



HOUSE OF COMMONS

Procedure Committee

Oral evidence: Sub judice resolution in the House of Commons, HC 933

Wednesday 21 January 2026

Ordered by the House of Commons to be published on 21 January 2026.

[Watch the meeting](#)

Members present: Cat Smith (Chair); James Asser; Bambos Charalambous; Sir Christopher Chope; Mr Lee Dillon; Mary Kelly Foy; Tracy Gilbert; Gurinder Singh Josan; Lee Pitcher; Kenneth Stevenson; Michael Wheeler; Sir Gavin Williamson.

Questions 91-116

Witness

[I](#): Rt Hon Lord Hermer KC, Attorney General.

Examination of witness

Witness: Lord Hermer.

Chair: Good afternoon and welcome to this public evidence session of the Procedure Committee. This afternoon's session is part of our inquiry into the sub judice resolution in the House of Commons. We are now coming towards the end of our inquiry, and we are taking the opportunity to ask the Government for their perspective on the evidence that we have heard to date. To that end, I am delighted to be joined this afternoon by the Attorney General for England and Wales, Lord Hermer KC. Good afternoon, Lord Hermer, and thank you for joining us. Before we begin, could you introduce yourself formally for the record?

Lord Hermer: I am Richard Hermer, the Attorney General.

Q91 **Chair:** As is traditional, the first question is from me. It is often said that the twin aims of the sub judice resolution are maintaining comity between Parliament and the courts and avoiding prejudicing legal proceedings. In your view, do they both matter equally or is one aim more important than the other?

Lord Hermer: That is a really good starting question. They are both of fundamental importance to our constitution—our constitutional framework. It is about where the balance lies. The essential starting point is the constitutional principle that Parliament must be free to discuss any matters that Parliament thinks fit. That is a bedrock principle in a democracy under our constitutional framework.

It is also a principle that has been long fought for. I am not sure of the extent to which the Committee has had evidence on the history of it. It starts out with parliamentarians trying to create as much space and freedom as they could in Tudor times. It does not go so well. It gets even worse under Charles I. As some of you will know, in 1629, two parliamentarians were arrested for sedition for comments they made in Parliament.

That increases the friction, which gets even greater in 1649, when the King comes to Parliament to try to have five parliamentarians named and is effectively ejected to the cry of "Privilege! Privilege!" We then come to the point at which the importance of parliamentary privilege is enshrined when we get to the Bill of Rights of 1689. It is the fundamental principle necessary for democracy that parliamentarians are free to say what they want to say.

That is balanced with another really important constitutional principle: that we have a separation of powers in this country, and that the adjudication of disputes is allocated to courts that are independent of Parliament and of the Executive. Allied to that is another really important constitutional principle: that we are all entitled to fair trials.



HOUSE OF COMMONS

What we see with parliamentary privilege and the development of the sub judice rule is a balance being struck. The sub judice rule is a self-denying ordinance from Parliament. To respect the balance between its rights and freedoms and the obligations to keep in place an independent court system and for trials not to be prejudiced, Parliament has decided to introduce and comply with the sub judice rule. I am not sure that it necessarily helps to think about what is more important, but the starting point is parliamentary sovereignty and the importance of comity between the different branches of our constitutional set-up.

Q92 Kenneth Stevenson: Thank you for being here, Lord Hermer. Given your experiences in the legal profession and now as a parliamentarian, do you think there is an equal degree of understanding of and respect for the principle of comity within Parliament and the judiciary?

Lord Hermer: I am going to speak with some obvious degree of humility about the parliamentary perspective. As I came into the House of Lords only in July '24, there will be others who have far greater knowledge of how it is perceived and how it operates in Parliament, and the extent to which it is understood by our colleagues in both Houses, so I think I would pass on that. In my own experience since July '24, I have seen nothing to question the operation of it.

On the other side of the fence, I have seen the enormous deference that is given by the courts to parliamentary privilege. I did lots of cases in which article 9 became an issue if one party or another wanted to rely upon proceedings in Parliament. I have seen the way that the article 9 rights of Parliament are upheld by the courts from that side, but others will be much better placed than I am to comment on the extent to which it is ingrained in the fabric of life in this building.

Q93 Bambos Charalambous: Lord Hermer, my question is on the length of time that cases take. Civil and criminal cases can take a number of years and the sub judice rule may be in place for a number of years while those cases are going on. Is the sub judice rule a disproportionate restriction on the freedom of speech of parliamentarians, given that some cases may take such a long time?

