House of Commons

Committee of Privileges

Matter referred on 21 April 2022: proposed conduct of inquiry

Second Report of Session 2022–23

HC 632

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Report, together with formal minutes relating to the report

Ordered by the House of Commons
to be printed 19 July 2022

HC 632
Published on 21 July 2022
by authority of the House of Commons

Committee of Privileges

The Committee of Privileges is appointed to consider specific matters relating to privileges referred to it by the House. The scope of any inquiry comprises all matters relevant to the matter referred.

Current membership

Ms Harriet Harman MP (*Labour, Camberwell and Peckham*) (Chair)

Andy Carter MP (*Conservative, Warrington South*)

Alberto Costa MP (*Conservative, South Leicestershire*)

Allan Dorans MP (*Scottish National Party, Ayr, Carrick and Cumnock*)

Laura Farris MP (*Conservative, Newbury*)

Yvonne Fovargue MP (*Labour, Makerfield*)

Sir Bernard Jenkin MP (*Conservative, Harwich and North Essex*)

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The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No. 148A. These are available on the internet via www.parliament.uk.

Publications

Committee reports are published on the Committee's website and in print by Order of the House.

Committee staff

The current staff of the Committee are Miguel Boo Fraga (Committee Operations Manager), Paul Connolly (Media Officer), Arvind Gunnoo (Committee Operations Officer), Dr Robin James (Clerk), Robi Quigley (Second Clerk), Duncan Sim (Committee Specialist) and Mike Winter JP (Chair Support Officer).

Contacts

All correspondence should be addressed to the Clerk of the Committee of Privileges, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 0207 219 1493; the Committee's email address is COMMITTEEOFPRIVILEG@parliament.uk.

Contents

Report

1. On 21 April 2022 the House agreed to the following Resolution and Order:

> That this House—
>
> (1) notes that, given the issue of fixed penalty notices by the police in relation to events in 10 Downing Street and the Cabinet Office, assertions the Rt hon Member for Uxbridge and South Ruislip has made on the floor of the House about the legality of activities in 10 Downing Street and the Cabinet Office under Covid regulations, including but not limited to the following answers given at Prime Minister's Questions: 1 December 2021, that "all guidance was followed in No. 10", Official Report vol. 704, col. 909; 8 December 2021 that "I have been repeatedly assured since these allegations emerged that there was no party and that no Covid rules were broken", Official Report vol. 705, col. 372; 8 December 2021 that "I am sickened myself and furious about that, but I repeat what I have said to him: I have been repeatedly assured that the rules were not broken", Official Report vol. 705, col. 372 and 8 December 2021 that "the guidance was followed and the rules were followed at all times", Official Report vol. 705, col. 379, appear to amount to misleading the House; and
>
> (2) orders that this matter be referred to the Committee of Privileges to consider whether the Rt hon Member's conduct amounted to a contempt of the House, but that the Committee shall not begin substantive consideration of the matter until the inquiries currently being conducted by the Metropolitan Police have been concluded.—(*Keir Starmer.*)

2. The Committee began its consideration of this matter on 29 June 2022. Following that meeting we issued a call for evidence in the following terms:

> The Committee is calling for evidence submissions and accounts from those with knowledge of events related to the inquiry. Specifically, the Committee is seeking witness information and evidence which would enable it to determine whether or not the Rt Hon Member for Uxbridge and South Ruislip misled the House. The Committee noted this may include evidence of:
>
> - Mr Johnson's knowledge of the activities in 10 Downing Street and the Cabinet Office under Covid regulations, from the occurrence of those events until now;
> - any briefing given to, or inquiries made by, Mr Johnson relating to those events.

3. We have since requested specified documentation from Mr Johnson and from the Cabinet Office, and reserve the right to request further material.[1]

1 https://committees.parliament.uk/committee/289/committee-of-privileges/news/171801/privileges-committee-call-for-evidence-in-inquiry-into-boris-johnson/

4. At our meeting on 29 June 2022 we appointed Rt Hon Sir Ernest Ryder, former President of Tribunals for the United Kingdom and former Lord Justice of Appeal, as our legal adviser.

5. We have deliberated on the procedures we will adopt in this inquiry. In the interests of fairness and transparency, and following the practice of our predecessor committees in considering the most recently referred cases of alleged contempts,[2] we have now agreed a Resolution on Procedure, which we set out as Annex 1 to this report. This was drawn up in consultation with Sir Ernest Ryder, whose written comments to us, submitted before we considered the draft Resolution, we set out as Annex 2.

6. The Clerk of the Journals has supplied us with a paper on contempt of the House which we publish as Annex 3 to this report. We agree with the reasoning about the nature of a contempt in that paper, namely that the focus of the House's jurisdiction is on whether or not an action or omission obstructs or impedes or has a tendency to obstruct or impede the functioning of the House, with the consequence that, looking at contempt in broad terms, intention is not necessary for a contempt to be committed. We accept the analysis in the Clerk of the Journals' paper and will be proceeding with the inquiry on that basis.

7. We address briefly in the following paragraphs four further issues arising in the inquiry, over and above those dealt with in the papers by Sir Ernest and the Clerk of the Journals.

8. First, we draw attention to a significant difference between the treatment of contempt in the courts and in Parliament. The treatment of some forms of contempt by the courts now considers intent. The House's jurisdiction is distinct and has evolved differently. However, the agreement that the House should exercise its penal jurisdiction as sparingly as possible, and only when satisfied that it was essential to do so, means that "many acts which might be considered to be contempts are either overlooked by the House or resolved informally."[3] The need to obtain the Speaker's permission before raising complaints of contempt on the floor of the House provides a screening mechanism to prevent trivial complaints progressing.

9. Secondly, we have considered the potential situation of people who may wish to make 'whistleblowing' submissions to the Committee. In our call for evidence issued on 30 June 2022, we stated:

> The Committee also confirmed it would be willing to take oral or written evidence from people who wish to remain anonymous, subject to the Chair being able to identify the individual's identity in conjunction with Committee staff, as well as the relevance and probity of their evidence.

10. Sir Ernest Ryder in his comments prefatory to our agreement of our Resolution on Procedure notes that the Resolution specifies "[t]he need for the anonymity of some witnesses or to move into private meetings from public meetings". Sir Ernest further comments:

2 Committee of Privileges, First Report of Session 2017–19, *Conduct of Mr Dominic Cummings* (HC 1490), published 27 March 2019; Committee of Privileges, First Report of Session 2016–17, *Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International* (HC 662), published 14 September 2016

3 *Erskine May's Parliamentary Practice*, 25th ed. (2019), para 15.2, p 289

> Fair process normally requires that the subject of the inquiry receives all of the information upon which the Committee intends to rely (including of course anything adverse to the conclusions to which the Committee may come). I am content that there can be provisions for anonymity and private 'hearings' but the Committee will have to decide how to offer confidentiality in a circumstance where there is no 'closed procedure'. There is no statutory or SI based scheme, for example like Civil Procedure Rules parts 82 and 88) to support confidentiality and unlike the Independent Expert Panel procedure at part F of its guidance, this is not an appeal following disclosure which has already been provided for.[4]

11. Some witnesses may only be willing to give evidence if their identity is not made public. If in those circumstances we consider that their evidence is necessary to our work, we will both protect the identity of such witnesses and ensure that the Member under investigation is aware of the content of the evidence and is able to challenge it if he chooses to do so. There is a range of measures we will use to protect the identity of any particular witness and we will apply these on a case by case basis.

