them, Sir Gavin—would not wish to prejudice criminal proceedings. I think people want guidance so that they can understand how far they can go, and there is enough in the resolution to allow the Chair to set that out and allow people to understand what they should and should not say.

**Dominic Grieve:** I agree with that. It is perhaps worth remembering with Southport that the most difficult phase—I would suggest—was at the very beginning. A terrible act had been committed. An individual had been arrested. Of course, the individual was a minor, which made this even more problematic, and there are certain safeguards for minors. On top of that, there was huge public speculation about what was going on, there was great anxiety about whether it was terrorism in the organised form and what had provoked it, and of course it led very rapidly to public disorder.

I note that the waiver granted on 2 September 2024 enabled Members to talk about a vast range of issues around the disorder while not referring to specific individuals who had been charged or were awaiting trial, or engaging in any discussion or speculation about individual cases. That strikes me, if I may say so, as being a rather sensible waiver. Of course, the disorder was generating further criminal proceedings against other people as it went down.

There will always be some degree of tension here with the role of a Member of Parliament, but there is still the justification for self-restraint, because without it you will be in a difficult place. I know MPs do not like the public in a sense being ahead of the curve. You are there to provide leadership, so when you are behind the curve, there is always a desire to somehow get in front, but I venture the suggestion that there are times when the restraint may just help calm things down.

**Sir Michael Ellis:** I agree with my colleagues on restraint, but part of the reason why we are here and the Committee has been asked to do this is that there is a perception that the pendulum has swung too far in the direction of fettering of free speech. That is the perception of many. Whether that is true or not is a different matter, but the perception is important. Sir Gavin, you made a point about the political hat as opposed to the legal hat. Wearing the political hat, it is very important that Members of Parliament feel that they can speak about things that are happening outside of this place. If they feel that they were restricted from doing that in Southport or in other cases of public import, that is not a good thing.

The comity rule—convention, really—is about friendliness. That is really what comity means, and it does work both ways. That is my other point. There is another perception that some members of the judiciary are more willing today than in previous generations to be political in their rulings. That has put greater pressure on the sub judice rule, because it creates a perception of imbalance between what is happening in some courts and



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what is happening outside and in this place. To protect the perception of free speech in this House, the House should be ahead of the curve and not behind the curve at all times. Having been here for 14 years, I would say that, wouldn't I? The reality is that the comity principle goes both ways.

I have to allude again to the Lady Chief Justice's intervention earlier this year. That was not a case in progress. That was a criticism of senior politicians in the fulcrum of this House—in the Chamber of this House at Prime Minister's questions—over a case that had concluded. I suppose it was potentially appealable, but the reality is that, if you are going to get judges making those sorts of comments, it is going to put pressure on the balance—the comity—between the judiciary and the legislature. My concern is that the pendulum is swinging too far in the wrong direction.

**Chair:** Before I go to Sir Christopher, I just want to make the point that, sometimes, the judiciary are not able to respond to accusations, but I think Sir Michael has made his point very clear.

**Q58 Sir Christopher Chope:** First, reference was made by Sir Jeremy to my wearing a hat as a member of the Chairmen's Panel. I have been in the Chair in Westminster Hall when I have been advised by the Clerks that a potential statement that would offend against the sub judice rule should not be allowed. I think the same is done by the Clerks when people are tabling questions, or when it looks as though they might be starting an Adjournment debate that could result in the sub judice rule being breached.

My questions are essentially about whether this is an area where we need more clarity on the discretion exercised by the Speaker. The Government provided written evidence suggesting that the Speaker should publish guidance on what he thinks should be taken into account in granting a waiver. Do you think that would be helpful or desirable? You have already been provided with a list of actual waivers. It has been suggested by the Government that this would be a useful way forward. What do you think of that?

**Dominic Grieve:** I think it could be, yes. Again, the difficulty with guidance is that you produce guidance and then you have to have exceptions because you can never cover every possible permutation that comes along. But I do accept—I am now talking more as a former MP than as a former Attorney General—that the Speaker has always been invested with very substantial discretions. Historically, although I think it has been changing a little in recent years, they are discretions which are simply exercised in a slightly abracadabra way; they are given, the pronouncement is made, and the rule is either you get rid of the Speaker or you accept it.

I certainly think that, if one can set out in a way that still leaves the necessary flexibility for the Speaker in how he operates in matters of waiver, for example, then that could obviously be very helpful for MPs. Remember, I came in in 1997. You rather predate that, Sir Christopher, but we came in and we had absolutely no induction of any kind



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whatsoever. I gather now, and I am very pleased about it, that new MPs do get some induction. Indeed, I sometimes think that old MPs might benefit from some re-induction from time to time.

