



House of Commons
Committee of Privileges

**Matter referred on
29 November 2022:
conduct of John
Nicolson MP**

Sixth Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
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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.

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Introduction

1. On 29 November 2022 the House of Commons agreed to a referral to this Committee in the following terms:

That the matter of the actions and subsequent conduct of the hon Member for Ochil and South Perthshire [John Nicolson MP] in relation to correspondence from the Speaker on a matter of privilege be referred to the Committee of Privileges.¹

2. At that time the Committee was engaged in what proved to be a long-running inquiry into the conduct of another Member. We decided to take written evidence relating to the referral of Mr Nicolson, but to defer further proceedings including oral evidence until the other case had been concluded. In relation to Mr Nicolson's case, we sought guidance on procedural and other matters from the then Clerk of the House, Sir John Benger KCB. This was submitted in the form of a memorandum in January 2023, and shared with Mr Nicolson. We received written evidence from Mr Nicolson in February 2023. The then Clerk's memorandum and Mr Nicolson's written evidence is published with this report.²

3. The prior case was concluded with the publication of our final report and a special report on 15 and 29 June 2023 respectively,³ followed by debates in and decisions by the House on 19 June and 10 July.⁴

4. We took oral evidence in private from Mr Nicolson on 12 September 2023. Mr Nicolson was accompanied by a legal adviser. The transcript of oral evidence is published on our website.

5. Our purpose in this inquiry has been to establish whether Mr Nicolson committed a contempt. We have also looked at related issues concerning the confidentiality of communications with the Speaker in relation to privileges matters.

1 Votes and Proceedings, [29 November 2022](#).

2 See Appendices 2 and 3.

3 Committee of Privileges, [Fifth Report](#) of Session 2022–23, *Matter referred on 21 April 2022 (conduct of Rt Hon Boris Johnson)*: Final Report, HC 564; [First Special Report](#) of Session 2022–23, *Matter referred on 21 April 2022: Co-ordinated campaign of interference in the work of the Privileges Committee*, HC 1652

4 Votes and Proceedings, [19 June 2023](#) and [10 July 2023](#)

Outline of events

6. The facts of the case are not in dispute and many of them are already in the public domain. A detailed narrative of events is set out in the then Clerk of the House's memorandum. We draw upon this in the paragraphs that follow.

7. On 19 May 2022 Rt Hon Nadine Dorries MP, the then Secretary of State for Digital, Culture, Media and Sport, gave evidence to the Digital, Culture, Media and Sport (DCMS) Committee on the work of her Department. Mr Nicolson was a member of that Committee. In the course of her evidence Ms Dorries told the Committee that various participants in a programme called *Tower Block of Commons* in which she had participated were "paid actors" rather than members of the public. Channel 4, which had broadcast the programme, subsequently asked the programme's producers to investigate what she had said. It released a statement in July 2022 saying that investigations had found no evidence to support her comments.

8. There then followed a series of written exchanges between the DCMS Committee and Ms Dorries. The Committee invited her to reconsider what she had said in evidence, and Ms Dorries continued to stand by her original statement.⁵

9. On 18 October 2022, the DCMS Committee agreed a special report on the matter.⁶ It stated that the claims that Ms Dorries had made were "groundless". It concluded the special report by saying:

We are concerned Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4.

Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.⁷

10. The formal minutes of the Committee for 18 October 2022 show that Mr Nicolson was at the meeting at which the special report was agreed, and that it was agreed without a division or any formal attempt to amend it.⁸ Minutes simply record the presence of a Member at some point during a meeting. They do not say for how long they were present, or for which business.

11. Mr Nicolson subsequently wrote to the Speaker to ask if he would give the matter of Ms Dorries' testimony to the DCMS Committee precedence as an issue of privilege, with a view to referring the matter to the Privileges Committee.⁹ Mr Speaker wrote in reply that he would not do so as the DCMS Committee had explicitly decided against pursuing the privilege point. The Speaker's letter stated that:

5 See DCMS Committee, [Fourth Special Report](#) of Session 2022–23, *Rt Hon Nadine Dorries MP* (HC 801) [hereafter cited as "DCMS Committee Fourth Special Report"].

6 DCMS Committee Fourth Special Report

7 DCMS Committee Fourth Special Report, para 9

8 [Formal Minutes](#) of the DCMS Committee, Session 2022–23, p 22

9 Letter of 31 October 2022 (see Appendix 1)

I have considered the matter carefully. Given the views expressed by the Committee in its report, I do not consider it reaches the threshold for me to give time for it to be raised as a matter of privilege as the Committee had explicitly decided against pursuing the privilege point.¹⁰

12. On 16 November Mr Nicolson tweeted about the reply he had received from the Speaker. In a video that he posted, he said:

Hello, I know a lot of you are following the case of Nadine Dorries, the former Culture Secretary, and the fact that she appeared before the Commons Culture Committee, on which I sit, and gave false testimony to it. Now the Committee published an excoriating report and I don't think that Nadine Dorries because of that should go to the House of Lords in Boris Johnson's resignation Honours list. So I sent a copy of the report to Mr Speaker and he's responded and I thought I should update you on what he said. He says that he's considered my letter but he's decided to take no further action and not to refer Nadine Dorries to the Privileges Committee. In other words, she'll suffer no consequences for what she's done. And I thought you should know.

13. Mr Nicolson did not publish the text of the letter from Mr Speaker, or any extract from it. On 16 November Mr Nicolson was asked on Twitter "do you have any idea why he refused to take the matter further?", to which he replied "No I am afraid not". On 17 November Mr Nicholson was asked on Twitter "Have you had a detailed reason" to which he replied "No detailed reason".

14. We were informed by the Speaker's Office that it became aware of the tweet the day it was posted as members of the public began to contact the office to criticise the Speaker's action.¹¹ The next morning, Mr Speaker met with Scottish National Party (SNP) whips, explained the impact on his staff and asked them to ask Mr Nicolson to remove the tweet and apologise. It was not removed. On 21 November Mr Speaker alerted the SNP whips first to his intention to make a statement on this matter in the course of the following week and later in the day to the fact that he was intending to make that statement on 23 November, asking them to alert Mr Nicolson so that he could be in the Chamber and would have the opportunity to apologise.

15. Mr Speaker made a statement about the matter in the House on 23 November.¹² He criticised Mr Nicolson for making private correspondence public and added that "[t]he hon. Member has seen fit to give a partial and biased account of my letter on Twitter, and I await his apology". In response, Mr Nicolson said that he deplored "social media pile-ons against [the Speaker]" but did not explicitly apologise.

16. On 28 November, the Speaker told the House that he had received a letter from Rt Hon David Davis MP asking him to give precedence to a matter of privilege, namely the conduct of Mr Nicolson in relation to his correspondence with Mr Speaker, a request to which he had agreed, having taken advice from the Deputy Speaker and Clerks. (The then Clerk of the House informed us that "while Privilege matters are for the Speaker to

10 Letter of 8 November 2022 (see Appendix 1)

11 Email correspondence with Committee.

12 HC Deb, [23 November 2022](#), Vol. 723, col 291

decide, he wanted to ensure that he was acting with appropriate objectivity in this case.”¹³) The debate took place on 29 November, when the House agreed to refer the matter to the Committee of Privileges on division by 371 votes to 16. The Resolution that the House agreed was:

That the matter of the actions and subsequent conduct of the hon Member for Ochil and South Perthshire in relation to correspondence from the Speaker on a matter of privilege be referred to the Committee of Privileges.¹⁴

17. Subsequently Mr Nicolson reiterated his argument in his defence in an article in a newspaper in his constituency.¹⁵

13 Appendix 2, para 9

14 Votes and Proceedings, [29 November 2022](#)

15 The article is given as Annex D to Appendix 2 to this report.

Key issues in the inquiry

18. In his memorandum to us, the then Clerk of the House stated that there were three points the Committee might wish to address when considering the referral from the House:

- a) Whether in making public the contents of the letter from Mr Speaker without his authority Mr Nicolson committed a breach of confidence.
- b) Whether in disclosing only part of the letter from Mr Speaker Mr Nicolson committed a selective breach of confidence, by implying that the Speaker had not acted with due impartiality.
- c) Whether Mr Nicolson's response to Mr Speaker's statement on 23 November, both in the Chamber and elsewhere (particularly on social media) constitutes a contempt.

19. In the following sections of the report we consider each of these issues in turn.

Making public the Speaker's decision

20. Mr Speaker told the House on 23 November 2022 that "Correspondence on matters of privilege is private".¹⁶

21. Mr Nicolson argues (1) that he was unaware that there was a rule prohibiting publication of a Speaker's decision on privileges matters, (2) that there is in fact no such rule, and (3) on grounds of transparency in public life, it is undesirable that there should be such a rule.

22. In the debate on the referral motion on 29 November 2022, Mr Nicolson stated that he had not deliberately intended to breach confidentiality:

I believe in open democracy, but I also believe in maintaining agreed confidentiality. It did not cross my mind that revealing the Speaker's decision on this was a breach of privilege. [...] I did not consider that I had broken any confidence or betrayed any trust.¹⁷

23. In his evidence to us, Mr Nicolson repeatedly asserted that he genuinely did not know that he was required to keep the Speaker's decision confidential. He noted that the Speaker's letter to him of 8 November 2022 was not marked "private" or "confidential". He stated in his oral evidence:

I was [...] told by my Whips that I had broken a rule of which I was unaware, namely that the contents of a Speaker's letter to an MP must never be known. My assumption was that any letter which the Speaker wanted to remain private would be marked private in the usual manner. [...] Had the Speaker marked his letter to me private or confidential, I would not have revealed its contents.¹⁸

16 HC Deb, 23 November 2022, Vol 723, col 291

17 HC Deb, 29 November 2022, Vol 723, col 806

18 Q1

24. When asked why his whips had told him that a rule had been broken, Mr Nicolson responded:

The Whips took on face value the Speaker’s Office assertion that this was a long-standing rule. The Whips did not know that the information they had been given was incorrect. [...] I think my Whips, on the basis of the information that we have been able to provide them, now recognise that the information they were given was wrong. When they told me that that rule existed, they told me that in good faith, and they now recognise that that was wrong.¹⁹

25. Mr Nicolson said that these events raised an issue about communications:

I think that it is in the interests of parliamentary democracy and communications with our constituents that as much of Parliament is available for the public to understand as possible. [...] my personal preference would be to err on the side of being open and transparent in all our decisions, from the Speaker down to us as individual MPs. [...] if we write to one another and we want something to be private, then just write “private” on it, because this situation would never have arisen if the letter [...] had been marked “private” on the top. I would never have breathed a word.²⁰

26. Mr Nicolson’s written evidence puts forward two arguments in particular:

- a) Transparency is an essential constitutional principle and an ethical requirement which binds Members.
- b) There is no rule against disclosing the Speaker’s rulings on matters of privilege. It is merely “not the practice”. In cases of general interest, there is a reasonable expectation that such rulings will be published.²¹

27. Mr Nicolson is correct that the Speaker’s response to his request was not marked “private” or “confidential”. Two questions then arise: (1) was there a rule or convention of which Members could have been expected to be aware, that the Speaker’s decision on an application to grant precedence to a matter of privilege should be kept confidential, and (2) should there be such a rule or convention?

28. The then Clerk of the House told us that Mr Speaker’s comment that “[c]orrespondence on matters of privilege is private” was in line with a precedent noted in *Erskine May*, which says that “it is not the practice for such letters [that is, ones which decline a request for precedence on a matter of privilege] to be made public”.²² The then Clerk continued:

It is also in line with the ruling made by Mr Speaker Weatherill in February 1985 who said “when I write letters to hon. Members I do not expect copies

19 Q5

20 Q34

21 Mr Nicholson’s written evidence, para 2

22 Appendix 1, para 13. See *Erskine May* (25th ed.), para 15.32, footnote 6.

to be given to the press, at any rate not without my authority”. This related to a letter not on a privilege matter, indicating a general presumption that correspondence with the Speaker is private unless otherwise agreed.²³

29. Mr Nicolson commented on the 1985 ruling. He notes that the passage excerpted follows one in which Mr Speaker Weatherill stated:

I went into the matter in great detail and I wrote to the hon. Member giving my conclusions. *There was nothing secret about what I wrote* [Mr Nicolson’s emphasis]. Nevertheless, when I write letters to hon. Members I do not expect copies to be given to the press, at any rate not without my authority,

30. Mr Nicolson adds:

Three points arise:

- (a) The Speaker subsequently published the letter in question anyway;
- (b) The Speaker took issue with the leaking of correspondence to the press (Mr Nicolson did not leak anything). He did not consider and did not rule on whether Members were entitled to make public statements referring to the content of his letters.
- (c) The Speaker confirmed that there was nothing inherently confidential (“secret”) about his correspondence.²⁴

31. Mr Nicolson’s written evidence argues that “it is established practice that the Speaker will publish private rulings where there is a general interest in that ruling and/or it may serve as a precedent”.²⁵ In support of this contention, Mr Nicolson cites a statement by Mr Speaker Thomas in 1981 that “when I give a private ruling which in my judgment is of general interest or could serve as a precedent for the future, the substance of the ruling will be published in the Official Report”.²⁶

32. We note that the Hansard reference quoted in the previous paragraph relates to rulings on any matter, not necessarily privilege matters. There is no such expectation in privilege matters, although the then Committee of Privileges which recommended the current procedure for raising privilege matters in 1977 (and which was very clear that it would not be in order to raise unsuccessful applications for leave in the House)²⁷ said that if a novel point of privilege arose there would be nothing to prevent the Speaker making a statement to the House to make it aware of the fact.²⁸

33. On the wider issue relating to transparency, this is indeed at the heart of proceedings in the Chamber: they are held in public and extensively reported and scrutinised. There should be a general presumption in favour of transparency in the work of Parliament. This is in accord with the principle of “Openness” that, as one of the Seven Principles of Public Life, is embedded in the House’s Code of Conduct:

23 Appendix 2, para 13

24 Mr Nicolson’s written evidence, para 37

25 Mr Nicolson’s written evidence, para 34

26 HC Deb, [5 November 1981](#), Vol. 12, col 113

27 Committee of Privileges, Third Report of Session 1976–77, *Recommendations from the Select Committee on Parliamentary Privilege*, para 9

28 *Ibid.*, para 12

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.²⁹

34. That does not mean, however, that everything that relates to the business of the House, including discussion both written and oral about how to proceed, should necessarily be made public. It is not for this Committee to decide what should or should not be made public. In relation to privilege, Members are required to raise privilege issues with the Speaker in writing in the first place as the House has resolved that complaints about privilege should be pursued “as sparingly as possible” and so this is a mechanism designed to prevent frivolous or nakedly politicised complaints or those designed simply to achieve publicity.³⁰ The reason why historically Speaker’s letters declining to give precedence to an issue on the grounds of privilege have not been made public has been the perceived risk of giving publicity to applications that have no serious chance of success, as well as possibly embroiling the Speaker in the politics of a contentious issue.