Lord Hermer: I do not think that, as a matter of principle, it is an unjustified restriction. Again, it is a restriction that Parliament has placed upon itself, and it has done so for the reasons that I have outlined. Whether there are cases—either because of the length of time that it will take for that case to get to court or for a variety of other reasons—in which it may be appropriate for the Speaker to consider a waiver is another matter. That is obviously a matter for the Speaker, but it could be in certain circumstances a factor to be taken into account. There will always be upsides and downsides, risks and benefits, when considering a waiver, but I do not see why, as a matter of principle, that length of time could not be a consideration.

Q94 Mr Dillon: Do you think that the two Houses of Parliament should remain aligned on the operation of the resolution, or should the elected House



HOUSE OF COMMONS

have more scope to discuss urgent and emerging issues?

Lord Hermer: I can see an argument for why there would be a difference. I think where I would land on that is ultimately there is a benefit in having a single standard, because if you have a single standard, everybody knows where they are. Again, if you go back to the basic principles for why the sub judice rule exists—which is to respect the role that the courts have to play and to avoid prejudice to trials—I think that ultimately the rationale for keeping that standard uniform is met.

- Q95 **Tracy Gilbert:** The sub judice rule can at times feel restrictive for Members, often because there is a perception that they are being prevented from discussing matters in Parliament that are being discussed in the outside world and in the media. Do you think that is a fair perception?

Lord Hermer: I can well understand the frustration of parliamentarians if constituents are online or coming in and talking about a case, and you cannot raise that in the Chamber or in Committee, so of course there is a frustration there. I come back to the question of the underlying principles. It is always important in a modern democracy where we have inherited principles over decades, and indeed centuries, to kick the tyres and ask ourselves whether they are still fit for purpose in a modern age. One of the things one can test that with is this age of social media.

In my mind, those principles are so important that, notwithstanding the frustration, I think the right balance has been struck. Again, whether the level of information that is out there in the public domain and the level of concern that there might be around those issues would justify a waiver in an individual case is another matter.

- Q96 **Tracy Gilbert:** You have touched on my follow-up question around social media. Are there any changes that should be made to consider social media in the sub judice rules?

Lord Hermer: That is certainly a legitimate discussion to have. I don't know that, ultimately, if what we want to do is ensure that parliamentary proceedings do not encroach on the constitutional lane that we have accorded to the courts, and ensure that we are protecting trials, it is necessarily going to shift the dial across the board. Whether it does in an individual case is another matter. That is why I am delighted the Committee is looking at this issue so carefully; I think it is a legitimate discussion.

There is a difference, of course, between members of the public on social media talking about a case, which can have a very damaging impact—I know you have been considering the Southport case—and Members of Parliament in Parliament talking about it. There is a difference not just because of the constitutional element where it might be said that you are in someone else's lane, but because you have such a status and it has a status when you are saying it in Parliament on legal proceedings, so there is potentially—again, depending on the case—greater prejudice that would be caused to a fair trial.



HOUSE OF COMMONS

Q97 Mary Kelly Foy: Lord Hermer, do you think that comments made by MPs in parliamentary proceedings carry more weight than commentary in the media or on social media?

Lord Hermer: I think they can do, yes. Rightly, people look to parliamentarians and give weight to what parliamentarians say, particularly when they say it in Parliament. I think that carries weight. If you are looking at it from a judge's perspective of trying to manage a fair trial—let's say a criminal trial—you are going to be very concerned if it comes from a parliamentarian, or you will certainly have greater concerns about the impact on prejudice if it comes from a parliamentarian than if it is just an individual tweeting.

Q98 Mr Dillon: To follow up on that, do you think it matters whether it is said in an Adjournment debate or in PMQs, for example? Or is it the fact that you are saying it on the Floor of the House that is the overriding factor?

Lord Hermer: It is the fact that you are a parliamentarian saying it in Parliament. Of course, there is a trade-off. If you are tweeting, you are liable to be prosecuted for contempt and go to prison for up to two years. If you are a parliamentarian, you are protected by article 9 of the Bill of Rights. To put it in language that was popular a couple of decades ago, together with rights come some responsibilities, and I think there is a balance there.

Q99 James Asser: This follows on from when we were asking about the role of Members, because it is something that MPs consider when we ask a question and there is a live legal case. In what circumstances do you think comments in Parliament could prejudice a trial and potentially lead to it being abandoned? Do you think that risk is higher with a jury trial than with other types of cases?

Lord Hermer: Yes, I think it is undoubtedly higher with a jury trial. If you are a criminal judge, you are charged with ensuring that that defendant gets a fair trial. There have not been many circumstances in which a trial has been abandoned because of comments made pre-trial. Off the top of my head, there is the Levi Bellfield case, which was not about a comment from a parliamentarian, but about newspaper reporting. That resulted in a serious charge having to be dropped, so it is a real concern.