12. Thirdly, we are aware there has recently been speculation about whether, in the event that the House were to agree to a recommendation from the Committee of Privileges that a Member be suspended from the service of the House for 10 or more sitting days as a sanction for having committed a contempt, such a decision by the House would trigger the recall process under the Recall of MPs Act 2015 in the same way that a suspension following a report from the Committee on Standards would.

13. Section 1 of the Recall of MPs Act provides that:

> "(7) The reference in subsection (4) to the Committee on Standards is to any committee of the House of Commons concerned with the standards of conduct of individual members of that House.
>
> (8) Any question arising under subsection (7) is to be determined by the Speaker."

14. We accordingly wrote to the Speaker to seek a ruling from him on this matter. We publish as an appendix to this Report the Speaker's response, in which he tells us that he has made a formal determination that the Committee of Privileges is a committee concerned with the standards of conduct of individual members to which the provisions of the Act would apply. Further details of the legal background to this determination are set out in that appendix.

15. Finally, since the House agreed the referral there have been political developments concerning the future role of the Rt Hon Boris Johnson, and some have suggested that the Committee's inquiry is no longer necessary. Our inquiry, however, is into the question of whether the House was misled, and political developments are of no relevance to that. The House charged the Committee with this task and we are obliged to continue with it. Unlike other Committees, we do not set our own agenda. Concluding this inquiry is consistent with the purpose of the Committee, which is to protect the functioning and the reputation of the House of Commons.

4 Annex 2, paras 13–14

Annex 1: Resolution on Procedure, agreed by the Committee on 19 July 2022

Matter of Privilege referred on 21 April 2022

The Committee will conduct its inquiry into the matter of privilege referred to it on 21 April 2022 according to the procedure set out below.

Stage 1—written evidence

(1) The Committee will invite evidence from individuals and bodies who the Committee thinks have knowledge relevant to the matter referred to it.

(2) The Committee will seek documents and written evidence relating to events in No. 10 Downing Street and the Cabinet Office and to briefings given to and inquiries made by Rt Hon Boris Johnson MP relating to those events.

(3) The Committee will write to Mr Johnson inviting him to disclose documents in his possession and give initial submissions and evidence in writing concerning the allegations including the identification of relevant documents not in his possession and the identity of witnesses (individuals or bodies) who can give relevant evidence.

(4) The Committee will, if it thinks fit, further explore issues raised by Mr Johnson in his initial submissions and evidence or in any other information it receives, with any individual or body.

Stage 2—oral evidence

(5) The Committee may request that any person attend to give oral evidence as a witness, as it thinks fit, and may invite oral evidence at any stage.

(6) The Committee will take oral evidence from Mr Johnson.

(7) At evidence sessions, Mr Johnson and any other witness may be accompanied by a legal or other adviser, and may take advice from them during the session, but must answer in person.

(8) All transcripts of evidence sessions will be made available to Mr Johnson and to other witnesses.

(9) The Committee will invite final evidence from Mr Johnson, and may, if necessary during its subsequent deliberations, seek further evidence from him, either oral or in writing.

Stage 3—Determination

(10) If the Committee intends to criticise Mr Johnson or any other individual or body it will first send a warning letter, and such a letter will:

(a) state what the criticism is;

(b) contain a statement of the facts that the Committee considers substantiate the criticism;

(c) refer to any evidence which supports those facts; and

(d) invite submissions on whether the criticism should be made but not the Committee's conclusions on the facts;

(e) if an allegation is determined against Mr Johnson, state the Committee's recommendation as to sanction, if any, and invite his submission on the sanction recommended.

(11) The Committee will take into account responses to warning letters that are received by it within 14 days.

(12) The Committee will consider responses to warning letters before reporting to the House.

(13) The Committee will report to the House.

General

(14) The allegations against Mr Johnson are those described in the Resolution of the House referred to the Committee on 21 April 2022.

(15) When considering the allegations against Mr Johnson, the Committee will decide whether the allegations are proved on the balance of probabilities.

(16) All requests for information (documents, submissions or evidence) shall be made in writing. Requests for documents include electronic materials, where relevant.

(17) All responses to requests for information by the Committee shall be made by the individual or the individual in the body to whom the request is made and not by a legal representative. Responses to requests for information shall be made in writing and accompanied by a statement of truth to the Clerk of the Committee of Privileges, Journal Office, House of Commons, London SW1A 0AA and a copy should be sent by email to COMMITTEEOFPRIVILEG@parliament.uk.

(18) Responses received from witnesses will be shared in confidence with Mr Johnson, save that the Committee may take steps to conceal the identity of a witness where this is appropriate.

(19) If Mr Johnson or any other witness wishes to be supported by a legal or other adviser, the details of that adviser must be notified to the Committee.

(20) The expectation is that oral evidence will be taken in public. The Committee will consider requests to take such evidence in private, and rule on them.

(21) All responses to requests for information in the form of oral evidence will be taken on oath and in the form of written evidence shall be accompanied by a statement of truth.

(22) Written evidence submitted to the Committee is to be held in confidence unless and until such time as the Committee orders or gives permission for its publication, save that Mr Johnson and other witnesses may disclose it to any legal or other adviser notified to the Committee. Where evidence is given in public the transcripts will be published as quickly as possible and may be referred to.

(23) The Committee will not be responsible for any costs incurred by Mr Johnson or any individual or body who is asked to respond to a request or who it requests to be a witness.

Annex 2: Memorandum by the Committee's Legal Adviser, Rt Hon Sir Ernest Ryder

Draft Motion on Procedure

1. I have provided to the Clerk of the Committee a draft motion on procedure for the meeting on 13 July 2022.

2. I have used plain language and have kept the procedure as simple as is possible consistent with a process that is fair.

3. The process for the determination of the matter of privilege which was referred to the Committee by the House on 21 April 2022 is a modified inquisition. My advice relating to the justification for that approach is the same as that set out in the review that I conducted for the Committee on Standards.[5]

4. The resolution of the House describes the allegations that are to be determined by the Committee.

5. I have had sight of the advice from the Clerk of the Journals on the approach to contempt that the Committee might take.[6] I agree with her description and her advice.

6. The Committee will have to decide whether a contempt of the House includes any mental element or *mens rea*.[7] My provisional view is that this is a strict liability issue and that a mental element is not required.

7. The Committee will also have to decide what is the standard of proof. My provisional view is that the standard of proof is the balance of probabilities.

8. The old form of determination of civil contempts in the courts included the requirement to respond to interrogatories on oath. That provides a helpful analogous procedure. If the Committee comes to the conclusion that it wishes to receive oral evidence on oath, then it would be wise to require that written evidence is likewise protected by a statement of truth, i.e. the answers to any questions that are provided in writing have the same status as sworn oral evidence.

9. Individuals or individuals in bodies to whom requests for evidence are made in writing must answer the requests themselves in the same way and for the same reason that a witness is required to when giving oral evidence to the Committee. They may of course take legal advice but the individual to whom the request is made signs the statement of truth rather than placing reliance on a legal adviser to do so.

10. The earlier precedents used by the Committee refer to submissions despite the fact that legal representatives are not permitted *quae* representative rather than as an adviser.

5 See Committee on Standards, Sixth Report of Session 2021–22, *Review of fairness and natural justice in the House's standards system* (HC 1183), published 4 March 2022

6 See Appendix 3 to the present report.

7 *Mens rea* refers to matters relating to the person's thought process, usually their intent, that is, their state of mind as an act is committed.

I prefer to use the formulation adopted in courts where litigants in person are parties which is to ask that all written responses are signed with statements of truth by the maker so that they have status as evidence. Legal submissions are not classically thought to have that status.

11. I have provided for issues that arise as proceedings develop including at the point where a determination is being considered.