Being aware of how you can work this place has always seemed to me to be one of the odd holes. I say this speaking personally, because it was only when I finally got engaged in some rather difficult and painful episodes towards the end of my career that I realised the extent to which I could legitimately get advice from the Clerks on a whole range of very complex issues that previously I had paid no attention to because they were not relevant in respect of the Standing Orders of the House. There is no reason why MPs should not all be aware of how the Standing Orders of the House work and how they may be, in some cases, changed or varied or whatever else may happen.

It is the same thing with a waiver: MPs should be absolutely familiar that that is what you can go and ask for. It might even be useful to explain how you go about asking for a waiver, what you ask for and whether you give grounds for it or just say, "Mr Speaker, you will be aware that this is a big problem. Will you grant a waiver?" Speaking personally, I think that further guidance as to how the Speaker goes about this, if it could be made available, would be very relevant.

**Sir Jeremy Wright:** I agree with that. I think it could be very helpful. There is an eternal conflict between clarity on the one hand and flexibility on the other. We all encounter it every time we try to make law. If you want to be able to deal with circumstances as they arise, you obviously want flexibility, but you also want people to know what they do and do not have to do. That requires clarity. That is always a tension.

Interestingly, what I think is happening with this resolution is that you have got, at the very beginning of it, a very general potential exclusion: "subject to the discretion of the Chair". That is in the first line, so everything is subject to the discretion of the Chair. In that respect, I think your point is well made. I think it would be worth trying to set out in a little more detail how the Chair might choose to exercise that discretion. The way to do it would probably be to refer back to the mischief that we are all seeking to avoid. What is it that the sub judice resolution exists to do? It exists to avoid the prejudice we have been talking about this afternoon. Setting it out in that way would at least give people some understanding of why a Speaker might say, "Well, I am going to allow this, even if it is outside the terms of the normal sub judice resolution, because I don't think it actually prejudices the things we're worried about happening."

The waiver is a slightly different thing. When we get to the waiver, I think what we are really talking about is the later text: "where a ministerial decision is in question, or in the opinion of the Chair a case concerns issues of national importance such as the economy, public order or the essential services". That has a little more granularity. It does give you a little more help as to the sorts of things for which the Speaker might choose to decide that a waiver is appropriate. I suspect that we can do as



you suggest, but it is probably in relation to the broader, overarching discretion that starts this whole sub judice resolution off that we need the most extra help, because that is the broadest potential exercise of discretion on the part of the Speaker.

**Sir Michael Ellis:** Sir Christopher, can I give a perhaps more emphatic answer than lawyers are wont to give sometimes, which is that I would be concerned about formal guidelines for the Speaker to follow when it comes to waivers? The reason I would be concerned—this has been alluded to by my friends—is that, as soon as you create guidelines, you create potential breaches of those guidelines. You create a potential lock-in, so that the exercise of discretion is fettered. Either you trust the person you are giving the discretion, in this case Mr Speaker, and let him or her exercise that discretion—there would no doubt be consequences if the incumbent of the office gets it wrong, as there are political consequences—or you do not. If you create guidelines, they can soon become overly restrictive.

The problem we have with sub judice is, as I said at the beginning, rather like that with self-defence, to use a lay analogy. Sometimes it is lawful self-defence to kill someone—that is what armed police officers have to sometimes do—and on other occasions, it is not lawful self-defence even to touch someone. Therefore you cannot really define self-defence, because it depends on the circumstances. You cannot define where there might be a breach of sub judice, and if you try to define it, there will be so many exceptions that that might create a problem in itself. That is the difficulty with having the guidelines to a waiver, as I think you are referring to.

**Q59 Sir Christopher Chope:** May I make one specific suggestion? As things have evolved, particularly in the criminal courts, there is a gap between conviction and sentencing in many more cases. It always used to be part of the whole shebang: the sentence would follow the plea of guilty or the conviction. Now, there are quite often weeks, if not months, between those two events. It is clear from the way in which the Speaker has been exercising his discretion recently that he regards the sentencing aspect as less jeopardising to the rule of law and the doing of justice. Would it be appropriate to say that, once you have a conviction, it should be a free-for-all for people to discuss and debate what sentence might be appropriate? That could include, for example, the presentation of parliamentary petitions, debates, questions and so on. It seems as though that is the way the Speaker is moving, but instead of moving in a sort of point-by-point way, would it not be better to set down a specific rule?

**Sir Michael Ellis:** I think I know what Dominic is going to say, but I will just quickly say this, Christopher. I would say yes. Once a jury has been dispensed with, it is a lot easier. When it is just the sentencing exercise, the bar for prejudicing court proceedings is fantastically high: the judge is robust enough to make his own decisions about sentencing, together with the guidelines. However, they have to be very careful—I think Dominic has an example of this—that no further proceedings are about to commence. If you have a free-for-all, you need to be pretty sure that there are not going to be new proceedings with new allegations.



**Dominic Grieve:** Michael hit the nail on the head. I prefer to err on the side of caution. The Speaker's current process seems to be that he will make the inquiries—he can do that through his office. That is my understanding of how it is done. He will quickly pick up whether, effectively, he can let people say virtually anything they like or whether we need to be slightly more careful.