If you have a judge alone, either because there has been a conviction and you are moving to sentence in a criminal trial or you are before the Court of Appeal, where there is no question about witnesses being intimidated or juries having their minds distracted by things that are irrelevant and prejudicial, those kinds of risk of a fair trial considerations are lessened. That is not to say they do not exist, but they are lessened.

There are other factors at play beyond the fair trial and beyond the mere constitutional lane for courts. We do not want to get into a position in which comments from parliamentarians are perceived by the public as having an improper influence on courts, irrespective of whether there is a jury or not. But generally speaking, the risk of a fair trial considerations are far greater in criminal proceedings with a jury.



HOUSE OF COMMONS

You can still have them in other proceedings, not least civil proceedings. In civil proceedings, you could still see an improper attempt to influence witnesses or to intimidate witnesses. We have had instances in which parliamentary privilege has been used to breach anonymity in a court order, for example. We have had a few of those instances over the decades.

In so far as your question is asking whether we can just limit this rule to jury trials, I think the answer is no. In so far as the question is whether there is a greater risk of prejudice to a fair trial in a jury trial as opposed to others, then as a matter of generality, I think the answer is yes.

Q100 Lee Pitcher: In your role as Attorney General, Lord Hermer, what consultation do you have with Government Departments about issues that may arise in Parliament and whether they may be sub judice?

Lord Hermer: What would happen is if there were concerns among Departments or indeed any of the arm's length bodies that I superintend—most relevantly here, the Crown Prosecution Service and the Serious Fraud Office—they would come to me to raise those concerns. Without breaching the Law Officers' convention, which means I can't talk about individual cases, I think I am in the happy position that Baroness Scotland, Jeremy Wright and others were in when they came to give evidence, in that this is not something that crosses my desk.

Q101 Bambos Charalambous: When Baroness Scotland came to give evidence in a previous session, she talked about the Attorney General wearing two hats. One was as an adviser to Parliament, where Parliament can ask for advice of the Attorney General in relation to certain matters. But how do you understand the Attorney General's role in relation to Parliament with regard to the sub judice rule?

Lord Hermer: It is absolutely right that part of the Attorney General's ambit can include providing advice to Parliament. As I understand it, that is very rarely exercised. I think Baroness Scotland had an example of it—I am not sure that the other three Attorney Generals who you took evidence from had. I have not.

In reality, the day job is advising the Prime Minister and the Government and also, constitutionally, the sovereign. I have not had experience of advising Parliament, though if there were particular issues about sub judice that I was not already advising the Government on, and they came through the appropriate route, then of course that is my job to do and I would get on and do it.

Q102 Bambos Charalambous: So it is a very rare occurrence.

Lord Hermer: As I understand it. It certainly has not happened since I have been in office. I read with interest what Baroness Scotland said, but it is rare.

Q103 Mr Dillon: Lord Hermer, you said if you were, "not already advising the Government". If Parliament asked first, would you then advise Parliament and not the Government?



HOUSE OF COMMONS

Lord Hermer: That is a really interesting question. I would want to think about that one.

Q104 **Lee Pitcher:** You have touched upon this, and the answer may be the same as you have given previously, but what discussions, if any, are there between you in your capacity as Attorney General and the House of Commons authorities, specifically the Speaker?

Lord Hermer: Again, I have not had to deal with an issue under the sub judice rule.

Q105 **Mary Kelly Foy:** Your written evidence to our inquiry suggests that the Speaker of the House of Commons should publish guidance on what he or she would take into account in granting a waiver. Why do you think that would be a useful development? Also, can you foresee any risks arising from the publication of such information?

Lord Hermer: First, just to caveat that, it is a respectful suggestion to the Speaker, because it is absolutely a matter for them. I think it would have an advantage of making plain to everybody what the purpose of the general sub judice rule is and the circumstances in which it might be appropriate to grant a waiver, so that there is transparency as to the process.

The downside of having that is if it becomes inflexible or is treated almost as the hard and fast rule. If the Speaker were minded to have guidance I would respectfully suggest that it should stress, and have built into it, the necessary flexibility and not be seen as a hard and fast rule, but as a helpful guide both to the Speaker and parliamentarians to understand why a waiver is or is not being given.

Q106 **Michael Wheeler:** Do you think that all the decisions that attract ministerial responsibility, including those of arm's length bodies or regulators, should be exempt from the sub judice resolution so that they can be discussed in Parliament without parliamentarians falling foul of the resolution?