35. It is also worth commenting on Mr Nicolson’s assertion that “There is no rule against disclosing the Speaker’s rulings on matters of privilege. It is merely ‘not the practice.’” In this case, the basis is not in fact practice but a decision of the House. The House agreed to the Committee of Privileges report from 1976–77 referred to in Paragraph 32 above, and endorsed the principle that rejected applications should not be raised in the House (and, by analogy, elsewhere too). The Journal Office has drawn our attention to a letter on file in that office from April 1995 in which Madam Speaker Boothroyd reprimands a Member for giving a letter in which she declined to give precedence to a complaint of privilege to a newspaper. She wrote that:

You ought to know, as a senior Member of the House, and in the context of a procedure which has been in place now for nearly twenty years, that the Speaker’s response to complaints of privilege ought not to be made public, as a matter of principle. Any other outcome would inevitably involve the Speaker in the debates on the merits of complaints, which would be obviously undesirable.

The contents of this letter have not previously been in the public domain or available to Members.

36. The present case is a clear example of what may happen if the Speaker is drawn publicly into such debates. The letter from Madam Speaker Boothroyd shows how the matter of disclosing Speaker’s correspondence on privilege matters has been dealt with previously. Madam Speaker Boothroyd referred to it as “a very great discourtesy to me personally and to the Chair”, but it was not treated as a contempt.

37. It has become apparent that the status of correspondence generally between Members and the Speaker is not well understood by Members. Some Members have expressed surprise at the Speaker’s comments that correspondence with him should remain private. We note, for instance, the statement by Pete Wishart in the referral debate on 29 November 2022 that:

29 House of Commons, [The Code of Conduct for Members of Parliament](#) (HC 1083), approved by the House on 12 December 2022, Section C

30 Erskine May, 15.32, first para

I have been in this House for 21 years, and [...] I have been a member of the House of Commons Commission for something like four years. I had absolutely no idea that we could not reveal that we had had correspondence with the Speaker or summarise what it was. How on earth was my hon. Friend supposed to know that, when I, with my 21 years in this House and my service on the Commission, did not know it?³¹

38. Mr Speaker Weatherill’s ruling of February 1985 indicated a general presumption that correspondence with the Speaker is private unless otherwise agreed. It is obviously useful for Members to be able to seek advice privately from the Speaker on a range of matters and for him to be able to reply as helpfully and candidly as possible. If such correspondence is unexpectedly made public, it may tend to make these exchanges less worthwhile. All parties to correspondence need to have clarity about how it may or may not be used.

39. We find that there has been an expectation, grounded in precedent and a past decision of the House, that correspondence with the Speaker on matters of privilege should remain confidential unless the Speaker authorises publication.

40. However, it has become apparent that this expectation is not clear to Members. The House operates on a basis of precedent, but Members at large are not likely to be aware of decisions from 1977 or rulings from the 1980s, set out in a footnote to Erskine May or held in the files of the Journal Office, unless their attention is specifically drawn to them or to the rules or conventions based on them. We have no reason to think that Mr Nicolson and other Members were being insincere when they said they were not aware of the expectation in regard to confidentiality over raising matters of privilege. More could be done to communicate these matters, particularly at the point at which Members engage with the Speaker or the House authorities over a privilege issue. The question of confidentiality in relation to the Speaker’s correspondence with Members more generally is for the Speaker rather than this Committee, but a statement from the Speaker setting out his expectations on how correspondence should be treated would, we believe, be useful for the House as a whole. It might be helpful, for example, if correspondence from the Speaker which is not intended to be disclosed were to be marked accordingly. The ways in which Members engage with the public, and expectations and understanding around privacy and confidentiality, have changed greatly since 1977, and it would be useful for there to be a clear statement of the current position for the benefit of Members, including, for example, whether Members are or should be allowed to disclose an application for an Urgent Question in advance of the Speaker’s decision or the fact that such an application has been declined.

Nature of the disclosure

41. In our view if the only issue was that Mr Nicolson had made public the contents of the Speaker’s letter without his agreement, then the question of privilege or contempt would not have arisen. It is the way in which he made those contents public, and what has happened since he did so, that gives rise to questions of privilege.

42. To recap briefly, the DCMS Committee’s special report on the conduct of Nadine Dorries before it when she was Secretary of State was highly critical of the way she had behaved. The key passage is the final paragraph:

Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.³²

43. Mr Nicholson wrote to the Speaker with a copy of the special report on 31 October 2022. In his final paragraph, he wrote:

I believe this to be a very serious matter. Having consulted a number of Parliamentarians cross party I have been advised to draw the report to your attention with a view to referring the matter to Privileges.

44. The Speaker replied on 8 November. The one substantive paragraph says:

I have considered the matter carefully. Given the views expressed by the Committee in its report, I do not consider it reaches the threshold for me to give time for it to be raised as a matter of privilege.

45. It was on 16 November that Mr Nicholson posted the tweet with the video commenting on what the Speaker had said. The key part of what he said was the last four sentences:

I sent a copy of the report to Mr Speaker and he’s responded and I thought I should update you on what he said. He says that he’s considered my letter but he’s decided to take no further action and not to refer Nadine Dorries to the Privileges Committee. In other words, she’ll suffer no consequences for what she’s done. And I thought you should know.

46. It will be seen that Mr Nicolson makes no mention of the Speaker’s stated reason for not giving the matter precedence, namely “the views expressed by the Committee”. The key point in the paragraph from the report quoted above is that the Committee published the report *instead* of seeking a referral to the Privileges Committee. That being so, giving the matter precedence would have gone against the express intention of the Committee, and there was no evidential basis for doing that.

47. Mr Nicholson also said that the Speaker had decided not to refer Ms Dorries to the Privileges Committee. That is not correct in any case; it would have been the House that decided whether to do that if the Speaker had granted precedence. This may seem a fine distinction, but it is an important one. Mr Nicholson then said, “In other words, she’ll suffer no consequences for what she’s done”, implying (or allowing the inference to be drawn) that it was the Speaker who was preventing Ms Dorries’ conduct being referred to the Privileges Committee, even though that was the decision of the DCMS Committee.

48. In his written evidence to us, Mr Nicolson argued that the DCMS Committee did not recommend against referring Ms Dorries to the Committee of Privileges, and

32 DCMS Committee, [Fourth Special Report](#), para 9

suggested that the final clause of paragraph 9 of the Committee’s special report (“we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions”) was an invitation to other Members not on the Committee to seek to make a referral on the grounds of privilege.

49. In oral evidence we explored with Mr Nicolson what exactly the DCMS Committee’s position on this matter had been. Mr Nicolson told us that:

[T]here has been some suggestion that the Committee was divided on whether to recommend that Ms Dorries be sent to Privileges. We were not. I don’t recall any discussion at all about it. As recently as 9 am this morning, I’ve confirmed this with other Committee members at the private meeting of the Committee itself. We assumed that such was the severity of the charge in our report that this would be the outcome and that Ms Dorries would have to appear before this Committee.³³ [...]

The Committee did not have a view, collectively, about sending Ms Dorries to the Committee of Privileges. They thought that she would be sent to Privileges. The Chair thought that she should be sent to Privileges. Today, I asked the members of the Committee who were members of the Committee at that time what they thought would happen, and they all said to me that their assumption had been that she would be sent to Privileges because a member of the Committee or another Member of Parliament, like myself, would request that that time be given. I do not think I misrepresented the Speaker by saying that he had decided not to allocate the time.³⁴

50. When asked why, in that case, the Committee itself had not recommended a referral, Mr Nicolson replied:

I can honestly say that we spent about a second or two discussing that. [...] I suppose we felt that it was so blindingly obvious that what [Nadine Dorries] had done was egregious and was a deception of Parliament that all of us just assumed that this would end up in Privileges. It just required a trigger.³⁵

51. This line of argument seems to us tenuous. It is based on a stretched interpretation of the wording in the Committee’s special report. If the DCMS Committee had wished Ms Dorries’ conduct to be referred to the Privileges Committee it could have made a recommendation to that effect (which would have been the “trigger” referred to by Mr Nicolson) rather than relying on some implicit and unstated understanding that other Members might do so. The obvious reading of the reference in the Committee’s report to “enabl[ing] the House, and its Members, to draw their own conclusions” instead of seeking a referral to the Privileges Committee, was that “Ms Dorries’ conduct condemns itself and people will judge her accordingly” without the need for a referral to Privileges. The relevant sentence hinges on the crucial word “instead” which makes clear that the report is the alternative to a referral, not a step towards one. Although Mr Nicolson

33 Q1
34 Q3
35 Q11

suggested that the Speaker should have consulted the Chair of the DCMS Committee about its intentions,³⁶ we see no reason why the Speaker should have felt the need to go behind the clear statement in the special report.

52. It is not within the scope of our inquiry to consider whether the Speaker made the correct decision in response to Mr Nicolson's application, but we note that it is standard practice, for sound reasons, for a Speaker to decline to re-open a question that has been decided in a select committee. A committee which has conducted an inquiry has had all the evidence before it whereas the Speaker does not.

53. We conclude that Mr Nicolson's video tweeted on 16 November 2022 was misleading in giving an erroneous impression of what the Speaker had done ("not to refer Nadine Dorries to the Privileges Committee") and, by omitting his stated reason for his decision, allowing a misleading impression to be given that he had acted out of partiality towards Ms Dorries. We consider the implications of this conclusion in terms of whether a contempt was committed in paragraph 63 below.

Mr Nicolson's subsequent conduct

54. Following his publication of the Speaker's decision on 16 November 2022, Mr Nicolson's further conduct included the following:

- Failure on subsequent occasions to set out the Speaker's reasons for not granting leave (in the House on 28 November he said that the Speaker did not believe the threshold for a debate had been met, but did not give his reason)
- On two occasions when asked on Twitter if the Speaker had given reasons for his decision Mr Nicholson said "No detailed reason" and "No I am afraid not".
- He did not remove the video when asked to do so. It was still possible to access the video via Mr Nicholson's Twitter account several months after it had originally been posted.
- On 23 November Mr Nicolson said he deplored the social media pile-ons against the Speaker but did not directly apologise. In the debate on 28 November he did apologise to the Speaker for "breaking a House rule" but did not unambiguously apologise for the fact that his actions led to the Speaker being publicly criticised.³⁷

55. Mr Nicolson accepted that "the Speaker received a great deal of criticism from the public over his decision"³⁸ (once Mr Nicolson had made this public), but he took no action when he could have done so to mitigate the consequences of the abuse being directed at the Speaker and his office.

56. Mr Nicolson's written evidence argues that it is the responsibility of the Speaker to maintain his impartiality, and that criticism of the Speaker is only a contempt if it is made explicitly, is unfounded and is not withdrawn.³⁹ It also argues that there were a number

36 Q16

37 See paras 12–17 above.

38 Q1

39 See Appendix 3, paras 2(d), 44–45.

of instances under the previous Speaker when direct criticism of him was not subject to censure, by implication suggesting that if those were not proceeded against, neither should the case against Mr Nicolson.

57. Clearly the Speaker does need to act in an impartial manner, but as well as avoiding direct, unfounded accusations against the Speaker, Members do also need to refrain from making comments which may unfairly imply that the Speaker has acted in a biased or partial manner as that could call into question his overall impartiality. The fact that no complaint was made about criticisms of the previous Speaker should not affect the general principle.

58. In oral evidence to us, Mr Nicolson offered an apology to the Speaker. The relevant exchange is as follows:

Chair: Andy [Carter] has just put it to you that you have not apologised to the Speaker for prompting the criticism that he faced, and asked whether you are willing to do so now. I am taking the answer to that to be yes.

John Nicolson: Yes.⁴⁰

59. We conclude that Mr Nicolson's conduct after 16 November 2022 compounded his original conduct by neglecting opportunities to correct misguided impugning of the Speaker's impartiality, and to offer a proper apology to the Speaker in good time. We consider the implications of this conclusion in terms of whether a contempt was committed in paragraph 63 below.