12. I have provided for warning letters as to criticism and sanction.

13. The modified inquisition that is used by the Committee only has such rules as are contained in Standing Orders, precedent including the resolutions of the House or the motion that is resolved. The need for the anonymity of some witnesses or to move into private meetings from public meetings is accordingly specified.

14. Fair process normally requires that the subject of the inquiry receives all of the information upon which the Committee intends to rely (including of course anything adverse to the conclusions to which the Committee may come). I am content that there can be provisions for anonymity and private 'hearings' but the Committee will have to decide how to offer confidentiality in a circumstance where there is no 'closed procedure'. There is no statutory or statutory instrument based scheme (for example like Civil Procedure Rules, parts 82 and 88) to support confidentiality, and unlike the House of Commons Independent Expert Panel procedure at part F of its guidance, this is not an appeal following disclosure which has already been provided for.

15. I am happy to develop these initial advices in discussion with the Committee.

Rt Hon Sir Ernest Ryder

12 July 2022

Annex 3: Paper from the Clerk of the Journals: The definition of contempt

Introduction

1. In preparing this paper I have been assisted by Sir Ernest Ryder, the Committee's legal adviser, and Saira Salimi, Speaker's Counsel, who provided legal insight from the perspective both of the law of England and Wales, and that of Scotland.

Background

2. Contempt is a free standing concept, related to the functions of the House and its members, rather than a species of offence inherently linked to either statutory (criminal) contempt or civil contempt in the courts. There is no recourse to a court for its determination. It is also relevant that the House agreed in 1978 that "in general the House should exercise its penal jurisdiction: (i) in any event as sparingly as possible, and (ii) only when satisfied that to do so was essential in order to provide reasonable protection for the House, its Members or its officers from improper obstruction or attempt at or threat of obstruction causing, or likely to cause, substantial interference with the performance of their respective functions".[8] This means that cases are relatively rare, and while Committees have sometimes tried to draw out principles from precedent, they do not consistently do so. The most comprehensive description of contempt and the House's jurisdiction is to be found in Erskine May.

3. In paragraph 15.2 Erskine May defines a contempt as follows:

> any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of their duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence.[9]

May concludes:

> It is therefore impossible to list every act which might be considered to amount to a contempt, as Parliamentary privilege is a 'living concept'.[10]

4. The mischief which is addressed is clear: obstructing or impeding a House in its functions.[11] The ways in which that mischief may be performed cannot be exhaustively defined.

8 Erskine May, *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 25th edition, para 15.32 (herafter *Erskine May*/ *May*)

9 *Erskine May*, 25th edition; this definition is derived from evidence given to the Select Committee on the Official Secrets Act, by the then Clerk of the House, and adopted by that Committee in 1939. Select Committee on the Official Secrets Act, *The Official Secrets Act*, Session 1938–39, HC 101, para 18, and p 22.

10 Because contempt is linked to a particular mischief – obstruction of the House, its committees or Members – actions which are contempts do not have to be linked to breach of one or other of the House's undoubted privileges.

11 Indeed, earlier editions of *Erskine May* describe the power as "akin in nature to the powers possessed by the courts to punish for contempt." (eg 15th edn, 1950, p. 89)

5. Ultimately in each case it is up to the Committee of Privileges to determine:

a) whether the conduct complained of is a contempt, and has reached the necessary bar set by the House;

b) the degree of culpability of the contemnor.

The House is at liberty to agree with or depart from the Committee's report, and it is the House's view which is determinative. So, for example, in the 1940s the House refused to categorise leaking accounts of private party meetings as a contempt, although it condemned it and censured the Member responsible.[12]

6. It may be helpful to note here that Article 6 of ECHR clearly does not apply when the House is exercising its jurisdiction against Members.[13] In Hoon v the United Kingdom[14] the European Court of Human Rights held:

> 29. According to well established case-law, the right to stand for election and to keep one's seat is a political right and not a "civil" one within the meaning of Article 6 § 1 (see Christian Estrosi v. France, no. 24359/94, dec. 30 June 1995, D.R 82-B, p. 56 and PierreBloch v. France, 21 October 1997, § 50, Reports of Judgments and Decisions 1997VI for cases concerning candidates' obligation to limit their election expenditure). Accordingly disputes relating to the arrangements for the exercise of a parliamentary seat lie outside the scope of that provision.
>
> 30. Therefore, the parliamentary proceedings in question, which were concerned with investigating possible breaches of the Code of Conduct of Members of Parliament, did not attract the application of Article 6 § 1 of the Convention, since they did not determine, or give rise to, a dispute as to the applicant's "civil" rights for the purposes of Article 6 § 1. Accordingly this part of the application, including the complaint relating to lack of access to court to challenge the legality of the parliamentary proceedings, is

12 For example, in the Allighan case, the Committee of Privileges decided that party meetings at which forthcoming business was discussed were attended by Members in their capacity as such, so imputations about the conduct of Members relating to such meetings were a contempt, even though this did not mean that "this conclusion attracts to such meetings all the privileges which are attached to the transactions of Parliament as a whole". (Report from the Committee of Privileges, Session 1946–47, HC 138, para 17) The House censured Mr Allighan for this, but expressly did so in terms which did not imply that any privilege attached to such meetings, resolving instead "That Mr. Allighan, a Member of this House, in corruptly accepting payment for the disclosure of information about matters to be proceeded with in Parliament obtained from other Members under the obligation of secrecy, is guilty of dishonourable conduct which deserves to be severely punished as tending to destroy mutual confidence among Members and to lower this House in the estimation of the people." HC Deb, 30 October 1947, vol. 443, c1094 ff

13 In *Demicoli v Malta* (*[]Application no. 13057/87*) privilege proceedings against the author of a satirical article for defamatory libel were held to be covered by Article 6 both because of the penalties involved and because "Mr Demicoli was not a Member of the House. In the Court's view, the proceedings taken against him in the present case for an act of this sort done outside the House are to be distinguished from other types of breach of privilege proceedings which may be said to be disciplinary in nature in that they relate to the internal regulation and orderly functioning of the House." The House of Commons has long since abandoned proceedings against those who publish material criticising the House, and implicitly accepts it has no power to impose a penalty beyond admonishment.

14 Application no. 14832/11

> incompatible ratione materiae with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

7. A fair process is necessary even if the ECHR does not directly apply and Sir Ernest Ryder will provide a separate note. The guidance provided by Sir Ernest in his review for the Committee on Standards is relevant. The process is a modified inquisition which is for the Committee or the House to determine.

8. The Committee has also asked for guidance on some particular points which I attempt to deal with below.

Is the concept of strict liability relevant in considering contempt?

9. A strict liability offence is one in which there is no consideration of intent. So, for example, the Contempt of Court Act 1981 which amends the [common] law relating to contempt of court provides:

> (1) The strict liability rule applies only in relation to publications, […] which is addressed to the public at large or any section of the public.
>
> (2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced…[15]

10. While there are many different kinds of contempt,[16] most are committed by those who do wish to interfere with the parliamentary process, or to influence the conduct of a Member, and so do intend to obstruct the House. Nonetheless not only is the focus in the definition in May on the effect of contempt on proceedings, some actions – such as serving or executing civil process within the precincts while the House is sitting – are always treated as a contempt whatever the motive.[17] In such cases, if the contempt was inadvertent, the Committee of Privileges has found a contempt has been committed, but recommended no further action.[18] Similarly, in considering the case of a Member who referred to a speech made in secret session, the Committee of Privileges concluded "Your Committee are of the opinion that there was a breach of the Rule[19] as accepted by the House, but entirely exonerate Mr McGovern of any intention to infringe the Rules of the House" and recommended no action should be taken.[20]

15 Contempt of Court Act 1981, s2

16 See *Erskine May*, 25th edn, Chapter 15

17 See *Erskine May*, 25th edn, para 15.12 n1

18 Report from the Committee of Privileges, Session 1945–46, HC 31, concerning the service of summons relating to road traffic offences in the precincts on a sitting day, paras 20 and 21. "Your Committee are of the opinion that in this case a breach of privilege occurred. 21 Your Committee are satisfied upon the evidence given that no breach of privilege or disrespect to the House was intended by any of the officers of the Metropolitan Police concerned in the service of the process […] For this reason Your Committee do not consider the interposition of the House is called for by any proceedings against the officers concerned." The Committee considered that the person who laid information and requested service of the process had not envisaged the possibility that service might occur within the Commons and so could not be held to have procured the commission of breach of privilege.