Lord Hermer: Yes, as I understand it, there is an exemption for ministerial decisions, and that strikes me as constitutionally appropriate because Ministers are answerable to Parliament. Ministers should not be able to hide around court proceedings to justify to Parliament decisions that they have taken. In respect of arm's length bodies, it probably depends on which one. Again, you can pick those by identifying what you consider to be the applicable principle: if it is about being answerable to Parliament, and they are answerable to Parliament, there might be a good argument for exemption; if they are not, there might be fewer compelling reasons.

Once decisions of an arm's length body are before the courts, it will again depend upon the particular arm's length body and the particular issues that are under consideration as to whether the trial will be prejudiced and which lane we are in. It is easier to answer your question firmly in respect



HOUSE OF COMMONS

of ministerial decisions; it becomes more fact-based when you turn to arm's length bodies.

Q107 Michael Wheeler: I want to dig a little deeper on that and separate the different types of arm's length bodies and regulators. I appreciate that this will not have been done, but how easy or difficult would it be to define the different types of bodies and put them into buckets that might or might not be answerable, if we were to go down this route?

Lord Hermer: It is difficult to do off the top of my head.

Michael Wheeler: I am not asking that.

Lord Hermer: I do not think that it should be very difficult. You identify the criteria—whether you are answerable directly to Parliament would be one of those, and I am sure that there would be others. Our set up for arm's length bodies would then have sufficient clarity to properly box each one.

Q108 Chair: I appreciate that you answered the earlier question from Lee Pitcher about discussions between the Attorney General and the House authorities, including the Speaker, about sub judice, but can you imagine circumstances in which such conversations take place where you, as Attorney General, speak to the House authorities about the application?

Lord Hermer: There may be scenarios in which, for example, there is an ongoing prosecution and statements are made in the House, with the possibility of further statements, that the Crown Prosecution Service believes are putting a trial at risk. In those circumstances, the Crown Prosecution Service may come to me and ask me to approach the Speaker. In theory, I can foresee that sort of scenario arising.

Q109 Mr Dillon: I want to talk about the timing of the sub judice resolution. You have probably seen in some of our previous evidence the suggestion that in criminal cases it should apply from the point of arrest, rather than from the point of charge. Do you think that would be helpful to the CPS in giving it the space to build a case in difficult or politically charged circumstances?

Lord Hermer: Yes. It is one of those areas where, again, there are legitimate arguments on both sides. The comparison is with contempt. The law of contempt—certainly the strict liability rule for contempt—arises from the point at which there has been an arrest and, as you know, the waiver arises from the point of charge. It is certainly possible to do a lot of damage to a trial through publicity between the point of arrest and the point of charge. So there are compelling and strong arguments for bringing the date back to the point of arrest.

One of the problems with or counter-arguments to that—this is a point that the Law Commission addressed when it was looking at contempt—is that, since the Supreme Court case of *Bloomberg*, police do not routinely identify who they have arrested. It sometimes makes it more complicated if you are liable to contempt in circumstances post arrest in which you might not know who the individual is. That is with contempt, and there will



HOUSE OF COMMONS

be a mirror, I think, with extending the waiver to Parliament. Again, there is a balance, and I would be very interested, if this is something the Committee looks at, to see where the Committee feels the balance lies.

The other tension is that there is an advantage in having certainty in a rule: it starts from point A, and everybody knows that it is point A, rather than that it might be point A or point B. At the same time, if you were to keep the rule at charge and not from arrest, there may be scenarios in which people know full well who has been arrested. Where you know full well, not having that sub judice rule in place, with the risk to a fair trial, would, I think, offend the underlying purpose and principles as to why you have the sub judice rule in the first place.

Having said that, the Speaker retains discretion. As I understand it, there has been at least one case in modern times in which the Speaker has effectively introduced the sub judice rule, or at least urged caution upon parliamentarians, after arrest but before charge.

Q110 Mr Dillon: In terms of starting either at A or at B, but not allowing you to start at A and choose B, do you think that that comes down to the national profile of the arrest? For example, it might be known in my local community who was arrested through word of mouth—a neighbour saw someone being put into a police car, for example—as opposed to it being covered by *The Times* on its front page.

Lord Hermer: It may possibly in some cases. Let's say that you know the name of the person who has been arrested but is yet to be charged, but it is not out there in the public domain—it is not in the national newspapers. Because the sub judice rule is not yet in force—because there is no charge—you choose to name that individual on the Floor of the House and make comments about that individual and that individual's guilt, which are then picked up by the local newspapers. The fact that *The Times* is not running it is not really going to be an answer to whether that individual has a fair trial, nor is it an answer to whether you veered into the court's lane. I think the answer is that it depends.