Our findings

60. In the light of our conclusions as set out above, we considered whether Mr Nicolson had committed a contempt.

61. Erskine May states that a contempt is:

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. It is therefore impossible to list every act which might be considered to amount to a contempt, as Parliamentary privilege is a ‘living concept’.⁴¹

62. The then Clerk of the House drew our attention to the fact that “A contempt is an offence against the House as a whole, and not against an individual Member.”⁴²

63. **We regard Mr Nicolson’s conduct as highly regrettable. The integrity of the Chair is important to our democracy and Members should not, by their actions or inaction, imply a lack of impartiality on the part of the Speaker when there are no reasonable grounds for supposing this. We consider that Mr Nicolson’s initial action in publishing the Speaker’s decision was disruptive, and we conclude that his subsequent conduct in neglecting to correct the mistaken impression he had given, or to offer a proper apology to the Speaker in good time, nearly crossed the line into being a contempt. Irrespective of the fact that Mr Nicolson felt he was acting within his rights, we consider that he showed intransigence in refusing to accept he had actually been at fault, and that he had caused unjustified public pressure and abuse to be directed at the Speaker. However, in view of his candour and co-operation with the Committee, and because when giving oral evidence he offered, through the medium of the Committee, an apology to the Speaker, we recommend that no further action be taken.**

64. **We note that it was entirely appropriate for this matter to be referred to the Committee, and that by so doing the House has given us an opportunity to clarify some important issues. We have set out earlier in this report our recommendation that steps be taken to improve the communication to Members of the House’s expectations as to the circumstances in which private exchanges with the Speaker, particularly in relation to privilege, are to be regarded as confidential.**

41 Erskine May, 25th ed. (2019), para 15.2

42 Appendix 2, para 11

Conclusions

Key issues in the inquiry

1. Mr Speaker Weatherill's ruling of February 1985 indicated a general presumption that correspondence with the Speaker is private unless otherwise agreed. It is obviously useful for Members to be able to seek advice privately from the Speaker on a range of matters and for him to be able to reply as helpfully and candidly as possible. If such correspondence is unexpectedly made public, it may tend to make these exchanges less worthwhile. All parties to correspondence need to have clarity about how it may or may not be used. (Paragraph 38)
2. We find that there has been an expectation, grounded in precedent and a past decision of the House, that correspondence with the Speaker on matters of privilege should remain confidential unless the Speaker authorises publication. (Paragraph 39)
3. However, it has become apparent that this expectation is not clear to Members. The House operates on a basis of precedent, but Members at large are not likely to be aware of decisions from 1977 or rulings from the 1980s, set out in a footnote to Erskine May or held in the files of the Journal Office, unless their attention is specifically drawn to them or to the rules or conventions based on them. We have no reason to think that Mr Nicolson and other Members were being insincere when they said they were not aware of the expectation in regard to confidentiality over raising matters of privilege. More could be done to communicate these matters, particularly at the point at which Members engage with the Speaker or the House authorities over a privilege issue. The question of confidentiality in relation to the Speaker's correspondence with Members more generally is for the Speaker rather than this Committee, but a statement from the Speaker setting out his expectations on how correspondence should be treated would, we believe, be useful for the House as a whole. It might be helpful, for example, if correspondence from the Speaker which is not intended to be disclosed were to be marked accordingly. The ways in which Members engage with the public, and expectations and understanding around privacy and confidentiality, have changed greatly since 1977, and it would be useful for there to be a clear statement of the current position for the benefit of Members, including, for example, whether Members are or should be allowed to disclose an application for an Urgent Question in advance of the Speaker's decision or the fact that such an application has been declined. (Paragraph 40)
4. We conclude that Mr Nicolson's video tweeted on 16 November 2022 was misleading in giving an erroneous impression of what the Speaker had done ("not to refer Nadine Dorries to the Privileges Committee") and, by omitting his stated reason for his decision, allowing a misleading impression to be given that he had acted out of partiality towards Ms Dorries. We consider the implications of this conclusion in terms of whether a contempt was committed in paragraph 63 below. (Paragraph 53)
5. We conclude that Mr Nicolson's conduct after 16 November 2022 compounded his original conduct by neglecting opportunities to correct misguided impugning of

the Speaker's impartiality, and to offer a proper apology to the Speaker in good time. We consider the implications of this conclusion in terms of whether a contempt was committed in paragraph 63 below. (Paragraph 59)

Our findings

6. We regard Mr Nicolson's conduct as highly regrettable. The integrity of the Chair is important to our democracy and Members should not, by their actions or inaction, imply a lack of impartiality on the part of the Speaker when there are no reasonable grounds for supposing this. We consider that Mr Nicolson's initial action in publishing the Speaker's decision was disruptive, and we conclude that his subsequent conduct in neglecting to correct the mistaken impression he had given, or to offer a proper apology to the Speaker in good time, nearly crossed the line into being a contempt. Irrespective of the fact that Mr Nicolson felt he was acting within his rights, we consider that he showed intransigence in refusing to accept he had actually been at fault, and that he had caused unjustified public pressure and abuse to be directed at the Speaker. However, in view of his candour and co-operation with the Committee, and because when giving oral evidence he offered, through the medium of the Committee, an apology to the Speaker, we recommend that no further action be taken. (Paragraph 63)
7. We note that it was entirely appropriate for this matter to be referred to the Committee, and that by so doing the House has given us an opportunity to clarify some important issues. We have set out earlier in this report our recommendation that steps be taken to improve the communication to Members of the House's expectations as to the circumstances in which private exchanges with the Speaker, particularly in relation to privilege, are to be regarded as confidential. (Paragraph 64)

Appendix 1: Correspondence between Mr Nicolson and the Speaker (October/ November 2022)



HOUSE OF COMMONS
LONDON SW1A 0AA

Dear Mr Speaker

I write as a Member of the DCMS Committee and as my party's front bench DCMS spokesperson. I contacted your office some weeks ago regarding Nadine Dorries' testimony to our Committee. She made allegations about a Channel 4 series - and people on a housing estate with whom she lived for that series - which we have concluded are entirely false.

I had a very helpful meeting with Eve Samson, Clerk of the Journals and passed on her advice to my fellow Committee members. As a result, the Chair offered Ms Dorries a further opportunity to retract her testimony. When she refused, we published a short, blunt report last week. Our conclusions were unanimous and cross party. We believe that Ms Dorries gave untrue evidence to our Committee, concocting a story which was false.

The report is excoriating. Ms Dorries was, at the time of giving evidence, the Secretary of State for Culture. She was responsible for the fate of Channel 4 which she planned to privatise. Our report states: "We are concerned Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4."

Furthermore investigating the untruthful testimony given to the Committee has cost many hours both for MPs and Commons staff. Channel 4 and Love Productions, the makers of the show, have spent time and considerable amounts of money conducting an in-depth investigation into her false claims to protect their own reputations, and that of the members of the public whom Ms Dorries traduced..

I believe this to be a very serious matter. Having consulted a number of senior parliamentarians cross party I have been advised to draw the report to your attention with a view to referring the matter to Privileges.

Please find a copy of the DCMS Committee report attached.

With kind regards.

Yours sincerely

John Nicolson

31/10/2022



Speaker's Office Houses of Commons London SW1A 0AA

Tuesday, 08 November 2022

Dear John,

Thank you for your letter of 31 October, with regards to the DCMS Committee's special report of 18 October on the testimony of Nadine Dorries MP.

I have considered the matter carefully. Given the views expressed by the Committee in its report, I do not consider it reaches the threshold for me to give time for it to be raised as a matter of privilege.

Yours sincerely,



Rt Hon Sir Lindsay Hoyle MP
Speaker of the House of Commons

John Nicolson MP
House of Commons

Appendix 2: Memorandum from the then Clerk of the House (January 2023)

Privilege complaint against John Nicolson MP

Memorandum dated 3 January 2023 by the Clerk of the House

1) I thought that it would be helpful to the Committee if I provided a memorandum on the complaint against Mr Nicolson, setting out in brief the sequence of events that led to the referral, and identifying some issues which the Committee may wish to consider in its inquiry. I also attach separately a detailed timeline of events.

Facts of the case

2) On 19 May 2022 Nadine Dorries MP, the then Secretary of State for Digital, Culture, Media and Sport, gave evidence to the DCMS Committee on the work of the Department. In the course of that evidence Ms Dorries told the Committee that various participants in a programme called Tower Block of Commons in which she had participated were ‘paid actors’ rather than members of the public. Channel 4, which had broadcast the programme, subsequently asked the programmes producers to investigate what she had said. It released a statement in July 2022 saying that investigations had found no evidence to support her comments.

3) There then followed a series of exchanges between the Committee and Ms Dorries. The Committee invited her to reconsider what she had said in evidence, and Ms Dorries continued to stand by her original statement.¹

4) On 18 October 2022, the DCMS Committee agreed a Special Report on the matter. It stated that the claims that Ms Dorries had made were ‘groundless’. It concluded the Special Report by saying:

We are concerned Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4.

Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.²

5) The Formal Minutes of the Committee for 18 October³ show that Mr Nicolson was at the meeting at which the Special Report was agreed, and that it was agreed without

1 For a full account of these events, see Digital, Culture, Media and Sport Committee, [Fourth Special Report, HC 801 \(Session 2022–23\), Rt Hon Nadine Dorries MP](#).

2 [ibid](#), paragraph 9.

3 [Formal Minutes of the DCMS Committee, Session 2022–23](#), page 22.

a division or any formal attempt to amend it. Minutes simply record the presence of a member at some point during a meeting. They do not say for how long they were present, or for which business.

6) Mr Nicolson subsequently wrote to the Speaker to ask if he would give the matter precedence as an issue of privilege.⁴ Mr Speaker wrote in reply⁵ that he would not do so as the Committee had explicitly decided against pursuing the privilege point.

7) Mr Nicolson tweeted about the reply he had received on 16 November. In the video that he posted, he said:

Hello, I know a lot of you are following the case of Nadine Dorries, the former Culture Secretary, and the fact that she appeared before the Commons Culture Committee, on which I sit, and gave false testimony to it. Now the Committee published an excoriating report and I don't think that Nadine Dorries because of that should go to the House of Lords in Boris Johnson's resignation Honours list. So I sent a copy of the report to Mr Speaker and he's responded and I thought I should update you on what he said. He says that he's considered my letter but he's decided to take no further action and not to refer Nadine Dorries to the Privileges Committee. In other words, she'll suffer no consequences for what she's done. And I thought you should know.

He did not publish the text of the letter from Mr Speaker, or any extract from it.

8) Mr Speaker made a statement about the matter in the House on 23 November.⁶ He criticised Mr Nicolson for making private correspondence public and added that “The hon. Member has seen fit to give a partial and biased account of my letter on Twitter, and I await his apology”. In response, Mr Nicolson said that he deplored “social media pile-ons against [the Speaker]” but did not explicitly apologise.

9) On 28 November, the Speaker told the House that he had received a letter from David Davis MP asking him to give precedence to a matter of privilege, namely the conduct of Mr Nicolson in relation to his correspondence with Mr Speaker, a request to which he agreed, having taken advice from the Deputy Speaker and Clerks (while Privilege matters are for the Speaker to decide, he wanted to ensure that he was acting with appropriate objectivity in this case) The debate took place on 29 November, when the House agreed to refer the matter to the Committee of Privileges on division by 371 votes to 16.⁷ The Resolution that the House agreed was:

That the matter of the actions and subsequent conduct of the hon Member for Ochil and South Perthshire in relation to correspondence from the Speaker on a matter of privilege be referred to the Committee of Privileges.⁸

10) Subsequently Mr Nicolson reiterated his argument in his defence in an article in a newspaper in his constituency, which I attach at annex D.

4 Letter of 31 October 2022.

5 Letter of 8 November 2022.

6 Hansard 23 November 2022, cols 291–2. The full text of the exchanges is attached at annex A.

7 Hansard 29 November 2022, cols 803 to 815. The full text of the exchanges is attached at annex C.

8 Votes and Proceedings, 29 November 2022

Issues of privilege

11) It may be helpful in the context of this referral by the House to examine briefly what constitutes a breach of privilege. Erskine May says:

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. It is therefore impossible to list every act which might be considered to amount to a contempt, as Parliamentary privilege is a ‘living concept’. (paragraph 15.2)

It is also important to note that ‘A contempt is an offence against the House as a whole, and not against an individual Member’.⁹

12) In response to Mr Nicolson on 23 November, Mr Speaker said that his comments on Twitter “put me in a bad light with the people of this country, and I do not expect that to happen, as an impartial Speaker”.¹⁰ The key characteristics of the office of Speaker are authority and impartiality. As Erskine May says ‘Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that that impartiality is generally recognised’. (paragraph 4.23). For this reason ‘reflections on the character of the Speaker, or accusations of partiality in the discharge of their duties...have attracted the penal powers of the Commons’. (paragraph 15.14)

13) Mr Speaker also told the House that “Correspondence on matters of privilege is private”. This is in line with the precedent noted in Erskine May, which says that ‘it is not the practice for such letters [that is, ones which decline a request for precedence on a matter of privilege] to be made public’.¹¹ It is also in line with the ruling made by Mr Speaker Weatherill in February 1985 who said “when I write letters to hon. Members I do not expect copies to be given to the press, at any rate not without my authority”.¹² This related to a letter not on a privilege matter, indicating a general presumption that correspondence with the Speaker is private unless otherwise agreed.

14) Against that background there are three points the Committee may wish to address when considering the referral from the House:

- whether in making public the contents of the letter from Mr Speaker without his authority Mr Nicolson committed a breach of confidence
- whether in disclosing only part of the letter from Mr Speaker Mr Nicolson committed a selective breach of confidence, by implying that the Speaker had not acted with due impartiality

9 Memorandum from the then Clerk of the House, Committee of Privileges, Third Report, HC 417 (1976–77), Recommendations of the Select Committee on Parliamentary Privilege, page xiii, paragraph 13 (i).

10 Hansard, col 292.

11 Erskine May, 25th edition, paragraph 15.32, footnote 6.

12 Hansard 5 February 1985, col 747.

- whether Mr Nicolson’s response to Mr Speaker’s statement on 23 November, both in the Chamber and elsewhere (particularly on social media) constitutes a contempt.

15) If the Committee considers that on any or all of these points Mr Nicolson is in contempt, it will then have to consider what would be an appropriate sanction.

Sir John Benger KCB

Clerk of the House

3 January 2023

ANNEX A

23 November 2022 col 291

Speaker’s Statement

12:33:00

Mr Speaker

On 20 October, the Digital, Culture, Media and Sport Committee published a special report on answers given to it by the right hon. Member for Mid Bedfordshire (Ms Dorries) when she was Secretary of State for Digital, Culture, Media and Sport. The hon. Member for Ochil and South Perthshire (John Nicolson) subsequently wrote to me asking for precedence for a complaint of a breach of privilege, as was his right. I declined to do so since the bar for such a complaint is high. The House should take action only when essential in order to provide reasonable protection for the House, its Members or its officers from improper obstruction. I note that the Committee itself, of which the hon. Gentleman is a member, has said:

“Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.”

So I considered it appropriate to respect the Committee’s assessment of the situation.

Correspondence on matters of privilege is private. Indeed, I go to great lengths to ensure that Members can write to me in confidence on any matter, knowing that their communication will remain private. I expect the same courtesy with my replies. The hon. Member has seen fit to give a partial and biased account of my letter on Twitter, and I await his apology. I gave the hon. Member notice that I would be raising this matter at this time, but I do stress that it is not the way we should be doing business in this House.

John Nicolson (Ochil and South Perthshire) (SNP) col 292

As you have just explained, Mr Speaker, the DCMS Committee, on which I sit, published a unanimous cross-party report about the testimony given to us by the right hon. Member for Mid Bedfordshire (Ms Dorries), and there is now considerable public interest in

what should happen next. I want to put on record that I deplore social media pile-ons against you, or indeed anyone else—I have been on the receiving end of them, and they are exceedingly unpleasant. But could I ask for guidance on what I and other Members should tell our constituents about integrity in politics in this context? If someone misleads a Committee, what should happen next?