If you just cut it off on the day of the conviction, you may be making more problems. I would personally stick to the waiver process. However, unlike Michael, I would not be entirely averse, if the Speaker feels this can be done, to providing more guidance to MPs, first, as to how they obtain the waiver and, secondly, setting out more fully what his process is. In fact, you have it in your background explanatory notes: the Speaker's Office has explained how the Speaker goes about it. Perhaps that note could also be available to MPs more generally, in the Clerks' office, if they wanted it; otherwise, they would have to go back and look at this Committee's proceedings to find out.

**Sir Jeremy Wright:** I do not have much to add. Inevitably, the exercise of discretion is a balancing exercise. You have to decide which risk outweighs all the others. I think the point here is that there is still a risk of prejudicing proceedings even at the sentencing stage, but it is a much lower risk, so it is quite likely that the Speaker might come to the view that if you weigh that relatively low risk against the higher risk that Members of Parliament are being unduly constrained from speaking about something they ought to be allowed to speak about, it comes down in favour of allowing Members of Parliament to speak about it. The fact that we have seen that judgment exercised in precisely that way very recently shows that, under the current system, it can and is being done. I would say that makes the case for change weaker, because it suggests to me that the system as it is is capable of accepting the logic of that position.

**Sir Michael Ellis:** I am not against the Speaker giving guidance to Members of Parliament; I am nervous about guidelines—more formal, enunciated guidelines, which can then be challenged.

Q60 **Chair:** This is the last question from me. Dominic Grieve touched on this point earlier. It has been suggested to us that sub judice should apply from the point of arrest rather than the point of charge. What are your views on that?

**Sir Michael Ellis:** I would be against that because of, first, the comity rule that we have referred to. I do not have the resolution in front of me, but it refers to comity with the courts, not with the police. As I have said in earlier answers, my concern is about overreach already, and I think that if we start to apply sub judice rules to the point of arrest, we are restricting Members of Parliament even further. There was a recent case where a person was arrested at least in part, apparently, for wearing a Star of David. It is right that Members of Parliament should be permitted to criticise the police if they feel it right to do so. I do not want to restrict Members of Parliament any more than they already feel that they are



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restricted. Therefore, I certainly would not apply it from arrest. That is my point.

**Dominic Grieve:** I do not think it is necessary, and if it is not necessary, I would not change the rules. As I explained earlier, because of the greater protections afforded to individuals on arrest, it is less likely that their identity will be available until they first appear in court. For all those reasons, while you can make an argument for merging the two, it was not done in 2001. The point about comity is correct; it is with the courts. I would not myself see a need to interfere with it, because there do not seem to me to be examples of it having caused significant problems.

**Sir Jeremy Wright:** I agree. The only thing that we might want to think about as a legislature is that, although Dominic is quite right, the reason this does not often arise as a problem is that, generally, identities are not promulgated after arrest in the way they were. It is not unlawful to do that, and we might want to think again, as we have in the past, about the concept of anonymity until the point of charge for criminal defendants. I think there is merit in that. Others take different views, but I think that if you want to be sure that there is not an argument for extending the sub judice rule back to arrest, that is the way to do it—make sure that people's identity cannot be disclosed before that point, thereby removing all the risk. But that, I accept, provokes a different set of arguments. For the other reasons that have been given, I don't think it is a necessary change.

Q61 **Gurinder Singh Josan:** I want to pick up on something that Mr Grieve said earlier. If somebody makes a comment after arrest but before charge and, in this day and age of media, that is repeated by media repeatedly, what is the risk of that prejudicing a trial?

**Dominic Grieve:** It may do. Indeed, the Contempt of Court Act covers that eventuality. If a newspaper—knowing that a person has just been arrested and knowing something of the background because it has been tipped off by a policeman or because something has happened and so it knows who it is—starts publishing prejudicial material, it is potentially open to prosecution under the Contempt of Court Act. While it would probably rely on the fact that there is going to be a long period before trial as part of its defence, it may be liable. But as Jeremy said, we are talking here about the privilege of the House of Commons to act differently. If a newspaper does this and is prosecuted successfully, it is going to be exposed to quite a lot of public opprobrium and pay a pretty whacking fine, in the order of several hundreds of thousands of pounds. Potentially its editor could go to prison. That is extraordinarily rare, but it could happen if they are prosecuted individually, and there are usually very substantial costs on top—so we are talking of two slightly different things.

**Chair:** Are there any other questions from colleagues? No. In that case, I will draw this afternoon's session to a close. Thank you, colleagues, for your questions. I thank our witnesses for their time today and for their comprehensive answers. Thank you very much. I know that you are very busy people, so it is very much appreciated. If any of you wish to add anything to your answers later, I would be grateful if you could send it



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through in a timely manner to the Committee. If you want to add anything that comes to you after today, we would greatly appreciate it.