19 The rule in question was that not only should there be no report of what was revealed in secret session, but that "accounts which purport to state the good or bad impression created in the debate or which in any way, however general, refer to what took place in the proceedings are a breach of privilege."(quoted in publication referenced immediately below).

20 Committee of Privileges, Report on the Matter of the Complaint made on 7th May 1942, Session1942–3, HC 93, para 5.

11. To take a more recent case, the actions of the Sussex Police in serving a Police Information Notice on Mr Loughton after a speech in the House related to a long standing dispute between Mr Loughton and a constituent.[21] The PIN put Mr Loughton on notice about behaviour which might be considered harassment wherever it might occur. Nonetheless the Committee of Privileges found the police had committed a contempt:

> The PIN carries a threat of future legal action and it was motivated by the content of Mr Loughton's speech to the House. A threat of legal action arising from the content of a speech made in the House and published by Order of the House is clearly a contempt].

12. In contrast, the Committee was prepared to be generous about the recording of the speech as a racist incident:

> We are prepared to consider that the action in this case was not a contempt because no one outside Sussex Police service was aware of the action taken, and therefore it could not be said to interfere with the functions of the House or its Members. In different circumstances, for example where legal proceedings have commenced as a result of a PIN, we could well find differently.

13. In Session 1995–96 the matter of "the alleged improper pressure brought to bear on the Select Committee on Members' Interests in 1994" was referred to the Committee on Standards and Privileges. The word "contempt" was not used anywhere in the Report, but the Committee concluded that:

> 33. In line with our terms of reference we conclude that:—
>
> (i) Mr Willetts' note was a broadly accurate account of the conversation;
>
> (ii) There is no evidence that Mr Willetts actively sought out Sir Geoffrey Johnson Smith with the intention of influencing his conduct of the Members' Interests Committee, but the note suggests that in the course of conversation he took the opportunity to do so, at least to the extent of reinforcing Sir Geoffrey's incIination to "go for (i)", i.e. to "argue now subjudice and get Committee to set it aside";
>
> (iii) Sir Geoffrey ought not to have participated in such a discussion;
>
> (iv) Mr Willetts ought not to have discussed the work of the Members' Interests Committee with its Chairman;
>
> (v) We regard the conversation as having gone beyond what should properly have taken place.[22]

Again, it appears that there was no intent to act improperly, but that was not relevant to the finding.

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21 Mr Loughton had "sacked" the constituent in an adjournment debate, and sent the daily part of Hansard to the person in question to inform him of this.

22 Committee on Standards and Privileges, First Report of Session 1996–7, Complaint of alleged pressure brought to bear on the Select Committee on Members' Interests in 1994, HC 88, para 33

14. In 1989 the then Clerk of the House told the Committee of Privileges:

> "I have been asked whether in any previous case it has been considered necessary to establish and intention to committee a breach of privilege or contempt before finding that such an offence had been committed.
>
> No such general principle has been enunciated in terms. […][23]

15. **In conclusion, contempt of the House by a Member is neither a criminal nor civil offence capable of being pursued before the courts nor is it analogous to those offences. It is in a legal category of its own. It is for the Committee and the House to determine whether a contempt has occurred and the intention of the contemnor is not relevant to making that decision. Intent has been considered relevant when a Committee has been considering whether or not there should be penalties for a contempt, or the severity of those penalties; it is best thought of as an aggravating factor in respect of remedy rather than a component part of the allegation.**

The current case

> *Resolved,* That this House-
>
> (1) notes that, given the issue of fixed penalty notices by the police in relation to events in 10 Downing Street and the Cabinet Office, assertions the Rt hon Member for Uxbridge and South Ruislip has made on the floor of the House about the legality of activities in 10 Downing Street and the Cabinet Office under Covid regulations, including but not limited to the following answers given at Prime Minister's Questions: 1 December 2021, that "all guidance was followed in No. 10", Official Report vol. 704, col. 909; 8 December 2021 that "I have been repeatedly assured since these allegations emerged that there was no party and that no Covid rules were broken", Official Report vol. 705, col. 372; 8 December 2021 that "I am sickened myself and furious about that, but I repeat what I have said to him: I have been repeatedly assured that the rules were not broken", Official Report vol. 705, col. 372 and 8 December 2021 that "the guidance was followed and the rules were followed at all times", Official Report vol. 705, col. 379, appear to amount to misleading the House; and
>
> (2) orders that this matter be referred to the Committee of Privileges to consider whether the Rt hon Member's conduct amounted to a contempt of the House, but that the Committee shall not begin substantive consideration of the matter until the inquiries currently being conducted by the Metropolitan Police have been concluded.-(*Keir Starmer.*)

16. There is no reference to intent in the reference; the House expresses a view that the Rt hon Member's statement "appear to amount to misleading the House" and requires the Committee to consider whether the conduct "amounted to a contempt of the House."

17. The reference implicitly puts two questions before the Committee:

> Did Mr Johnson's statement "amount to misleading the House?

23 Committee of Privileges, *Alleged Misconduct affecting a Parliamentary Agent*, Session 1988–89, HC 502, Appendix 2, paras 1–3.

Was the conduct a contempt of the House?

"Misleading"

18. Erskine May says:

> The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963, the House resolved that in making a personal statement which contained words which they later admitted not to be true, a former Member had been guilty of a grave contempt.[24]
>
> In 2006, the Committee on Standards and Privileges concluded that a Minister who had inadvertently given a factually inaccurate answer in oral evidence to a select committee had not committed a contempt, but should have ensured that the transcript was corrected. The Committee recommended that they should apologise to the House for the error.[25]

19. The reference to misleading the House as a species of contempt which could be committed by Members appeared for the first time in the 1964 edition of May, after John Profumo had been found in contempt.[26] Previous editions had categorised contempts relating to misconduct by Members and Officers as corruption, acceptance of fees for professional services connected with proceedings and advocacy on which they had been concerned professionally and a general statement that "Neglect or breaches of duty by Members or officers of either House, other than corruption in the execution of their office and cognate offences may also be treated as contempt."[27] This reflects the fact that Erskine May describes what has happened, and while it is a guide to the rules and practice of the House insofar as those are settled it is not the ultimate source of those rules.

20. The fact that it is for the Committee and ultimately the House to determine whether a contempt has been committed, means the treatment of cases in which the House has been misled varies widely. Note that in the definition of contempt in Erskine May it is stated, "any act or omission which obstructs or impedes either House of Parliament [„„] **may** be treated as a contempt"; it is not necessary it should be so. Moreover, the test is not simply that the House has been obstructed or impeded in the performance of its functions. A matter may also be a contempt if it has a tendency, directly or indirectly, to produce such results.

21. Much of the commentary has focussed on whether Mr Johnson "deliberately" or "knowingly" misled the Committee. This wording is not in the motion. Instead, it appears to have been picked up from the Ministerial Code which provides:

> "It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister."