Mr Speaker

First of all, printing the letter, and only half the letter, is not integrity; in fact, it is far from it. It misled the people of this country, and it certainly put me in a bad light with the people of this country, and I do not expect that to happen, as an impartial Speaker. If that was an apology, I do not think it was very good.

Mr David Davis (Haltemprice and Howden) (Con)

On a point of order, Mr Speaker. Further to that, hon. Members of this House have certain strict duties on them. First, there is a duty to uphold the institutions of this House. Clearly, in breaching the confidentiality of the Speaker's private correspondence, the hon. Member for Ochil and South Perthshire (John Nicolson) has knowingly broken that rule. If that was an apology, it was not sufficient for that alone, frankly.

We also have a duty to tell the truth. In the hon. Gentleman's public pronouncements, he implicitly criticised you, Mr Speaker, for not referring the Secretary of State to the Privileges Committee, but you were simply following the convention of agreeing with the Select Committee, of which he is a member. When the Committee decided not to refer, there was no minority report from him. There was not even a vote against from him; it was a unanimous vote. What he was trying to do was blame you, through his partial release of the letter, and lead the public to believe that somehow you made this decision against the wishes of the Committee.

The rules of this House do not allow me to assert whether I view the misleading of the public as deliberate, so the House can make its own judgment on that, but this miserable half-apology was completely inadequate for this breach.

Mr Speaker

I am going to leave it there for today, and I hope the hon. Member for Ochil and South Perthshire will consider the way he has put his own part.

ANNEX B

28 November 2022 col 659

Speaker's Statement

15:36:00

Mr Speaker

Before we come to our next business, I wish to make a short statement. I have received a letter from the right hon. Member for Haltemprice and Howden (Mr Davis) requesting that I give precedence to a matter as an issue of privilege. The procedure for dealing with

such a request is set out in “Erskine May” at paragraph 15.32. The matter in question is the conduct of the hon. Member for Ochil and South Perthshire (John Nicolson) relating to private correspondence between him and my office. The House will recall that I gave the hon. Member an opportunity to apologise.

While “Erskine May” is clear that the granting of applications for precedence is a matter for the Speaker, given that the subject relates to my office, I have consulted with the Deputy Speakers before making my decision. It is not for the Chair to decide whether a contempt has been committed, but instead whether there is an arguable case for the House to examine such.

I have considered the issue, taking account of advice from the Deputy Speakers and the Clerks of the House. I have decided that this is a matter that I should allow the precedence accorded to issues of privilege. The right hon. Member for Haltemprice and Howden may therefore table a motion to be debated tomorrow. The motion will appear on tomorrow’s Order Paper, to be taken after any urgent questions or statements and before Government business. The motion will be available to Members once it has been tabled, which will be before the rise of the House today. If necessary, I will advise the House tomorrow on the usual conduct in debate on such motions. I hope that this is helpful to the House.

ANNEX C

29 November 2022 col 803 to 815

Privilege

Madam Deputy Speaker (Dame Rosie Winterton)

I remind hon. Members of the decision in question and of the procedure on this motion. The decision before the House is whether to refer the matter to the Committee of Privileges. It will be for the Committee to report back on whether it considers that there has been a contempt.

Although it is in order for hon. Members to refer to the issues cited in the motion, it is not in order to make general criticisms of the conduct of the hon. Member for Ochil and South Perthshire (John Nicolson) or of any other hon. Member. Good temper and moderation must be maintained in parliamentary language. Previous debates on such motions have usually been relatively short; I hope that this debate will be focused and brief. Any hon. Member who wishes to speak needs to stand at the beginning of the debate to ensure that they catch my eye.

The right hon. Member for Haltemprice and Howden (Mr Davis) has tabled a motion for debate on the matter of privilege, which Mr Speaker has agreed should take precedence today. I call David Davis to move the motion.

13:57:00

Mr David Davis (Haltemprice and Howden) (Con)

I beg to move,

That the matter of the actions and subsequent conduct of the hon Member for Ochil and South Perthshire in relation to correspondence from the Speaker on a matter of privilege be referred to the Committee of Privileges.

I have been advised by the Clerks that this is a very narrow motion, so I will stick strictly and exclusively to the matter at hand. Before I come to the substantive motion, however, I want to say something to those members of the public who may think that this is an arcane or even abstruse issue.

Ever since Speaker Lenthall told King Charles I that

“I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me,”

the Speaker has been the spokesman, champion and protector of the Members and institutions of this place, as well as being the impartial arbiter of our proceedings. If hon. Members think that that is just a piece of ancient history, they ought to consider more recent times. Mr Speaker’s more recent predecessors have been criticised on issues of impartiality or for failing to protect Members: for example, Mr Speaker Martin’s failure to protect my right hon. Friend the Member for Ashford (Damian Green) was highly controversial at the time and very important.

As for upholding the rights of Back Benchers and Opposition Members, we need only look at Mr Speaker’s fierce criticism of the Government during the statement yesterday, when he upheld our rights. It is therefore vital for Members to protect the integrity, impartiality and apolitical nature of the Speaker’s office. That point is clearly recognised in “Erskine May”—hardly a polemical document—at paragraph 15.14, which states that

“reflections on the character of the Speaker or accusations of partiality in the discharge of their duties”

are a punishable offence. “Erskine May” also recognises that a Member’s behaviour and conduct outside this House count towards that.

I turn to the substantive motion. Following an appearance by my right hon. Friend the Member for Mid Bedfordshire (Ms Dorries) before the Select Committee on Digital, Culture, Media and Sport while she was Secretary of State, the Committee opened an investigation into several claims that she made, but ultimately it decided against any action. The Committee as a whole published a special report—[Interruption.] [Hon. Members: “He’s turned up.”] Oh, right.

The Committee as a whole published a special report, which said:

“we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.”

It is crucial in this matter to remember that the hon. Member for Ochil and South Perthshire (John Nicolson) sits on that Committee. He did not ask for a Division before the report was published; he did not vote against it; he did not publish a dissenting opinion on that

report. Instead, he wrote to Mr Speaker asking him to give precedence to matters reported on by the Committee, even though the Committee itself was not seeking such precedence. As would be expected, Mr Speaker did the usual thing, and—in his own words—decided to

“respect the Committee’s assessment of the situation.”—[Official Report, 23 November 2022; Vol. 723, c. 291.]

After Mr Speaker had replied to the hon. Member privately, as is the convention with privilege issues, the hon. Member took to Twitter. He brandished a copy of Mr Speaker’s letter in his video. He broke all the conventions on the privacy of Speakers’ correspondence on privilege, and disclosed a partial and partisan account of Mr Speaker’s letter. He said on Twitter:

“He’s considered my letter, but he’s decided to take no further action.”

In doing so, he implied that it was Mr Speaker’s unfettered decision not to refer the matter to the Privileges Committee. Nowhere in his filmed statement did he tell his followers that Mr Speaker was following normal procedure by accepting the will of the DCMS Committee—I imagine that is why Mr Speaker described his action last week as giving a “partial and biased account” of the correspondence—and nowhere in his statement did he tell his followers that it was he himself who sat on that Committee and signed off the conclusions.

All of us in this House have a duty to uphold its rules and institutions, but by knowingly breaching the confidentiality of the Speaker’s correspondence, the hon. Member has done the opposite. This is a clear breach of our rules. The proper response after Mr Speaker’s censure of him for his behaviour last week was for the hon. Member to accept the seriousness of his actions, apologise properly to the House, and delete the offending tweets. If he had done so, I imagine that would have been the end of the matter; indeed, I would not have made my point of order on the day. However, he failed to apologise, and instead compounded his misdemeanour. Taking to Twitter once again, he claimed that he

“offered no apology as there was no misrepresentation.”

Pete Wishart (Perth and North Perthshire) (SNP)

Will the right hon. Gentleman give way?

Mr Davis

He claimed that he

“didn’t ‘release’ the Speaker’s letter. I summarised it entirely fairly.”

That is untrue. He misled the country by deliberately withholding the way in which this decision had been arrived at and his part in it. He also retweeted an account that was directly critical of Mr Speaker, saying that Mr Speaker’s statement had been merely “Ermine pursuing theatrics” and that Mr Speaker was placing his

“integrity above that of parliament”.

Pete Wishart

Will the right hon. Gentleman give way?

Mr Davis

The hon. Member for Ochil and South Perthshire had again compounded his misdemeanour by deliberately attempting to undermine the impartiality and integrity of the Speaker's office. It is the role of the Speaker of this House to protect Members and stand up for its Back Benchers, and it is the Members' duty, on our part, to uphold the dignity of the Speaker's office.

Pete Wishart

Will the right hon. Gentleman give way?

Mr Davis

I do not believe any of this conduct to be appropriate for a Member of this House. However, that is not for me to judge, as a single, ordinary Member, which is why this is not a motion to condemn, but a motion to pass the matter to the Privileges Committee of the House of Commons.

14:03:00

John Nicolson (Ochil and South Perthshire) (SNP)

At the heart of this issue, I believe, is accountability. What should happen to Members who break the rules, and how open should our procedures be? What should the public be allowed to know?

Let me say at the outset that I am very sorry that the Speaker feels that my revealing his decision not to have a debate in the House about our Committee's report has put him in a bad light with the public. That was never my intention. My intention—[Interruption.] If Members allow me to develop my speech, they will hear my points. My intention was merely to let the public know what had been decided.

I am accused of breaking a rule myself, and I would like to explain the circumstances to the House. I am a member of the Digital, Culture, Media and Sport Committee. We held a hearing with the then Culture Secretary, the right hon. Member for Mid Bedfordshire (Ms Dorries), at which she claimed that a Channel 4 reality series in which she had appeared some years ago had used actors pretending to be members of the public. She claimed that they had confessed this to her. A member of the production team who lived on the estate concerned—

Madam Deputy Speaker (Dame Rosie Winterton)

Order. I am sorry that the hon. Gentleman missed my opening remarks, but it is quite clear that this is not about the actions of any other Member. It is not about what happened in the Committee with any other right hon. Member. It is about the motion before us.

John Nicolson

Thank you, Madam Deputy Speaker. Let me say that there was considerable press interest in our Committee's work, and I decided that we should send a copy of the report to the Speaker. I thought that time might be set aside for a debate about referring it to the Committee of Privileges. However, the Speaker wrote back to me saying that he did not believe the case met the threshold for a debate. I recorded a video summarising the Speaker's decision, and I tweeted it. I offered no comment about the Speaker, nor did I criticise him. There was considerable public interest, and I soon discovered that the Speaker was angry. He believed that I should not have reported his decision. Last Wednesday, he told me in the House that he thought I had not summarised him accurately, and that I should not have reported him at all. It was not my intention in any way to summarise him inaccurately.

Before I was elected to the House, I was a journalist—a reporter for “Newsnight”, among other current affairs shows. I believe in open democracy, but I also believe in maintaining agreed confidentiality. It did not cross my mind that revealing the Speaker's decision on this was a breach of privilege. After all, what was I to say if journalists asked me whether I had written to the Speaker? Was I to say, “Yes”? If they asked me, “Has the Speaker responded? Has the Speaker given a ruling?”, was I then to say, “I'm afraid I can't tell you”? I did not consider that I had broken any confidence or betrayed any trust. I did not imagine that the Speaker's decision on a matter of importance to my constituents could not be revealed. Moreover, I believe that I summarised the Speaker fairly, but I am in the unfortunate position of finding myself unable to prove that, because in order to do so I would have to release the Speaker's letter to me in its entirety—something which, as we have established, the Speaker does not believe I should do.

There has been a suggestion that I printed only half the letter. That is not the case. The Speaker's letter to me came as a letter through the post. There was no need for me to print it, nor did I publish it, nor did I show its contents to the camera, nor did I leak it to others. I was very open in the way I talked about it, which I hope shows that I did not think I was behaving improperly. There has also been some suggestion that the Select Committee did not wish to see this matter proceed to a privileges debate. That, too, is not the case. The Committee decided not to refer the Member concerned because she was no longer a Cabinet Minister, but the Committee left open the option for others to do so. Indeed, some Committee members expected that to happen. I agreed with the findings of the Committee, which were unanimous and cross-party.

The right hon. Member for Haltemprice and Howden (Mr Davis), who wrote to the Speaker asking for this debate, has just spoken again. I have never met the right hon. Member or spoken to him here, although I may have interviewed him in the past. He is not a member of the Select Committee, and he has previously championed free speech.

Madam Deputy Speaker

Order. We really are not here to discuss the matters surrounding the Committee itself. The hon. Gentleman needs to stick to what is in the motion.

John Nicolson

May I just say this, Madam Deputy Speaker? I spoke to the Chair and the Clerk of the Committee today. I gave them exactly the words that I intended to use, and obtained their permission to use the words that I have just repeated.

Madam Deputy Speaker

Order. It is up to me to make the final decision. [Hon. Members: “Hear, hear.”] Those people do not give the hon. Gentleman permission; I do.

John Nicolson

The right hon. Member for Haltemprice and Howden spoke last Wednesday following the Speaker’s remarks from the Chair, and he laid into me with some vigour, using what appeared to be a pre-prepared speech. He was especially exercised by what he saw as my breach of parliamentary etiquette. It is worth me pointing out in that context that he did not contact me to inform me that he planned to speak about me, which as we all know is the convention. I was not afforded the opportunity to reply last Wednesday, but before moving on to other business the Speaker concluded:

“I am going to leave it there for today”.—[Official Report, 23 November 2022; Vol. 723, c. 292.]

I therefore assumed that the matter had been laid to rest. However, the right hon. Member then took to Twitter to pursue his criticism of me, complete with a video of his speech.

Madam Deputy Speaker

Order. It is not for the hon. Gentleman to be criticising the right hon. Gentleman who moved the motion. He can speak to the motion, not outside it, so can we just stick to the matter in hand?

John Nicolson

Thank you, Madam Deputy Speaker—

Simon Hoare (North Dorset) (Con) rose—

John Nicolson

I will give way to the hon. Gentleman.

Simon Hoare

I am grateful to the hon. Gentleman, who on a personal level I like. Can I just give him some friendly advice? Put the spade down.

John Nicolson

People are watching this, and I am pleased that they are. I think they will draw conclusions, having heard both sides of the argument.