Q111 Mr Dillon: To push you on the first question I asked, you spoke about the different scenarios that could arise and that it is worth the Committee looking at them. What is your preferred view?

Lord Hermer: As to when it would start?

Mr Dillon: Yes.

Lord Hermer: Respectfully, this Committee is going to have more time and a wider amount of evidence to consider that question, and I want to see that. At the moment, where I am at is that it really should be from the point of arrest, or if the identity of the person arrested is known or could reasonably be known. But I would really rather wait for the final judgment. That was impressionist; if you want where I would be impressionistically, it would probably be there.

Q112 James Asser: As you can tell, we have had some interesting discussions



HOUSE OF COMMONS

on sub judice and contempt of court. Some of what I was going to touch on, Lee has successfully worked his way through, but I will continue on that interesting theme.

Your written evidence to us suggested we should consider whether the sub judice rules should be brought into closer alignment with contempt of court. In previous evidence sessions, we have had discussions as to why they are different and why they work differently. Could you expand on your written evidence and on what your thinking is around that?

Lord Hermer: This is a really interesting area, but there are some important distinctions. We just discussed one: arrest versus charge. The tests are lower, as you know. It is pretty much a complete prohibition under the sub judice rule, whereas for the purposes of contempt, you have to show substantial harm caused and that the trial has been seriously impeded, so it is different test. You have no sanction in Parliament because of article 9, whereas you have up to two years if you are guilty of contempt. They are very different. Although they are all trying to protect the sanctity of a trial, they come from different places. It is one of those areas where I can see it both ways. It is ultimately for Parliament to decide where it wants to land, but there is no compelling, clinching argument that they must be the same.

Q113 **James Asser:** Can I tempt you to lean one way or another, or are you very happy where you are?

Lord Hermer: I think I am happy where I am, but thank you for the invitation.

James Asser: It was worth asking the question.

Q114 **Gurinder Singh Josan:** The Speaker has in recent times used his discretion to issue waivers just prior to sentencing in cases of heightened public interest. Do you think there is a residual risk of impact on such cases, or is the potential for interference minimal at that stage?

Lord Hermer: Again, each case will depend on its facts. I anticipate that one can never say that the impact would be non-existent—at least, there will be few cases in which you can say it is non-existent. Effectively, what the Speaker carries out is a balancing exercise between the importance of parliamentarians being able to talk about a case and the risk. From the waivers that I have reviewed, I would respectfully say that the Speaker has got it right.

Q115 **Sir Christopher Chope:** This is all centred around the need to ensure that there is a fair trial. There is a propensity for the time between arrest and charge to be very extensive now, and people may be arrested but it never leads to a charge and therefore never leads to a trial. There can be immense prejudice caused to people who are arrested, never charged, and are on police bail. A number of colleagues, in this place and elsewhere, have suffered as a result of that. Do you think there is a role here for the sub judice rule or contempt of court to be extended to cover those cases? It seems to me that, because of the increase in the use of police bail and the length of time between arrest and charge, it can be a really

burdensome injustice for people.

Lord Hermer: It would certainly be relevant to contempt, because contempt kicks in from the point of arrest: if the other elements of the crime of contempt were made out, liability would arise from the point of arrest. In respect of the sub judice rule, it certainly would be a factor in the consideration whether to change it to align with contempt, so that the point at which it kicks in is arrest rather than charge. But as I touched on before, there are arguments both ways; there are competing merits and demerits.

Q116 **Chair:** Do you think that the sub judice resolution should be less strict on appeals, given that they are often on a point of law, than on a first trial?

Lord Hermer: Again, the answer to that can be analysed through which justification or rationale for the sub judice rule you look at. If you are looking at it from the fair trial perspective alone, then absolutely, because by the time you have got to appeal, whether that is civil or criminal, you do not have a jury and are not dealing with live witnesses who could be intimidated, and people who are not used to and trained in ignoring factors that are irrelevant. Seen simply through the prism of "Is a fair trial possible?" the rationale for it is far less compelling at an appellate level.

As I set out at the beginning, that is not the only justification for the rule: there is the constitutional comity point, which I do not think is necessarily undermined. But I accept that overall, the rationale for it is not quite as strong where the risk of prejudicing a fair trial is not so real and apparent.

Chair: Thank you so much for your very thorough answers today, Lord Hermer. If you want to add anything further, we would be happy to receive it in writing. That concludes today's evidence session.