24 Erskine May, para 15.27, CJ(1962–63) 246. There was no Committee inquiry in this case:
25 The Byers case, discussed further below and in the annex
26 Seventeenth edn, p115.
27 Sixteenth edn, 1957, pp 115–117.

22. While this wording has been adopted from an earlier Resolution of the House on Ministerial Accountability neither it nor the Resolution (which sets out general principles) constrain the Committee's decision about what would amount to misleading the House.

23. The eighteenth century definition of "mislead" – To guide a wrong way; to betray to mischief or mistake[28] – has a suggestion of intent about it, as has the Oxford English Dictionary definition – "to deceive by giving incorrect information or a false impression (of a situation, etc.); to delude or misinform" – but it is possible to be unintentionally misleading, for example by relaying information one does not know to be incorrect. The plain language of dictionary definitions is accordingly not decisive. The Annex gives more details about precedents in which Members have been referred for misleading the House, or a Committee has been concerned that it has been misled.

24. In the Byers case (see Supplement to this paper) the then Clerk of the House noted that:

> formal complaints that a witness has wilfully misled the House or a select committee are treated as contempts rather than as breaches of the Code of Conduct. Such complaints, however, have been and are very rare. In order for one to be sustained it must be demonstrated not only that the statement or evidence was incorrect, but also that there was a deliberate intention to mislead.[29]

25. In that case the statement complained of had been accepted as untruthful and an apology offered before the referral was made. The Member who moved the motion to refer the matter to the Committee of Privileges was extremely clear: "Ministers may be evasive, they may be difficult, they may be downright disingenuous-but they must not lie to the House of Commons. The charge that lies on the table in front of the right hon. Member for North Tyneside (Mr. Byers) is that on 14 November 2001 he lied to a Select Committee of this House."[30] Lying by definition involves intention.

26. **It will be for the Committee to decide, on the basis of its assessment of the evidence, whether, in the circumstances in which they were made, Mr Johnson's statements "amounted to misleading the House". It is possible that in making that decision the Committee may expressly or implicitly come to a view as to whether the Ministerial Code was breached, but that is not the question before it.**

What is the relevance of Mr Johnson's position as Prime Minister?

27. It is a contempt for anyone to knowingly mislead the House or a committee, or to prevaricate or refuse to answer committee questions. This applies to Members as much it does to anyone else. Indeed, their position as members of the House may increase the obligation on them to act as the House expects. The then Clerk of the House noted in his memorandum on the Byers case:

> The Resolution [on Ministerial Accountability] was intended to be a clarification of the roles of Ministers in relations with Parliament. It was not intended to affect or derogate from the duties owed by a Minister to

28 Johnson's dictionary

29 Committee on Standards and Privileges, Sixth Report of Session 2005–06, *Mr Stephen Byers (Matter referred on 16 October 2005)*, Appendix 1, para 5

30 HC Deb, 19 Oct 1995, c 848

> Parliament in his or her capacity as a Member of the House. Similarly the obligations placed on Ministers by the Ministerial Code, such as their additional duty to offer their resignation to the Prime Minister, do not affect the right of the House to proceed against them in a case of alleged contempt as it might against any other Member.[31]

28. The Committee may consider that the fact Mr Johnson is Prime Minister is relevant because misstatements by Ministers are inherently likely to obstruct or impede the House. The 1997 Resolution permits Ministers to withhold information in some circumstances, but it also states "It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity."[32]. If it is of paramount importance Ministers tell the truth to Parliament (as the House has resolved) it is apparent that failure to do so is very likely to impede or obstruct.

29. Parliamentary debate is conducted in many ways, and the Committee may wish to consider whether a different level of response is appropriate in different circumstances – for example, while information given should always be correct, is there a difference between the expectations in oral questions and in a select committee hearing? Are there circumstances in which there is a duty on Ministers to be particularly careful about the information they give in answers to oral questions?

30. The Committee may also consider whether the resources available to Ministers affect the level of care they should take in ensuring they are in a position to give accurate answers. Mr Johnson was answering about matters which were clearly of increasing public interest. Did he at any stage have a duty to ensure that he was in possession of the best knowledge and advice to put to Parliament?

Conclusion

31. In summary, the focus of the House's contempt jurisdiction is on the effect of the action or omission in question – does it impede or obstruct the House's functions, or does it have the tendency to do so, directly or indirectly.

32. It is not necessary that intention is involved. Although some degree of intent may be inherent in the public perception of "misleading", that is not decisive and the references in Erskine May are descriptive. The Committee will have to decide how far some intent or omission is implied in the plain language of the resolution of the House.

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31 Ibid, para 8

32 See Erskine May, para 11.40. The full text of the Resolution is as follows: 'That, in the opinion of this House, the following principles should govern the conduct of ministers of the Crown in relation to Parliament: ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps Agencies; it is of paramount importance that ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister; ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute, and the government's Code of Practice on Access to Government Information (second edition, January 1997); similarly, ministers should require civil servants who give evidence before parliamentary committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information, in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code.'

33. The Ministerial Code is not relevant, but Mr Johnson's position as a Minister is relevant as untruthful answers from Ministers are inherently likely to obstruct or impede the functioning of the House, or to have the tendency to do so.

34. Since context is important in privilege cases, the Committee may wish to consider this further when it has gathered more information.

Eve Samson

Clerk of the Journals

July 2022

Supplement: Detailed notes on cases involving misleading the House or a contempt

Allighan case

1. The last MP expelled from the House for contempt, Mr Gary Allighan, was a back bencher. The Committee of Privileges found his contempt lay in alleging Members routinely sold accounts of the proceedings of the Parliamentary Labour Party to the press, and that the proceedings of the PLP could also be gleaned by from MPs who were only half sober and that lying about the matter to the Committee of Privileges was an aggravating factor.[33] The House considered it a grave contempt in one of a series of resolutions condemning different aspects of his behaviour:

> *Resolved:* That Mr. Allighan, in persistently misleading the Committee of Privileges in his evidence, and in seeking to cast suspicion on others in respect of the very matter of which he knew himself to be guilty, has committed a grave contempt of this House in disregard of the Resolution of this House of 12th November, 1946, 'That if it shall appear that any person hath given false evidence in any case before this House, or any Committee thereof, this House will proceed with the utmost severity against such offender.' "—[*Mr. H. Morrison.*][34]

Stephen Byers (Matter referred on 19 October 2005),

2. The House agreed "That the matter of the evidence given by the right hon. Member for North Tyneside to the Transport Sub-Committee of the Select Committee on Transport, Local Government and the Regions on 14th November 2001 be referred to the Committee on Standards and Privileges"[35].

3. In that session Mr Byers, then Secretary of State for Transport, had been asked:

> "857. Was there any discussion, theoretical or otherwise, in your Department before July about the possibility of a future change in status for Railtrack, whether nationalisation, the move into a company limited by guarantee, or whatever?

4. Despite having commissioned an options paper on Railtrack when he took up office, Mr Byers answered "Not that I am aware of."

5. The existence of these papers emerged during a judicial review relating to the privatisation of Railtrack. As the Committee report says:

> On 17 October, Mr Byers made a personal statement to the House. In his statement, he informed the House that his reply to Mr Grayling's Question 857 had been "factually inaccurate" and apologised. He added that he "did not intend deliberately to mislead" the Transport Sub-Committee, and that he had done so "due to an inadvertent error".[36]

6. So by the time the matter was referred, an apology had already been given.

33 Report from the Committee of Privileges, Session 1946–47, HC 138, paras 22–24
34 HC Deb, 30 October 1947, vol. 443, c1111
35 https://publications.parliament.uk/pa/cm200506/cmhansrd/vo051019/debtext/51019–05.htm#51019–05_spnew1
36 Committee on Standards and Privileges, Sixth Report of Session 2005–06, Mr Stephen Byers (Matter referred on 16 October 2005),para 10.