Pete Wishart

I have been in this House for 21 years, and as you know, Madam Deputy Speaker, I have been a member of the House of Commons Commission for something like four years. I had absolutely no idea that we could not reveal that we had had correspondence with the Speaker or summarise what it was. How on earth was my hon. Friend supposed to know that, when I, with my 21 years in this House and my service on the Commission, did not know it? All of this seems to be, at best, some sort of means for retribution and, at worst, institutional bullying, because that is what it is starting to feel like right now.

Madam Deputy Speaker

Order. Interventions can be made, but they should be brief. I would also remind hon. and right hon. Members that if the House decides to refer this matter to the Committee of Privileges, these sorts of arguments can be made there. This debate is on the simple matter of the motion. Other arguments can be made to the Committee if the House decides it wants the matter to go to the Committee.

John Nicolson

I know that the Speaker has been on the receiving end of often unpleasant comments from the public since I revealed his decision. That was never my intention. I did not use his name, I did not link to him and I did not post contacts for him. I am very sorry that a pile-on has ensued. I have friends across the House, and I believe in vigorous but fair debate. I have no time for abusive behaviour; I do not engage in it and I deplore it.

I am advised that I breached a parliamentary rule by referring to the Speaker's letter, but as I have explained, I did not knowingly do so. I would never reveal a confidence. I did not believe that the Speaker's decision on a parliamentary matter was a secret. Indeed—this is perhaps not a matter for today—should there not be a distinction between correspondence containing confidences and correspondence on policy decisions? Has every Member who has revealed a Speaker's decision by letter found themselves the subject of a parliamentary privilege debate, as I am today? Although this convention appears to exist, is it not the very antithesis of open democracy? Many Members on both sides of the House have told me privately that they did not know this rule existed.

Tim Loughton (East Worthing and Shoreham) (Con)

I should declare an interest as another Member who appeared in the very same reality show that the hon. Gentleman's Committee discussed. He has not apologised to the Speaker. Does he not think that, having betrayed what was marked as private correspondence, which clearly and rightly aggrieved the Speaker, if he had given an apology at the time when it was raised by the Chair last week, he would not be in this position now? Why did he not do that? Would he not like to bring back at least some decorum by apologising profusely to the Speaker and the House now for the offence he has caused?

John Nicolson

The hon. Gentleman says the letter was marked "private". I do not know how he knows what was on the letter. I have shown the letter to absolutely nobody. But since he challenges me, the letter was not marked "private". If it had been, I would not have talked about it. It is a core belief of people in my former profession that we hold confidences and that we

will go to prison rather than reveal our sources. The letter was not marked “private”. It was about a matter of policy on whether or not a debate could be held, and I did not think that it was confidential.

Wera Hobhouse (Bath) (LD)

The hon. Member has said that he was aware that the Speaker had become very angry. As the Speaker serves all of us, and as this is all about decorum, is it not time that he apologised to the Speaker? Maybe that would resolve a lot of things.

John Nicolson

I want to answer that question honestly. I am slightly torn because, on the one hand, I am deeply sorry that the Speaker is upset. Those who know me will know that I do not ever conduct politics in a way that aims to be offensive, and I am truly sorry that the Speaker is upset. I am truly sorry that I have upset the Speaker, but it would be disingenuous of me to say that I knowingly revealed this. I could not have been more open by going on camera and discussing this. I clearly was not trying to hide it. If people in my profession—my former profession and this profession—want to pass things into the public domain in a sleekit or surreptitious way, they give them to journalists. I did not do that. I stood up and talked about the letter, not revealing its contents in detail but summarising it.

This place often seems hard to understand for the general public, and its procedures can appear opaque. I suspect that most people will find it curious that the Member who misled the Select Committee was subject to no consequences but the Member who revealed that—

Madam Deputy Speaker (Dame Rosie Winterton)

Order. The hon. Gentleman absolutely needs to withdraw that remark.

John Nicolson

I withdraw that remark. I, however, am subject to the current debate. I note that, over the years, these debates have been confined to people who have committed or been accused of committing some of the most egregious offences, but I have yet to meet a Member who thinks this falls into that category.

I want to conclude by saying again that it was never my intention to insult the Speaker. I do not know him well but we have only ever had friendly exchanges when meeting. I bear him absolutely no ill will. I deplore any and all online abuse that he has suffered. Nobody, I imagine, is enjoying this debate—least of all me. I find interpersonal conflict stressful and unpleasant. I hope the House concludes that there was no malicious intent in anything that I did, and I apologise to the Speaker for breaching a House rule, but given the all-party nature of the Committee report I sought no party political advantage and I hope that Members here today will seek no party political advantage. My only motivation was to do what I always try to do, and that is to engage with the debate and to communicate my work here with constituents and with journalists as openly and fairly as I can.

14:19:00

Sir Peter Bottomley (Worthing West) (Con)

I received a letter today from someone who met me at a conference, saying that I was right in saying to her then that although I was not directly involved in her cause, it was a cause worth fighting for. I took that as a tribute. It was the LGB Alliance conference across the road from here. The hon. Member for Ochil and South Perthshire (John Nicolson) talked about pile-ons, and he constantly used the term on Twitter. That may or may not be relevant to the Committee of Privileges, if the matter is referred to that Committee—
[Interruption.]

Madam Deputy Speaker

Order. I have to say to the Father of the House that this is not about criticising other people's behaviour. It is strictly about the motion before us.

Sir Peter Bottomley

In the Hansard of 23 November, at 12.33 pm, Mr Speaker said he was awaiting an apology. The response from the hon. Member for Ochil and South Perthshire expressed regret at the pile-on against the Speaker, and we have heard today that the hon. Gentleman did not intend to be offensive to anybody.

I think the proper description of last week's exchange with the Speaker, as shown on the record in Hansard, is that the Speaker is awaiting an apology, which we have not yet heard. We have heard an explanation this afternoon that the hon. Gentleman was asking for a debate on a Select Committee report. The way to ask for a debate on a Select Committee report is to ask the Leader of the House. That is the normal parliamentary procedure.

The hon. Gentleman was actually asking for a privileges reference, which was not accepted. If a Member has been here for 21 years, they know the rules changed some years ago. Requests for a privileges reference are taken up in private with the Speaker, who then gives a view. If an hon. Member receives a reply from the Speaker saying no, and if they decide to make it public that they asked, they have a responsibility to be fully open about Mr Speaker's whole response, not a part of it, as the Speaker said in the Chamber last week at 12.33 pm.

I believe the House has a responsibility to back the Speaker, right or wrong, but especially when he is right. On this issue, my right hon. Friend the Member for Haltemprice and Howden (Mr Davis) is right, and I ask the House to support the reference to the Committee of Privileges. After that, when the Committee has reported, we can decide whether to have a fuller debate and whether the hon. Member for Ochil and South Perthshire has, by then, done as the House would expect, and as the Speaker asked, and given a full apology.

Madam Deputy Speaker (Dame Rosie Winterton)

I call the SNP spokesperson, Deidre Brock.

14:21:00

Deidre Brock (Edinburgh North and Leith) (SNP)

It is extremely unfortunate that matters have come to this, but I understand the conventions of the House that brought us here. The Scottish National party respects the need for a transparent and open process.

The Leader of the House has previously spoken of the importance of parliamentary modernisation, and of how the House operates unlike any normal administrative centre in the public or private sector, and I agree with her. The procedures of the Houses of Parliament need updating, and this situation perhaps provides us with an example of where some reform could take place.

I am confident, having spoken to my hon. Friend the Member for Ochil and South Perthshire (John Nicolson), that he was completely unaware of the conventions of the House at the heart of this issue. He sought clarity on proper procedure and was caught out. He has already spoken at length, with his customary eloquence, outlining his position and how there was no malicious intent.

In closing, I repeat that the SNP respects the need for transparency and openness.

Madam Deputy Speaker (Dame Rosie Winterton)

I call the shadow Leader of the House.

14:23:00

Thangam Debbonaire (Bristol West) (Lab)

The upholding of conventions is essential to the smooth running of this House and to the foundation of political order in this country. “Erskine May” is clear—there is a search function, and I checked this morning—about the procedure for raising a complaint about a breach of privilege. The rules are there to find for a Member who seeks to raise such a complaint. “Erskine May” says that Members need the permission of the Speaker and must request it in writing. There is a long-standing convention that, when Members write to the Speaker, they do so on the basis that the correspondence in both directions will remain confidential. This is especially the case on matters of privilege. Paragraph 15.32, footnote 6, is explicit:

“It is not the practice for such letters to be made public... Members should not challenge the Speaker’s decision in the House.”

As Members of this House we all hold parliamentary privilege, but that comes with responsibility. We have a duty not to misuse it, and we have a duty to respect the Chair’s rulings. Our conduct must live up to the high expectations that the public should have a right to expect of us.

I therefore believe the conduct of the hon. Member for Ochil and South Perthshire (John Nicolson) warrants an investigation by the Committee of Privileges, as requested by the right hon. Member for Haltemprice and Howden (Mr Davis), so I will support the motion today, and I urge others to do so.

14:24:00

The Leader of the House of Commons (Penny Mordaunt)

I thank my right hon. Friend the Member for Haltemprice and Howden (Mr Davis) for moving the motion. I deeply regret it, but I understand why he has had to do so.

I heard what the hon. Member for Ochil and South Perthshire (John Nicolson) said today, and I am glad to see him in the Chamber. I do not think his argument that he was not aware of the right course of action or of the appropriate response to journalistic inquiries, which is to state that any such correspondence is confidential, is a reason for not passing the motion. I sincerely hoped he would make an apology. I think there is consensus across the House about the right course of action. Had he taken that opportunity, the matter could potentially have been brought to an end today.

The procedure for raising breaches of privilege is a long-standing and important convention that ensures the privileges and rights of this House are protected.

John Nicolson

I think there is a misunderstanding. I quite clearly said that I was apologising to Mr Speaker. I was unaware of this convention, and I wished to cause him no hurt. I apologised, and I am repeating that now.

Penny Mordaunt

I am afraid that the way in which the hon. Gentleman phrased it, and the way in which he has not appreciated—

Pete Wishart

Will the Leader of the House give way?

Penny Mordaunt

I will continue.

The hon. Member for Ochil and South Perthshire has not appreciated the damage that has been done in these circumstances. The Speaker's role in this is integral, including in avoiding—

Pete Wishart

Will the Leader of the House give way?

Penny Mordaunt

No, I will not give way. I am going to have my say.

The Speaker's role in this is integral, including in avoiding frivolous complaints. It is important that his role is respected.

Pete Wishart

Will the Leader of the House give way?

Penny Mordaunt

No.

Correspondence on such matters must remain confidential and, in this place, we all suffer if that does not happen. As Mr Speaker noted, it is not for him to determine whether

a contempt has been committed. I therefore support the motion and the need for the Committee of Privileges to thoroughly and correctly investigate any potential breach. I think we all regret where we are today. I am sorry the hon. Member for Ochil and South Perthshire did not make a full and frank apology, and I support the motion.

Question put.

Division 101

29/11/2022 14:27:00

The House divided:

Ayes: 371

Noes: 16

Question accordingly agreed to.

Resolved,

That the matter of the actions and subsequent conduct of the hon Member for Ochil and South Perthshire in relation to correspondence from the Speaker on a matter of privilege be referred to the Committee of Privileges.

ANNEX D

Article by John Nicolson MP in the Alloa and Hillfoots Advertiser, 7 December 2022

I've got myself into a bit of trouble down at Westminster.

I've been sent to the Privileges Committee for investigation – sent by a phalanx of Tory MPs, 100 Labour MPs and assorted LibDems and Ulster Unionists.

I will be joining Boris Johnson in the dock. I think most people know what he is charged with. So let me tell you why, last Tuesday, a whole afternoon was set aside to debate my case.

I'm a member of the Commons Culture Committee. Nadine Dorries, the ex-Culture Secretary gave evidence to the Committee about a Channel 4 reality series where she lived with 'real' people on a Council housing scheme.

It wasn't true. But her claim was serious.

It maligned the people concerned. And since, as Culture Secretary, she was considering privatisation, it seemed she had sought the opportunity to traduce the reputation of Channel 4.

The Committee, unanimously, and cross party wrote an excoriating report about her. I sent it to the Speaker and asked that time be set aside to debate referring this serious issue to the Privileges Committee.

The Speaker replied to me. He didn't agree to my request.

I reported his response by posting a video on Twitter. It attracted a lot of views.

What I didn't know was that MPs aren't allowed to say they've received a letter from the Speaker or summarise its contents – even, apparently, if the letter is not marked 'private'.

Now I'm a journalist by profession. I'd never reveal a source when asked not to.

Nor would I ever reveal something personal if asked to keep it private. But it seems to me there was a gulf of difference when reporting a matter of public interest.

I see the latter as open democracy. The thought never crossed my mind that what I was doing broke parliamentary rules.

Indeed none of the senior MPs I spoke to knew either. And the last MP to be referred to Privileges over this was, apparently, in 1937.

I am truly sorry the Speaker was deluged by a pile on over social media when I revealed his decision.

That was never my intention. I abhor abuse and try always to be courteous when using Twitter and Facebook whether I'm having exchanges with members of the public or political opponents. I did not encourage or want people to be rude to him.

I have apologised for inadvertently breaking the rule.

But it's important not to be disingenuous when apologising. I believe in open democracy. I don't believe we should withhold information from constituents about Parliamentary procedures and outcomes.

If I'd wanted to get the letter into the public domain secretly I could (but never would) have leaked it to a journalist. I didn't. I was quite open.

But, as the *The Guardian* pointed out, I'm now in the position of finding myself reported to the Privileges Committee for revealing that Nadine Dorries – who misled a Select Committee – is not being reported to the Privileges Committee.

The Committee will decide my fate in the new year.

Appendix 3: Written evidence from Mr Nicolson (February 2023)

Dear Harriet,

I am enclosing my formal submission to the Committee.

However I have a couple of thoughts which I want to express informally to you.

The first of these is that I did not want this to happen. I have heard some suggestion that I am somehow enjoying this, or that I have sought some confrontation with the Westminster authorities to make an anti Westminster political point. Neither is true.

I had no idea that the Speaker intended his letter to me to be confidential. He didn't mark it as such. I'm a journalist by profession and have always considered keeping confidences a matter of personal and professional honour.

The Speaker wasn't writing to me about a personal matter but House business. I thus assumed it was okay to put his decision into the public domain. Indeed, I've asked a variety of senior and experienced Members across the House if they believed there was a rule about keeping Speakers' correspondence secret when not marked 'private'. Not one has told me they knew about this rule. I suspect, because, as our research has shown this rule doesn't seem to exist. Indeed as the enclosed document shows, a whole variety of MPs - from both sides of the House - have put various Speakers' letters into the public domain over many years without explicit authorisation and without subsequent censure.

Nor did I attack the Speaker as has been suggested. I reported his decision. I know lots of people were mean to him online but I didn't encourage that. I didn't use his handle or even name him. Everyone who knows me believes, I hope, that I'm not vindictive or mean spirited. I have friends across the House from my days in journalism and subsequently. I don't engage in abuse.

Some have asked me why I didn't simply leak the letter to friends in the press. Well, the answer to that is that, first of all, I don't make a habit of leaking to the press. And second, I didn't think the Speaker's correspondence was secret and so I discussed it quite openly and without subterfuge.

I've obviously had quite a bit of time to think about these issues since this unexpected stooshie late last year. I have two thoughts in conclusion. The first is that I am genuinely sorry the Speaker is so upset. I bear the Speaker no ill will. I scarcely know him, but whenever we've met we have chatted amicably. So I have no grudge of any kind against him.

But on perhaps a more important point; I really do think that hiding Speakers' decisions from the scrutiny of our constituents and the press is unhealthy. It's the very antithesis of open democracy. And, as I say in my submission, it would put MPs in the strange position that they would be free to reveal that they'd written to the Speaker but when asked if the Speaker had made a ruling - or even replied - we as MPs would have to say 'that's a secret.' That doesn't seem a position which is easy to explain or justify as democrats. And,

of course, the effect would be to incentivise MPs to leak information to the press as Tam Dalyell did in the example cited by Labour's front bench during the Privileges debate. Incidentally he suffered no sanction when it was revealed that he had done so.

The enclosed submission is written by my barrister Sam Fowles who acts as legal counsel for the APPG on the constitution. He approached me and asked if he could represent me on a pro bono basis as he feels my case raises important open democracy and free speech issues. He has interviewed me a number of times whilst preparing this. As you will see, he has done an enormous amount of research into the issues raised and precedents (or lack thereof). He has asked me to say that he would be happy to clarify in writing any points contained in our submission for the Committee. And I look forward to speaking to the Committee when I appear before you in due course.

With best wishes,

John

(John Nicolson MP)

BEFORE THE COMMITTEE OF PRIVILEGES

IN RE. THE MATTER REFERRED ON 29 NOVEMBER 2022: CONDUCT OF JOHN NICOLSON MP

Written submissions on behalf of

JOHN NICOLSON MP

INTRODUCTION

1) These submissions are made on behalf of Mr John Nicolson, the Hon. Member for Ochil and South Perthshire, in response to the Chair of the Committee on Privileges ("the Committee") letter of 19 January 2023.

Executive Summary

2) First, the case against Mr Nicolson proceeds on a number of propositions about the rules or conventions of parliament for which we have been unable to identify a precedent. Further:

- a) Transparency is an essential constitutional principle and an ethical requirement which binds Members.
- b) There is no rule against disclosing the Speaker's rulings on matters of privilege. It is merely "not the practice". In cases of general interest, there is a reasonable expectation that such rulings will be published.
- c) Contempt of parliament, while a broad and evolutionary concept, is not one that, we contend, should be invoked save in the most severe circumstances.

- d) Criticism of the Speaker has not been considered contempt unless (i) it contains an explicit allegation against the Speaker and (ii) that allegation is false. For at least a decade, Members have been permitted to make outright attacks on the integrity and impartiality of the Speaker without censure.
 - e) MPs should be able to expect that the ordinary rules of fairness and due process are followed by the Committee. It is not “fair”, retrospectively, to impose rules on one Member if other Members have not been held to the same standard.
 - f) There is no parliamentary definition of “breach of confidence” or “partial breach of confidence” and there is no authority for either being recognised as a species of contempt or a punishable offence in their own right.
- 3) Second, Mr Nicolson’s case relies on five key propositions:
- a) Transparency is essential to democracy. Mr Nicolson did no more than provide information to the public about a decision in which the public had a substantial interest.
 - b) Censuring Mr Nicolson risks creating a precedent which could damage the public’s faith in parliament. Members will be able to tell the public that they have written to the Speaker, but they will not be able to disclose whether the Speaker has replied or the nature of that reply. The spectacle of Members announcing to their constituents: “I have received an answer from the Speaker regarding that issue, but I can’t tell you what it is” would be unfortunate and is unlikely to promote public confidence in Parliament or the Speaker.
 - c) The information that Mr Nicolson disclosed – the nature of the Speaker’s decision on his request for precedence – was of an inherently public nature because it would have inevitably become public even if Mr Nicolson had not disclosed it. Moreover, it is convention for the Speaker to publish rulings on matters of privilege where there is a “general interest” in doing so (such as where they might provide guidance for future cases).
 - d) Mr Nicolson’s gist of the Speaker’s letter was fair and neutral. He did not make any express or implied criticism of the Speaker.
 - e) The subsequent public criticism of the Speaker was not caused by Mr Nicolson. It was caused by the fact that members of the public disagreed with the Speaker’s decision. Elected officers must expect to be critiqued by the public. The Speaker could have explained his decision to the public (and availed himself of the convention that private rulings are published in Hansard where there is, *inter alia*, a “general interest” in doing so) but decided not to.
- 4) Third, the three questions posed by the Chair in her letter of 19 January 2023 are answered as follows:
- a) Nothing in Mr Nicolson’s actions – whether or not one agrees with them – approaches the level of contempt.

- b) The information that Mr Nicolson disclosed was not confidential so its disclosure cannot be a breach of confidence (even if breach of confidence were a contempt). Nor did the Speaker mark his letter “private” or “confidential”.
- c) Mr Nicolson’s gist of the Speaker’s letter was fair and neutral. There can be no suggestion that it amounted to a “selective breach of confidence” (even if that were a concept recognised by parliamentary precedent or any other form of law).

Procedural Points

5) It is important to state at the outset that these submissions are necessarily incomplete because Mr Nicolson has not been provided with sufficient information about the case against him to mount a full defence. In particular, Mr Nicolson has not been informed about:

- d) The nature of the alleged deficiencies in his account of the Speaker’s letter;
- e) What is meant by “breach of confidence” in this context;
- f) The nature of a “selective breach of confidence” and the relevant test in this context;
- g) The basis for Sir John’s suggestion that Mr Nicolson implied that the Speaker did not act with due impartiality.

This procedural deficiency does not accord with the Committee’s promise to conduct this matter in accordance with the rules of fairness and due process.

6) Moreover, much of the case against Mr Nicolson turns on the allegation that his account of the Speaker’s letter was somehow deficient. The Committee cannot make an informed decision on this matter without sight of the letter in question and knowledge of the full context in which it was written. Mr Nicolson was prevented from producing the former or using the latter in his own defence before the Commons voted. The Committee is, therefore, requested to permit the letter to be put before it and to permit Mr Nicolson to make any consequential submissions.

FACTUAL BACKGROUND

7) Many of the relevant facts are summarised accurately in the Clerk to the House’s, Sir John Benger’s, note of 3 January 2023. This summary, therefore, does not repeat all that note (save where it is required for sense or context) but, rather, adds a number of facts that are missing from Sir John’s summary.

8) On 19 May 2022 the Hon Member for Mid-Bedfordshire (Nadine Dorries, then Secretary of State for Digital Culture Media and Sport) asserted, in evidence to the Select Committee on Digital Culture Media and Sport, that participants in the Channel 4 television programme “Tower Block of Commons” (in which she had participated) were “paid actors” masquerading as members of the public. Ms Dorries made these remarks in the context of defending her proposal to privatise Channel 4.

9) The DCMS Committee subsequently commenced an investigation into Ms Dorries' allegations. The conclusions of this were published in a report on 18 October 2022 ("the DCMS Committee Report"). The DCMS Committee Report concluded that Ms Dorries' assertions were "groundless" and that:

We are concerned Ms Dorries appears to have taken an opportunity, under the protection of privilege, to traduce the reputation of Channel 4.

Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions.¹³

10) On 28 October 2022, Mr Nicolson tweeted a video providing a gist of the DCMS Committee Report and also tweeted a link to the full report. Included in these tweets was the statement: "I have sent our report to the parliamentary authorities". Erskine May (in its publicly available form) states that the Speaker of the House "enforces the observance of all rules for preserving order in its proceedings." Given that the DCMS Committee Report indicated that Ms Dorries had abused parliamentary privilege, the Speaker was reasonably identifiable as one of the "parliamentary authorities" to which Mr Nicolson had sent the report.

11) Mr Nicolson discussed sending the DCMS Committee report to the Speaker with the Committee chair, who agreed he should do so.

12) When Mr Nicolson received the response from the Speaker, it was not marked as confidential.

13) On 16 November 2022 Mr Nicolson published a tweet which read:

I know many of you are following the story of how Nadine Dorries misled the House of Commons Culture Select Committee on which I sit. The Committee issued an excoriating report about her. I sent a copy to The Speaker asking him to take action. Have a listen to his response to me.¹⁴

14) Attached to the tweet was a video, in which Mr Nicolson said the following:

Hello, I know a lot of you are following the case of Nadine Dorries, the former Culture Secretary, and the fact that she appeared before the Commons Culture Committee, on which I sit, and gave false testimony to it. Now the Committee published an excoriating report and I don't think that Nadine Dorries because of that should go to the House of Lords in Boris Johnson's resignation Honours list. So I sent a copy of the report to Mr Speaker and he's responded and I thought I should update you on what he said. He says that he's considered my letter but he's decided to take no further action and not to refer Nadine Dorries to the Privileges Committee. In other words, she'll suffer no consequences for what she's done. And I thought you should know.

13 Digital, Culture, Media and Sport Committee, Fourth Special Report, HC 801 (Session 2022–23), Rt Hon Nadine Dorries MP, §9

14 Appendix 1

15) The Hon Member for Aberdeen South (Stephen Flynn) retweeted Mr Nicolson’s tweet.

16) On 23 November the Speaker made a statement in which he claimed that “correspondence on matters of privilege is private” and accused Mr Nicolson of giving a “partial and biased account” of his letter. To date the Speaker has not particularised the reasons for his claim that Mr Nicolson’s account was “partial and biased”. Mr Nicolson responded by deploring “social media pile ons” and expressing his sympathy for the Speaker having experienced such a thing. He also asked the Speaker for guidance on what members should tell their constituents in the instant context, i.e., if another member has been found to have misled parliament but the Speaker had declined to set aside time for MPs to discuss the matter.

17) The Speaker did not answer Mr Nicolson’s question. Instead, he called on David Davis, who made a substantial critique of Mr Nicolson (this was in breach of convention because Mr Nicolson had not been notified in advance). The Speaker did not permit Mr Nicolson to respond to Mr Davis.

18) The matter proceeded subsequently as set out in paragraphs 9 and 10 of Sir John’s note.

RULES/PRECEDENT

This Committee’s Approach

19) While this committee is not bound by the procedural rules that would bind a court, we respectfully submit that the Committee has a duty to apply both fairness and due process. As Erskine May makes clear:

*Parliament itself would expect to comply with modern expectations of fairness and due process...*¹⁵

Transparency and Democracy

20) Democracy is the foundation of the UK constitution and the sole source of the House of Common’s authority. As Baroness Hale PSC put it in R (*Miller/Cherry*) v *The Prime Minister*:

*Let us remind ourselves of the foundations of our constitution. We live in a representative democracy. The House of Commons exists because the people have elected its members.*¹⁶

While this Committee is not bound by judicial authority, Lady Hale’s words must be both right and instructive.

21) Transparency is essential to a functioning democracy. While the Committee is not bound by the decisions of the Supreme Court, the words of Lord Mance JSC (with whom Lord Neuberger PSC and Lord Clark JSC agreed) in *Kennedy v Charity Commission*¹⁷ may be instructive:

15 Erskine May, (25th Ed.), §11.22

16 [2019] UKSC 41; [2020] A.C. 373

17 [2014] UKSC 20

Information is the key to sound decision-making, to accountability and development; it underpins democracy and assists in combatting poverty, oppression, corruption, prejudice and inefficiency. Administrators, judges, arbitrators, and persons conducting inquiries and investigations depend on it; likewise the press, NGOs and individuals concerned to report on issues of public interest.

22) Accountability and openness, consequently, are two of the five General Principles of Conduct for members:

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.¹⁸

23) Transparency is particularly important in matters of significant public interest. The truth or falsity of statements made in parliament by ministers is one such matter. Indeed, misleading parliament is, perhaps, the quintessential form of contempt.¹⁹ Parliament cannot hold the government to account, and the public cannot have faith in parliament as an effective legislature, unless it can have confidence that statements made by ministers are true. It is, therefore, both right and necessary for the public to be informed about whether a minister has misled parliament and, if so, whether the minister will face consequences for their actions.

Contempt

24) Contempt of Parliament is a “living concept”. It may broadly be defined as:

“any act or omission which obstructs or impedes either House of Parliament, 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...”²⁰

25) This definition is, potentially, extremely broad. Indeed, it could potentially treat any criticism of (or even disagreement with) another Member or officer as contempt. The mere act of repeating a report that a minister has misled the House may be framed as contempt because that report may damage public confidence in the minister (even though it was, in fact, the minister’s own actions that actually damaged the public’s confidence in the minister). For this reason, in 1978, the House resolved to use its penal jurisdiction only when it is essential to do so.²¹

18 Erskine May, (25th Ed.), §5.3

19 Ibid, (25th Ed.), §15.27

20 Ibid, (25th Ec.), §15.2

21 Ibid, §§15.2 and 15.32

Breach of Confidence

What is “breach of confidence”?

26) The phrase “breach of confidence” does not appear in Erskine May. Nor is there any record in Hansard of a Member being censured for breach of confidence. It does not appear to be a concept recognised or enforced in a Parliamentary context. Sir John did not refer to any authority in his note. On this basis alone, it is not clear how it can be the basis for a finding of contempt against Mr Nicolson. It would, of course, be unfair to retrospectively impose a rule on Mr Nicolson.