7. The Standards and Privileges Committee noted the advice of the then Clerk of the House that:

> formal complaints that a witness has wilfully misled the House or a select committee are treated as contempts rather than as breaches of the Code of Conduct. Such complaints, however, have been and are very rare. In order for one to be sustained it must be demonstrated not only that the statement or evidence was incorrect, but also that there was a deliberate intention to mislead. In order to find that Mr Byers committed a contempt in the evidence session of 14 November 2001, the Committee will need to satisfy itself not only that he misled the Sub-Committee, but that he did so knowingly or deliberately.

8. In this context, the Clerk noted the Sessional Resolution which had been passed until November 2004 (and was quoted in the motion relating to the conduct of Mr Allighan, see above):

> That, if it shall appear that any person has given false evidence in any case before this House, or any Committee thereof, this House will proceed with the utmost severity against such offender.

(The Sessional Orders had then been dispensed with, as being of no practical effect.)

9. The Committee did not "consider that the case has been made that Mr Byers had a political agenda which he was anxious to conceal from the Transport Sub-Committee" and came to the conclusion that:

> 57. While Mr Byers now accepts his answer was untruthful, we do not find the charge of contempt, as defined by the Clerk of the House, is sustained. We do not believe, on the evidence we have seen, that Mr Byers lied to the Transport Sub-Committee as alleged.

10. But it also noted that as, the complainant, Mr Grayling had said, if Mr Byers had given a correct answer "it would not have changed the course of history."

11. In the course of the analysis leading to this conclusion, the Committee made a very full examination of the context, and of the effect of the untruthful answer. It was very critical of Mr Byers personal statement made in the House on 17 October, which had given a rationale for the misstatement when in fact he was unaware why he had answered as he did. It recommended that he apologise again, which he subsequently did.

12. The Clerk's memorandum must be seen in the context of the case before the Committee at the time, in which it was already acknowledged that there had been an incorrect statement and an apology had been given. The case the Committee had to decide was whether the reason the evidence to the Committee had not been truthful was, as alleged by Mr Grayling, Mr Byers had lied – a matter very different from being mistaken, inattentive, or not recollecting something,

Other cases

13. The case of Mr Byers followed a model governed by legal thinking: a charge was made, and the Clerk offered the Committee a definition of contempt which it implicitly

accepted. In many cases, Committee reports do not follow this approach. Instead, they give a narrative followed by conclusions without setting out the principles underlying their decision. This is particularly the case when no further action is recommended.

The alleged improper pressure brought to bear on the Select Committee on Members' Interests in 1994

14. In 1995–96 the Committee considered complaints of pressure on the Select Committee on Members Interests (a forerunner of the Committee on Standards). In one case a note of a conversation between Mr Mitchell, a junior Whip and the Chair of the Committee, Sir Geoffrey Johnson Smith, had been revealed in legal proceedings. The note appeared to show that the Chair "wanted advice" on a particular inquiry. The Committee on Standards and Privileges concluded: that although it was prepared to accept that one Member did not recollect what had been said:

> 37. .. We have already stated that we believe that the original note was a broadly accurate account of the conversation. It follows that we cannot accept much of the memorandum submitted to the Committee by Mr Willetts, nor much of his oral evidence, as being accurate.
>
> 38. We are very concerned that any Member should dissemble in his account to the Committee and believe that this response by Mr Willetts has substantially aggravated the original offence.
>
> 39. We have decided that, in any future investigation of matters of privilege or of complaints about the conduct of Members, it will be our normal practice to take evidence on oath.[37]

15. No further action appears to have been taken, and the Committee had ceased to administer the oath by Session 1997–98.

16. In earlier cases, involving witnesses who were not MPs, prevarication has been considered a contempt.[38] These are of limited value, since most date from the 19th century, but indicate that actions short of the lie direct have been considered contempts.

37 Committee on Standards and Privileges, First Report of Session 1996–7, *Complaint of alleged pressure brought to bear on the Select Committee on Members' Interests* in 1994, HC 88, paras 37–39. The Committee on Standards and Privileges issued a further report on the fact that one of the Committee members was a government whip, concluding that this had inhibited Government members, and recommending that no whip should be appointed again. At that time the Committee was chaired by the Leader of the House.

38 See Commons Journal (1865–67), 239 , Mr. Hibbert, from the Select Committee appointed to try and determine the matter of the Petition Election, complaining of an undue Election and Return for the Borough of New Windsor, informed the House, That Alfred Colburn had prevaricated and otherwise misbehaved in giving his Evidence before the Committee; and that he had, by the direction of the Committee, by Warrant under his hand, committed the said Alfred Colburn to the custody of the Serjeant at Arms attending this House, to await the pleasure of the House. And the House being informed by a Member, That the said Alfred Colburn had expressed his contrition for his offence ; Ordered, That Alfred Colburn be discharged out of the custody of the Serjeant at Arms attending this House, without payment of his Fees

Appendix: Correspondence with Mr Speaker concerning the Recall of MPs Act 2015

Table of Contents

Monday, 18 July 2022

Dear Harriet,

Thank you for your letter of 11 July seeking my determination, under the Recall of MPs Act 2015, as to whether the Committee of Privileges is a committee concerned with the standards of conduct of individual members to which the provisions of the Act would apply.

I enclose a copy of my determination, together with a note from myself to the Clerk of the House and the supporting legal advice from an independent QC, Andrew O'Connor.

Warm regards,

Rt. Hon Sir Lindsay Hoyle MP
Speaker

Harriet Harman QC MP
House of Commons

CERTIFICATE OF DETERMINATION BY THE SPEAKER OF THE HOUSE OF COMMONS

In the exercise of the power conferred by section 1(8) of the Recall of MPs Act 2015, I, Lindsay Harvey Hoyle, Speaker of the House of Commons, hereby DETERMINE that the Committee of Privileges is a Committee concerned with the standards of conduct of individual members of that House.

Signed 

Dated this eighteenth day of July 2022

Note from Speaker to Clerk of the House on Recall of MPs Act 2015

1. Section 1(4) of the Recall of MPs Act 2015 ("the Act") provides that the second recall condition is "that, following on from a report from the Committee on Standards in relation to an MP, the House of Commons orders the suspension of the MP from the service of the House for a specified period of the requisite length". (The "requisite length" is defined as a period of at least 10 sitting days or at least 14 days.)

2. Section 1(7) of the Act further provides that the reference in subsection (4) to the Committee on Standards is to "any Committee of the House of Commons concerned with the standards of conduct of individual members of that House".

3. Section 1(8) provides that "Any question arising under subsection (7) is to be determined by the Speaker".

4. The question has arisen whether or not the Committee of Privileges is a Committee of the House concerned with the standards of conduct of individual members of that House.

5. Given the seriousness of this question, and that a genuine doubt has arisen as to the application of the Act in the event of any period of suspension imposed following a report of the Committee of Privileges, I have taken independent legal advice on this question from Andrew O'Connor QC. A copy of the advice is attached to this determination in the interests of transparency.

6. Following careful reflection, and for the reasons set out in that advice, I have determined that the Committee of Privileges is a committee concerned with the standards of conduct of individual MPs, and therefore any suspension of the requisite length following on from a report from that Committee will attract the provisions of the Recall of MPs Act. I attach my certificate of determination.

ADVICE BY ANDREW O'CONNOR QC REGARDING SECTION 1 OF THE RECALL OF MPs ACT 2015

Introduction

1. I am asked to advise the Speaker of the House of Commons on a point of statutory construction regarding section 1 of the Recall of MPs Act 2015 ('the 2015 Act').

2. Section 1 of the 2015 Act establishes three 'recall conditions'. When one of these conditions is met in relation to an MP, and the Speaker gives notice of that fact, the 'recall petition' process described in section 1(2) of the 2015 Act is triggered.

3. The present issue concerns the second recall condition. The key provisions are subsections 1(4) and 1(7) of the 2015 Act, which provide as follows:

> *1(4) "The second recall condition is that, following on from a report from the Committee on Standards in relation to an MP, the House of Commons orders the suspension of the MP from the service of the House for a specified period of the requisite length."*
>
> *1(7) "The reference in subsection (4) to the Committee on Standards is to any committee of the House of Commons concerned with the standards of conduct of individual members of that House".*

4. Subsection 1(5) of the 2015 Act provides that the *"requisite length"* of a period of suspension for the purposes of subsection 1(4) is 10 sitting days where the period is expressed as a number of sitting days, and in any other case 14 days.

5. Subsection 1(8) of the 2015 Act provides that *"Any question arising under subsection 1(7) is to be determined by the Speaker".*

6. The narrow issue that I have been asked to consider is whether the second recall condition would be satisfied by a suspension of the requisite length ordered by the House of Commons following a report to the House made not by the Committee on Standards, but by the Committee on Privileges.

7. There is a reason why this issue has arisen for consideration now. In April this year the House of Commons passed a motion calling for the Privileges Committee to investigate the Prime Minister for having potentially misled Parliament. The Committee has very recently begun considering this issue. Once it has completed its investigation, the Committee will report its findings and (if appropriate) any recommended sanctions to the House. If the Committee does conclude that the Prime Minister misled Parliament, it may recommend a period of suspension of 10 sitting days or 14 days in total, or more. Were the House to endorse any such recommendation, the question of whether the second recall condition had been satisfied would arise, and would fall to be determined by the Speaker under subsection 1(8) of the 2015 Act.

Construction

8. The starting point for any exercise of statutory construction is to ascertain the plain meaning of the words in question. Where there is doubt and/or ambiguity as to the plain

meaning of the words, it is appropriate to have regard, amongst other things, to the statutory context, an exercise that was described by Lord Wilberforce in the following terms:

> *"In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs."*[39]

Plain meaning?

9. Applying that approach, the first question for present purposes is whether the issue under consideration (viz, whether the second recall condition would be satisfied by the House ordering a suspension of the requisite length following a report from the Privileges Committee as opposed to the Standards Committee) is answered simply by the plain meaning of the statutory language. My answer to that question is that it is not.

10. The meaning of the words in subsection 1(4) is, of course, perfectly clear. But the effect of subsection 1(7) is to amplify subsection 1(4), and the effect of that extra meaning is not clear. On an entirely literal reading, the effect of subsection 1(7) might be thought to extend the meaning of "Committee on Standards" in subsection 1(4) to any other committee concerned with the conduct of individual MPs. But that outcome would beg the question as to why subsection 1(4) was drafted in the way it was – i.e. by referring exclusively to the Committee on Standards. Why not simply refer to any committee concerned with conduct at that point and obviate the need for subsection 1(7)? This cannot be said to the plain meaning of the words.

11. An alternative, and much narrower, reading of subsection 1(7) would be that it is intended to catch (and only to catch) other committees that may in due course exercise the same functions as that performed by the Standards Committee in 2015 (e.g. as a result of the renaming of the Committee, or because of a reallocation of its functions). That is certainly a plausible reading, but it is not, in my view, a plain one. Put simply, the words do not actually spell out (as they could have) this meaning.

Resolving ambiguity

12. Since the statutory language does not have a plain meaning that can resolve the issue, it is necessary to undertake a more nuanced analysis. As mentioned above, the statutory context must be considered. It is also appropriate to consider relevant Explanatory Notes as part of this exercise.

13. With regard to statutory context – what Lord Wilberforce described as *"the state of affairs existing, and known by Parliament to be existing, at the time [of enactment]"* – it seems to me that the following matters are of particular significance.

a) Between 1995 and 2013 there was a single Standards and Privileges Committee of the House of Commons.

b) In 2013 that Committee was split to create two separate committees, the Committee on Standards and the Committee on Privileges.

39 *Royal College of Nursing v Department of Health and Social Security* [1981] AC 800, HL, p.822

c) Under the new regime established in 2013, the two committees have the same chair and MP membership. But the Standards Committee has additional lay members who do not sit on the Privileges Committee. And the two committees have different remits, which reflect the two strands of the work previously conducted by the joint committee. The Privileges Committee deals with issues of privilege, and in particular investigates possible contempts of parliament (i.e. allegations that privileges have been impeded). The Standards Committee deals with the MPs' code of conduct – adjudicating and determining sanctions for any cases of misconduct referred to it by the independent parliamentary commissioner for standards – and oversees the Commons standards system.

d) At the time the 2015 Act was passed the new regime had only been in place for some two years. During that period, as I understand it, the Privileges Committee had not considered any matters relating to MPs' conduct. Historically, the Privileges side of the Standards and Privileges Committee had occasionally considered issues that touched on the conduct of individual MPs (e.g. allegations of misconduct in relation to the work of Select Committees), but this was rare and had never resulted in a sanction of the nature / severity of that contemplated in section 1 of the 2015 Act (i.e. a suspension for the "*requisite period*").

14. There was nothing in the history or standing orders of any of the other committees of the House of Commons to suggest that any of those committees would ever be involved in making a determination regarding the conduct of an MP.

15. The Explanatory Notes to section 1 of the 2015 Act state:

> "*The effect of subsection (7) is to future-proof the second recall condition by ensuring that the reference to the Committee on Standards (in subsection (4)) captures any other House of Commons committee concerned with the standard of conduct of an MP, regardless of what it is called.*"

16. Returning to the analysis of subsections 1(4) and 1(7) and the issue that I have been asked to address, it seems to me that the Explanatory Notes provide a reliable explanation for the function of subsection 1(7) and its relationship with subsection 1(4). Subsection 1(7) is a future-proofing provision. To expand this analysis a little:

a) At the time the 2015 Act was passed, the intention was that the second recall condition would only be triggered by a report from the Standards Committee (hence the exclusive reference to that committee in subsection 1(4)).

b) Subsection 1(7) reflects a Parliamentary recognition of the possibility that the status quo may change, requiring the ambit of subsection 1(4) to be broadened to include other committees.

17. However, this still begs the question of what type of change to the status quo subsection 1(7) was designed to address.

18. There are at least two possibilities.

19. One is that it was always intended that the second recall condition would only be triggered by a report from the body that in 2015 was constituted as the Standards Committee, and that subsection 1(7) caters (only) for the possibility of a future re-naming

of that Committee, or a reallocation of its functions. As will be discussed further below, it is common for statutes that name Parliamentary committees to make provision for this so-called 'successor committee' issue.

20. A second possibility is that, in passing the 2015 Act, Parliament was proceeding on the assumption (based on what was then the current factual position) that matters relating to the conduct of individual MPs – and certainly such matters resulting in the level of sanction contemplated by the second recall condition – would in practice only ever be dealt with by the Standards Committee. On that analysis, the reference (only) to the Standards Committee in subsection 1(4) reflects the practical assumption that that was the only committee that would be involved in such matters, rather than an intention to create a permanent, exclusive jurisdiction. And (again, on this analysis), the 'future-proofing' purpose of subsection 1(7) is to cater for the contingency that at some future point this practical position might change, with a committee other than the Standards Committee dealing with a serious conduct matter.