27) Further and in the alternative, in her letter of 21 February 2023, the Chair stated that, in interpreting the meaning of “breach of confidence”, “the Committee will adopt plain-English definitions as used in a parliamentary context.” “Breach of confidence”, however, is a legal term of art. It has no meaning other than its meaning in law. Its meaning in “plain English” does not, therefore, differ from its meaning in English law any more than the definition of “murder” differs in “plain English” from English law.

28) The Cambridge English Dictionary defines “breach of confidence” as:

*A situation in which someone makes information known that they should keep secret. To establish breach of confidence, you must show that the information was not public property or knowledge.*²²

29) This “plain English” (dictionary) definition mirrors the legal definition. This is set out in *Coco v A.N. Clark (Engineers) Ltd [1969] RPC 41 at 48–49*:

- a) The information must have the “necessary quality of confidence”;
- b) The information must have been imparted in circumstances importing an obligation of confidence; and
- c) There must be an unauthorised use of the information to the detriment of the person communicating it or another person.

30) In her letter of 21 February, (in response to Mr Nicolson’s question as to whether the Committee would rely on the Coco definition) the Chair said, “examples taken from past cases... have no particular relevance”. It is important to be clear that Coco is not an “example taken from a past case”. It is the authoritative definition of “breach of confidence” in both English law and “plain English”. Moreover, on every occasion that the term “breach of confidence” has been referred to in Parliament, that reference has been to this definition.²³

31) Should the Committee seek to adopt a different definition of “breach of confidence”. Mr Nicolson would request permission to make a further written response.

Confidentiality of the Speaker’s rulings

22 <https://dictionary.cambridge.org/dictionary/english/breach-of-confidence>

23 See, for example, HC Deb, (1985), vol. 75, col. 334 (concerning leaks from the draft reports of select committees, which are marked “confidential”); HC Deb (1887), vol 311, col. 182 (disclosure of a draft bill marked “confidential”); HC Deb, (1972), vol. 889, col. 732 (publication of a draft report marked “confidential”); HC Deb, (1832), vol. 13, col. 232 (publication of draft report “transmitted under sealed covers”).

32) Erskine May does not speak to any general rule that the Speaker's correspondence is confidential and there is certainly no rule that publishing the Speaker's correspondence (whether in full or as a gist) constitutes contempt.

33) It appears to be suggested that all of the Speaker's correspondence with Members is inherently confidential, even when it involves the exercise of inherently public powers (such as the agenda of the legislature – possibly the most quintessentially “public” power in a parliamentary democracy). This cannot be right and is not supported by authority.

34) First, it is established practice that the Speaker will publish private rulings where there is a general interest in that ruling and/or it may serve as a precedent.²⁴ Where, therefore, a member receives a ruling that concerns a matter of general public interest, they may have a reasonable expectation that the Speaker will, themselves, make that letter public.

35) Second, Erskine May does not identify a “rule” that correspondence on matters of precedence is kept secret. Rather, the relevant footnote provides that it is “not the practice” to publish the correspondence:

... It is not the practice for such letters to be made public (HC Deb (1984–85) 72, c 747 and ibid (1985–86) 106, c 1044) ... The Speaker does not usually communicate an unfavourable outcome to the House or to other Members (ibid (1985–86) 87, cc 1042–3), though this may sometimes be done (ibid (1993–4) 238, c21) ...

36) The authority relied on for that proposition is a ruling of 5 February 1985. The Hon Member for Tweeddale, Ettrick, and Lauderdale (David Steel) asked the Speaker to confirm to the House that a report in The Times had accurately summarised the contents of a letter sent to another member. The Speaker was happy to do so. He also said the following in passing:

I went into the matter in great detail and I wrote to the hon. Member giving my conclusions. There was nothing secret about what I wrote. Nevertheless, when I write letters to hon. Members I do not expect copies to be given to the press, at any rate not without my authority.²⁵

37) Three points arise:

- a) The Speaker subsequently published the letter in question anyway;
- b) The Speaker took issue with the leaking of correspondence to the press (Mr Nicolson did not leak anything). He did not consider and did not rule on whether Members were entitled to make public statements referring to the content of his letters.
- c) The Speaker confirmed that there was nothing inherently confidential (“secret”) about his correspondence.

²⁴ HC Deb (1981) vol. 12, col. 113

²⁵ HC Deb (1985) vol. 72, col. 747

38) Moreover, even where a document or discussion is, itself, confidential, it is common practice to provide a “gist” for the public. This balances the public interest in transparent government with the (narrower) interest in maintaining necessary confidentiality. Erskine May does not rule out gisting in this way.

39) The above authorities support the following propositions:

- a) The Speaker’s “private” rulings are not, by nature, secret.
- b) While it is not the normal “practice” to publicise such rulings, there is no explicit rule against doing so.
- c) Indeed, where it is in the general/public interest, a Member may reasonably expect a private ruling of the Speaker to be published in Hansard.

40) Indeed, there are multiple occasions on which the Speaker’s correspondence has been published without permission without it giving rise to allegations of contempt:

- a) 13 January 1988 – The Hon Member for Chesterfield (Tony Benn) wrote to the Speaker seeking permission to publish the rules of procedure for ministers. Mr Benn subsequently quoted the Speaker’s (“private”) ruling in the House. There is no suggestion that he received permission to do so. Indeed, the Speaker noted that Mr Benn had quoted selectively from the letter.²⁶
- b) 19 October 1995 – The Hon Member for Colchester North (Bernard Jenkin) referred, in the House, to a private ruling by the Speaker in a letter written to another member (the Hon Member for Coventry South-West, John Butcher). Mr Butcher had, therefore, clearly shared the letter with Mr Jenkin and Mr Jenkin made (at least by inference) some or all of its contents public. There is no indication that the Speaker gave permission for that disclosure.²⁷
- c) 5 April 2021 – Letters written by Lord Fowler (then Lords Speaker) warning of the costs of re-furbishing the parliamentary estate were leaked to The Telegraph. There is no indication that any attempt was made to identify or censure those responsible.²⁸
- d) 10 September 2016 – A letter from the Speaker to the Hon Member for North West Leicestershire (Andrew Bridgen), regarding whether Mr Bridgen would be permitted to make various allegations of criminal conduct against another Member in the House, was leaked to The Observer.²⁹

Contempt by criticising the Speaker

41) Sir John’s note of 3 January 2023 takes two quotes from separate sections of Erskine May together:

The key characteristics of the office of Speaker are authority and impartiality. As Erskine May says ‘Confidence in the impartiality of the Speaker is an

26 HC Deb, (1988), vol. 125, col. 290

27 HC Deb, (1995), vol. 264, col. 548

28 <https://www.telegraph.co.uk/business/2021/04/05/cost-restoring-parliament-could-soar-12bn-mps-will-not-relocate/>

29 <https://www.theguardian.com/politics/2016/sep/10/keith-vaz-second-leicestershire-police-investigation>

indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that that impartiality is generally recognised'. (paragraph 4.23). For this reason 'reflections on the character of the Speaker, or accusations of partiality in the discharge of their duties...have attracted the penal powers of the Commons'. (paragraph 15.14)

- 42) This may, entirely inadvertently, give the (incorrect) impression that:
- a) Criticism of the Speaker must be treated as contempt.
 - b) The burden of maintaining public confidence in the Speaker lies with Members (to refrain from disagreeing with or even reporting the Speaker's actions to the public), rather than with the Speaker himself (to refrain from doing anything that might dent the public's confidence in them).
- 43) The two separate propositions quoted by Sir John are better understood in their individual contexts:
- 44) **The Speaker must remain impartial** – Paragraph 4.23 (the first paragraph cited by Sir John) governs the Speaker's duties as presiding officer of the House. The conventions to which it refers comprise:
- a) Duties imposed on the Speaker to maintain their impartiality (such as by not taking a partial role in debates); and
 - b) Conventions adopted by parties (such as not contesting the Speaker's seat – this convention was breached in 2019. No action was taken concerning the breach)³⁰.
 - c) Erskine May does not speak to any duty, placed on individual members, specifically to preserve the reputation of the Speaker in the eyes of the public.
- 45) **Members must not make unfounded personal attacks on other Members or officers** – Paragraph 15.14 (the second paragraph cited by Sir John) refers, inter alia, to personal attacks regarding the conduct of other members. Attacks on the Speaker are but one of several examples cited. The authorities referred to in that passage demonstrate that an attack on the Speaker only reaches the level of contempt where two criteria are met:
- a) A Member makes an explicit and positive allegation of misconduct against the Speaker; and
 - b) That allegation is unfounded and is not withdrawn.
- 46) While it has not been possible to access the records for all of the authorities cited (all of which are of some age), those which could be identified are as follows:
- a) Mr Conybeare and The Speaker (20 July 1888) – Mr Conybeare wrote to a morning newspaper accusing the Speaker of acting without due impartiality and siding with the government to close a debate in the middle of his speech

30 <https://www.independent.co.uk/news/uk/politics/john-bercow-brexit-contest-seat-andrea-leadsom-conservatives-a9096261.html>

proposing an amendment. In fact, the Speaker had merely brought the debate to an end at the scheduled time (having warned Mr Conybeare that he would do so in advance).³¹

- b) Mr Atkinson and Mr Speaker (27 July 1891) - Mr Atkinson wrote to the Speaker (in a letter that was subsequently placed before the House) accusing the latter of “persecuting” him over a minute which described Mr Atkinson as calling for frivolous divisions (the Speaker had done no such thing). Mr Atkinson also wrote to the clerks of the House demanding that the Speaker be replaced as chair for the time that the House considered his complaint because the Speaker was unable to act impartially.³²

47) When considering whether an act rises to the level of contempt, it is submitted that the Committee should consider recent public statements by Members which have (a) portrayed the Speaker in a negative light, and (b) not been subject to censure. Examples include:

- a) 17 May 2010 – Nadine Dorries accused the Speaker of bias towards Labour. She did not provide any evidence to substantiate the claim. She was not censured.³³
- b) 9 January 2019 – The Hon Member for Reigate (Crispin Blunt) and the Hon Member for Gravesham (Adam Holloway) both accused the Speaker of partiality on the basis that his wife had a sticker advocating against Brexit on the window of her car. Neither was censured.³⁴
- c) 29 August 2019 – The Hon Member for North East Somerset (Jacob Rees-Mogg) accused the Speaker of acting “unconstitutionally” because the Speaker (entirely correctly, as the Supreme Court subsequently confirmed) described the prorogation of parliament in 2019 as unlawful. Mr Rees-Mogg was not censured.³⁵
- d) 29 August 2019 – Andrew Bridgen said of the Speaker:

He’s a Speaker who has ripped every page about impartiality out of the Speaker’s rule book.

It is hypocritical. He’s showing what an arch-Remainer he is. No doubt his impotence to stop prorogation will undoubtedly be making him go apoplectic.

Mr Bridgen was not censured.³⁶

SUBMISSIONS

Preliminary Points

48) Before addressing the three issues raised in the Chair’s letter of 19 January 2023, five preliminary points must be made:

31 Parl Deb (1888) Vol. 329, Col. 48

32 Parl Deb (1890–91) Vol. 356, Col. 423

33 <https://www.theguardian.com/politics/2010/may/17/john-bercow-speaker-reelection>

34 HC Deb, (2019), vol. 652, col. 381

35 <https://www.dailymail.co.uk/news/article-7406635/Jacob-Rees-Mogg-savages-John-Bercow-wading-Parliament-suspension-row.html>

36 <https://www.dailymail.co.uk/news/article-7406635/Jacob-Rees-Mogg-savages-John-Bercow-wading-Parliament-suspension-row.html>

First - Transparency is essential

49) Before delving into the specific application of the relevant rules, it is important to see this matter in the proper context.

50) The public's trust in politicians is, today, lower than at any point on record. Almost two thirds of the public see politicians as "merely out for themselves".³⁷ 74% believe MPs are not telling the truth half, or more than half, of the time.³⁸ Young people trust TikTok and Instagram "influencers" to give a more truthful account of current affairs than elected politicians.³⁹

51) It has, therefore, never been more important for politicians to be honest and transparent. In the instant case, a select committee concluded that a cabinet minister had lied to parliament about an important and controversial matter within her remit. There was, at the very least, an arguable case that the minister was guilty of contempt. The public has a legitimate interest in understanding what consequences the minister will face. The public is entitled to ask whether, if ministers face no consequences for misleading parliament, they can trust anything that is said to or in the legislature.

52) Moreover, the individual MPs who sat on the DCMS Committee are answerable to their constituents. We must be able to tell their constituents what actions we have taken and why.

53) If matters of such substantial public interest, that go to the very heart of the public's confidence in our democracy, are conducted behind a veil of secrecy, then we cannot expect the public to have confidence or trust in parliament or in parliamentarians.

Second – A finding against Mr Nicolson would create a problematic precedent

54) There is a danger in applying the rules so as to produce result which reduces the public's respect for Parliament. If Mr Nicolson is found to have broken a parliamentary rule then the only interpretation possible of those rules is as follows:

- a) Members are entitled to write to the Speaker and publicise the fact that they have done so (as the letter is their correspondence, not the Speaker's);
- b) Members are not entitled to reveal, even as a gist, what the Speaker says in response, even when the response concerns matters of public interest.

55) The result would be that Mr Nicolson could have made a video saying "I wrote to the Speaker asking for him to refer Ms Dorries to the Privileges Committee. I have received a response, but I cannot tell you what it is". This would run the risk of bringing the Speaker and parliament into disrepute. Moreover, it would be entirely pointless because, once it became clear that the member had not been referred to the Privileges Committee, the gist of the Speaker's letter would be obvious. Alternatively (if even the fact of receiving a reply is prohibited), Mr Nicolson could say "I have written to the Speaker, but I cannot tell you

37 <https://www.ippr.org/news-and-media/press-releases/revealed-trust-in-politicians-at-lowest-level-on-record/>

38 <https://www.ipsos.com/en-uk/6-in-10-do-not-trust-boris-johnson-to-tell-the-truth-nearly-twice-many-as-keir-starmer>

39 <https://www.independent.co.uk/news/uk/survation-tiktok-facebook-youtube-twitter-b2104669.html>

if I have received a reply”. This is equally, if not more, absurd. It is difficult to understand how such an interpretation of the Parliamentary rules will elevate either the Speaker or parliament as a whole in the eyes of the public.