21. There are certainly good arguments in favour of first analysis. In 2015 the new Standards Committee was still a recent innovation. And the process that leads to a report being made to the House by that Committee has certain characteristics that are unique to the work of that Committee (for example the involvement of the Commissioner, the presence of lay members on the Committee, and other elements of due process). This, it might be thought, is a compelling reason why Parliament might have decided that only a suspension following a report from the Standards Committee (as opposed to a report from another committee, which would not, or at least may not, be made with the same degree of due process) should trigger the second recall condition. Moreover, the language of subsection 1(7) is certainly capable of bearing the 'successor committee' meaning discussed above.

22. That said, there are two further considerations that, in my view, tend to favour the second of the two interpretations above over the first.

23. First, it appears that as at 2015 (and, indeed, for some time before that) the Standards Committee was the only committee that in fact dealt with matters relating to the conduct of individual MPs, certainly such matters involving the level of sanction that might engage the second recall condition. Had the position been different – had, for example, the Privileges Committee been regularly involved in serious conduct matters, then its omission from subsection 1(4) would have been highly significant. But given the actual factual context, it is hard to read into the reference to the Standards Committee alone in subsection 1(4) a deliberate decision to exclude either the Privileges Committee or indeed any other committee. Whilst of course it can be said that if Parliament had wanted to include a reference to the Privileges Committee in subsection 1(4) it could have done so, it could equally be said that, having regard to "*the state of affairs existing, and known by Parliament to be existing, at the time*", there would have been no reason for Parliament to think that such a reference was needed.

24. Second, although, as I have said, the language of subsection 1(7) can bear the 'successor committee' meaning that is discussed above, that is an inferential rather than the natural meaning of the words. The natural meaning of the words of subsection 1(7) (together with that of the words of the Explanatory Note) is much closer to the future-proofing function

contained in the second interpretation, namely allowing for the contingency that in due course committees other than the Standards Committee may determine serious conduct matters.

25. Moreover, it is noteworthy that in a series of other statutes both pre-dating and post-dating 2015, 'successor committee' provisions were made in terms that were very similar to each other, but not at all similar to subsection 1(7) of the 2015 Act.[40] The drafting of section 10(6) of the Financial Services (Banking Reform) Act 2013, for example, is very similar to that of the other provisions in this series. It states:

> *"The reference in subsection (5) to the Treasury Committee of the House of Commons*
>
> *if the name of that Committee is changed, is a reference to that committee by its new name, and*
>
> *if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable;*
>
> *and any question arising under paragraph (a) or (b) is to eb determined by the Speaker of the House of Commons."*

26. Drafting of this nature was in common use both before and after the passing of the 2015 Act to achieve the 'successor committee' future-proofing purpose. The fact that this language was not used in subsection 1(7) of the 2015 Act might be thought to be compelling evidence that that subsection was intended to serve a different purpose.

27. Finally, I have reviewed the Hansard records of the Parliamentary debates preceding the passing of the 2015 Act to consider whether any of that material might alter the analysis set out above. My answer to that question is no. First, I have considerable doubts as to whether any of the Hansard material is of sufficient cogency and clarity to satisfy the test for admissibility as an aid to construction under the rule in *Pepper v Hart*. Second, although reference was made in the course of the debates, including by Lord Wallace who sponsored the Bill in the House of Lords, to the special procedures of the Standards Committee (in particular the presence of lay members) that made it well-suited to consider conduct issues independently of partisan tactics, those references do not in my view amount to a sufficiently clear indication of a Parliamentary intention that cases triggering the second recall condition should be *permanently confined* to those dealt with by that particular Committee and its successors to outweigh the contrary textual analysis of subsection 1(7) outlined above. It seems to me that those passages are at least as likely simply to reflect the common factual understanding held at that time (see above) that most if not all second recall condition cases would come to the House by way of the Standards Committee. Third, I do not think that Lord Wallace's reference to the purpose of the amendments creating what became subsections 1(7) and 1(8) as being to "*future-proof the second edition [sic] by ensuring that the reference to the Standards Committee captures any other committee that in future exercises the relevant functions…The amendments*

40 See paragraph 2A of Schedule 1ZA to the Financial Services and Markets Act 2000; section 19 of the Political Parties, Elections and Referendums Act 2000; paragraph 16 of Schedule 1 to the Local Democracy, Economic Development and Construction Act 2009; paragraph 29 of Schedule 1 to the Budget Responsibility and National Audit Act 2011 and section 10(6) of the Financial Services (Banking Reform) Act 2013.

make it clear that any other committee doing that function, whatever it is called, will be given that function" take the matter any further. The language used is ambiguous, and is equally consistent, it seems to me with both of the alternative interpretations identified at paragraphs 18 and 19 above.

Conclusion

28. The question boils down to that of which of the two alternative interpretations that are set out at paragraphs 18 and 19 above is the better reading of subsections 1(4) and 1(7). Whilst both interpretations are perfectly arguable, my view, on balance, and for the reasons I have explained, is that the second interpretation is the better reading of the relevant provisions. In other words, the 'future-proofing' function of subsection 1(7) is not to preserve an exclusive area of competence of the Standards Committee or its successors, but is rather to bring within the scope of the second recall condition reports concerning the conduct of individual MPs made by other committees.

29. It follows that my answer to the issue framed at paragraph 6 above is in the affirmative - the second recall condition would be satisfied by a suspension of the requisite length ordered by the House of Commons following a report to the House made not by the Committee on Standards, but by the Committee on Privileges.

30. Finally on this point, I should add that I have read the Advice on this issue that has been prepared for the Good Law Project by Jason Coppel QC. I note that our conclusions – that, on balance, a report from the Privileges Committee can trigger a recall petition – are similar, albeit that the routes by which each of us has reached that conclusion are rather different.

ANDREW O'CONNOR QC

Temple Garden Chambers

London.

6 July 2022

Letter dated 11 July 2022 from the Chair of the Committee to Mr Speaker

Dear Mr Speaker,

As you will be aware, there has recently been speculation about whether, in the event that the House were to agree to a recommendation from the Committee of Privileges that a Member be suspended from the service of the House for 10 or more sitting days as a sanction for having committed a contempt, such a decision by the House would trigger the recall process under the Recall of MPs Act 2015 in the same way that a suspension following a report from the Committee on Standards would.

Section 1 of the Recall of MPs Act provides that:

"(7) The reference in subsection (4) to the Committee on Standards is to any committee of the House of Commons concerned with the standards of conduct of individual members of that House.

(8)Any question arising under subsection (7) is to be determined by the Speaker."

The Committee would be grateful to know your determination as to whether the Committee of Privileges is a committee concerned with the standards of conduct of individual members to which the provisions of the Act would apply.

With best wishes,

Harriet Harman

Rt Hon Harriet Harman MP

Chair, Committee of Privileges

Formal minutes

Tuesday 19 July 2022

Members present

Ms Harriet Harman, in the Chair

Andy Carter

Alberto Costa

Laura Farris

Sir Bernard Jenkin

Draft Report (*Matter referred on 21 April: proposed conduct of inquiry*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 15 read and agreed to.

Annexes 1 to 3 agreed to.

Appendix agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

The Committee adjourned.

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records	HC 350

Session 2022–23

Number	Title	Reference
1st	Select committees and contempts: review of consultation on Committee proposals	HC 401
2nd	Matter referred on 21 April 2022: proposed conduct of inquiry	HC 632