Third – The information Mr Nicolson disclosed was inherently public

56) Mr Nicolson did no more than disclose the fact that the Speaker had declined to give precedence to a matter of privilege regarding Ms Dorries or to refer Ms Dorries to the Privileges Committee. This was inherently non-confidential or even inherently public information:

- a) The proceedings of parliament happen, for the most part, in public.
- b) The inevitable consequence of any decision by the Speaker to give precedence would be a debate on Ms Dorries conduct in the House. The inevitable consequence of any decision by the Speaker not to give precedence would be that no such debate took place.
- c) Regardless of whether one concludes that Mr Nicolson was entitled to disclose the Speaker’s letter to him, it cannot be denied that he was entitled to disclose his own letter to the Speaker (any confidence attaching thereto belonged to Mr Nicolson).
- d) If Mr Nicolson disclosed the contents of his own letter (as he was entitled to do and did on 28 October 2022) then the Speaker’s decision to give precedence or not give precedence would inevitably become public because the public would be able to see that there either was or was not a debate on Ms Dorries’ conduct.

57) The information that Mr Nicolson disclosed – namely the Speaker’s decision not to give precedence – would, therefore, inevitably have become public even if Mr Nicolson had made no such disclosure. Further, or in the alternative, Mr Nicolson (or any other Member) would have been entitled to create the circumstances (by publishing their own correspondence to the Speaker) in which the substance of the Speaker’s response would inevitably become public knowledge.

Fourth - Mr Nicolson’s gist was fair

58) In his statement of 23 November 2022, the Speaker accused Mr Nicolson of giving a “biased and partial account” of his letter. The Speaker did not, however, particularise how the account was “biased” or “partial”.⁴⁰ Indeed, to date, no such particularisation has been forthcoming. Mr Nicolson is, therefore, placed at a substantial disadvantage when answering this charge.

59) The closest that anyone has come to particularisation of this accusation is the Hon Member for Haltemprice and Howden (David Davis). He made two accusations:

- a) “... nowhere in his [Mr Nicolson’s] statement did he tell his followers that it was he himself who sat on that Committee and signed of the conclusions.”; and

- b) “Nowhere in his statement did he tell his followers that Mr Speaker was following normal procedure by accepting the will of the DCMS Committee...”⁴¹

60) The first of these two accusations is simply not true. In the very first sentence of his statement of 16 November, Mr Nicolson said:

Hello, I know a lot of you are following the case of Nadine Dorries, the former Culture Secretary, and the fact that she appeared before the Commons Culture Committee, on which I sit, and gave false testimony to it. [Emphasis added]

61) Indeed, Mr Nicolson had previously tweeted:

- a) A video giving the gist of the DCMS Committee’ report;
- b) A link to the report itself; and
- c) A statement that he had sent the report to the “parliamentary authorities” (of which the Speaker is the public face).

62) It is notable that, despite the obviousness of this error, Mr Davis has not apologised for misleading the House, has not corrected the record, and has not been sanctioned.

63) The second accusation is equally misleading:

- a) First, the DCMS Committee did not recommend against referring the Hon Member for Mid-Bedfordshire (Nadine Dorries) to the Privileges Committee. The relevant paragraph reads:

Had Ms Dorries remained Secretary of State, driving a policy of selling the channel, we may have sought a referral to the Privileges Committee but, as her claims have not inhibited the work of the Committee and she no longer has a position of power over the future of Channel 4, we are, instead, publishing this Report to enable the House, and its Members, to draw their own conclusions. [Emphasis added]

The Committee thus declined to seek a reference to the Privileges Committee itself (i.e., it declined to propose a motion collectively, as it had done in the case of News International executives in 2016)⁴² but it left the possibility open when it said that Members may “draw their own conclusions”. Indeed, Members were prevented from drawing any conclusions (at least collectively) by the Speaker’s decision to refuse Mr Nicolson’s request for precedence.

- b) Second, there is no authority for the proposition that the “normal procedure” for when a select committee concludes that a minister has misled Parliament and leaves it up to MPs to make up their own minds about what action to take. Erskine May does not speak to this state of affairs, Mr Davis did not cite a precedent, and Sir John has not identified any authority in his note. Mr Nicolson cannot be criticised for failing to inform his followers about a “normal procedure” which does not exist.

41 HC Deb (2022) vol. 723, col. 803

42 HC Deb (2016) vol. 616, col. 443

- c) Third, it has been implied that Mr Nicolson somehow acted in bad faith by voting in favour of the DCMS Report in committee but then seeking precedence for a matter of privilege. This is an obviously unfair accusation. The effect of the DCMS report was to decline to seek a reference collectively to the Privileges Committee but explicitly acknowledge that individual MPs (whether members of the DCMS Committee or otherwise) could “make up their own minds”. It must follow that MPs were entitled to make up their own minds about what action to take. Mr Nicolson did just that. He did not criticise the DCMS Committee for declining to take collective action, but simply “made up his own mind” and sought a reference as an individual. This was entirely consistent with his vote in committee.

Fifth - Mr Nicolson’s comments did not portray the Speaker in a bad light

64) In his statement of 23 November, the Speaker claimed that Mr Nicolson’s tweet “put me [the Speaker] in a bad light with the people of this country”. This is not true. Mr Nicolson’s portrayal of the Speaker was entirely neutral. His tweet did nothing more than report the fact that the Speaker had declined to refer Ms Dorries to the Privileges Committee. He did not criticise the Speaker’s decision. He did not suggest, imply, or assert that it was not made without reason. He simply stated that it was the Speaker’s decision. He followed this by stating the inevitable consequence of the decision: that the Hon Member would “face no consequences for what she has done”. This is undeniably true.

65) Mr Nicolson did not encourage the public to make contact with the Speaker (or even suggest they do so). He did not use the Speaker’s Twitter handle or otherwise provide contact details. Nevertheless many people, acting independently, criticised the Speaker for his decision. Many of them did so after finding out about it from Mr Nicolson’s statement. That is the nature of democracy. The Speaker is an elected official. He must be open to public critique just as any other public official must. It is inevitable and right that some people will disagree with his decisions, and it is inevitable and right that some people will express that disagreement in a variety of ways (although expressing disagreement abusively is always unacceptable). It is always open to the Speaker to explain his decisions by making a statement to the House or publishing his letter to Mr Nicolson in Hansard in accordance with the convention. It is a matter for him, not Mr Nicolson, that he chose to do neither.

66) The criticism to which the Speaker was subjected was nothing to do with Mr Nicolson. Regardless of whether Mr Nicolson was entitled to disclose the Speaker’s letter, the public criticism of the Speaker flowed from the substance of the decision, not the fact of its disclosure. The Speaker is a public official and the public are entitled to criticise him (even if that criticism is perceived as wrong or unfair). It would, indeed, be extremely problematic in a democracy if elected representatives insisted on keeping their decisions secret so as to avoid public criticism (accountability) for those decisions.

67) Moreover, if Mr Nicolson’s tweet impacted negatively on the Speaker then Mr Flynn’s must also have committed the same offence. No such suggestion is made against Mr Flynn.

The Issues In The Chair’s Letter

68) I now turn to address the three issues in the Chair’s letter.

Did Mr Nicolson Commit A Contempt?

- 69) There is no construction of Mr Nicolson's actions that can amount to contempt.
- 70) The "offence" of contempt may be broken down into three limbs:
- a) An act or omission;
 - b) Which obstructs or impedes the House, a Member, or an officer in the performance of their duties;
 - c) Which is of sufficient seriousness in the context of the whole House such as to justify the use of the House's penal powers (a high bar).
- 71) Where criticism of the Speaker has risen to the level of contempt it has contained two important elements:
- a) There is an explicit assertion that the Speaker has acted improperly; and
 - b) That assertion is untrue or unfair.
- 72) Moreover, the rules on contempt must be interpreted in the light of the democratic basis of Parliament. It cannot, therefore, be contempt to make oneself accountable to the electorate.
- 73) The instant case clearly does not meet those criteria:
- a) Neither this Committee nor anyone who spoke in the debate of 29 November 2022 has identified how the House, a Member, or officer was impeded in their duties as a result of Mr Nicolson's tweet. Nor has it ever been suggested that Mr Nicolson asserted or implied that the Speaker acted improperly.
 - b) The closest anyone has come to doing so is the insinuation that Mr Nicolson's tweet somehow contained an unfair criticism of the Speaker. This is simply not true. Mr Nicolson's tweet did no more than state two incontrovertible facts: that the Speaker had declined to make time for MPs to consider passing the matter to the Privileges Committee and that, as a result, the Hon Member for Mid-Bedfordshire would face no further consequences for misleading Parliament.
 - c) Before sending his tweet, Mr Nicolson had already published the DCMS Committee's report on Twitter in full, published a gist of the report, and published that he was referring the matter to the parliamentary authorities. He made it clear that the tweet in question was an "update" on those previous publications and that he had been party to the DCMS report. He, thus, made the context for his statement abundantly clear.
 - d) Mr Nicolson did no more than inform his followers that the Speaker had declined his request to refer the matter to the Privileges Committee. While the Speaker was undoubtedly subject to criticism for his decision, this cannot ground a finding of contempt. Being subject to criticism is an inevitable (and, indeed, essential) part of holding public office. Any suggestion that Mr Nicolson somehow had a duty to protect the Speaker from criticism by concealing the fact

that the Speaker had refused his request (even after Mr Nicolson had made the request public and it concerned a matter of public interest) is profoundly anti-democratic.

- e) If Mr Nicolson really has fallen foul of a genuine parliamentary rule then Mr Flynn must have done so as well. The fact that no such accusation has been levelled against Mr Flynn suggests that no rule was breached.

Did Mr Nicolson Commit a Breach of Confidence?

74) Sir John does not, in his note, define “breach of confidence” so it is not possible to respond fully to this accusation.

75) The basis of this accusation appears to be that the Speaker’s correspondence is inherently confidential and any sharing of a private ruling without the prior permission of the Speaker is automatically a breach of confidence. This interpretation of the rules cannot be right and, as argued above, is not supported by authority.

76) The better interpretation is that:

- a) There is inherently “nothing secret” about the Speaker’s correspondence (unless explicitly identified as such);
- b) While private rulings relating to requests for precedence on matters of privilege are not, as a matter of practice, published, there is no identified rule against doing so.
- c) Indeed, it is convention that the Speaker will publish private rulings where there is, *inter alia*, a general interest in doing so.

77) In the instant case:

- a) There was (and remains) significant public interest in the honesty of politicians and, in particular, ensuring that ministers do not make misleading statements to parliament.
- b) Mr Nicolson had already made public (as he was fully entitled to do) the fact that the DCMS Report had found that the Hon Member for Mid-Bedfordshire had misled parliament and that he had referred this finding to the parliamentary authorities. It was, therefore, clearly in the public interest to publish the Speaker’s subsequent decision. The question therefore fell within the class of decisions which, by convention, are made public.
- c) Nothing in the Speaker’s letter indicated that its contents were confidential.
- d) Moreover, the authorities which indicate that the Speaker’s correspondence should be kept confidential exclusively refer to the publication of the actual letter. Mr Nicolson did not publish the Speaker’s letter but, rather, gave a gist of the letter. This both protected the confidentiality of the Speaker’s correspondence (such that there was any) and also gave the public information that it was entitled to know – namely whether parliament would take action against a minister found to have misled it.

- e) In doing so, Mr Nicolson did not publicise any information that was not either already obvious to the reasonable person or would shortly become so. The fact that the Hon Member for Mid-Bedfordshire's conduct had been referred to the parliamentary authorities was already public, and Mr Nicolson confirmed that (as he was entitled to do) in his tweet. The nature of the Speaker's decision would be obvious to any reasonable member of the public.

78) Consequently, Mr Nicolson did not disclose information that has any inherent quality of confidence. The information was not imparted in conditions of confidence (it was not marked "confidential"). There is no identified harm suffered by the Speaker as a result of the disclosure. Mr Nicolson's disclosure cannot, therefore, be considered a breach of confidence.

Did Mr Nicolson Commit a Selective Breach of Confidence?

79) "Selective breach of confidence" is a concept unknown to Erskine May, English law, or, indeed, the dictionary. It is therefore very difficult to make submissions in response to this allegation because there exist no criteria against which it can be tested. It is difficult to see how requiring Mr Nicolson to respond to this allegation in such a context accords with the requirements of fairness and due process.

80) Nevertheless, an attempt will be made to address the point. The accusation appears to be that:

- a) Mr Nicolson published part of a confidential document, namely the part of the Speaker's letter which stated that he would not give precedence for a matter of privilege concerning Ms Dorries; and
- b) That part gave a misleading impression of the totality of the letter.

81) Neither limb of the accusation is true:

- a) Mr Nicolson did not publish any part of the Speaker's letter. Rather, he provided a gist of the Speaker's decision.
- b) The gist was fair and accurate, for the reasons set out above.

CONCLUSION

82) For the reasons set out above, the Committee is humbly invited to conclude:

- a) Mr Nicolson has not committed a contempt;
- b) Mr Nicolson has not committed a breach of confidence;
- c) Mr Nicolson has not committed a selective breach of confidence.

SAM FOWLES

Cornerstone Barristers

23 February 2023

Formal minutes

Tuesday 17 October 2023

Members present:

Ms Harriet Harman, in the Chair

Andy Carter

Alberto Costa

Allan Dorans

Yvonne Fovargue

Sir Bernard Jenkin

Sir Charles Walker

Draft Report [*Matter referred on 29 November 2022: conduct of John Nicolson MP*], proposed by the Chair, brought up and read.

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

Paragraphs 1 to 64 read and agreed to.

Papers were appended to the Report as Appendices 1, 2 and 3.

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

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

Adjournment

The Committee adjourned.

Witness

The following witness gave evidence. A transcript can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 12 September 2023

John Nicolson MP

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 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
3rd	Matter referred on 21 April 2022: comments on joint opinion of Lord Pannick QC and Jason Pobjoy	HC 713
4th	Matter referred on 21 April 2022: summary of issues to be raised with Mr Johnson	HC 1203
5th	Matter referred on 21 April 2022 (conduct of Rt Hon Boris Johnson): Final Report	HC 564
1st Special	Matter referred on 21 April 2022: Co-ordinated campaign of interference in the work of the Privileges Committee	HC 1652

Session 2019–21

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